

## **General Terms and Conditions of Sale of HÖR Technologie GmbH**

### **1 - General Provisions – Area of Application**

- (1) Our Terms and Conditions of Sale are applicable on an exclusive basis; we do not recognise any terms and conditions of customers contradicting or deviating from our Terms and Conditions of Sale, unless we expressly confirmed their application in writing. Our Terms and Conditions of Sale shall apply also in the event that we make delivery to the customer without reservations being aware of terms and conditions of business of the customer contradicting or deviating from our Terms and Conditions of Sale.
- (2) We reserve design changes, provided that they are not of a fundamental nature and the contractual purpose is not restricted.
- (3) Our Terms and Conditions of Sale also apply to all prospective transactions with the customer.

### **2 - Offer – Offer Documentation**

- (1) If the order is to be classified as offer pursuant to section 145 BGB (German Civil Code), we are allowed four weeks to accept it.
- (2) We reserve our title and copyrights to illustrations, drawings, calculations and other documentation; they must not be disclosed to any third parties. This shall also apply especially to such written documentation identified as “confidential”; the customer requires our express written consent prior to disclosing them to any third parties.

### **3 - Prices – Terms of Payment**

- (1) Unless provided otherwise in the order confirmation, our prices are on an “ex works” basis without packaging; the latter will be billed separately. In the event of cost increases after the conclusion of contract, especially due to materials price increases or currency fluctuations, we have the right to adjust our prices accordingly and at our reasonably applied discretion. On request, we will prove the cost increases to the customer.
- (2) The statutory value added tax is not included in our prices; it will be charged separately in the invoice in the statutory amount as on the invoice date.
- (3) Any discount deduction shall be subject to a special written agreement.
- (4) Unless provided otherwise in the order confirmation, the purchase price shall be due for payment as net amount (without deduction) within 14 days of the invoice date. If the customer gets in default of payment, we have the right to claim statutory default interest.
- (5) The customer is entitled to set-off rights only if its counterclaims have been established without further legal recourse or are undisputed or have been acknowledged by us. In addition, the customer has the right to exercise a right of retention provided that its counterclaim is based on the same contract.

#### 4 - Delivery Period

- (1) The beginning of the delivery period indicated by us requires the clarification of all technical questions.
- (2) If for reasons we are responsible for we should delay in delivery, then the customer has the right to claim a lump-sum compensation for the delay at a rate of 3% of the delivery value for each completed week of delay, however not to exceed a maximum of 10% of the delivery value. If the delay is based on intent or gross negligence or if it constitutes a material breach of duty, the statutory liability shall apply which, however, is limited to the damage as foreseeable from time to time in the event of a merely negligent breach of duty.
- (3) If the customer sets a reasonable period of grace for us after we got in default before, then after the effectless expiration of such period of grace the customer has the right to rescind the contract; the customer is entitled to damage claims *in lieu* of performance in the amount of the foreseeable damage only if the delay was caused by intent or gross negligence or a material breach of duty; apart from that, the liability for damages shall be limited to 50% of the damage occurred.
- (4) The limitations of liability pursuant to subclause (2) and subclause (3) above shall not apply if a fix transaction between merchants was agreed upon; the same applies if based on the delay for which we are responsible for the customer may claim that the immediate assertion of the claim for compensation of the damage *in lieu* of performance comes into consideration.
- (5) If we are unable to meet delivery deadlines for reasons we cannot control (unavailability of the performance) we will inform the purchaser hereof immediately concurrently communicating the prospective new delivery deadline. If the performance is not available also within the new deadline, we are entitled to rescind the contract, as a whole or in part. We will pay for any counterperformance of the purchaser immediately. Especially the late delivery to us by our suppliers shall be deemed a case of unavailability of performance as defined above if we entered into a congruent supply transaction or if neither we nor our supplier are to be held responsible for it or if we are not under any obligation to provide any supply in the specific case.
- (6) The compliance with our delivery duties is subject to the timely and due performance of the customer's duties.
- (7) If a customer gets in default of acceptance or violates any other cooperation duties, we have the right to claim the damage we suffered, including additional costs, if any. In such a case the risk of accidental loss or accidental deterioration of the item of purchase also passes to the customer by the point in time when the latter gets in default of acceptance.

## 5 - Passing of the Risk

- (1) Unless provided otherwise in the order confirmation, delivery “ex works” is agreed upon.
- (2) If the customer so requests, we will take out transport insurance to cover the delivery; the relevant costs shall be borne by the customer.

