



## **General Terms and Conditions of Sales and Delivery of HTG GmbH**

### **§ 1 Miscellaneous**

1. The conditions as set forth hereinafter shall apply to all quotations, conclusions of contract, deliveries and services provided by HTG. The contract partner (subsequently referred to as “buyer”) agrees to these conditions at the latest when accepting the shipment or the service. These conditions and terms shall also apply to any future contracts in the framework of the current business relationship.
2. General terms and conditions of the buyer contradictory to these Conditions and Terms of Sales and Delivery or deviating from a legal regulation to the disadvantage of HTG shall only be valid if explicitly confirmed by HTG in writing.
3. Should any provision of these terms and conditions, either partially or completely, be found to be unenforceable or invalid, this shall not affect the effectiveness of the other provisions. In such event the parties commit to change or replace such provision so as to best accomplish the objectives of such unenforceable or invalid provision in a way that comes closest to the originally intended purpose of that provision in a commercial sense.
4. The buyer agrees that HTG discloses data relevant for the conclusion, handling and execution of the individual contracts to a credit protection organization responsible for HTG.
5. The buyer shall not be entitled to assign claims arising from contracts concluded with HTG to third parties without prior written agreement from HTG. Any rights of set-off and retention can only be claimed by the buyer if such claims were either legally established as final and absolute or undisputed and acknowledged by HTG.

### **§ 2 Conclusion of contract**

1. All quotations submitted by HTG are non-binding and subject to change. The conclusion of contract shall only be valid if confirmed in writing by HTG.
2. Any deviations from these Terms and Conditions of Business, oral side agreements, promises or subsequent modifications of the contract shall only be valid if confirmed in writing by HTG.

### **§ 3 Prices/packing**

1. Prices are quoted by HTG in EURO (€) and are to be understood ex works, without cash discount or other discounts. They do not include any packing, freight and insurance costs and value added tax. Should the legal value added tax be payable, it will be indicated separately in the invoice and be part of the invoice amount.
  2. Unless special instructions were given by the buyer, it is within the discretion of HTG to decide on suitable packing.
  3. If no price agreement was made, HTG’s list prices valid at the time the order confirmation is issued shall apply. If prices were fixed and no other written agreements were made, HTG shall be obliged to adhere to these prices for a period of 3 months starting with the date of quotation, subject to price changes in consequence of legal provisions.
- In case of payment delay or should the buyer initiate bankruptcy, composition or insolvency proceedings any discounts granted shall become void retrospectively.



#### **§ 4 Payment / payment delay**

1. Unless differently agreed on, payments are due and must be effected without deductions within a period of 14 days commencing with the invoice date.
2. Payment orders, checks and/or bills of exchange are only accepted upon prior special agreement and on account of payment on condition that any financing costs, collection fees and discount charges shall be at the expense of the buyer. HTG shall not be liable for the timely presentation, protesting, notification and return of such means of payment, unless HTG, its legal representatives or vicarious agents are to be accused of intention or gross negligence.
3. Should the buyer fail to meet his payment obligation HTG shall be entitled to invoice interest for delay amounting to 8 % p.a. above the respective base rate of the European Central Bank. Should HTG be able to prove a higher interest burden or the buyer be able to prove a lower interest burden the interest for delay is to be set at higher or lower rates.
4. According to HTG's choice, payments made shall be offset in the following order: first against any costs occurred, then against interest due, afterwards against accounts receivable originating from the purchase price.
5. Should the buyer be confronted with an essential deterioration of his financial circumstances, HTG shall be entitled to call in invoices not yet due at that time or other accounts receivable, for which additional time for payment was granted, for immediate payment.
6. The buyer shall only be entitled to set off accounts receivable on the part of HTG against undisputed or legally established counter-claims or assert a right of retention based thereon.

