

General Terms and Conditions of HEP GmbH

General terms

The following conditions only apply to business people and corporate bodies or special funds under public law.

Regardless of the order value, deliveries are carried out solely according to the following delivery conditions.

The customer's purchasing or other conditions shall only apply if they have been confirmed by us in writing.

If the customer is a wholesaler, he shall be obliged to deliver only to the retail trade. If the customer is a retailer he shall be obliged to sell only to the final consumer.

These conditions shall also apply to future transactions in the case of permanent business relations between our customers and us.

Delivery

Our offers are subject to change and non-binding. A contract is deemed concluded if and when we confirm the purchase order in writing or by telephone.

In case a specific delivery time is agreed upon, the delivery period shall begin upon receipt of all documents necessary for the completion of the order and the payment, if so agreed (advance payment). Moreover, delivery is carried out within a period of approx. 1 month. With the notification that the goods are ready for shipment and the subsequent, immediate despatch, the delivery period is considered to be complied with, if shipment is delayed or impossible without fault on our behalf.

Adequate partial deliveries as well as reasonable deviations from the ordered quantities of up to about 10 % are permissible.

If an agreed delivery period is not complied with, the buyer shall be entitled to demand for each completed week of delay a lump sum compensation of 3% of the value of that part of the complete delivery which has not been delivered according to contract for each completed week of delay. This compensation due to delay shall not exceed 15% of aforesaid delivery value. Any further damages of delay due to gross negligence or wilful intent may be claimed by the customer. In addition, we shall only be liable for defaults that put essential contract obligations at risk.

For call orders without agreement on duration, batch sizes and acceptance dates we can request a binding specification thereof at the latest three months after conclusion of the contract. If the customer does not comply with this request within three weeks, we shall be entitled to set an extension of two weeks. After the expiry thereof we shall be entitled to withdraw from the contract and/or to claim damages.

Force majeure shall entitle us to postpone delivery by the duration of the obstruction and an additional reasonable starting time of approx. 3 weeks or to withdraw from the contract completely or partially. As equivalent to force majeure are treated any operating breakdowns due to strike, lockout, lack of raw material or unforeseeable delays in transport through our sub-suppliers that make punctual delivery impossible despite reasonable endeavours. The proof thereof has to be furnished by us. Our right of withdrawal is excluded in cases of short-term disturbances merely causing a delay in performance and other performance obstacles that we are responsible for.

The customer can prompt us to declare within two weeks whether we are going to withdraw from contract or deliver within a reasonable extension of time. If we do not submit any declaration, the customer may withdraw from the contract in whole or in part. We shall notify the customer without delay if a case of force majeure or any other incident equivalent to force majeure occurs.

Transfer of risk

The risk of delivery is transferred to the customer as soon as the goods are despatched from our company. This shall also apply to partial deliveries.

Prices

We invoice prices in accordance with the respective price lists valid for the individual product groups. For special projects the prices agreed and confirmed by us in writing shall apply.

Unless confirmed otherwise in writing, the prices indicated are ex works Schalksmühle or ex distribution warehouse and do not include VAT, postage, packing or insurance of value. Packing shall be invoiced at cost.

Payment conditions

Unless agreed otherwise, our invoices shall be paid in euros within 30 days from the date of invoice. This shall also apply to partial deliveries.

Guarantee and customer's complaint

The customer shall inspect the goods immediately upon receipt. Claims for defects shall only apply if defects are reported immediately by the customer in writing within 7 days from date of delivery at the latest. In case of hidden defects the complaint is to be submitted within 7 days upon their identification. In the event that defects are discovered by third parties, the customer's first notice of the defect commences upon receipt of that information within the scope of the statutory or agreed warranty period.

For all those parts that turn out to be defective due to circumstances that occurred before the transfer of risk we reserve the right, at our option, either to repair or replace them free of charge. The identification of such defects is to be reported to us in writing immediately. Replaced parts shall become our property.

For the realisation of all repairs and replacement deliveries that seem necessary to us, the customer shall grant, in agreement with us, the necessary time and opportunity. Otherwise we shall be exempted from liability for the consequences arising thereof. It is only in urgent cases, e.g. when the operating safety is at risk or excessively great damage is to be prevented – in the event of which we shall be informed immediately – that the customer shall be entitled to remedy the defect himself or have it remedied by a third party, and to request from us compensation for the necessary expenditures.

Of the costs arising from repairs or replacement deliveries we shall bear – if the complaint turns out to be justified – the costs of the replacement including shipping and packing.

