

General Terms of Sale and Supply

1. General

- 1.1 The following General Terms of Sale and Supply hereinafter referred to as "GTSS") apply to all current and future supplies and other services including any consultancy services and information of HellermannTyton GmbH (hereinafter referred to as "the Seller"). This will also apply even if the Seller does not refer the Customer to them again in subsequent transactions. The Customer's terms and conditions shall not form part of a contract even if the Seller does not expressly raise objections. Instead, these GTSS shall apply exclusively.
- 1.2 These General Terms of Sales shall apply only to companies, legal persons under private law or special funds under public law within the meaning of Section 310 paragraph 1 German Civil Code (BGB).
- 1.3 Quotations by the Seller are made without obligation. A duty to supply will not exist until the Seller issues a written confirmation of order.
- 1.4 All agreements that are made between the Seller and the Customer shall be put in writing in the contract.
- 1.5 In case of doubt, Incoterms 2010 shall prevail for the interpretation of trade terms.
- 1.6 The Customer may only assign to third parties claims against the Seller arising from this contract with the prior express consent of the Seller.
- 1.7 Where individual provisions of these GTSS are or become ineffective, this shall not affect the validity of the rest of the provisions. The invalid provision shall be replaced by such existing provision as is common practice in the trade for this event and, where there is no permissible provision that is common practice in the trade, the corresponding statutory provision.
- 1.8 We are not willing and not obliged to participate on the procedures on settlement of disputes in front of a consumer arbitration board.

2. Prices and payment conditions

- 2.1 Unless otherwise agreed in writing, prices quoted are ex works or ex Seller's warehouse exclusive of ancillary costs such as freight, customs clearance, packaging and insurance. Turnover Tax at the current statutory rate will apply. For minimum orders under 300 Euros (net less Turnover Tax) the Seller will charge a minimum order surcharge of 50 Euros (net) per delivery.
- 2.2 All invoices – subject to any divergent written agreement in individual cases – are payable within thirty days of date of invoice.
- 2.3 Payments must be made free of charge, in the agreed currency and with provision of the account number, exclusively to the Seller's accounts shown in the invoice. They must be made on the date due free of charge and without any deduction. Completion for payments of all types is the date on which the Seller has unrestricted access to the payment.
- 2.4 The Seller is not obliged to accept bills of exchange or cheques. If permitted they will only be accepted subject to possible discounting against payment of all charges. The Seller is not obliged to submit bills of exchange or cheques on time or to lodge protests.
- 2.5 In the event of payment default by the Customer, default interest of 9 (nine) percentage points p.a. over the current basic interest rate according to § 247 BGB [German Civil Code] shall be chargeable. The claiming of further loss caused by default shall remain reserved.
- 2.6 Rights of set-off or retention shall be available to the Customer only if its counterclaims are legally established, unchallenged or recognised by the Seller. This restriction shall not apply to the right of retention pursuant to § 320 BGB.
- 2.7 In the event of a petition to commence insolvency proceedings against the Customer's assets, if the Customer has initiated out-of-court proceedings to settle the debt or has stopped payments, or if the Seller is aware of other circumstances which substantially reduce the creditworthiness of the Customer and appear to threaten fulfilment by the Customer of the counter-performance, the Seller is entitled to seek security by advance payment or bank guarantee (at the Customer's choice) for outstanding supplies by fixing a period of at least one week and to delay supply until the security is made. The Seller is further entitled after the fruitless expiry of a reasonable period of grace to withdraw from this contract or to demand compensation for non-fulfilment of contract. In this case the Seller may also withdraw the authority to resell together with the authorisation to collect under 5.3 and 5.6 and the right to handle and process, combine and mix goods already supplied under 5.2 and 5.3 and also to demand the return of the goods supplied.

