

# General Terms Conditions of Sale of Herlitz AG and her associated companies in the sense of § 15 AktG (Stock Corporation Law)

## § 1 Validity

- (1) All deliveries and services shall exclusively be subject to the following terms and conditions. The buyer shall recognize these as binding on placement of the order. The purchasing terms of the buyer are thus negated.
- (2) The following individual terms shall only not apply when a separate agreement has been made in writing.

## § 2 Quotation and Contract

- (1) The quotations of the seller contained in sales documentation and on the Internet shall always, insofar as there is no specific indication to the contrary, be subject to alteration, i.e. they are only to be understood as a request to submit a quotation.
- (2) Orders shall be deemed accepted when the seller has confirmed them in writing.
- (3) Should the seller become aware of information, particularly late payment with regard to previous deliveries, which upon due commercial consideration would appear to indicate a significant worsening of the assets of the purchaser, the seller is entitled to demand pre-payment or appropriate securities, and, should this be denied, to withdraw from the contract; invoices for part / partial deliveries already made shall be due for immediate payment.

## § 3 Delivery

- (1) Insofar as no other written agreement has been made delivery deadlines are only binding if they are confirmed in writing by the seller. Should the agreed deadline not be met, the buyer is only entitled to withdraw from the contract after an appropriate period of grace has been imposed in writing on the seller. The right to self-supply in time is reserved in all cases.
- (2) The written confirmation of order shall be definitive regarding the content, range and scope of the delivery. Minimal deviations of up to 5 % of the order volume shall be valid for production reasons. Part deliveries and parts of services are permissible to a reasonable extent.
- (3) Each instance of an Act of God, strike, lock-out, intervention of national or international authorities and all unforeseen obstacles arising after signing the contract over which the seller has no influence shall extend the delivery deadline insofar as such instances significantly impact on the delivery of the goods sold. This shall also apply if these circumstances affect the sellers suppliers or their subcontractors. Should the delay in delivery last longer than three months the purchaser shall, following an appropriate deadline, be entitled to withdraw from the contract with regard to the unfulfilled part thereof. In such cases claims for compensation shall not be valid.

## § 4 Forwarding

- (1) The route of and means of transport shall be decided by the seller, insofar as no separate agreement is made. This shall also apply to packaging which shall effect based on transport and environmental considerations.
- (2) Transportation shall be at the risk of the buyer. The danger of accidental damage to or accidental loss of merchandise is transferred to the buyer when it leaves the works or the storage facility. This applies irrespective of which party pays for the freight costs.
- (3) Reusable packaging shall be returned at the times given by the seller. Reusable pallets shall be exchanged on a delivery versus payment (DVP) basis following the exchange criteria of the European Pallet Pool ([www.gpal.de](http://www.gpal.de)). For each unexchanged pallet the buyer shall pay a fine of 12 Euros for the loss
- (4) Irrespective of the application of the Regulations on Packaging, neither party shall be permitted to make deductions from invoices for the disposal of packaging, especially packaging used for transportation.

## § 5 Prices, Terms and Conditions

- (1) Insofar as the order confirmation does not make other allowances, the prices of the seller shall be understood as Euros plus transportation costs and Value Added Tax and are subject to confirmation. The price calculation shall be made in each case on the basis of those prices applicable on the day of delivery.
- (2) All invoices shall be payable within 14 days (2 % settlement discount) / after 30 days without deduction. Payment is taken as received when it has been registered on the account of the seller. Should the buyer be late in paying then all requests for payment shall be due for immediate payment at that point and no settlement discount shall be deductible. Further, the seller is entitled to demand interest for late payment at a rate of 8 % above the Base Rate. Any further claim for compensation shall be unaffected by this.
- (3) All payment demands on the part of the seller shall be immediately due for payment if the payment conditions are not adhered to and it becomes clear that the buyer has suffered a considerable loss

of assets. In this event the seller shall be entitled to make further deliveries dependent on pre-payment or making available the appropriate securities.

- (4) The buyer may only charge against payment demands which are undisputed or legally binding. Retention rights shall only be permitted insofar as they are related to the same contractual agreement. In other cases payment shall only be withheld to a reasonable extent with regard to defects or complaints.

## § 6 Retention of title

- (1) The supplied merchandise shall remain the property of the seller as conditional goods until the demands for payment from the seller relating to the contract have been met in full.
- (2) Insofar as the buyer is not late with payment he may sell the merchandise until cancelled. The claims for payment acceded upon sale shall be passed on immediately in full, for reasons of security, to any seller who accepts such an assignment. The buyer is entitled, until cancelled, to collect in payment for re-sale of the merchandise. This right shall be withdrawn particularly if the buyer should be in arrears with payment. This shall also be possible under the circumstances listed in § 5 Para. 3, Clause 1. On request the buyer shall also name his debtors to the seller.
- (3) The buyer is not authorised to pawn or to transfer by way of security the conditional goods. He shall inform the seller without delay with regard to both possible attempts by third parties to gain access to the merchandise and the assignment of claim for payment.
- (4) Should the value of the securities available to the seller exceed his claims for payment by more than 20 % then the seller is bound to release the securities of his choice when requested to do so by the buyer.

## § 7 Claims for faulty goods

- (1) The buyer shall examine the merchandise without delay to check the quantity and condition. The purchaser shall inform the seller of any noticeable defects or errors regarding quantity within 7 working days in writing. The stipulations of the Commercial Code (HGB) shall apply.
- (2) The buyer is obliged to allow the seller to check the merchandise with regard to the complaint. Should this be refused then the guarantee shall be void.
- (3) Following the notice of a justified defect within the prescribed period, the seller shall determine, whilst considering the legitimate interests of the buyer, the form of replacement of his choice (replacement delivery or improvement / correction). Should the improvement / correction fail or be refused, the buyer can bring § 437 BGB (German Civil Code) to bear. Paragraph 8 of these sales terms apply to claims for compensation.
- (4) All claims made for faulty goods shall become time-barred 12 months following the hand-over of the merchandise to the buyer. This shall not apply as far as § 479 Paragraph 1 BGB prescribes a longer period.

## § 8 Liability

Claims for slight negligence are excluded irrespective of the legal reason. Should essential contractual obligations be violated then the seller shall only be liable - except in cases of gross negligence or malice aforethought - for the contract-typical damage. These limits to liability and exclusions shall not apply in cases in which liability is borne by product liability law or in cases of physical injury, damage to health or life. They shall also not apply when assured characteristics are missing or to guarantees for the condition of the merchandise when sold.

## § 9 Data Protection

The buyer is hereby informed that the seller processes personal data associated with the commercial activity within the scope of the regulations of the Federal Data Protection Law.

## § 10 General Regulations

- (1) The place of fulfilment for all obligations and liabilities is the premises of the seller.
- (2) For the entire commercial relationship the Law of the Federal Republic of Germany shall apply, with the exception of UN Purchasing Law and German international private law.
- (3) The area of jurisdiction for all disputes associated with the commercial relationship is Berlin.
- (4) Should one of the stipulations be ineffective, this shall not affect the validity of the remaining stipulations. The commercial partners shall in such an event agree on an effective stipulation which shall be as close as possible to the intended meaning and commercial sense of the ineffective regulation.