

## General Terms and Conditions of Delivery

(June 2009)

### 1. General, Scope of Application

- 1.1 These General Terms and Conditions of Delivery of Hennecke GmbH (hereinafter referred to as "Supplier") apply to all business relations with entrepreneurs ("*Unternehmer*") (Paragraph 14 German Civil Code (BGB)), public-sector legal entities or special bodies or funds under public law (hereinafter referred to as "Customer").
- 1.2 Any contradictory or supplementary general conditions of business of the Customer shall become an integral part of the contract only if and to the extent that the Supplier has expressly consented to the application thereof.

### 2. Offer and Conclusion of the Contract

- 2.1 All offers by the Supplier are subject to confirmation and are not binding. All orders placed by the Customer shall be deemed to be a binding offer of a contract. The Supplier can accept said offer of a contract within 4 weeks of the Supplier's receipt of said offer. Acceptance can be declared either in writing (e.g. by confirmation of the order) or by delivery of the goods to the Customer.
- 2.2 The Supplier reserves the right to make changes concerning the delivery items (e.g. weights, dimensions, function values, load-bearing capacities, tolerances, technical data or product descriptions) as well as the representation thereof (e.g. drawings and illustrations) provided that they do not significantly alter or improve the quality of the delivery items and the changes or deviations shall be reasonably acceptable to the Customer.
- 2.3 The Supplier reserves ownership of and the copyright in all documents. They should not be made available to third parties or used for advertising purposes and must be returned upon request. Documents may only be used in accordance with the contract; they may particularly not be used to replicate any goods, irrespective of whether such replicas would be identical or similar to the goods delivered by the Supplier. Design drawings will not be supplied.

### 3. Prices and Payment

- 3.1 Unless otherwise agreed, prices apply ex works plus the statutory value added tax, assembly, commissioning and packaging, in the case of export deliveries plus customs duties and charges and other official duties. The Supplier will not take back the transportation packaging or any other packaging under the Packaging Directive (*Verpackungsverordnung*); said packaging shall become the property of the Customer.
- 3.2 If the agreed prices are based on the Supplier's list prices and delivery is not to be effected within four months after the contract was concluded, the Supplier's prices applicable at the time of delivery shall apply (in each case less an agreed percentage or fixed discount).
- 3.3 Payment shall be due without any deductions upon delivery or upon acceptance of performance ("*Abnahme*"), whichever is applicable. If payment is not so effected, the Customer shall be in default ("*Verzug*") 14 calendar days following delivery and the issue of the invoice. Payment shall only be deemed to have been effected on the date of receipt thereof by the Supplier, and cheques shall be deemed to be payment only once they have been honoured. In the event of the Customer being in arrears with any payments, provided that the Supplier shall not be responsible for the Customer's suspension of the making of the payment, the Supplier shall, without prejudice to any claims for compensation that it may have, be entitled to defer its own contractual obligations until the arrear payments have been effected.
- 3.4 The Customer shall not be entitled to set off claims or to withhold payments on the basis of any counterclaims that it may have against the Supplier, unless such counterclaims are undisputed or have been confirmed by a competent court.
- 3.5 If, after conclusion of the contract, the Supplier becomes aware of circumstances which are likely to considerably diminish the Customer's creditworthiness and which may jeopardise the making of payments by the Customer of debts owed to the Supplier under any contract (including other individual orders subject to the same framework agreement), the Supplier shall be entitled to effect outstanding deliveries or render outstanding services only against receipt of advance payment from or if appropriate security has been provided by the Customer.

