

§ 1 Scope of applicability

- (1) The sale of products of HSM Stahl- und Metallhandel GmbH (hereinafter referred to as: HSM) and the performance of any and all services associated therewith shall be subject exclusively to the terms and conditions set forth hereinafter. Terms and conditions of the Customer of differing content shall only be taken to have been contractually agreed where HSM shall have explicitly confirmed this in writing. The fact that HSM shall not have explicitly objected to terms and conditions of differing content shall not be construed as tacit acknowledgement, e.g. by acceptance of a given order. These terms and conditions apply only if the customer is an entrepreneur (§ 14 BGB), a body corporate organised under public law or a special governmental estate.
- (2) These terms and conditions shall hold for all present and future sales business, even where HSM shall not thereby have made specific reference to same. Decisive is the valid version of the terms and conditions at the conclusion of contract, which are available under <http://www.hsm-stahl.de/agb>.
- (3) Placement of order with HSM shall be construed as approval on the part of the Customer of the applicability of the present GTC's.
- (4) Indications to the validity of statutory provisions are just of clarifying meaning. Even without such a clarification the statutory provisions are valid, insofar as they are not directly changed or explicitly excluded in these terms and conditions.

§ 2 Conclusion of contract; Quotation

- (1) The language of contractual agreement shall be German.
- (2) Quotations issued by HSM shall, at all times, be subject to confirmation and likewise subject, as provided for under § 2 (3), to punctual delivery to ourselves on the part of our suppliers.
- (3) Supply of the Customer shall be subject to punctual delivery to HSM on the part of its suppliers. HSM shall not order the goods required from its upstream supplier(s) until it shall have received the order of the Customer. HSM shall not be in position to quote binding delivery dates upon receipt of order from its Customer in the light of the imponderables associated therewith, in particular, such as relate specifically to delivery dates. HSM shall undertake to inform the Customer immediately where it shall encounter supply-delay on the part of its own suppliers or where the ability on the part of its upstream supplier(s) to perform shall be held to be in jeopardy. If the ordered goods are not available HSM will immediately inform the customer and immediately refund potential considerations already provided by the contracting party.
- (4) Orders shall be required to contain the information required to facilitate issue of confirmation of order and manufacture of the goods in question.
- (5) Contracts with HSM shall not be deemed to have taken effect until such time as HSM shall have furnished the Customer with confirmation of acceptance of order in text format.
- (6) The content of contract and the obligations of the Contractual Parties shall be governed by the content of the confirmation of order. The Customer shall undertake and be obliged to notify HSM immediately and in text format where the contents of the confirmation of order are found to be inconsistent with those of the order of the Customer. Any such inconsistency shall be construed as having been approved where notification of same is not forthcoming.

§ 3 Prices, measurements, weights, quality

- (1) The prices / surcharges shall be based strictly on the list prices applicable on the date of delivery / performance of service. The prices / surcharges chargeable for raw materials shall be calculated on the basis of the market price applicable on the date of delivery / performance of service.
- (2) Where unforeseeable change shall occur three months or later after the conclusion of contract of relevance to the issue of calculation of price, HSM shall adjust the price as required by such change at the point-in-time of delivery / performance of service. Adjustment shall be made by way of either an adequate increase or an adequate decrease in price, whereby the amount of adjustment shall correspond to the change impacting on the factor in question of relevance to the issue of calculation of price or the amount of the sum of changes impacting on the factors of relevance to the issue of calculation. HSM shall undertake to notify the Customer immediately in the event of occurrence of change impacting on those factors of relevance to the issue of calculation of price.
- (3) Qualities, sorts and dimensions of the goods in question shall be based on those DIN and EN standards agreed upon conclusion of contract. Where no such standards shall have been agreed, those DIN and EN standards applicable upon conclusion of contract shall be determinative. Where DIN and EN standards shall neither have been agreed nor be of pertinence, normal practice and commercial custom shall be deemed decisive.
- (4) HSM shall not assume any guarantee or furnish any assurance by way of reference to standards and similar guidelines, works test certificates and similar items of certification as well as to details relating to qualities, sorts, dimensions, weights and usability or to declarations of conformity and corresponding markings such as CE or GS. This shall not apply where the Parties shall have explicitly agreed something to the contrary.
- (5) Details in respect of weight shall be based on those weighing procedures conducted by HSM or by its upstream supplier(s). Presentation of the weighing slip shall serve as evidence of weight. The weight may also be determined without weighing and according to standard to the extent permitted under applicable law. HSM shall be at liberty to determine the weight without weighing and according to standard (theoretical) plus 2.5% (commercial weight).

