

Hermes Technologie GmbH & Co.KG:
Terms and conditions for business transactions with entrepreneurs

§1. Personal scope

These terms and conditions apply solely to business transactions with entrepreneurs. Entrepreneurs are persons or legal entities that in concluding a legal transaction are carrying out their commercial or independent professional occupation.

§2. Applicable law

(1) The mandatory applicable law of the European Union and that of the Federal Republic of Germany always have priority.

(2) Furthermore, for all disputes that may arise out of contracts concluded with us as a matter of non-mandatory law any individual agreements, any special terms and conditions relating to individual orders, then these general terms and conditions and finally the non-mandatory law applicable in the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) are deemed to have priority.

§3. Substantive and temporal scope

(1) Once these general terms and conditions have been admitted the first time, they shall apply to all present and future contractual arrangements even if they are not expressly admitted again.

(2) They apply equally to the purchase of goods and to the delivery of works and services.

(3) They further apply to the purchase of goods and the use of works and services by us, in so far as the following provisions do not relate explicitly to the sale of our goods or the delivery of our works or services.

§4. Contract partners' differing terms and conditions

In the context of an individual agreement contract partners' terms and conditions that differ from ours shall not apply without our express consent.

§5. Pre-contract services

Delivery by us of samples and submission of cost estimates shall be suitably remunerated. Passing on our samples or cost estimates to third parties is forbidden.

§6. Conclusion of contract

(1) Descriptions of our goods or services in any form of advertising even in conjunction with information on prices do not constitute an offer directed towards the conclusion of a contract, but an invitation to our customers to make an offer to purchase. By ordering goods, services or work the customer is making a legally binding offer. The customer is bound to this offer for 5 working days. A contract is deemed concluded by our acceptance of the customer's offer, normally by a written confirmation of order.

§7. Quality agreement/ Guarantee

(1) Agreements concerning the quality of our goods must be drawn up explicitly on a case-by-case basis. Quality agreements cannot be based on product advertisements for example in catalogues and prospectuses and visual or textual illustrations on our website.

(2) The same applies to any agreement concerning guarantees.

§8. Quantity deviations

Quantity deviations on our deliveries of up to 10% are due to technical reasons and meet the conditions of the contract.

§9. Commercial letter of confirmation

If we do not reply to a commercial letter of confirmation from the contracting or negotiating partner, no contract or change to an agreed contract shall become effective. Changes to a contract that has been concluded always require our explicit agreement.

§10. Prices

(1) In the absence of an individual agreement on price, our price lists valid when the contract is concluded shall pertain, provided they were notified to the contract partner before or at the point of conclusion of contract.

(2) In the absence of a different agreement, prices shall be in euros ex-works plus packaging, statutory sales tax, insurance costs and in the case of export deliveries possible customs duty, other public fees arising out of delivery as well as costs associated with the use of transport infrastructure (e.g. road tolls).

(3) Granting of cash discount requires express agreement.

§11. Price changes

If the customer wants us to effect delivery more than 4 months after conclusion of contract, we are entitled to increase prices in the same proportion as the price index for producer prices of the Statistisches Bundesamt für gewerbliche Produkte (Federal office for industrial products) has risen.

§12. Pre-payment or security deposit in the case of noticeable payment difficulties

Where there are noticeable payment difficulties as evidenced by late payment, we are entitled to make further deliveries to the contracting partner only against pre-payment or a security deposit.

§13. Delivery times

(1) Deadlines binding on us require explicit agreement.

(2) A delivery time to which we have agreed is only binding on us if the contract partner has also previously fulfilled in a timely manner the obligations that were agreed with him in so far as these were a pre-condition for the timely fulfilment of our service obligations.

(3) Where shipping has been agreed, delivery dates and deadlines refer to the time of transfer to the forwarder, haulier or other third party appointed to carry the goods.

§14. Period of acceptance in case of call-off purchase orders and consignment stock transactions

If, for a call-off purchase order, no time-limit has been specified, our goods must be retrieved within six months of conclusion of contract at the latest. The same applies to consignment stock where the period begins when the goods enter storage.

§15. Part-deliveries

We are entitled to make part-deliveries, if the customer finds that part-delivery is suitable for the intended use of the goods stipulated in the contract, if delivery of the remaining

goods on order is assured and if our doing so does not occasion the customer any material additional expenditure or further costs.

§16. Self-supply reservation

(1) If we have concluded a congruent covering transaction in good time and it is impossible for us to supply as a result of a failure to deliver on the part of our supplier that we could not foresee, our contractual obligation ceases.

(2) In that case we are not liable for compensation. We shall promptly refund advance payments made for services that have not been fulfilled.

§17. Transfer of risk

Risk is transferred when we have passed the delivery items to the forwarder, haulier or other third party appointed to carry the goods, as soon as loading has been completed.

