

# General Terms of Sales and Delivery

## Hack Formenbau GmbH

### 1. Scope

- 1.1 These general terms of delivery and payment apply to all of our contracts regarding the sales and/or delivery of mobile objects and other services, including additional services such as development, design and advice (sales transactions). These conditions are not applicable to our purchasing transactions and contracts with consumers.
- 1.2 Our general terms of business are the basis in their corresponding current version for all the future services and deliveries according to Item 1.1, also if their inclusion is not again expressly agreed.
- 1.3 Our terms and conditions are exclusively applicable. Any deviating opposing or supplementary conditions of the customer only become a part of the contract insofar as we expressly agreed that they are applicable.

### 2. Offers and conclusion of the contract

- 2.1 Our quotations are not binding. Conclusions of contracts and other agreements only become binding upon our confirmation.
- 2.2 After the conclusion of the contract, a change or cancelation of the contract requires our expressive consent.
- 2.3 The basis for our services is the performance specification of our quotation and our order confirmation, as well as the performance specifications which are included in a specification or have been confirmed by us.

### 3. Sample exam

- 3.1 Before the first delivery of any of our products, we will generally submit samples of the subject matters for approval to the customer. The assessment of the usability of the subject matter of the contract, including any details of the type, material and use of the materials in their environment is solely incumbent upon the customer.
- 3.2 In case of changes of the subject matter of the contract regarding type and/or material we will also submit a sample for approval and inspection on a regular basis before the corresponding first delivery of one of our products.
- 3.3 For the purpose of quality assurance, our customer has to send us the approval in writing. Until the receipt of the written approval by our customer, we are not obliged to deliver or to start production. Possibly agreed delivery terms will only start from the receipt of the approval at our premises resp. are delayed (in case of a modification of the subject matter of the contract) accordingly if the approval has not been received at our premises within three working days from the delivery of the samples.

### 4. Delivery and scope of services

- 4.1 The delivery terms given by us, are anticipated and non-binding dates unless the dates are expressly mentioned as binding by us.
- 4.2 We are allowed to perform partial deliveries and can invoice them separately to our customer.
- 4.3 The delivery is generally made ex works in 73230 Kirchheim unter Teck (EXW Incoterms 2010) unless any other agreement had been made with the customer. With the delivery the risk of the accidental loss or of accidental degradation of the product transfers to the customer. Any transportation and insurance contracts with the third parties need to be concluded by the customer himself and at his own expenses. Furthermore, the customer bears any other costs, customs and taxes.
- 4.4 The delivery deadline needs to be complied with if the goods to be delivered are made available at our factory until its expiry and if the customer has been informed about the readiness for shipment.
- 4.5 If the dispatch has been delayed upon the instruction of the customer, we are allowed to deliver after setting a final extension period and its non-productive expiry to dispose the goods to be delivered in another way and then deliver products to the customer with a new reasonably extended deadline.
- 4.6 Delays in delivery which are based on the fact that the customer asserts change requests compared to the original order are in his responsibility. This also applies if the customer does not comply with his obligation to deliver data in the agreed form in time or if the delivered data are faulty and need to be reworked.
- 4.7 Insofar as we order objects, materials or services with one of our suppliers for an order placed with us and this supplier cannot execute the delivery of the objects or services at all or not on time, then there is no claim for compensation of our customer towards us if there is no liability resulting of Item 8 . We will immediately inform the customer about the delay in delivery. The customer is entitled to withdraw from the contract in case of a delivery delay of more than one month. The customer may withdraw from the contract already at an earlier point in time if the delay in delivery is unacceptable for him.
- 4.8 In case of acts of God or other unforeseeable exceptional and non-culpable circumstances - e.g. in case of difficulties of material procurements, disruptions of operation, strike, lockout, shortage of means of transportation, authority interventions, shortage of energy supply, etc. also if these difficulties occur at the premises of sub-suppliers the term of delivery would be extended in a reasonable scope if we have been prevented from the timely fulfilment of our obligations and are not responsible hereof.
- 4.9 We are freed from our delivery commitment if our deliveries or services become impossible or unreasonable due to the mentioned conditions. If the delay in delivery lasts for more than one month, the customer is entitled to withdraw from the contract. The customer may withdraw from the contract already at an earlier point in time if the delay in delivery is unacceptable for him.
- 4.10 If the bindingly agreed delivery time has been extended without our fault or due to force majeure or if we are freed from our delivery obligations due to the above mentioned reasons according to the Items 4.7 to 4.9 the customer cannot derive any claim for compensation against us hereof. Our liability according to Item 8 remains unaffected. We may only refer to the mentioned conditions if we immediately inform the customer about them.
- 4.11 If we do not comply with a binding delivery date, the customer can withdraw from the contract if he has set a reasonable

