

General Sales Conditions of Hemmelrath Technologies GmbH

This English version is a convenience translation only. Only the German version, which can be accessed at [deutsche AGB](#), is legally authoritative and binding.

§ 1 General remarks, scope of application

(1) These General Sales Conditions (GSC) shall apply to all our business relationships with our customers (hereinafter referred to as "Buyer(s)"). The GSC shall apply only if the Buyer concerned is an entrepreneur (*Unternehmer*, § 14 BGB – German Civil Code), a legal entity under public law, or a separate fund under public law.

(2) The GSC shall in particular apply to contracts concerning the sale and/or delivery of movable objects (hereinafter also referred to as "goods"), irrespective of whether we manufacture the goods ourselves or purchase them from third party suppliers (§§ 433, 651 BGB). The GSC in their respective version shall also apply as a framework agreement to future contracts concerning the sale and/or delivery of movable objects with the same Buyer, without the explicit need for us to refer to them again in each individual case; we shall in this case inform the Buyer immediately of any changes in our General Sales Conditions.

(3) Our GSC shall apply solely. Any divergent, contrary or supplementary General Terms and Conditions of the Buyer shall become a constituent part of the contract only if and insofar as we have explicitly consented to their applicability. This requirement for consent shall apply in all cases, e.g. also if we, aware of the Buyer's General Terms and Conditions, execute the delivery to him without reservations.

(4) Individual agreements made in a particular case with the Buyer (including ancillary agreements, supplements and changes) shall in all cases have priority over these GSC. For the content of such agreements, a written contract or our written confirmation shall be determinative.

(5) Legally relevant declarations and notifications that have to be issued to us

by the Buyer after the contract has been signed (e.g. setting deadlines, notifications of defects, declarations of withdrawal/rescission or reduction) must be made in writing in order to be valid and operable.

(6) References to the validity of statutory provisions shall have clarificatory significance only. Even without such a clarification, the statutory provisions shall apply, unless they have been directly changed or explicitly excluded in these GSC.

§ 2 Conclusion of contract

(1) Our quotations are subject to alteration and non-binding. This shall also apply when we have provided the Buyer with prospectuses, technical documentation packages (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents (also in electronic form), for which we reserve property rights and copyrights.

(2) The Buyer's purchase order for the goods shall be construed as a binding offer of a contract. Unless the purchase order specifies something to the contrary, we shall be entitled to accept this offer of a contract within four weeks after receiving it.

(3) The acceptance can be declared either in writing (e.g. by an order confirmation) or by delivering the goods concerned to the Buyer.

§ 3 Delivery deadlines, default in delivery

(1) The delivery time shall be agreed individually or specified by us when accepting the purchase order.

(2) Compliance by us with the delivery deadline shall be conditional upon all commercial and technical questions between the contracting parties having been clarified and the Buyer having met all

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the obligations incumbent upon him, e.g. provision of the requisite official certification or approvals, or making a down payment. If this is not the case, the delivery time shall be extended appropriately. This shall not apply if we are to blame for the delay concerned.

(3) If we are unable to meet binding delivery deadlines for reasons outside our responsibility (non-availability of the works and services), we shall immediately notify the Buyer thereof, and at the same time notify him of the presumptive new delivery time. If the work is not available within the new delivery time either, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any consideration already provided by the Buyer. A case of non-availability of the work within the aforementioned meaning shall also be the late delivery to ourselves by our own supplier if we have concluded a congruent covering transaction, neither we nor our supplier is at fault, or in the individual case concerned we are not obligated to ensure procurement.

(4) The delivery deadline shall be deemed met if the object of purchase has left our warehouse or our supplier's warehouse or readiness for dispatch has been announced before the expiry of the deadline. Default in delivery shall be deemed to commence in accordance with the statutory provisions. In any case, however, a reminder from the Buyer shall be required. If we are in default of delivery, the Buyer can demand liquidated damages (*pauschalierter Schadensersatz*) for his loss or damage caused by delay. The liquidated damages shall for each completed calendar week of such default amount to 0.5 % of the net purchase price (delivery value), but in total to no more than 5 % of the delivery value of the goods delivered late. We reserve the right to demonstrate that the Buyer suffered no loss or damage at all, or only a

significantly slighter loss or damage than the above-specified liquidated damages.

(5) The rights of the Buyer in accordance with § 8 of these GSC and our statutory rights, in particular if our obligation to perform has ceased to exist (e.g. by reason of impossibility or unreasonableness of the work and/or supplementary performance) shall remain unaffected.

