

# Terms and Conditions of Sale, Delivery and Payment

## 1. Offers, Acknowledgement of Orders, Conclusion of Contracts

- 1.1. All offers are without obligation. We reserve the right to modify, supplement or discontinue our production at any time. We are entitled to accept only partial orders or to refuse them without giving a reason.
- 1.2. Our written acknowledgement of order constitutes a contract, an acknowledgement of order by facsimile is sufficient also. The content of the acknowledgement of order shall at the same time be the content of the contract unless the customer raises an objection against it immediately after receipt. Otherwise, our acknowledgement of order and our Terms and Conditions of Sale, Delivery and Payment shall be deemed to have been accepted. In case of claim against the order confirmation, its content becomes a contract if the customer accepts the delivery and/or makes a payment.
- 1.3. After the acknowledgement of order has been sent, the order placed with us no longer can be changed or cancelled.
- 1.4. The present Terms and Conditions of Sale, Delivery and Payment shall supersede any purchasing conditions of our customers in any case. They also apply to any future business with the customer.
- 1.5. Prices are understood to be from the factory, unpackaged, carriage forward and without VAT.
- 1.6. In case of an increase in costs during the period between the acknowledgement of order and delivery, we shall be entitled to make the respective price adjustments.
- 1.7. In case that a component of a fitting ordered is not needed, the price deduction shall not be made according to the component price but according to our price calculation.
- 1.8. Declarations and announcements of HERZ towards our contract partners come into force with sending these declarations and announcements to the mailing address known to us. This is also valid if the mailing address has been changed and has not been announced immediately.
- 1.9. To be considered valid, changes and additions to the contract must be agreed and confirmed in writing by persons with representative status who are entered in the company register of our firm. Our other staff are not authorised to arrange changes or additional agreements.

## 2. Conditions of Payment

- 2.1. As long as nothing else is given in the order confirmation, payments are net cash at receipt of the invoice and without any discount.
- 2.2. In case of default payment we reserve the right to demand payment of default interest at a rate of 10% above the then current Austrian bank rate (per year), however not less than 1% per month. Only payments made to the payment entity specify in the invoice will be recognised. In case of bank transfers, payment shall be deemed to have been made only when the amount of the invoice has been irrevocably credited to our account.
- 2.3. Bills of exchange, cheques and payments by money order will be recognised only on account of payment. In this event a discount is not permitted even for special discount arrangements.
- 2.4. In case of payment by accepted bill or customer's bill, the discount charges shall be borne by the debtor.
- 2.5. The date of the invoice shall be relevant for the date of payment in any case, even if goods are received with a delay for reasons not to be attributed to us.
- 2.6. In the event that payment is not made by the due date or in case of deteriorating financial soundness of the customer or on other important reasons, we shall be entitled at our discretion to repudiate the contract or to demand immediate payment of any and all debts irrespective of the term of payment agreed upon, all this without any claim for fulfilment or damages arising against us.

## 3. Retention of Title

- 3.1. The goods supplied by us shall remain our property until payment in full has been made for any and all goods supplied. This shall also apply to the payment of any bills of exchange accepted in payment by us. In the event of re-sale for cash, the re-sale proceeds from this separate retention by the customer come to us and oblige the customer to enter a valid note in the accounts (anticipated ownership). In the case of manufacturing our retention of title (proportionate) is the end product. The customer must inform their buyer at re-sale about the existing retention of title and all other security laws agreed.
- 3.2. The buyer must inform us immediately if third parties raise claims against our goods supplied under our retention of title or bring legal actions. Any costs resulting from legal consequences are to be borne by the buyer.

## 4. Packing and Dispatch

- 4.1. The goods will be packed to commercial standards at the buyer's expense. Packing materials will not be taken back. The packing shall be dimensioned assuming customary transport conditions.
- 4.2. The goods will be dispatched ex-works at the risk of the buyer, even in case of delivery freight prepaid.
- 4.3. The seller shall be obliged to take out insurance only if and to the extent that this has been agreed upon in writing.

## 5. Modification of Models

- 5.1. We reserve the right to make design modifications, to change tolerances and to make improvements.
- 5.2. In case of special designs manufactured according to customer sample, model or drawing, we reserve the right to supply up to 5 % more or less than the quantity ordered.

