

Hellma GmbH & Co.KG

# Terms and Conditions

# Terms and Conditions of Hellma GmbH & Co. KG

The following conditions apply to all present and future offers submitted by us and contracts concluded by us with companies (Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB)), legal entities under public law, or special funds under public law (henceforth: “Customers”). Any general terms of business of the customer shall become a contractual component only and to the extent that we have expressly agreed to their validity.

## 1. Contractual conclusion

- 1.1 Unless otherwise stated, our offers are non-binding and free from obligation; a contract shall only be established upon issuance of our written order confirmation or upon delivery. Our order confirmation is solely decisive for the contractual content, in particular the scope of service. Contractual amendments and supplements require our written confirmation.
- 1.2 With respect to figures, descriptions, drawings, weights, dimensions, and other information in our prospectuses, price lists, catalogs, and our offers, we reserve the right to make changes insofar as the delivery item is not substantially changed thereby or its quality improved, and the changes are reasonable for the Customer.

## 2. Prices and payment conditions

- 2.1 Our prices for deliveries are stated ex works in addition to transport insurance, packaging, dispatch, statutory value added tax, and in the case of export deliveries in addition to customs charges, fees, and other official duties. Service and repair work shall be invoiced according to the price list valid at the time of service provision.
- 2.2 The remuneration is due without any deduction upon delivery or acceptance. The Customer shall enter default 14 days after delivery and invoicing, without this requiring a warning. Our receipt of the payment shall be decisive for the date of payment. Checks and bills of exchange shall only be deemed as payment after redemption. Discounting, exchange charges, note taxes, and similar duties shall always be assumed by the Customer.
- 2.3 In the event that we are compelled to view our claims as jeopardized as a result of a significant deterioration of the economic circumstances of the Customer, we shall be permitted to withdraw from the contract. Should the Customer be in default on payment, we may make the entire receivable due for immediate payment. In these cases, we are also permitted to make the processing of all orders of the Customer dependent on an advance payment or a security deposit.

- 2.4 Set-off with counter-claims of the Customer or the retention of payments due to such claims is only permissible insofar as the counter-claims are undisputed or legally determined or stand in mutuality to our claims.
- 2.5 Should the delivery occur later than six months after contractual conclusion for reasons not attributable to us, we may adjust the price up to the list price applicable on the day of delivery (in each case minus an agreed percentage or fixed discount).

### **3. Delivery periods**

- 3.1 Delivery periods are determined according to agreements made in individual cases. A delivery period is deemed observed if the delivery item is handed over for transport or readiness for transport has been established and communicated.
- 3.2 In the event that we are unable to observe the agreed delivery period due to obstructive reasons such as operational disruptions, strikes, lockouts, energy supply difficulties, or delayed or missing deliveries from suppliers, for which we are not responsible, we shall promptly inform the Customer accordingly. In such cases, the Customer is not permitted to withdraw from the contract.
- 3.3 However, if it is not possible to foresee if we will be able to render our performance without an appropriate period, yet no later than within four months, we and the Customer may withdraw from the contract. The same applies accordingly if the obstructive reasons continue to exist after four months since our notification. Insofar as we have rendered a partial performance, however, the withdrawal is only permissible with respect to the still outstanding part of the performance. Should the obstructive reasons already be recognizable to us upon contractual conclusion, we shall not be permitted to withdraw from the contract.
- 3.4 Should the Customer enter default on acceptance, we shall charge storage costs in the amount of 0.5 % of the invoice amount per month, yet no more than 5 % of the invoice amount. After the setting and expiry of a suitable period, we may withdraw from the contract and demand a lump-sum compensation instead of the performance in the amount of 20 % of the order amount. Both parties may reserve the right to demonstrate greater or lesser damages.

### **4. Delivery**

- 4.1 All deliveries shall be ex works or ex warehouse (Incoterms 2020). Should the Customer enter default on acceptance, the risk shall be transferred upon notification of readiness for transport. This shall apply regardless of whether the shipment is performed from the place of fulfilment and who bears the transport costs.

