

## **General Terms and Conditions of Sale of HARTMANN VALVES GMBH 03/2017**

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### **1. General Remarks**

- 1.1 These General Terms and Conditions of Sale, Delivery, and Payment (hereinafter: *Terms and Conditions of Sale*) for entrepreneurs of the HARTMANN VALVES GMBH (hereinafter: *we*) shall apply exclusively; we do not acknowledge any terms of the purchaser conflicting with or deviating from our Terms and Conditions of Sale, unless we have expressly consented to their applicability. Our Terms and Conditions of Sale shall apply even where we carry-out a delivery to the purchaser without reservation, although we are aware of terms and conditions of the purchaser that conflict with or deviate from our Terms and Conditions of Sale, including any procurement directives of public-law corporations.
- 1.2 Any and all agreements made between us and the purchaser for fulfilment of a contract must be laid down in a written contract to be effective. Alterations and amendments to the contract shall require written form.
- 1.3 Our Terms and Conditions of Sale shall also apply to all future transactions with the purchaser within the scope of its activities under the current business relationship.
- 1.4 Our Terms and Conditions of Sale apply only towards entrepreneurs in the meaning of section 14 subsection 1 BGB [(German) Civil Code], corporated bodies under public law, and public separate estates in the meaning of section 310 subsection 1 BGB.

### **2. Offers, Offer Documents, Scope of Delivery**

- 2.1 Our offers are subject to confirmation and non-binding, unless anything to the contrary arises from the contract. Our written order confirmation shall be decisive for the scope of our deliveries. If our offer with a time limit has been accepted in due time and we have not yet confirmed the order, our offer shall be decisive for the scope of delivery. Our sales personnel shall principally not be entitled to make any subsidiary agreements or to give any assurances exceeding the contents of the written contract.
- 2.2 We reserve the right to make insignificant alterations of the delivery item not affecting its intended use. We also reserve the right to modify our products due to further technical developments, within what is customary in the trade. We further reserve the right to deviations in colour, form, dimensions, and material, unless separate agreements have been made about this.

- 2.3 We reserve all rights of ownership and copyright in illustrations, drawings, calculations, and other documents; such documents may not be made available to third parties. This shall, in particular, apply to such written documents which are expressly marked confidential. It is only upon our prior express consent in written form that they may be passed on to third parties.
- 2.4 Any company protective measures becoming necessary because of particular circumstances at the purchaser's production site shall, principally, be made by the purchaser at its own expense. Unless anything to the contrary has been agreed, they are not contained in the scope of delivery. This shall also apply where erection and commissioning is performed by us.

### **3. Prices – Payment Terms**

- 3.1 Unless anything to the contrary arises from the order confirmation, our prices shall apply „ex works“ (according to Incoterms® 2010), exclusive of VAT and packaging, shipping costs and costs for special packaging shall accordingly be invoiced additionally. Unless anything to the contrary has been agreed, redemption, return transport, and disposal of packaging shall not be part of the services to be provided by us.
- 3.2 In the absence of separate agreements, our prices shall be calculated by us each time and communicated to the purchaser in our order confirmation. Unless anything to the contrary has been laid down in writing, payment shall be made net without deductions to our payment office upon delivery (or notification of readiness for shipment, if the delivery has been delayed for reasons the purchaser is not liable for) and shall be due within 30 days from the date of invoice.
- 3.3 If a time of performance has been agreed 5 months after conclusion of the contract, or where a time of performance occurs 5 months after conclusion of the contract due to circumstances the purchaser is liable for or attributable to circumstances lying within the purchaser's sphere of risk, we reserve the right to appropriately increase our prices for the purchaser to an extent cost increases have occurred after conclusion of the contract, in particular due to labour agreements and / or increases in the price of material. At request, we will furnish the purchaser proof of such increased costs.
- 3.4 We shall be entitled to use payments of the purchaser for settlement of its older debts first. Where cost and interest have already occurred, we shall be entitled to offset the payment against costs first, then against interest and finally against the principal claim.
- 3.5 Where the purchaser is in default with payments, we will principally charge interest of 9 percentage points above the respective basic interest rate, pursuant to the BGB [(German) Civil Code]. Where we can prove a higher default damage, we shall be entitled to claim compensation for it.
- 3.6 Where payment by instalments has been agreed, the total invoice amount shall become due immediately if one instalment is not paid on due date.
- 3.7 The purchaser shall be entitled to set-off only to the extent its counter-claims are uncontested or have been determined without further legal recourse. The purchaser may only assert rights of retention which are based on counter-claims under the same contract relationship.
- 3.8 A payment shall be deemed to have been made when the amount is available to us. Until that time, we shall retain our right of ownership. In the case of payment by cheque, the payment shall be deemed to have been made on its final encashment.
- 3.9 Should we be obligated to make advance deliveries, and should we become aware, after a contract has been concluded, of any circumstances based on which our claim to payment is endangered due to the purchaser's lacking ability to perform, we shall be entitled to choose to either demand security within a reasonable period of time or delivery versus payment. Where the purchaser fails to meet this request, we shall be entitled to withdraw from the contract reserving the assertion of further statutory rights.