§ 4 Delivery, passage of risk, acceptance, default in acceptance

(1) Delivery shall be made ex warehouse, which shall also be the place of performance. On request and at the expense of the Buyer, the goods will also be dispatched to a different destination (delivery to a destination according to the Buyer's instructions). Unless something to the contrary has been agreed, we shall be entitled to determine ourselves the mode of dispatch (particularly carrier, dispatch route, packing).

(2) The risk of accidental destruction and accidental deterioration of the goods shall pass to the Buyer at the latest with handing-over. In the case of a delivery to a destination according to the Buyer's instructions, the risk of accidental destruction and accidental deterioration of the goods, and the risk of delay shall already pass with delivery of the goods to the forwarding agent, the carrier, or the person or institute otherwise commissioned to execute the dispatch operation. It shall be deemed equivalent to handing-over if the Buyer is in default of acceptance.

(3) If the Buyer is in default of acceptance, if he fails to perform an act of cooperation, or if our delivery is delayed for other reasons within the Buyer's sphere of responsibility, we shall be entitled to demand compensation for the loss or damage incurred thereby, including

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additional expenditures (e.g. storage costs).

§ 5 Prices and conditions of payment

(1) Unless in an individual case something to the contrary has been agreed, our current prices in force on the date the contract was entered into shall apply on an ex warehouse basis, plus statutory value-added tax.

(2) In the case of delivery to a destination according to the Buyer's instructions (§ 4(1)), the Buyer shall bear the transportation costs from the warehouse, and the costs of any transport insurance desired by the Buyer. Unless we invoice the transportation costs actually incurred, a flat fee for transportation (excluding transport insurance) amounting to EUR 350.00 shall be deemed to have been agreed. Any customs duties, fees, taxes and other public-sector levies shall be borne by the Buyer. We will not take back transport and all other packing in conformity with the German Packaging Ordinance, this becomes the property of the Buyer; this does not apply to pallets.

(3) The purchase price shall be due for payment and be paid without deduction within 8 days from the invoice date. In the case of contracts with a delivery value of more than EUR 10,000.00, however, we shall be entitled to demand a down payment amounting to no less than 30 % of the purchase price. The down payment shall be due for payment and be paid within 8 days from the invoice date.

(4) With expiry of the above-specified payment deadline, the Buyer is in default. During the period of default interest shall accrue on the purchase price at the statutory default interest rate applicable at the time in question. We reserve the right to assert further claims for loss and damage due to default. In relation to businesspersons, our entitlement to the

commercial default interest (§ 353 HGB) shall remain unaffected.

(5) The Buyer shall be entitled to set-off or a right of retention only insofar as his claim has been finally determined (*res judicata*) or is undisputed. In the case of defects in the consignment, the Buyer's reciprocal rights shall remain unaffected, particularly in accordance with § 7(7), 2nd sentence of these GSC.

(6) If following the conclusion of a contract it emerges that our claim to the purchase price is endangered due to inadequate performative capability on the part of the Buyer, then we shall be entitled, in accordance with the statutory provisions, to refuse performance and (where appropriate after setting a deadline) to withdraw from the contract (§ 321 BGB). In the case of contracts concerning the manufacture of customised products (one-off items), we shall be able to withdraw from the contract immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected thereby.

§ 6 Retention of title

(1) Until payment has been made in full for all our present and future receivables arising from the purchase contract and an ongoing business relationship (secured receivables), we shall retain title to the goods sold.

(2) The goods subject to retention of title may, until payment has been made in full for the secured receivables, neither be pledged to third parties nor transferred as collateral. The Buyer must inform us immediately in writing if and insofar as third parties have seized the goods belonging to us.

(3) If the Buyer does not comply with his contractual obligations, particularly in the event of non-payment of the due purchase price, we shall be entitled, in accordance with the statutory provisions, to withdraw

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from the contract and to demand the return of the goods by reason of retention of title and withdrawal. The demand for mere return of the goods shall not simultaneously constitute a declaration of withdrawal; rather, we shall be entitled to merely demand the return of the goods and reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may assert these rights only if we have previously, without success, set the Buyer a reasonable deadline for payment, or if such a setting of a deadline is dispensable under the applicable statutory provisions.

(4) The Buyer shall be entitled to sell on and/or process the goods subject to retention of title during the normal course of business. In this case, the following provisions shall additionally apply:

(a) The retention of title shall extend to the products created by processing, mixing or connecting our goods at their full value, and we shall be deemed the manufacturer. If in the event of processing, mixing or connection with goods of third parties their property right prevails, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or connected goods. Otherwise, the provisions that apply to the goods delivered under retention of title shall apply *mutatis mutandis* to the product/s thus created.

