

# General Terms and Conditions of Helmut Hund GmbH

## § 1 Applicability of the Terms

(1) All contractual relationships between Helmut Hund GmbH (hereinafter referred to as "HUND") and the Purchaser are governed exclusively by the following General Terms and Conditions. These Terms and Conditions apply to all future business dealings. Explicit reconfirmation of the Terms and Conditions is not required.

(2) Upon the acceptance of the product or service the Purchaser agrees to these Terms and Conditions. Any terms of the Purchaser conflicting with or deviating from HUND's General Terms and Conditions are not recognized, unless HUND agreed to the applicability of such terms in written form. The Terms and Conditions of HUND also apply in the event that HUND provides the delivery to the Purchaser without reservation and having knowledge of such Purchaser's terms which conflict with or deviate from HUND's General Terms and Conditions.

Any and all agreements between HUND and the Purchaser require the written form.

## § 2 Offer and Conclusion of the Agreement

(1) All offers tendered by HUND are non-binding and without engagement. In the event HUND tenders a binding offer, HUND reserves the right to subsequent changes or modifications to the extent such subsequent changes or modifications consider HUND's interests, and are considered to be reasonable from the Purchaser's perspective.

(2) In the event the order is defined as an offer pursuant to Section 145 BGB [German Civil Code], HUND may accept the offer within a two week period. Acceptance declarations any orders, and other verbal agreements require confirmation by HUND in written form or per fax to become effective. Orders by the Purchaser are binding.

(3) Diagrams, illustrations, dimensions, weights, or other specifications are only binding if such data has been expressly agreed to in writing.

(4) In the event of customer specific production HUND reserves the right to manufacture a short or additional delivery of up to 10 % of the ordered quantity.

## § 3 Prices

HUND prices are ex works, without packaging unless otherwise agreed. The statutory sales tax is not included in the prices; the amount of the statutory sales tax applicable on the day of invoicing is shown separately on the invoice.

## § 4 Delivery Period and Performance Schedule, Obligations of the Purchaser

(1) Delivery dates, times, periods, or performance dates, times, or periods that can be agreed on as binding or non-binding require the written form.

(2) In the event delivery or performance is delayed, in part or in full, due to circumstances HUND is not liable for in particular events of force majeure like interruptions of traffic, strikes, fire and water damages, power shutdowns, interruptions of operations, administrative measures, lock-outs, lack of materials or other inevitable events - this applies also if such events occur at HUND's suppliers or their sub-contractors - HUND may even in the event of firmly agreed delivery periods and due dates, extend delivery dates by the durations of the impediment plus a reasonable start-up period or withdraw in full or in part from the yet to be performed share of the agreement.

(3) In the event the impediment exceeds a period of three months and after the expiry of a reasonable grace period, the Purchaser is entitled to withdraw from the agreement with regard to the not yet fulfilled portion of the agreement. In the event delivery is delayed or HUND is released from its obligation to deliver, the Purchaser may not derive any damage claims from this.

(4) HUND is entitled at any time to provide short deliveries and partial performance. This entitlement applies also to invoices for short deliveries.

(5) The timely and proper performance of the Purchaser's obligations is a prerequisite for HUND's compliance with its delivery and performance obligations. The Purchaser is in particular obligated to ensure that the delivery, assembly, installation, setting up, and putting into operation can be started and performed without interruptions as agreed. This also includes the unobstructed access to the Purchaser's premises and buildings as well as to the equipment (hardware) to the extent this is required for the performance of the contractual services.

(6) In the event of the Purchaser's default in acceptance HUND is entitled to claim damages for suffered losses. The risk of accidental deterioration and accidental loss passes to the Purchaser upon the Purchaser's default in acceptance.

(7) Upon request a cost estimate will be prepared before repair or maintenance works are performed. This cost estimate is subject to a fee, if the performance of the repair or maintenance works has not been commissioned.

## § 5 Industrial Property Rights

In the event that HUND is obligated to deliver the delivery item according to the Purchaser's specifications (diagrams, models, samples, drafts etc.) the Purchaser assumes responsibility that the Industrial Property Rights of third parties are not infringed upon. In the event of a culpable breach, the Purchaser is obligated to release HUND from any third party claims upon first demand.

## § 6 Passing of Risk, Acceptance

The risk of loss or of damage to the delivery item is passed on to the Purchaser upon the acceptance of the work or upon the transfer of the delivery item to the person responsible for shipping or the delivery item has left the HUND warehouse for the purpose of shipping. In the event the item is picked up or the Purchaser

organizes the transport itself or in the event of a delay in shipment to the extent HUND is not responsible for the delay, the risk passes to the Purchaser with the notification of readiness for shipping by HUND. This also applies to partial deliveries. Upon the passing of risk the Purchaser bears any risk of any kind for or damage to the delivery item or the work.

## § 7 Warranty

(1) The warranty period for quality and legal defects is 12 months and commences with the passing of risk. Any warranty is excluded for the sale of used items.

(2) In the event the Purchaser is a general merchant, the Purchaser is obligated to inspect and is required to lodge a complaint with regard to a defect immediately upon receipt of the HUND deliveries and services pursuant to Section 377 HGB [German Commercial Code]. Upon completion of a works agreement Section 377 HGB [German Commercial Code] applies mutatis mutandis. The Purchaser is to inspect the product with regard to functionality immediately upon the passing of risk i.e. the acceptance of the product and is to immediately notify HUND of any defects determined through the inspection, in the event of hidden defects after discovery, in writing and in a clear and understandable manner at the latest within a period of 7 days. The Purchaser is obligated to provide HUND with any information and verifiable documents that are required for the determination of the defect. In the event HUND cannot identify the defect by means of an inspection the Purchaser bears the costs of the inspection.