3. Supply and acceptance

- 3.1 The Seller's duty to supply is conditional on it receiving delivery that is complete, correct and on time in as far as the Seller obtains the goods as complete or as components of the goods from a subcontractor. This shall not apply if the Seller is responsible for non-delivery or delay. Failure to supply for which the Seller is not responsible shall entitle the Seller to withdraw from the Contract.
- 3.2 Unless otherwise agreed, the Seller delivers FCA Tornesch. The customer shall bear the risk and costs of shipment of the goods as well as the costs of transport insurance. This shall also apply if shipment is carried out by a carrier chosen by the Seller. The Seller shall load the goods on the vehicle of the transporter / carrier on his work site. From loading, the risk passes to the customer.
- 3.3 The risk passes to the Customer directly on leaving the Seller's premises – even in the case of carriage-paid deliveries.
- 3.4 Should the goods be ready to be shipped, and dispatch or assignment of space and/or acceptance is delayed on grounds beyond the Seller's control, the risk shall pass to the Customer upon receipt by the Customer of notification of readiness to ship.
- 3.5 The customer may not return excesses or shortfalls in supply of a reasonable size and must pay for such deliveries immediately upon receipt. Objection to an excess or shortfall in supply shall not entitle the Customer to refuse further shipments under the same or a different contract. The Seller reserves the right to oversupply or undersupply by 10% of the quantity ordered in the case of special orders. The actual quantity supplied will be invoiced in each case.
- 3.6 The Customer will also be in default of acceptance when the goods are ready for shipment if, in the case of delivery EXW or an agreed obligation to collect by the Seller, the delivery is merely offered in writing by the Seller or the Customer has declared that it will not accept the delivery.
- 3.7 The Customer must promptly accept goods notified as ready for shipment under the terms of the contract. Otherwise the Seller is entitled either to ship the goods at the risk and cost of the Customer or place the goods in store and to invoice after a grace period of one week has elapsed, as the Seller chooses. The same will apply if the goods have not been retrieved in full or in part within the period agreed for retrieval.

- 3.8 If the Customer falls more than one month behind in fulfilling the obligations resulting from the above arrangements, the Seller can, notwithstanding rights that extend further, demand from the Customer a contractual penalty of 5 (five) percent of the invoice value in place of fulfilment of contract, and sell the goods stored elsewhere. The contractual penalty must be calculated against the compensation the Customer would have to pay if the situation arose. The Customer must repay any quantity discount granted on earlier deliveries.

- 3.9 The Customer has to provide certificates of delivery. To this end, the Customer has to prove that goods have been delivered by sending the relevant original document to the Seller within four weeks of collection/shipment of the goods. If the document is not received by the Seller within this period, the Seller shall be entitled to invoice the Customer for the turnover tax applicable to the net value of goods at the moment in time.

4. Delivery periods and deadlines

- 4.1 Observance of delivery periods and dates is subject to the timely fulfilment of contractual obligations on the part of the Customer. Delivery periods start with the date of the Seller's confirmation of order but not before clarification of all details for execution of the order and receipt of all materials required for execution of the order and of other details to be supplied by the Customer and the receipt of any payment agreed. The delivery period will also be considered to have been met if the goods leave the works or warehouse at the time agreed or notification of readiness to ship has been sent to the Customer but the goods have not been shipped on time for reasons for which the Seller is not responsible. The above arrangements shall apply to the delivery dates correspondingly.
- 4.2 Unforeseeable events beyond the control of the Seller such as war, risk of war, unrest, the use of violence by third parties against persons or property, intervention involving sovereignty including currency and commercial policy measures, employment disputes at the Seller's company or its suppliers or shipping companies, interruptions to the transport links provided, fire, shortages of raw materials, shortage of energy and other non-fault operating problems at the Seller's company or its suppliers will extend fixed delivery periods and dates by the duration of the obstruction. This shall also apply to the extent that the Seller is already in default of delivery or to the extent that the foregoing obstructions to delivery were already present before conclusion of the contract but the Seller was not aware of them. The Seller shall advise the Customer immediately of obstructions of the type mentioned above.
- 4.3 If delivery delays caused by the obstructions last longer than two months, both parties shall be entitled to withdraw from the contract. The Customer may only withdraw if the Seller, at the former's request, fails to state within a week whether it wishes to withdraw or make delivery within a reasonable period. The same right to withdraw shall arise independently of the above period, if completion of the contract has become unreasonable for one of the parties in view of the delay that has occurred.

