

**General Terms and Conditions of the Wilhelm Hedtmann GmbH & Co. KG  
for Legal Transactions with Business People  
(as of September 2011)**

### **1. Area of Validity**

- (1) We, Wilhelm Hedtmann GmbH & Co. KG process orders issued to us solely on the basis of the following Terms and Conditions. These Terms and Conditions also apply to all future transactions with you, our customer, even if future orders are concluded without express reference to these Terms and Conditions, in particular for contracts for the sale and/or delivery of chattel (also referred to in the following as „goods“) without consideration for whether we manufacture the goods ourselves or purchase them from suppliers.
- (2) These Terms and Conditions only apply if you are a business person (section 14 of the German Civil Code [BGB]), a legal entity under public law, or a special fund under public law.
- (3) These General Terms and Conditions are solely applicable. Deviating, contradictory, or supplementary general terms and conditions of the customer are hereby expressly objected to. They only then become a component of the contract to the extent that we have expressly agreed to their validity, in particular even if we have made a delivery to you with knowledge of your general terms and conditions without reservation. In deviation from clause 1-3, any individual contractual agreements made in individual cases with you (including ancillary agreements, supplements, and changes) take precedence in any case before these General Terms and Conditions.

### **2. Coming into Effect of a Contract**

- (1) Our offers are subject to change. The drawings, samples, catalogues, or other documents handed over or otherwise transmitted to you in conjunction with the offers and/or other declarations in conjunction with preparation of the conclusion of the contract remain our property and are subject solely to our disposal by power of our copyright and/or our commercial and other industrial property rights. They may only be made available to third parties with our express permission.
- (2) The Contract comes into effect after clarification of all technical and commercial conditions by acceptance of your order by means of our written order confirmation; this also applies if your order is transmitted by our representative.
- (3) Our order confirmation with the therein contained description of the service to be performed by us is the sole basis for the scope of our duty to deliver and the details of the characteristics of our performance. This also applies if the performance owed by us is to be realised pursuant to your specifications, in particular a drawing coming from you. Insofar as no special manufacturing plans are made in the drawing, we may manufacture in the scope of the DIN or ISO or other preliminary standards applicable at the time production is begun.
- (4) In the event of agreement to presentation of sampling with test reports, the VDA processes typical of the industry are agreed; the values present in the sampling are only to be considered contractual qualities of the performance owed by us after express written authorisation of production by you.
- (5) The declarations contained in the order confirmation, in catalogues, and/or other correspondence between us regarding the contractual product about the characteristics of the contractual products do not, though, constitute a guarantee within the meaning of section 276 para. 1 BGB unless we have expressly announced such to you in our written order confirmation and have also indicated which success we are guaranteeing. If the goods are manufactured and delivered with a particular design requested by you (pursuant to a drawing, sample, or other specifications), you assume the liability that no rights of third parties, in particular patents, registered designs, and other industrial protection rights and copyrights are infringed by the execution. You are obligated to release us from all claims of third parties that could arise from such infringement.

### **3. Tools**

- (1) Should we manufacture tools and/or equipment needed for production pursuant to drawn and/or other design templates provided by you, we shall claim participation in the manufacturing expenses for this (share of costs for tools) which we will announce to you in the scope of the contractual negotiations and invoice after approval of the tool. The shares of costs of tools become due with the approval of the first outturn sample produced with the tool; at the latest, though, with the first contractual delivery from this tool. Without prejudice to your participation in the costs, we remain owner of the tool that we use solely for the deliveries to you unless you allow us to use it for other customers upon request in writing.
- (2) We obligate ourselves to store the tools for you for three years after the last delivery to you. If you inform us before the expiry of this period that you will make additional orders within the next year, then we are obligated to storage for the period of time indicated by you. Otherwise we have the free right of disposal of the tools.

### **4. Prices**

- (1) Our prices in offers and order confirmations are in EURO ex works not including the statutory value-added tax, packaging and shipping or transport expenses or any insurance expenses, taxes, or customs.
- (2) Subsequent reductions in the order amounts and/or reductions in agreed call orders give us the right to increase piece prices in a reasonable amount and also the agreed share of costs for tools.
- (3) Our prices are based on the currently typical cost accounting factors. If the basis for accounting changes in a long-term manner for call orders, we are entitled to adjust the piece prices based on this change in costs according to our face discretion.