## 6. Complaints

- 6.1. With regard to any defects or damage that can be recognised during proper inspection upon receipt, not recognizable defects or damages have to be reprehend immediately after their occurrence, a complaint shall be filed immediately after receipt of goods. However, any warranty claim shall expire three months after delivery.
- 6.2. In addition, in case of deviations in the number of units supplied or in weight, a complaint shall be filed with the railway company or the forwarding agent (carrier) upon receipt of the goods, and a certification to support any such difference shall be obtained. Any defective units shall be returned to us without delay freight prepaid.

## 7. Warranty

- 7.1. We will perform our warranty obligation by replacing free of charge any items which become totally inoperative within a period of three months as a result of defective materials or deficiencies in workmanship, provided that the rejected items are returned within 4 months from delivery.

## 8. Returned Goods

- 8.1. Returned goods will only be accepted with our prior written consent and only if sent free our works in Vienna without any damage or defect.
- 8.2. Return of items made to order will not be accepted in any case.

## 9. Default in Delivery and Release from the Delivery Commitment

- 9.1. The obligation to deliver and to adhere to the delivery period shall be suspended by any extraordinary events and circumstances not to be attributed to us which causes a relevant interruption of operations or makes the dispatch of goods impossible.
- 9.2. In the event that dispatching of goods is impossible, we shall be entitled to store any goods already manufactured at the expense and risk of the buyer. In that case, the goods will be invoiced to the buyer as if they had already been supplied.
- 9.3. If we are in default in delivery, the buyer shall grant a reasonable period of grace of not less than 6 weeks. The buyer shall not be entitled to cancel the contract after we have initiated production of the goods ordered – even after having granted a period of grace.

## 10. Quality of a Consignment

- 10.1. The quality of a consignment cannot be assessed on the basis of the quality of individual items.

## 11. Damages, Limitation of Warranty

- 11.1. The amount of any claims is limited according to the net invoice value of the item in question.
- 11.2. We are entitled to settle any guarantee claims through the provision of replacement parts. No claims can be made for price reductions.
- 11.3. We shall not recognise or reimburse any claims for damages with respect to installation costs, incipient processing costs, maintenance costs, etc. in any case.
- 11.4. Claims for damages by the customer are excluded, whatever the legal reasons, particularly due to delays, impossibility of attainment, positive breach of a claim, debts at conclusion of a contract, damage consequential to defects and defects due to improper handling, as long as they are intentional or do to gross negligence on our part. In the event of intent or gross negligence the customer must give proof of this. Information issued by us (installation and maintenance instructions, details of areas of use for products, etc.) must be strictly adhered to. Where instructions are disregarded or ignored, the official conditions release us from any liability.
- 11.5. We do not assume liability for any loss or damage resulting from improper handling or use, overstraining or natural wear. Furthermore, we do not assume liability with respect to any loss or damage caused by negligence nor any indirect or consequential loss.
- 11.6. Our liability for material damage due to a production fault according to the Product Liability Act (Produkthaftungsgesetz) shall be excluded for all companies participating in the production and distribution of our products, as well as for all buyers of our products who are entrepreneurs. The parties to contracts with us who are entrepreneurs undertake to transfer this exoneration clause to their customers to the extent that they on their part are entrepreneurs and as far as our products are concerned.

## 12. Place of Fulfilment and Jurisdiction

- 12.1. The place of fulfilment for all contract demands shall be Vienna, if the product is taken from Vienna factory; if the product is taken from Pinkafeld factory, Pinkafeld is a place of fulfilment.
- 12.2. For partners from the European Union countries as well as from the European Economic Area and for the partners with headquarter situated in a country, which has an enforcement agreement with Austria the court having subjectmatter jurisdiction in Vienna is agreed as a place of fulfilment for all contract demands.
- 12.3. For the partners from countries, which do not fall under the point 12.2 the court having subjektmatter jurisdiction in Vienna is agreed as a place of fulfilment. HERZ reserves the right to sue for the contract demand in each case in the responsible court.
- 12.4. In subsidiarity to these Terms and Conditions of Sale, Delivery and Payment, Austrian legal provisions are to be applied exclusively. The application of the UN-Convention on Contracts for the International Sale of Goods is expressly excluded.