

## **General Terms and Conditions of Supply, HÜHOCO Metalloberflächenveredelung GmbH**

### **I Area of application, Offers**

- 1 These general conditions of sale and delivery apply for all contracts with companies and other organisations, including future contracts with companies, legal persons under public law and special public funds, supply and other services including works contracts and the supply of none-fungible goods. Conditions of purchase of the customer are not accepted even if not expressly contradicted following receipt by us.
- 2 Our offers are without obligation. Our written order confirmation is binding as regards the object of the agreement. Agreements by word of mouth, guarantees, subsidiary agreements and contractual modifications must be confirmed in writing in order to be valid.
- 3 The documents relating to our offers, such as illustrations, drawings and data relating to weight and dimensions, are approximate if not stated expressly to be binding. We retain rights of ownership and copyright in our cost estimates, drawings and other documents; these may not be made accessible to third parties.

### **II Prices**

- 1 Unless otherwise agreed, our prices are ex works. VAT is added to deliveries within Germany.
- 2 If costs increase to a significant extent between conclusion of the contract and date of delivery, such as in particular costs for salaries, raw materials, semi-finished products, energy or freight, the agreed price can be modified in accordance with the influence of the relevant cost factors.
- 3 If no agreement is made to the contrary or no statement to the contrary is contained in our invoices, payment is due for our invoices immediately following delivery, without deduction. Payment shall be effected in such a way that the payment is at our disposal on the due date. Bills of exchange and cheques are only acceptable by agreement and on account of performance and only if discounting is possible. Any costs connected with payment shall be borne by the customer.
- 4 If the date for payment is exceeded or if payment is delayed, interest shall be charged at the rate of 8% above bank base rate, unless a higher rate of interest has been agreed. We reserve the right to claim further damages in connection with delayed payment.
- 5 Rights of retention and rights to offset payment on the part of the customer are only acceptable if his counterclaims are undisputed or established by law.

### **III Delivery and transfer of risk**

- 1 Delivery times which are stated are approximate. Delivery periods start at the earliest on the date of our order confirmation, however not before supply of necessary documents, approvals and releases by the customer. Any agreed deposits must also have been paid.

- 2 The delivery date is considered fulfilled if the item to be delivered has left our factory on that date, or, if the goods cannot be despatched or cannot be despatched in good time through no fault of our own, if the customer has been informed that the goods are ready for collection.
- 3 Our obligation to supply assumes correct and prompt deliveries by our sub-suppliers, unless such incorrect or late delivery is attributable to ourselves or our actions. The delivery period shall be correspondingly extended in case of working disturbances, in particular strikes and lockouts as well as the occurrence of unforeseeable obstacles which lie outside our sphere of influence, in so far as such obstacles can be proven to have considerable influence on our production or supply of the product. This shall also apply if unfavourable circumstances arise in our sub-suppliers' companies. The obstacles and circumstances shall also not be considered our responsibility if they occur within an existing delay. We shall inform the customer of the start and end of such obstacles to supply as soon as possible.
- 4 Goods which are declared ready for collection must be collected immediately by the customer. Otherwise we shall be entitled, at our discretion, to despatch or store the goods at the cost and risk of the customer.
- 5 Risk is transferred to the customer with transfer of the goods to a carrier or road haulage company, or when storage begins in accordance with Item 3 above, at the latest however when the goods leave our factory or warehouse. This also applies if delivery is effected by ourselves. We arrange insurance on request and at the expense of the customer.
- 6 In the absence of special agreement we select the means of transportation, the transport route and the carrier or road haulage company.
- 7 We are entitled to make partial deliveries to an extent which is reasonable.
- 8 The customer shall accept goods delivered, even if these exhibit minor defects.
- 9 In case of delayed delivery, the customer can set a reasonable period of grace. If delivery is not effected within this agreed period, the customer shall be entitled to withdraw from that part of the contract which has not yet been fulfilled. Claims for damages in such cases shall be regulated according to Paragraph V11 of this contract.

