

# General Terms and Conditions of Business of Hermann Reckers GmbH & Co. KG KG

## § 1 General – Sphere of validity

- (1) Only our terms and conditions of business shall apply. Buyer's terms and conditions of business which are contrary to, or differ from, our own shall not be recognised unless we have expressly consented to them in writing. Our terms and conditions of business are valid even in those cases in which we carry out deliveries to the Buyer without reservations in the knowledge that the buyer has terms and conditions of business which are contrary to, or which differ from, our own terms and conditions of business.
- (2) Our terms and conditions of business apply only to businesses in the sense of § 310 Section 1 of the German Civil Code [BGB].
- (3) Our general terms and conditions of business shall also apply for all future transactions with the Buyer, even if they are not expressly agreed upon again.

## § 2 Offer, Offer documents, Scope of performance

- (1) If the offer is to be regarded as an offer in accordance with § 145 BGB, we shall consequently be allowed to accept it within 2 weeks.
- (2) We reserve the proprietary and intellectual property rights to diagrams, drawings, calculations and other documents. This also applies for those written documents which have been designated as being "confidential". The Buyer must obtain our express written consent before passing them on to third parties.
- (3) We shall not be liable for mistakes which arise from documents, drawings, samples etc. and/or from the Buyer's specifications, provided that we cannot be reasonably expected to recognise these.
- (4) Our offer, including drawings, diagrams, dimensions, weights or other performance data, is subject to change without notice and is not binding, provided that there is nothing stated to the contrary in the order confirmation or that we have not stated in writing that our offer is binding. The information contained in leaflets and catalogues, such as drawings, diagrams, stated weights and dimensions, represents approximations normal in the trade.
- (5) Discrepancies in dimensions, weights and unit quantities within tolerances normal within the trade, relevant DIN regulations and technical casting requirements are permitted. Weights and dimensions stated in our offers and order confirmations do not constitute guarantees of condition. For invoicing purposes the delivered weights and unit quantities ascertained by us are decisive.
- (6) Production equipment specific to an order, such as models, templates, core boxes, moulds, casting tools, devices and inspection gauges, which are supplied by the Buyer, are to be forwarded to us free of charge. We shall only check that the production equipment supplied by the Buyer is identical with the contractual specifications or drawings or samples handed over to us on the basis of express agreement. We are permitted to modify production equipment if this appears to be necessary for technical casting reasons and the work piece is not modified as a result. The Buyer bears all costs for the modification, maintenance and replacement of his production equipment.
- (7) The production equipment will be handled and stored by us with the same level of care and attention as that we would give to our own property. We shall not be liable for accidental deterioration or destruction of the production equipment. Production equipment belonging to the Buyer which we no longer require can be returned to the Buyer at his own expense and risk or, if the Buyer fails to satisfy our request that he collect the goods within a reasonable period of time we may store the equipment at the usual cost and destroy it after waiting an appropriate period of time and having warned the Buyer that we shall destroy his production equipment if he fails to collect it.

- (8) Order-related production equipment which is produced or purchased by us on behalf of the Buyer shall remain our property even if the Buyer is invoiced a share of the costs. They shall be kept in safekeeping for a period of three years after the last casting. In so far as a variant agreement is made, stating that the Buyer is to become the owner of the equipment, ownership shall pass to him as soon as the agreed price or share of the price is paid. The hand-over of the equipment shall be replaced by our obligation to keep the equipment in safekeeping. Notice of termination may not be served by the Buyer on the safekeeping arrangement before two years have elapsed from the passing of ownership, unless there is good cause for doing so. Given this, claims under German copyright law or industrial property law may only be asserted by the Buyer when he points out such rights to us and expressly reserves the right to assert them. If, when using production equipment which can only be used once, defective goods are produced, the Buyer has consequently to provide more production equipment or to bear the costs of replacement equipment. Parts to be used by us for casting must be supplied by the Buyer in the correct dimensions and in perfect condition. The Buyer is to supply replacements free of charge if parts become unusable due to of rejects.
- (9) The features stipulated in the technical specifications (also in the form of a drawing) shall be a definitive description of the services to be rendered.