### **5. Payment**

- (1) Our invoices are payable within 10 days with 2% trade discount or 30 days net. In the event of late payment, we shall charge you interest on arrears in the amount of 8 points above the respective base rate.
- (2) We expressly reserve the right to accept cheques or bills of exchange. Principally, they are only accepted on account of payment and are only valid as payment with releasing character upon redemption. You are to bear discount charges.
- (3) You only have the right to set off if your counterclaim is not disputed or has been established by court of law. You are only allowed to exercise a right of retention insofar as your counterclaim is based on the exact same contractual relationship and undisputed or established by court of law.

### **6. Date of Delivery**

- (1) The indication of a time of delivery is made according to the best of our knowledge with no guarantee. Agreed delivery periods begin with the day of our order confirmation, but not until all details of execution have been clarified. Delivery deadlines are considered met when the parts owed by us leave our premises at the agreed time or are made available by us in the delivering works if you are in acceptance arrears.
- (2) The delivery period is prolonged in the event of the occurrence of a force majeure and all unforeseen hindrances arising after conclusion of the contract for which we are not responsible. In particular, we are not responsible for labour unrest, strikes and lock-outs, unforeseeable operational disturbances and all other causes that result in partial or complete cessation of work, such as unavoidable shortage of raw materials, lack of materials, and lack of consumables, shipping difficulties, and problems with energy supply. This also applies if these circumstances arise at our suppliers and their subcontractors. We will inform you without delay of the beginning and foreseeable end of such delays. In all of these cases, we are entitled to delay delivery to you for the duration of the hindrance. If the delivery is delayed by the occurrence of a force majeure or other unforeseeable hindrance for more than 6 months, you can withdraw from the contract. Our legal rights or withdrawal and termination as well as the statutory regulations about unwinding of the contract with exclusion of duty to perform remain unaffected.
- (3) We reserve the right to release ourselves from the duty to fulfil the contract if the goods are to be delivered by a subcontractor on the day of dispatch and the delivery does not occur in part or whole. This reservation of delivery by our supplies only applies if we are not responsible for the lack of delivery, in particular if we concluded a so-called congruent hedging transaction with the subcontractor in a timely manner for fulfilment of the contractual duties. If the goods are not delivered, we will inform you about this circumstance without delay. We will refund any counter-performance already paid by you without delay.
- (4) In the event of our delivery arrears, you have the right to set a reasonable grace period of at least 15 workdays with the threat of refusal for us. If its fruitless expiry, you can only claim the right to withdrawal or damages for the part of the scope of the contract that was not fulfilled by us. However, you cannot claim loss of interest.
- (5) If significant worsening of your financial situation arises after conclusion of the contract or if such worsening of your financial situation only becomes known after conclusion of the contract, then we have the right to refuse performance or demand that you rectify the threat to the contractual purpose by means of provision of a sufficient security. If you do not comply with our demand for payment of a security within the reasonable period set by us, we are entitled to withdraw from the contract and/or demand damages.

### **7. Multiple Deliveries and Partial Deliveries**

- (1) The delivery always occurs in the customary manner. We reserve the right to make a partial delivery insofar as this appears advantageous for quick processing and the partial delivery is not exceptionally unreasonable for you. Partial deliveries are considered transactions in and of themselves, will be invoiced separately, and are to be paid separately.
- (2) In the event of special designs and special kinds, excess or short deliveries of up to 20% of the ordered amount are allowed.
- (3) In the event of contracts with ongoing delivery, the distribution of types and kinds is to be announced in a timely manner. If call orders and classifications are not made in a timely manner, after fruitless setting of a grace period, we are entitled to sort ourselves and to deliver or withdraw from the part of the contract that has not been fulfilled yet and demand reimbursement for the damage thereby arising for us.
- (4) We will inspect the delivered parts for their measurements, material properties, workpiece drawings, surface defects, and surface cracks insofar as they can be discovered with a visual check. The expenses for this regular inspection are included in the agreed prices. Any additionally needed inspections and the inspection processes to be used, such as 100% hardness testing (Brinell or Rockwell), magnetic flaw detection, and ultrasound defect inspections and the like require a special agreement and are to be indicated exactly in the part drawings, orders, and order confirmation. Additional charges will also be defined for them.