§ 4 Obligations of HSM

- (1) The contractually-agreed obligations to perform on the part of HSM are as set forth under the confirmation of order.
- (2) HSM shall reserve the right, giving due consideration thereby to the legitimate interests of the Customer, to make such minor adjustments as shall serve in insignificant measure only to reduce the value and capability of the product supplied. Subject to the same requirements, products may also undergo such level of technical modification/upgrading as shall ensure that their purpose is not compromised in any way.

- (3) In so far as nothing to the contrary shall have been agreed, HSM shall be required to ensure availability for collection of the goods at the location agreed.
- (4) HSM has established an integrated quality management system for the performed services, which is conform not only to ISO 9001 but also to EN 9120 and KTA 1401. Special requirements to order processing, documentation etc. of these regulations can only fulfilled by HSM, if the Customer specifies the required regulations in the inquiry and in the order.

§ 5 Transfer of risk, delivery dates

- (1) Risk shall pass to the Customer as soon as the goods shall have been made available for collection.
- (2) The delivery of goods shall be subject strictly to pertinent instruction and shall be conducted for the account and at the risk of the Customer.
- (3) "Delivery dates" within the meaning of the present GTC's shall be taken to be those dates upon which the goods shall have been made available for collection.
- (4) Any and all delivery dates specified shall be non-binding and shall be strictly subject to punctual delivery to ourselves on the part of our suppliers.
- (5) Even where delivery dates shall have been explicitly declared binding, they shall only be treated as such where the Customer shall have performed as required under its obligation to collaborate, in particular, in relation to the provision of detail in respect of specifications required, the procurement and submission of any items of official certification required, the payment of deposits agreed, etc.

§ 6 Export of products

- (1) The goods shall be made available without the provision of any such items of approval for export as may be required. The procurement of such approval shall be the responsibility of the Customer.
- (2) In so far as nothing to the contrary shall have been agreed, the goods are not sold for the purpose of export through the Customer or through a third party. Responsibility for obtaining the requisite approvals shall also lie with the Customer.
- (3) Where a delivery agreed shall be delayed due to export restrictions or be rendered impossible as a consequence, HSM shall be at liberty to withdraw from the contract upon which the transaction is based.

