

General Terms and Conditions of Sale and Delivery (as of 01.07.2018)

Wilhelm Humpert GmbH & Co. KG – Wickede (Ruhr)



1. Acceptance of the terms of sale and delivery

1.1 All offers and agreements are subject exclusively to the following conditions.

1.2 Unless they are expressly recognised by us in writing, any contrary terms and conditions applied by the customer will not be binding on us. In particular, the customer's purchasing conditions will have no application, even if we do not expressly reject them.

2. Placing of orders

2.1 All agreements only become binding on our written confirmation. The same applies to additions, amendments and ancillary agreements.

2.2 Our offers are subject to confirmation, unless they are expressly designated as binding.

2.3 The customer is liable for the correctness of any documents or materials which it supplies, in particular samples and drawings, and for ensuring that any goods supplied meet the contractual specifications.

2.4 Samples to be supplied are normally charged for.

2.5 The information, drawings, illustrations and specifications contained in electronic data media, catalogues, price lists or documents related to our offers are approximations which are customary in the industry and are therefore not binding. They are only binding if they are expressly designated as binding in the order confirmation.

3. Delivery

3.1 Any agreed delivery period is only approximate. It begins with the date of dispatch of the order confirmation, but in no case prior to the provision of any documents or goods to be supplied by the customer, or the receipt of any payment in advance which has been agreed. The delivery period will be deemed to have been met if the goods have left the factory at the agreed time, or if the customer has been notified that they are ready for shipment.

3.2 The delivery time may be extended to a reasonable extent in the event of any later changes to the contract by the customer which influence the delivery time.

3.3 The delivery period will be extended appropriately in the event of unforeseen extraordinary events which we are unable to avert despite taking all reasonable care that can be expected in relation to the circumstances of the individual case. This also applies to such events experienced by our own suppliers. They include, in particular, official interventions, operational disruptions, labour disputes, delays in the delivery of raw or auxiliary materials and the failure of a workpiece. If the delivery or service becomes impossible or unreasonable as a result of the above-mentioned events, we will be released from our supply obligations without any claim to compensation arising on the part of the customer. We will inform the customer of the beginning and end of obstacles to delivery of the above-mentioned kind immediately after we become aware of them.

3.4 In the event of a delay in delivery the customer must grant us a reasonable extension period of at least 2 weeks, with the explicit declaration that acceptance of the delivery will be refused after the expiry of this period. In the event of non-compliance on our part the customer will be entitled to withdraw from the contract.

3.5 Deliveries ordered on call must be accepted within six months of the order confirmation, unless a longer period has been expressly agreed. Call orders are only released for production after receipt of the call.

4. Shipping and transfer of risk

4.1 As a rule, all shipments are ex works. Unless agreed otherwise we reserve the right to select the shipping method, without responsibility for choosing the cheapest method.

4.2 Even in the case of freight-paid shipments the risk will be transferred to the customer as soon as the goods have been made available to the carrier or have been loaded onto one of our vehicles.

4.3 At the request of the customer the shipment can be insured in the name and for the account of the customer against the specified insurable risks.

4.4 Any damage must be recorded and confirmed on the transport documents immediately upon receipt of the goods. In the case of transport damage the customer must arrange for an inspection of the case by the responsible bodies and inform us without delay.

4.5 Complaints due to missing parts or quantity deviations must be reported to us within one week from receipt of the shipment at the latest.

4.6 We take back packaging as part of our obligations under packaging regulations.

5. Pricing

5.1 Unless expressly agreed otherwise, our prices are ex works and do not include packaging, freight, postage and insurance. The packaging will be charged for at cost.

5.2 Invoicing will be based on the agreed prices. Unless expressly agreed otherwise, in the case of orders with delivery to third parties, the customer will be regarded as the principal. Provided that any price adjustment does not exceed 5%, for agreed delivery periods of more than 4 months the list prices valid on the day of delivery will be charged. In calculating price adjustments only the following factors are included: any rise in material costs and wages incurred both by us and our suppliers; any increase in import charges or a rise in taxes of any kind. Higher price adjustments will require a renewed price agreement. If such an agreement is not concluded, the customer will be entitled to withdraw from the contract. In the case of contracts for multiple deliveries, the prices which are valid on the day of delivery will apply.