### § 3 Prices, Passing of risk, Packing costs

- (1) Unless anything is stated to the contrary, we are bound by the prices contained in our offers for 30 days from the date of the offer. Otherwise the prices stated by us in the order confirmation plus the rate of value added tax in force at that time shall apply. Additional goods and services shall be invoiced separately.
- (2) Orders for which specific fixed prices or remunerations have not been agreed shall be invoiced at the list prices in force on the day on which the goods or services are rendered or at the rates applicable on this day for invoicing our wages (Daily rates) plus postage, freight and packing.
- (3) Provided that there is nothing to the contrary in our order confirmation, our prices shall be “ex Works“ excluding packing; this shall be invoiced separately unless an express agreement has been made to the contrary, (cf. also § 5 No (4)).
- (4) A separate written agreement is required before a discount for prompt payment may be subtracted.
- (5) Provided that the Buyer so wishes, we shall cover the delivery with transit insurance. Any costs incurred as a result shall be borne by the Buyer.
- (6) We shall only be liable for damage in transit or losses for which we, or our legal representatives, contractors or other assistants are to blame in the event of intent or gross negligence. In the event of ordinary negligence we shall be obliged to assign any claims for compensation there may be against the transport company etc. to the Buyer, if this does not substantiate liability on our part as a result. Damage in transit is thus to be reported to us without delay enclosing a damage confirmation by the transport company (cf. § 377 of the German Commercial Code [HGB]). The damaged goods are to be kept ready for our disposal.

### § 4 Terms and conditions of payment

- (1) Provided that the order confirmation does not state otherwise, the purchase price including all other agreed remuneration – in particular the payments for ancillary services – shall full due for payment in full (net amount) upon delivery or acceptance and handing over or delivery of the invoice. The Buyer shall find himself in default without any further statements being made by us 30 days after the date on which payment is due, if he has not settled the invoice.
- (2) In the event that there are defects, the Buyer shall not be entitled to a right of retention unless the consignment is obviously defective or the Buyer is obviously entitled to a right to refusal to accept the work; in such a case the Buyer is only entitled to a right of retention provided that the sum retained is in a reasonable proportion to the defects and the probable costs of subsequent fulfilment (in particular the costs of rectifying the defect). The Buyer is not be entitled to assert claims and rights on account of the defects if he has not effected payments due and the amount due is in a reasonable proportion to the value of the consignment and / or work affected by defects.
- (3) Moreover, the Buyer shall only be entitled to offsetting rights if his counter claims have been declared final and absolute in a court of law, are uncontested and are recognised by us. In addition to this, he is authorised to exercise a right of retention in so far as his counter claim is based on the same contractual relationship.

- (4) Default interest shall be invoiced at 8 % p. a. above base rate (§ 247 BGB). It is to be set higher or lower, that is at a higher rate of interest if we can prove that we have incurred a cost or lower if the Buyer can prove that the charge we have incurred is less than the base rate.
- (5) If the Buyer fails to fulfil his payment obligations, in particular if a cheque is dishonoured or if we become aware of other circumstances calling into question the creditworthiness of the Buyer, we shall consequently be entitled to make the remaining debt payable even if we have accepted drafts. In this case we shall also be entitled to demand advance payments or that securities are provided.