- 4.2 Partial deliveries are permissible if the partial delivery can be utilized by the Customer in accordance with the contractual intended purpose, the delivery of the remaining ordered goods is ensured, and the Customer does not thereby incur significant additional workload or additional costs.
- 4.3 Where agreed, excess or reduced deliveries of up to 20 % of the order quantity are permissible. Excess or reduced delivery shall be deemed agreed if reference is made to possible excess or reduced deliveries in our offer or our order confirmation and the Customer does not expressly object to this reference within seven days of receipt and we have informed the Customer about the legal consequences of their conduct at the beginning of the period. In the event of an objection on the part of the Customer, we reserve the right to withdraw from the contract. The price to be paid by the Customer is determined by the actually delivered quantity, whereby the agreed prices as well as these conditions, in particular the payment conditions pursuant to Section 2, apply accordingly to excess or reduced deliveries.

## **5. Reservation of ownership**

- 5.1 Goods delivered by us shall remain our property until complete payment. Goods, which the Customer has not fully paid for prior to delivery, shall remain our property until the complete fulfilment of all our claims arising from the entire business relationship with the Customer.
- 5.2 The Customer is obliged to store and label the goods subject to reservation separately. The Customer shall insure the goods subject to reservation at its own cost against fire, water damage, break-in, and theft. Upon request, the insurance policy shall be submitted to us for inspection. The Customer assigns us the claims arising from the insurance in advance. We accept the assignment.
- 5.3 In the event that third parties seize the goods subject to reservation, the Customer must promptly inform us accordingly. The Customer shall assume all costs necessarily incurred for the release of the seizure and the recovery of the goods delivered by us.
- 5.4 The Customer is permitted to sell the good subject to reservation in the ordinary course of business, provided that the Customer is not in default. Pledging or transferring by way of security is not permitted. As a precaution, the Customer hereby assigns to us the receivables arising from the resale or other legal grounds (insurance, tort) with respect to the goods subject to reservation to the full extent. We revocably authorize the Customer to collect the receivables assigned to us for our account in the Customer's own name. Upon our request, the Customer shall disclose the assignment and hand over the information and documents required for collection of the receivable.

- 5.5 If the good subject to reservation is combined with other items, the reserved ownership shall continue in the newly created item. We shall thereby acquire a share of co-ownership in the ratio of the value of the good subject to reservation (invoice value) to the value of the remaining combined items. If one of the combined items is to be considered the main item, the Customer shall assign us co-ownership in the ratio of the value of the good delivered by us (invoice value) to the value of the remaining combined items. With respect to our co-ownership share, the Customer shall keep the new item safe free of charge. If the good subject to reservation is resold as a component of the new item, the advance assignment agreed in Section 5.4 shall only apply in the amount of the invoice value of the good subject to reservation.
- 5.6 In the event that the law of the country in which the delivery item is located does not permit the agreement of a reservation of ownership – or only permits this agreement in a restricted form – we may reserve other rights to the delivery item. The Customer is obliged to cooperate in all necessary actions (e.g. registrations) for realizing the reservation of ownership or other rights, which apply instead of the reservation of ownership, and for protecting these rights.
- 5.7 Insofar as the realizable value of all security rights exceeds the amount of all secured claims by more than 10 %, corresponding parts of the security rights shall be released at the request of the Customer. We shall be entitled to choose between the various security rights to be released.

## **6. Supplied products**

- 6.1 Products supplied by the Customer must be inspected by the Customer for conformity with the agreed material types, dimensions, tolerances, and other specifications prior to delivery to us. Moreover, the Customer shall issue us an inspection certificate, which the Customer must send us with the supplied products.
- 6.2 Our inspection obligation for incoming goods control is limited to defects, which are evidently manifest upon visual examination including the delivery papers and upon our quality control on a random sample basis (e.g. transport damages, incorrect and reduced delivery). This incoming goods inspection shall not release the Customer from the obligations as defined in Section 6.1.
- 6.3 Guarantee claims against us are excluded if and to the extent that the defect of one of our products is due to an error in the product supplied.
- 6.4 Supplied products shall be handled and stored according to our dutiful discretion, insofar as no specific customer instructions prescribe other handling. The Customer shall bear the risk of accidental loss or accidental deterioration of the products it supplies.
- 6.5 The Customer shall release us from all third-party claims based on protective rights in connection with these supplied products, for which the Customer shall be responsible.

