

General Terms and Conditions of Sales and Delivery as per 01.08.2002

Scope: The following terms and conditions are only effective towards entrepreneurs, legal persons under public law, or special assets under public law.

I. Application

1. Orders become binding by our acknowledgement of order. Any changes and amendments shall be made in textual form. All offers are without engagement unless they are expressly made as firm offers.
2. If the business relationship is a permanent one these terms and conditions are also effective for any future transactions without express reference, provided that the purchaser shall have received the terms conditions for a previous order acknowledged by us.
3. The purchaser's general terms conditions are not effective unless H&K Müller expressly acknowledges them.
4. Any present or future invalidity of specific provisions does not affect the remaining terms and conditions.

II. Prices

1. Unless otherwise agreed, prices are ex works, exclusive of freight, customs, ancillary import charges and packaging, plus legal value-added tax.
2. Should major cost factors change substantially after the offer is made or the order is acknowledged then H&K Müller and the purchaser will agree on an adjustment of the prices and the prorated costs for molds.
3. If the parties are agreed that the price depends on the weight of the parts the final price follows from the weight of the type samples released.
4. For new orders (= follow-up business), H&K Müller is not bound by previous prices.

III. Obligations to make and take delivery

1. The delivery period runs from the receipt of all documents needed for the execution of the order, down payment, and timely provisions of any materials that may have been agreed. Once we give notice of readiness for dispatch the delivery period is deemed complied with if dispatch is delayed or made impossible without our fault.
2. Should an agreed delivery period be exceeded through the fault of H&K Müller's then upon expiration of a reasonable extension of time the purchaser may claim compensation for delay or withdraw from the contract, in which case any further claims are excluded unless we have acted with gross negligence or intentionally. Compensation for delay is limited to a maximum of 5% of the partial delivery that is not made in accordance with the contract. There can be no withdrawal from the contract if the purchaser is in default of acceptance. It is up to the purchaser to prove that any damage beyond the above has been incurred.
3. Fairly made partial deliveries and reasonable deviations from the quantities ordered by no more than +/- 10% are allowable and must be accepted by the purchaser.
4. For call orders where no duration, production lot sizes and acceptance dates are agreed, we may no later than three months after the acknowledgement of order require a binding commitment on those matters. If the purchaser fails to meet such request within three weeks then we entitled to set an extension of two weeks and upon expiration of such extension withdraw from the contract and/or claim damages.
5. Should the purchaser fail to meet its obligations to take delivery then H&K Müller, notwithstanding any other rights, is not bound by self-help sale provisions; instead, H&K Müller may sell the object of delivery in the open market upon prior notification of the purchaser.
6. In cases of force majeure, we have the right to postpone delivery by the period of hindrance and a reasonable starting time or else wholly or partially withdraw from the contract for the part not yet fulfilled. For the purposes of these terms and conditions, force majeure includes strike, lockout or unforeseeable, unavoidable circumstances such as plant stoppages that prevent us delivering in time in spite of reasonable efforts; H&K Müller must prove the existence of such circumstances. The same applies when the above hindrances occur during a delay or at a subcontractor's. The purchaser may set a period of two weeks in which we must declare our intention either to withdraw from the contract or deliver within a reasonable extension of time. If we make no such declaration the purchaser may withdraw from the contract for the part not yet fulfilled. Firma H&K Müller will immediately notify the purchaser of any occurrence of force majeure within the meaning explained above. H&K Müller will make sure that the purchaser suffers as little damage as possible; for instance, by handing over the molds for the duration of the hindrance.

IV. Packaging, shipment, passage of risk, and default in acceptance

1. Unless otherwise agreed, H&K Müller chooses packaging, type of shipment, and shipping route.
2. Even when delivery is made freight prepaid does the risk pass to the purchaser with the departure from the delivering works. If dispatch is delayed through the purchaser's fault then the passage of risk takes place as early as with the notice of readiness for dispatch.

3. At the purchaser's written request and its expense, goods are insured against the risks to be identified by the purchaser.

