

General Terms and Conditions of Sale and Delivery of Messrs. Hutz-EL s.r.o

For Use with:

- Natural persons who are professionally engaged in a trade or business or self-employed persons at the time of the conclusion of the contract (entrepreneurs),**
- legal persons under public law or any special fund under public law as defined by § 310 [1] BGB (German Civil Code).**

I. Introduction

- All deliveries and other services shall be based exclusively on these terms and conditions of sale and delivery and separate contractual agreements, if any. Deviating conditions of the customer do not apply even if they are not explicitly contradicted by us.
- The inefficiency of individual provisions of this contract or its components does not affect the efficiency of the other provisions. The contracting parties are obliged to replace, in good faith and within the scope of reasonability, an ineffective condition by an effective one which ensures the same economic success, provided that no fundamental alteration of the subject terms of the contract is caused; the same applies if circumstances in need of regulation are not explicitly regulated.
- We reserve and retain all property rights and copyrights to samples, cost estimates, drawings and similar information whether of physical or non-physical nature including information in electronic form; they must not be used by the recipient without our express written consent outside the cooperation with us and especially not be made available to third parties. We commit ourselves to ensure that information we have received from the customer and which he declares as confidential will only be used within the frame of our dealings with the customer and that we will not make this information available to third parties.

II. Offers, Scope of Service, Conclusion of Contract, Place of Performance

- Our offers to enter into a contract are not binding and subject to confirmation. Unless otherwise explicitly agreed in writing, a contract shall only be brought about after our written acknowledgement of order. Our written acknowledgement of order shall exclusively be decisive regarding the scope of the performance to be effected under the contract.
- Excess deliveries of up to 10% or short deliveries of up to 10% of the respective total quantity of products agreed upon are admissible. Partial deliveries shall be allowed, if they are not unreasonable for the customer. Partial deliveries shall be invoiced and paid separately.
- We reserve the right of a free choice of the production process, provided that it is consistent with customer's specifications. The customer will agree to any proposal for a change of the production process as far as it is reasonable for the customer.
- Place of performance for all obligations resulting directly or indirectly from this contractual relationship, including the obligation to pay, is the seat of our company.

III. Prices and Terms of Payment

- Prices are to be understood ex works excluding packing and delivery and transport charges. Packing is calculated at net costs and only taken back if we are obliged to do so by virtue of imperative statutory provisions.
- If the period of time between the conclusion of contract and delivery exceeds four months without our being responsible for any delay in delivery, we are entitled adequately to increase the price/the compensation in accordance with the increase of any cost of materials, wages and other ancillary costs that has occurred in the meantime. Should this lead to an increase of the price/compensation by more than 25% the customer has the right to withdraw from the contract.
- If modifications requested by the customer after conclusion of the contract are taken into consideration, the resulting additional costs will be charged to the customer.
- If no other terms of payment have been agreed upon, invoices shall be payable net within 30 days from the date of the invoice.

IV. Offsetting and Right of Retention

The right to set off and the assertion of rights of retention shall be excluded unless the customer's claim is undisputed or has become res judicata.

V. Tools, Moulds and the like

- The customer will bear the cost of the moulds and tools which are needed for the execution of orders and which are made by ourselves or for us by a third party. In case the customer requests changes before the completion of tools and thereby causes a postponement of the presentation of reference samples, we are entitled to claim immediate reimbursement of tool costs that have arisen so far. Tool costs will generally be invoiced separately from the goods to be supplied.
- We will carefully store and maintain the moulds and tools for repeat orders. We shall only pay for the replacement of tools and moulds which have become useless, if it can be proved that we are to blame for the damage or loss of the tool.
- As the part of the tool costs borne by the customer does not cover our costs for mould design work, construction, trial runs, regular maintenance, care and so on, the tools and moulds remain our property. They remain in our possession and we are not obliged to surrender them. Our duty to store the tools will cease if no repeat orders have been received from the customer within a period of three years after the last delivery.
- Tools and other devices provided by the customer are not co-insured under our insurance coverage. Our liability for damages thereto shall be limited to the case of intent or gross negligence.

VI. Delivery Time

In general, the delivery date indicated in our final acknowledgement of order is to be considered as the agreed delivery date. The delivery date is stated at our best discretion. The delivery time is extended adequately should the customer delay or fail to give the support required or agreed upon. The same applies in the case of delays caused by industrial action, especially strikes and lockouts, as well as in the case of unforeseeable impediments which are beyond our power, e.g. delivery delays of subcontractors, disturbances of traffic, operational breakdowns, shortages of materials, energy, etc.

VII. Passing of Risk / Acceptance

- The risk passes to the customer when the goods leave our premises. This also applies to partial deliveries.
- If acceptance of the goods has been arranged, the act of accepting determines the passing of risk.
- If the delivery or the acceptance is delayed or fails to happen due to circumstances beyond our control, the risk shall pass to the customer the day of our advice to the customer that we are ready for delivery or acceptance.