(b) The Buyer already assigns to us as security his claims against third parties arising from the resale of the goods or the product in their entirety or in the amount of any co-ownership share in accordance with the above paragraph. We hereby accept the assignment. The Buyer's duties as specified in Para. 2 shall also apply in regard to the claims assigned.

(c) The Buyer remains authorised to collect the claims along with us. We undertake not to collect the claims as long as the Buyer meets his payment obligations with us, does not default, no

application has been submitted for opening insolvency proceedings, and there is no other deficiency in his performative capabilities. If this is the case, however, we shall be able to demand that the Buyer disclose to us the claims assigned and the debtors involved, provide all the particulars required for collection, hand over the associated documents, and inform the debtors (third parties) of the assignment.

(d) If the realisable value of securities exceeds our receivables by more than 10 %, we shall, upon the Buyer's request, release securities of our choice.

§ 7 Buyer's claims for defects

(1) For the rights of the Buyer in the event of material and legal defects (including incorrect and incomplete deliveries and faulty installation or inadequate installation instructions) the statutory provisions shall apply, unless something to the contrary is specified below. In all cases, the statutory provisions applying at final delivery of the goods to a consumer shall remain unaffected (supplier's recourse in accordance with §§ 478, 479 BGB).

(2) The basis of our liability for defects is primarily the specification of the quality of the goods. A liability for a particular purpose or a particular suitability shall be accepted only insofar as this has been explicitly agreed; otherwise, the suitability and utilisation risks shall be vested solely in the Buyer. Contents of the specification agreed, or any intended purpose explicitly agreed, shall not be construed as a warranty (*Garantie*). Acceptance of a warranty shall require an explicit written agreement.

(3) If the requisite quality has not been agreed, the question of whether the goods are defective shall be assessed according to statutory law (§ 434(1) Sentences 2 and 3 BGB). For public statements by the manufacturer or other third parties (e.g.

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advertising statements), however, we accept no liability.

(4) The Buyer's claims for defects shall be conditional upon his having met his statutory duties of investigation and notification of defects (§§ 377, 381 HGB). If during such investigation or subsequently a defect emerges, we must be notified thereof immediately in writing. Such notification shall be deemed immediate if it is made within two weeks, with punctual dispatch of the notification sufficing for meeting the deadline. Irrespective of these duties of investigation and notification of defects, the Buyer must notify us in writing within two weeks of delivery of any obvious defects (including incorrect and incomplete deliveries), with punctual dispatch of the notification here, too, sufficing for meeting the deadline. If the Buyer fails to perform due and proper investigation and/or notification of defects, our liability for non-notified defects shall be excluded.

(5) If the goods concerned have been acceptance-tested by the Buyer (cf. § 4(2)), any complaint of such material defects which could have been ascertained by means of the agreed mode of acceptance-testing shall be excluded.

(6) If the object delivered is defective, we can choose whether to provide supplementary performance (*Nacherfüllung*) by remedying the defect (reworking/repair) or by delivering a [new] defect-free item (replacement). Our right to refuse the selected mode of supplementary performance under the statutory preconditions shall remain unaffected. Replaced parts shall become our property.

(7) We shall be entitled to render the supplementary performance owed dependent on whether the Buyer pays the purchase price due. The Buyer shall, however, be entitled to retain a part of the purchase price in reasonable proportion to the defect concerned.

(8) The Buyer must give us the time and opportunity required for the supplementary performance owed, particularly by handing over the allegedly defective goods for purposes of testing. In the event of a replacement, the Buyer must return to us the defective object in accordance with the relevant statutory provisions. Supplementary performance does not include either the removal of the defective item or the subsequent installation, if we were not originally obligated to install it.

(9) The expenditures required for purposes of testing and supplementary performance, particularly transportation, travel, labour and material costs (not: removal and installation costs), shall be borne by us, if a defect is actually involved. If, however, the Buyer's request to remedy defects proves to be unjustified, then we shall be able to demand reimbursement from the Buyer for the costs incurred thereby.

(10) In urgent cases (e.g. if plant safety is at risk or in order to prevent disproportionate damage), the Buyer shall have the right to remedy the defect himself and to demand from us reimbursement of the expenditures objectively required for this purpose. We must be notified immediately, and preferably beforehand, of any such self-remedial action. There shall be no right to self-remedial action if we were entitled to refuse a corresponding supplementary performance in conformity with the applicable statutory provisions.

(11) If the supplementary performance has failed, or a reasonable deadline to be set by the Buyer for supplementary performance has expired without success, or is dispensable under the applicable statutory provisions, the Buyer can withdraw from the purchase contract or reduce the purchase price appropriately. In case of an insignificant defect, however, there shall be no right of withdrawal, but merely a right to a reduction in the contractual price.

