



## **HELM Austria Gesellschaft m. b. H.**

### **General Terms and Conditions of Sale**

#### **1. Applicability**

All contracts with us shall exclusively be concluded in accordance with the terms and conditions stated in our sale confirmations and in accordance with the following General Terms and Conditions of Sale. Unless expressly agreed otherwise in writing, we hereby expressly object to deviating, supplementing or conflicting General Terms and Conditions (of Purchase) of the Purchaser.

#### **2. Offer and acceptance**

Our offers are subject to change unless they are expressly stated to be binding. Purchase orders placed by the Purchaser shall be binding for us only upon transmission of the acknowledgement of the order or upon delivery.

#### **3. Prices; Terms of payment**

3.1. The purchase price shall be payable when due without deduction.

3.2. In the case that factors on which calculation of the purchase price is based (raw materials, staff costs, etc.) change between the acknowledgment of the order and the invoice date, we shall be entitled to charge the Purchaser the purchase price calculated on the basis of such changes. In that case we will provide the Purchaser with evidence of the changed factors (underlying price increases) from time to time.

3.3. The parties expressly agree that our accounts receivable and ancillary receivables shall be of stable value. The index for calculation of adjustments shall be the Consumer Price Index (08/2018 CPI 2015 = 100), which is published monthly by Statistics Austria, or an index replacing the same.

Upward or downward fluctuations in the index figure of up to 0.3% exclusive shall not be considered.

- 3.4. In the case of late payment by the Purchaser we shall be entitled to claim late payment interest, i.e. in the case of invoices issued in EUR at a rate of 9.2% above the base rate and in the case of invoices issued in other currencies at a rate of 9.2% above the discount rate of the top bank of the country in the local currency of which the invoice was issued that is applicable at that time.
- 3.5. In the case of late payment by the Purchaser we shall be entitled to claim provisional surrender of the goods to which we hold title (see Clause 7.3).
- 3.6. In the case of justified doubts about the Purchaser's solvency, in particular if late payment has already occurred despite a reminder and granting of a grace period, we shall be entitled, notwithstanding other rights, to revoke with immediate effect any payment periods that have been granted and to claim advance payment or sufficient collateral.
- 3.7. The Purchaser may only offset against our claims undisputed claims or claims which have been ascertained by court in a non-appealable/final manner.
- 3.8. Independent of the place of delivery of the goods or documents the place of performance of the payment shall be our registered office.

#### **4. Delivery**

- 4.1. Delivery shall be effected in accordance with the contractual provisions. The Incoterms applicable at the time of conclusion of the contract shall apply to trade clauses.
- 4.2. Partial deliveries shall, in principle, be permitted.

- 4.3. In the case of a delay in delivery the Purchaser shall grant us a reasonable grace period. Rescission of contract by the Purchaser on the ground of a delay in delivery shall only be permitted after he has granted us a grace period of at least six (6) weeks and after that grace period has fruitlessly expired. The Purchaser shall claim rescission by registered letter and in the case of deliveries that can be split it shall only apply to that part of the delivery which is delayed.
- 4.4. Default in acceptance. Goods which are not accepted by the Purchaser at the agreed time shall be put into storage for 14 days at the Purchaser's risk and costs and the Purchaser shall be charged the storage fee. At the same time we may either insist on specific performance or rescind the contract after having granted a reasonable grace period and realise the goods otherwise. In the case of realisation a contractual penalty of 10% of the invoice amount shall be deemed agreed.

## **5. Product quality**

- 5.1. Unless expressly agreed otherwise in writing the quality of the goods shall exclusively be defined by our product specifications.
- 5.2. Relevant identified uses of the goods as defined in Regulation (EC) No 1907/2006 concerning chemicals (REACH) shall neither constitute an agreement on a contractually agreed quality of the goods nor a type of use that is expected based on the contract.
- 5.3. The properties of specimens or samples shall only be binding if they have expressly been agreed and described in writing as the quality of the goods.
- 5.4. Details regarding quality and shelf life shall only constitute guarantees if they have been agreed and described as such.

## **6. Consulting**

- 6.1. If we render consultancy services, we shall do so to the best of our knowledge. Details and information on the suitability and use of goods shall not release the Purchaser from his obligation to inspect and test them himself.
- 6.2. Technical and chemical specifications shall constitute no warranty or guarantee for the suitability or usability of the products.

## **7. Retention of title**

- 7.1. Simple retention of title. Title to the delivered goods shall pass to the Purchaser only upon full payment of the purchase price.
- 7.2. Right to information and disclosure. The Purchaser shall provide us with all necessary information about the status of the goods to which we hold title within three (3) days and/or clearly indicate our title to the goods on the packaging.
- 7.3. Late payment. In the case of late payment by the Purchaser we shall be entitled to claim provisional surrender of the goods to which we hold title at the Purchaser's costs even without rescinding the purchase contract and without granting a grace period.
- 7.4. Partial waiver clause. If the value of collateral exceeds that of our claims by more than 15%, we shall waive our right to ask for collateral at our option to that extent.
- 7.5. In addition to Clauses 7.1 to 7.4 the following regulations shall apply to deliveries of goods the destination of which is in Germany, Austria or Switzerland.

