

**General Terms and Conditions of Business  
of HEUSCH GmbH & CO. KG  
Last updated June 2019**

**1. Exclusive application and acknowledgment of our General Terms and Conditions of Business**

1.1 These General Terms and Conditions of Business ("Terms and Conditions") apply to all of our business relations with our customers ("Customers"). The Terms and Conditions apply only if the Customer is an entrepreneur (as defined in Sec. 14 of the German Civil Code (BGB)), a legal entity existing under public law, or a public-law special fund.

1.2 The Terms and Conditions apply in particular to contracts and agreements concerning the sale and/or delivery of movable items ("Goods"), irrespective of whether we produce the Goods ourselves or purchase them from suppliers (Sec. 433 and 650 BGB). Unless otherwise agreed, the Terms and Conditions apply in the version thereof in force at the time of the Customer's order or, at any rate, in the version thereof that was most recently communicated to the Customer in text form as a framework agreement, including to similar future agreements, without any obligation on our part to make reference thereto again in each individual case.

1.3 Our Terms and Conditions apply on an exclusive basis. General terms and conditions of business of the Customer that deviate from, conflict with or supplement these Terms and Conditions become an element of the contract only if and insofar as we have expressly consented to the application thereof. This requirement of consent applies in all cases, including, for example, if we execute a delivery to the Customer without reservations while knowing of the Customer's general terms and conditions of business.

1.4 Individual agreements made with the Customer in an individual case (including side agreements, addenda and amendments) take precedence over these Terms and Conditions in all cases. The operative factor in determining the content of any such agreements, in the absence of evidence to the contrary, is a written agreement or our written confirmation.

1.5 Legally significant declarations and notices made by the Customer with regard to the contract (e.g. setting of time limits, reports of defects, rescission or reduction of payment) must be made in writing, meaning in written or text form (e.g. letter, e-mail, fax). Nothing herein shall affect any statutory requirements as to form and/or further documentation, particularly in the case of doubts regarding the identity of the party making the declaration.

**2. Offers; side agreements; content of contract; offer documents**

2.1 Our offers are non-binding and subject to change in the sense that a contract does not come into existence unless and until we accept the order. The Customer's order is binding. We are entitled to accept this offer within two weeks by transmitting an order confirmation or to send the delivery item ordered to the Customer within this time limit.

2.2 Side agreements to our offers and order confirmations and agreements with our field representatives are not valid except with our written confirmation. In case of doubt, our written order confirmation is the sole factor determining the content of the contract.

2.3 We reserve all title and all copyrights to any and all documents that may be included with our offers, such as illustrations, drawings, information on dimensions and weights, etc. These must not be made accessible to third parties and must be returned upon request or, if the order is not placed with us, without delay.

2.4 Unless expressly agreed otherwise, any information published by us in catalogs or other publications in text or image form (e.g. descriptions, illustrations, drawings) designates the specific quality of the Goods delivered by us and their possible uses on a conclusive basis. Any and all other information is not binding. The information we provide does not constitute a warranty of durability or of a particular quality and is provided in accordance with our current knowledge. We are not liable for any particular outcome of use. We reserve the right to make changes based on technological advances. Drawings,

illustrations, dimensions, weights or other performance data are binding only where expressly agreed in writing.

2.5 Information and advice regarding our products are provided based on our experience to date. The values stated in this process, particularly including indications of performance, are average values that have been determined. Provision of information or advice does not eliminate the need to check the Goods supplied to determine their suitability or the need to comply with processing specifications.

**3. Prices; payment**

3.1 Unless otherwise agreed, our prices apply to delivery ex works, exclusive of freight, packaging, insurance and value-added tax (VAT). In all cases, we will charge VAT in addition, at the rate applicable by law on the day of performance.

3.2 The agreed prices are based on the wage, material and energy costs applicable at the time when the contract is entered into. If such costs rise between then and the time of performance, we are permitted to charge a price that has been increased accordingly in proportion to the percentage of the agreed price that is made up by these costs.

3.3 Unless otherwise agreed, payment for our services is due without any deductions no later than 30 days after the services are performed. If payment deadlines are exceeded, we will charge default interest at the rate of nine percent p.a. above the then-applicable basic rate of interest pursuant to Sec. 247 BGB. We reserve the right to assert claims for further damage and/or losses, particularly all costs of legal proceedings. Our field representatives are not authorized to accept payment. Deduction of a prompt payment discount requires a separate written agreement and, even if such an agreement exists, is permissible only if the Customer is not in arrears with payment for earlier services.

