

TERMS AND CONDITIONS

General terms and conditions of sale, delivery and payment for Hommel Hercules Werkzeughandel GmbH & Co. KG

(status on 1st October 2014)

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§ 1 General - scope

1. All current and future deliveries are subject to these general terms and conditions. These apply when the customer orders an item or items from the catalogue or when he/she accepts an order confirmation or delivery without dispute. Our terms and conditions also apply even if we send an unconditional delivery to the customer despite being aware that the supplier's delivery conditions differ from our own.
2. These terms and conditions only apply to companies within the meaning of § 14 of the German Civil Code (BGB), legal persons under public law and special funds under public law.
3. Our terms and conditions also apply for all future business transactions with the customer.

§ 2 Offer and conclusion of contract

1. By ordering goods, the customer enters into a binding agreement to purchase the ordered goods.
2. We reserve the right to accept the offer of contract enclosed within the order within two weeks of receipt. The acceptance can be declared either in writing or through the delivery of the goods to the customer.
3. Our offers are subject to change. Any images, diagrams, specifications pertaining to measurements and weight are only estimates, unless it is specifically stated that they are binding. We are not liable for any deviations from specifications in the catalogue, from other images or descriptions.
4. The conclusion of the contract is subject to correct and timely delivery by our suppliers. This condition only applies, if we are responsible for the failure to deliver, in particular in the case of the conclusion of congruent covering transactions with our supplier. The buyer will be informed that the goods are not available as soon possible. Any advance payments will be reimbursed without delay.

§ 3 Price - conditions of payment

1. Our prices apply from the warehouse, and do not include packaging, which is billed separately.
2. Our lists and catalogue prices are subject to change. We reserve the right to raise our prices in the case that there is a price increase between the conclusion of the contract and the appointed time of delivery, due to collective agreements or increases in the price of materials.
3. Our prices do not include VAT; this is listed separately at the rate applicable on the day on which the invoice is issued.
4. Payment is due upon receipt of the delivery and when the invoice has been issued. The amount invoiced is due in cash to our paying agent.
5. Cheques and bills of exchange will only be accepted as payment; in the case of bills of exchange, the bank discount and collection charges will also be calculated. These are to be paid in cash immediately.
6. Discounts may only be deducted on the basis of a separate written agreement.
7. In the event of default of payment, or if a cheque or bill of exchange fails to clear, or if there are any reasons to doubt the customer's ability to pay, the entire amount is to be paid immediately in cash, regardless of payment deadlines or the period of validity of any bills of exchange or cheques received. In such cases, we reserve the right to withhold any outstanding deliveries and to carry them out them only in return for advance payment.
8. The customer is only entitled to offset payment, if any counter claims are legally established or undisputed. The customer can only exercise his rights of retention, if the counter-claim is based on the same contractual relationship.

§ 4 Delivery periods, delays in delivery

1. The fulfilment of our delivery obligations is subject to the customer fulfilling his own obligations promptly and correctly. We reserve the right to object, if the terms of the contract are not met in full.
2. If the customer delays delivery or breaches any other obligations, we are entitled to demand compensation for any resulting damages, including any additional expenditure. We also reserve the right to make further claims. The risk of accidental loss or the accidental deterioration of the goods becomes the responsibility of the customer at the point when delivery is delayed or a default on payment occurs.
3. If the failure to comply with delivery obligations is due to reasons of force majeure, e.g. mobilisation, war, terror attack, civil unrest, or due to circumstances such as industrial disputes, e.g. strikes or lock-outs, the terms of delivery are extended for the duration of these events.
4. Partial deliveries are only made if these are acceptable for the customer.
5. In the case of delays caused by a failure on our part to meet delivery obligations, the customer is entitled to demand compensation to the amount of 0.5 % for every full week in which the delivery is delayed. The customer is entitled to claim an amount not exceeding 5 % of the purchasing price paid for the goods delivered.
6. In the event of delivery delays, claims for compensation made by the customer on the grounds of delivery delays and claims for compensation in lieu of performance will not be met, if they extend beyond the limits stated in paragraph 5, even if we have failed to meet a specified deadline. This does not apply, if the delivery delay was caused by deliberate or a grossly negligent breach of the contract on our part. Furthermore, the disclaimer or liability limitation does not apply, if the customer's life is endangered or in the case of bodily harm or damage to the customer's health.
7. At our request and within a reasonable time period, the customer is obliged to declare whether he intends to terminate the contract due to delays in delivery, or if he insists on receiving his goods.

§ 5 Transfer of risk

1. The risk of accidental loss or accidental deterioration of the goods passes to the customer upon delivery, or passes to the carrier or the freight carrier or whoever may be responsible for the delivery when the goods are handed over for transportation.
2. If delivery is delayed by the customer, the transfer is still be deemed to have taken place.
3. Transportation insurance will only be arranged, if requested by the customer and at the customer's own expense.

§ 6 Warranty

1. Written notification of any obvious defects must be sent to us within two weeks after receipt of the goods, otherwise the customer is excluded from making claims due to any defects. Written notification of any hidden defects must be sent to us within two weeks after their discovery, otherwise the customer is excluded from making claims due to any defects. It is sufficient when the notification of any defects is sent within this period. The customer is solely responsible for providing evidence to meet the prerequisites for making a claim; in particular proof of the defect, the time when the defect was first noticed and for the punctual notification of the defect.
2. We are only liable for defects that are reported within the period prescribed, and we reserve the right to decide whether to replace or repair the faulty goods or faulty components.
3. If this supplementary performance fails, the customer is entitled to either demand a reduction in the purchasing price, or to withdraw from the contract. The customer does not have the right to withdraw from the contract in the event of a minor infringement of the contract agreement, or if the defect is only minor.
4. If the customer claims damages based on deliberate or gross negligence, including the deliberate or gross negligence of our representatives or agents, then our liability is subject to law. As long as no deliberate or grossly negligent breach of contract can be determined, the liability for compensation is limited to covering foreseeable and typical damage.
5. If the customer makes a claim for damages based on a minor violation of fundamental contractual obligations, the liability for compensation is limited to covering damage that is foreseeable and typical for the type of goods.
6. The warranty period is one year, commencing at the point when the goods are delivered.

