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Terms and Conditions for the Sale of Goods and Services of Haug Vertriebs GmbH & Co. KG (Version 03 | 0614)

I. Conclusion of contract

1. The following conditions of sale shall govern any and all quotations, supplies and services including information and advice provided by Haug Vertriebs GmbH & Co. KG. They shall also govern any and all future supplies or services to the Customer even where no express reference is made there-to again upon concluding the contract.

2. These Terms and Conditions shall govern exclusively. Other than these shall not apply including where we do not again express objection to you. Additions, amendments or collateral agreements to these conditions shall require our written confirmation in order to be effective. This shall also apply to release of the requirement as to writing.

3. Our quotations are subject to change without notice unless a period of validity is expressly agreed. A contract shall only become binding if we confirm the order of the Customer in writing or make delivery or perform a service on order without separate confirmation.

4. The use of an electronic signature in accordance with the current level of technology and the statutory provisions relating thereto shall be permissible for a valid conclusion of a contract or amendment to a contract and shall replace the requirement as to writing.

II. Delivery and performance time

1. Fixed dates and time limits quoted for our deliveries and services shall not be binding unless otherwise expressly agreed in writing. Time limits shall only commence to run when agreement is reached on all particulars of performance, the Customer has furnished information, documentation and materials to be provided by him and has paid the agreed price or made payment on account, provided that cash in advance or payment of a deposit has been agreed. The absence of cooperation as well as requests for amendment on the part of the Customer shall lead to a reasonable postponement of fixed dates or increase in time limits.

2. Unforeseeable and unavoidable events (for example, war, circumstances of a warlike nature, want of energy or raw materials, sabotage, industrial action) as well as all other breakdowns or official actions for which we are not responsible shall release us from the duty to make delivery or perform service for the duration of their continuance, including if they arise during a previously existing delay. Fixed dates and time limits shall be thereby extended to a reasonable extent. This shall also apply to deliveries and services of our own suppliers not made in good time or incomplete, for which we are not responsible.

3. Should we default due to a culpable breach of a nonmaterial contractual duty, the Customer may - should it demonstrably have suffered damage as a result of the default - require compensation for delayed performance for each complete week of the delay in the amount of 0.5 % up to a total amount of 5 % of the value of that part of the delivery for which we are in delay (provided that it can be proved that damage has arisen for him from the delay). Further claims by the Customer are excluded for all cases of delayed delivery including following the expiry of an additional period which may have been granted to us. This shall not apply to such an extent as liability is imposed by law for example in cases of wilfulness, gross negligence or death, personal injury and injury to health. The right of the Customer to rescind following expiry of an unavailing additional period granted to us shall remain unaffected. The same shall apply correspondingly to a cancellation by us.

III. Prices, payment and financial deterioration

1. Our prices are net prices exworks (EXW, Incoterms 2010).

2. In the event of cost increases - in particular in the event of an increase in prices for raw materials, energy and transport services and currency fluctuations - that result in an increase in overall cost for us, we may adjust the prices of the affected supplies or services in line with the increase in overall costs. Sentence 1 shall apply to supplies and services that are to be provided after the expiry of four months following conclusion of the contract and to supplies and services based on continuous obligations.

3. All payments are due for payment fourteen days following despatch of the consignment and delivery of invoice and to be made without deduction free of charges to the address for payment stipulated, unless otherwise expressly agreed. Timely payment shall be determined by receipt of payment. Bills of exchange and cheques shall only be accepted on the basis of a corresponding agreement and only on account of performance. Payment shall only be deemed to be made in those cases when we are finally able to dispose of the particular amount. All costs of bills of exchange, cheques and discount as well as all other costs thereby shall solely be borne by the Customer.

4. The Customer shall only be entitled to a right of setoff or retention provided that his counter claims have been judicially determined, or are uncontested or acknowledged by us.

5. Assignment of all claims of the Customer against us to a third party shall require our express written consent to be effective. Section 354a HGB shall not be affected thereby.

6. Should we become aware of a material deterioration in the Customer's financial condition following conclusion of the contract (e.g. adverse credit information or interim default in payment), we may elect to provide outstanding supplies and services only against advance payment or reasonable provision of security, in which respect, any deadlines for delivery and performance shall be extended accordingly. Outstanding receivables for supplies or services shall become due and payable immediately.

7. We may rescind the contract, if the Customer ceases payment, or the Customer becomes illiquid or overindebted, or an application for insolvency proceedings over the Customer's assets is filed, or proceedings for the protection against creditors or the appointment of a trustee or receiver or similar proceeding are initiated as regards the Customer. § 321 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) shall remain unaffected.

IV. Supplies, services and passing of risk

1. Place of performance is the place of delivery pursuant to Incoterms. Risk of accidental loss or accidental depreciation of the goods shall pass to the Customer on delivery from the place of performance. This shall also apply to partial deliveries or if we undertake other services (for example, dispatch of goods or shipping costs).

