

General Terms and Conditions of Sale of Hans von der Heyde GmbH & Co. KG

1. Preamble

1.1 Deliveries and services of Hans von der Heyde GmbH & Co. KG (›Hans von der Heyde‹ or ›Seller‹) are exclusively subject to the following terms and conditions of sale, insofar as they are not modified by an explicit deviating agreement, at least in text form, between the parties. We do not recognise any conflicting, deviating or additional conditions of the customer unless we have expressly agreed to their validity in writing. These Terms and Conditions of Sale and Delivery shall also apply if we carry out the delivery/service to the Buyer without reservation in the knowledge that the Buyer's terms and conditions are contrary to, deviate from or additional to our terms and conditions or additional terms and conditions. If an agreement was made verbally, it must be presented in text form within 24 hours, otherwise it shall be deemed not to have been made from the outset.

1.2 Any errors in sales brochures, price lists, offer documents or other documentation of the Seller may be corrected by the Seller without the Seller being held liable for any damages resulting from such errors.

1.3 These General Terms and Conditions of Sale shall only apply to entrepreneurs within the meaning of Section 310 (1) of the German Civil Code (BGB).

2. Order and offer documents

2.1 The quantity, quality and description and any specification of the goods shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). All sales documents, specifications and price lists are to be treated as strictly confidential and may not be made available to third parties.

2.2 The Buyer shall be responsible for the accuracy of the order, and the Buyer shall be responsible for providing the Seller with any necessary information regarding the

goods ordered within a reasonable time in order for the order to be executed in accordance with the contract.

2.3 If the goods are to be manufactured or otherwise processed by the Seller and the Buyer has submitted a specification to that effect, the Buyer shall indemnify the Seller against any loss, damage, costs or other expenses of the Seller which the Seller has to pay or is prepared to pay because the contractual processing of the goods has been found by reason of the Buyer's specification to infringe any patent, copyright, trademark or other proprietary right of any third party.

2.4 The Seller reserves the right to amend the description of the goods with regard to the specification to the extent that legal requirements are to be taken into account, provided that this amendment does not result in a deterioration of the order with regard to quality and usability.

2.5 We reserve the property rights and copyrights to illustrations, drawings, calculations and other documents. This also applies to such written documents that are designated as 'confidential'. The customer requires our express written consent before passing them on to third parties.

3. Purchase price

3.1 The purchase price shall be the price quoted by the Seller.

3.2 After timely notification of the Buyer and prior to delivery of the goods, the Seller reserves the right to increase the price of the goods as required by general price developments beyond the Seller's control (such as exchange rate fluctuations, currency regulations, changes in customs duties, significant increases in material or manufacturing costs) or due to changes in suppliers.

3.3 Unless otherwise stated in the offer or unless otherwise agreed in writing between the Seller and the Buyer, all prices quoted by the Seller are on an 'ex works' basis. If the parties have agreed on a different place of delivery, the Buyer shall bear the costs for transport, packaging and insurance.

3.4 Prices are exclusive of value added tax, which the Buyer must additionally pay to the Seller.

3.5 Interest on arrears shall be charged at a rate of 9% above the respective base rate. We reserve the right to claim higher damages caused by delay.

4. Terms of payment

4.1 Unless otherwise stated on the invoice, the Buyer shall pay the purchase price within 30 days of the invoice date. The statutory rules concerning the consequences of default in payment shall apply.

4.2 Payments should only be made by bank transfer or cheque; bills of exchange will not be accepted as fulfilment of the payment obligation.

4.3 It may be agreed between the contracting parties that the Buyer shall open a documentary letter of credit through its bank (or another bank acceptable to the Seller). In this individual case, it is stipulated that the letter of credit shall be opened in accordance with the General Rules and Practices for Documentary Credits, 1993 Revision, ICC Publication No. 500.

4.4 If the Buyer fails to pay on the due date, the Seller may, without prejudice to any other rights or remedies to which it is entitled, at its discretion:

- terminate the contract or suspend further deliveries to the Buyer; or
- charge the Buyer interest on the unpaid amount at a rate of 7% per annum above the respective European Central Bank base rate until final and full payment is made. The Buyer is entitled to prove that no or only minor damage has been incurred as a result of the delay in payment.

