

# Terms of Sale and Delivery – Holders Technology GmbH

## 1. General

If the Buyer is a merchant, all deliveries shall occur based on the following terms of sale. These terms form the basis of all offers and agreements and are recognized as accepted for the duration of the entire business relationship upon issuance of an order or acceptance of delivery. Deviant conditions are not binding on us as the Seller, if they are not explicitly acknowledged in writing, irrespective if we do not expressly refuse them. Oral agreements outside this Agreement are excluded.

## 2. Conclusion of the Agreement

Our offers are always subject to change without notice. We become bound by orders, once we provide written confirmation, deliver without reservation within 3 weeks of receiving the order or upon issuance of an invoice, bill of sale or the like.

The order confirmation is part of the Agreement. The Buyer is obliged to promptly examine the contents of the order confirmation with respect to its material accuracy. Complaints must be made in writing and received by us within week.

We reserve the property rights and copyrights attendant all to cost estimates, illustrations and other documents. The Buyer may not make these documents available to third parties without our express consent.

The conclusion of the Agreement is subject to us being timely and correctly supplied by our suppliers. This applies only to the case that we are not responsible for the non-delivery, in particular when we are concluding a corresponding supply transaction with our supplier. The Buyer will be promptly informed that the service is unavailable. Any contractual consideration shall be returned immediately, as necessary.

Any kind of description or weight and/or quantity specifications, especially those in catalogs, price lists and advertisements, are merely reference or approximate values. They are not binding quality specifications. Oral statements regarding quality are only binding if we confirm them in writing.

Modifications in design or shape or deviations in the color of the goods to be delivered which are caused by the supplier are allowed insofar these changes or deviations do not decrease the purchase with respect to quality or usability and these are reasonable to the Buyer taking the legitimate interests of both parties into account. No rights with respect specifying the particular purchase item or the scope of delivery may be derived from indices or numbers that we or our suppliers use to designate an order or the item purchased.

## 3. Prices – Payment

Insofar as not otherwise agreed, the prices apply ex works, including the standard shipping packaging. Special packaging requested by the customer shall be charged against it separately at cost. VAT is not included in prices and will be listed separately in the invoice at the statutory rate on the date the invoice is issued. Payment must be made within 30 days after the invoice date to our bank account. Payments are only effective with date of receipt of the money on our bank account. We are not obliged to accept cheques and/or bills of exchange. Cheques and/or bills of exchange are only accepted on account of performance. Expenses that accrue to us as a result of the Buyer's paying by cheque and/or bill of exchange will be charged to the Buyer. Credit entries for cheques and/or bills of exchange will be effected with the value date on the day when the equivalent is credited to our bank account. Any deduction of discounts requires special written agreement. If the payment period is exceeded, we are entitled to demand advance payment or the provision of a security for future deliveries. If the Buyer defaults on payment, the overdue accounts shall carry interest of 8% points above the basis interest rate. All other claims for further damages are unaffected hereby.

The Buyer may only offset against our claims, if its claim is undisputed or an enforceable legal title exists; a right of reservation may be claimed if it is based on claims coming from the sales contract. A set-off using claims of a company of the Buyer's company group or from other legal relationships is in all cases excluded.

We reserve the right with respect to agreements that provide for a delivery time of more than 3 months to increase the prices in accordance with the cost increases incurred due to supply agreements, collective agreements or material price increases. If the increase is more than 5% of the agreed purchase price, the Buyer is entitled to rescind the Agreement in accordance with Section 313, Para. 3 of the German Civil Code (BGB). The Buyer is not entitled to any claim for damages in this case.

## 4. Deliveries

Delivery dates and deadlines – irrespective of whether bindingly or unbindingly agreed upon - must be made in writing. Delivery periods begin upon the conclusion of the Agreement.

The start of the agreed delivery period begins when all technical issues have been clarified. Another prerequisite is the Buyer's timely and proper performance of contractual obligations. Events of force majeure and those temporarily preventing us - without the presence of our own fault - from delivering purchased goods on the agreed date or within the agreed deadline (e.g. strikes, lockouts, interruptions, weather traffic problems, delays in the delivery of raw materials or machinery, war or state action) entitle us to postpone the delivery or service for the duration of the impediment plus a reasonable start-up time. If the corresponding disturbances lead to a delay in performance of more than 4 weeks, the Buyer may withdraw from the Agreement. Rights of rescission for other reasons are not affected hereby.