### **8. Packing, Shipping, Transfer of Risk**

- (1) If you do not indicate anything in particular, the method of shipping is subject to our discretion without our assuming responsibility for the cheapest shipping method.
- (2) The risk of accidental loss, accidental deterioration of the goods, and the risk of delay are transferred to you after departure from the works. In the event of sales to destination - regardless of who bears the shipping expenses - risk of accidental loss and accidental deterioration of the goods as well as danger of delay are transferred to you upon handover or delivery of the goods to the shipper, forwarder, or other person or institution assigned to shipment. Insofar as acceptance of the goods is agreed, this is authoritative for the transfer of risk. All other provisions of an acceptance agreement are governed pursuant to the statutory rules and regulations for contracts for work. The handover or acceptance are deemed to have occurred if you are in arrears of acceptance. If the goods are ready to ship and the shipment or acceptance is delayed for reasons for which we are not responsible, the risk is transferred to you with receipt of the announcement of readiness to ship.

### **9. Duty to Make Notice of Defects**

- (1) With the notice that none of our declarations represent a guarantee within the meaning of section 276 para. 1 BGB, we assume a warranty and liability for our deliveries and services pursuant to no. 9-13.
- (2) You are obligated to inspect random samples of the products delivered by us carefully - even if a prototype or sample was sent beforehand - without delay after they arrive at your premises for completeness and orderly nature, which also includes the presence of the contractual quality. The delivery is considered approved if you have not made notice of defects without 6 weeks of delivery. If the defect cannot be recognised during an orderly examination, then notice of the defect is to be made to us within 7 days of its discovery in writing or per fax. However, you are required to examine the material parameters needed by you for planned processing before you use the materials for production. The materials are to be separated from comparable products from other manufacturers so that it can be determined clearly that the goods about which you are complaining originate from our deliveries.
- (3) Notices of defects for parts that are no longer in the as-delivered condition are late in any case. It is agreed that a loss on account of faulty parts up to 0.5% of the contractual amount, but at least 2 pieces, is not subject to a notice of defects and will be accepted by you.
- (4) You are obligated to report shipping damages to the shipper or forwarder immediately upon delivery, not give them a clean event in the event such damages are present, and to inform us of this without delay in writing. With respect to this, the duties to report pursuant to the German General Conditions of Shipment (ADSp) are additionally applicable.
- (5) By no means does the seller waive the objection of late, insufficient, or unfounded notifications of defects on account of negotiations about complaints.

## 10. Warranty Claims

- (1) In the event of notices of defects made in an orderly and time manner pursuant to these Terms and Conditions and no. 9, we are obligated to supplementary performance by means of subsequent improvement or replacement delivery according to our choice. However, we are also entitled to credit you for the value of the parts sorted out. However, you can only demand supplementary performance if the limits for short amounts pursuant to DIN 6930 are undercut on account of the defective pieces. Our right to refuse supplementary performance under statutory conditions remains unaffected.
- (2) We are responsible for all expenses required for the purposes of inspection and supplementary performance, including transport, fare payments, labour and material costs if a defect really exists. If warranty claims are made against us and should it be determined by us during an inspection that either there is no defect present or the claimed defect, damage, or other change or deterioration of the goods are not defects that trigger statutory warranty claims then you are to pay remuneration for the testing and processing expenses in the regular amount plus the statutory value-added tax. Additionally arising necessary fees for estimates, repairs, materials, and similar costs are to be reimbursed by you including the statutory value-added tax. You are expressly entitled to prove that no damages arose or not in the claimed amount.
- (3) We bear expenses necessary for the purpose of supplementary performance, in particular shipping, travel, labour, and material expenses only insofar as the expenses are not increased because the goods delivered by us were subsequently brought to a place other than the delivery location specified by you unless the movement corresponds to their proper use.
- (4) Your rights of recourse against us exist only insofar as you have not made any agreements going beyond those claims for defects obligatory under law with your customers. The provisions above in this section apply in the corresponding manner for the scope of your right of recourse.
- (5) In the event of fraudulent concealment of a defect or in the event that a guarantee is assumed for the quality of the goods at the time of the transfer of risk, your rights are based solely on the statutory provisions in any case in deviation from that which is stated above.
- (6) If the end buyer of the goods in the delivery chain is a consumer, then you - pursuant to the additional conditions of section 377 HGB - in deviation from that which is stated above - are entitled recourse pursuant to the statutory provisions (sections 478, 479 BGB). You are to inform us without delay in the event of regress and, if possible, in the event of rectification of defects to choose the least expensive manner.
- (7) The buyer may only assert claims for damages or reimbursement of futile expenses under the provisions of no 11; all other claims are excluded.
- (8) The limitation of actions periods for all claims from defects of quality and title amounts to one year after the beginning of the legal statute of limitations.
- (9) However, if the goods concern a building or a thing that is typically used for a building and its defective nature caused the building's defectiveness, the legal statute of limitations is applicable in deviation from para. 8. Unaffected in any case remain the statutory special regulations for real rights of third parties for return of a purchased thing (section 438 para. 1 no. 1 BGB), fraudulent concealment of a defect (section 438 para. 3 BGB), and the assumption of a guarantee by us for claims in supplier regress in the event of end delivery to a consumer (sections 478, 479 BGB) and for claims for damages and reimbursement in the cases named in no. 11 para. 3 and 4. The limitation periods of the Germany Product Liability Act [Produkthaftungsgesetz] shall also remain unaffected in any event.