6. Payment terms

6.1 All invoices are payable without deduction within 14 days of the invoice date, and regardless of receipt of the goods. Interest will not be paid on payments made in advance. Invoices for contract work are payable without deduction within 8 days.

6.2 In the event of late payment, default interest will be payable in accordance with § 288 Section (2) BGB and a late payment charge will be payable in accordance with § 288 Section (5) BGB. This is without prejudice to the assertion of further claims for damages.

6.3 Bills of acceptance will only be accepted if agreed in advance. Cheques and bills of exchange are accepted only on account of performance and are not subject to a cash discount. Interest and charges will be borne by the customer and will be payable immediately. We will not be responsible for the punctual presentation, protesting, notification and return of the bill of acceptance.

6.4 If, after the conclusion of the contract, we become aware of facts which indicate a material deterioration in the customer's financial circumstances which, according to our reasonable commercial judgment, is likely to jeopardise our claims to payment, we will have the right to require payment in advance or the provision within a reasonable period of suitable security until the time of performance or, at the time

of performance, the provision of suitable security within a reasonable period or contemporaneous performance. In addition, we will have the right to withhold any goods that have not yet been delivered or to stop further work. We will also be entitled to these rights if the customer is in default of payment for other deliveries which are based on the same legal relationship. If the customer does not comply with our legitimate request or fails to do so in good time, we will have the right to withdraw from the contract or claim damages on the grounds of non-performance. If the customer is in arrears with a partial payment, we can immediately make the entire outstanding claim due. In the event of a default in payment which is due to a substantial deterioration in the customer's financial position, we will have the right to withdraw from the contract without granting a further extension period for payment, or demand compensation for non-fulfillment of payment obligations. In the event of arrears of payment not due to the customer's financial situation, after the fruitless expiry of a reasonable extension period we will have the right to demand cancellation of the contract.

6.5 Any offsetting by the customer of counterclaims is excluded, unless they have been recognised by us or established by a court of law.

7. Retention of title

7.1 We reserve title to the goods produced with our own materials (the "reserved goods") until settlement in full of all our claims against the customer arising from the business relationship, including claims arising in future from contracts concluded at the same time or later. This will also apply if individual claims or all claims on our part have been included in a statement of account and the balance has been drawn up and approved.

7.2 In relation to the goods provided to us by the customer for processing in relation to the fulfilment of the contract, we will first be entitled to a contractor's lien and subsequently to ownership after the processing has been completed. We will retain ownership until full payment of all our claims.

7.3 The following provision applies only to commercial transactions: in the event of a breach of contract by the customer, in particular default of payment, we will be entitled to take back the goods delivered by us and the customer will be under an obligation to release them. Taking back the goods does not represent a withdrawal from the contract on our part, unless we have expressly declared this in writing. In the event of the seizure of reserved goods or other intervention by third parties, the customer must notify us in writing without delay so that we can file an action in accordance with § 771 ZPO (Code of Civil Procedure) or take other suitable measures. If the third party is unable to reimburse us for the judicial and extrajudicial costs of a lawsuit pursuant to § 771 ZPO, the customer will be liable for the losses we incur.

7.4 The customer will only be entitled to resell the goods delivered by us in the ordinary course of business if all claims arising from the resale against the purchaser of the goods or third parties are assigned to us. If the reserved goods are sold unprocessed or after processing together with other materials that are exclusively the property of the customer, the customer hereby assigns to us the claims resulting from the resale in full. If the reserved goods are sold by the customer after processing/combination with goods not belonging to the customer, the customer hereby assigns to us its claims arising from this resale to the value of the reserved goods, including all supplementary rights and ranking before all other claims. We hereby accept this assignment. Even after assigning the rights to us the customer is authorised to receive the relevant amounts on our behalf. This is without prejudice to our right to collect the claims ourselves. However, we undertake not to collect the claims as long as the customer duly meets its payment and other obligations. We will have the right to require the customer to inform us about the assigned claims and the relevant debtors, to provide us with all the information and documents necessary for the collection of the claims, and to notify the debtors of the assignment.