The Buyer is obliged to accept the purchased goods. If the Buyer defaults in accepting the goods, we are entitled to demand compensation for any resulting damages. Agreed times for receipt by the Buyer or an authorized carrier must be strictly observed. Failure to observe a receipt time for goods announced as ready for shipping provide us with title to those goods on the subsequent day. The Buyer bears all costs incurred due to late pickup or the provision of freight services. If the agreed delivery times or deadlines dates with respect to the delivery of several subsets of good is not met by the Buyer, we are authorized after unsuccessful passage of a further deadline to deliver the remaining goods, to rescind the still remaining portion of the order, or demand damages for non-performance.

We are entitled to perform partial deliveries, if a partial delivery is suitable for the customer with respect to the contractual purpose of the goods, the delivery of the remaining goods is ensured, and the customer does not incur any significant additional effort or costs due to the partial delivery.

Insofar as the sales contract is a time bargain (§ 286, Para. 2, No. 4 BGB, § 376 HGB), we are liable under the law. The same applies in the event that the Buyer is entitled to assert that its interest in continued contractual fulfilments is no longer present due to the delay in delivery that we caused.

## 5. Transfer of Risk – Packaging

Unless otherwise agreed, the risk of damage or loss of goods occurring in transport to the Buyer, provided the latter is a merchant, transfers when the goods are given to the person performing the transport or when the goods leave the warehouse to be shipped. We will accept the return of transport containers and other packaging pursuant to the provisions set out in the Packaging Ordinance. Any resulting transport costs will not be taken into account.

## 6. Complaints

The Buyer's claims for defect liability assume that the Buyer has properly and timely fulfilled its obligation to examine and object as required by § 377 HGB.

The Buyer must promptly object to obvious defects in writing within 2 weeks after receipt and enclose the delivery note therein.

Hidden defects must be promptly objected to after discovery, but at the latest 1 year after delivery. In this case, the Buyer is obliged to specify the batch number located on the packaging and attach a sample of the rejected materials. Rejected chemicals must be returned in their original packaging. Rejected machines and devices must be returned to us with the spare parts belonging thereto.

If in deviation from Section 5, we bear the risk of transport damage, transport damages are covered by transport insurance concluded by us. In this case, if transport damage occurs, the Buyer must comply with the duties required to claim the insurance protection. In particular,

the Buyer must promptly notify us in writing of the transport damage and enclose appropriate proof of such. Goods damaged during transport may only be accepted under reservation. Acceptance under reservation must be documented in writing and acknowledged in writing by the carrier. The product shall be placed in quarantine storage until it is released.

## 7. Warranty – Liability

We have the discretion to first remedy by either repair or provision of a replacement delivery in the event of a defect claim by the Buyer. If repair or replacement fail, the Buyer may reduce the corresponding amount or rescind the Agreement. Cure is deemed as unsuccessful after the second failed attempt. The conditions for exercise of the right of rescission are determined in accordance with § 323 BGB (German Civil Code).

The limitation period for material defects in newly manufactured goods is one year after delivery of the goods. The sale of used goods occurs in this respect under exclusion of any liability for material defects. In the event of cure, we shall bear all expenditures necessary for remedy, in particular transport, travel, labour and material costs, insofar as the costs are not raised to the extent that the purchased goods must be transferred to another place of performance.

We are liable for intentional action and gross negligence in accordance with law if attendant damages occur.

In cases of simple negligence, we are only liable for breach of a material contractual obligation up to indemnification of foreseeable, typically occurring damages. A material contractual obligation is an obligation whose fulfilment allows the achievement of the objective being pursued at the conclusion of the Agreement and upon the fulfilment of which the customer may customarily rely.

The foregoing limitation of liability for simple negligence does not apply to damages resulting from injury to life, limb or health. It also does not apply, if we have fraudulently concealed a defect or have assumed a guarantee regarding the quality of the goods or the customer has a claim under product liability law. Liability is excluded except as otherwise provided above.

The above liability exclusions and limitations also apply to the personal liability of our employees, workers, staff, representatives and agents.

The above provisions also apply to any damages that may occur while correcting defects or replacing products in the context of defect liability.

