

General Supply and Payment Terms for HERA Herm. Rahmer GmbH & Co. KG

Scope

1. These Conditions of Sale apply to companies, legal entities under public law and public special assets. Our deliveries and services are provided exclusively on the basis of the following conditions. They apply as well to future contracts with the Partner unless agreement to the contrary is reached. The Partner's terms and conditions not expressly acknowledged by us do not apply. They also do not apply if they are included in an order confirmation ("Order") subsequent to our offer or in any other written documents and we do not expressly object to these or if we execute the order without reservation. Our silence signifies rejection of the Partner's conditions. This shall particularly apply to conditions and contracts conveyed by means of references in Internet portals. Visits to the website never comprise our consent.

General provisions

2. Orders become binding solely upon our order confirmation or the execution of the order. The contractual partners shall promptly confirm all oral agreements in writing as these are individually reached.
3. The Partner must review statements of account, especially balance confirmations as well as other invoices and notifications for their accuracy and completeness. Objections to statements of account must be raised in writing within one month from the date of the invoice; other objections must be raised immediately. Failure to raise timely objections shall be regarded as acceptances. The Partner may offset only with undisputed or legally established claims and may only assert a right of retention if its counterclaim is undisputed, legally established or ready for decision.
4. The information and images contained in our brochures and promotional materials are typical representations and contain no technical details. Claims concerning defects may not be based on this information unless the quality has been expressly agreed to.

Long-term and call-off contracts, price adjustment

5. Open-ended contracts may be canceled upon 12 months' notice.
6. In the case of long-term contracts (those having a term greater than 12 months and open-ended contracts), should there occur a significant change in the costs of labor, materials or energy, either party to the contract is entitled to request negotiations to achieve an appropriate adjustment of the price to take such factors into consideration.
7. Should there be no binding agreement on order quantity, we will base our calculation on the expected non-binding order quantity (target quantity) provided by the Partner for a specified period of time. Should the Partner accept less than the target quantity, we are entitled to increase the unit price accordingly. Should the Partner accept more than the target quantity, we will reduce the unit price accordingly provided that the Partner has informed us of the increased requirement at least 3 months prior to delivery.
8. Binding quantities must be announced for call-off delivery contracts at least 2 months before the delivery date by call-off. The Partner shall bear the burden of any additional costs caused by its late call-off or subsequent changes to the call-off with respect to time or quantity; our calculation is determinative of these costs.

Confidentiality

9. In the absence of a separate agreement concerning confidentiality, the following provisions shall apply: Each contractual partner shall make use of all documents (including samples, models and data) and information received as a result of the business relationship solely for purposes pursued in common by both parties and shall, with respect to third parties, maintain the confidentiality of these with the same care it would exercise with respect to its own documents and information, should the other contractual partner designate these as confidential or have a clear interest in their confidentiality. This obligation shall commence upon the initial receipt of the documents or information and shall terminate 36 months following the end of the business relationship.
10. The obligation shall not apply to documents and information that are generally known or that were already known to the contractual partner on a non-confidential basis upon its receipt of these or that were subsequently divulged by a third party entitled to disclose these or which are developed by the receiving contractual partner without making use of documents or information of the other contractual partner which are to be kept secret.

Drawings and descriptions

11. Should one contractual partner make available to the other partner drawings or technical documents concerning the goods to be delivered or their manufacture, these shall remain the property of the contractual partner making them available.

Samples and production resources

12. If manufacturing costs for samples and production resources (tools, molds, patterns, etc.) were previously agreed to, these shall be invoiced separately from the goods to be delivered unless a different agreement is reached. This shall also apply to production resources having to be replaced due to wear and tear.
13. The costs of maintenance and proper storage as well as the risk of damage or destruction of the production resources shall be borne by us for the duration of the agreed-upon service life of the resources.
14. During the manufacturing period of the samples or production resources, should the Partner suspend or terminate the cooperative relationship, the Partner shall bear all manufacturing costs accruing up to that point.
15. The production resources shall remain in our possession at least until the termination of the supply contract even if the Partner has paid for these. From that point forward, the Partner is entitled to demand surrender of the production resources if no amicable arrangement has been made during the manufacturing period and the Partner is fully compliant with its contractual obligations. Upon receipt of production resources with proportional tool costs, transfer shall occur only following payment of the remaining amount. Where the Partner reimburses the costs of acquiring or manufacturing production resources in accordance with the agreement, such resources remain our property until full payment is received.
16. We will store the production resources at our own cost for two years following the final delivery to our Partner. We will subsequently advise our Partner in writing to comment within 6 weeks concerning further use. Our storage obligation shall terminate if there has been no such comment made or no new order placed within these 6 weeks.
17. Production resources owned by the Partner may be used by us solely with the Partner's prior written consent for deliveries to third parties.