- 7.5.1. Retention of title with processing clause. Where the Purchaser processes goods delivered by us we shall be deemed the manufacturer and shall acquire direct (co-) ownership of the newly created goods. If goods are processed together with other materials, we shall acquire direct co-ownership of the new goods in the proportion of the invoice value of the goods delivered by us to the invoice value of the other materials.
- 7.5.2. Retention of title in connection with a combination and commingling clause. If goods delivered by us are combined or commingled with objects of the Purchaser in a way that the Purchaser's object has to be considered the principal object, it shall be deemed agreed that the Purchaser transfer co-ownership of the principal object to us in the proportion of the invoice value of the goods delivered by us to the invoice value (or, in the absence of such, the market value) of the principal object. The Purchaser shall keep the sole ownership or co-ownership created in this way safe for us for no consideration.
- 7.5.3. Extended retention of title. The Purchaser shall be entitled to dispose of the goods to which we hold title in the ordinary course of business, provided that he fulfils his obligations under his business relationship with us in time. The Purchaser shall assign to us all claims under the sale of goods to which we have retained title as early as at the time of conclusion of the contract. If we have acquired co-ownership in the case of processing, combination or commingling, the assignment shall be effected in the proportion of the value of the goods delivered by us subject to retention of title to the value of the goods sold by the Purchaser. The Purchaser shall assign to us accepted balances of receivables under current account agreements as early as at the time of conclusion of the contract in the amount of our claims that will still be outstanding then.
- 7.5.4. Right to information and disclosure. In addition, the Purchaser shall provide us with all necessary information about claims assigned to us at our request and/or inform his customers about the assignment of the claims to us.

## **8. Defects**

- 8.1. The Purchaser shall inspect the goods immediately after delivery and notify us in writing of defects, wrong deliveries or deviations in quantity, if any, immediately and in any case within one week of delivery. Defects which cannot be identified in the course of an inspection after delivery shall be notified by the Purchaser in writing immediately and in no case later than one week of detection of the same.
- 8.2. The Purchaser shall proof the existence of defects. Section 924 of the Austrian Civil Code [*ABGB*] shall not apply.
- 8.3. In the case of a timely and justified notice of defects the customer's claims in connection with defects shall at our choice be limited to replacement or improvement for the time being.
- 8.4. If our subsequent performance as defined in Clause 8.3 fails, the Purchaser shall be entitled at his choice to reduce the purchase price or to rescind the contract. Claims for damages as defined in Clause 9 shall remain unaffected.
- 8.5. Notification of a defect or other claim shall not release the Purchaser from his obligation to pay the purchase price.
- 8.6. We neither warrant nor guarantee that the product is free from patents or other industrial property rights of third parties.
- 8.7. The Purchaser's claims in connection with defects shall become statute-barred one year after delivery of our goods, unless a longer period of limitation is provided for by mandatory statutory provisions.

## **9. Liability**

- 9.1. As a matter of principle, we shall be liable for damages as provided for by statutory provisions and the following regulations: (i) in the case of a breach of material contractual obligations with ordinary negligence our liability shall, however, be limited to typical foreseeable damages; (ii) in the case of a breach of non-material contractual obligations with ordinary negligence liability on our part shall be excluded; (iii) the foregoing limitations of liability shall not apply in the case of damage resulting from harm to life, limb or health (personal injuries).
- 9.2. Liability shall become statute-barred six (6) months after the Purchaser obtained knowledge of the damage and of the party who caused the damage.

## **10. Force majeure**

If due to events or circumstances the occurrence of which is beyond our control (such as acts of God, war, labour disputes, shortage of raw materials or energy, traffic or business disruptions, fire or explosion damage, sovereign dispositions) the availability of goods from the plant from which we are supplied is reduced so that we will be unable to fulfil our contractual obligations (taking other internal or external supply obligations appropriately into account), we shall (i) be released from the contractual obligation for the duration of the disruption and to the extent of its effects and (ii) not be obliged to obtain the goods from third parties. The first sentence shall also apply to the extent that the events or circumstances render performance of the transaction concerned sustainably uneconomical for us or concern our upstream suppliers.

If the events last longer than three (3) months, we shall be entitled to rescind the contract without the Purchaser being entitled to claim damages from us.

## **11. Final provisions**

- 11.1. The place of jurisdiction shall be Vienna, Innere Stadt [first district], Austria; we shall, however, be entitled, at our option, to sue the Purchaser in the court having jurisdiction over his registered office.
- 11.2. The contract shall exclusively be subject to Austrian law; its conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG, UN Sales Law) shall be excluded.
- 11.3. If any provision of these General Terms and Conditions of Sale is or becomes ineffective, incomplete, unenforceable or void in whole or in part, the effectiveness of the remaining provisions shall not be affected. The ineffective, incomplete, unenforceable or void provision shall be replaced by a legally valid provision which comes as close as possible to its financial effects. In the event that certain clauses of these GTC are not in line with mandatory statutory provisions, the validity of the remaining provisions shall not be effected either.
- 11.4. Modifications of and/or amendments to a contract shall be made in writing. This shall also apply to an abolishment of the formal requirement of written form.

### **HELM Austria Gesellschaft m. b. H.**

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