4.5 The customer shall only be entitled to set-off rights if its counterclaims have been legally established, are undisputed or have been acknowledged by us. Furthermore, it shall be entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

5. Delivery of goods

5.1 The start of the delivery time stated by us presupposes the clarification of all technical questions.

5.2 Compliance with our delivery obligation further presupposes the timely and proper fulfilment of the customer's obligation. We reserve the right to plead non-performance of the contract.

5.3 Delivery of the goods shall be made in such a way that the Buyer takes delivery of the goods at the Seller's premises, that the goods are ready for collection, or, if a

different place of delivery has been agreed with the Seller, by delivery of the goods to that place.

5.4 As far as the delivery of bulk goods is concerned, the Seller may deliver up to 3 % more or less of the quantity of goods without having to adjust its purchase price, and it is agreed that the quantity of goods so delivered shall be deemed to be in accordance with the contract.

5.5 If the Buyer is in default of acceptance on the due date, it must nevertheless pay the purchase price. In such cases, the Seller shall store the goods at the risk and expense of the Buyer. At the Buyer's request, the Seller shall insure the goods at the Buyer's expense.

5.6 If the conditions of paragraph (3) are met, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's delay.

The risk of damage to or loss of the goods shall pass to the Buyer as follows:

- insofar as the goods are not delivered at the Seller's business premises, at the time of handover or, if the Buyer is in default of acceptance, at the time when the Seller offers to hand over the goods.
- insofar as the goods are delivered at the Seller's premises (»ex works«, Incoterms 2000) at the time when the Seller informs the Buyer that the goods are ready for collection.

5.7 We shall be liable in accordance with the statutory provisions insofar as the underlying purchase contract is a transaction for delivery by a fixed date within the meaning of Section 286 (2) No. 4 of the German Civil Code (BGB) or Section 376 of the German Commercial Code (HGB). We shall also be liable in accordance with the statutory provisions if, as a consequence of a delay in delivery for which we are responsible, the customer is entitled to claim that its interest in the further performance of the contract has ceased to exist.

5.8 Furthermore, we shall be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; any fault on the part of our representatives or vicarious agents shall be attributed to us. If the delay in delivery is due to a grossly negligent breach of contract for which we are responsible, our liability for damages shall be limited to the foreseeable, typically occurring damage. Liability for consequential and pecuniary damages as well as for loss of profit is not covered by the foreseeable, typically occurring damage.

5.9 We shall also be liable in accordance with the statutory provisions if the delay in delivery for which we are responsible is due to the culpable breach of a material contractual obligation; in this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damage. In this respect, too, the foreseeable, typically occurring damage does not include consequential and pecuniary damage or loss of profit.

5.10 Further legal claims and rights of the customer remain reserved.

6. Force majeure

6.1 In cases of force majeure, the contracting party affected thereby shall be released from the obligation to deliver or accept for the duration and to the extent of the effect. We will inform the Buyer in good time in writing or in text form.

6.2 A case of force majeure shall be deemed to exist in the case of any unforeseeable, serious event such as, in particular, war, terrorist conflict, epidemics or pandemics (insofar as at least an increased level of risk has been determined by the Robert Koch Institute and continues at the time of performance of the contract), illnesses, quarantine measures or industrial disputes (including strikes or lawful lock-outs) which are beyond the control of a contracting party and as a result of which a contracting party is prevented in whole or in part from fulfilling its obligations, including fire damage, energy and raw material shortages, transport bottlenecks or obstacles through no fault of its own, floods, strikes as well as operational disruptions (fire, water, machinery damage) or official orders and lawful lock-outs for which it is not responsible.

6.3 The contracting parties undertake to adapt the contract to the changed circumstances in good faith. For the duration and to the extent of the direct and indirect effects, the contracting parties shall be released from their obligations under the contract and shall not be liable for damages in this respect. In any case, we as the Seller are entitled to postpone the delivery for the duration of the impediment or to withdraw from the contract in whole or in part due to the part not yet fulfilled, provided that we have complied with our duty to inform and it is no longer reasonable for us to fulfil the contract and we have not assumed the procurement risk or a delivery guarantee.

7. Retention of title

7.1 The goods delivered by the Seller shall remain the property of the Seller (Reserved Goods) until all outstanding claims arising from the purchase contract and from the

current (present and future) joint business relationship, including interest and costs, have been settled in full.

7.2 The Seller shall have the right to withdraw from the contract in accordance with the statutory provisions and to demand the surrender of the object of sale in the event of conduct by the Buyer that is in breach of the contract, in particular in the event of default in payment, subject to § 107 (2) InsO (German Insolvency Regulations). After reclaiming the object of sale, the Seller is entitled to sell it elsewhere or otherwise dispose of it. The proceeds of the sale shall be credited against the Buyer's liability - less reasonable costs of sale.