§18. Storage costs after transfer of risk

The contract partner shall bear all warehousing costs incurred after risk has been transferred.

§19. Obligation to inspect and to lodge a complaint

(1) The obligation to inspect goods and notify of any defects under § 377 of the HGB (German Commercial Code) apply also to entrepreneurs who are not merchants.

(2) The contract partner must inspect goods promptly. If a defect is discovered, the contract partner must notify us promptly. If he fails to do so, the goods are deemed to have been approved unless the defect was not detectable.

(3) Notwithstanding HGB § 377, we must be notified of defects in writing or they cannot be considered. Also, notwithstanding HGB §377, the timeliness of the notification shall depend on the time when we receive it.

(4) Possible instructions and recommendations given by us do not absolve the contract partner from the obligation to ensure that our products are appropriate for their respective purposes.

In every case it is the duty of those using our products to know and to observe the relevant technical rules and regulations.

§20. Exclusion of off-set

Offsetting with counterclaims against our own claims is only permissible if the latter are uncontested, legally established or ready for judgment at the time of declaration of off-set.

§21. Retention of title

(1) We retain title to the goods until settlement in full of all receivables from the current business relationship.

(2) The customer is entitled to resell the goods in the proper course of business. However, he here and now assigns to us all claims resulting from the resale to third parties up to the invoiced amount (including VAT). We hereby accept such assignment. The entrepreneur shall be entitled to collect receivables assigned to us for our account until we cancel or suspend his payments to us, or until filing of a petition to open bankruptcy proceedings.

(3) In the event of late payment by the entrepreneur as well as cessation of payment and/or business and where there is a petition for the opening of insolvency proceedings, we can demand that the contract partner informs us about the receivables assigned and details of

the debtors and for his part provides us with all particulars required for collection, hands over all relevant documents and informs the (third party) debtor of the assignment. Our right to disclose the assignment in such cases and to collect the receivables ourselves remains unaffected. Claims which the entrepreneur has assigned to us in the aforementioned context cannot be assigned to third parties. The same applies to pledges. Assignments by way of security are prohibited.

(4) The contracting partner is obliged to inform us immediately when a third party has access to goods that are our sole property or co-property, for instance in the event of attachment. The same applies if there is possible damage to or destruction of goods. The contracting partner must also report to us any change of owner of the goods and any change in his place of business.

(5) If the contracting partner culpably infringes the obligations set out in para.4, we are entitled to demand surrender of the goods. This applies even if we do not at the same time withdraw from the contract. Repossession on our part does not constitute withdrawal from the contract with respect to the entrepreneur unless we had expressly stated that. In the event of cessation of business or payment, and also of insolvency proceedings (subject to the rights of an insolvency administrator), subsections 1 and 2 shall apply accordingly.

(6) After repossession of the goods we are entitled to dispose of them. The revenue from their disposal, less reasonable disposal costs, will be deducted from the liabilities of the contracting partner.

(7) We commit ourselves to release, at the contract partner's request, the securities we are entitled to, to the extent that their realisable value exceeds the claims to be secured by more than 10%. The choice of which securities to return shall be left to us.

§22. Claims for defects and liability

(1) In accordance with statutory regulations we assume general unlimited liability for damages arising from injury to life, body or health under our guarantee for the quality of the products and in the event of damage in accordance with German product liability law.

(2) We further assume unlimited liability in accordance with statutory regulations for all cases of intentional acts or gross negligence or deliberate failure to disclose a deficiency.

(3) Where sub-sections 1 or 2 do not apply but where there is a breach of contractual obligations and minor negligence our liability is limited to the foreseeable losses typical of this type of contract. Material contractual obligations are obligations whose breach would put the purpose of the contract at risk, as well as obligations on whose fulfilment the proper implementation of the contract depends and on whose observance the contracting partner may regularly rely.

(4) Where sub-sections 1 or 2 do not apply but where there is a breach of non-material contractual obligations we accept no liability for a slightly negligent breach of duty.

(5) Where sub-sections 1 or 2 do not apply but where the goods delivered by us are not intended for construction work and have caused its defectiveness, the limitation period for material defects claims under warranty is one year.

§23. Industrial property rights

(1) Each of the partners to the contract must inform the other partner promptly in writing, if a third party claims that implementing the contract infringes his property rights.

(2) If we produce goods on the instruction of the contracting partner and a third party makes a claim of infringement of property rights against us, the contract partner shall indemnify us against all financial claims that arise.

(3) Rights based on a technical invention made by our company when carrying out a commission from the contract partner always remain our property. This applies particularly to the right to file an application for a patent.

§24. Contract language

(1) The contract language is German.

(2) This applies even if communication has taken place in another language.

§25. Jurisdiction and place of fulfilment

If the client is a businessman, the place of jurisdiction for any disputes concerning contracts concluded with us is our company's registered office.