

# **General Terms and Conditions of Delivery and Payment**

## **HVB Hoch-Vakuum-Beschichtungs GmbH**

### **§ 1 Scope**

Only these terms and conditions of sale apply. We do not recognise deviating or conflicting conditions insofar as we have not expressly agreed to them in writing.

These terms and condition of sale also apply to all future transactions between the parties even if we deliver the goods in knowledge of deviating or conflicting conditions.

These general terms and conditions apply only to companies, legal persons under public law, or special assets under public law within the scope of § 310 Para. 1 BGB (German Legal Code).

### **§ 2 Offer and Acceptance**

1.

Insofar as the order of a buyer represents an offer within the scope of § 145 BGB, we have the right to accept it within a two-week period. In the case of deliveries, we reserve up to 10% of short or excess deliveries.

2.

Insofar as it has not been expressly agreed otherwise, we will make an effort to observe the agreed delivery times, whereby these times are to be considered only a non-binding declaration of intent. In case of default of delivery, the buyer may allot a reasonable extension period and, if this period passes without delivery, withdraw from the contract. The buyer may demand compensation for damages due to non-fulfilment when this extension period has expired only if default of delivery has occurred due to intentional or grossly negligent behaviour.

3.

Circumstances due to *force majeure*, such as public limitations like strikes and lockouts, authorise us to extend the delivery period by the duration of the obstruction. If these circumstances last longer than two months, we may cancel the contract completely or in part without triggering a responsibility to provide compensation for damages in the process. This also applies to unforeseeable circumstances which we are otherwise unable to influence and which prevent or delay the manufacturing or shipping of the goods.

### **§ 3 Prices and Payment**

Our prices are ex works, not including legal value-added tax and the costs for packing, insofar as not expressly agreed otherwise. Payment of the net purchase price is due within 30 days of invoicing. When payment becomes past due, default interest to the amount of 8% above the respective base interest rate p.a. is charged. We reserve the right to assert damages due to the delayed performance that go beyond this amount.

Any deductions from invoice amounts (especially discount deductions) must be expressly agreed upon by the parties in advance.

### **§ 4 Price Adjustment**

If the purchase price or wages and incidental wage costs to be paid have increased by more than 5%, for which we must provide proof upon demand, we have the right to increase the agreed price accordingly in order to pass on the increased purchase and wage costs to the customer. This has nothing to do with an increase in our margin. Insofar as we have sole influence over one or more of the abovementioned cost items, these cost items are not taken into consideration. The abovementioned adjustment stipulation does not apply to the prices of goods and services delivered or rendered within four months after the conclusion of the contract.

### **§ 5 Offset and Retention**

The buyer has a right to offset only insofar as his or her counterclaims are undisputed or have been legally determined. The buyer has the right to assert retention claims only based on counterclaims from the same contractual relationship.

### **§ 6 Delivery**

1.

Delivery presupposes the timely, proper fulfilment of the buyer's obligations. The defence of the non-fulfilled contract is subject to change. In case of a default in acceptance of the delivery or other culpable violations of the duty to cooperation on the part of the buyer, we have a right to compensation for the resulting damage, including any additional expenses. Claims going beyond this are subject to change.

2.

In this case, the risk of the accidental destruction or deterioration of the goods passes to the purchaser at the point in time of the default in the acceptance of the delivery or other violations of the duty to cooperate.

## **§ 7 Transfer of Risk and Shipping**

1.

All shipments are made at the cost and risk of the buyer, even if the prices have been agreed to be free delivered. At shipment of the goods upon the desire of the buyer, the risk of accidental destruction or deterioration of the goods transfers to the buyer at the point in time of shipping or loading. We are not liable for property damage caused by our vehicles or drivers in connection with the delivery, with the exception of intentional damage or gross negligence.

2.

In case of self pickup, the buyer or his or her agents are responsible for loading the transport vehicles and the observance of the legal regulations, especially in regard to the transport of hazardous materials. Insofar as our employees help load or unload, they act upon the sole risk of the buyer and not as our vicarious agents.

3.

If the shipment is delayed by circumstances for which the buyer is responsible, the risk already transfers to the buyer at the point in time of the readiness to ship. The buyer must bear and, if pertinent, repay us for additional costs incurred due to the delay.

4.

The buyer must report recognisable transport damage of any kind immediately, but within five workdays after receipt of the goods at the latest. All deliveries within Europe are insured.

