

# General Terms and Conditions for the Sale of Goods of HV & IBK Knecht GmbH

## Version April 2014

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### § 1 General

1.1. Our terms of business are agreed to exclusively govern all business relations.

1.2 The buyer's contracting terms and conditions are expressly disagreed with hereby. They are not even acknowledged by us if we fail to explicitly express our disagreement after having received them. Our Standard Contracting Terms and Conditions shall even apply if we unconditionally perform the delivery in awareness of terms used by the buyer which are inconsistent with or which supplement or which differ from our Standard Delivery Terms and Conditions.

**1.3 Both contracting parties are responsible for fair and interest-adequate dealings in their mutual business relationship. In any case of a conflict of interests, either contracting party shall only be guided by objective considerations and shall exercise a maximum degree of integrity. The business relationship is based on mutual respect and in recognition of the agreements entered into.**

### § 2 Deliveries

2.1 In any individual case, the times of delivery specified by us shall not commence to run until all performance details and all technical and commercial questions arising from the buyer's domain have been ultimately resolved. The buyer shall have no right to revoke any order if a delay has occurred which is reasonable under the special circumstances of the respective individual case. If the time limit for delivery is not met due to force majeure, industrial action or other events which are outside of our sphere of influence, the time limit for delivery is automatically extended accordingly; the same shall apply in case we do not receive our supplies in time or in proper condition.

2.2 Deliveries may be made by installments.

2.3 Our deliveries are made from our plant, i.e., EX WORKS (INCOTERMS 2010) unless we and the buyer have agreed otherwise. If the shipping insurance was bought by us, the provisions in the attached insurance certificate shall apply.

2.4 Goods which have been made available but have not been retrieved may either be placed in storage or sent to the buyer at the buyer's cost and risk.

2.5 We have the right to choose the packaging that seems to be appropriate and the method of shipping.

2.6 The buyer shall take delivery of all goods ordered under a blanket order within 12 months; otherwise we automatically dispatch the residual stock of those goods.

2.7 If we permit the cancellation of an order in any individual case on a good will basis, such permission shall not be valid until it has been given by us in writing. Goods ordered to meet customer-specific requirements cannot be settled on a good will basis. A processing fee in the amount of 25% of the value of the goods is charged by us in any case of a cancellation accepted by us. The buyer shall, however, keep its right to prove that the damages sustained by us were less than claimed by us.

2.8 Due to manufacturing and packaging related reasons, we reserve the right to supply up to 10%, no less than one unit, however, more or less than the respective agreed upon quantity of goods.

2.9 Our information on measures, weights, performance and materials is provided carefully but without obligation unless it has explicitly been identified as firm. The same shall apply to all information and recommendations regarding design. We reserve the right to make adjustments due to technical developments.

2.10 The drawings, sample items, and data and documents made by us remain our property. They shall not be made accessible without our written permission. Insofar, we emphasize the existence of intellectual property rights or copyrights. Models, tools, and other appliances for the performance of any order shall always remain our property even if we charge the cost on a prorated basis. We are not obligated to retain any tools or appliances after an order has been delivered.

### **§ 3 Force Majeure**

3. Strikes, shipping delays and supplying delays, administrative restrictions and similar events which occur outside of our sphere of influence shall stay the deadlines and extend them adequately.

### **§ 4 Retention of Title**

4.1. We retain the property rights to the delivered item until all of our claims against the buyer arising from any legal basis have been satisfied. Until then, the customer shall keep custody of the goods free of any charge. The customer shall keep the goods separate in a manner making them identifiable. We are entitled to repossess the delivered item if the buyer commits a breach of contract, including without limitation default on any payment; the buyer shall surrender the delivered item to us. No recovery of any delivered item by us shall imply a rescission of any contract unless the provisions of the German Consumer Credit Act (Verbraucherkreditgesetz) apply or unless we have expressly and in written form declared the contract to be rescinded. The buyer shall immediately inform us in writing of any attachments or other interventions by third parties so that we can file suit pursuant to German Code of Civil Procedure (ZPO) section 771. To the extent any such third party is not capable of reimbursing us for the court fees and out of court expenses for this action pursuant to ZPO section 771, the buyer shall be liable to compensate us for the loss incurred.