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(12) Claims for defects shall be null and void if the applicable installation and operating instructions for the delivered item have not been observed, in the event of natural wear and tear, faulty or negligent handling, improperly executed maintenance, use of unsuitable expendables – insofar as they are not within our sphere of responsibility.

(13) Buyer's claims for damages or reimbursement of futile expenditures shall in all cases be subject to the stipulations of § 8 and are otherwise excluded.

§ 8 Other liability

(1) Unless these GSC, including the provisions below, lay down something to the contrary, we shall be liable in the event of a breach of contractual and extra-contractual duties in accordance with the relevant statutory provisions.

(2) We shall be liable for damages – irrespective of the legal grounds involved – in the case of intent and gross negligence. In the case of simple negligence, we shall be liable only for

a) loss or damage arising from injury to life, limb or human health,

b) loss or damage arising from violation of an essential contractual duty (obligation whose fulfilment is crucial to properly performing the contract and compliance with which the contractual partner can and may confidently expect); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring loss or damage.

(3) The restrictions on liability arising from Para. 2 shall not apply if we have fraudulently concealed a defect or have provided a warranty for the quality of the goods. The same shall apply for claims asserted by the Buyer under product liability legislation.

(4) On the grounds of a breach of duty that does not constitute a defect, the Buyer can

withdraw or terminate only if we are to blame for the breach of duty concerned. A free right of termination for the Buyer (particularly in accordance with §§ 651, 649 BGB) is excluded. Otherwise, the statutory preconditions and legal consequences shall apply.

(5) The restrictions on and exclusions of liability specified in this § 8 shall apply to the same extent in favour of our corporate bodies, legal representatives, employees and other vicarious agents.

§ 9 Statute of limitation

(1) In divergence from § 438(1) No. 3 BGB, the general period of limitation for claims arising from material and legal defects shall be one year from delivery. If an acceptance test has been agreed, the limitation period shall begin with such acceptance.

(2) If, however, the goods involved are civil works or an article that in accordance with its customary use has been utilised for civil works and has caused the latter's defectiveness (construction material), the period of limitation shall, in accordance with the statutory provision, be 5 years from delivery (§ 438(1) No. 2 BGB). The statutory provisions for material claims relating to surrender of possession by third parties (§ 438(1) No. 1 BGB), in the event of fraudulent intent on the part of the seller (§ 438(3) BGB) and for claims in supplier's recourse in the case of final delivery to a consumer (§ 479 BGB) remain unaffected.

(3) The above limitation periods of the sales law provisions shall also apply to the Buyer's contractual and extra-contractual claims for damages that are based on a defect in the goods, unless the application of the standard statutory statute of limitation (§§ 195, 199 BGB) would lead to a shorter limitation period in the particular case concerned. The limitation periods under the German Product Liability Act (*Produkthaftungsgesetz*) shall in all cases

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remain unaffected. Otherwise, solely the statutory limitation periods shall apply for any claims for damages on the part of the Buyer in accordance with § 8.

§ 10 Software utilisation

(1) If software is included in the scope of delivery, the Buyer shall be granted a non-exclusive right to use the software delivered, including its documentation packages. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

(2) The Buyer may duplicate, revise, translate the software, or convert its object code into the source code only to the legally permissible extent (§§ 69a ff. UrhG - German Copyright Act). The Buyer undertakes not to remove any of the manufacturer's particulars (especially notes on copyright) or to change them without our prior explicit consent.

(3) All other rights to the software and the documentation packages, including the copies, shall remain with us or the software supplier. Granting sub-licences shall not be permissible.

§ 11 Choice of law and place of jurisdiction

(1) To these GSC and all legal relationships between us and the Buyer, the laws of the Federal Republic of Germany shall apply, to the exclusion of international unified standard law, in particular the UN Convention on the International Sale of Goods. Preconditions and effects of retention of title in accordance with § 6 shall be subject to the applicable law at the ongoing location of the item concerned, insofar as the choice of law made in favour of German law is impermissible or inoperative.

(2) If individual clauses of these sales conditions should be invalid in whole or in part, this shall not affect the validity of the

other clauses or the other parts of such clauses.

If the contract or these sales conditions contain an omission, such legally valid rules shall be deemed agreed that the contracting parties would have agreed in accordance with the commercial aims of the contract and the purpose of these sales conditions, had they been aware of the omission.

(3) If the Buyer is a businessperson within the meaning of the German Commercial Code (HGB), a legal entity under public law or a separate fund under public law, the sole (including international) place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered business location of Klingenberg. We shall, however, also be entitled to file suit at the Buyer's general place of jurisdiction.