#### **§ 5 Delivery / delivery time**

1. Even where carriage is pre-paid, delivery is effected at the buyer's risk. The risk is transferred at the latest when goods are consigned to the carrier responsible for transportation. HTG shall be at liberty to decide on the mode and route of transport.
2. Returnable packaging has to be returned by the buyer 8 weeks after receipt of goods at the latest without further notice; it must be in proper and clean condition and carriage must be prepaid.
3. In case of doubt, delivery dates specified by HTG shall be non-binding. The buyer shall only be entitled to resign from the contract after delivery was due and he did set an appropriate period of grace of 4 weeks without any result.
4. Any replacement of damages caused by such delay and indemnification for failure to fulfill the obligations shall be excluded as set forth under § 7.
5. Force majeure or other disruptions of operation occurring at HTG or one of its suppliers, which temporarily impede delivery on the agreed date through no fault on the part of HTG, shall extend the delivery dates as referred to under item 3 by the period of such disruption of operation as caused by these circumstances. Should such events last for a period of more than 6 months, both contract partners shall be entitled to resign from the contract. In particular the following are considered to be force majeure: riots, strikes, lockout, regulatory interference and official directives – even if occurring at suppliers or subcontractors of HTG – difficulties with regard to energy supply and material procurement, accidents as well as other unforeseen manufacturing problems and disruptions of operation beyond our control.



## **§ 6 Defects/warranty**

1. Unless explicitly agreed upon, data provided in quotations, orders, order confirmations and product descriptions do not constitute a guarantee of special product characteristics.
2. HTG guarantees that goods and services are free of manufacturing and material defects. Any warranty is excluded for natural wear or if the operation and maintenance instructions are not complied with, further if the item of delivery is being handled improperly or modified or parts are exchanged for others not corresponding to the original specifications.
3. Claims for defects can only be asserted in written form within 14 days after arrival of the goods. In case of latent defects the claim has to be notified in writing and immediately after detection of the defect, at the latest within 6 months after arrival of the goods. The burden of proof that the defect claimed is a latent defect rests with the buyer.
4. In case of justified claims for defects HTG commits – at its own choice – to repair the defective item after return shipment by the buyer and to return the repaired part to the buyer or to have the defective part repaired through an authorized subcontractor on site. At its own discretion HTG is also entitled to refund the purchasing price or to send a replacement delivery for the subject of the contract. For the replacement delivery number 2 shall also apply. Should subsequent performance or replacement delivery fail, the buyer shall be entitled to cancel the contract or to appropriately reduce the purchasing price.

## **§ 7 Liability**

1. Regardless of whether a primary or secondary obligation was violated and regardless of which legal ground HTG shall in addition be obliged to indemnify the other party within the framework of legal regulations with regard to all cases of breach of contract, however only if such damage can typically occur when performing businesses of such kind and if such damage was caused due to intention or gross negligence or any obligation essential to the contract was negligently violated.
2. Inasmuch as they are related to defects, indemnity claims of the buyer in the sense of number 1 become statute-barred within 6 months after transfer of risk in the sense of § 5.1, otherwise after a period of 2 years after conclusion of the contract. Should HTG deny indemnification claims of the buyer in writing, such claims are excluded unless claimed by legal action within 3 months.
3. Buyer's claims for indemnification regarding the lack of guaranteed / warranted characteristics remain unaffected by the preceding regulations inasmuch as these are based on §§ 463, 480 II, 635 BGB [*German Civil Code*].

## **§ 8 Reservation of proprietary rights**

1. The goods delivered shall remain the property of HTG until complete payment of all accounts receivable from the business relationship including current account balance claims. Quotation documents shall remain the property of HTG and must be returned upon request.
2. Goods subject to retention of title shall be stored separately from the other goods; at HTG's request they shall be marked and insured against fire, water, burglary and theft.
3. The buyer shall be entitled to process, sell or rent the goods in the regular course of business. Any sale in the framework of a complete or partial sale of the business is not deemed to be a sale in the regular course of business and subject to the prior consent on the part of HTG.



The buyer shall not be entitled to pledge or assign as collateral any goods subject to retention of title. The buyer processes goods subject to retention of title for HTG without any obligations arising therefore for HTG. HTG, however, is deemed to be the manufacturer in the sense of § 950 BGB [*German Civil Code*].