(3) In the event of a defect HUND is entitled at its option to undertake three attempts at remedy or replacement (subsequent performance). If subsequent performance fails and after setting a grace period the Purchaser's other legal rights remain unaffected. The grace period is to be set in writing; the period must be at least 14 business days.

(4) In the event the Purchaser has a statutory right of rescission the obligation to compensate according to Section 236 Article 3 Subsection 3 BGB [German Civil Code] does not apply only if the Purchaser has observed the due diligence of a conscientious businessman.

(5) HUND's right of subsequent performance does not apply only once damage claims have been paid, even if the Purchaser has already demanded such performance.

(6) In the event HUND operations or maintenance instruction were not followed, modifications were made to the products, parts were substituted or consumables were used that do not correspond with the original specifications any warranty does not apply if the Purchaser cannot refute a substantiated claim, that one of the circumstances caused the defect.

## § 8 Retention of Title, Title to Tools

(1) HUND retains the title to the delivery item until receipt of all payments arising from the business relationship with the Purchaser. In the event the Purchaser's actions constitute a breach of contract, in particular default in payment- HUND is entitled to demand the return of the delivery item. The return of the delivered item constitutes a withdrawal from the agreement.

Upon return of the delivered item HUND is entitled to dispose of such item. The proceeds from such disposal are to be credited to the payables of the Purchaser reduced by reasonable expenses for the disposal of the item.

(2) The Purchaser is only permitted to sell the delivery item within the regular course and transaction of business. The Purchaser is not entitled to pledge or assign the delivery item as security or to make other dispositions that may jeopardize HUND's property rights. The purchaser assigns any receivable arising from the resale to HUND; HUND accepts this assignment. The Purchaser is revocably entitled to collect such assigned claims in its own name in a fiduciary capacity. HUND may revoke this authorization as well as the right of resale if the Purchaser is in arrears with any material obligations such as outstanding payments to HUND. The Purchaser will provide HUND with all requested information regarding the delivery item or regarding claims that, according to this provision, have been assigned to HUND, at any time. In the event of the processing, combining or alteration of the delivery item HUND acquires co-ownership to the new item proportionate to the value of the delivery item (the final invoice amount including Value Added Tax) in relation to the other combined or processed items.

(3) In the event of any third party access to the goods subject to retention of title, in particular attachments, the Purchaser will indicate that such goods are HUND's property and the Purchaser will notify HUND without undue delay such that HUND can assert its property rights. To the extent the third party is not able to reimburse the incidental court and out-of-court costs the Purchaser assumes liability for such costs.

(4) HUND undertakes to release collaterals due HUND upon the Purchaser's request to the extent, that the realizable value of such collaterals exceeds the to be secured receivables (including all current account payment balances) which the Purchaser owes HUND now or in future, irrespective of the legal grounds, by more than 10%.

(5) Tools, inspection, assembly, or manufacturing equipment and other order related materials and equipment utilized for the performance of the purchase or order remain the property of HUND even if they are invoiced separately. Any deviation from this provision requires the written form.

## § 9 Payment

(1) HUND invoices are due immediately and are to be paid within a 10 day period from the date of invoice.

(2) In the event of a delivery abroad HUND is entitled to request advanced payment or alternatively at its option the delivery of a guarantee which is unlimited in time, issued by a major bank and

subject to the laws of the Federal Republic of Germany in the amount of the order value of the delivery item to collateralize its payment claims.

(3) In the event the Purchaser is default HUND is entitled to demand interest at the rate of 10 percentage points above the respective base rate of the European Central Bank as damage claim. The interest amount is to be reduced if the Purchaser furnishes proof of a lower debit amount or damages. HUND may provide proof of higher damages.

(4) In the event the Purchaser does not provide payment within on calendar week under this agreement HUND is entitled to suspend any further work. Delays caused by delayed payment are not to be included in Penalty Agreements.

(5) The Purchaser retains offsetting or retention rights only if its counterclaims have been established with legal effect, are uncontested or are recognized by HUND.

## § 10 Limitation of Liability

(1) Damage claims - irrespective of the legal ground - are excluded against HUND and its vicarious agents unless willful or gross negligent acts exist. To the extent no willful breach of contract is lodged against HUND damage claims are limited to damages typical are foreseeable for such agreements.

(2) In any case HUND's liability for injury to life, limb, or health, liability according to German Product Liability Act and other claims arising from manufacturer's liability as well as warranty assumption by HUND remain unaffected. In the event the Purchaser refers to the assumption of a warranty the Purchaser bears the burden of proof with regard to the existence of a warranty case. In addition HUND's liability remains unaffected in the event of culpable breach of a material contractual obligation, a so-called primary contractual obligation. The performance of such material contractual obligations is a prerequisite for the proper execution of an agreement; in this case liability is limited to damage claims for foreseeable and typical damages.

## § 11 Confidentiality

The Purchaser and HUND undertake to observe secrecy of unlimited duration with regard to any and all business and trade secrets of the respective counterparty incidental to or in execution of the agreement, and agree to not pass such secrets on to third parties or to utilize such secrets otherwise.

## § 12 Assignment, Applicable Law, Place of Jurisdiction, Place of Performance and Miscellaneous

(1) HUND is entitled to assign its trade receivables.

(2) These business relationships and all legal relationships between HUND and the Purchaser are governed by the laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(3) To the extent the Purchaser is a general merchant in terms of the German Commercial Code, legal entity of public law of special public fund the seat of HUND is the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The registered office of HUND is the place of performance.

(4) In the event a provision of these terms and conditions or a provision of other agreements is or becomes ineffective the effectiveness of all other provisions or agreements remain effect.