5. Reservation of ownership

- 5.1 All goods delivered shall remain the property of the Seller (reserved goods) until complete and final fulfilment of all claims arising from the business connection for whatever legal reason. The same shall also apply in respect of any future or conditional claims arising from contracts entered into concurrently or later within the context of the business connection. For current invoices, the reserved property shall serve as collateral for the receivables of the Seller from a current account relationship.
- 5.2 Treatment and processing of reserved goods shall be performed for the Seller as manufacturer within the meaning of Section 950 BGB, without placing any obligation on the Seller. In the event of treatment/processing, linking or mixing of the reserved goods by the Customer with other goods not belonging to the Seller, the Seller shall have joint ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used. If ownership by the Seller of the reserved goods expires by linking, mixing or treatment/processing of the reserved goods the Customer will transfer the title it holds in the new part or item to the extent of the invoice value of the reserved goods and will hold it for the Seller free-of-charge with the due care of a prudent businessman. If the Seller acquires ownership or joint ownership of the new item, it shall transfer its ownership or joint ownership of the new item to the Customer under the condition of precedent that the full purchase price will be paid.
- 5.3 The Customer may only sell the reserved goods in the normal course of its business and only on its normal terms of business provided that concurrently the claims under the resale pass to the Seller as per 5.4 to 5.6. The Customer is not entitled to any other dispositions of the reserved goods, in particular to a pledge or transfer by way of security. The above authorisation will expire in the event of the Customer's default of payment. The authorisation may also be cancelled by the Seller in the cases listed in No. 2.6, by a breach of the foregoing obligations and in the case of non-payment of an invoice when due. In such cases, the Customer is also prohibited from treating and processing the reserved goods and linking or mixing them with other goods.
- 5.4 The demands and other claims including the Customer's collateral rights arising from the resale of the reserved goods are now, i.e. with the agreement of these GTSS, assigned to the Seller, which hereby accepts the assignment. They shall serve to secure the Seller's claims to the same extent as the reserved goods. If the reserved goods are sold by the Customer with other goods not supplied by the Seller, the claim arising from the resale shall be assigned in the ratio of the invoice value of the reserved goods to the invoice value of the other goods. When goods are sold to which the Seller has joint title under 5.2, the Seller shall be assigned a part corresponding to its share under the joint title.
- 5.5 The Customer is entitled to collect receivables from the resale. The Customer shall notify the Seller immediately of any detriment to its rights through third parties by delivering any documents required for intervention. Any intervention costs incurred shall be borne by the Customer.
- 5.6 The Seller may, if the Customer is more than two weeks in arrears with its payment obligations to the Seller, demand the return of the reserved goods and collect the demands and other claims assigned to the Seller. Furthermore, the Seller may use the reserved goods to satisfy its claims as soon as the Seller has withdrawn from the contract or the conditions for a claim for compensation on the grounds of non-fulfilment have arisen.
- 5.7 If the collectible value of the existing securities exceeds the secured claims by a total of 10 (ten) percent, the Seller, at the Customer's request, will undertake to release securities to extent selected by the Seller.

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6. Nature of the goods and warranty

- 6.1** To the extent that the Seller places test pieces or samples at the disposal of the Customer or receives them from the Customer, or quotes analyses, DIN provisions, other domestic or foreign quality standards or gives other details on the quality of the goods, these shall merely serve to specify in more detail the services to be provided by the Seller. No guarantee of quality is associated with these details.
- 6.2** In particular, the Seller does not undertake to assess whether the goods meet or are suitable for the specific purpose intended by the Customer. Contrary to the rule above, in case of new parts to be developed for the Customer in accordance with the Customer's requests, an individual agreement relating to the specific purpose is required.
- 6.3** The Customer shall inspect the goods delivered without delay with the care it considers reasonable and (if necessary by way of a test process) check the quality of the goods supplied and raise a claim for any identifiable defects without delay but no later than 7 (seven) days of receipt of the goods in writing (as far as possible and reasonable, enclosing samples) quoting the invoice, manufacturing and shipping numbers. Hidden defects must be similarly notified immediately when they are detected during the normal course of business. Otherwise the goods will be deemed approved without reservation. Any further obligations of the Customer under Section 377 HGB [German Commercial Code] shall not be affected.
- 6.4** No claims for defects will apply if the Customer fails to grant third party rights of recourse, processes defective goods without prior quality control or supplies goods claimed as defective to third parties without giving the Seller the opportunity to check the defects constituting the claim. The same shall apply to inappropriate or improper use of the goods, faulty assembly or commissioning by the Customer or third parties, improper modifications to the goods supplied, natural wear and tear and faulty or careless handling.
- 6.5** If claims for defects or complaints are justified, the Seller undertakes at its choice either to repair or remedy the defect or supply a replacement. Sorting measures by the Customer shall be agreed in writing with Seller prior to their commencement. In the event of repair, the Customer shall pay any extra costs arising from the goods supplied being taken to a place other than the place of performance.
- 6.6** If the repair chosen by the Seller should repeatedly be unsuccessful; if it should be unreasonable to expect such of the Customer; if it should be refused by the Seller or be delayed beyond a reasonable period on grounds within the Seller's control, the Customer may – notwithstanding any claims for damages – withdraw from the contract or reduce the purchase price.
- 6.7** Warranty claims for defective goods shall expire within one year after passing of the risk. This shall not apply where the law prescribes longer time limits pursuant to § 438, sub-section 1, No. 2 BGB (Building Works and Items for Building Works), § 479 sub-section 1 BGB (Recourse Claim) and § 634 a sub-section 1 No. 2 BGB (Structural Defects) or where the Seller is liable due to wilful intent.
- 6.8** Furthermore, any claims for damages are limited according to No. (7).