4.2 We may demand that the goods be immediately surrendered to us and that the claim be asserted against third parties if

- a petition for insolvency proceedings or composition proceedings has been filed.

In those cases, the fiduciary authorization to collect on our claims is deemed revoked.

4.3 The buyer may resell the delivered item in the ordinary course of the buyer's business; the buyer is, however, now already, assigning all claims in the amount of the invoice total (including the sales tax applicable at that time) of our receivable accruing to the buyer from such resale against the buyer's customers or any third party regardless if the delivered item was resold without being processed or after having been processed. Even subsequently to their assignment under this section, the buyer remains authorized to collect on those claims. Our right to collect on the claim ourselves remains unaffected thereof. We agree, however, not to collect on those claims while the buyer duly meets its payment obligations and does not default on any payment. Should that be the case, however, we may demand that the buyer make the assigned claims and their debtors known to us, inform us of all the details required for collection of those claims, surrender the pertaining documents and disclose the assignment to the debtors (third parties). Goods title to which has been retained shall neither be pledged by the buyer nor conveyed as collateral.

4.4 Any processing or transforming of the delivered item by the buyer shall always be deemed to be made on our behalf. If any delivered item is processed jointly with other items not owned by us, then we shall acquire a joint ownership interest in any newly created item equivalent to the value of the respective delivered item in proportion to the value of those other jointly processed items at the time of such processing. The provisions governing delivered items title to which has been retained shall also govern items created through the processing process to the extent the latter are not covered by the above provisions.

4.5 If any delivered item is inseparably confused with other items not owned by us, then we shall acquire a joint ownership interest in those items equivalent to the value of the respective delivered item in proportion to the value of those other confused items at the time of their confusion. If such a confusion is performed thus that the buyer's item is to be treated as the principal item, then it shall be deemed agreed upon that the buyer transfers such a joint ownership interest in that item to us on a proportionate basis. The buyer shall keep the custody of the object of this joint or sole ownership interest on our behalf.

4.6 For the purpose of securing our claims against the buyer, the buyer also assigns such claims against third parties to us which accrue to the buyer as a result of the attachment of the delivered item to a piece of real property.

4.7 Upon the buyer's request, we agree to release any respective collateral we are entitled to to the extent that the value of such collateral exceeds the yet outstanding claims to be secured by more than 10%.

4.8 As a precaution for the event of goods title to which has been retained being located abroad, the buyer agrees to cooperate in all measures and declarations required for procuring security rights which are equivalent to a retention of title for us.

## **§ 5 Intellectual Property Rights**

5.1 The buyer agrees to abstain from infringing upon any intellectual property rights (patents, licenses, trademarks, etc.) owned by third parties while processing or selling any item.

5.2 We are only obligated to deliver items free and clear of any intangible property rights owned by third parties within the territory of the Federal Republic of Germany.

5.3 The buyer shall not assert any claim if and to the extent that it is responsible for any infringement of intellectual property rights.

5.4. Nor shall the buyer have any claim if and to the extent that an intellectual property right has been infringed upon by

- a. - special requirements by the buyer
- b. - any use made which was not foreseeable for us
- c. - any modification of any delivered item by the buyer
- d. - any use made of the delivered item jointly with products not supplied by us.

## **§ 6 Quantity, Quality**

6.1 Obvious defects shall be given notice of without any culpable delay, no later, however, than within 5 weekdays of receipt of any item. Hidden quality deviations shall be given notice of without culpable delay after they have been discovered.

6.2 The specifications made in our lists of types of products, advertising materials and other printed materials shall not be treated as a warranty of any qualities.

6.3 Any special technical requirements or any special intended use shall be defined in writing and conclusively when the order is made and are subject to be confirmed by us in writing in which case we must then insist that the buyer accepts delivery of the ordered items.

6.4 Upon receipt of any batch of items, the buyer shall examine them with regard to all technical requirements and by using all reasonable testing methods, even at its customers premises, if necessary, by all means before manufacture, however. If any defect does not become apparent until the manufacturing process begins, the manufacturing process shall be stopped immediately.

