

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

## H&G PRODUKTION UND SERVICE GMBH

### § 1 GENERAL STIPULATIONS, SCOPE

1. These General Terms and Conditions of Sale shall apply to all business relationships of H&G Produktion und Service GmbH (referred to in the following as: "H&G") with its customers (referred to in the following as: the "Customer"). The General Terms and Conditions of Sale shall only apply if the Customer is a business person, a legal entity governed by public law or a special asset governed by public law.

2. The General Terms and Conditions of Sale shall apply in particular to contractual agreements pertaining to the sale and/or the supply of moveable objects (referred to in the following as: "goods") without prejudice to whether H&G manufactures the goods itself or purchases such with suppliers (§§ 433, 651 of the German Civil Code (BGB)). The General Terms and Conditions of Sale also apply in their respective version as a framework agreement including for future agreements pertaining to the sale and/or supply of goods with the same customer without H&G having to make reference to such once again in every individual case.

3. The General Terms and Conditions of Sale of H&G apply exclusively. Any deviating, contrary, additional or amending general terms and conditions of the Customer shall not be part of the supply and business relationship and hence not part of an agreement with H&G.

4. Any individual agreements concluded in individual cases with the Customer (including subsidiary covenants and agreements, amendments and changes) shall always have priority over these General Terms and Conditions of Sale. A written agreement or written confirmation by H&G of the content of such agreements shall be required.

5. Declarations and notifications of legal importance that are to be issued by the Customer to H&G before and/or after conclusion of an agreement (for example, the setting of deadlines, notices of defect, declarations of withdrawal from the agreement or reduction in price) must always be in writing to be effective (data transmission by e-mail or telefax shall be deemed to suffice). This also applies to changes and amendments of the contractual covenants and agreements.

6. References to the application of statutory provisions shall only serve the purpose of clarification. Statutory provisions shall also apply even without any such clarifying note if such are not directly changed or expressly ruled out by these General Terms and Conditions of Sale.

### § 2 CONCLUSION OF THE AGREEMENT

1. The offers of H&G – in particular with respect to the conclusion of agreement and with regard to quantity, price and delivery period – are subject to change and nonbinding. This is also the case if H&G has provided the Customer with a catalogue, technical documentation (for example drawings, plans, estimates, calculations, references to DIN standards), other product descriptions or documents – including in electronic form – pursuant to which H&G retains title and copyrights. Documents which have been submitted may only be made available to third parties with the express consent of H&G and, in the event that no agreement comes about, shall be returned to H&G without undue delay.

2. The order of goods by the Customer shall be deemed to constitute a binding contractual offer. An order shall only be deemed to be valid after written confirmation of order is issued or upon the delivery of the goods to the Customer as agreed upon (acceptance).

3. This acceptance is subject to a suspensive condition (§ 158, section 1 of the German Civil Code): it shall only become effective if the export control laws of the Federal Republic of Germany or the European Union do not (any longer) stipulate a contractual prohibition for this legal transaction and the approval(s) required for this legal transaction has/have been issued. The parties do explicitly not agree on retroactivity (§ 159 of the German Civil Code).

4. The goods manufactured and supplied by H&G correspond to all German and European standards applicable at the point in time when the Agreement is concluded (in particular the EC Machinery Directive). The Customer shall communicate any additional non-European standards and norms that are to be met to H&G. If as a result of these non-European standards and norms H&G has to carry out additional measures, H&G may demand additional reasonable remuneration for such measures. If the Customer fails to inform H&G about any non-European standards and norms that are to be applied in an individual case and third parties assert claims against H&G as a result of failure to abide by these standards and norms, the Customer shall indemnify H&G from any and all such claims on the part of third parties.

### § 3 DELIVERY PERIOD AND DELAY IN DELIVERY

1. All delivery, installation and commissioning dates and deadlines (referred to in the following only as: delivery period) shall be individually agreed upon or stated by H&G upon acceptance of the order. The stated delivery period shall be deemed to constitute an approximate period of time subject to the proviso that all obligations of the Customer to cooperate in the execution of the agreement have been fulfilled and that input material of flawless quality has been supplied in due time.