7. Limitation of claims for damages and reimbursement of expenses

- 7.1** The Customer's claims for damages and reimbursement of expenses against the Seller or the Seller's employees, representatives and vicarious agents, on whatever legal grounds, are precluded, unless the aforementioned are held liable for wilful intent, gross negligence, the acceptance of a guarantee given, the acceptance of a risk of sourcing, harm to life, limb and health or fundamental contractual duties. This shall also apply to any claims for damages arising from incorrect supplier declarations. This ruling does not shift the burden of proof to the detriment of the Customer.
- 7.2** The Customer's claims for damages and reimbursement of expenses against the Seller or the Seller's employees, representatives and vicarious agents due to the infringement of essential contractual obligations by slight negligence are limited to the foreseeable damage typical of the contract. Essential contractual obligations will be deemed to mean such obligations as those which, when violated, threaten the purpose of the contract, e.g. in cases of substantial delay, considerable infringement of cooperation, notification or confidentiality obligations or in the case of considerable violation of obligations that may determine the success or failure of the contract. This above provision does not in any way shift the burden of proof to the detriment of the Customer.
- 7.3** Apart from cases involving wilful intent, gross negligence or injury to life, limb and health, when determining the amount of damages to be paid by the Seller due consideration adequately in favour of the Seller shall be given as to the economic capabilities of the Seller as well as to the nature, scope and duration of the business relations between the contractual partners as well as to a particularly unfavourable situation of installation of the part supplied. Especially damages, cost and expenditures which shall be paid by the Seller must be in reasonable ratio to the value of the part supplied.
- 7.4** Contractual claims for damages and reimbursement of expenses against the Seller or its employees, representatives and vicarious agents, on whatever legal grounds, shall expire after one year at the latest. The special regulation for warranty claims for defective goods in No. (6.7) is not affected.
- 7.5** Where the Seller is mandatorily liable under the Product Liability Act of 15 December 1989 for damage to property or personal injury caused by a product's defects, the provisions of the Product Liability Act shall prevail. The foregoing rules shall still apply to an internal settlement under § 5 sentence 2 of the Product Liability Act.

8. Intellectual property rights

The Seller reserves the copyright to drawings and other design materials. Such materials must not be made accessible to third parties. Where the Seller manufactures goods to the Customer's drawings, samples or other details and infringes third-party intellectual property rights thereby, the Customer shall indemnify the Seller against all claims associated with such infringements.

9. Place of performance, jurisdiction and applicable law

- 9.1** Tornesch shall be the place of performance for delivery and payment.
- 9.2** Itzehoe shall be the forum for any legal disputes arising from or about the existence and validity of this contract including those arising from cheques or bills of exchange – insofar as the Customer is a trader or a special fund under public law. However, the Seller may instigate legal proceedings against the Seller at any other jurisdiction that is given under the Code of Civil Procedure.
- 9.3** The contractual relationship shall be governed by the law of the Federal Republic of Germany. The provisions of the UN Treaty on International Trade (CISG) are excluded.

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