## 11. Liability

- (1) We are liable - regardless of legal foundation - for damages including any claims for reimbursement corresponding to the following provisions.
- (2) Insofar as we negligently breach a material contractual duty, the fulfilment of which is necessary for reaching the goal of the contract, which is necessary to make orderly fulfilment of the contract possible in the first place, and which you can and may regularly expect to be fulfilled, the duty to replacement is limited to the foreseeable damages typical of the contract.
- (3) We are liable in any case without limitation for damages that related to a grossly negligent breach of duty by us or a intentional or grossly negligent breach of duty by one of our legal representatives or agents.
- (4) For damages related to the injury to life, limb, or health that are based on a negligent breach of duty by us or an intentional or negligent breach of duty by one of our legal representatives or agents, we are liable without limitation in any case.
- (5) We are also liable without limitation in the event that we have fraudulently concealed a defect or assumed a guarantee for the characteristic of the goods.
- (6) The liability pursuant to the German Product Liability Act remains unaffected in any case.
- (7) For the rest, additional liability for our part is excluded - regardless of legal foundation.
- (8) Insofar as our liability is excluded or limited pursuant to the above provisions in no. 11, this also applies to the personal liability of our employees, representatives, organs, and agents.
- (9) All claims for damages and reimbursement against us, regardless of legal foundation, become time-barred at the latest one year after the legal statute of limitations. In deviation from clause 1, the legal statute of limitations is solely applicable in para. 3-6.

## 12. Commission Orders

- (1) If we carry out commission orders and you make available or deliver to us materials, parts of materials, semi-finished goods, or tool equipment for this or other orders, these items will be processed, treated, and stored by us with care and scrupulousness. We are only obligated to inspect their suitability for the intended purpose in the event that this is expressly agreed with you and you bear any arising inspection costs.
- (2) Should parts be unusable because of a defect in the materials, we are to be reimbursed by you for the corresponding processing expenses. In the event that parts become unusable on account of the processing, we will carry out the same work on a new piece sent to us carriage-paid at no charge. You are to accept scrap in the amount of up to 2% of the total amount.
- (3) For the rest, the provisions on liability pursuant to section 11 are applicable.