## § 5 Delivery period

- (1) Delivery periods or dates which may be agreed as being binding or non-binding must be agreed in writing.
- (2) A delivery period agreed with us in writing cannot start before all technical matters have been clarified. Consequently, unless an agreement has been made to the contrary, agreed delivery dates shall only be agreed as being approximate.
- (3) Compliance with our obligation to supply shall be dependent upon the Buyer fulfilling his obligations properly and on time. We shall reserve the right to assert that the contract has not been fulfilled properly.
- (4) Goods reported as being ready for dispatch must be taken over by the Buyer without delay, otherwise we shall be entitled to dispatch them as we see fit or to put them into storage at normal hauler rates and at the Buyer's expense and risk. We shall also be entitled to take the latter course of action if we undertake to dispatch the goods but are unable to do so for no fault of our own. The goods shall be regarded as having been delivered one week after storage commences.
- (5) If the Buyer is in default with acceptance or if he is in culpable breach of other duties to co-operate, we shall consequently be entitled to demand the reimbursement of any damages we sustain as a result, including any additional expenditure we may incur. The right to assert other claims remains reserved.
- (6) Provided that the preconditions in Section (5) have been satisfied, the risk of accidental destruction or accidental loss of the purchased thing shall pass over to the Buyer at the point in time at which he finds himself in default with acceptance or debtor's default.
- (7) We shall be liable in accordance with the law, provided that the underlying purchase agreement is a fixed transaction in the context of § 286 Section 2 No 4 BGB or of § 376 HGB. We shall also be liable in accordance with the law if the Buyer is entitled to assert that continuing to have the contract fulfilled has ceased to be in his interests as a result of a default in delivery for which we are to blame.
- (8) Moreover, we shall be liable in accordance with the law in so far as the default in delivery is attributable to an intentional or grossly negligent breach of contract for which we are to blame; if our representatives or assistants are to blame; this blame is to be attributed to us. Provided that the breach of supply agreement is not based upon an intentional breach of contract for which we are to blame, our liability to make good damages shall be limited to the foreseeable damages typical for this type of contract.
- (9) We shall also be liable in accordance with the law in so far as the default in delivery for which we are to blame is attributable to a culpable breach of an important contractual duty. In this case the liability to make good damages shall, however, be limited to the foreseeable damages typical for this type of contract.
- (10) Moreover, we shall be liable in the event of a default in delivery for default damages expressed as a lump sum of 0.5 % for each full week of default not, however, to exceed 5% of the sum invoiced for the goods and services affected by the default.
- (11) If the Buyer amends or extends the scope of work originally agreed, and this results in delayed completion or delivery, we shall not be liable for this. However, we shall notify the Buyer of a new completion and / or delivery date straight away. If the cause of non-compliance with a date is attributable to force major or operational breakdowns, including where such events affect our suppliers or sub-contractors, and for which we are not to blame, we shall not be under any obligation to compensate for damages caused as a result of delays resulting herefrom. We shall notify the Buyer straight away.
- (12) If the hindrance persists for more than three months, the Buyer shall, having set a reasonable period of time, be entitled to withdraw from that part of the contract not yet fulfilled. If the supply period is extended or if we are exempted from our obligation to supply, the Buyer may consequently not derive any compensation claims for damages from this as a result. We may, however, only rely upon the named circumstances if we notify the Buyer straight away.
- (13) The Buyer reserves the right to assert his statutory claims and rights.
- (14) We shall be entitled to render partial services and partial deliveries at any time unless the partial delivery or partial service is of no interest for the Buyer.

## § 6 Liability for defects

- (1) We shall be liable for seeing that the parts supplied by us have been manufactured perfectly in accordance with the agreed technical supply specifications. The Buyer bears responsibility for proper design, in particular with regard to the intended application and use, taking into account compliance with any safety regulations which may apply, the selection of the material and the necessary testing procedures, for verifying that the technical supply regulations and the technical documents and drawings to be handed over to us have complied with regulations in full and correctly as well as the model of the production equipment and to be more precise even in those cases in which we suggest modifications which are approved by the Buyer. Moreover, the Buyer vouches that no third party proprietary or other rights shall be breached as a result of the information that he has given. The condition of the goods at the point in time at which risk is passed shall determine whether they are in accordance with the contract.
- (2) Claims under warranty will not be substantiated if the discrepancies from the agreed condition are no more than minor or if the usability has only been impaired to a minor extent.
- (3) If a defect becomes apparent after assembly work / installation work has been carried out by parties other than ourselves, we shall only be liable for quality defects if the assembly work or installation work for the item previously processed or sold by us has been carried out competently and professionally. The Buyer shall have to prove that the assembly work and / or installation work has been carried out competently and professionally. We shall not be liable for defects arising as a result of improper or unsuitable use, faulty assembly and / or start-up and normal wear and tear.
- (4) Consequently we are to be notified in writing straight away and at the latest within one week of the receipt of the delivered item. Defects which cannot be detected within this period, even after careful inspection, are to be notified to us straight away upon detection. Warranty claims asserted by the Buyer shall be subject to him having fulfilled the inspection and notification obligations properly in accordance with § 377 HGB.
- (5) Insofar as the purchased object does have a defect, we shall, as we see fit, be entitled to render subsequent fulfilment either by rectifying the defect or by supplying a new defect-free object. In the event of rectifying a defect we shall be obliged to bear all the expenses necessary for the purpose of rectifying the defect, in particular transportation and travelling expenses and material costs, provided that these have not been increased as a result of the purchased item having been removed to a location other than the place of fulfilment. We shall be entitled to refuse subsequent fulfilment for as long as the Buyer does not fulfil his payment obligations, with regard to the defect-free part of the service rendered by us.
- (6) If the subsequent fulfilment is unsuccessful, the Buyer shall as he sees fit be entitled to withdraw from the contract or to demand a reduction in the purchase price.
- (7) We shall be liable under the law in so far as the Buyer asserts compensation claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or assistants. Provided that we are not charged with intentional breach of contract our liability to pay compensation for damages shall be limited to foreseeable damage typical for this type of contract.
- (8) We shall be liable under the law in so far as we culpably breach an important contractual obligation. In such a case our liability to pay compensation for damages will, however, be limited to foreseeable damage typical for this type of contract.
- (9) Our liability for a culpable loss of life, physical harm and personal injury remains unaffected. This also applies for compulsory liability under the German Product Liability Act.
- (10) Unless an arrangement is made to the contrary above, liability is excepted. This applies in particular for damages not relating to the purchased object itself, as well as for compensation claims for lost profit.
- (11) The time limitation for claims asserted on the basis of rights to and defects in the goods and services – regardless of whatever legal reason on which such claims are based – shall be one year. However, this shall not apply in instances of § 438 Section 1 No 1 BGB (Legal defects for immovable things), § 438 Section 1 No 2 BGB (Buildings, things for buildings), § 479 Section 1 BGB (The contractor's right of recourse) or § 634 Section 1 No 2 BGB (Buildings or work, the success of which consists in the rendering of planning or supervisory services for this). The periods of limitation stated in Sentence 2 above are subject to a time limit of 3 years.
- (12) The time limits in accordance with Section (9) shall also apply for all compensation claims for damages asserted against us which are associated with the defect – irrespective of the legal basis of the claim. Insofar as there are any type of compensation claims for damages against us the period of limitation in Section (9) Sentence 1 shall apply.

