

General Terms and Conditions of Heller Kunststoffe GmbH Herborn

§ 1 Validity of terms and conditions

The following General Terms and Conditions shall apply exclusively to all contractual relationships between Heller Kunststoffe GmbH Herborn (hereinafter referred to as the Seller) and the Buyer, even in case the Buyer communicates its own deviating conditions without the Seller having to explicitly object. Deviating regulations or collateral agreements shall only be binding for us if we expressly acknowledge them in writing. Verbal collateral agreements shall be non-binding.

By placing an order, the Buyer shall recognise our General Terms and Conditions not only for the business transaction in question, but also for all future business transactions.

§ 2 Offer, order and delivery

Our offers are always subject to change without prior notice. Drawings, figures, dimensions, weights or other performance data shall only be binding if expressly agreed upon. In case of doubt, our written order confirmation shall be exclusively authoritative for the contents of the contract.

Excess or short deliveries of up to 10% of the quantity confirmed are customary in the trade and we shall reserve the right to make them.

Delivery shall be subject to availability. Scheduled delivery dates shall be subject to an undisturbed flow of business with regard to the Seller and its supplier. Non-observance of confirmed delivery deadlines shall not entitle the Buyer to assert claims for damages or to annul the order.

Cases of force majeure or other circumstances beyond our control, including, without limitation, traffic disruptions, interruptions of operations, strikes, lack of raw materials and the like shall release us from the obligation to deliver and shall entitle us (the Seller) to extend the delivery time accordingly or to withdraw from the contract in whole or in part. The Buyer shall not be entitled to any claims for damages for non-performance.

The Buyer's requests to change the delivery date can only be taken into account if they are communicated to the Seller in writing at least two weeks prior to delivery. If, at the Buyer's request, the dispatch or the handover of the completed work is postponed to a date later than the date provided in the contract, the risk shall pass to the Buyer as of the delivery date originally agreed upon, unless another date is agreed by the parties.

Partial deliveries requested by the Buyer shall be sent carriage forward.

Consignments with a merchandise value below 500.00 euros [in German: 500,00 Euro] shall generally be dispatched carriage forward.

The Buyer shall be obligated to take delivery/to acceptance on provision [Bereitstellung] of the goods.

In the event that the Buyer is in default of acceptance, the Seller shall be entitled to claim compensation for the loss or damage incurred; upon default of acceptance, the risk of accidental loss and of accidental deterioration of the delivery items shall pass to the Buyer.

In case of call off orders for which no agreement is made regarding deadlines for acceptance, the Buyer shall be obligated to take delivery of the entire blanket order quantity within one year.

We reserve the right to reject orders without giving reasons.

Telephone orders must be confirmed in writing by the Customer without delay.

We provide no guarantee for the correctness of delivery of orders placed by phone.

§ 3 Prices

Unless stated otherwise, the Seller shall be bound to adhere to the prices stated in its quotation for up to three months. The prices specified in the order confirmation plus the applicable value added tax (VAT) shall be decisive. Additional deliveries and services shall be charged separately. The deduction of bonuses and cash discounts shall be subject to a written agreement.

In case there are any changes in cost after conclusion of the contract, in particular owing to changes in wages or prices of materials, the Seller shall reserve the right to change the prices accordingly.

§ 4 Payments

We issue invoices as soon as the ordered goods are ready for delivery or for collection. Delays in dispatch or in collecting the goods for which we are not responsible shall not postpone the due date of the invoice.

Unless otherwise agreed in writing, the Seller's invoices are due without deduction within 30 days of invoice.

If payment is made within 14 days of date of invoice, we will grant a cash discount of 2%, if payment is made within 8 days of date of invoice, we will grant 3% cash discount. After the expiry of 30 days after the invoice date, the Buyer shall be in default of payment.

We do not accept bills of exchange as a means of payment. Cheques shall be accepted only on account of payment, not in lieu of performance.

In the event of late or non-payment by the Buyer, the Seller shall be entitled to charge default interest of 8 percentage points above the base rate of the European Central Bank [ECB] as of the date in question.

In case of payment difficulties of the Customer, in particular in the event of default of payment, the Seller shall be entitled to make further deliveries only against advance payment and to require the immediate payment of all outstanding invoice amounts, including those for which an extension has been agreed, or to demand securities.

For new customers, the first three deliveries shall be made against advance payment only.

Tooling costs or proportions of tooling costs shall be payable on presentation of patterns, strictly net.

The supplier's invoices dated between 1st and 15th of the month shall be paid by the Seller at the end of the month with 3% cash discount, those dated between 16th and the end of the month shall be paid at the 15th of the following month with ./. 3% cash discount.

§ 5 Passing of risk

The risk of loss or damage of the delivery item shall pass to the Buyer upon delivery to the forwarding agent, freight carrier or any other person determined to carry out the dispatch. The same shall apply to partial deliveries.

§ 6 Tools, moulds, manufacturing devices

Any tools, moulds and manufacturing devices produced by us or by a third party on our behalf shall remain our property.

If the Buyer pays the full costs of the tools, the tools shall pass into the ownership of the Buyer after the settlement of the account.