V. Retention of ownership

1. We retain the ownership in all goods we deliver until all our claims against the purchaser are satisfied, even when the purchase price for separately identified claims has been paid. In cases of current accounts, ownership in deliveries (conditional goods) is retained in order to provide security for H&K Müller' account balance. If H&K Müller in connection with the payment of the purchase price accepts liability for a bill of exchange then retention of ownership does not expire until the buyer pays the bill in its capacity as drawee.
2. Any working or processing of goods is done by the purchaser made on our behalf, to the exclusion of acquisition of ownership under § 950 BGB. According to the ratio between the net invoice value of our goods and the net invoice value of the goods being worked or processed, we become joint owners of the new goods, which serve as conditional goods for the security of H&K Müller's claims according to subsec. 1 above.
3. In cases of processing (combination/mixture) with any other, non-H&K Müller-goods by the purchaser, the provisions of §§ 947, 948 BGB are applied to the effect that H&K Müller's share of joint ownership in the new goods is considered conditional goods within the meaning of the present terms and conditions.
4. The purchaser may resell conditional goods only within the ordinary course of its business and subject to the condition that a retention of ownership clause according to subsections 1 through 3 above shall also be imposed on the purchaser's customers. The purchaser is not entitled to dispose of conditional goods in any other way; in particular, there can be no pledging and transfer of ownership by way of security.
5. For any future resale of conditional goods, the purchaser hereby in advance assigns to H&K Müller all and any receivables and other lawful claims including ancillary rights that the purchaser may acquire against its customers, until all our claims against the purchaser shall be satisfied. At our request, the purchaser shall immediately provide us with any and all the information and records we may require in order to assert our rights against the purchaser's customers.
6. If the purchaser resells conditional goods processed according to subsections 2 and/or 3 above, together with other, non-H&K-goods then the assignment of the purchase price claim under subsec. 5 is limited to the invoice value of the conditional goods of H&K Müller.
7. If the securities that exist for us exceed the balance of our claims by more than 10% we shall at the purchaser's request release excessive securities, the choice of which is left to ourselves.
8. We must be notified immediately of any pledging or attachment of conditional goods by third parties. The purchaser is responsible for all necessary costs of intervention unless they are borne by third parties.
9. If subject to the above provisions we assert retention of ownership by taking back conditional goods we are entitled to sell the goods in the open market or put them up for auction. The assertion of the retention of ownership and in particular the claim for return constitutes withdrawal from the contract. Conditional goods are taken back at the proceeds of sale but not exceeding the agreed delivery prices. Any further claims damages, especially for loss of profit, are reserved.

VI. Liability for defects

1. Decisive for the quality and workmanship of our produce are the type samples, which we submit for validation by the purchaser at its request. Any reference to technical standards is to illustrate the specifications and does not constitute a warranty of quality.
2. If we have advised the purchaser outside our contractual services then we shall not be held liable for the functionality and fitness of the object of delivery unless upon express previous warranty.
3. Complaints about defects must be lodged immediately in writing. Hidden defects must be asserted immediately in writing once they are detected. In either case, all claims for defects are subject to a limitation period of twelve months after the passing of risk, unless otherwise agreed. Any longer limitation periods that may be mandatory under the law (BGB § 438 subsec. 1 no. 2, BGB § 479 subsec. 1, and BGB § 634a subsec. 1 no. 2) take precedence.
4. If a complaint for defects is justified - on the basis of the quality and workmanship warranted by the type sample released in writing by the purchaser - we are under obligation to rework. If we fail to remedy the defect within a reasonable period of time or if even repeated reworking fails then the purchaser may reduce the purchase price or contract withdraw

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from the contract. Any further claims, especially repayment of expenses or compensation for immediate or consequential damages from defective goods, are subject to the provisions of VII below. At our request, any replaced parts must be returned to us freight collect.

5. By unauthorized reworking and improper handling, the purchaser forfeits any claims from defective goods. Only for the prevention of excessive damages or in case the removal of defects by H&K Müller is delayed will the purchaser be entitled, after consultation with H&K Müller, to remedy the defects and claim reimbursements of reasonable costs.
6. Wear and tear by proper contractual use does not constitute any warranty claims.
7. Rights of recourse under §§ 478, 479 BGB exist only when the use by the consumer was lawful and only to the legally allowed extent. Goodwill arrangements that were not agreed with H&K Müller are excluded. Rights of recourse require that those entitled observe their own obligations, in particular the duty to complain about defects.

VII. General limitation of liability

Whenever, notwithstanding the above terms and conditions, is legally or contractually liable for damages or repayment of expenses such liability is limited to cases of intent, gross negligence, personal, fatal or health injuries caused by H&K Müller, its senior executives or persons employed in the performance of its obligations. This limitation does not affect the provisions for liability without fault under the product liability act or liability for warranted qualities. Nor does it affect a liability for culpable infringement of essential contractual duties; in this case, however, liability is limited, except in the cases of sentence 1 above, to foreseeable damages typical of the particular kind of contract. The above provisions do not imply any shifting of the burden of proof to the purchaser.

