

# GENERAL TERMS OF DELIVERY AND PAYMENT

## For HUESECKEN WIRE GmbH

### 1. General provisions

**1.1** Our deliveries and services are provided solely on the basis of the conditions hereinafter. The Purchaser's general terms and conditions shall only apply, where we have expressly agreed to them in writing.

**1.2** Our offers are non-binding. Contracts and other agreements only become binding when confirmed in writing by us.

**1.3** Our General Terms of Delivery and Payment only apply to entrepreneurs within the meaning of § 310(1) German Civil Code.

### 2. Pricing / Payment terms

**2.1** We reserve the right to change our prices accordingly in the event of cost reductions or cost increases after conclusion of the Contract, in particular, on the basis of wage agreements or changes in the price of materials. Such changes shall be evidenced to the Purchaser upon request.

**2.2** The Purchaser may only offset claims that are undisputed or legally binding. The Purchaser is only entitled to a right of retention to the extent that this is based on the same contractual relationship.

**2.3** Where circumstances occur, which result in a significant deterioration of the Purchaser's financial position, and our claim for payment is at risk, we are entitled – irrespective of the maturity date of credited bills of exchange – to make payment due and payable. Where the Purchaser is in arrears with payment, which indicates that our claim is at risk, the Purchaser undertakes to return the goods to us immediately upon first request. Furthermore, we may refuse further processing of delivered goods. This shall not apply where the Purchaser is not responsible for the arrears. Taking back goods does not constitute withdrawal from the Contract.

In both cases, we can revoke the direct debit mandate in accordance with Clause 7.7 and require advance payment for outstanding deliveries. The Purchaser can avoid all these legal consequences by making a security payment in the amount of our endangered claim for payment.

**2.4** We are entitled to securities of customary type and scope for our claims, even if they are conditional or time-limited.

**2.5** Statutory provisions in relation to default of payment remain unaffected.

However, where the Purchaser is in default of payment due by more than four weeks, either for the entirety of the relevant payment of a substantial portion thereof (at least 50%), default of payment is deemed to apply to all outstanding debts of the Purchaser to us.

**2.6** It is agreed that we are entitled to assign our claims against the Purchaser.

### 3. Data protection clause

**3.1** Within the scope of our commercial relationship, we are entitled to collect, store, process and use information and data about the Purchaser for administration of the contractual relationship and to transfer such information and data to third parties for storage, processing and use for the purpose of debt collection or outsourced debt management.

### 4. Weights

**4.1** Weights are determined on our calibrated scales and are decisive for invoicing. Evidence of weight is provided by means of presentation of the weighing slip.

### 5. Shipment and transfer of risk

**5.1** Where goods are ready for shipping in cases where collection by the Purchaser (EXW) has been agreed, risk of damage and loss of the goods shall transfer to the Purchaser upon dispatch of the shipping notice. Where the Purchaser is delayed in collecting the goods, after granting an appropriate grace period in writing, we are entitled to store the goods at the expense of the Purchaser. Any additional rights of withdrawal and/or claims for damages remain unaffected. The same shall apply in the event that the Purchaser is responsible for contracting the carrier and we have made the goods, cleared for export, available for collection at the specified location (FCA). (In such cases we are similarly entitled to request payment with delivery made in this way).

**5.2** Unless otherwise agreed in writing, goods are delivered without packaging and are not protected against rust. Where packaging is contractually agreed, we do not offer a take-back service.

**5.3** Unless otherwise agreed, the shipping route and means of shipment shall be at our discretion.

**5.4** We are entitled to make partial deliveries, where reasonable.

**5.5** Where Incoterms have been agreed, the newest version of Incoterms will always apply in case of doubt.

### 6. Delivery periods / Delay in delivery

**6.1** Periods for the delivery of goods and services are only binding when we have confirmed these in writing. The agreed period for delivery of goods and services is always, irrespective of other agreed delivery conditions, determined in accordance with the date/time of notification of readiness for shipment ex works, unless the goods cannot be shipped or collected for reasons for which we are responsible.

**6.2** Where the Purchaser fails to fulfil contractual obligations in a timely manner –, including duties to cooperate or ancillary obligations –, such as providing a letter of credit, advance payment, etc., we are entitled to postpone our delivery period appropriately – without prejudice to our rights based on default by the Purchaser – in accordance with the requirements of our production process.