If no repeat orders are received or are to be expected within two years after the last transaction, we shall be entitled to use the tools, moulds and devices at our own discretion. The same shall apply if the invoice for the proportionate tool costs [Werkzeugkostenanteile] has not been settled within 6 months of invoice.

§ 7 Reservation of title

We shall reserve title to the delivered goods as long as we are still entitled to claims under the business relationship with the Buyer. In case where goods delivered by us are reworked or processed [be- oder verarbeitet], every acquisition of title by the Buyer shall be excluded. Reworking or processing shall be effected on our behalf [für uns] in such a way that we are to be regarded as the manufacturer. In the case that the goods subject to retention of title [Vorbehaltsware] are processed with goods of different origin which are also subject to a retention of title extending to processing [ausgedehnter Eigentumsvorbehalt], we shall acquire co-ownership of the new article in the ratio of the invoice value of our goods to the value of the other goods which they have at the time of processing. The goods may not be assigned or pledged to third parties as security.

All the Buyer's receivables arising from a resale of goods to which we hold title or joint title shall pass to us at the time of the conclusion of the sales contract, irrespective of whether the goods are sold without having been reworked, processed, combined or mixed or after having been reworked, processed, combined or mixed and irrespective of whether they are sold to one customer or to several customers. In the event that the sold goods are not solely owned by us or that they are sold together with goods not belonging to us, the assignment shall only cover the counterclaim in the amount of the invoice value of our goods.

If the Buyer wholly or partly defaults on fulfilling an obligation secured by retention of title or if circumstances become known to us which make our rights appear jeopardised, we may demand surrender of the goods delivered by us, without previously having declared rescission from the sales contract pursuant to Sect. 449 para. 2 of the German Civil Code [BGB] or having set a period for fulfilment of the payment obligation pursuant to Sect. 323 para. 1 of the German Civil Code [BGB]. The continuance of the sales contract and the Buyer's obligations shall remain unaffected by such a demand or by the surrender of the goods.

At Buyer's demand, we shall undertake to release the securities (goods and accounts receivable) to which we are entitled in accordance with the provisions above at our choice to the extent that their value exceeds the claims to be secured by more than 20%.

§ 8 Limitations of liability

Any claims for damages – for whatever legal ground – shall be excluded, both against the manufacturer and its vicarious agent or assistant, unless the damages are due to wilful intent, gross negligence or omission. In cases of gross negligence or omission the manufacturer's liability shall be limited to the foreseeable damage typical of the contract concerned.

§ 9 Terms of warranty

Immediately upon delivery/receipt [bei Erhalt], the Buyer must inspect the delivered goods for completeness and, to the extent that is possible, for any possible defects. Complaints, of any kind, must be made in writing at the latest within 8 days of receipt of the goods in question. Should the complaint be justified, then a free replacement shall be provided on condition that the rejected goods are returned in the same condition as when they were delivered by the Seller or its upstream supplier. On principle, any further claims for damages shall be rejected - this shall also apply if the Buyer has a stake in the production of the form tools involved.

The functioning and durability of gaskets depend to a large extent on installation conditions, a factor over which the manufacturer has no control. This is the reason why we shall only guarantee the perfect quality of our material. All technical details have been stipulated to the best of our knowledge; however, they do not constitute a warranty of any sort. We shall reserve the right to make any technical modifications.

The warranty period for all products shall be 1 year starting from the date of delivery. In case of defects the Seller shall, at its choice, be entitled to three attempts of rectification or replacement (supplementary performance [Nacherfüllung]).

If the supplementary performance fails, the Buyer shall be entitled to set a deadline and to reserve its rights arising from Sect. 437 paragraphs 2 and 3 of the German Civil Code [BGB]. The deadline must be made in writing and must be a minimum of 14 business days in length.

If we expressly recognize a warranty claim, the costs of the least expensive delivery shall be borne by us. Basically we shall not accept any additional costs resulting from goods being delivered outside the Federal Republic of Germany (FRG).

Any further claims shall be excluded.

Warranty claims shall be excluded in case of improper handling or storage, and if the goods are not returned in their original packaging or have not been processed in a material-specific manner.

We shall not assume any guarantee that the ordered goods are suitable for the Customer's intended application and purpose. We shall not assume any liability for errors due to falsely submitted documents.

§ 10 Applicable law, court of jurisdiction/venue, severability

Solely the laws of the Federal Republic of Germany [FRG] shall apply to these General Terms and Conditions and to all legal relationships between the Seller and the Buyer.

If the Buyer is a registered merchant within the meaning of the German Commercial Code [HGB], a legal person under public law or a special fund under public law, the place of the Seller's head-office shall be the exclusive venue for all and any legal disputes arising either directly or indirectly from the contractual relationship.

If any provision in these General Terms and Conditions or any provision within the scope of other agreements is or becomes ineffective, the effectiveness of the entire remaining provisions or agreements shall remain unaffected.

These General Terms and Conditions are available in both German and English. In case of doubt the German text shall prevail. German law shall apply exclusively for construing and interpreting the Terms.

§11 Data Processing License

We shall have the right to process all of the legally protected data pertaining to the Customer within the scope of the relevant statutory regulations.

As of: January 2021