7.3 As long as the goods have not been paid for in full, the Buyer must hold the goods in trust for the Seller and keep the goods separate from its property and that of third parties and properly store, secure and insure the goods subject to retention of title and mark them as the property of the Seller.

7.4 The Buyer is revocably entitled to resell the reserved goods in the ordinary course of business. The Buyer hereby assigns to the Seller accepting the assignment, irrespective of any processing, all claims and ancillary rights to which it is entitled from the resale and the business relationship with its customers in connection with the resale. In the event that the delivery is sold by the Buyer together with other goods not belonging to the Seller, the assignment of the Buyer's purchase price claim shall only apply to the value of the delivery.

7.5 The Buyer is revocably authorised to collect the claim from the resale of the reserved goods as long as it meets its payment obligations. The authorisation to collect and the right to process shall lapse, even without express revocation, if the Buyer ceases to make payments, is in default of payment, in the event of a seizure having taken place or if an application has been made to open insolvency proceedings. Assigned accounts receivable received thereafter shall be accumulated immediately in a special account with the designation to be specified separately by the Seller. At the request of the Seller, the Buyer shall immediately inform the Seller in text form of the debtors of the assigned claim(s) and notify the debtors of the assignment to the Seller. The Seller shall also be entitled to notify the Buyer's customers of the assignment of the Buyer's claim(s) to the Seller and to collect the claim(s).

7.6 In the event of a combination or inseparable mixing of the reserved goods with other items, the reservation of title shall also extend to the resulting uniform item. If the reserved goods are combined or inseparably mixed with other materials not owned by the Seller, the Seller shall acquire co-ownership of the uniform item in the ratio of the invoice value of the reserved goods to the invoice value of the other, third-party materials. If the combination or mixing takes place in such a way that the Buyer's item

is to be regarded as the main item, the Buyer hereby assigns to the Seller the co-ownership share determined in accordance with the above sentence. In addition, the provisions of this Section 7 regarding the goods subject to retention of title shall also apply to the uniform item created after combination or mixing.

7.7 Any processing or transformation of the reserved goods shall always be carried out on behalf of the Seller, with the result that the Seller shall become the owner of the newly produced item. If the reserved goods are processed or transformed into a new item together with other materials not owned by the Seller, the Seller shall always acquire co-ownership of the newly produced item in the ratio of the invoice value of the reserved goods to the invoice value of the third-party processed materials. In all other respects, the provisions of this Section 7 concerning the goods subject to retention of title shall also apply to the new item produced after processing or transforming the goods subject to retention of title.

7.8 The Buyer shall be deemed to be the Seller's custodian for the Seller's sole or joint property thus created.

7.9 In the event of seizure or other interventions by third parties – also after combining, mixing, processing or reworking – as well as any other impairment of the rights to the goods subject to retention of title owned by the Seller, the Buyer shall notify the Seller immediately in text form so that the Seller can file an action pursuant to § 771 ZPO (German Code of Civil Procedure). Insofar as the Buyer fails to comply with this obligation, it shall be liable for the damage incurred.

7.10 The Seller undertakes to release the securities to which it is entitled at the Buyer's request to the extent that the realisable value of the securities exceeds the claims to be secured by more than 10%. The choice of the securities to be released shall be made by the Seller.

8. Warranty and liability

8.1 Claims for defects on the part of the Buyer presuppose that it has duly fulfilled its obligations to examine the goods in accordance with § 377 of the German Commercial Code (HGB). If the goods are not delivered in full or as agreed, the Buyer is obliged to give written notice of this immediately after discovery of the defect and to assert its claim to subsequent performance. If the Seller does not fulfil its obligation of subsequent performance, the Buyer is entitled to set a reasonable deadline. If the Seller allows this period to elapse without success, the Buyer may, at its discretion, demand a reduction in price within the framework of the statutory provisions. The Buyer shall not be entitled to substitute performance (performance of the work by third parties at the Seller's expense).

8.2 The Seller accepts no responsibility for the goods being fit for a particular purpose. In this respect, only the contractually agreed quality and/or the use expressly agreed in accordance with the contract shall be decisive. The application of § 434 Abs. 3 BGB (German Civil Code) is expressly excluded.