**6.3** Where we are prevented from fulfilling our obligations due to the occurrence of unforeseen events, which affect us or our suppliers and which we could not avert in spite of reasonable efforts in the circumstances, e.g. war, Act of God, national unrest, natural disaster, accidents, other operational disruptions and delays in the delivery of essential operating materials or raw materials, the delivery period shall be extended for the duration of the interference and by a reasonable start-up period. Where delivery is impossible or unreasonable due to the interference, we can withdraw from the Contract; the Purchaser has the same entitlement where acceptance is unreasonable for the Purchaser due to the delay. For the purpose of this clause, strikes and lock-outs shall constitute an interference for which we are not responsible in every case.

The delivery period shall be extended – without prejudice to our rights based on default by the Purchaser – by the period during which the Purchaser is in default in its obligations to us. If we enter into default, the Purchaser can withdraw from the Contract upon expiry of a reasonable grace period communicated by the Purchaser in writing. The same applies if delivery of the goods is impossible for us for reasons for which we are not responsible. We undertake to inform the Purchaser immediately prior to occurrence of an unforeseen event in the sense of Clause 1.

**6.4** Where we are culpable of default in delivery, the Purchaser can – insofar as it can prove that it has incurred resultant loss – demand damages for each complete week of delay of 0.1% of the net price for that part of the delivery which cannot be put into useful operation, up to a maximum, however, of 5%.

**6.5** Both damages claims by the Purchaser due to default in delivery and compensation in lieu of performance which exceed the limits specified at Clause 6.4 are excluded in all cases of delayed delivery, even after expiry of any deadline that we set for delivery. This shall not apply in the event of mandatory liability for intent, gross negligence or injury to life, limb or health.

**6.6** Any right of withdrawal available to the Purchaser or ourselves in accordance with Clause 5.4 generally covers only the unfulfilled part of the Contract. Where partial deliveries cannot be used by the Purchaser, however, it is entitled to withdraw from the Contract in its entirety.

### 7. Defects in the goods / Warranty

**7.1** The Purchaser is obliged to meet its obligation to inspect and submit complaints in compliance with § 377 German Commercial Code as a prerequisite for making any claim on the basis of defects.

The limitation period for claims for defects is three months from transfer of risk. This period shall not apply insofar as the law prescribes mandatory longer periods or where defects were maliciously concealed. **7.2** For justified and timely claims for defects, the Purchaser can avail of the rights concerning defects in accordance with statutory provisions, provided, however, that: Where goods are defective, the claims of the Purchaser are initially limited, in case of defects, to the right to supplementary performance. Rectification or replacement delivery shall be chosen at our discretion.

Where supplementary performance fails on two occasions or is refused by us, the Purchaser is entitled to a reduction of the purchase price or to withdrawal from the Contract. The Purchaser is not entitled to the right of withdrawal if the defect is negligible.

In cases of failure to exhibit guaranteed characteristics, we are only liable insofar as the guarantee is

intended to safeguard the Purchaser against the damage/loss incurred.

**7.3** The Purchaser must provide us with an immediate opportunity to verify the defect, in particular, it must provide the rejected goods or samples thereof to us upon request.

**7.4** After implementation of any agreed acceptance, notification of defects, which are discernible upon acceptance, is excluded.

**7.5** In the case of goods, which are explicitly purchased as declassified material, the Purchaser is not entitled to any warranty rights in respect of the reasons for declassification specified in the Contract. In particular, the warranty is excluded in this respect. The same applies in the event of purchase of goods that are expressly denoted as second-rate quality goods (II-a-Ware), in respect of defects and faults, which the Purchaser must typically expect with such materials.

**7.6** Claims of the Purchaser for the purpose of covering necessary expenditure, in particular, transport, travel, labour and materials costs, shall only be processed insofar as these have not increased because the goods have been shipped to a location other than the place of delivery. This shall not apply, where shipment of the goods complies with normal practice.

### 8. Retention of title

**8.1** All goods delivered remain our property (goods subject to retention of title) until fulfilment of all claims, in particular, any balance claims to which we are entitled in the context of the commercial relationship. This shall also apply to future and conditional claims, for example, from acceptor bills.

**8.2** Treatment and processing of goods subject to retention of title is undertaken for us as manufacturer within the meaning of § 950 German Civil Code without any obligation on our part. The treated and processed goods shall be considered as goods subject to retention of title within the meaning of Clause 7.1.

**8.3** In the event that the Purchaser processes, combines or mixes the goods subject to retention of title with other goods, we shall be entitled to co-ownership of the new item at the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods. Where our ownership expires as a result of combination, mixing or processing, the Purchaser hereby transfers the proprietary rights arising in its favour or expectant rights to the new stock or item in the amount of the invoice value of the goods subject to retention of title, in the case of processing, at the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used, and shall store the goods for us free of charge. Our rights of co-ownership shall be considered as goods subject to retention of title within the meaning of Clause 1.