## **§ 8 Retention of Title**

1.

Until all payments have been received in full, the goods remain our property. In case of contractual violations of the buyer, including default of payment, we have the right to take back the goods after an appropriate period (to be defined) has expired.

2.

Until complete payment, the buyer must handle the goods carefully and insure them appropriately.

3.

Insofar as the purchase price is not completely paid, the buyer must inform us immediately in writing if the goods are encumbered with the rights of third parties or exposed to other interference by third parties.

4.

The buyer has the right to resell the goods under retention of title in the course of ordinary business. In this case, however, he or she assigns all claims from such a resale to us, regardless of whether it takes place before or after a processing of the goods under a retention of title. Notwithstanding our right to collect the claims directly, the buyer is also entitled to collect the assigned claim. In this context, we are obliged not to collect the claim as long as and insofar as the buyer meets his or her payment

obligations, does not start a bankruptcy or similar proceedings, and does not stop payment.

5.

If the goods under retention of title are processed or manufactured or if the processed or manufactured item is resold or otherwise used, all claims that the buyer acquires in this way will be assigned to us together with all ancillary rights and security interests insofar as the security interests of third parties are not affected. If an item is created through processing or manufacturing, combination, or mixing and this item is co-owned by third parties or whose security rights are continued by third parties, the following applies in case of a resale: The buyer will assign to us all claims achieved through the sale of the item that correspond to the ratio of the value of the items originally provided by us under retention of title to the value of the items provided by the third party.

6.

According to this § 8, the retention of title also remains in effect when individual claims have been included in a current account, and the buyer has been informed of and has accepted the balance. Insofar as the abovementioned securities exceed the claims being secured by more than 10%, we are obliged to release the security as we choose upon demand of the customer.

## **§ 9**

### **Warranty**

1.

The prerequisite for any warranty rights of the buyer is his or her proper fulfilment of all culpable obligations to inspect the goods and lodge complaints.

2.

Warranty claims can be asserted within a six-month period after the transfer of risk.

3.

In case of defects in the goods, the buyer has a right to subsequent specific performance in the form of the elimination of the defect or delivery of a defect-free item. If the subsequent specific performance fails, the buyer has the right to reduce the purchase price or cancel the contract.

4.

If the sale takes place on the basis of the sample, the properties of the same do not represent a guarantee or promise, but rather a non-binding viewing object for a description of the goods unless otherwise expressly stipulated in the contract. The stipulation in this Para. 4 is accordingly applicable in the case of analysis specifications.

If not otherwise agreed, the sole object of the contract between us and the buyer is the purchase and, if pertinent, delivery of the purchased goods. We do not assume a warranty or liability for the suitability of the goods for the purpose intended by the purchase or for the concrete use. The opposite applies only if consulting was expressly made an object of the contract by the parties.

## **§ 10**

## **Liability**

1.

In case of intent or gross negligence on our part or on the part of our representatives or vicarious agents, we are liable according to the legal regulations; this also applies in case of a culpable violation of essential contractual obligations. Insofar as the damage at hand is not an intentional violation of the contract, our liability for damages is limited to the foreseeable, typical damage that occurs.

2.

Liability due to culpable injury to life, limb, or health and liability according to the Produkthaftungsgesetz (German Product Liability Act) are unaffected hereof.

3.

Insofar as it is not otherwise expressly regulated, our liability is excluded.

## **§ 11**

### **Cancellation of Contract**

If the financial circumstances of the buyer worsen considerably after the conclusion of the contract in such a way that our payment claims are endangered, for example the buyer generally stops payment or bankruptcy proceedings are opened in regard to his or her assets, we have the right to make the continuation of ongoing, long-term delivery or upcoming, intended delivery dependent upon the provision of security as we choose. We have the right to cancel the contract if the security is not provided within an appropriate, set period.

## **§ 12**

### **Applicable Law, Place of Jurisdiction, Miscellaneous**

1.

This contract is subject to the law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods and the collision regulations of private international law.

2.

The place of fulfilment and sole place of jurisdiction for all disputes arising from or in connection with this contract is Berlin, Germany.

3.

If individual provisions are or become entirely or partially invalid, the rest of the contract remains effective. This also applies if a loophole is discovered in the contract. This particularly applies for these General Terms and Conditions of Sale and Delivery.

Berlin, October 2009