2. If H&G is unable to meet expressly agreed upon, binding delivery periods in cases of force majeure or for other reasons, delivery periods shall be extended – including during delay – by the period for which such events have an impact. Cases of force majeure shall in particular be deemed to include war, epidemics, unrest, earthquakes, flooding or other natural disasters, national and company-related strikes as well as measures taken by civil and military authorities. The same shall moreover apply in the case of an objective shortage of raw material and/or operating resources.

3. H&G shall inform customers about delays in delivery periods without undue delay and at the same time inform them about the probable new delivery period. If performance is not possible within the new delivery period, either, H&G shall be entitled to withdraw from the agreement in whole or in part; any counterperformance already rendered by the Customer shall be reimbursed without undue delay.

4. The commencement of delay in delivery shall be based on statutory provisions. At any rate, admonishment by the Customer shall be necessary. Claims to damages for delay in delivery shall be limited to 5% of the invoice value of the products owed, with whose delivery H&G is in delay, with the exception of wilful intent or gross negligence. This shall not affect the rights of the Customer under § 10 of these General Terms and Conditions of Sale and H&G's statutory rights.

#### § 4 DELIVERY, TRANSFER OF RISK, DELAY IN ACCEPTANCE, INSTALLATION, COMMISSIONING

1. Delivery shall be carried out ex works (ex works, Incoterms 2010). If so requested by and at the expense of the Customer, the goods shall be sent to another location. If nothing to the contrary has been agreed upon, H&G shall be entitled to determine the manner of sending the goods itself (in particular the transport company, the transport route, packaging or auxiliary transport material). H&G is also entitled to effect partial deliveries on a reasonable scale.

2. The risk of accidental loss and deterioration shall be transferred to customer upon notification that the goods are available for provision. When sent the risk of accidental loss and accidental deterioration of the goods shall be transferred upon the handover of the goods to the forwarding agent, the shipping agent or any other person commissioned to send the goods. The aforestated shall apply in the same degree if H&G has assumed the tasks of installation and commissioning.

3. If the Customer is delayed in pronouncing acceptance, if goods made available to be picked up are not picked up without undue delay, if the Customer fails to act to cooperate or if delivery is delayed for any other reason for which the Customer is responsible, H&G shall be entitled to store the goods and/or to demand compensation for the damage it incurs including additional expenses (for example, storage costs). While setting off additional claims, H&G can demand lumpsum compensation in the amount of 0.1% of the invoice value per calendar day commencing with the delivery deadline or in lieu of any delivery deadline upon notification that H&G is prepared to ship the goods. This shall not affect the right to demonstrate that greater damage has been incurred as well as statutory claims (in particular compensation for additional expenses, reasonable damages, termination).

4. If H&G in addition to delivery also assumes the task of installation and commissioning of the goods, the Customer shall meet the following obligations at its own expense:

a. it must be possible to approach the place of installation unimpeded with a lorry; the party placing the order shall act to ensure that non-public access routes are paved with adequately hard material (including to support heavy lorries up to 40 t) and that any hazard or injuries to persons or damage to objects as a result of delivery is ruled out. In the event of damage that is due to deficiency of the access routes, the party placing the order shall bear liability. All preliminary performances to be rendered on site must be ready by the agreed upon date of installation;

b. the Customer shall provide the electrical power supply so that the goods can be installed ready for operation;

c. the power lines required (of, if so desired, 63A CEE socket and 63A CEE plug) must be present, and

d. the staff of the Customer must be present to be instructed regarding the goods on the day of installation.

If the Customer fails to adhere to these obligations, H&G shall be entitled to claim all costs that are incurred as a result of failure to adhere to these obligations against the Customer. This shall apply independently of whether H&G carries out the installation and commissioning for separate individual remuneration or as a remunerative part of the purchase price of the goods. The claim on the part of H&G to payment of remuneration for the installation and commissioning of the goods shall not be affected by the possible assertion of claims for additional costs.

5. If installation is performed by H&G, all machine parts supplied by H&G shall be installed and tested to ensure that they are ready for operation. After installation is performed, the goods shall be commissioned in a test run of the individual functions of the goods. The functions must correspond to the contractually agreed upon performance data. Successful execution of the test run shall be confirmed by signing a handover protocol or a customer service report by H&G and the customer.