### 4. Delivery and Delay

- 4.1 Delivery shall be effected ex warehouse (EXW, Incoterms 2000) which is also the place of performance. Upon the request and at the cost of the Customer the goods shall also be sent to a different point of

- destination (sale by delivery to a place other than the place of performance ("*Versendungskauf*"). Unless otherwise agreed, the Supplier shall be entitled to determine the type of dispatch itself (particularly the haulage company, the forwarding route and packaging).
- 4.2 The delivery periods stated by the Supplier are not binding unless binding deadlines are expressly stated in the written confirmation of the order. Insofar as dispatch has been agreed, the delivery periods and delivery dates refer to the time when the purchased goods leave the Supplier's warehouse or the time with effect from when the Supplier notified the Customer that they were ready for dispatch.
- 4.3 Compliance with delivery periods by the Supplier shall be subject to the condition that all commercial and technical questions between the contract parties have been resolved and the Customer has fulfilled all obligations incumbent on it such as, e.g. obtaining the necessary official certificates or permits or the furnishing of a deposit. In the event of any delays in respect of the foregoing, the delivery time shall be appropriately extended. This shall not apply if the Supplier is responsible for the delay.
- 4.4 The Supplier shall not be liable for impossibility of the delivery or for delays in delivery to the extent that said impossibility was caused by force majeure (e.g. natural catastrophes, war, unrest) or other events that were not foreseeable at the time the contract was concluded (e.g. stoppages of all kinds, transport delays, strikes, lawful lock-outs, a shortage of workers, power or raw materials, difficulties in procuring necessary administrative licences, administrative measures or a failure to supply, incorrect supply or untimely supply by suppliers) for which the Supplier is not responsible. Insofar as such events make delivery of the goods or services considerably more difficult or impossible for the Supplier and the impediment is not only of a temporary duration the Supplier shall be entitled to rescind the contract. In the event of impediments that are of temporary duration the deadlines for delivery or performance shall be extended or the delivery or performance dates shall be postponed by the period of the impediment plus a reasonable start-up period. Insofar as the Customer cannot reasonably be expected to accept the delivery or performance because of the delay, the Customer can rescind the contract by means of a prompt written declaration to the Supplier.
- 4.5 The Supplier shall be entitled to effect part deliveries of goods only if the Customer is able to effectively use the goods so delivered for their contractually stipulated purpose, delivery of the remainder of the goods ordered has been ensured, and the Customer does not thereby incur considerable additional work and expense.
- 4.6 If the Supplier is late in effecting a delivery or providing a service, or if, for any reason whatsoever, the making of a delivery or the provision of a service becomes impossible for the Supplier, the Supplier's liability for damages shall be limited as set out in Clause 7 of these General Terms and Conditions of Delivery.
- 4.7 If, at the request of the Customer, deliveries are to be effected later than the delivery dates originally agreed, payment shall nevertheless be effected as though the delivery had been made on the delivery dates originally agreed. This shall also apply if the Customer fails to accept delivery on the contractually agreed delivery dates. The cost of any necessary storage of the goods as well as other costs incurred by reason of the delay shall be charged to the Customer.

### 5. The Passing of Risk and Acceptance

- 5.1 The risk shall pass to the Customer at the latest when the goods to be delivered have left the Supplier's warehouse. The same applies if part deliveries are effected or the Supplier has undertaken to also provide additional services (e.g. dispatch or installation of goods). If dispatch or delivery is delayed as a consequence of the acts or omissions of the Customer, the risk shall pass to the Customer immediately upon the Supplier being ready for dispatch or delivery and the Supplier having notified the Customer accordingly.
- 5.2 If the Customer is obliged to accept delivery, acceptance shall be effected on the relevant acceptance date, alternatively within one week following the Supplier's notice of its readiness for acceptance. The Customer cannot refuse to accept delivery if there is a defect which is only minor.

### 6. Reservation of Title

- 6.1 The Supplier shall retain title to goods delivered by the Supplier until all of the Supplier's claims arising out of the business relationship with the Customer have been satisfied in full, in particular until the Customer has settled the account balance.
- 6.2 The Customer shall handle, store, maintain and repair any goods delivered to it subject to a reservation of title by the Supplier with due care, and insure them at its own cost against fire, water damage, breaking and entering and theft. The Customer shall promptly notify the Supplier of any damage to such goods and send the insurance policy to the Supplier

for inspection upon request. The Customer assigns all claims against the insurance company arising out of the insurance contract to the Supplier in advance. The Supplier accepts said assignment. If the Customer has not adequately insured the goods/services to be delivered, the Supplier shall have the right but not the duty to insure the goods/services to be delivered at the Customer's cost.