2. We may make partial deliveries and perform partial services if we notify the Customer in good time that the remainder is to be delivered or provided subsequently within a reasonable period and this is acceptable to the Customer following enquiry.

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3. The Customer shall bear the costs of the ineffective delivery as well as for further storage at the supply factory or at a place of storage selected by us, if the delivery is delayed for reasons for which the Customer is responsible. In these cases the risk of an accidental loss or accidental depreciation shall pass to the Customer with notification of readiness to make delivery.

V. Manufacture according to instructions of Customer

1. We shall provide no warranty and assume no liability with regard to the functionality of the goods and defects in the event of manufacture in accordance with drawings, samples or other instructions of the Customer, provided such goods or defects are based on such instructions.

2. The Customer shall indemnify us against any and all third party claims based on damage caused by the goods, as far as the damage results from drawings, samples or other instructions by the Customer.

3. The Customer shall guarantee to us that the manufacture and delivery of goods finished according to his instructions infringe no industrial property rights of third persons. We may cancel the contract after consultation with the Customer in the case of a claim to industrial property rights by third persons against us, unless the third person withdraws the claim for industrial property rights against us within a reasonable period of notice by way of written declaration. The Customer shall reimburse us for the damages and costs arising from the claim to industrial property rights. Work on the product or for the service previously performed by us shall be reimbursed in accordance with our invoicing, in the case of cancellation.

4. Any moulds, tools and design or construction documentation necessary for performance of the contract prepared by us or on our instructions are our property exclusively. The Customer shall not be entitled to claims hereto including if he has contributed to the costs of manufacture of the forms, tools and design documentation. We may destroy the corresponding forms, tools and design documentation five years following completion of the last Customer order at the latest, if no other written agreements have been entered into or corresponding consents have had to have been obtained by reason of agreements.

5. We reserve ownership, copyright as well as other industrial property rights in all documentation passed or provided to the Customer. They must not be made available to, or commercially used by, third persons and are to be returned to us without delay on demand together with all copies and extracts prepared.

VI. Provision of materials by Customer

The Customer is responsible for their suitability if parts, materials or other substances are provided by the Customer for the execution of his order. For that reason, we carry out no inspection of incoming goods and testing for suitability unless otherwise expressly agreed in writing. No claims of the Customer to guarantee or liability shall exist against us to the extent that the materials made available by the Customer are unsuitable, unfit or ill-adapted for the order and this is not evident to us. In addition, the Customer shall reimburse us the cost of damage caused by the unsuitability, unfitness or ill-adaptation of the materials following our invoicing and indemnify us for expenditure additionally arising.

VII. Technical modifications and variations in quantity

1. We reserve the right to make technically necessary or expedient modifications (in particular to the design, selection of materials, specification, construction) if not otherwise expressly agreed, in as far as these modifications are notified to the Customer in advance and have taken his interests into account.

2. Variations in production can arise with the manufacture of special alloys / products for technical, manufacturing reasons. We may therefore make deliveries over or under the delivery quantity provided that these variations have been notified to the Customer and are reasonable taking his interests into account. The actual quantity delivered will be invoiced.

VIII. Warranty and inspection of goods upon receipt

1. We warrant that as at the date of passing of risk the goods delivered shall be free and clear of defects that cancel the value or suitability for use as contemplated under the contract or for normal use or that reduces such value or suitability to a significant extent. Any and all goods that manifest a material defect within the limitations period and whose cause already existed at the date of passing of risk shall be, at our choice, repaired free of charge or newly delivered. We provide no warranty for wear and tear due to normal usage and defects resulting from improper use, improper treatment or storage or noncompliance with manufacturers', assembly or operating instructions.

2. Any and all information provided by us, in particular, pictures, drawings, technical information and references to norms and specifications in offers and brochures, are only descriptions and indicators and do not constitute a guarantee of quality or durability within the meaning of § 443 BGB. The same shall apply to the delivery of samples.

3. Even in the event of prior delivery of samples, the Customer shall inspect the goods without undue delay following delivery and notify us in writing of any defects or quantity variances ascertained. Otherwise the goods shall be deemed approved, as far as no latent defects are involved.

4. The limitations period for warranty claims shall be 12 months. This shall not apply in the event of wilful conduct, malicious concealment of a defect or noncompliance with a guarantee of quality.

5. The Customer shall enable us to perform repairs without undue delay and shall provide the goods subject to the complaint for inspection and processing. Should the repair costs increase due to the fact that the goods have been brought to another location than the place of delivery following delivery, the Customer shall bear such additional costs, unless the relocation conforms with usage in accordance with the relevant provisions.

6. The Customer shall bear any costs arising from unjustified defect-related complaints. No flat cost charges for defect-related complaints by the Customer shall be recognised.

7. Should repairs or substitute delivery fail, the Customer may demand reduction of the compensation or rescind the contract without affecting any compensatory damages claims.