7. With respect to the condition of the goods, only our product descriptions or those from the manufacturer are considered binding. Public statements, appraisals or advertisements made by the manufacturers do not represent a contractual indication of the condition of the goods.
8. The customer does not receive any guarantees from us in the legal sense. All manufacturers' guarantees remain unaffected by this.

§ 7 Electrical and electronic equipment act (ElektroG)

1. The customer will undertake to return any electrical and electronic devices delivered by HHW to HHW at his own expense after end-of-life. HHW will dispose of or recycle the devices in accordance with legal regulations.
2. The customer will undertake to refrain from giving or selling the devices that have reached their end-of-life to private households, in particular employees.
3. If the device is transferred to another industrial user, it is the customer's responsibility to ensure that a suitable agreement is also made with the relevant company, so that the device is returned to HHW after end-of-life, in accordance with point 1.

§ 8 Limitations of liability

1. In the case of minor negligent breaches, our liability is limited to covering damage that is foreseeable and typical for the type of goods. This also applies to minor negligence on the part of our legal representatives or subcontractors.
2. We are not liable in the event of a minor negligent breach of nonessential contractual obligations.
3. The above-mentioned limitations of liability and the limitations of liability stated in § 6 do not apply to any claims made by the customer regarding product liability. Furthermore, the liability limitations do not apply in the case of bodily harm, damage to health or loss of life for which we are responsible.
4. The customer's right to claim damages in the event of a faulty product expires one year after the goods have been delivered. This does not apply in the event of bodily harm to the customer or any damage to health or loss of life for which we are responsible. Furthermore, the shorter limitation period does not apply to the customer's right to claim for other damages caused by gross negligence on our part or on the part of our legal representatives or subcontractors. The statutory limitation periods also apply to any claims for damages in accordance with product liability law.

§ 9 Reservation of title

1. The goods delivered by us remain our property until all payments have been made. If we have agreed to accept payment in the form of cheques or a bill of exchange, this reservation is extended until the payment of the bill of exchange by the customer, and is not cancelled out by clearance of the cheque.
2. If the customer acts in a way contrary to the contractual obligations, in particular in the event of a default in payment, we are entitled to repossess the delivered goods. If we repossess goods, this does not constitute a withdrawal from the contract, unless this has been expressly declared in writing. The customer has already indicated that he agrees to the repossession of the goods, and has already given us permission to collect the goods from him. After repossession of the goods, we are entitled to dispose of them at our discretion; the proceeds will be offset against the amount owed by the customer – with the deduction of reasonable redemption costs.
3. The customer will undertake to handle the delivered goods with care: specifically, he is also obliged to adequately insure the goods against fire or water damage or theft at his own expense.
4. In the event of seizure of property or other interventions by third parties, the customer is obliged to inform us immediately in writing, so that we can claim ownership. If the third party is unable to cover judicial and extrajudicial costs, the customer is liable to cover any losses incurred by us.
5. The customer has the right to resell the subject of delivery within his normal business transactions; however he already assigns to us in full any claims he has against buyers or third parties generated from the resale. We hereby accept this assignment. The buyer also remains entitled to collect this receivable even after the assignment. Our authorisation to collect the account receivable ourselves will remain unaffected. Should the customer be in default of payment, he will undertake to give us all information necessary for the collection of the claims, surrender the relevant documents, and inform his debtors about the assignment.

6. We undertake to release the guaranties we are entitled to at the buyer's request in this respect, if the value of our guaranty (deposit) exceeds the securing guaranty (deposit) by more than 20 %; the choice of the guaranty (deposit) to release is up to us.

§ 10 Data protection

1. The customer agrees with and acknowledges that he has been informed that all customer-relevant data pertaining to the business relationship, also in relation to personal data and invoicing within the meaning of the Federal Data Protection Act, has been saved by our electronic data processing system and that it will only be disclosed to the relevant service providers and agencies and within the scope of order management processes.

§ 11 Place of fulfilment – place of jurisdiction

1. The place of fulfilment for our deliveries is our branch office that carries out or organises the delivery to the customer. Our registered office serves as the place of fulfilment for all other claims arising from the contractual relationship.
2. If the customer is a registered trader, we are free to decide whether our registered address or Mannheim should serve as the place of jurisdiction; however, we also have the right to litigate at the customer's place of business.
3. If the customer is not a registered trader, our registered address then serves as the place of jurisdiction, even if the customer transfers his place of residence or usual place of residence outside the scope of the Federal Republic of Germany. This also applies when the customer's place of residence or usual place of residence are unknown at the time when legal action commences.

§ 12 Custom-made products

1. In the case of custom-made products, we reserve the right to deliver a delivery surplus or shortage of up to 15 %. Orders for custom-made products cannot be returned. This also applies to mass-produced articles, if they have been ordered with special characters or labelling.

§ 13 Final provisions

1. The laws of the Federal Republic of Germany apply. The provisions of the UN convention on the international sale of goods do not apply.
2. If individual provisions of the agreement with the customer, including these general terms and conditions, become invalid or partially invalid, this has no effect on the validity of the remaining provisions. The invalid or partially invalid provisions should be replaced by a provision whose economic purpose best approximates the invalid provision.