VIII. Patent Infringement

If the product is manufactured and delivered according to specifically prescribed requirements of the customer (in accordance with drawings, samples or other specific information), the customer takes responsibility that in the manufacturing process the rights of third parties, especially patents, utility models and other industrial property rights and copyrights are not infringed. The customer undertakes to release us from all demands and claims which are made due to the infringement of such third party rights.

IX. Retention of Title

- We reserve the ownership of the goods supplied until full payment including default interest, if any. The retention of title also remains in force until all, even future and contingent claims arising from the business relationship between the customer and our company have been satisfied.
- The customer is not entitled to give the goods in chattel mortgage or in pledge. He is, however, entitled to sell the goods which are under reservation of ownership in the orderly course of business. He herewith assigns the claims arising therefrom against his business partners to us.
- If the goods are processed, worked or used, the retention of title shall cover the whole new item. The customer acquires co-ownership of the new item in proportion to the value of his goods and the value of the goods supplied by us.
- If the value of all existing securities assigned to us exceeds our existing claims by more than 10% in the long term, we shall release securities at our discretion upon customer's request.
- We are entitled to assert our rights of retention of title without withdrawing from the contract.

X. Duty to examine/Claims based on defects/ Claims in the case of work farmed out to sub-contractors

- The nature of our products and their possible uses are described in catalogues, leaflets, presentations, brochures and other publications by written or pictorial specifications (e.g. descriptions, illustrations and drawings). The information in these documents does not serve as a guarantee of quality or durability and reflects our present state of knowledge. Other data are not binding. We are not liable for the success of the possible uses described.
- In case the purchase is a commercial transaction for both parties, the customer has to inspect the goods immediately after reception, as far as this is feasible in the ordinary course of business and shall immediately notify us in writing, by written telecommunication or by telefax (fax) should a defect show up. Should the customer fail to inform us of a defect, the goods are deemed to be accepted unless it is a defect which was not recognizable during inspection. Our outdoor staff are not authorized to accept notifications of defects. In addition, § 377 et seq. HGB (German Commercial Code) apply.
- Warranty against material defects – except for claims under XI. – is as follows:-
Claims relating to material defects are limited to rectification of defects. If the rectification of defects fails, the customer has the choice to demand either a reduction in price or the rescission of the contract.

The customer shall allow us the necessary time and give us the opportunity to rectify the defect, otherwise we are not liable for damages resulting therefrom. Only in urgent cases in which the operational safety is endangered or to prevent immense damages shall the customer be entitled to correct the defect himself or to have it corrected by a third party. In this case we shall reimburse the costs accrued provided that the customer has immediately informed us of the defect.

- Further claims of the customer which are not covered by a guarantee are excluded. This shall not apply to intent, gross negligence or the breach of essential obligations assumed by us under the contract.

- If work is farmed out to sub-contractors and if materials, parts of materials, semi-finished products or equipment and devices are provided or supplied by the customer for these or other orders, they will be processed or handled by us with the care of a prudent businessman. We shall only be obliged to examine them, if specifically agreed and if the costs arising therefrom are assumed by the customer. Should the items provided become unusable due to circumstances for which we are not responsible or due to force majeure, no claim for replacement of the material free of costs or reimbursement of other costs can be derived therefrom against us. Should parts become unusable because of material defects, our machining costs have to be reimbursed. If parts become unusable because of faulty machining we will carry out the same work free of costs on a part to be sent to us carriage paid.

XI. Liability

- We are only liable for damages, which have arisen on the delivery item itself – for whichever legal grounds – in the case of:
 - intent,
 - gross negligence of the customer/his organs or his executive employees,
 - culpable injury of life, body or health,
 - defects which we have fraudulently concealed or whose absence we have guaranteed,
 - defective delivery items in so far as liability is provided under the Product Liability Act for personal injury and property damage to privately used items.In the case of a culpable breach of essential contractual obligations, we shall also be liable for gross negligence of subordinates and for slight negligence, the latter, however, being restricted to contract typical, reasonably foreseeable damage. Further claims are excluded.
- If through our fault, the delivery items cannot be used by the customer as specified in the contract, due to the fact that we have not implemented or not properly implemented the proposals made or the advice given before or after the conclusion of the contract or due to violation of other accessory obligations under the contract, the provisions of sections X and XI are applicable; further claims being excluded.

XII. Limitation of Action

All claims of the customer – irrespective of the legal ground – are subject to a limitation period of 12 months. To claims for damages according to sec. XI 1 a. and d. the statutory limitation period is applicable.

XIII. Choice of Law and Place of Jurisdiction

All legal relationships between ourselves and the customer shall be exclusively governed by German law. The application of the UN right of purchase is excluded. Place of jurisdiction shall be the court being competent for our head office. We shall have the right however, also to sue the customer at the place of jurisdiction of the customer's head office.

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