## 8. Liability on other legal grounds

Liability for damages exceeding the specific liability standard under Section 7 above (regardless of the legal nature of the claim) is excluded. This applies in particular to claims for damages arising for fault present at the conclusion of this agreement, or other tort claims for damages under § 823 of the German Civil Code (BGB).

Insofar as liability for damages against us is excluded or limited, this also applies to any personal liability of our employees, workers, staff, representatives and vicarious agents.

## 9. Merchant's Recourse

If the Buyer resells the sold goods in the course of its commercial operations to a consumer and then must accept the return of these goods due to a defect or must reduce the purchase price, the Buyer may immediately assert its defect liability claims against us without a notice period. The Buyer may also demand compensation for expenses which he had to bear with respect to the consumer, if the defects alleged by the consumer existed when the risk passed to the Buyer. Such expenses include in particular transport, travel, labor and material costs.

The Buyer does not have a claim to damages in the scope of this merchant's recourse. The obligation of the Buyer under § 377 HGB is unaffected by the above regulation.

## 10. Retention of title

The purchased goods remain the Seller's property until the receivables to which we are entitled under the sales contract are settled. If the Buyer is a merchant within the meaning of the German Commercial Code (HGB), we retain ownership to all delivered goods until receipt of all payments arising from the business relationship.

The Buyer is obliged to handle the delivered goods with care. In particular, it is obliged to insure these up to their replacement value against fire, water damage and theft at his own expense.

The Buyer is entitled resell the delivered goods in the ordinary course of business, however it hereby assigns to us all claims in the amount of the net invoice of the purchase price (including VAT) it owes against its customers or a third party due to the resale regardless of whether the delivered goods have been sold with or without processing. We shall not attempt to recover these debts, as long as the Buyer continues to fulfill its payment obligations in accordance with contract and no petition for the initiation of a insolvency proceedings is filed. If one of the circumstances mentioned just above occurs, the Buyer must supply us on request with all information necessary to collect the assigned claim, hand over pertinent documents and inform the affected debtors (third parties) regarding the assignment.

The Buyer shall immediately notify us in writing in the event of seizures or other interventions by third parties, so that we may in particular bring suit under § 771 of the German Civil Procedure Act (ZPO). The Buyer shall carry costs and damages due to such interventions, insofar as we are unable to pursue redress against a third party.

The processing or modification of the delivered goods shall always be made for us. If the delivered goods are processed with other goods not belonging to us, we shall acquire joint ownership to the new goods in proportion to the value of the goods delivered to the other processed goods assessed at the time of processing. The same provisions apply to objects created by processing as do objects delivered under reserve. If the delivered goods are inseparably mixed with objects not belonging to us, we acquire joint ownership of the new object in proportion to the value of the delivered goods to the other mixed objects. If such a mixing occurs such that the object of the Buyer is considered the main object, it is agreed that the customer shall transfer to us pro-rata co-ownership. The customer shall protect for us the resulting sole ownership or joint ownership.

In the event that the value of the guarantees exceed the claims secured thereby by more than 10%, the Seller is obliged at the request of the Buyer to release the guarantees to which it is entitled. We have the right to choose which guarantees shall be released.

## 11. Changed circumstances of the Buyer

If the financial situation of the Buyer worsens significantly, and it possesses goods outside the normal course of business that we delivered under retention of title or it dissolves its enterprise, we are entitled to immediately assert all claims, remit all payables, and continue to deliver only on condition of prepayment or provision of a security.

If the Buyer is in default or over-indebted or a petition for an insolvency or composition proceedings is filed over its assets, we have the discretion to either assert the above rights, or withdraw from the Agreement in accordance with law.

## 12. Privacy Policy

So as to carry out the purpose of the Agreement, we are entitled to electronically save and process all data about the Buyer that relates to the business relationship in accordance with the provisions of the Federal Privacy.

## 13. Jurisdiction - Place of Fulfillment - Choice of law

The place of payment and performance for all deliveries is our company's seat in Kirchheimbolanden. Court venue is Kaiserslautern, if the Buyer is a merchant under the German Commercial Code (HGB), a legal entity under public law or legal entity under public law. In this case, we are entitled to bring suit against the Buyer at its place of residence.

The Agreement is governed by the laws of the Federal Republic of Germany. Application of the UN Sales Convention is excluded. If certain provisions of these terms and conditions are invalid, the validity of the remaining agreement shall remain unaffected thereby. Invalid provisions shall be replaced by a provision provided by law.