#### § 5 PRICES AND TERMS AND CONDITIONS OF PAYMENT

1. If nothing to the contrary is agreed upon in individual cases, the prices that currently apply at the point in time when the agreement is concluded shall apply ex warehouse plus statutory value-added tax and solely packaging. If the current prices of H&G change by the point in time of delivery, H&G shall be entitled at the point in time of delivery to demand current prices from the customer. If H&G exercises this right to an increase in prices, the customer shall be entitled to withdraw from the agreement within a period of 10 working days following declaration of said price increase. This right to withdraw from the agreement shall not apply to framework supply agreements.

2. In agreeing upon the shipment (§ 4, section 1), the Customer shall bear the transport costs ex warehouse and the costs of transport insurance that may be desired by the Customer. The Customer shall bear the costs of any customs tariffs, fees, taxes or any other public levies and taxes. Transport packaging and all other auxiliary transport resources shall not be taken back by H&G if nothing to the contrary has been expressly agreed upon. Such shall become property of the Customer and charged to the customer in a reasonable scope. Pallets are excepted from this.

3. Any deviations from dimensions, weight and quality that are allowed under applicable standards or prevailing practice shall not have any influence on the delivery price.

4. The price for deliveries shall be due and payable within 10 working days after delivery and the invoice date or, in the case of installation and commissioning by H&G, beginning with the date of the handover protocol for the goods and in-voice date with the reservation of any agreements to the contrary. In determining whether payment has been effected in due time, the date on which payment is received shall apply. H&G shall always be entitled to demand a reasonable prepayment.

5. The Customer shall be deemed to be in delay upon the expiry of the aforementioned payment period. During the period of delay the purchase price shall incur interest on delay at the statutory rate applicable. H&G retains the right to claim additional damage due to delay. This shall not affect the claim to commercial maturity interest (kaufmännischer Fälligkeitszins) (§ 353 of the German Commercial Code).

6. If there is a delay in delivery for reasons for which the customer is responsible and H&G stores the goods, these shall be deemed to have been delivered 5 working days since the commencement of storage in the meaning of § 5, section 4 of these Terms and Conditions and can be charged in the full amount.

7. The Customer shall only be entitled to setoff or retention of amounts to the extent that its claims have been established by a court of law or government authority or are undisputed. If there are defects in the delivery, this shall not affect these counter-rights of the Customer.

8. If following conclusion of the agreement it becomes recognisable that the claim to the purchase price or work wages will be jeopardised as a result of lack of performance of the Customer (for example due to application for the opening of an insolvency proceeding), H&G shall be entitled to refuse performance and – if applicable after the setting of a deadline – withdraw from the agreement (§ 321 of the German Civil Code). In the case of contractual agreements on the manufacturing of non-fungible objects (custom manufacturing), H&G may declare withdrawal immediately. This shall not affect statutory provisions on the ability to waive setting a deadline.

#### § 6 RESERVATION OF TITLE

1. H&G reserves title to the goods sold until complete payment of all current and future receivables such are based on the agreement and the ongoing business relationship (secured receivables).

2. The goods subject to reservation of title may not be pledged to third parties or placed as collateral until complete payment of the secured receivables. The Customer shall notify H&G in writing without undue delay if and to the extent third parties gain access to goods belonging to H&G. The customer shall keep the goods that are subject to H&G's reservation of title at its own expense and insure them against loss or damage. If maintenance and/or inspection work is to be carried out, the Customer shall execute such in due time at its own expense. In addition, H&G may demand that the goods subject to reservation of title be handed over even without advance declaration of withdrawal from the agreement.

3. In the event that the Customer acts in violation of the agreement, in particular fails to pay the price due, H&G shall be entitled to withdraw from the agreement under statutory provisions and/or to demand that the goods be handed over as a result of the reservation of title. The demand that the goods be handed over does not at the same time include a declaration of withdrawal. H&G shall be entitled, rather, to merely demand that the goods be returned and reserve the right to withdraw from the agreement.

