

General Terms and Conditions of Purchase of the companies

HIMMEL Antriebstechnik GmbH & Co.KG
hoelschertechnik-gorator GmbH & Co.KG
LAT Maschinen- und Antriebstechnik GmbH & Co.KG
BOCKWOLDT Antriebstechnik GmbH & Co.KG
himmel GmbH
Himmelwerk GmbH
HIMMEL Tür- und Torantriebe GmbH & Co.KG
PVG Pumpenvertrieb Gescher GmbH,
WABE Wasseraufbereitung GmbH & Co.KG



Sect. 1 General provisions, scope of application

(1) The present General Terms and Conditions of Purchase (AEB) shall apply to all business relationships with our business partners and suppliers („Seller“). The AEB shall apply only if the Seller is an entrepreneur (Sect. 14 BGB), a legal person under public law, or a special fund under public law.

(2) The AEB shall apply particularly to contracts relating to the sale and/or delivery of movable goods („Goods“), irrespective of whether the Seller manufactures the Goods himself or purchases them from suppliers (SS. 433, 651 BGB).

(3) The present AEB shall apply exclusively. Deviating, opposing, or supplementary general terms and conditions of the Seller shall become an integral part of the contract only and inasmuch as we expressly give written approval of their application. This requirement of approval shall apply generally, for example if we accept the Seller's deliveries without reservation despite having knowledge of the Seller's general terms and conditions.

(4) Individual agreements concluded with the Seller in individual cases (including side agreements, supplementary agreements and amendments) shall always take precedence over the present AEB. The contents of such agreements shall be determined by written contract, resp. our written confirmation, subject to counterevidence.

(5) Legally significant declarations and notices that must be made to us by the Seller after the conclusion of contract (e.g. setting of deadlines, reminders, notices of termination) shall be effective only in written form.

(6) References to the application of statutory provisions shall only serve for clarification. Even without such clarification, statutory provisions shall apply unless they are directly modified, or expressly excluded, in the present AEB.

Sect. 2 Conclusion of contract

(1) Our order shall become binding no earlier than at the moment it is placed, or confirmed, in writing. The Seller shall notify us, prior to acceptance, of any obvious errors (e.g. spelling mistakes and calculation errors) and incompleteness of the order, including the order documents, for the purpose of correction, resp. completion; otherwise the contract shall be deemed not concluded.

(2) The Seller is under an obligation to confirm our order within a period of 2 weeks in writing or to execute it unconditionally by dispatching the Goods (acceptance).

Late acceptance shall be deemed a new offer and is subject to our acceptance.

Sect. 3 Delivery time and late delivery

(1) The delivery time stated by us in the order is binding – unless otherwise agreed in the individual case. The Seller is obliged to inform us forthwith in writing if foreseeably he is unable to meet the agreed delivery times whatever the reason.

(2) If the Seller fails to perform his services, or fails to perform them within the agreed delivery period, or defaults on them, our rights – especially termination rights and rights to damages – shall be subject to statutory law. The provisions under Para. (3) shall not be affected.

(3) If the Seller defaults we may – in addition to other statutory claims – demand liquidated compensation in the amount of 1% of the net price per full calendar week, however not exceeding 5% of the net price of the Goods delivered late, for the damage/loss we suffered through such default. We reserve the right to prove that damage of higher value was caused. The

Seller reserves the right to prove that no damage or damage of significantly lower value was caused.

Sect. 4 Performance, delivery, passing of the risk, delay in taking delivery

(1) The Seller is not entitled without our prior written approval to use third parties (e.g. subcontractors) to perform the services he owes. The Seller bears the procurement risk for his own services unless otherwise agreed in the individual case (e.g. limitation to stocks).

(2) Delivery shall be free and within Germany to the destination specified in the order. If the destination is not specified and nothing else has been mutually agreed, delivery shall be performed to our place of business in Gescher, Germany. The destination shall also be the place of performance for delivery and any subsequent performance (obligation to be fulfilled at Buyer's domicile (German: *Bringschuld*)).

(3) A delivery note stating the date (issuance and dispatch), contents of the shipment (item no. and quantity) and our order identifier (date and number), shall be enjoined with the delivery. If the delivery note is missing or is incomplete, we shall not be liable for any resulting delays in processing and/or in payment. A corresponding dispatch note containing the same information shall be sent to us separately from the delivery note.

(4) The risk of accidental loss and accidental deterioration of the Goods will pass to us upon delivery of possession at the place of performance. If an acceptance procedure is agreed the risk shall pass thereupon. Otherwise, too, acceptance shall be subject to the statutory provisions relating to contracts for work and labour (German: *„Werkvertragsrecht“*). Our delay in acceptance shall be treated as equal to delivery of possession, resp. taking delivery.