6.5 In all cases we shall be immediately notified in writing. We shall be given opportunity to examine and inspect the defective item, to perform test runs and to inspect the documents. Quality defects shall be immediately reported exhaustively and in a sufficiently specified manner.

6.6 If any delivered item is defective, we shall, at our choice, be twice given the right to remedy the defect or to deliver a replacement item within reasonable time. If remedying the defect or delivering a replacement item is impossible or has failed or been unreasonably delayed, the customer may demand that the compensation be lowered (price reduction) or rescind the agreement after the requirements for rescinding the agreement have been met.

6.7 The period of limitation for claims to have defects remedied shall be 12 months as of the commencement of the statutory period of limitation. The same shall apply to rescinding the agreement and reducing the price. If statutory law prescribes longer periods pursuant to German Civil Code (BGB) sections 438 subsec. 1 item 2 (structures and items for structures), 479 subsec. 1 (right of recourse), and 634a subsec. 1 item 2 (constructional defects), in cases of intentional misconduct, fraudulent concealment of any defect, and if a quality-related warranty is breached, those longer statutory periods shall apply. The statutory provisions on the temporary tolling of the expiration and on the temporary tolling and the resumption of the periods remain unaffected thereby.

## **§ 7 Shipping Damages**

Missing quantities can only be given consideration if they have been identified immediately upon delivery and if written notice thereof has been given to us and to the forwarding agent without culpable delay. If the affected transaction has been a transaction between merchants, the enhanced provisions of German Commercial Code (HGB) sections 377 et seq. shall apply.

Please note:

a) The buyer shall have any externally visible damages to the shipments attested to by the agent delivering the shipment (railway company, postal services, forwarding agent, etc.) on the way-bill without culpable delay in the form of a report of the facts or in any other adequate manner. The shipping companies are obligated to provide such attestations.

b) If any damages, defects or losses of weight become apparent which are not externally visible, the unpacking shall immediately be discontinued. The shipping company performing the delivery shall immediately be made liable in writing and be requested to establish and report the facts and to ascertain the damage, in compliance with the standards hereunder:

a) delivery by mail (postal service): immediately on the day of receipt

b) delivery by the railway services' goods arrival services or express arrival services: immediately on the day of receipt

c) delivery by automobile carriers or road haulers: immediately on the day of receipt after the delivery of the goods.

In any event, the goods and the packaging shall be left in the state they are in at the time the damage was discovered until the facts have been established by the representative of the shipping company.

## **§ 8 Warranty - Cost - Remedial Work**

8.1 We warrant that our products are manufactured according to the most recent state of the art and by diligent working methods. Anyhow, defects of our products and defective manufacturing processes are not always unavoidable. Our liability for unavoidable defects in terms of this section shall be limited to the delivery of a replacement item or remedial work (supplementary performance); the buyer shall not have any warranty rights beyond the delivery of a replacement item or remedial work in those cases. The same shall apply to functional deficiencies of our products if we are only obligated to perform an optical control not including a functional test and if the functional deficiency could have been discovered during a functional test.

8.2 The buyer shall have the full burden of proof for all requirements of any claim, in particular for the defect itself, for the time at which the defect was discovered and for the timeliness of the notice of any defect. The buyer shall make equipment or parts available for examination and remedied performance immediately upon our request.

8.3 The warranty period shall be one year for all products delivered by us unless agreed upon otherwise in writing. It shall expire prematurely, however, as soon as the buyer makes repair attempts or changes or if operating instructions are not complied with. The warranty shall commence upon the passing of the risk.

8.4 In any case of a complaint and return, the buyer shall pay the shipping cost probably to be incurred in advance. If the complaint turns out to be unjustified, the buyer shall ultimately pay the cost. We reserve the right to claim liquidated expenses, the buyer having the right, however, to prove that the damages or expenses have been lower.