4. The Customer is entitled to resell and/or process the goods subject to reservation of title in regular business commerce. In this case, the following provisions shall apply in addition:

a. Reservation of title shall cover the products that come about as a result of processing, mixture or linkage of the conditional goods in their full value, whereby H&G shall be deemed to be the manufacturer. If in the case of processing, mixture or linkage with goods of third parties such third parties retain title, H&G shall acquire co-title in the ratio of the invoice value of the goods that have been processed, mixed or linked. Otherwise the product that is created shall be treated equal to the goods delivered with subject to the reservation of title.

b. The Customer cedes as collateral to H&G any receivables from third parties that come about through further sale of the goods or the product as a whole or in the ratio of the possible co-title of H&G in accordance with the above section. H&G accepts such cession. The obligations of the Customer laid down in section 2 shall also apply with regard to the ceded claims.

c. In addition to H&G, the Customer shall be entitled to collect the receivable. H&G shall be obligated to refrain from collecting the claim as long as the Customer meets its payment obligations towards H&G, does not fall into arrears on payment, no application has been filed for the opening of an insolvency proceeding and there are no other deficiencies with regard to the performance capability of the Customer. If this is the case, however, H&G may demand that the Customer disclose the receivables ceded and their debtor, that it provide all information required for collection, hand over the documents relating thereto and notify the debtor (third party) of such cession.

d. If the realisable value of the collateral exceeds the receivables of H&G by more than 10 per cent, H&G shall release collateral if so requested by the Customer and as H&G sees fit.

## § 7 WARRANTY CLAIMS BY THE CUSTOMER

1. Statutory provisions shall apply to the rights of the Customer in the event of material and legal defects (including incorrect delivery or insufficient delivery) if nothing to the contrary is stipulated in the following.

2. The foundations for liability for defect of H&G is exclusively the contractual agreement concluded on the quality of the goods. Product descriptions and technical descriptions and technical documents as well as specifications which are part of the individual agreement shall be deemed to constitute agreements on the quality of goods; here it shall not matter whether these documents come from customers, from a third party or from H&G. Merely their mutually agreed-upon inclusion in the agreement shall apply. H&G also retains the right to undertake any changes in the form and/or design of the goods that are necessary and/or expedient for legal or substantive reasons, in particular for reasons of product safety, after conclusion of the agreement as well if the goods are not subject to significant change and not reasonable to expect of the customer. Such changes shall be deemed to be part of the agreed-upon condition of the goods without any additional declaration by the parties to the agreement.

3. Claims for defect on the part of the Customer shall be subject to the requirement that the Customer has met its statutory requirements to inspect the goods and issue complaints (§ 377, § 381 of the German Commercial Code (HGB)). If a defect is found in the inspection or later, H&G shall be notified hereof in writing without undue delay. Independently of this obligation to inspect the goods and issue complaints, the Customer must provide notice in writing of visible defects (including for incorrect delivery or insufficient delivery) within one week after delivery or, in the event of installation and commissioning by H&G, beginning with the date of the declaration of handover, whereby such notice shall be deemed to be in due time if notification is sent out within a period of one week. If the Customer fails to perform the due inspection and/or notice of defects, liability for the defects which are not notified is excluded.

4. If the object delivered is defective at the point in time of delivery or, in the event of installation and commissioning by H&G, at the point in time of the declaration of handover, H&G can first of all decide whether subsequent fulfilment should be performed through elimination of the defect (subsequent improvement) or through the delivery of an object free of defect (replacement delivery). This shall not affect the right to refuse subsequent fulfilment under statutory prerequisites. If the defect is due to a product supplied by an upstream supplier, H&G may meet the warranty claims that are being asserted as it sees fit by transferring its own claims to warranty towards the upstream supplier. There shall only be additional warranty rights against H&G in such cases if the attempt to satisfy claims against upstream suppliers through the court has remained unsuccessful.

5. H&G shall be entitled to make the subsequent fulfilment that is owed contingent upon the customer paying the price due. The Customer shall be entitled, however, to retain a reasonable part of the price in relation to the defect.