(5) Our default in acceptance is subject to statutory law. However, the Seller must expressly offer his services to us even if a particular, or determinable, calendar time is mutually agreed for an act, or contributory act, on our part (e.g. provision of material). If we default on delivery, the Seller may demand compensation of his extra expenses (Sect. 304 BGB). If the contract relates to non-fungible Goods (single-piece production) to be manufactured by the Seller, the Seller shall be entitled to additional rights only if we previously agreed to perform a contributory act and are liable for omitting its performance.

Sect. 5 Prices and terms of payment

(1) The price stated in the order is binding. All prices are including statutory value-added tax, unless the latter is shown separately.

(2) If nothing else is mutually agreed in the relevant individual case, the price includes all Seller's services and ancillary services (e.g. assembly, installation) and all ancillary costs (e.g. proper packaging, transport costs, including any transport insurance and civil liability insurance).

(3) The agreed price shall be due payable within 30 calendar days from full delivery and performance (including any agreed acceptance procedure) and receipt of a proper invoice. If we effect payment within 14 calendar days, the Seller shall grant us a 3% discount on the net invoice amount. In the case of bank transfers, payment shall be deemed punctually effected if our bank receives our remittance order prior to the end of the payment term; we assume no liability whatsoever for any delays caused by the banks that may be involved in the payment process.

(4) We owe no interest on arrears. Default on payment shall be subject to statutory law.

(5) We are entitled to setoff and retention rights, and to the defence of an unperformed contract, to the extent provided by statutory law. In particular, we are entitled to retain due payments as long as we continue to be entitled to claims resulting from incomplete or defective performance against the Seller.

(6) The Seller shall be entitled to setoff or retention rights only in respect of counterclaims that are *res judicata* or undisputed.

Sect. 6 Secrecy and retention of ownership

(1) We reserve all title and copyrights to illustrations, plans, drawings, calculations, instructions, product descriptions and other documents. Such documents may be used exclusively for the contractual services and shall be returned to us after performance of the contract is completed. The documents shall be kept secret from third parties, even after the end of the contract. The obligation to maintain secrecy shall expire no earlier than, and inasmuch as, the knowledge contained in the documents supplied has become general knowledge.

(2) The provisions set forth herein-above shall apply *mutatis mutandis* to compounds and materials (e.g. software, finished and semi-finished products) and to tools, templates, and other objects, that we provide the Seller with for manufacture. Such objects shall be kept separately and shall be reasonably insured against destruction and loss.

(3) Any processing, commingling, or combination (subsequent processing), of supplied items by the Seller shall be deemed on our behalf. The same applies in the event that we subsequently process the delivered Goods so that we qualify as the manufacturer and obtain ownership of the product upon subsequent processing, at the latest, in accordance with statutory law.

(4) Ownership of the Goods shall be transferred to us unconditionally and irrespective of the payment of the purchase price. If, however, in the individual case, we accept the Seller's offer to transfer ownership subject to the condition precedent of payment of the purchase price, the Seller's reservation of ownership shall expire upon payment of the purchase price of the delivered Goods, at the latest. Subject to the advance assignment of the resulting receivables (in the alternative, subject to the ordinary retention of title that extends to reselling), we will remain entitled to resell the Goods in the normal course of business even before the purchase price is paid. Thus, all other forms of retention of title are excluded, in particular an extended and assigned retention of title, and retention of title extended to re-processing (German: *erweiterter, weitergeleiteter und auf die Weiterverarbeitung verlängerter Eigentumsvorbehalt*).

Sect. 7 Defective delivery

(1) Unless otherwise stipulated herein-below, our rights shall be subject to statutory law in the case of Goods that are defective in quality and/or in title (including wrong delivery and short delivery) and in the case of other breaches of obligations on the part of the Seller.

(2) According to statutory law, the Seller shall be liable in particular for ensuring that the Goods are of the agreed quality at the time the risk passes to us. Product descriptions that – especially by designating, or referring to, our order – are the subject matter of the contract in question, or that form an integral part of the contract, as do the present AEB, shall be deemed an agreement of a certain quality. It makes no difference whether the product description originates from us, the Seller, or from the manufacturer.

(3) Contrary to Sect. 442 Para. (1) Sentence (2) BGB, we are entitled without limitation to claims based on defects even if the defect was unknown to us at the time of the conclusion of contract for reasons of gross negligence.

(4) The commercial obligation to inspect for and give notice of defects shall be subject to statutory law (SS. 377, 381 HGB), subject to the following conditions: our obligation to inspect goods is limited to defects that openly emerge during our incoming goods inspection, including the delivery documents, upon external examination and during our quality control in the sampling procedure (e.g. damage caused by transportation, wrong and short delivery). Where an acceptance procedure is agreed, no obligation to inspect the Goods applies. Otherwise, the existence of an obligation to inspect the Goods depends on whether an inspection is pertinent in the due course of business, taking into consideration the circumstances of the individual case.

Our obligation to give notice of defects discovered thereafter shall not be affected. In all cases, our notice of defects (German: *Mängelanzeige*) shall be deemed forthwith and punctual if the Seller receives it within 8 days.

