

General Terms of Delivery and Payment of HERA Herm. Rahmer GmbH & Co. KG

Scope

1. The present terms and conditions shall apply to enterprises, public-law legal entities and public-law special funds. Our deliveries and services shall be made exclusively on the basis of the following terms and conditions and shall also apply to all future transactions with the partners unless expressly agreed otherwise. Terms and conditions of business partner not expressly acknowledged by us shall not be valid. They shall also not be valid if contained in an order or commissioning ("order") following our quotation and we do not expressly object to them or carry out the order without reservations. Our silence shall be deemed as rejection of partner's conditions. In particular, this applies to conditions and sets of agreements transmitted with reference to internet portals. Call up of the page is never deemed as consent by our side.

General Conditions

2. Orders shall only become binding with our order confirmation or execution of the order. The contract parties shall immediately confirm any verbal agreements in detail and in writing.
3. The partner shall verify the correctness and completeness of statements of accounts, in particular balance statement as well as all other settlements and reports. Any objections to statements of account shall be made in writing within one month after issue of invoice; other objections shall be raised without delay. Failure to raise timely objections is deemed as consent. The partner shall only be entitled to offset counterclaims that are either uncontested or have been recognized by declaratory judgment and assert a right of retention only in as far as they are uncontested, ready for decision or defined by enforceable final judgment.
4. The information and illustrations contained in our brochures and promotional documentations are statements customary to the trade and do not contain any technical detail information. No claims for defects can be derived from this information unless they are expressly specified as contractually binding properties of the products.

Long-term and Call Contracts, Price adjustment

5. Unlimited contracts can be terminated with 12 months' notice.
6. If an essential change in labor, material or energy costs occurs for long-term contracts (contracts with a term of more than 12 months or unlimited contracts), each contract party shall be entitled to demand an appropriate adjustment of the prices, taking said factors into account.
7. If no binding order volume has been agreed, we shall base our calculation on the non-committal order volume (target volume) for a certain period submitted by the partner. In the event the partner orders less than the target order volume, we shall be entitled to increase the unit price appropriately. If partner orders more than the target volume, we shall lower the unit price accordingly provided the partner has informed us of his increased demand at least 3 months prior to delivery.
8. For on-call delivery contracts, partner shall notify us of binding quantities at least 2 months prior to delivery by making the respective call. Additional costs caused by a delayed call or subsequent changes of the call regarding deadline or quantity caused by the partner will be charged to the partner; in this respect our calculation shall be decisive.

Confidentiality

9. In the event that no separate confidentiality agreement has been agreed, the following provisions shall apply: each contract party shall only use the documents (including samples, models and data) as well as know-how obtained from the business relationship for the joint business interests and treat them with the same care as its own proprietary information. They shall treat them as confidential and shall not disclose it to third parties when the other partner declares them as confidential or has an obvious interest in maintaining secrecy. This obligation shall begin on the date the documents or information are first received and ends 36 months after termination of the business relationship.
10. This obligation shall not apply to documents and information which are in the public domain or were already known to the contract partner upon receipt without being bound by a confidentiality obligation or information received by a third party entitled to transmission or developed by the receiving party without utilization of documents and information of the other contract party which are subject to confidentiality.

Drawings and Descriptions

11. If one contract party provides the other party with drawings or technical documents relating to the goods to be delivered or their manufacture, they shall remain the property of the contract party providing them.

Samples and Production Equipment

12. The production costs for samples and production equipment (tools, moulds, templates etc.) shall be charged separately from the goods to be supplied unless other agreements have been made. This also applies to production equipment to be replaced due to wear.
13. The costs of upkeep and proper storage as well as the risk of damage or destruction of the production equipment shall be borne by us during the agreed lifetime of the items.
14. In the event the partner ceases cooperation or terminates the contract during the production period of the samples or production equipment, all production costs incurred up to such time shall be borne by him.
15. The production equipment shall remain in our possession until completion of the delivery contract even though the contract partner has paid for them. Thereafter, the partner shall be entitled to demand hand-over of the production equipment if no mutual agreement has been reached regarding date of hand-over and said partner has fully fulfilled all his contractual obligations. In the event hand-over of production equipment with pro-rata tooling costs, hand-over shall only take place after final payment has been made. Production equipment for which the partner shall reimburse the acquisition or production costs pursuant to the agreement, shall remain our property until all payments have been made.
16. We shall store the production equipment free of charge for a period of two years after our last delivery to the partner. Thereafter, we shall request in writing that our partner expresses his wishes regarding further use of the equipment within 6 weeks. Our duty to store the items shall end if no communication is received within these 6 weeks or no new order is placed.
17. Customer-owned production equipment may only be used by us for deliveries to third parties with prior written approval of the partner.