Within the scope of the legal provisions the customer shall be entitled to withdraw from the contract, if we fruitlessly lapse – under consideration of the legal exceptions – a reasonable period set by the customer for the repair or replacement delivery due to a material defect. If there is only a minor deficiency, the customer shall be merely entitled to reduce the contract price. Otherwise, the right to a reduction of the contract price shall be excluded.

Particularly the following cases we shall not guarantee: Improper or incorrect use, faulty assembly or putting in use on behalf of the customer or third parties, natural wear, faulty or negligent treatment, undue use or maintenance, improper application. Should the customer or a third party carry out incorrect repairs, we shall not be liable for the consequences arising from it. The same shall apply to changes carried out on the delivery item without our prior consent.

If we have advised the customer beyond the subject matter of his contract, our liability for the operability and the suitability of the delivery item shall be subject to our explicit prior assurance.

Should the customer find out that an infringement of an industrial property right of a third party may occur through the goods delivered by us he shall be obliged to inform us without delay. The same shall apply in the case that recourse is sought against the customer as a consequence of a purchase of consumer goods (§ 478 BGB – German Civil Code).

Claims for defects and contractual claims from customers by reason of and in conjunction with the delivery of the goods shall become time-barred one year after delivery of the goods. This shall not apply to cases of gross negligence, wilful default, injuries to life and limb or fraudulent concealment of a defect. Any improvements or replacement deliveries shall not cause the period of limitation to begin again.

Other liabilities

If the customer cannot use the delivery item according to contract due to our fault and in consequence of neglectful or incorrect execution of recommendations and consultation carried out before or after the conclusion of the contract, or through the breach of other contractual secondary obligations – particularly instructions for the operation and maintenance of the delivery item – the following shall be valid subject to the exclusion of further claims of the customer: For damage that has not occurred on the delivery item itself we shall be liable for whatever legal reasons only in the case of wilful intent, gross negligence, non accidental injury to life, health and limb, in the case of defects that have been fraudulently concealed or the absence of which had been guaranteed; for defects of the delivery item, we shall be liable to the extent that we are liable for personal or material damage on privately used items according to the Product Liability Act. In the event of undue breach of essential contractual duties we shall also be liable in the case of gross negligence of non-executive employees and in the case of slight negligence, in the latter case liability shall be limited to the reasonably foreseeable damage typical for a contract. Further claims are excluded.

Retention of title

We shall reserve title to the goods delivered pending the full settlement of all claims including all accessory claims against the customer from the business relation and including claims accruing in the future.

The customer shall be entitled to resell the items delivered with retention of title within the scope of a proper course of business. However, as of now, he shall assign to us all claims accruing from sales to his customers or to third parties. This shall apply, irrespective of whether the reserved goods are sold with or without treatment or alterations. Until cancelled, the customer shall remain authorised through us to collect the outstanding accounts assigned to us. We commit ourselves to not collecting the outstanding accounts as long as the customer meets his obligations to pay.

Moreover, the customer shall not be entitled to pledge the goods delivered under retention of title as security or to dispose of them otherwise.

We commit ourselves to releasing the securities he is entitled to on request of the customer, if their value exceeds our total claims to be secured against the customer by 20 %.

A repurchase of the goods under retention of title or a pledge of this merchandise through us is not considered to be a withdrawal from the contract.

If we make use of the retention of title by repurchasing the goods in accordance with the preceding provision, we shall be entitled to sell the merchandise by private contract or by auction. The reserved goods shall be repurchased at the proceeds generated, yet maximally at the delivery prices agreed. We reserve the right to further claims for damages, particularly loss of profit. On repurchasing the goods, a lump sum shall be agreed, namely for merchandise in its original packing that is still part of the current sales line, it shall be 30 % of the amount invoiced; for merchandise that has to be newly packed, 70 % of the amount invoiced and for merchandise that is no longer part of the current sales line, 50 % of the amount invoiced. We shall also be entitled to pay the current, proven damage instead of the lump sum at any time.

Offsetting and liens

The customer shall only be entitled to offset claims that have been accepted by us or that have been irrevocably established. In view of the customer's respective underlying claim, the same shall apply to the exercise of the right to refuse performance and to liens.

Contract changes

Contractual amendments, changes or subsidiary agreements require our written confirmation in order to become effective.

Other

Place of fulfilment is Schalksmühle as our head office, place of jurisdiction is the Local Court of Lüdenscheid/County Court of Hagen. We reserve the right, at our option, to claim against the customer at his general place of jurisdiction.

Should one or several of the preceding provisions be or become ineffective, the effectiveness of the other provisions shall not be affected. Ineffective provisions or those that are not applicable shall be replaced by such provisions that are closest to the economically desired purpose of the dropped provision.

The customers' and suppliers' data are saved and processed within the scope of the business relation.

HEP GmbH
April 2012