3.4 If, after entering into the contract, we become aware of any circumstances that cause the Customer's creditworthiness to appear dubious, we are permitted to demand payment in advance or provision of security at our discretion. The same applies if the Customer does not comply with a payment obligation toward us that is incumbent on the Customer when due. If any of these cases applies, the entirety of our claims on the Customer, including based on other transactions, will fall due for payment immediately and at the same time.

3.5 The Customer is not entitled to offset claims of its own against our payment claims or to exercise a right of retention with regard to sums due. This does not apply to any setoff against claims that are undisputed or have been determined with final, binding legal force.

**4. Performance time limits and deadlines**

4.1 Time limits and deadlines agreed for our services apply only on an approximate basis unless they are expressly designated as binding.

4.2 Performance time limits determined only according to duration are deemed to commence as of the end of the day on which full agreement regarding all details of the content of the order is achieved, and in any event no earlier than upon our acceptance of the order, but not before the documents, approvals, and/or authorizations to be provided by the Customer are supplied, and not before agreement is reached with regard to any advance payment to be rendered by the Customer.

4.3 Delivery time limits or delivery deadlines, if any, are deemed to be met if the Goods – or, in cases in which the Goods cannot or should not be sent – notice of our readiness to deliver by the end of the time limit has left our plant or sales warehouse.

4.4 In the case of time limits and delivery deadlines that are not expressly designated in the order confirmation as "fixed," the Customer can set a reasonable cure period for us to deliver/perform after the time limit or deadline has passed. Only after this cure period elapses can we be deemed to be in default.

4.5 If performance is delayed due to circumstances that lie outside our personal sphere of influence (war, fire, strike, lack of means of transportation, general shortage of supply goods, operational disruptions, etc.) or of which we do not become aware, through no fault of our own, until after the contract is

entered into, the performance time limit is extended or the performance deadline postponed, as the case may be, by the duration of the impediment plus a reasonable start-up period; this also applies to delays that occur because we do not receive the correct deliveries, or do not receive deliveries on time, ourselves through no fault of our own. If such circumstances occur after we have fallen into default, the consequences of default are ruled out for this period. Either Party is permitted to rescind the contract after a reasonable time limit elapses. We will notify the Customer without delay if any such circumstances exist and, in the event that we rescind the contract, will refund any consideration that has already been received without delay.

4.6 If we are in default of performance, the Customer is permitted to rescind the contract to the extent that we are responsible for the delay. The Customer is obligated to declare at our request, within a reasonable time limit, whether it wishes to rescind the contract after the time limit expires due to the delay in delivery and/or demand damages in lieu of performance or compensation for expenses or insists on the delivery. If the Customer does not exercise its rights in due time, we are no longer obligated to deliver the item purchased or to effect a cure.

4.7 The Customer cannot derive any claims for damages whatsoever against us from a performance time limit or performance deadline being exceeded or from default in performance except in cases of intent or gross negligence, including on the part of one of our statutory representatives or agents in the performance of our contractual obligations or in cases of loss of life, bodily injury, or impairment of health. If the time of delivery is an essential contractual obligation, the claim for damages arising from default is limited to 5% of the purchase price.

4.8 After a period of one month since notification of our readiness to deliver has elapsed, we will charge a storage fee of 0.5% of the invoiced amount for each month or portion thereof during which the delay persists.

4.9 If the Customer is in default of acceptance or violates other obligations of cooperation, we are permitted to demand compensation for the damage and/or losses we have sustained as a result and, after setting a reasonable cure period and threatening action accordingly, may dispose freely of the Goods.

4.10 Partial deliveries are permitted to a reasonable extent and must be charged separately.

4.11 If we are required to deliver parts according to a drawing or sample, the delivery quantity for which we assess charges and the Customer is required to pay is permitted to exceed or fall short of the ordered quantity by up to 10%, and in any event by two pieces per measurement at the least.

## **5. Insurance; shipping; passage of risk; acceptance of returns of packaging**

5.1 We will insure consignments of Goods, at the Customer's request and expense, against the customary risks involved in transportation, with the exception of deliveries made to other countries, by freight forwarders and pick-ups.