- (13) The periods of limitation in accordance with Section (9) and (10) shall apply subject to the following proviso:  
The periods of limitation do not apply in the event of intent. They do not apply even in those cases in which we have maliciously concealed a defect or have furnished a guarantee for the condition of the goods and services. If we have maliciously concealed a defect, the statutory periods of limitation which would have applied had we not acted in bad faith shall apply. The period of limitation shall apply for compensation claims for damages not including cases in which there is loss of life, personal injury and physical harm, or freedom and it shall not apply for claims asserted in accordance with the German Product Liability Act, or in cases in which we have breached an obligation as a result of gross negligence or if we have breached important contractual obligations.
- (14) The period of limitation for all claims begins when the goods are delivered or when services have been accepted.
- (15) Provided that nothing has been expressly agreed to the contrary, the statutory provisions on the beginning of the period of limitation, the suspension of a period of limitation and restarting of the period of limitation remain unaffected.

### § 7 Joint liability

- (1) Any other liability for compensation for damages than provided for in § 6 shall be ruled out regardless of the legal basis of the asserted claim. This shall apply in particular for compensation claims for damages based on fault when entering into the contract, on account of other breaches of duty or on account of tortious compensation claims for property damage in accordance with § 823 BGB.
- (2) Insofar as we are not liable for compensation for damages or our liability is limited, this also applies with regard to the personal liability of our salaried staff, employees, representatives and assistants to pay compensation for damages.

### § 8 Security of reservation of title

- (1) We shall reserve the right of property for the purchased object until all payments under the supply contract have been received by us. The reservation of the right of property shall also cover the recognised balance of account insofar as we book accounts payable by the Buyer in current accounts (Reservation of current account). In the event of the Buyer's conduct being in breach of the contract, we shall be entitled to take back the purchased object. If we take back the object this shall not constitute withdrawal from the contract unless we have expressly stated this in writing. Levy of execution on the purchased object by us shall always constitute withdrawal from the contract. We are authorised to sell the purchased object once we have taken it back and the proceeds from the sale are to be offset against the Buyer's liabilities – minus a reasonable sum to cover the costs of sale.
- (2) The Buyer is obliged to handle the purchased object with care. In particular he is obliged to take out adequate insurance cover at his own expense against fire damage, water damage and theft for the value of the purchased object when new.  
In so far as maintenance and inspection work is necessary, the Buyer must carry these out in good time and at his own expense.
- (3) In the event of levy of execution or other third party interference, the Buyer has to notify us straight away in writing so that we can take legal action in accordance with § 771 of the German Code of Civil Procedure [ZPO]. Insofar as the third party is not in a position to reimburse us for the costs of taking legal action both in and out of court, in accordance with § 771 ZPO, the Buyer shall be liable for the shortfall we have incurred.
- (4) The Buyer is entitled to resell the purchased object in a proper commercial transaction. However, he shall assign to us here and now all accounts up to the value of the final invoiced amount (including VAT) of our claim accruing to him from the resale to his buyers or to third parties, and that irrespective of whether the purchased thing has been resold without or after being processed. The Buyer shall also be authorised to collect this account after assignment. Our authority to collect the account ourselves remains unaffected by this. We shall, however, undertake not to collect the account as long as the Buyer fulfils his payment obligations from the proceeds he receives, does not fall into arrears and, in particular, an application is not made for bankruptcy or insolvency proceedings to be instigated or he stops making payments. If this is the case however, we may consequently demand that the Buyer informs us of the assigned accounts and who owes them, passes over to us all the information required for collection and hands over the documents associated with this, and notifies the debtors (third parties) of the assignment.