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extension beforehand and this extension also expires without delivery. Apart from that, our liability applies according to Item 8.

### **5. Prices and terms of payment**

- 5.1 Our invoices have to be fully paid. Discount deductions are only possible if they have been agreed or offered in our invoice.
- 5.2 In case of instalment contracts, the total amount is immediately due if the customer has delayed with an instalment by at least 10 days.
- 5.3 If not otherwise agreed, our prices are applicable ex works, including packaging but excluding loading and transportation which need to be additionally paid by the customer. The prices are plus VAT at the corresponding legal rate.
- 5.4 Freight costs are invoiced to the customer directly by the freight carrier or by us if we commission the delivery on our own behalf.
- 5.5 Bills of exchange and cheques are only accepted in exceptional cases and only on cash basis.
- 5.6 If a bill of exchange or a cheque of the customer has been protested by us or with a third party we can immediately declare our total claim due. In this case, we are only obliged to make any further delivery to the customer if he pays in advance or secures our claims. If the customer is not ready or able to make a prepayment in advance or secure the payment, we can withdraw from the contract after a non-productive expiry of one of our set reasonable extension and assert our claims according to § 323 BGB (German Civil Code).
- 5.7 If the customer falls behind with the payment of due receivables, we are entitled to execute the right of retention according to § 273 BGB (German Civil Code) for all further deliveries and services until the payment is received.
- 5.8 In case of a delay in payment of the customer, we are entitled to demand default interest according to § 288 BGB (German Civil Code) irrespective of any other legal claims. Upon non-productive expiry of one of our set reasonable extensions we are entitled to withdraw from the contract and to assert our claims according to § 323 BGB (German Civil Code).
- 5.9 If it becomes apparent that our claim for payment has been endangered due to insufficient performance capability of the customer after the conclusion of the contract, we are entitled to objections due to uncertainty according to § 321 BGB (German Civil Code). In this case, we can set a reasonable extension to the customer in which he can execute counter performance or provide securities at his discretion step by step against our services. Upon non-productive expiry of the term, we are entitled to withdraw from the contract and to assert our rights according to § 323 BGB (German Civil Code).
- 5.10 If the customer is responsible for our withdrawal from the contract, he will be obliged to compensate us for our damages. We are entitled to demand a lump compensation of 20 % of the net order sum. The customer may prove that we did not suffer any damage or only little damage.