6. The Customer shall provide H&G the time and opportunity required to perform subsequent fulfilment as owed and access to goods that the Customer has complained about for testing purposes and shall make possible subsequent improvement work. Subsequent improvement shall not be deemed to mean either the dismantling or the remounting of the objective object.

7. The expenses required for the purpose of testing and subsequent fulfilment, in particular transport costs, road charges, work and material expenses (not dismantling and remounting costs) shall be borne by H&G if a defect is indeed present. If the Customer's demand for rectification of the defect turns out to be unwarranted, however, H&G may demand that the Customer compensate it for the costs that it has incurred.

8. If the Customer is entitled by law to rectify the defect and demand compensation from H&G for the expenses which are objectively required in urgent cases, for example a danger is caused to safety of personnel or to prevent excessive damage, H&G shall be notified without undue delay and if possible in advance about any such efforts by the Customer to rectify defect itself. There shall be no right on the part of the Customer to rectify defect itself if H&G would be entitled to refuse to perform respective subsequent fulfilment under statutory provisions.

9. If subsequent rectification fails, a deadline to be set by the Customer for subsequent rectification expires without successful rectification or is unnecessary under statutory provisions and the Customer can thus withdraw from the Purchase Agreement or reduce the purchase price under applicable statutory provisions, the Customer shall not be entitled to withdraw from the agreement if there are only minor defects.

10. Claims on the part of the Customer to compensation or to damages as a result of expenses incurred in vain shall only apply in accordance with the stipulations of § 10 and are otherwise ruled out.

## § 8 ADHERENCE TO STATUTORY PROVISIONS UNDER LAWN-GOVERNING EXPORT CONTROLS

1. The obligation on the part of H&G and the party receiving the goods to fulfil an agreement shall be subject to the proviso that the execution of the agreement is not prohibited or negatively affected by applicable exportcontrol provisions of the Federal Republic of Germany or the European Union.

2. In addition, this obligation is subject to the proviso that the execution of an agreement is not prohibited or negatively affected by other applicable provisions under exportcontrol law.

3. Should trade policy or other factual or legal developments emerge, that an agreement or certain performances owed under an agreement are or will become subject to government approval or fall or will fall under a prohibition ban, the parties shall be obligated to consult over alternative contractual designs with the aim of adopting an amendment to the agreement by mutual agreement.

## § 9 EXCLUSION OF LIABILITY FOR DAMAGE INCURRED IN CONNECTION WITH EXPORTCONTROL LAW

An agreement shall be deemed to be null and void if it relates to a legal transaction that is prohibited under applicable law in the Federal Republic of Germany (§ 134 of the German Civil Code) and shall be provisionally invalid to the extent that it relates to a legal transaction that requires an approval (§ 15 of the German Act Against Restraints of Competition – AWG). Notwithstanding provisions to the contrary in an agreement, H&G shall not be liable for damage, losses or any other costs that emanate from adherence to applicable exportcontrol provisions of the Federal Republic of Germany or the European Union including, but not restricted to those which

a. emanate for this legal transaction from a negligent or unrecognised contractual prohibition or an approval of the agreement that is not received under applicable exportcontrol provisions of the Federal Republic of Germany or the European Union as long as failure to obtain approval is not due to the wilful intent or gross negligence of a party,

b. lead to the execution of the agreement being prohibited or negatively affected by applicable exportcontrol provisions of the Federal Republic of Germany or the European Union,

c. emanates from delays as a result of government approval obligations and/or comparable procedures that have not been caused by a party acting with wilful intent or in a grossly negligent manner.

## § 10 OTHER LIABILITY

1. If nothing to the contrary emanates from these General Terms and Conditions of Sale including the following provisions, H&G shall bear liability in the event of a violation of contractual and non-contractual obligations under applicable statutory provisions. Any warranty claims or any other claims to liability for the goods delivered by H&G for compatibility with other products or a certain intended use are excluded. In particular, the customer shall be responsible for adherence to all statutory and government provisions and requirements in connection with the further use of the goods (e.g. installation, sale) under its own responsibility.