**8.4** The Purchaser may resell the goods subject to retention of title only in the normal course of business in accordance with its normal business terms and conditions and only insofar as the Purchaser is not in default, provided that it agrees retention of title with its customer and that the receivables from the resale are passed to us in accordance with Clauses 7.5 and 7.6.

The Purchaser is not entitled to dispose of the goods subject to retention of title in any other way. Use of the goods subject to retention of title to fulfil contracts for works, labour and materials shall be considered as resale.

**8.5** The Purchaser's claims from the resale of the goods subject to retention of title are hereby assigned to us. They shall serve as collateral to the same extent as the goods subject to retention of title within the meaning of Clause 7.1.

**8.6** Where goods subject to retention of title are resold by the Purchaser together with other goods, the claim from the resale shall be assigned to us at the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods. In the event of resale of goods, of which we have joint ownership in accordance with Clause 7.3, a proportion of the claim corresponding to our share in ownership shall be assigned to us.

**8.7** The Purchaser is entitled to collect receivables from the resale, unless we cancel the direct debit mandate in the circumstances specified at Clause 2.3. Upon our request, the Purchaser is obliged to notify its customer of the assignment to us without delay – insofar as we do not do so ourselves – and to provide to us the information and documentation required for collection.

**8.8** The Purchaser is not entitled to assign the claims under any circumstances; this also applies to factoring transactions, which the Purchaser is not permitted to make on account of our direct debit mandate.

**8.9** The Purchaser must inform us immediately of any seizure or other third-party interference.

**8.10** Where the value of the existing securities exceeds the total claims being secured by more than 20%, we are obliged to release securities at our discretion to this extent, upon request of the Purchaser.

### 9. General limitation on liability

**9.1** Our liability for damages, on any legal ground whatsoever, in particular, due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contractual negotiations and liability in tort, is limited.

**9.2** We are not liable in the event of simple negligence by our institutions, legal representatives, employees or other vicarious agents, insofar as there is no breach of fundamental contractual obligations. Fundamental contractual obligations are those of timely delivery of the object of delivery, its freedom from defects, which impair its functional capability and serviceability to a significant extent, and advisory, protective and custodial obligations which are considered to enable the Purchaser to use the object of delivery in conformity with the Contract or obligations protecting the life and limb of the Purchaser's personnel or which are intended to protect the Purchaser's property from significant damage.

**9.3** Our liability is limited to damages which we foresaw upon conclusion of the Contract as a possible consequence of a breach of contractual obligations, or which we should have foreseen in applying due care indirect damages or consequential damages, which are the consequence of defects in the object of delivery are, furthermore, only eligible for compensation insofar as such damages are typically to be expected when the object of delivery is used in accordance with its intended purpose.

**9.4** In every case, our liability is limited to the respective sum insured under our product liability insurance, where there is a breach of fundamental contractual obligations.

### 10. Plea of uncertainty/deterioration

**10.1** We are entitled to suspend the obligation to deliver, if it emerges after conclusion of the Contract that the Purchaser cannot fulfil a significant part of its obligations due to a serious deficiency impairing its capacity to fulfil the Contract, in particular, its borrowing capacity (creditworthiness).

**10.2** In this case, we undertake to notify the Purchaser in writing of our intention to discontinue deliveries. Insofar as the Purchaser offers sufficient collateral for fulfilment of its obligations, we undertake to continue performance as incumbent upon us.

### 11. Other provisions

**11.1.** Where a clause of these conditions is invalid, this shall not affect the validity of the other clauses. Even in the event of invalidity, either of provisions of these conditions or other provisions and arrangements, the remainder of the Contract shall remain binding. This shall not apply when adherence to the Contract would represent an unreasonable hardship for a Party.

**11.2.** Where the written form is required, this shall be deemed to be met by communication by fax, email or other communication using electronic data-processing methods.

### 12. Applicable law

The law of the Federal Republic of Germany to the exclusion of UN Sales Law (CISG) shall apply.

### 13. Place of performance and place of jurisdiction

The place of performance for delivery and payment is 58119 Hagen-Hohenlimburg.

Insofar as the Purchaser is a merchant, a legal entity under public law or special fund under public law, the place of jurisdiction is 58086 Hagen.

We are also entitled to initiate legal proceedings against the Purchaser as its general place of jurisdiction.