- 6.3 The Customer shall promptly notify the Supplier in writing if any goods delivered to it subject to a reservation of title by the Supplier are attached or otherwise encroached upon by third parties.
- 6.4 The Customer shall be entitled to sell goods delivered to it subject to a reservation of title by the Supplier in the ordinary course of business so long as the Customer is not in default of payment. The goods may not be pledged or title thereto transferred as security. The Customer hereby assigns to the Supplier as security all claims that may arise consequent to a sale by it of such goods or for some other legal reason (in particular, transfer of ownership, insurance claims and delicts). The Supplier accepts said assignment. The Supplier revocably authorizes the Customer to enforce the assigned claims in its own name, for the Supplier's account. If the Customer acts contrary to the terms of the contract, including defaulting on making any payment, the Supplier can require it to disclose the assignment to the third party and to hand over to the Supplier the information and documents necessary to enforce the claim.
- 6.5 In the event of a breach of contract by the Customer, especially in the event of defaulting in making payment, the Supplier may demand the return, at the Customer's cost, of any goods delivered to the Customer subject to a reservation of title by the Supplier, subject to the Supplier having first set a reasonable deadline. Such demand for the return of the goods by the Supplier shall constitute rescission of the contract. After the goods have been returned to the Supplier, it shall be authorized to exploit them. The proceeds from any such realization, less the reasonable realization costs, must be offset against the amount owed by the Customer.
- 6.6 If any goods delivered to the Customer subject to a reservation of title by the Supplier accede to other objects, the reservation of title shall be valid and continue in respect of the newly created object. The Supplier shall thereby acquire co-ownership in such object commensurate to the value of the goods delivered to the Customer subject to a reservation of title. If one of the joined objects ("*verbundene Sache*") is considered to be the principal object ("*Hauptsache*"), the Customer shall transfer to the Supplier co-ownership in the joint object commensurate to the value of the goods delivered to the Customer subject to a reservation of title. The Customer shall keep any object in respect of which the Supplier has acquired joint ownership in safe custody free of charge. If goods delivered to the Customer subject to a reservation of title by the Supplier are resold as an integral part of a new object, the assignment subject to Clause 6.4 shall apply only in the amount of the invoice value of the goods delivered to the Customer subject to a reservation of title by the Supplier.
- 6.7 If the value of the security to which the Supplier is entitled under the above provisions exceeds the Supplier's claims by more than 10 %, the Supplier shall be obliged to release the security in the value that exceeds said amount. The choice of security to be released shall be up to the Supplier.
- 6.8 If the law of the country, in which any delivered goods are located, does not permit or recognise a reservation of title or does so only in a limited form, the Supplier can reserve other rights in the delivered goods. The Customer shall be under a duty to cooperate with the Supplier in relation to all measures (e.g. registration) necessary to effect the reservation of title or to create such other rights, as may appropriately protect the interests of the Supplier in lieu of a reservation of title. The Customer shall cooperate in the enforcement of such rights.

## 7 Damages

- 7.1 The Supplier shall be liable in accordance with the statutory provisions for any breach by it of material contractual obligations, i.e. contractual obligations, the performance of which characterize the contract and which are necessary for its proper implementation. The Supplier shall not be liable for any other breaches of contract, unless damage has been caused pursuant to the intentional or grossly negligent acts or omissions of its statutory representatives ("*gesetzlicher Vertreter*") or any persons engaged by the Supplier to assist it in complying with its obligations in terms hereof ("*leitender Erfüllungsgehilfe*").
- 7.2 In the absence of intentional conduct, the Supplier shall be liable only for reasonably foreseeable damage that occurs.
- 7.3 The foregoing shall neither effect the liability of the Supplier under the German Product Liability Act ("*Produkthaftungsgesetz*"), nor its liability for culpable ("*schuldhaft*") injury to life, body or health. If a guarantee has been assumed the Supplier shall be liable in accordance with the statutory provisions.