(5) The Seller shall also bear any costs incurred by him for the purposes of inspection and subsequent performance (including disassembly and reassembly costs) even if the fact emerges that no defect actually existed. Our liability for damage/loss in the event of unjustified demands for defect rectification shall not be affected; in this case, however, we shall be liable only if we were aware, or not aware through our gross negligence, that no defect existed.

(6) If the Seller fails to fulfil his duty of subsequent performance – at our choice either by remedying the defect (subsequent performance) or by delivering a defect-free item (replacement delivery) – within a time limit set by us, we may remedy the defect ourselves and claim reimbursement, resp. a corresponding advance payment, of the expenses required for that purpose. If subsequent performance on the part of the Seller fails or is unreasonable to us (e.g. because of a special urgency, danger for operational safety, or the pending occurrence of unreasonable damage/loss) no time limit is required; we will inform the Seller forthwith, where possible in advance, of such circumstances.

(7) For the rest, we are entitled to reduce the purchase price or withdraw from the contract under statutory law in the case of a defect in quality or in title. In addition, we are entitled to compensation and reimbursement of expenses under statutory law.

Sect. 8 Recourse against the supplier

(1) We are entitled to our statutory rights of recourse within a supply chain (recourse of the entrepreneur under SS. 478, 479 BGB) in addition to claims based on defects. In particular, we are entitled to demand precisely the type of subsequent performance (subsequent remedy or replacement delivery) from the Seller that we owe our to our buyer in the individual case. This shall not limit our statutory right of choice (Sect. 439 Para. (1) BGB).

(2) Before accepting or fulfilling a claim (including reimbursement of expenses under SS. 478 Para. (2), 439 Para. (2) BGB) raised by our buyer on the grounds of a defect, we will notify the Seller and, briefly illustrating the facts of the case, request his written comment. If the Seller fails to comment within a reasonable period of time and if no amicable solution is reached, the defect claim actually accepted by us shall be deemed owed to our buyer; in this case, the Seller is under the burden of proof of the contrary.

(3) Our claims resulting from recourse against the supplier shall apply even if the Goods are re-processed by us or by one of our buyers, e.g. by installation into another product, before selling them to a consumer.

Sect. 9 Producer's liability

(1) If the Seller is responsible for product damage he shall indemnify us against, and hold us free from, third party claims to the extent that the cause is based in his sphere of organisation and control and he is liable in relation to third parties.

(2) Based on his indemnification obligation, the Seller shall reimburse any expenses defined by SS. 683, 670 BGB that result from or in connection with claims asserted against third parties, including recall actions carried out by us. Inasmuch as possible and reasonable, we will inform the Seller of the content and scope of recall actions and give him opportunity to comment. No additional statutory claims shall be affected.

(3) The Seller shall take out and maintain product liability insurance with a lump sum coverage of no less than EUR 10m per incident of personal injury / property damage. On request, the Seller shall provide us with written proof of the conclusion and existence of the aforementioned insurance.

Sect. 10 Limitation

(1) The reciprocal claims of the contracting parties shall become time-barred in accordance with statutory law, unless otherwise agreed herein-below.

(2) Contrary to Sect. 438 Para. (1) No. (3) BGB, the general limitation period for claims based on defects is 3 years from the passing of the risk. Where an acceptance procedure is agreed, the limitation period shall commence upon acceptance. The 3-year limitation period applies *mutatis mutandis* to claims based on defects in title, however without affecting the statutory limitation period for third party rights to *in rem* recovery of possession (Sect. 438 Para. (1) No. (1) BGB); rights based on defects in title shall become time-barred under no circumstances whatsoever for as long as the third party is able to claim the right against us – especially if it is not time-barred.

(3) The limitation periods under Sales Law, including the extensions mentioned herein-above, shall apply – within the statutory limits – to all contractual claims based on defects. If, in addition, we are entitled to extra-contractual damages claims the regular statutory limitation period shall apply (SS. 195, 199 BGB), unless the limitation periods under Sales Law lead to a longer limitation period in the individual case.

Sect. 11 Choice of law and place of jurisdiction

(1) The present AEB and the contractual relationship between us and the Seller shall be governed by the laws of the Federal Republic of Germany, to the exclusion of uniform international law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Seller is a merchant as defined by the German Commercial Code („HGB“), a legal person under public law, or a special fund under public law, the place of jurisdiction for all disputes arising from the contract shall be our place of business in Gescher, Germany. The same shall apply if the Buyer is an entrepreneur as defined under Sect. 14 BGB. In all cases, however, we are also entitled to file an action at the place of performance of the delivery obligation stipulated in the present AEB, resp. in a prevailing individual arrangement, or at the Seller's general place of jurisdiction. Prevailing statutory provisions, in particular those relating to exclusive jurisdiction, shall not be affected.

As of: November 2021