Prices

18. Our prices shall be in Euro exclusive of value added tax, packaging, freight, postage and insurance.

Terms of payment

19. All invoices shall be due for payment within 30 days of delivery and invoice date. Tooling costs and wage labor shall be paid net immediately.
20. In the event that goods delivered by us are undisputedly partly defective, our partner shall nevertheless be obliged to make payment for the defective part.
21. In the case of payment arrears, we are entitled to demand default interest in the amount of 8 per cent over the base rate p.a. If we can prove a higher damage caused by the delay, we are entitled to claim this excess damage. The assertion of any further damage shall not be excluded.
22. In the event of default of payment and after written notification, we are entitled to discontinue the fulfillment of our obligations until payment is received.
23. Cheques shall only be accepted upon explicit agreement and only as a conditional payment. Discount charges will be calculated from the due date for payment of the invoice amount. Bills of exchange will not be accepted as payment.
24. If, after conclusion of the contract, we become aware of circumstances which jeopardize our claim to payment due to a failure in performance on the part of the partner, we are entitled to discontinue the fulfillment of our obligations and stipulate a reasonable period within which the partner must pay contemporaneously against delivery or furnish security. If the partner refuses to do so or the deadline expires without result, we shall be entitled to withdraw from the contract and demand damages.

Delivery

25. Unless otherwise agreed, we shall supply "ex works". Compliance with the delivery date or delivery period is determined by the date partner receives our notification of dispatch or pick-up readiness of the goods.
26. The delivery period shall commence with dispatch of our order confirmation and shall be reasonably extended if the required conditions of section 55 are met.
27. Partial deliveries shall be reasonable to an extent acceptable for the partner. They shall be charged separately.
28. Within a tolerance of 10 percent of the total order volume, production-related short or long deliveries shall be admissible. The total price shall change depending on their extent.

Dispatch and Passage of Risk

29. Goods reported as ready for dispatch shall be taken over by the partner without delay. Otherwise, we shall be entitled to dispatch them at our discretion or store them at partner's risk and expense.
30. In the absence of a special agreement, we shall choose the means of transport and transport route.
31. Risk is transferred to the partner when goods are passed to the railway, transport company or freight forwarder or with start of storage, and at the latest when goods leave the factory or storage including cases where we have effected delivery.

Delay in Delivery

32. In the event that we can foresee that the goods can not be delivered within the delivery period, we shall notify our partner immediately, state the reasons and if possible, inform him of the expected date of delivery.
33. Even in cases when according to law a reminder is sufficient or not required, we shall only fall into arrears after having received a written notification of a reasonable grace period. If the delivery is delayed by circumstances stated in section 55 or by any action or omission of the partner, an extension of the delivery period adequate under the circumstances is granted.
34. The partner shall only be entitled to withdraw from the contract if we are responsible for failure to comply with the delivery date and the partner has set a reasonable extension without success.

Retention of Title

35. We reserve title to the supplied goods until fulfillment of all claims from the business relationship with the partner.
36. The partner shall be entitled to sell said goods in the ordinary course of business as long as he fulfills his obligations from the business relationship with us in good time. However, he may not pledge or assign by way of security any of the retained goods. He is obliged to secure our rights in credited resale of the retained goods.
37. In the event the partner breaches his contractual obligations, in particular if he is in default of payment, we shall be entitled to withdraw from the contract and demand return of the goods on expiry of a reasonable grace period set by us; the statutory provisions concerning the waiver of a grace period shall remain unaffected. We are also entitled to withdraw from the contract in the event the partner has filed an application to open insolvency proceedings on his assets. The partner shall be obliged to return the goods after our withdrawal from the contract.
38. All claims and rights from the sale or, possibly, rental of goods permitted to partner, to which rights of ownership accrue to us, shall be ceded to us here and now by way of security. We hereby accept the assignment.
39. All and any machining or processing of the retained goods shall always be done by the partner on our behalf. In case the retained goods are processed or inseparably combined with other items not owned by us, we shall acquire co-ownership of the new item in proportion between the invoice value of the goods supplied by us and the other items at the time of processing/mixing or combining subject to reservation of ownership to that of the other material at the time of processing or combining. If our goods are processed or inseparably combined with other movable objects to form a single new object and when this new object is regarded as the main object, the partner shall transfer co-ownership to us pro rata provided the new main object is his property. The partner shall maintain ownership or co-ownership on our behalf. Incidentally, the same provisions as for retention goods apply to the object resulting from processing or blending.
40. The partner shall inform us without delay of all compulsory enforcement measures taken against the retained goods, claims assigned to us or other securities by third parties providing us with all documents necessary for an intervention. This shall also apply to other infringements of any kind.
41. If the value of the existing collateral exceeds the secured claims by a total of more than 10 percent, we shall be obliged, upon request by the partner, to release collateral to this extent at our discretion.