- (5) The processing or reforming of the purchased object shall always be carried out by the buyer on our behalf. If the purchased object is processed together with other items not belonging to us, we shall consequently acquire co-ownership of the new object in proportion to the value of the purchased object (final invoiced amount including VAT) to the other processed items at the point in time at which the processing takes place. Moreover, the same shall apply for the object created by processing as for the purchased object supplied subject to reservation of ownership.
- (6) If the purchased thing is inseparably mixed with other items not belonging to us, we shall consequently acquire co-ownership to the new object in proportion to the value of the purchased object (final invoiced amount including VAT) to the other processed items at the point in time at which the processing takes place. If the combination takes place in such a way that the Buyer's object is to be regarded as the main item, it shall be regarded as agreed that the Buyer shall assign proportional co-ownership to us. The Buyer shall retain the sole ownership or co-ownership created for us in this manner in safekeeping.
- (7) We shall undertake to release the securities to which we are entitled at the Buyer's request, in so far as the marketable value of our securities exceeds the accounts to be secured by more than 10%. The selection of the securities to be released shall be incumbent upon us.

#### **§ 9 Lien, Assignment by way of security, Sale, Storage fees**

- (1) When items are being processed, we shall be entitled to a lien on the Buyer's items which have come into our possession as a result of the commission, due to our account created by the order. The lien shall cover all accounts to which we are entitled in accordance with security of the reservation of title in accordance with § 8 Number 1. The lien may also be asserted due to accounts created by work previously carried out, spare parts previously delivered and other services already rendered, provided that they are connected with the item.  
The lien shall only apply for other claims under the business relationship in so far as these are not contested or have been declared final and absolute in a court of law.
- (2) If the Buyer is in default with payment for a period in excess of 2 months, we shall consequently be entitled to sell the subject-matter of the contract on the open market at market prices to achieve the best possible price having announced our intention in writing in advance and after waiting a further 4 weeks. The Buyer shall be entitled to any sales proceeds. However, we shall be entitled to subtract the costs of the sale as well as our main account and accrued interest from the sales proceeds.
- (3) If, for operational reasons, we are unable to keep the goods subject to a lien in safekeeping, we may demand the reimbursement of costs we incur as a result of having them stored elsewhere. The Buyer will be invoiced storage costs at normal market rates for keeping goods in safekeeping within the company.
- (4) Insofar as we process goods for the Buyer which do not belong to him but to third parties, the Buyer shall assign to us here and now the claim to remuneration accruing to him against third parties for the amount of the sum invoiced for our service. We accept the assignment. Irrespective of the assignment the Buyer shall be entitled to collect the account for as long as he fulfils his obligations to us and his financial status does not collapse. Upon demand the Buyer shall have to furnish us with the information necessary for us to collect assigned accounts and to notify his debtor of the assignment.

#### **§ 10 Place of jurisdiction – Place of fulfilment**

- (1) Provided that the Buyer is a registered business, our place of jurisdiction shall be Rheine or Münster. However, we shall also be entitled to take legal action against the Buyer at the courts having jurisdiction where he is resident.
- (2) These terms and conditions of business shall be governed by the law of the Federal Republic of Germany. The UN law on sales does not apply.
- (3) Unless there is something to the contrary in the order confirmation, the place of fulfilment shall be our main place of business (Rheine or Hörstel).