

Purchasing Terms and Conditions of HERMA GmbH

(Status 01. February 2005)

I. Validity

1. Our orders of all types placed on a commercial footing shall be subject to these terms and conditions of purchasing alone. The Seller expressly accepts them – for future orders as well. In any case the delivery of the goods and /or the rendering of a service by us shall be regarded as such recognition.
2. The Seller's terms and conditions – regardless of whatever point in time at which we receive them – shall not be binding on us and shall be expressly rejected.

II. Order

1. The prices stated in our orders are fixed prices. They shall be franco domicile including packing but exclusive value added tax at the rates in force at that time.
2. Discrepancies from our order and the documents and amendments submitted by us from the condition, quality or performance of the goods or services to be delivered compared with goods or services supplied or agreed hitherto shall require our express written consent. When supplying to drawings or to plans and specifications provided by us for the goods, the stated dimensions, tolerances, and specifications are to be adhered to precisely. They shall take precedence over any general standards there may be. If we are provided with samples, mass production and / or delivery may only commence after we have given our express clearance in writing.
3. For call-off orders we shall be entitled to decide the point in time of the call-off within the agreed period of time and the amount to be taken delivery of (unless an agreement is made to the contrary) in accordance with our equitable discretion, taking into consideration our needs at that time.
4. Our prior consent shall be required to pass on the order or part thereof to a third party (sub-contractor) in so far as the issue concerned is not minor additional work. The Seller shall also vouch for third parties commissioned by him in those cases in which we have granted our consent for work to be sub-contracted.

III. Drafts, Tools, Furnished materials

1. We shall retain all rights to our own sketches, drafts, final drawings originals, film tools, printing tools, punch tools, drills, and printing tools etc. which we provide to the Seller to carry out an order. They shall only be loaned to the Seller. The Seller shall have to maintain them in a condition suitable for use at his own expense. In particular, he shall have to service and maintain them properly and professionally. They are to be handed over to us in a proper condition upon request by us at any time including any copies which may have been made, and no later than if they are no longer needed to carry out the order.
2. All objects of the type named above may only be used when working together with us and for the purposes for which they are intended. Moreover, they must not be handed over to third parties for inspection or for use without our prior written consent.
3. The above regulations shall also apply for those objects which the Buyer has manufactured himself or had manufactured for the production of products designed to be passed over for us to use, and the manufacturing costs of which we shall bear in full or in part, regardless of whether these objects become our property or not under the agreements to be made in each case.

IV. Delivery and passing of risk

1. The delivery / performance dates marked on our orders shall be binding and compliance therewith is absolutely essential. The Seller shall have to notify us immediately in writing of identifiable delays in performance. However, such notification shall not exempt the Seller from claims for compensation for damages to which we may possibly be entitled and shall not curtail our right of withdrawal.
2. The risk of accidental loss and accidental deterioration shall only pass over to us when we or the place of receipt nominated by us has actually acquired power over the delivered goods.
3. All deliveries shall be delivered franco domicile including packing at all times. Part-deliveries shall only be allowed subject to our prior written consent. We shall accept the Seller's retention of title only in the form of a simple retention of title.
4. If the objects to be delivered are machinery, systems or equipment, the Seller shall maintain ready for delivery a stock of spare parts for the normal service life of the delivered goods, but for a period of ten years at least, and he shall supply us as required at normal market terms and conditions.

V. Payment

1. Payment shall be made at our choice within 14 days qualifying for a 3% prompt payment discount or within 30 days net. If the goods are delivered after we have received the invoice, the date on which the goods are delivered shall count with regard to the terms of payment stated above. All payments shall be made subject to the goods being delivered properly and the invoice being correct.
2. The Seller may not offset his claims against us, unless such claims are uncontested or have been declared final and absolute in a court of law. Moreover, the Seller may only assign claims created under the business relationship to third parties with our written consent.

VI. Warranty, Third Party rights and Product liability

1. In the event that a performance / delivery is defective, as well as in any other breach of duties under the law of obligations, we shall be entitled to all statutory rights and claims without limitation.
2. In the event of operational reliability and / or to avoid damage on an exceptional scale in our premises or at third parties premises, we shall be entitled, even without contacting the Seller beforehand, to rectify defects and to repair the damage or to make covering purchases, all at the Seller's expense.
3. The Seller shall vouch that the performance rendered by him is not in breach of third party rights, in particular copyright and industrial property rights. He shall exempt us as well as our buyers from any third party claims which may possibly arise as a result.
4. The Seller shall also exempt us from any other third party claims which may possibly be asserted – in particular as a result of product liability – which are based on the deficiency of the performances / and of part performances rendered by him (in particular the supply of basic materials). This shall also apply for the costs of any recall campaigns there may possibly be. The Seller shall be obliged to take out an insurance policy providing adequate cover against this risk and to provide evidence that he has done so to us upon request.

VII. Quality control

1. The Seller has to prove that the quality control system maintained by him is suitable in terms of both type and scope and is in line with state-of-the-art technology. He must provide evidence of this to us upon request. Upon request he shall be obliged to sign a quality control agreement with us to this effect, and to be more precise, on the basis of the international standard DIN ISO 9001 or any successor or supplementary standards which there may be.
2. Given the Seller's obligation to maintain and operate a quality control system, our obligation to check the goods and to notify the Seller of defects in accordance with § 377, §378 of the (German) Commercial Code [HGB], shall not apply – subject to specific agreements if the Seller is a registered trader – provided that such defects are not manifest discrepancies in volume and obvious transport damage.

VIII. Final Provisions

1. The place of fulfilment for all goods and services shall be the place of receipt prescribed by us or – in so far as we have not prescribed one – our principal place of business.
2. The place of jurisdiction shall be Stuttgart, provided that the Seller is a registered trader, legal entity established under public law or a public-law special fund or does not have a general place of jurisdiction within the Federal Republic of Germany. However, we shall also be entitled to take legal action against the Seller at the court having jurisdiction where he has his principal place of business.
3. All legal relationships between us shall be governed by the law of the Federal Republic of Germany. The standard UN law on sales (CISG) shall not apply.
4. The Seller shall grant his consent that we may save and process information electronically on a computer in so far as this is necessary for business purposes and is legal within the parameters of the Federal Data Protection Act (BDSG). This consent shall at the same time be regarded as notification within the meaning of § 26 Section 1 BDSG.
5. Should a part of a contract or of these terms and conditions of sale be invalid or impractical, the validity of the contract or of these terms and conditions shall not be affected as a result.