5.2 If we do not receive any special shipping instructions, we will ship the Goods via the shipping route we deem to be least expensive. The Goods are shipped at the Customer's expense and risk.

5.3 The risk of loss or deterioration of the Goods for which we are not responsible shall pass to the Customer upon loading at our plant, or if the Goods cannot or should not be shipped, upon transmission of the notification that we are ready to deliver. This also applies if delivery free of freight charges is agreed or in cases in which further services, such as setup, have been agreed.

5.4 To the extent that we are obligated to accept returns of packaging pursuant to the German Packaging Act (VerpackG), the Customer shall bear the costs of the return transportation of the packaging used.

## **6. Retention of title**

6.1 The Goods supplied by us remain our property until such time as any and all claims on our part arising from the business connection with the Customer have been fully settled

and discharged, including to the extent that these have been included in an ongoing invoice.

6.2 Should we not acquire co-ownership, but rather lose our title, as the result of processing or reworking of the Goods delivered by us with goods of the Customer, the Customer's ownership or co-ownership of the new item shall pass to us immediately upon creation thereof. The Customer hereby assigns to us all expectancies that may lead to any such acquisition of ownership or co-ownership by the Customer. The delivery, if any, that may be necessary in order for us to acquire ownership or co-ownership is replaced by the agreement that the Customer will keep the item in safekeeping for us like a borrower or, to the extent that the Customer is not in possession of the item, by the assignment to us of the claim to relinquishment thereof against the party that is in possession thereof, which is hereby agreed. The ownership or co-ownership that arises for us must be treated in legal terms like the original Goods.

6.3 All claims of the Customer arising from the resale of Goods of which we have ownership or co-ownership (goods subject to retention of title) shall pass to us when the sale transaction is concluded, regardless of whether the Goods are sold to one or more customers. In the event that the goods subject to retention of title do not belong to us in full or that they are sold together with goods that do not belong to us, the assignment encompasses the counterclaim only in the amount of the invoiced value of the goods subject to retention of title. The Customer is permitted to collect on the claims assigned. We are permitted to revoke permission if the Customer does not fulfill an obligation toward us that is incumbent upon it in due time or if we become aware of circumstances that cause our rights to appear to be in jeopardy.

6.4 We agree that at the Customer's request, we will release items of security to which we are entitled pursuant to the foregoing provisions (Goods and receivables) of our choice to the extent that the value thereof exceeds the claims to be secured by more than 10%. The determining factor in valuing the items of security is the realizable value (security value) thereof.

6.5 If our retention of title ceases to be valid in the case of deliveries to another country or for other reasons, the Customer is obligated to grant us, without delay, security with regard to the items delivered or other security for our claims, which must be valid under the laws applicable in the place in which the Customer has its registered office and must approximate the retention of title under German law as far as possible.

## **7. Claims regarding defects**

7.1 The Customer's rights in the case of material and legal defects are governed by the statutory provisions unless otherwise agreed hereinafter. Claims against us are ruled out in all cases if the defective goods have undergone further processing by the Customer or another entrepreneur, e.g. by being installed in another product.

7.2 The primary basis for our liability for defects is the agreement made regarding the specific quality of the Goods. "Agreement regarding the specific quality of the Goods" means all product specifications and manufacturer indications that are the subject matter of the individual contract or were publicly announced by us (particularly in catalogs or on our website) at the time when the contract was entered into.

7.3 The Customer's claims for defects presuppose that the Customer has complied with its statutory obligations to inspect the Goods and complain of any defects therein (Sec. 377 and 381 of the German Commercial Code (HGB)). In the case of Goods intended for installation or other further processing, an inspection must take place in all cases immediately before processing. If a defect becomes apparent upon delivery or inspection or at any later point in time, we must be notified thereof in writing without delay. In all cases, apparent defects must be reported in writing within seven working days after delivery, and defects not apparent upon inspection must be reported in writing within the same time limit after discovery thereof. If the Customer fails to inspect the Goods properly or to report any defects therein, we are not liable for the defect that was not reported or was not reported in due time or properly pursuant to the statutory provisions.

7.4 If the item delivered is defective, we can initially choose whether to effect a cure by eliminating the defect (cure) or supplying an item that is free of defects (substitution). Nothing herein shall affect our right to refuse to effect a cure subject to the statutory prerequisites.