#### **4. Delivery Period and Passing of Risk**

- 4.1 Unless anything to the contrary has been agreed or arises from the contract relationship, the delivery period stipulated by us is generally not binding. The delivery periods stipulated by us presupposes the clarification of all the necessary - in particular technical – issues / clarification and adherence to the purchaser's obligations.
- 4.2 We shall not be liable for any delay in delivery due to force majeure or to unforeseeable circumstances for which we are not responsible, such as operational disruptions, strikes, lock-out, lack of means of transportation, difficulties in procuring raw materials, orders imposed by authorities, supplies not delivered to us on time by our suppliers. Any agreed delivery period shall be extended by the period of obstruction. If the obstruction lasts longer than three months, we and the purchaser shall be entitled at the end of an additional period of time of reasonable length to withdraw from the contract with regard to the part not yet performed. We shall, however, be entitled to withdrawal from the contract if we are not responsible for the obstruction which has caused the withdrawal. It is only pursuant to compelling statutory requirements and in accordance with number 8 that we are liable to pay damages.
- 4.3 Where the statutory requirements are fulfilled, the purchaser may withdraw from the contract if a delay in delivery occurs. In such case, the purchaser shall be entitled to claims for damages because of non-performance if the delay was due to intent, gross negligence or the negligent breach of cardinal duties (such duties the fulfilment of which is a prerequisite for proper execution of the contract and on the fulfilment of which the contract partner relies and may rely as a rule). Number 8 of these Terms and Conditions of Sale shall apply additionally.
- 4.4 The limitations of liability pursuant to the paragraphs above shall not apply where a commercial short-selling transaction has been agreed; the same applies if the purchaser, due to a delay for which we are responsible, may assert that its interest in fulfilment of the contract has ceased to exist. In such cases, liability shall be limited to the damage which is foreseeable and typical for a contract like that. This shall not apply in cases where our liability is unrestricted pursuant to number 8 of these Terms and Conditions of Sale.
- 4.5 If the purchaser is in default with acceptance of a delivery or if it violates other duties to cooperate, we shall be entitled to claim compensation for the damage incurred by us, inclusive of any other additional expenses. We shall be entitled to claim a monthly lump sum of 0.5 percent of the invoice amount or the costs actually incurred for the storage and maintenance of the delivery items. In such case, the purchaser shall reserve the right to prove that no damage has occurred or is substantially lower than the lump sum. In cases provided for by law, the risk of accidental loss or accidental deterioration of the purchases item will pass to the purchaser at the time when it defaults in accepting delivery. Partial deliveries and partial invoices shall be permissible, unless there is an obvious interest of the purchaser to the contrary.

#### **5. Reservation of Title**

- 5.1 We shall retain title to the delivered items until receipt of all payments owed under the business relationship with the purchaser. In the event that the purchaser acts in breach of the contract, in particular in the event of defaults in payment upon setting a reasonable period for payment we shall be entitled to take back the item delivered. This shall not apply where the purchaser has already filed an application for insolvency proceedings or where insolvency proceedings have already been opened due to which we are not allowed to immediately take back the items delivered.
- 5.2 Withdrawal from the contract shall not preclude the assertion of claims against the purchaser. Upon taking back the item delivered, we shall be entitled to its realisation. The realisation proceeds less reasonable realisation expenses shall be set off against the purchaser's liabilities. The realisation regulations of the InsO [(German) Insolvency Code] shall remain unaffected.
- 5.3 The purchaser shall handle the delivery item carefully. Where maintenance or inspection work is required, the purchaser shall perform it in due time and at its own expense.