8.4 The liability of the Seller is assumed under the following conditions:

- the Seller shall not be responsible for defects in the goods resulting from a description or specification of the goods by the Buyer;
- the Seller shall not be responsible for the defectiveness of the goods if the purchase price due has not been paid by the due date;
- the Seller's responsibility does not extend to parts, materials or other equipment manufactured by or on behalf of the Buyer unless the manufacturer of such parts accepts responsibility vis-à-vis the Seller.

8.5 This warranty does not cover product defects resulting from improper installation or use, misuse, negligence or other causes.

8.6 All claims of the Buyer based on defects shall become statute-barred after one year. The statutory provisions shall apply to the commencement and expiry of the limitation period. The reduction shall not apply if the Seller is guilty of intentional or grossly negligent breach of duty.

The reduction of the limitation period to one year shall not apply to claims against the Seller based on mandatory statutory provisions on the recourse of intermediaries in the supply chain against the Seller (§§ 478 BGB).

The Seller's liability for damages resulting from injury to life, body or health caused by a defect for which the Seller is responsible shall also not be affected by this clause.

8.7 The Buyer may demand replacement goods, repair or a price reduction, if this is stipulated accordingly in the specific individual contract.

8.8 Insofar as there is a defect in the purchased item for which the Seller is responsible and the Seller is notified thereof, the Seller shall be entitled to make a replacement delivery or remedy the defect free of charge. If the Seller is not willing or able to remedy the defect or to make a replacement delivery, the Buyer shall be entitled, at its discretion, to withdraw from the contract (rescission of the contract) or to demand a price reduction (reduction of the purchase price).

9. Liability

9.1 Any further liability for damages than provided for in § 8 or mandatory by law is excluded, regardless of the legal nature of the claim asserted. This applies in particular to claims for damages arising from culpa in contrahendo, from other breaches of duty or from tortious claims for compensation for property damage in accordance with § 823 BGB.

9.2 The limitation according to paragraph (1) shall also apply insofar as the customer demands reimbursement of useless expenses instead of a claim for damages.

9.3 Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, representatives and vicarious agents

10. Packaging take back

10.1 Pursuant to Section 15 Paragraph 1 Sentence 1 of the German Packaging Act (VerpackG), manufacturers and subsequent distributors in the supply chain (each as defined by the German Packaging Act) of:

- Transport packaging
- Sales packaging and secondary packaging which, after use, does not typically accumulate as waste at private end consumers
- Sales and secondary packaging for which system participation is not possible due to system incompatibility in accordance with § 7 Paragraph 5
- Sales packaging of pollutant-containing filling goods or- reusable packaging

shall be obligated to take back, free of charge, used, empty packaging of the same type, shape and size as the packaging placed on the market by it at the place of actual handover or in its immediate vicinity.

10.2 Unless we as the Seller have agreed otherwise with the Buyer, we as the Seller are the manufacturer or the subsequent operator in the supply chain within the meaning of Section 15 (1) sentence 1 of the German Packaging Act (VerpackG) and we as the Seller have used packaging material within the meaning of Section 9.1 (hereinafter referred to as 'packaging material' in this Section 9) when supplying a product, the following shall apply:

The Seller shall take back the packaging material free of charge at the place of actual delivery or in the immediate vicinity thereof, insofar as the Seller is requested to do so by the Buyer prior to or upon delivery. By taking back the packaging material, the Seller shall ensure that the packaging material is returned to the recycling cycle. In all other respects, the statutory provisions shall apply.

11. Other provisions

11.1 The Seller shall be entitled to modify and improve the goods without having to inform the Buyer in advance, provided that the modification or improvement does not have a lasting adverse effect on the form or function of the goods.

11.2 These Terms and Conditions replace all other agreements previously made by the contracting parties in writing or orally and which become ineffective upon the signing of these Terms and Conditions.

11.3 Each Party shall bear its own costs in implementing this agreement.

12. Choice of law, place of jurisdiction

12.1 The place of jurisdiction for disputes arising from or in connection with the contractual relationship existing between the Seller and the Buyer shall be the Seller's place of business. However, we are also entitled to sue the customer at its local court.

12.2 The law of the Federal Republic of Germany shall apply.

12.3 Unless otherwise stated in the order confirmation, our place of business shall be the place of performance.

13. Severability clause

Should one of these contractual provisions be or become ineffective, the remaining provisions shall remain effective. Should one of these contractual provisions be or become invalid, the parties shall replace this provision by way of renegotiation.