Prices

18. Our prices are quoted in euros exclusive of value-added tax, packaging, freight, postage and insurance.

Terms and conditions of payment

19. All invoices are due within 30 days following delivery and the invoicing date. Tool costs and wage labor are immediately payable net.
20. If it is undisputed that a portion of our delivered goods are defective, our Partner is nonetheless obligated to make payment for the non-defective portion.
21. In the event of late payment, we are entitled to charge interest on arrears in the amount of 8 percentage points above the base interest rate. The assertion of a further claim is not excluded.
22. We are further entitled in the event of late payment, following written notification to the Partner, to suspend fulfillment of our obligations until receipt of such payment.
23. Checks will be accepted only by arrangement and only as conditional payment subject to their discountability. Discount charges are calculated from the due date of the invoiced amount. Bills of exchange are not accepted as a means of payment.
24. Should it become apparent following conclusion of the contract that our payment claim is jeopardized by the Partner's inability to pay, we are entitled to refuse the service and set a reasonable period in which the Partner must either make stepwise payments against delivery or provide security. If the Partner refuses to comply or does not comply in due time, we are entitled to withdraw from the contract and to claim compensation.

Delivery

25. Unless a different agreement has been reached, our deliveries are "ex works". Relevant for compliance with the delivery date or the delivery deadline is the Partner's receipt of notification that the consignment is ready for shipping or collection.
26. Delivery terms begin with the transmission of the order confirmation and can be reasonably extended under the conditions of Clause 55.
27. Partial deliveries are permitted to the extent that these are reasonable for the Partner. These shall be invoiced separately.
28. Within a tolerance of 10 percent of the overall contractual quantity, higher or lower deliveries resulting from production conditions are allowable. The extent of these shall affect the corresponding total price.

Shipment and transfer of risk

29. Goods declared as ready for shipment shall be immediately accepted by the Partner. Failing this, we are entitled at our own discretion either to effect shipment of the goods or to store these at the Partner's cost and risk.
30. Unless a special agreement has been reached, we shall select the transport means and route.
31. The risk shall transfer to the Partner upon handover to the rail company, freight forwarder or shipper or upon the commencement of storage but no later than upon departure from the premises even in cases where we have assumed delivery.

Late delivery

32. Should we be in a position to anticipate that the goods cannot be delivered within the delivery period, we will immediately make the Partner aware of this situation, sharing the reasons behind it, and shall specify the anticipated delivery date to the extent that this is possible.
33. We shall only enter into default following expiration of a reasonable written grace period even in situations where a warning either suffices or is not required under the law. Should the delivery be delayed as a result of either the conditions described in Clause 55 or the Partner's action or omission, a reasonable extension of the delivery period in view of the circumstances shall be granted.
34. The Partner is only entitled to withdraw from the contract if the failure to comply with the terms of delivery is attributable to us and the Partner's reasonable grace period has been unsuccessful.

Retention of title

35. We retain the title to the delivered goods until the fulfillment of all claims arising from the business relationship with the Partner.
36. The Partner is entitled to sell these goods in the regular course of business, provided it meets its obligations arising from the business relationship with us in good time. It may nonetheless neither pledge nor transfer by way of security the goods subject to retention of title. It is obligated to ensure that our rights are intact in any credited further sale of the goods subject to retention of title.
37. In the case of the Partner's violation of any obligation, especially late payment, we are entitled to withdraw from the contract and to repossess the goods following the unsuccessful expiration of a reasonable deadline presented to the Partner; the provisions of the law regarding the dispensability of setting a deadline remain unaffected. We are also entitled to withdraw from the contract if an application to open insolvency proceedings on the Partner's assets has been filed. Following withdrawal, the Partner is obligated to surrender the resources.
38. As security, the Partner shall immediately assign us all claims and rights arising from the sale or any Partner-authorized lease of goods to which we hold the title. We hereby accept the assignment.
39. The Partner's processing or transformation of the goods subject to retention of title is always carried out on our behalf. Where goods subject to retention of title are processed together with other objects not belonging to us or are inseparably mixed with these, we shall acquire co-ownership of the new object in proportion to the value of the goods' invoice to the other processed or mixed objects at the point in time when these were or are processed or mixed.
Should our goods be mingled with other movable objects into a single resulting item or inseparably mixed with these and the other object is seen as the main object, the Partner shall grant us proportional co-ownership to the extent that it owns the main object. The Partner shall store the property or joint property on our behalf. For the rest, the same shall apply to the object resulting from the processing, combination or mixing as for the goods subject to retention of title.
40. The Partner must promptly inform us concerning third-party enforcement measures aimed at the goods subject to retention of title, claims assigned to us or any other securities, transferring the documents needed for any intervention. This shall also apply to impairments of any other type.
41. Should the value of the existing securities exceed the secured overall claims by more than 10 percent, we are obligated upon the Partner's request to release securities in this amount, using our discretion concerning which securities to release.