### **6. Reservation of proprietary rights**

- 6.1 All delivered products remain our property until full payment of all outstanding claims from the business relation with the customer – or until encashment and freedom of recourse claims in case of payment by cheque (goods subject to reservation). This also applies to accounts receivable arising and incurred in the future, even if payments have been made in respect of specially designated claims. This title retention until outstanding accounts have been paid finally lapses with the settlement of all due accounts receivable recorded in this title retention at the point in time of the payment.
- 6.2 Treatment and processing of the goods subject to reservation are performed for us as manufacturer in the sense of § 950 BGB (German Civil Code), without obliging us.  
The treated and processed goods are deemed as goods subject to reservation in the sense of Item 5.1. If the purchaser manufactures, combines or mixes the goods to which title is retained with other goods, we shall obtain co-ownership in the new goods in proportion to the invoiced price of the goods to which title is retained to the invoiced price of the other goods. If the title expires due to combining or mixing, the buyer shall immediately transfer his title to the new stock or goods in the invoice amount of the goods subject to retention of title and will keep them safe free of charge for us. Our co-ownership rights shall apply as goods subject to reservation within the meaning of Item 5.1.
- 6.3 The customer is entitled to resell the products in the proper course of business provided that he is not in default with the payment of the purchase price. He is not authorized to extraordinary disposals such as pledging and collateral assignment to third parties.
- 6.4 In the event of resale the customer already assigns in advance any claims arising against his purchasers and other claims including all unsettled balances from current accounts credit as security with any auxiliary rights to us.
- 6.5 The customer is entitled to collect the assigned claims until revocation of such permission. We will not make use of the own collection authority as long as the customer fulfils his payment obligations. The collection authority becomes automatically void if the customer stops his payments, files for bankruptcy or a petition of such is being filed or inadmissible or in case of protest of a bill of exchange or of a cheque.
- 6.6 In such cases, we demand that the customer informs us about the assigned accounts receivable and the debtors, about all information necessary for the collection of debts for disclosure, hands over the corresponding documents, and informs the third-party debtor about the assignment.
- 6.7 It is prohibited to the customer to dispose of the resale of the claim by chattel mortgage or release of covenant also by the way of claim sale without our prior written consent, unless it concerns an assignment by way of the real factoring which is reported to us and with which the factoring proceeds exceed the value of our secured claim.
- 6.8 The Customer shall inform us without undue delay of any seizing or other legal or physical impairment or endangering of the Retained Goods or any other security right provided to us. The buyer shall support all costs that may occur for the annulment of the attachment or the return transportation of the reserved merchandise, so long as the costs are not replaced by third parties.

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6.9 We are obliged to retransfer or release the collateral securities upon request of the customer insofar as the value of the securities provided to us exceeds our claim by a total of more than 20 %.

### **7. Guarantee**

7.1 We guarantee that the subject matters of the contract comply with the agreed quality requirements and the applicable legal and official regulations in Germany when the risk has been transferred. In the absence of such an agreement, the usual quality requirements in the sense of § 434 para. 1 p. 2 BGB (German Civil Code) or § 633 para. 2 p. 1 No. 2 BGB (German Civil Code) apply. Also, the samples approved by the customer are regarded as agreed quality requirements.

7.2 The guarantee does not extend to defects, performance losses, malfunctions or functional failures which are being caused by

- Natural wear or tear
- Excessive use,
- Incorrect installation or use of the subject matter of the contract,
- Improper storage or soiling,
- Improper use or misuse,
- Change of the subject matters of the contract or improper maintenance works performed by the customer or third party without our previous written consent,
- External influence including force majeure.

7.3 Insignificant reasonable variations in the dimensions and performance in particular in case of repeat orders do not allow for authorization complaints, unless the compliance of dimensions and colours has been expressly agreed upon. Any technical improvements, as well as necessary technical modifications, shall also be deemed compliant with the contract as long as they do not constitute any deterioration in value.

7.4 If the customer prescribes the use of a certain material or if he makes the material to be used available to us, we are not liable for defects and damages resulting hereof and herewith which might occur on our products or lead to defects on the product and needs to be manufactured. We do not assume any auditing duty regarding this material which goes beyond the usual examination for obvious exterior damages.

7.5 The warranty period amounts to 12 months, starting from the date of delivery. For make-and-take orders or in case of making available the safety stock for our customer this term starts with the storage of the produced products for our customer on stock. In case of intent or gross negligence, in case of fraudulently concealing of the defect, in case of physical injury or harm to health or deficiencies in title in the sense of § 438 para. 1 No. 1a BGB (German Civil Code) as well as for guarantees (§ 444 BGB (German Civil Code)) and claims from unlawful acts the legal periods of limitations are applicable- also in the case of claims according to the product liability law.