4. When processing goods subject to retention of title together with other goods not being the property of HTG HTG shall have a co-ownership share of the new item proportionally to the invoice value of the goods supplied by HTG according to §§ 947, 948 BGB [*German Civil Code*]. Should the buyer however acquire the sole ownership of the new item the buyer shall be obliged to grant a co-ownership of the new item on a pro-rata basis in respect of the invoice value of the goods supplied by HTG. The buyer shall store the goods on behalf of HTG free of charge.

Inasmuch as such goods are in the possession of third parties the buyer shall assign his claims against such party to HTG already now, in particular any claims for surrender.

HTG shall be entitled to pick up the goods on its own or through third parties at any time, to withdraw goods from the possession of the buyer and to enter the buyer's premises for this purpose.

5. The buyer shall assign the accounts receivable arising from the sale of the goods subject to retention of title to HTG already; the value shall equal the value of the goods subject to retention of title. HTG accepts this assignment. The same shall apply to accounts receivable from contracts covering service and work performances – on performance of which the reservation of proprietary rights shall expire. Should the total amount of the accounts receivable assigned in advance exceed the claim to be secured by more than 20 %, HTG shall be obliged to re-assign claims at its own choice in the amount of the excess value.

6. Should goods, for which HTG has or is entitled to be granted a co-ownership after processing, be sold the share of debt securities of the advance assignment shall be equal to the invoice value of the goods supplied.

The same shall correspondingly apply if goods subject to retention of title are to be sold together with other goods. With regard to contracts covering service and work performances – on performance of which the reservation of proprietary rights shall expire - the share of debt securities of the advance assignment shall be equal to the invoice value of the goods supplied.

7. Despite an assignment the buyer shall be authorized to collect accounts receivable, pending further notice. He shall, however, not be entitled to dispose of such accounts receivable in any other way. HTG shall have the right to revoke this authorization to collect accounts receivable at any time and to handle collection on its own. HTG will, however, refrain from doing so as long as the buyer duly meets his payment obligations.

HTG is also entitled to request that the buyer informs his customers of the assignment. Additionally the buyer shall be committed to inform HTG of the names of his customers and the amounts of the assigned accounts receivable, as well as to provide any information necessary to claim such assigned accounts receivable.

8. The buyer shall be obliged to protest foreclosure proceedings by third parties affecting the goods subject to retention of title or assigned accounts receivable and to immediately notify HTG thereof. With regard to seizures HTG must receive a copy of the distress warrant at the same time and an affirmation in lieu of oath proving that the goods to be seized are subject to HTG's reservation of proprietary rights.



Should accounts receivable be seized the buyer must declare in lieu of oath that these are accounts receivable resulting from the sale of goods subject to retention of title previously assigned to HTG.

9. Apart from this the buyer shall commit to inform HTG at any time and by request on the whereabouts of the goods delivered under reservation of proprietary rights as well as on accounts receivable resulting from their resale.

10. Should the buyer fail to meet his obligations towards HTG, should he in particular fail to effect payment according to contract or should the buyer be confronted with a financial crisis, HTG shall be entitled – subject to any further rights – to request the surrender of the goods subject to retention of title. It is not required to set a deadline for this purpose.

Taking back the goods shall not be considered as withdrawal from the contract, unless HTG explicitly declares so separately and in written form. With such withdrawal HTG shall be entitled to reduce the credits for granted discounts by the costs occurring for handling.

Should HTG take possession of the goods subject to retention of title it shall be entitled, but not obliged, to utilize and sell them by free negotiation on behalf of the buyer or to accept them back at the value the returned goods still represent for HTG. Apart from this, the buyer's payment obligations shall remain unaffected. In case of utilization HTG shall only be liable in case of intention and gross negligence.

### **§ 9 Place of fulfillment/place of jurisdiction/ applicable law**

1. The place of fulfillment for delivery is the headquarters of HTG. The place of payment for all deliveries is Munich. The place of jurisdiction for all current and future claims arising out of this business relationship, including bills and checks receivable, shall be Munich exclusively. Irrespective of this HTG shall be entitled to file claims at the court having jurisdiction at the buyer's place of business.

2. Exclusively the laws of the Federal Republic of Germany shall govern and apply to all contracts and agreements. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated April 11, 1980 shall be excluded.

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