- 5.4 The purchaser shall immediately inform us in writing of any attachments or any other inferences by third parties.
- 5.5 The purchaser shall be entitled to resell the delivery item in the ordinary course of business; however, it herewith already assigns to us all claims in the amount of the invoice sum total (including value-added tax) of our claim accruing to it from the resale against its customers or third parties, irrespective of whether the delivery item has been resold without or after having been processed.
- 5.6 The purchaser shall be entitled to collect this claim even after assignment. However, we shall be authorised to collect the claim ourselves, if the purchaser does not fulfil its obligations to pay from the collected proceeds, defaults in payment or has filed an application for the opening of insolvency proceedings, or payments have been suspended. In such cases, we may demand from the purchaser to disclose to us the assigned claims and their debtors, to provide any and all information required for collection, to surrender all pertinent documents, and to inform the debtor/debtors (third parties) of the assignment. However, we will not be able to collect the claim if this is precluded by the [German] Insolvency Code.
- 5.7 Any processing or transformation of the delivered item by the purchaser shall always be carried out on our behalf. If the delivered item is processed with other items not belonging to us, we shall acquire joint title to the new good proportionally to the value of the delivered item (invoice sum total, including value-added tax) to the other processed items at the time of processing. The provision applicable to the items delivered with reservation shall also apply to the thing resulting from processing.
- 5.8 Where the items delivered by us are installed in an estate in such a manner as to become the property of the estate owner the above paragraph shall apply accordingly.
- 5.9 We undertake to release the securities to which we are entitled at the purchaser's request to the extent that the value of our securities exceeds the claims to be secured by more than 10%. Selection of the securities to be released shall be incumbent on us.
- 5.10 If the delivery item is taken abroad, the following shall apply:
- 5.10.1 If the delivery item was delivered prior to payment of all amounts owed by the purchaser under the contract, we shall retain title to the item until payment has been made in full, if this is admissible under the law in the area of application of which the delivery item is located. If this law does not permit the reservation of title but allows us to reserve other rights to the delivery item, we may exercise all rights of this kind.
- 5.10.2 The purchaser shall be obligated to participate in our measures that we will take to protect our right of ownership in the delivery item or the right to the delivery item replacing it.

## **6. Warranty**

- 6.1 The warranty rights (claims for defects) shall require the purchaser to inspect the goods immediately upon receipt and to notify us in writing of any obvious defects immediately, or 10 days following inspection at the latest, or of any hidden defects immediately, or 8 days following their detection at the latest, by giving a detailed account of the defects (section 377 HGB [(German) Commercial Code]).
- 6.2 All parts or services where a defect becomes apparent within the limitation period of paragraph 6 subparagraph (6) shall - at our discretion - be repaired, delivered again or provided again free of charge, provided that the reason for the defect had already existed at the time when the risk passed. The purchaser shall, however, retain the right to reduce the purchase price or to withdraw from the contract, at its option, in the event that subsequent fulfilment fails. Paragraph 8 shall apply to claims for compensation.

- 6.3 In the case of notices of defects, payments made by the purchaser may be withheld to an extent which is in a reasonable proportion to the defects which have occurred, only. In addition, the payments may only be withheld if the requirements of paragraph 3 subparagraph (7) sentence 2 are fulfilled.
- 6.4 If the purchaser, for reasons we are not responsible for, wrongfully gives notice of a defect for which we are responsible, we shall be entitled to charge the purchaser for reasonable expenses incurred by us in connection with the remedy and discovery of the defects.
- 6.5 Statutory rights of recourse of the purchaser against us from a sale of consumer goods (sections 478, 479 BGB [(German) Civil Code] shall be excluded with regard to agreements of the purchaser with its customers insofar as they exceed the purchaser's statutory claims for defects. Apart from that, the rights under sections 478, 479 BGB shall remain unaffected.
- 6.6 Claims for defects of the purchaser will become statute-barred within 12 months. This shall, however, not apply in the event of fraud, intent, within the scope of paragraph 6.5, and claims for compensation because of injury to body, health or life, or because of an intentional or grossly negligent violation of duty or because of a negligent violation of cardinal duties.
- 6.7 The above-mentioned provisions concerning the limitation of claims for defects pursuant to paragraph 6.6 shall apply accordingly to any claims for defects of the purchaser with regard to drives (third-party products).
- 6.8 The goods complained about shall be sent to us, free of charge, in a not dismantled condition, but free from any substances hazardous to health, specifying all the circumstances which are essential for evaluation of the defect. The inspection will be performed by us within a reasonable period after receipt of the goods. Following that, we will inform the purchaser in writing of the result of the inspection, and also of the expected duration and the estimated costs of the measures required to remedy the defects. Hereby, we may repair or replace defective components subject to our reasonable discretion.
- 6.9 We will not assume liability for damages which have occurred in result of the following reasons: Improper or inappropriate use, inappropriate, unauthorised or inexpert repair attempts by the purchaser or third parties, incorrect assembly or incorrect commissioning by the purchaser or third parties, natural wear and tear, incorrect or negligent handling, in particular overstrain, improper operating equipment, as well as chemical, electrochemical, or electric influences, unless expressly warranted.
- 6.10 In the event of the assertion of warranty rights the component found to be defective shall be sent to us uncleaned and unrepaired but free from any substances hazardous to health for inspection.