## **7. Claims for defects**

- 7.1 Should our deliveries or services prove to be defective, we shall first be obliged to resolve the defect at our discretion by means of defect rectification or replacement delivery. In the case of replacement delivery, the Customer must return the defective item according to the statutory provisions. We shall bear the expenses necessary for the purpose of subsequent fulfilment, in particular transport, labor and material costs; this shall not apply insofar as the costs increase because the delivery item is located at a location other than the place of intended use.
- 7.2 We are permitted to make the owed subsequent fulfilment dependent on the Customer paying the due purchase price. However, the Customer is permitted to retain a portion of the purchase price that stands in suitable proportion to the defect.
- 7.3 Except for malice and subject to Section 8.4, the limitation period for claims for defects amount to 12 months, counted from the day of delivery – or from the day of acceptance insofar as an acceptance is required.
- 7.4 Should the defect be due to a faulty third-party product, we shall be permitted to assign our guarantee claims against our suppliers to the Customer. In this case, claims may only be asserted against us on the basis of the above provisions if the Customer has asserted the assigned claims against the supplier in court.
- 7.5 We provide no guarantee for the marketability or suitability of the good for a certain purpose of use. The Customer is responsible for checking whether the items provided by us are suitable for the purpose intended by the Customer; in this respect, we shall only assume responsibility insofar as this has been expressly agreed in writing.
- 7.6 Claims for defects shall lapse if the Customer alters the delivery item without our approval or arranges such alterations through third parties and the defect rectification is hereby rendered impossible or unreasonably difficult. In any case, the Customer shall bear the additional costs of defect rectification incurred due to the alteration.

## **8. Liability**

- 8.1 We shall be liable for a culpable breach of our essential contractual duties according to statutory provisions. Essential contractual duties refer to obligations which characterize the typical contractual purpose, whose fulfilment makes the proper performance of the contract possible in the first place and the observance of which the contracting partner may regularly rely upon. Insofar as we are neither liable for grossly negligent nor willful conduct, however, we shall only be liable for the typically occurring, foreseeable damage.
- 8.2 In all other cases, we shall be liable if a damage was willfully or grossly negligently caused by one of our legal representatives or by a vicarious agent. In the case of the assumption of a guarantee as well as for damages due to injury to life, limb, or health, we shall be liable according to statutory provisions. Otherwise, claims for compensation against us due to breaches of duty are excluded.

- 8.3 Liability in accordance with the German Product Liability Act (Produkthaftungsgesetz) remains unaffected.
- 8.4 Compensation claims according to the above Sections 8.1 to 8.3 shall lapse within the statutory periods.
- 8.5 A claim for compensation due to a breach of duty concerning subsequent fulfilment pursuant to Section 437 No. 1 and Section 439 BGB shall only exist insofar as, during the 12-month limitation period according to Section 7.3, a) the Customer has requested subsequent fulfilment, and b) we have breached our duty to provide subsequent fulfilment.

## **9. Drawings, designs, and other documents**

- 9.1 Drawings, designs, calculations, and other documents, such as samples and models, provided by us or produced according to our specifications, shall remain and become our property. They may neither be forwarded to third parties nor used for other purposes without our written consent. They must be returned to us at our request following performance of the order.
- 9.2 In the case of deliveries according to drawings, models, or specifications of the Customer, the Customer shall release us from all claims based on third-party protective rights. In the event of contractual violations on the part of the Customer, its protective rights shall not contradict our use of the good.

## **10. Information and technical advice**

Our information and recommendations are provided free from obligation and excluding any liability, unless we have expressly committed ourselves in writing to the issuance of information and recommendations. Our information and disclosures do not constitute a quality promise with respect to our products.

## **11. Final provisions**

- 11.1 This contract is subject to German law. The United Nations Convention on the International Sale of Goods is excluded, i.e. does not apply.
- 11.2 The place of fulfilment for all obligations arising from both contract parts is our registered address.

- 11.3 The place of jurisdiction for all legal disputes in connection with this contract is Müllheim/Baden. Moreover, legal action may also be taken against the Customer at its registered address at our discretion. We likewise have the choice to obtain a final decision by one or more arbitrators named according to the rules of arbitration of the International Chamber of Commerce (ICC) at the place of arbitration Freiburg im Breisgau with respect to all legal disputes arising from the business relationship with the Customer according to these rules of arbitration. At the request of the Customer, we shall be obliged to exercise this option regarding a certain legal dispute within a period of one week from receipt of the request by way of declaration vis-à-vis the Customer, if the Customer wishes to initiate legal action against us.
- 11.4 The invalidity of individual provisions of the contract regarding these terms of delivery and service shall not affect the validity of the remaining provisions and the existence of the contract. Insofar as the invalid provision does not concern general terms of business, it shall be replaced with a valid provision, which comes as close as possible to the originally intended purpose of the invalid provision. The same applies accordingly in the event of omissions.