7.6 The customer must immediately inspect the delivery and inform us about any deficiencies without delay, the latest in 10 working days after the receipt of the subject matter of the contract. Any deficiencies, which were not recognizable in spite of inspections but have been detected later on, need to be notified in writing immediately ,the latest in 5 working days after knowledge hereof. If a complaint has not been filed or filed with delay, the delivered subject matters of the contract are regarded as approved. The customer has to keep the claimed subject matters of the contract ready for assessment by us. The existence of a deficiency at the point in time of the delivery must be proven by the customer.

7.7 In case of a deficiency we may remove the deficiency at our premises or at the premises of the customer or deliver a fault-free item to the customer upon our discretion (supplementary performance). Any replaced goods become our property and will be returned to us. We are entitled to commission a third party with the supplementary performance. If the deficiency is not remedied after the second trial or if we do not perform the supplementary performance within a reasonable time, then the customer may reduce the price or withdraw from the contract.

Apart from that, we are liable according to the liability rules mentioned in Item 8.

### **8. Liability**

8.1 In accordance with the legal regulations we are liable without restrictions for damages resulting of the injury to life, the body or health which results from a deliberate or negligent breach of duty, as well as for other damages which result from deliberate or grossly negligent breach of duty as well as from fraudulent intent. Furthermore, we are liable without limitation for any damages which have been included in the liability of legally compulsory regulations, such as the product liability act as well as in case of the assumption of guarantees.

8.2 For such damages, which are not included in Item 8.1 and have been caused by simple or slight negligence, we are liable insofar as this negligence concerns the breach of contractual obligations, the fulfilment of which only allows the proper performance of the contract and upon which completion the customer trusts and may trust on a regular basis (so-called cardinal duties). At this our point, our liability is limited to the foreseeable damages, which are typical to the contract.

8.3 In the event of a slightly negligent breach of an obligation, we cannot be held liable for the damages which did not occur on the delivered objects themselves; in particular in such cases, we are not liable for lost profit or damages on other assets of the customer (so-called consequential damages). However, insofar in such cases, a liability exists and it is limited to the foreseeable damages which are typical to the contract.

8.4 Any further liability is being excluded.

8.5 Above mentioned regulations also apply in favour of our employees, agents or other third parties which serve us to fulfil the contract.

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**9. Copyright**

The copyright and the ownership of the design drawings, data, CAM data, and technology data as well as of all works which are capable of being copyrighted which we render to the customer remains with us unless otherwise agreed.

**10. Exclusion of set-off, contractual penalty**

- 10.1 The customer can only set-off the payment of agreed remuneration or execute his right of retention against accounts receivable from us, if the counter-claim of the customer was either accepted by us or has been declared by judgement.
- 10.2 Contractual penalties are only accepted by us if they are consistent with the content of the contract, which have been individually set forth in the contract in writing and were signed by us. Contractual penalties in general terms and conditions of the customer are not binding for us in any case. All contractual penalties include for us the rights according to §§ 339 et seq. of the BGB (German Civil Code) providing that the party who wants to derive the rights from the promise of contractual penalty has to demonstrate and prove all conditions hereof. Any contractual penalty is chargeable to any claims for compensation. We reserve the right to prove that no or only a minor damage was caused than the contractual penalty specifies and to reduce the contractual penalty accordingly. If a forfeited contractual penalty is disproportionate it may be reduced by judgement according to § 343 of the BGB (German Civil Code). The § 348 of the German Commercial Code (HGB) is not applicable.

**11. Final provisions**

- 11.1 The place of performance for the mutual legal relationship is 73230 Kirchheim unter Teck.
- 11.2 Place of jurisdiction of all disputes including claims for bill of exchange and cheque receivables is 73230 Kirchheim unter Teck. We are also entitled to sue our customer at his place of general jurisdiction.
- 11.3 Solely the laws of the Federal Republic of Germany shall apply for these Terms and Conditions and all legal relationships between the parties. The application of the German conflict of law's provisions and the United Nations Convention on Contracts for the International Sale of Goods dated 11.04.1980 are excluded.

Kirchheim unter Teck, November 2015

**Hack Formenbau GmbH**