VIII. Terms of payment

1. All payment must be made in € (EURO) and only to H&K Müller.
2. Unless otherwise agreed, the purchase price for deliveries or other services is due with a 2% discount within 14 days and net cash within 30 days of the date of invoice. There can be no discount unless all previously due undisputed invoices have been paid. No discount is allowed for any payments by bill of exchange.
3. For excess of the agreed dates of payments, the purchaser must pay interest at the legal interest rate of 8 percent above the current base interest rate of the European Central Bank, unless we can prove a greater damage. It is up to the purchaser to prove that the actual damage was smaller.
4. We reserve the right to reject checks or bills of exchange. Checks and rediscountable bills are only accepted on account of performance; all costs involved are at the purchaser's expense.
5. The purchaser can only set off claims or assert a right of retention if its claims are undisputed or finally recognized in court.
6. If the purchaser by persistent noncompliance with terms of payments gives cause for seriously doubting its credit standing then all H&K Müller accounts receivable from the purchaser become immediately due. Additionally, in this case, we are entitled to demand advance payments on all outstanding deliveries as well as upon fruitless expiration of a reasonable period of grace withdraw from the contract.

IX. Molds (tools)

1. The price for molds also covers the costs of single sampling but neither the costs of testing and working neither equipment nor modifications caused by the purchaser. Costs of any further sampling for which we are responsible are at our expense.
2. Unless otherwise agreed, we are and remain the owners of the molds manufactured for the purchaser by us or by a third party on behalf of us. Molds are only used for orders of the purchaser as long as the purchaser meets its obligations to pay and take delivery. We are only obliged to replace these molds free of charge to the purchaser if they are needed to produce the output that the purchaser was promised. H&K Müller's duty to preserve a mold expires two years after the last partial delivery from that mold and previous notification of the purchaser.
3. If it was agreed that the purchaser should become the owner of the molds then ownership passes to the purchaser upon full payment of the purchase prices for the molds. Delivery of the molds to the purchaser is replaced with preserving them for the benefit of the purchaser. Irrespective of the purchaser's legal right to recover possession and the serviceable life of the molds, H&K Müller has an exclusive right of possession until the termination of the contract. H&K Müller shall mark the molds as third-party property and at the purchaser's request and expense obtain insurance coverage for them.
4. For the purchaser's own molds according to subsec. 3 and/or those provided on loan by the purchaser, our liability in terms of preservation and maintenance is limited to the diligence we usually employ in our own affairs. Costs of maintenance and insurance are at the purchaser's expense. H&K Müller's obligations expire upon completion of the order if the purchaser fails to collect the molds within a reasonable period of time although it was requested to do so. At any time, as long as the

purchaser does not fully comply with its contractual obligations we have a right of retention in the molds.

X. Provision of materials

1. Any materials to be provided by the purchaser must be delivered in time and in good order and condition at the purchaser's expense and risk, including an additional 5% on the agreed quantity.
2. Failure to meet those conditions causes a reasonable extension of the delivery period. With the exception of cases of force majeure, the purchaser must also pay additional expense for a disruption of production.

XI. Industrial property rights and deficiencies in title

1. To the extent that our deliveries are based on drawings, models, samples or parts supplied by the purchaser, it is the purchaser's responsibility to ensure that they do not violate any third-party property rights in the country of destination of the goods. We shall advise the purchaser of any rights of which we may have knowledge. The purchaser shall indemnify us against any third-party claims and make compensation for any resulting damage. If a third party making reference to some property right of its own enjoins us or the purchaser to refrain from manufacture or delivery then we are entitled - without examination of the legal situation - to suspend work until the legal position of the purchaser and the third party is made clear. Should the delay be such that we cannot be reasonably expected to continue the order we are entitled to withdraw from the contract.
2. If no order comes about then any drawings and samples provided by the purchaser are returned at the purchaser's request; otherwise, we are entitled to destroy them within three months of making the offer. The purchaser is under a similar obligation. The party entitled to destroy must notify the other party in advance and in time of its respective intention.
3. We have the copyrights, where applicable industrial property rights, and in particular the rights of use and exploitation in the models, molds, equipment, designs, and drawings created by ourselves or by third parties on our behalf.
4. Any other deficiencies in title that may exist come under the provisions of VI above, which apply accordingly.

XII. Place of performance and jurisdiction

1. The place of performance is Engelskirchen.
2. The place of jurisdiction is either Gummersbach or at our discretion the purchaser's place of business. This also includes documentary, bill enforcement, and check proceedings.
3. The present terms and conditions are exclusively governed by German law. Application of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (BGBI 1989 p. 586) to the Federal Republic of Germany (BGBI 1990 p. 1477) is excluded.

H&K Müller GmbH & Co. KG

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