§ 7 Retention of title

- (1) The goods delivered shall remain the property of HSM until such time as all amounts owing, irrespective of their legal basis, shall have been paid in full, inclusive of such as shall accrue in future or are conditional and/or shall be based on contracts concluded simultaneously or later. This shall also apply where payments shall have been effected against specifically designated amounts owing or by way of cheque or bill of exchange.
- (2) The Customer may only sell the goods subject to retention of title through the usual channels of business and subject to its normal terms and conditions of business and as long as it shall not be found to be in default of payments. This concession, however, shall be subject to the proviso that any and all amounts owing as a result of resale shall pass to HSM as provided for under Subparagraphs (4) through (6). The Customer shall not be at liberty to dispose of the goods subject to retention of title in any other manner.
- (3) Any reworking, processing mixing or combining on the part of the Customer of the goods subject to retention of title with other goods shall, without exception, be carried out on behalf of HSM. Where this shall be the case on the basis of a contract concluded with a third party, the obligations deriving therefrom shall attach to the Customer alone. Where the other goods involved in the event of reworking, processing mixing or combining of the goods subject to retention of title shall constitute the primary component, HSM shall acquire co-ownership of the new product created, namely in measure proportionate to the value of the goods subject to retention of title. Subparagraph (2) shall apply accordingly where the Customer shall re-sell the new product.
- (4) Amounts owing to and any and all ancillary entitlements of the Customer (and likewise items of security furnished by third parties or items of substitution for a claim(s) against third parties) that have their origins in the resale of the goods subject to retention of title shall be, herewith and now, assigned to HSM. The claims thus assigned shall serve as security to the same extent as the goods subject to retention of title. Where the goods subject to retention of title shall be sold by the Customer together with other such goods as shall not have been supplied by HSM, assignment of claim deriving from resale shall apply only in measure proportionate to the resale value of the goods subject to retention of title sold in any given case. Where the claim deriving from resale of the goods subject to retention of title shall be managed by the Customer within the framework of a current-account arrangement established with its own customer, the current-account claim shall be deemed assigned in full to HSM. Once offset has been duly conducted, it shall be replaced by the balance acknowledged, which shall be deemed assigned in measure equivalent to the amount equating to the original amount of claim per current-account status.
- (5) The Customer shall be entitled to collect amounts receivable from resale in so far as HSM shall not revoke this entitlement. Revocation shall be deemed admissible only where such measure shall be deemed requisite and reasonable for the purpose of securing the claims in favour of HSM and against the Customer, and in particular in the event of default of payments.
- (6) The Customer shall only be entitled to assign the amount receivable - including sale of amount(s) receivable to factoring banks - where it shall have sought and secured the prior approval of HSM. Should HSM so require, the Customer shall be obligated to notify its customers immediately of the assignment arrangement and to make available any and all such information and documentation as may be required for the purpose of implementing collection. Where payment shall be effected by way of cheque, ownership of same shall pass to HSM as soon as it shall be acquired by the Customer. Where payment shall be effected by way of bill of exchange, the Customer does, herewith and now, assign any and all entitlement deriving therefrom to HSM. The process of surrender of the aforementioned instruments shall be replaced in that they shall be held by the Customer for safekeeping on behalf of HSM, or, where the Customer shall not take direct possession of said instruments, it does, herewith and now, assign in advance any and all claim for surrender against third parties deriving therefrom; it

shall undertake to hand over the instruments immediately, having duly affixed its endorsement thereto.

- (7) Assertion of retention of title on the part of HSM shall only be taken to constitute withdrawal from contract where this shall have been explicitly declared. The right of the Customer to retain possession of the goods subject to retention of title shall expire where it shall fail to fulfil its obligations under this or any other contract.
- (8) The Customer shall be obliged to notify HSM immediately in the event of seizure or any other encroachment on the part of third parties. Pledge or cession by security shall require to have been approved by HSM.
- (9) HSM shall be obliged, should the Customer so demand, to release items of security of its own choosing where the overall value of security held shall exceed that of the claims thereby secured by in excess of 20%.
- (10) The Customer shall be obliged to ensure the safekeeping of the goods subject to retention of title on a free-of-charge basis, to store them separately or to designate them accordingly as well as to insure them against the usual risks. The Customer does, herewith and now, assign to HSM any and all claims as shall accrue as a result of loss of or damage to said goods.
- (11) Acceptance of the aforementioned assignment is herewith confirmed. Assignment of any and all claims against HSM shall be subject to the approval of HSM.

§ 8 Obligations of the Customer

- (1) The Customer shall be obliged to perform all such acts of collaboration as may be required, and, where applicable, to effect payment on account and payment of the purchase price. In addition, payment-transaction charges (e.g. transfer charges imposed by its own bank) shall be for the account of the Customer.
- (2) In so far as nothing to the contrary shall have been agreed, the prices quoted shall be taken to be net prices, to which value added tax shall be added at the rate applicable together with delivery charges where appropriate. There shall be no provision for early settlement discounts.
- (3) The purchase price shall be due and owing upon passage of risk.
- (4) Payments shall be cashless and shall be effected by way of bank transfer. The Customer shall be required to assume any and all costs or charges incurred in conjunction with payment.
- (5) With the debtor's delay HSM has a sweeping pecuniary claim of 40,00 Euro. This also applies for down payments or deferred payments. As of due date, HSM shall be entitled to collect a reasonable flat-rate charge in the amount of EUR 5.00 per reminder required. The Customer shall be at liberty to provide HSM with evidence to the effect that the loss incurred was of lesser amount or that none was incurred at all.
- (6) The Customer shall be required to examine the material delivered for quality, dimensions and accuracy of measurement prior to engaging in processing. Even warrants, certificates and test reports of third persons do not release from this obligation.
- (7) The prices agreed shall, at all times, refer specifically to a given order placed concretely by the Customer. HSM shall not be bound by said prices in the case of orders placed subsequently.
- (8) Where the Customer shall be found to be in such default of payments as would indicate that satisfaction of the claim of HSM may be held to be in jeopardy, it shall be obliged, should HSM so demand, to make the goods in question available for collection and to permit HSM to enter the premises of the Customer for the purpose of removal of said goods. HSM shall also be entitled, in such event, to prohibit the further processing and removal, by whichever manner or means, of the goods supplied. This shall not apply where the Customer may not be held accountable for the accrual of arrears of payment.
- (9) The Customer shall be obliged to specify special, influencing requirements (EN 9120, KTA 1401 etc.) in the execution of the order and to inform HSM about these requirements, so HSM can purposefully fulfil the special requirements in preparation and during the processing of the order.