8. Should we operate as a materials or parts supplier vis-à-vis the Customer, we shall not be subject to any liability pursuant to § 478 BGB.

9. Unless these Terms and Conditions provide otherwise, additional claims on the part of the Customer shall be excluded.

IX. Retention of title

1. We shall retain title in the delivered goods and any items resulting from their processing (Retained Goods) until full payment of any and all Customer receivables to which we are entitled, even if these are created only following conclusion of the relevant contract. In the case of current account receivables, the retention of title shall secure our balance claims.

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2. Processing shall be permitted only in ordinary course of business and shall be performed by the Customer for us without any obligations inuring to us as a result. Should processing involve combination, mixing or mingling with other items delivered subject to an ordinary or extended retention of title, we shall acquire joint title in the new items based on the ratio of the gross price agreed between the Customer and us to the relevant value of the other items. The Customer hereby transfers to us its joint title resulting from any combination, mixing or mingling of the Retained Goods with other items.

3. The Customer shall exercise the care of a prudent businessman in its possession of items in which we hold sole or joint title as custodian for us. Should it take out insurance for the Retained Goods, it hereby assigns its claims under the respective insurance policy to us; in the event of joint ownership, it hereby assigns such claims to us according to the ratio of our joint title interest to all joint title interests.

4. The Customer may dispose over the Retained Goods only in the event of sale during the ordinary course of business and if it has been ensured that the resultant receivables pass to us. It may not affect other dispositions of any kind, in particular pledges and transfers by way of security.

5. The Customer hereby assigns to us as security any receivables to which it is entitled under the sale of or for any legal grounds pertaining to the Retained Goods. Should the assigned receivables be charged in a current account, the Customer hereby assigns to us a portion of its right to the balance, including the closing balance, in an amount equivalent to its resale claim. Should the Customer sell the Retained Goods following processing or following combination, mixing or mingling with other products or together with other products, the assignment of receivables shall be deemed agreed in an amount equivalent to the gross price agreed between the Customer and us plus a collateral security margin of 20%. The Customer may collect the receivables assigned to us.

6. We may revoke the authorisation to dispose over the Retained Goods and to collect the receivables assigned to us at any time should the Customer not duly and properly perform its obligations towards us.

7. The Customer shall furnish us at any time with any and all desired information on the Retained Goods and the assigned receivables and shall provide relevant documentation. Upon our request, the Customer shall notify debtors of the assignment.

8. The Customer must notify us of any interventions or claims by third parties, including any measures of compulsory execution, in relation to the Retained Goods or assigned receivables without undue delay and provide any relevant documentation. It shall notify third parties immediately of the retention of title and the assignment by way of security. The Customer shall bear any costs in mounting a defence against such interventions or claims.

9. We may repossess the Retained Goods, disclose the assignment by way of security and exploit the Retained Goods and the assigned receivables in order to settle due and payable claims against the Customer, should the Customer default in payment or breach its other obligations under the contract. The Customer shall in this event without undue delay grant us or our authorised representative access to the Retained Goods and deliver them up. A demand for furnishing of the Retained Goods by us or a compulsory levy of attachment shall not constitute rescission of the contract.

X. Other claims for compensation

1. Any compensatory damages claims on the part of the Customer, whatever the legal basis therefore, in particular, for breach of duties under the obligatory relationship and for tort, shall be excluded.

2. Paragraph 1 shall not apply in those cases in which we or a vicarious agent of us has acted wilfully or in gross negligence, or we are liable due to culpable injury to life, limb or health by us or a vicarious agent of us or due to provision of a guarantee of quality, or we or a vicarious agent of us breaches a material contractual duty as a result of ordinary negligence and the Customer is particularly dependent on performance of such duty.

In the event of breach of material contractual duties due to ordinary negligence and in the event of grossly negligent conduct on the part of employees and other vicarious agents who are not executive employees, we shall be liable only for the typically foreseeable damage taking all relevant and ascertainable circumstances into account.

3. Liability pursuant to the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected, unless this may be contractually excluded or limited.

4. No change of the burden of proof to the detriment of the Customer is associated with the foregoing provisions.

XI. Miscellaneous

1. German law shall be applied to our contracts and these General Conditions of Sale for deliveries and services of Haug Vertriebs GmbH & Co. KG to the exclusion of the Treaty of the United Nations on contracts concerning international sale of goods (CISG).

2. The possible ineffectiveness of individual provisions of these Conditions of Sale shall not affect the effectiveness of the remaining provisions. Any ineffective provisions shall be replaced by the parties to the contract with such which most closely approach the purpose of the ineffective provision.

3. Place of jurisdiction for any and all disputes arising from or in connection with the contract is Stuttgart. We may also assert our claims before the courts of competent jurisdiction of the Customer. Any exclusive place of jurisdiction shall remain unaffected.