## 13. Retention of Title

- (1) The delivered goods (goods subject to retention of title) remain our property until all claims against you to which we are entitled now or in the future including all balances of accounts from current accounts. The placement of individual claims in a current account or netting out and recognition do not affect the retention of title. The receipt of the equivalent value is considered payment.
- (2) Insofar as you act in a manner in breach of contract - in particular insofar as you are in arrears with payment of a claim - we have the right to take back the goods subject to retention of title after we have set a reasonable grace period for payment or such a setting of a grace period is unnecessary pursuant to the statutory regulations. You are to bear the shipping expenses arising for the return. Insofar as we take back the goods subject to retention of title, this is considered withdrawal from the contract. It also amounts to withdrawal from the contract if we detain the goods subject to retention of title. We are allowed to exploit the goods subject to retention of title that we have taken back. The proceeds from the exploitation will be set off against those amounts that you owe us after we have deducted a reasonable amount for the exploitation expenses.
- (3) You must treat the goods subject to retention of title with care and insure them sufficiently at your own expense against fire, water, and theft damages at their new value. Should any maintenance and inspection work be necessary, the you must carry it out at your own expense and in a timely manner.
- (4) You are not allowed to detain the goods subject to retention of title or assign them as a security. You are to inform us without delay in writing if and insofar as third parties seize goods subject to retention of title and inform them of our ownership. Insofar as the third party is not in a position to reimburse us for judicial or extrajudicial expenses arising in conjunction with this, you are liable for them.
- (5) You may use the goods subject to retention of title and sell them in normal business operations. In such an event, the following provisions are also applicable.
- (6) Your demand for remuneration against your customer from sale of the goods subject to retention of title and those claims with regard to the goods subject to retention of title that arise for you on another legal basis against your customers or third parties (in particular claims from tort actions and claims from insurance payments) and that including all balances of claims from current accounts is assigned by you to us now to its full extent as a security. Furthermore, you are obligated to secure our rights upon sale of the goods subject to retention of title on credit. We accept this assignment.
- (7) You may collect these claims assigned to us on your own account and in your own name for us as long as we do not revoke this authorisation. Our right to collect these claims ourselves are not affected; however we will not make the claims ourselves or revoke the authorisation to collect as long as you fulfil your duties to pay in an orderly manner and are not in payment arrears, no application for opening insolvency proceedings is made and no other deficiency in your ability to pay is at hand. If any of the above events occurs, we can request that you inform us of the debt claims assigned and the respective debtors, state all details necessary for debt claim recovery, hand over all documents pertaining and notify the debtors (third parties) of the assignment.
- (8) You also may not assign these claims to be collected by a factoring company unless you irrevocably obligate the factoring company to bring about counterperformance to us as though our claims against you still existed.
- (9) You perform any handling, processing, or transformation of the goods subject to retention of title for us without obligations arising for us on account of this. If the goods subject to retention of title are processed, combined, mixed, or blended with other goods that do not belong to us then we acquire co-ownership of the new item in the relationship of the value of the goods subject to retention of title (invoiced amount including value-added tax) to the other processed items at the time of processing, combination, mixing, or blending. For the rest, the same applies to the product arising from the processing as for the goods subject to retention of title. We accept these transfers. You will protect the thereby arising sole or co-ownership of the product for us at no charge.
- (10) If the goods subject to retention of title are sold together with other goods, regardless of condition, then the assignment in advance agreed above only applies in the amount of the value of the goods subject to retention of title that is subject of the delivery transaction together with the other goods.
- (11) Upon your request we are obligated to release securities to which we are entitled pursuant to the provisions above insofar as their realisable value exceeds that of the open claims against you by more than 25%. However, in doing so we may select the securities to be released to you.

## 14. Applicable Law, Place of Fulfilment, Legal Venue

- (1) The business relationships between you and us are governed by the laws of the Federal Republic of Germany to the exclusion of all international and supranational (contractual) legal systems, in particular the Convention of the United Nations on Contracts for the International Sale of Goods (CISG). Prerequisites and effects of the retention of title pursuant to no. 13 are however governed by the legal venue applicable at the respective storage location of the thing insofar as the choice of German law is inadmissible or invalid.
- (2) Place of performance and sole - also international - legal venue for all disputes arising directly or indirectly from the contractual relationship is our registered office in Hagen/Westphalia insofar as you are a business person in the sense of the German Commercial Code, a legal entity under public law, or a special fund under public law. The same legal venue applies if you have no general legal venue in Germany, move your residence or regular place of abode abroad after conclusion of the contract, or your residence or regular place of abode is not known at the time suit is filed. We are, however, entitled to file suit against you at your general or special legal venue.

## 15. Final Provisions

- (1) Rights that arise from this contract may only be transferred by you or us to third parties with mutual agreement.
- (2) Legally relevant declarations and announcements that are to be made to us by you after conclusion of the contract (e.g. setting periods, notifications of defects, declaration of withdrawal or reduction) require the written form for validity.
- (3) Notices of the applicability of statutory regulations are only for clarification purposes. Thus, the statutory regulations apply even without such clarification insofar as they are not directly changed or expressly excluded by these Terms and Conditions.
- (4) If one or more of the individual provisions of these Terms and Conditions and/or the contract augmented by you become invalid, this shall not affect the validity of the other provisions.