## **7. Industrial Property Rights / Defects of Title**

- 7.1 Unless anything to the contrary has been agreed, we shall only be obligated to perform the delivery within the country of the place of delivery, free of any third-party rights.
- 7.2 In the event of a violation of any property rights of third parties, we shall at our own discretion and at our own costs be entitled either to acquire and grant a right of use sufficient for the agreed or presumed utilisation or to amend the item of delivery in a way that does not infringe the property right, or exchange the item of delivery if the agreed or presumed utilisation of the delivery item by the purchaser is not affected by this. If we are not able to do this or if this is unreasonable, the purchaser shall be entitled to the statutory claims and rights.
- 7.3 Para. 8 and para. 6 subparagraphs (3), (4), and (6) of these Terms and Conditions of Sale shall apply accordingly to claims for compensation.

## **8. Claims for Compensation and Liability for Other Reasons**

- 8.1 Subject to the provision under paragraph 8.2 our statutory liability is restricted as follows:
- (a) We shall be liable up to a limited amount for damages typically foreseeable at the time of conclusion of the contract for the slightly negligent violation of essential duties under the obligatory relationship (cardinal duties). Here, the term cardinal duties is an abstract description of such duties the fulfilment of which is a prerequisite for proper execution of the contract and on the fulfilment of which the contract partner may rely as a rule.
  - (b) We shall not be liable for the slightly negligent violation of inessential duties under the obligatory relationship.
- 8.2 The above-mentioned limitations of liability shall not apply to intent or gross negligence, in cases of a compelling statutory liability (in particular under the [German] Product Liability Act), in the case of an acceptance of guarantee, or culpably caused injuries to body, health, or life.
- 8.3 The purchaser shall be obligated to take appropriate measures for the prevention and reduction of damages.
- 8.4 The above-mentioned provisions pursuant to subparagraphs (1) to (5) do not involve a change of the burden of proof.
- 8.5 Where liability on our part has been excluded or restricted this shall also apply to the personal liability of our salaried employees, hourly workers, associates, representatives, and agents.
- 8.6 Limitation of the claims between us and the purchaser shall be subject to paragraph 6 subparagraph (6) of these Terms, provided this does not affect claims under the [German] Product Liability Act.

## **9. Specific Regulations for Software**

- 9.1 Where software produced by third parties is the item of delivery or part of the items of delivery, the scope of the rights and powers granted the purchaser is defined by the license terms of the third party concerned which we have enclosed with the delivery and forwarded in advance at request. This applies, in particular, to software like operating systems and comparable components of systems to be delivered. We will make the purchaser aware of this in an appropriate manner when the item of delivery is software from third parties, e.g. by mentioning the third-party manufacturer in the order documents.
- 9.2 Apart from that, the general provisions of this contract and of these Terms and Conditions of Sale shall apply with regard to software, particularly with regard to warranty and our liability.

## **10. Confidentiality**

Both parties mutually undertake not to disclose to third parties any know-how and company secrets of the respective other party becoming known to them in the course of execution of this contract, as well as any know-how not generally known, and to impose corresponding obligations on their employees.

## **11. Claims under Insurance Contracts**

Where we, as a co-insured party, have direct claims against the purchaser's insurer the purchaser already now grants us its consent to the assertion of such claims.

## **12. Place of Jurisdiction – Place of Fulfilment**

- 12.1 Where the purchaser is a merchant in the meaning of the [German] Commercial Code, a corporate body under public law, or a public separate estate, our place of business is also the

exclusive place of jurisdiction for all disputes arising directly or indirectly from this contract relationship. Apart from that, we shall be entitled to file lawsuits with the court competent at the purchaser's place of business.

- 12.2 Our place of business shall also be the place of fulfilment, unless anything to the contrary arises from our order confirmation.
- 12.3 Where it has been agreed that customs and / or import duties of the country of destination are paid by us, any increases to such duties becoming effective between submission of our offer and delivery of the goods shall be at the expense of the purchaser. Any other fees, taxes, and costs in connection with the purchase contract shall also be borne by the purchaser.

### **13. Other**

- 13.1 Unless opposed by justified interests of the purchaser, we may, upon prior notification, inspect the products delivered by us during operation, take note of company secrets, and show the products to our prospective buyers.
- 13.2 The details made available by us will be processed and stored in electronic data processing systems. Personal details will be protected against misuse in accordance with the statutory provisions.
- 13.3 Information, files, documents etc. transmitted by us electronically will be scanned for viruses by us. We will assume no liability for any misuse of our electronic data by third parties.
- 13.4 The legal relationship between the parties shall be governed by German law exclusively, excluding the UN Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG).
- 13.5 The text in German language shall be binding for us as regards all written documents.

### **14. Severability Clause**

Should individual provisions of these Terms and Conditions be or become invalid/inexecutable or should these Terms and Conditions contain a regulatory gap, the other provisions shall remain effective. The contract parties shall be obligated to replace the invalid/inexecutable provision from the beginning of its invalidity/inexecutability by a provision which – economically - is most similar to it. The same applies in the event of a regulatory gap.