- 7.4 Unless otherwise provided above, claims against the Supplier for damages arising out of a breach of duties ("*Pflichtverletzungen*") shall be excluded.
- 7.5 The claims for damages under Clauses 7.1 to 7.3 above shall prescribe in accordance with the statutory periods.

## 8 Warranty

- 8.1 Any warranty claims ("*Mangelsprüche*") against the Supplier shall be conditional on fulfilment of the duties incumbent upon the Customer under Paragraph 377 German Commercial Code ("*HGB*") to inspect any goods delivered and to report any complaints.
- 8.2 If the Supplier's goods or services prove to be defective, the Supplier shall be under a duty to remedy the defects by, at the Supplier's option, either rectifying the defect or by delivering a replacement ("*Ersatzlieferung*"). In the case of the delivery of a replacement the Customer must return the defective goods to the Supplier in accordance with the statutory provisions. The costs of such supplementary performance ("*Nacherfüllung*") by the Supplier, in particular the transport costs, labour costs and cost of materials, shall be borne by the Supplier. The Customer shall bear any increased costs as a result of goods being located somewhere other than the intended place of use.
- 8.3 The Supplier shall be entitled to make supplementary performance dependent on the Customer paying the purchase price. The Customer shall, however, be entitled to withhold such part of the purchase price as is reasonable in proportion to the defect.
- 8.4 If the supplementary performance fails, the Customer shall be entitled to a reduction of the purchase price or to rescind the contract. There shall be no entitlement to rescind the contract in the case of a negligible defect. In addition the Customer can claim damages in accordance with Clause 7. Any other warranty claims are excluded.
- 8.5 Save in the case of bad faith ("*Arglist*") and subject to the provisions of Clause 7.5, all warranty claims shall prescribe 12 months after delivery or, if acceptance is required, after acceptance.

## 9. Information and Technical Advice

Information and recommendations provided by the Supplier are not binding and are made excluding all liability unless the Supplier has expressly and in writing undertaken otherwise. The Customer shall be responsible to investigate whether a product is suitable for the Customer's particular requirements. Any details and information provided by the Supplier in relation to its goods do not constitute any promise as to their suitability for the Customer's purposes.

## 10. Use of Software

- 10.1 To the extent that the scope of delivery includes software, the Customer is granted a non-exclusive right to use the goods supplied including their documentation. The software shall be used only with respect to any relevant goods so delivered. The software may in particular not be used on more than one computer system.
- 10.2 The Customer may copy, revise, translate or convert the object code into the source code only to the extent permitted by statute (Paragraphs 69 a et seq. German Copyright Act ("*Urheberrechtsgesetz*"). The Customer undertakes not to remove or to alter any manufacturer's details - in particular copyright notices - without the express, prior consent of the Supplier.
- 10.3 All other rights in the software and in the documentation including any copies shall remain with the Supplier, alternatively, the supplier of the software, as the case may be. The grant of sub-licences is not permitted.

## 11. Choice of Law, Place of Jurisdiction, Place of Performance

- 11.1 Unless otherwise provided or another place of performance results out of the nature of an obligation, the place of performance for all of the Supplier's and Customer's obligations shall be Sankt Augustin/Birlinghoven.
- 11.2 German law shall apply; application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
- 11.3 It is agreed that the place of jurisdiction shall be Cologne. In addition, the Supplier shall be entitled to assert its claims at the Customer's place of general jurisdiction. The Supplier shall additionally have the choice to have any and all disputes arising out of the business relationship with the Customer finally decided in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with said Rules.
- 11.4 Even if individual provisions are void all of the remainder of the provisions of contracts concluded in accordance with these Terms and Conditions of Delivery shall remain binding on the Customer.

**Hennecke GmbH**