7.5 Any processing of the reserved goods by the customer will be implemented on our behalf, without

this giving rise to any obligations on our part. If the goods are processed, combined or mixed together with other goods which don't belong to us, the customer will be entitled to co-ownership of the new product in proportion to the value of the reserved goods in relation to the other processed goods at the time they are processed, combined or mixed. If the customer acquires the exclusive ownership of the new product, the contracting parties agree that the customer will grant us co-ownership in relation to the value of the reserved goods which have been processed, combined or mixed with the other goods, and will store the end product on our behalf free of charge.

7.6

If payment of the purchase price by the customer requires liability in connection with a bill of exchange, the reservation of title as well as the underlying payment for deliveries of goods will not expire until the customer has accepted the bill of exchange drawn on it.

7.7

We will be obliged to release the securities to which we are entitled at the request of the customer insofar as their value exceeds any unsettled claims they secure by more than 20%.

7.8

We reserve property rights or copyright to all offers and cost estimates submitted by us as well as files, drawings, illustrations, calculations, brochures and catalogues, models, tools and other documents and aids made available to the customer. Without our express consent the buyer may not make these materials or their content accessible to third parties, and may not use or reproduce them or have them used or reproduced by third parties. At our request the customer must return such materials to us and destroy any copies which have been made if they are no longer required in the regular course of business or if negotiations do not result in the conclusion of a contract.

8. Tools/moulds

Only a proportion of the cost of tools or moulds to be produced will be invoiced, separately from the value of the goods. Payment for part of the cost of reproduction of tools/moulds will not entitle the customer to ownership of these. On the contrary, they will remain our property and in our possession.

9. Complaints/warranties

9.1

In all cases the customer has the responsibility of checking that any goods supplied – together with any preliminary or intermediate products sent for correction – comply with the contractual specifications. The risk of any errors will be transferred to the customer when the customer gives its final approval for production, unless they are defects which arise or could only be detected during the production operations following on from such final approval. The same applies to all other declarations of approval provided by the customer.

9.2

Obvious defects must be reported to us within a period of one week after receipt of the goods. Otherwise the assertion of any warranty claim will be excluded. Sending off the claim in good time will be sufficient to meet the above deadline. The customer will bear the full burden of proof for all the conditions on which the claim is based, in particular in relation to the defect itself, the time when it was discovered and the submission of the claim by the relevant deadline.

9.3

In the case of justified claims we will, at our own discretion, be obliged to repair and / or replace the goods to the exclusion of other claims. In the case of delayed, omitted or unsuccessful repair or replacement, the customer may demand a reduction in the price or cancellation of the contract (withdrawal). However, in the event of a minor breach of contract, in particular where only trivial defects are concerned, the customer will have no right of withdrawal from the contract.

9.4

Complaints based on a shortage of products or defective products delivered are excluded to a level of up to 3% in the case of mass parts and up to 1.5% of the total quantity delivered in the case of rack products.

9.5

If the customer opts to withdraw from the contract because of a legal or material defect and a failed attempt by us to provide subsequent fulfilment, there will be no entitlement to claim damages for the defect.

9.6

If after a failed attempt at subsequent fulfilment the customer opts to claim compensation, the goods will remain in the possession of the customer. The

compensation will be limited to the difference between the purchase price and the value of the defective goods.

9.7

The warranty period is one year from the date of delivery. This will not apply if the customer has not reported the defect in good time.

9.8

If a part of the goods supplied by us is defective, this will not entitle the customer to make a complaint relating to the entire delivery.

9.9

We will only be liable to the value of the order for any deviations in the properties of any material used by us which has not been provided by the customer.

9.10

In the event of any data transmission the customer must use programmes providing protection against computer viruses that are in line with the latest technical standards before the data is sent. Making the appropriate data backup is the sole responsibility of the customer. We are entitled to make a copy.

9.11

The warranty will be void if the customer – without our knowledge and without our consent – changes any materials which are supplied to us or has them changed by a third party, and if this then leads to defects in the products which we subsequently manufacture.

9.12

The warranty will also be void if any instructions provided by us in relation to the customer's products are not complied with by the customer.

9.13

Any warranty is excluded if the customer uses the products manufactured by us beyond the usual and contractually agreed purpose, and without us being informed of this in writing prior to the conclusion of the contract. This will especially be the case if the products are exposed to special stresses under specific operating conditions which are unknown to us and of which we have not been notified.