§ 9 Contractual exclusion of set-off and right of retention

- (1) There shall be strictly no provision for the implementation on the part of the Customer of set-off against claims of HSM.
- (2) HSM, for its part, shall be entitled to implement set-off of all amounts receivable from the Customer.
- (3) Contractual exclusion of set-off shall not apply for the Customer where its claims are conclusively undisputed or final and non-appealable under law.
- (4) The Customer shall have no right of retention.
- (5) Exclusion of right of retention shall not apply where the claims warranting retention shall be based on the same contractual relationship or are conclusively undisputed or final and non-appealable under law.
- (6) Right of retention shall prevail in favour of the Customer in the event of defect where the goods supplied shall be evidently defective or the Customer shall be clearly entitled to refuse to accept the work in question. In such event, however, the Customer shall only have right of retention in so far as the amount retained is proportionate to the defect(s) established and to the anticipated cost of supplementary performance and, more specifically, of rectification of defect.
- (7) The Customer shall not be entitled to assert claims and entitlements on grounds of defect where it shall have failed to effect payment of amounts already due and owing and the amount due and owing in the case in question is proportionate to the value of the goods delivered or work performed with defect as the case may be.

§ 10 Transport damage

- (1) The Customer shall be obliged to examine the goods upon receipt for completeness and intactness.
- (2) The Customer shall be required, in advance of acceptance of the delivery, to have the employee responsible of the transport company or haulier confirm the existence of readily identifiable transport damage such as, for example, damage to outer packaging. A remark on the consignment note will not suffice.
- (3) The following shall apply in the case of such transport damage as shall not be readily identifiable

- in the case of consignments by rail: establishment of the facts must be requested within one week as of delivery of the goods,
 - in the case of consignments by post: establishment of the facts must be requested within 24 hours as of delivery of the goods,
 - in the case of consignments executed through hauliers: the haulier shall be required to have been advised of the damage at least in text format within seven days as of delivery of the goods.
- (4) In addition, it shall be a requirement that HSM shall likewise have been advised in text format of the details of damage and notification of same for the attention of the hauliers within the periods specified above.
 - (5) Where the Customer shall fail to advise transport damage on time, HSM shall be liable for said damage only where and as far as HSM, for its part, shall have received compensation payment from the haulier or transport-insurance provider.
 - (6) Liability on the part of HSM for transport damage shall be limited to the amount of compensation received.