2. H&G shall bear liability for compensation – regardless of the legal reason for such – in the event of wilful intent and gross negligence. In the event of simple negligence, H&G shall only bear liability

a. for damage resulting from harm to life and limb or damage to health,

b. for damage resulting from violation of an important contractual obligation (obligation whose fulfilment is necessary for the proper execution of the agreement and adherence to which the parties to the agreement generally rely on and generally can rely on); in this case, however, liability on the part of H&G shall be limited to compensation for damage that is foreseeable and typically occurs.

3. Restrictions on liability emanating from section 2 shall not apply if H&G fraudulently conceals a defect or has assumed a guarantee for the quality of goods. The same shall apply to claims of the Customer under the German Product Liability Act (Produkthaftungsgesetz).

4. The Customer may only withdraw from or terminate the agreement as a result of a violation of an obligation that is not related to a defect if H&G is responsible for the violation of obligation. Any free right on the part of the Customer to terminate the agreement (in particular in accordance with § 651, § 649 of the German Civil Code) is excluded. Otherwise statutory provisions and legal consequences thereof shall apply.

## § 11 TIME BARRING (STATUTE OF LIMITATIONS)

1. By way of deviation from § 438, section 1, subsection 3 of the German Civil Code, the general timebar period for claims emanating from material or legal defects shall be one year beginning with delivery or, in the event of installation and commissioning by H&G, beginning with the date of the declaration of handover. This time bar shall also apply to all repaired parts or replacement goods that are supplied. Special statutory provisions for rights in rem to hand over objects held by third parties shall also remain unaffected (§ 438, section 1, subsection 1 of the German Civil Code) as well as fraudulent intent on the part of the seller (§ 438, section 3 of the German Civil Code).

2. The aforesaid timebar periods under purchase law shall also apply to contractual and non-contractual claims to damages on the part of the Customer that are based on a defect of the goods unless application of regular statutory time-bar periods (§ 195, § 199 of the German Civil Code) would lead to a shorter time-bar period in individual cases. This shall at any rate not affect the time-bar periods laid down in the German Product Liability Act (Produkthaftungsgesetz). Otherwise solely statutory time-bar periods shall apply to damage claims by the Customer in accordance with § 10.

## § 12 PLACE OF FULFILMENT, GOVERNING LAW, JURISDICTION AND ARBITRATION AGREEMENT

1. The place of performance for deliveries effected by H&G is Burbach in the case of delivery ex works. The place of performance for payments rendered by the customer to H&G is the business offices (administrative headquarters) of H&G.

2. The law of the Federal Republic of Germany shall apply to these General Terms and Conditions of Sale and all legal relationships between H&G and the Customer. The UN Convention on the International Sale of Goods (CISG) is excluded. The preconditions and effects of the reservation of title stipulated in § 6 shall be subject to law governing the respective storage site for the objects if selection of governing law according to this criteria in favour of German law is unallowed or ineffective. If applicable law does not contain any reservation of title, the legal principle laid down in respectively applicable law which in terms of its own effects comes as close to the reservation of title provided for in these General Terms and Conditions of Sale shall be deemed to have been agreed upon.

3. (For) all disputes, differences of opinion and/or claims directly or indirectly emanating from or in connection with this contractual relationship including its validity, invalidity, its being null and void, practicability and impracticability, violation or dissolution,

a. with customers having their head business offices (administrative headquarters) in the EU, Switzerland, Norway or Iceland, the exclusive place of jurisdiction shall be the courts having jurisdiction over H&G. H&G shall be entitled, however, to take legal action at the general place of jurisdiction of the Customer.

b. with customers which do not have any head offices (administrative headquarters) in the EU, Switzerland, Norway or Iceland, shall be finally settled according to the Arbitration Rules and the Supplementary Rules for Expedited Proceedings of the German Institution of Arbitration e.V. (DIS) in force on the date when the Notice of Arbitration is submitted in accordance with these Rules without recourse to the ordinary courts of law. The court of arbitration shall be composed of one arbitrator and if the value in dispute is 1,000,000 or more, three arbitrators. The place of arbitration is Siegen, Germany. The language of the arbitral proceedings is German. The choice of law in section 2 shall also apply with respect to this arbitration agreement.

Status: January 2018