7.5 We are entitled to render the cure owed dependent on the Customer paying the purchase price when due. The Customer is, however, entitled to withhold a portion of the purchase price that is appropriate in relation to the defect.

7.6 The Customer is required to give us the time and opportunity necessary in order to effect the cure owed, and in particular must turn over the Goods that are the subject of the complaint for inspection and testing purposes. In the event of substitution, the Customer must return the defective item to us pursuant to the statutory provisions. The cure does not include either the removal of the defective item or the re-installation thereof if we were not originally obligated to install it.

7.7 The expenditures necessary for the purposes of inspection, testing and effecting a cure, particularly transportation and travel costs, work and material costs and, where applicable, removal and installation costs, shall be borne or reimbursed by us in accordance with the statutory provisions if there is in fact a defect. Otherwise, we are permitted to demand that the Customer provide compensation for the costs arising from the unjustified demand to cure a defect (particularly costs of inspection, testing, and transportation) unless the Customer was unable to ascertain that the item was not defective.

7.8 In urgent cases, such as in the event of any risk to operational safety or reliability or to avert disproportionate damage and/or losses, the Customer has the right to eliminate the defect itself and demand that we provide compensation for the expenditures that were objectively necessary to that end. If the Customer effects the cure itself, we must be notified without delay, and if at all possible beforehand. The Customer is not permitted to effect a cure itself if we would be entitled to refuse such a cure pursuant to the statutory provisions.

7.9 If the cure has failed or a reasonable time limit to be set by the Customer for the cure elapses without producing the desired result or no such time limit is necessary pursuant to the statutory provisions, the Customer is permitted to rescind the purchase agreement or reduce the purchase price. There is, however, no right of rescission in the case of trivial defects.

7.10 Claims of the Customer to damages and/or compensation for expenditures made in vain, even in the case of defects, exist only subject to the provisions of this section and are otherwise ruled out.

## **8. Other liability**

8.1 Unless otherwise specified in these Terms and Conditions, including the provisions that follow, we are liable pursuant to the statutory provisions in the event of any breach of contractual and non-contractual duties.

8.2 Our liability for damages – irrespective of the legal grounds therefor – exists within the scope of liability for fault in the case of intent and gross negligence. Subject to statutory limitations of liability (e.g. the level of care exercised in our own affairs; trivial breach of duty), we are liable for ordinary negligence only

a) for damage and/or losses arising from loss of life, bodily injury, or impairment of health; and

b) for damage and/or losses arising from a breach of an essential contractual duty (an obligation whose fulfillment renders the proper performance of the contract possible in the first place and in the fulfillment whereof the other party to the contract generally trusts and is permitted to trust); in this case, however, our liability is limited to compensation for the foreseeable and typically occurring damage and/or losses.

Indirect damage and/or losses and consequential damage and/or losses that result from defects in the Goods are moreover only eligible for compensation to the extent that such damage and/or losses are typically to be expected if the delivery item is used as intended.

8.3 The limitations of liability arising from Sec. 8.2 hereof also apply in the case of breaches of duty by or in favor of persons

for whose fault we are held responsible pursuant to statutory provisions. They do not apply to the extent that we have maliciously concealed a defect or have provided a warranty for the specific quality of the Goods or to claims of the Customer pursuant to the German Product Liability Act (ProdHaftG).

8.4 The Customer is not permitted to rescind or terminate the contract with regard to a breach of duty that does not consist in a defect unless we are responsible for the breach of duty. Any free right of termination on the part of the Customer (particularly pursuant to Sec. 650 and/or 648 BGB) is ruled out. In all other respects, the statutory prerequisites and legal consequences apply.

## **9. Limitation of claims**

The limitation period for claims regarding material and legal defects is one year from delivery of the Goods.

## **10. Place of performance; place of jurisdiction; applicable law**

10.1 The place of performance for all obligations arising from the contractual relationship, particularly performance, acceptance of returns of packaging, and payment, is Aachen.

10.2 The sole place of jurisdiction for any and all disputes arising out of and regarding the contract is Aachen. We do, however, also have the right to bring a legal action against the Customer in another place of jurisdiction that applies to the Customer.

10.3 In the case of foreign transactions, the entire contractual relationship is governed by the laws of the Federal Republic of Germany unless another jurisdiction necessarily applies. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is ruled out.