§ 11 Warranty

- (1) The freedom from defects of the goods is primarily determined by their compliance with the agreed quality, in particular the agreed EN standards, data sheets or other regulations. Subject to other agreements, the agreed quality results from the order confirmation; if no agreement has been made there, from HSM's product description
- (2) Insofar as the quality has not been agreed, the goods shall be free from defects if they are suitable for the use presumed under the contract. A use is contractually presumed only if HSM was informed of this use by the Customer in text form at the latest upon conclusion of the purchase contract and has expressly agreed to this use in text form.
- (3) Insofar as the goods have the agreed quality in accordance with clause Sect. 11.1 or are suitable for the use stipulated in the contract in accordance with Sect. 11.2, the Customer may not invoke the fact that the goods are not suitable for normal use or have a quality which is usual for goods of this type and which the Customer has expected. In this respect, the liability of HSM is excluded, unless otherwise provided in Sect. 12 of these Terms and Conditions.
- (4) The period of warranty shall be one year and five years in so far as a building or object is concerned as provided for under § 438 Subsection I No. 2 b) German Civil Code [BGB].
- (5) Where notification of damage shall be warranted and timely, HSM shall undertake to take back defective goods and to deliver replacement goods. HSM may, however, at its own discretion perform repair instead.
- (6) The Customer may only avail itself of its statutory entitlements under warranty where HSM shall fail to honour these obligations or where repair shall conclusively fail. In any event, repair may only be deemed to have failed following a second unsuccessful attempt. Only then, shall the Customer be at liberty to demand compensation or further statutory entitlements under warranty.
- (7) There shall be no question of implementation of warranty where transport damage shall not have been reported on time as provided for under § 10.
- (8) The following shall apply even within the period of warranty, namely: That there shall be no question of implementation of warranty where the Customer shall have failed to furnish notification of readily identifiable defect(s) immediately as of receipt of the goods. There shall likewise be no question of implementation of warranty where the damage in question shall not have been reported by the Customer as provided for under § 10 (5) and (6) and payment of compensation shall not have been forthcoming. Where an instance of concealed defect shall not become apparent until later, the Customer shall be advised to effect notification of said damage immediately, but not later than four working days as of detection. Notification of defect shall be required to be effected in text format, providing specific detail as to the defect(s) in question.
- (9) All rights deriving from material defect shall lapse where the Customer shall fail, having been requested to do so, to afford HSM the opportunity to satisfy itself as to the existence of said material defect and, in particular to make available to HSM, having been requested to do so, the goods constituting the subject matter of complaint or samples thereof for the purpose of examination.
- (10) In addition, claims for defect shall not be entertained where divergence from the physical properties agreed is of insignificant extent or capability is affected to a likewise insignificant degree only.

§ 12 Liability of HSM

- (1) Liability shall prevail where HSM, its legal representatives or vicarious agents shall be found to have culpably (wilfully or negligently) caused harm to life, limb or health.
- (2) Liability shall prevail where HSM, its legal representatives or vicarious agents shall be found to have caused loss/damage of any other nature as a consequence of wilful or grossly negligent breach of obligation.
- (3) Liability shall likewise prevail where HSM, its legal representatives or vicarious agents shall be found to have culpably (wilfully or negligently) breached a contractual obligation hereunder of significant content. A contractual obligation of significant content shall be taken to be such obligation fulfilment of which is a requirement for implementation of contract to become possible and in respect of which the Customer will and may reasonably assume, as a general rule, that such obligation will be fulfilled. In such event, extent of liability shall be limited to such damage as shall be foreseeable and immediate.
- (4) Liability as provided for under the Product Liability Act [Produkthaftungsgesetz] shall remain thereby unaffected.
- (5) Liability on the part of HSM shall not, under any circumstances, exceed the above.

§ 13 Applicable law, jurisdictional venue

- (1) The contract shall be governed by the laws of the Federal Republic of Germany to the exclusion of the provisions of the UN Convention of 11 April 1980 for Contracts on the International Sale of Goods and the conflict of laws under international private law.
- (2) Place of performance of contract shall be taken to be the legal domicile of HSM.
- (3) Sole – also international - jurisdictional venue for all disputes arising from the present contract or implementation thereof shall be taken to be the legal domicile of HSM. HSM

shall be at liberty at its own discretion to institute legal action against the Customer at the jurisdictional venue of the Customer where said venue shall be located in Germany.

§ 14 Miscellaneous

- (1) There shall be no provision, under any circumstances, for assignment to third parties of such claims of the Customer as shall be directed at HSM; the provisions of § 354a Uniform Commercial Code [*HGB*] shall remain thereby unaffected.
- (2) Unless the present GTC's shall have stipulated otherwise, any and all such declarations as shall be submitted for the purpose of amending the present contract or in conjunction therewith shall be required to have been executed in text format.
- (3) The ineffectiveness of individual provisions under the present contract shall have no bearing on the effectiveness of the remaining GTC's. In the case of an invalid clause the parties are bound to negotiate about a valid alternative clause, which is as close as possible to the economic intention of the invalid clause.