#### **IV Retention of title**

- 1 All goods supplied shall remain our property (goods subject to retention of title) until complete payment has been made. This applies in particular to payments that are due to us within the framework of this contractual arrangement (current account reservation). This shall also apply to future claims arising from the business relationship, for example from accepted bills of exchange and also if payments are to be made for particular claims. The right to receive payment finally ends with payment of all amounts due, including payments in connection with current account reservation.
- 2 Further processing of the goods subject to retention of title is carried out for us as the manufacturer in the sense of § 950 German Civil Code without obligation for us. The processed goods are considered to be goods subject to retention of title in the sense of

the aforementioned Item 1. In the case of processing, modification or combination with other goods which are not our property, we shall be entitled to joint ownership in the new item to the amount of our proportion of the goods expressed as the proportion of the invoiced value of the processed, modified or combined goods subject to retention of title to the invoiced value of the other processed, modified or combined goods.

- 3 The customer may only sell the goods subject to the retention of title within the normal course of business and as long as his payments for the goods are not delayed, provided that rights from further sales are assigned to us in accordance with Items 4 and 6 below.
- 4 In case of further sale of the goods subject to retention of title or the new processed item, the manufacturer already now assigns his rights against the customer to us as regards payment, including all current accounts balances in the sense of providing security, without the need for special agreement. If the goods subject to retention of title are sold by the customer together with other goods not sold by us the claims from the further sale will be assigned to us in the proportion of the invoiced value of the goods subject to retention of title to the invoiced value of the other goods which are sold. In the case of sale of goods in which we hold joint title a portion corresponding to our proportion of the goods shall be assigned to us. We already now accept this preliminary assignment. In relation to all the aforementioned claims we shall be entitled without limitation to separation and recovery of assets or recovery of equivalent assets.
- 5 The customer is entitled to call in the claims assigned to us. This right to call in the claims does not entitle the customer to dispose of the claims in other ways, for example by means of assignment or pledging as security. If the customer does not fulfil his obligation to us in good time, we shall be entitled to cancel the right to call in claims and to require of the customer that he informs his customer in turn of the assignment of rights.
- 6 If the value of the existing securities exceeds the secured claims by more than 20% in total, on request of the customer we shall be obliged to release corresponding securities of our choice.
- 7 If the manufacturer is late with payment or if he does not honour a bill of exchange when it falls due, we shall be entitled to take back the goods subject to retention of title and to enter the premises of the customer for this purpose. The same applies if after conclusion of the contract it becomes clear that our claim to payment arising from this contract or from other contracts concluded with the customer is endangered because of insolvency. Reclamation of the goods does not indicate withdrawal from the contract. The rules of the provisions governing insolvency shall remain unchanged.
- 8 The customer shall inform us immediately of any seizure of the goods or other measures which influence our interest in the goods. The customer is responsible for all costs arising from cancellation of the seizure or return transportation of the goods subject to retention of title, in so far as these costs are not borne by third parties.

## **V Nature of the goods, quality, dimensions and weights**

- 1 The nature of the goods basically only consists of the characteristics described in our product descriptions, specifications and identification markings or labels. Public statements, advertising or similar do not constitute a binding specification of the nature of the goods.
- 2 Advice given by us by word of mouth in writing and in the form of trials or tests is offered according to the best of our knowledge and belief, but is only offered without obligation. This also applies in relation to any protective rights of third parties. Such advice does not free the customer from the obligation to check the suitability of products supplied for by us for the intended processes and purposes. Use and processing of the products are implemented outside our sphere of influence and therefore lie exclusively within the area of responsibility of the customer.
- 3 Excess or decreased deliveries are permitted, depending on dimensions, invoice position and individual call off as follows: under 5t up to 30%, between 5t and 15t up to 20% and over 15t up to 10%. Otherwise, deviations as regards volumes, dimensions, weight, quality and other specifications are possible in accordance with DIN EN standards or if such deviations are common in normal industrial practice.
- 4 We are not able to observe the precise individual weights and sizes of rollers as specified by the contract. For this reason 10% per item deviation as regards weight and size is permissible.
- 5 Packaging material and intermediate layers are included in the weight. The theoretical weight of pallets is deducted in the absence of express agreement to the contrary.
- 6 The weights are established on our scales and are binding for invoicing. Proof of weight is given by presentation of the weighing card. Complaints with regard to weights delivered must be made in writing within 1 week of delivery of the goods at the specified destination.

## **VI Liability for defects**

- 1 Complaints regarding defects in the goods must be submitted immediately in writing, however at the latest 10 days following delivery. This also includes cases in which another item or a too-small quantity is delivered. Defects which cannot be discovered within this period, even on careful inspection, must be communicated immediately in writing on discovery, however before completion of the agreed or legally specified period of grace.
- 2 In case of justified complaints made within the specified period we may select repair of the goods or replacement by defect-free goods. If the supplier fails to repair the goods or refuses to supply defect-free goods within an appropriate period the customer shall be entitled to withdraw from the contract or reduce the price. If the defect is not significant or the goods have already been sold, processed or modified, the customer shall only be entitled to a reduction in price.