9.14

In the case of galvanising orders, if the materials of the goods supplied to us are unknown, the customer will be under an obligation to check on its own responsibility and independently whether the material delivered for galvanic surface treatment is suitable for such treatment.

In particular, the customer must ensure that the material to be galvanised is free from cast skin, foundry sand, scale, oil, coal, baked-on grease, welding slag, graphite and paints and substances with a similar effect, and that there are no pores, gaps, cracks, laminations and residual magnetism or similar features. Existing threads must be sufficiently overcut or undercut. In particular, in processing bulk materials it must be ensured that the supplied material is free of foreign substances, such as cloth, cardboard, foil, shavings etc., as well as free of excessive oil. If this is not the case, we will be entitled to reject the processing or to withdraw from the contract. If, despite our advice, the customer nevertheless insists on the processing or if the material supplied to us for surface treatment is - for reasons unknown to us - technologically unsuitable for such surface treatment, we will not assume any warranty for the dimensional accuracy, adhesion, corrosion-resistant properties or friction coefficients of the applied coating. No warranty for specific dimensional stability, adhesion, colour retention or corrosion-resistant properties of the applied coating will be provided by us if the customer has failed to fulfil the above obligation to test and ensure the suitability of the material supplied, and if any deficiencies are based on this breach of the customer's obligations. In particular, no warranty is provided for adhesive strength if the material has been shaped after the galvanising treatment and if test-galvanised parts have been shaped without any flaking of the galvanic coating.

9.15

In the case of galvanising orders, if the customer orders additional services such as sorting/packaging, assembly, thread locking, in the assertion of warranty claims the corrosion reduction which is typical of the process must be taken into consideration. The corrosion test is normally carried out directly after the galvanic treatment of the goods.

9.16

In the case of galvanising orders, hollow parts are only galvanically treated on their outer surfaces, unless in special cases galvanising of the hollow interiors has been agreed between the parties. Immediate corrosion on untreated surfaces will not give rise to any warranty claims. The customer warrants that it is aware of the fact that galvanised material is at risk of condensation and fretting corrosion. In this respect, too, we will accept no warranty claims. No claims will be accepted either if the goods are not properly packed and stored by the customer and / or are

stored and transported in a way which is contrary to our instructions. The same applies if the specifications of the relative galvanising standards, e.g. B. DIN 50979, are not observed.

9.17

In the case of galvanising orders the customer must specify the minimum coating thicknesses at an agreed measuring point. If this is not done, we will proceed according to our established standard, which is known to the customer. We provide no warranty for damage caused by atmospheric conditions or later by residues of the treatment process seeping out of laminations and other inaccessible hollow spaces, or embrittlement damage to the base material. If the shipment of the goods is not implemented by us, the customer must take appropriate measures to prevent and avoid chemical and mechanical damage to the surface of the goods.

10. Liability

10.1

In the case of minor negligence our liability is limited to the average direct damage that is foreseeable in relation to the nature of the goods and of the contract. This also applies to minor negligent breaches of duty by our legal representatives or those acting on our behalf. No liability is accepted in the case of the slightly negligent violation of insignificant contractual obligations.

10.2

Claims for damages by the customer in relation to defects will lapse one year from delivery of the goods.

10.3

The provision of goods for further processing is implemented at the risk of the customer and is not covered by insurance on our part.

11. Property rights

11.1

We reserve the right of ownership and copyright to files, illustrations, drawings and other documents: they may not be made accessible to third parties without our consent and must be returned to us immediately upon request.

11.2

If third-party property rights are infringed by the supply of goods based on files, drawings, samples or other information provided by the customer, the customer exempts us from all claims made in this respect by third parties.

12. Assignment of rights

Claims on the part of the customer against us can only be assigned with our prior consent.

13. Final provisions

13.1

The laws of the Federal Republic of Germany will apply to all transactions, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

13.2

If the customer is a merchant within the meaning of the German Commercial Code or has no general place of jurisdiction in Germany, our registered place of business will be the place of fulfilment and jurisdiction for all disputes arising from the contractual relationship, including legal action in relation to cheques, bills of exchange and summary processes.

13.3

Should any of these terms and conditions be wholly or partially invalid, the validity of the remaining provisions will not be affected. The wholly or partially invalid provision is to be replaced by whatever provision comes closest to the business purpose of the invalid provision.