Claims for Defects

42. The condition of the goods shall be exclusively based on the agreed technical delivery specifications. In the event we have to supply our goods based on drawings, specifications, samples provided by our partner, the latter shall bear the risk of suitability for the intended purpose. The moment of transfer of risk is decisive as regards determining the contractually agreed state of the goods. In the absence of specific agreements, we deliver mass articles not subject to a 100% screening.
43. We shall not be liable for any defects in quality caused by improper use, for incorrect assembly or installation by the customer or third parties, for normal wear and tear or for faulty or negligent maintenance, also not for the consequences of improper modifications or changes performed without our consent by the partner or third parties. The same shall apply to defects that only negligibly reduce the value or serviceability of the goods.
44. Claims for defects expire one year after passing of risk.
45. If an acceptance of the goods or an initial sampling inspection has been agreed on, any objection to defects that could have been identified by the type of acceptance verification agreed upon is excluded. Obligations of the partner pursuant to Section 377 HGB [German Commercial Code] remain unaffected.
46. We shall be given an opportunity to ascertain the claimed defect. Upon request, the faulty goods shall be returned to us without delay. We shall be in charge of coordinating the transport. We will cover transport costs in the event that the claim is justified; in all other cases the partner has to reimburse these costs, unless he was in no position to determine with reasonable means that his claim was not justified.
47. If the warranty claim is justified and made in due time, we shall remedy the defects at our discretion either by rectifying the defect or by providing an equivalent replacement service. The partner's compensation claims shall only arise to the extent established in sections 50 to 54.

48. If we fail to comply with these obligations within a reasonable timeframe, the partner is entitled to set an extended deadline within which we have to comply with our duties. After unsuccessful expiry of this deadline, the partner is entitled to demand reduction of the price, withdraw from the contract or perform the necessary remedial work himself or commission a third party at our expense and risk.
49. Claims for defects shall only be remedied at the original delivery location or at our place of business.

Other Claims, Liability

50. If nothing else arises from the provisions below, any claims of the buyer on other legal grounds are excluded. In particular, this applies to claims for damages on account of breach of duties from the contractual relationship or liability in tort. We shall therefore not be liable for damage to objects other than the supplied goods. Above all, we shall not be liable for loss of profits, damages on account of business interruption or other financial losses of the partner.
51. The aforementioned limitations of liability shall not apply to intent, gross negligence on the part of our legal representatives or executives, fraudulent concealment of a defect or culpable breach of material contractual duties. In the event of a culpable breach of material contractual duties, we are liable – except in cases of intent or gross negligence on the part of our legal representatives and executives – only for reasonable, foreseeable typical contract damages. The limitation of liability shall also not apply in cases where according to the product liability law a liability exists for defects in the delivered goods which result in personal injury or property damage to privately used property, neither does it apply in case of loss of life or limb or health, or for loss or damage caused by the absence of warranted characteristics, where such assurance had been given with the specific purpose of protecting the partner from damages that did not directly affect the delivery item itself.
52. The partner has statutory rights of recourse against us only in so far as the partner has not reached any agreements with his customer which go beyond the statutory claims for defects. There shall be no reimbursement of costs if the expenses increase because the goods have been brought to another location after our original delivery, unless this corresponds to the intended use of the goods.
53. Insofar as our liability is ruled out, or limited, this also applies to the personal liability of our employees, workers, personnel, legal representatives, and agents
54. The legal provisions regarding burden of proof shall remain unaffected.

Force Majeure

55. Force majeure, industrial disputes, unrest, official measures, non-delivery by our suppliers and other unforeseeable, unavoidable and serious incidents shall release the contract parties from performance of their duties for the duration of the disturbance and to the extent of its effects. This shall also apply if said incidents occur at a point in time when one of the contract parties is already in arrears, unless he has caused the arrears with intent or on account of gross negligence. The contract parties shall be obliged, to a reasonable extent, to transmit all required information and to adapt their obligations to the altered circumstances in good faith.

Place of Performance, Place of Jurisdiction and Applicable Law

56. If no other agreement has been made, our registered office is the place of performance.
57. For all legal disputes, including those involving draft and cheque proceedings, our registered office is the place of jurisdiction. However, we shall be entitled to file suit at our partner's place of business.
58. The laws of the Federal Republic of Germany shall exclusively apply to this contractual relationship to the exclusion of the Convention on the International Sale of Goods (CISG – 'Vienna Sales Convention') of 11 April 1980 pertaining to contracts concluded for the sale of goods.