- 3 We shall receive the opportunity to establish the defect for ourselves. The goods which are allegedly defective or samples of these must be returned to us immediately. We shall bear the transport costs if the complaint is justified. If the customer does not fulfil these obligations or if changes have already been made to goods which are the subject of complaint without our permission, no claims to compensation will be accepted.
- 4 We shall only be responsible for costs in connection with supply of replacement goods in so far as these are appropriate in the individual case, in particular in relation to the price of the goods. We shall cover expenses which arise because the goods have to be transported to a different location from that already agreed, unless this would contravene the conditions of the contract.
- 5 After implementation of an agreed goods acceptance procedure by the customer, submission of complaints regarding defects which could have been detected in the course of the agreed acceptance procedure is not acceptable. If the customer has remained unaware of a defect as a result of negligence on his part, he can only claim with regard to such defects if we concealed the defect with intent to deceive or if we offered guarantees for the nature or characteristics of the goods.
- 6 Other claims of the customer are regulated by Paragraph ~~VII~~ VII of these terms and conditions. Rights of recourse of the customer according to §§ 478,479 of the German Civil Code shall remain unaffected.

## **VII General limitation of liability and lapse**

- 1 We shall only be liable in cases of infringement of contractual and extra-contractual obligations, in particular with regard to impossibility, delay, blame, errors during drafting and preparation of the contract, including for our managers and other vicarious agents, in cases of deliberate intent and gross negligence, limited to the typical contractual damages which could be foreseen at the time of conclusion of the contract. Otherwise we shall not be liable. This exclusion also applies for defects and damages consequential upon defects. These limitations shall not apply in case of negligent infringement of basic contractual obligations in so far as achievement of the contractual goals is endangered. Nor shall they apply in case of negligent injury to life, limb and health and also and if and in so far as we have taken over a guarantee for the nature of the goods sold, as well as in cases of mandatory liability arising from product liability law. Requirements regarding demonstration of proof shall remain unaffected.
- 2 Contractual claims which have occurred to the customer from and in connection with the supply of the goods lapse one year following delivery of the goods if not otherwise agreed and longer periods are not prescribed by law. Our liability arising from deliberate and grossly negligent neglect of duty, damage caused through negligence to life, limb and health as well as lapse of rights of regress according to §§478 and 479 German Civil Code shall remain unaffected.

## **VIII Implementation of subcontracted orders**

- 1 In contradiction to Paragraph VII of these terms and conditions, in the case of subcontracted orders we only accept liability for the proper execution of the work for

which we are responsible and up to the amount of the actual cost of work or costs confirmed by us. This also applies if the customer's materials which were supplied to us for processing on a sub-contracted basis suffer a decrease in value because of demonstrable errors in our work. We do not offer a guarantee of perfect finishing of goods processed by us on a sub contracted basis, as in this case we are dependant on the quality of the goods which are supplied to us. The previous sentence also applies for goods supplied to us which are not in accordance with the contract.

- 2 Otherwise Paragraph VI applies correspondingly for the implementation of sub-contracted orders.

## **IX Infringement of protective rights and tool costs**

- 1 If items are supplied according to drawings, samples, or other information of the customer and if patents, registered designs, copyright or other protective rights of third parties are infringed as a result, the customer shall be liable to us for the resulting damages and loss of profits.
- 2 If the customer takes over tool costs or a proportion of tool costs, use of the tools can only be limited to use for the customer's purposes or to manufacture of goods for the customer if the customer holds protective rights in the goods to be manufactured. However, the limitation must be expressly stated to us by the customer. In any event the tools remain in our possession and are our property.

## **~~IX~~ X Place of fulfilment, legal venue and governing law**

- 1 Place of fulfilment and legal venue for all claims arising from business relationships and in particular with reference to our supplies and services is Wuppertal. This legal venue also applies with regards to conflicts regarding establishment and effectiveness of the contractual relationship. At our discretion we shall be entitled to make complaint before the court responsible at the registered office of the customer.
- 2 The law of the Federal Republic of Germany shall govern all legal relationships between us and the customer supplementary to these provisions, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980.