## 6 - Warranty for Defects

- (1) The customer’s warranty rights are subject to the customer’s due compliance with its duties of inspection and defect notification pursuant to section 377 HGB (German Commercial Code).
- (2) Where there is a defect of the item of purchase we are responsible for, we may opt for either subsequent performance in form of defect removal or replacement delivery. In the event of defect removal we are obliged to pay all the costs required for defect removal, especially costs for transportation, travel, labour and materials, provided that they do not increase due to the fact that the item of purchase was taken to another place than the place of performance.
- (3) If the subsequent performance proves abortive, the customer has the right to opt for either declaring its rescission or claiming a corresponding reduction of the purchase price.
- (4) Unless provided otherwise below (subclause 5 and subclause 6), additional claims of the customer on any legal grounds, whatsoever, shall be excluded. Accordingly, we are not liable for damages not caused to the item of delivery proper; we are particularly not liable for any loss of profit or other loss of assets of the customer.
- (5) If the cause of the damage is a result of acting with intent or gross negligence, we will be liable in accordance with the legal regulations. This also applies if the customer claims damages *in lieu* of performance due to the absence of a quality of the item we guaranteed.
- (6) If we violate a material contractual duty culpably, liability is limited to the damage as typical for the contract; apart from that, liability is excluded pursuant to subclause (4) above. A “material” contractual duty in the meaning of these General Terms and Conditions always exists if we culpably violate such duties the proper performance of which the customer relies on and may rely on as they form the core of the contract.
- (7) The warranty period is 12 months calculated as of the passing of the risk.
- (8) The warranty claim expires in case of participation in competitions of any type.

## 7 - Total Liability

- (1) Liability for damage compensation in excess of the provisions in section 6 (4) through (6) is excluded without regard to the legal nature of the asserted claim.
- (2) The provision in subclause (1) above does not apply to claims pursuant to sections 1, 4 of the German Product Liability Act (Produkthaftungsgesetz). It is not applicable also in case that we are liable for personal injuries or damages to the health based on other legal grounds.

- (3) Unless the limitation of liability pursuant to section 6 (6) above is applicable to claims under the manufacturer's liability for property damages as defined in section 823 BGB, our liability is limited to the insurance benefit. If such benefit is not granted, as a whole or in part, we are liable up to the amount of the sum insured.
- (4) Likewise, the provision pursuant to subclause (1) above does not apply in case of initial inability to perform or impossibility of performance for which the relevant person is to be held responsible for.
- (5) The extent in which our liability is excluded or limited shall also apply to the personal liability of our employees, representatives and agents.

## **8 - Retention of Title**

- (1) We reserve the title to the items of purchase until the receipt of all payments under the delivery contract. If the customer should act in breach of contract, especially in case of default of payment, we have the right to repossess the item of purchase. Our repossession of the item of purchase does not constitute any rescission of the contract, unless we would have expressly declared so in writing. The attachment of the item of purchase by us always constitutes a rescission of the contract. After the repossession of the item of purchase we have to right to dispose of it while the disposal proceeds shall be set off against the customer's liabilities less reasonable costs of disposal.
- (2) The customer shall treat the item of purchase with care; in particular, the customer shall take out sufficient insurance in the amount of the replacement value at its own expense to cover damages caused by fire, water and theft. If maintenance and inspection work is required, the customer shall perform such work at its own expense and in a timely manner.
- (3) In case of attachments or other third-party action the customer shall inform us immediately in writing so as to allow us taking legal action pursuant to section 771 ZPO (German Code of Civil Proceeding). If the third party is unable to reimburse us for the costs at court and out of court associated with legal action pursuant to section 771 ZPO, the customer shall be liable for the loss we suffered.
- (4) The customer has the right to sell on the item of purchase in the ordinary course of business; already hereby, however, the customer assigns to us all claims in the amount of the final invoice amount agreed with us (incl. VAT) accruing to the customer from such sale against its customers or third parties irrespective of whether or not the item of purchase was sold without being processed or after its processing. The customer remains entitled to collect such claim also after the assignment. Our entitlement to collect the claim ourselves shall not be affected by the foregoing. We agree, however, not to collect the claim for as long as the customer complies with its payment obligations relating to the earned proceeds and is not in default of payment and, in particular, no application for the institution of any bankruptcy or composition proceedings was filed and no suspension of payments was declared. If this is the case, however, we may request that the customer discloses to us the assigned claims and the respective debtors and provides all the information required for collection and submits the documents required to this effect and informs the debtor (third party) of the assignment.
- (5) Any processing or conversion of the item of purchase by the customer is always made for us. The expectant right of the customer to the item of purchase is extended to the converted item. If the item of purchase is processed with other items we do not own, then we acquire the co-

ownership to the new item in the proportion of the objective value of our item of purchase compared with the other processed items at the time of processing. Apart from that, the same as for the item of purchase delivered under reservation applies to the item created by processing.

- (6) If the item of purchase is combined in an inseparable manner with other items not owned by us, then we shall obtain the co-ownership to the new item in the proportion of the objective value of our item of purchase as compared with the other combined items at the date of combination. If the combination is made in a manner that the customer's item is to be regarded as the main thing, it is deemed agreed that the customer assigns to us the co-ownership on a proportional basis. The customer shall safeguard the so created sole ownership or co-ownership for us.
- (7) To secure our claims against the customer, the latter also assigns to us the claims against third parties resulting from the combination of the item of purchase with real property.
- (8) We agree to release the security we are entitled to on the customer's request to the extent in which the realisable value of our security exceeds the claims to be secured by more than 10% or the nominal value by more than 50%; we are free to select the security to be released.

## **9 - Final Provisions**

- (1) We have the right to assign claims from our business relationships.
- (2) The contractual relationship shall be governed exclusively by German law excluding international uniform law, especially the U.N. Sales Law.
- (3) If the purchaser should be in default with any payment obligations to us, then all existing claims shall become due immediately.
- (4) Place of performance shall be Weiden i.d.Opf. (Germany).
- (5) Venue of court shall be Weiden i.d.Opf. (Germany).