8.5 If the manufacturer of a product maintains a repair facility within a reasonable distance, the buyer may be directed to have the repair made at this location (our right to ascertain and remedy the defect). The buyer's statutory warranty claims against us are not affected thereby, that means, the buyer keeps its right to rescind the agreement or to reduce our compensation (reduce the purchase price or be reimbursed a portion of any payment made).

## **§ 9 Liability**

9.1 The buyer shall not assert any damages beyond the one-year quality warranty unless we can be made responsible of intentional misconduct or grossly negligent conduct. All other claims for damages of the buyer shall be ruled out. This shall not apply to any mandatory liability, e.g., under the German Product Liability Code (Produkthaftungsgesetz) or in any case of intentional misconduct, grossly negligent misconduct, injury to life, body or health or if essential contractual duties have been breached. Damages for the breach of essential contractual duties are, however, limited to the loss typically to be expected for this type of contract unless the breach is committed intentionally or through gross negligence or unless the liability results from injuries to life, body, or health. The above provisions do not result in a shift of the burden of proof to the buyer's detriment.

9.2 Claims for damages and claims in connection with measures to avoid damages shall expire by limitation within 12 months; if claims for damages are based on the German Product Liability Code, the statutory limitation provisions shall apply.

## **§ 10 Prices and Payment Terms**

10.1 The prices agreed upon as described in the acknowledgment of any order shall apply when the delivery is made unless expressly agreed otherwise in writing. We do not pay any taxes, tariffs, etc., levied on any transaction in the country of the receiving party. Increases of customs duties, etc., occurring after the agreement has been entered into, shall be paid by the buyer. In the event that information has been provided in advertising materials, such information is subject to change.

10.2 Our deliveries shall be payable net within 30 days (14 days with a 2% cash discount) as of the invoice date unless other payment terms have been agreed upon. We have the right, however, to agree upon down payments or advance payments with the buyer if a business relationship with it had hitherto been nonexistent, if deliveries are to be made abroad, if the buyer has its registered office abroad or if there are any other circumstances provide cause for doubting that payments will be made timely after delivery.

10.3 Payments shall in terms of German Civil Code section 366 generally always be set-off against the oldest claims. If the payment period under 10.2 is exceeded, we shall have the following rights:

- a) We may charge an interest rate which is customary in the banking industry plus expenses for uncovered credits.
- b) We may refuse to make more deliveries or make deliveries only against cash on delivery, irrespective of all former agreements.
- c) We may exercise all rights resulting from the retention of title.
- d) We may immediately demand payment of all receivables, regardless of any former agreements.

10.4 Any petition for insolvency or composition proceedings, any suspension of payments on debts or any substantial change of the priorly assumed financial position or earnings position shall be equivalent to defaulting payment.

10.5 The buyer shall not be entitled to set off claims of its own against our claims or to withhold any payment unless such set off or withholding of payment is based on claims which are either uncontested or declared to be meritorious by an unappealable judicial decision.

10.6 The price agreed upon for any particular transaction shall be applied to that transaction. The statutory value added tax is not included in our prices; that tax will be separately shown on the invoice in the amount applicable on the day the invoice is made.

## **§ 11      Applicable Law, Place of Performance, Place of Litigation**

11.1 All contracts shall be governed by the laws of Germany without giving effect to the United Nations Convention on the International Sale of Goods (CISG).

11.2 Our registered office shall be the place of any performance. Stuttgart shall be the place of any litigation for all claims arising from any contractual relationship provided the transactions are made between merchants.

11.3 If any disagreement arises, that disagreement will be tried to be settled by mediation of an arbitration board in consultation with the local Chamber of Commerce provided that both parties agree thereto.

## **§ 12      Data Protection - Confidentiality**

12.1 We are authorized to electronically store and process data for the purpose of processing orders, inquiries, and offers made by us or by third parties commissioned by us on our behalf. We are authorized to forward data to third parties, including without limitation banks and contracting partners providing services for the handling of orders. The provisions of the Federal Data Protection Act (BDSG) section 4 subsections 1 and 2 are observed.

12.2 The parties to any agreement agree to treat all commercial or technical details they receive or gain knowledge of from the respective other party to the respective contract as business secrets while the respective other contracting party does not make those details publicly accessible.