Claims concerning defects

42. The quality of the goods shall be exclusively determined in accordance with the agreed-upon technical delivery specifications. In the event that our delivery is required to be in accordance with our Partner's drawings, specifications, samples, etc., the Partner shall assume the risk of suitability for the intended use. The relevant date for the contractual condition of the goods is the time when the risk is transferred. Without separate agreement, we deliver articles in bulk that are not subject to 100% inspection.
43. We are not liable for material defects resulting from inappropriate or improper use, incorrect assembly or commissioning by the Partner or third parties, normal wear and tear, improper or negligent handling, nor for the consequences of inappropriate or unapproved changes or repairs made by the Partner or third parties. The same shall apply to defects that have only an insignificant effect on the value or suitability of the goods.
44. Claims concerning defects shall expire one year after the transfer of risk.
45. If acceptance of the goods or initial sample inspection has been agreed to, this shall exclude objections to defects which the Partner should have been able to identify through careful acceptance or initial sample inspection. The Partner's obligations under Sec. 377 Commercial Code (HGB) remain unaffected.

46. We shall be granted the opportunity to assess the defect that was the subject of the objection. Rejected goods must be immediately returned to us if we so request. We will arrange transport. We assume the transport costs if the objection to the defect is justified; the Partner shall otherwise reimburse us for these costs unless it was unable to discern with reasonable effort that the objection to the defect is unjustified.
47. In the event of timely justified objection to defect, we may use our discretion to improve the rejected good or to deliver a non-defective replacement. The Partner's claims for compensation shall exist only to the extent that these are described in Clauses 50 through 54.
48. Should we fail to meet these obligations within a reasonable period of time, the Partner may set a written grace period for us within which we are required to meet our obligations. Following unsuccessful expiration of this period, the Partner is entitled to demand a price reduction, withdraw from the contract or perform the necessary replacement itself or have this performed by a third party at our cost and risk.
49. We will address claims concerning defects exclusively at the original place of delivery or at our business headquarters.

Other claims, liability

50. Unless otherwise stipulated below, other and further-reaching claims by the Partner against us shall be excluded. This shall particularly apply to claims asserted on the basis of breach of obligations arising from the contractual obligation or unauthorized actions. We are therefore not liable for damage that did not occur to the delivered goods themselves. Above all, we are not liable for loss of revenue, damage from business interruption or other financial losses by the Partner.
51. The existing restrictions of liability shall not apply in the event of malice, gross negligence by our legal representatives or company executives or fraudulent failure to disclose a defect or culpable violation of significant contractual obligations. In the event of culpable violation of significant contractual obligations, our liability – except in cases of malice or gross negligence by our legal representatives or company executives – shall extend only to reasonable, foreseeable typical contract damage. Moreover, the limitation of liability does not apply in cases where according to the Produkthaftungsgesetz (German Product Liability Act) there is a liability for personal injury or damage to privately used objects in case of defects in the delivered goods. Nor shall it apply in the event of loss of life or injury to limb or health, nor to the omission of assured qualities if and to the extent that said assurance would have resulted in protecting the Partner against damage not caused by the delivered goods themselves.
52. The Partner's legal claims to recourse against us exist only to the extent that the Partner has not reached any agreements with its customer that exceed statutory claims concerning defects. Cost reimbursement is excluded to the extent that expenses may have increased due to our delivery of the goods to a different destination unless this corresponds to the intended use of the goods.
53. To the extent that our liability is excluded or restricted, this shall also apply to personal liability against our employees, workers, personnel, legal representatives and vicarious agents.
54. Legal regulations governing the burden of proof remain unaffected by this.

Force majeure

55. Force majeure, labor disputes, unrest, official measures, failure by our suppliers to make deliveries and other unforeseeable, unavoidable and severe events shall release the contractual parties for the duration of the disturbance and to the extent that these affect their obligation to perform. This shall also apply where such events occur at a point in time in which the affected contractual partner is in arrears unless its default has resulted from malice or gross negligence. The contractual partners are obligated to provide the necessary information without undue delay within the bounds of reason and to adjust their obligations to the changed circumstances in good faith.

Place of Performance, Jurisdiction and Applicable Law

56. Unless a different agreement has been reached, our business headquarters is the place of fulfillment.
57. For all legal disputes including those in the context of an exchange and check process, our business headquarters is the place of jurisdiction. We are also entitled to file suit at the Partner's business headquarters.
58. The law of the Federal Republic of Germany shall apply exclusively to this contractual relationship. Application of the United Nations Convention of April 11, 1980 on Contracts for the International Sale of Goods (CISG – the "Vienna Convention") is excluded.