



## General Terms and Conditions of Sale Hermes Schleifmittel Ges.m.b.H.

### § 1 Scope

1. These General Terms and Conditions of Sale, as amended from time to time and in force at the time of conclusion of the contract, shall apply to all deliveries of goods and services performed by us on the basis of orders. By placing an order, the customer acknowledges these General Terms and Conditions of Sale.
2. Our terms and conditions of sale shall also apply where we perform deliveries to the buyer without reservation in the knowledge of terms and conditions of the buyer that conflict with, deviate from or supplement these terms and conditions.
3. These terms and conditions of sale shall apply exclusively. We do not recognise any terms and conditions of the customer that conflict with or deviate from these terms and conditions of sale, and we hereby object to them, unless we have expressly agreed to their applicability.
4. Should individual provisions of these terms and conditions of sale be or become wholly or partially invalid, the validity of the remaining provisions shall remain unaffected.
5. These General Terms and Conditions of Sale, as amended from time to time and in force at the time of conclusion of the contract, shall also apply to all future transactions entered into with a contractual partner following the first legal transaction.

### § 2 Offers

1. Our offers are non-binding.
2. Illustrations, statements, descriptions and specifications contained in technical data sheets, advertising materials and other representations are non-binding. No assurance of characteristics is associated with them. Any such assurance shall in all cases require our express written declaration.
3. We reserve all rights to illustrations, drawings, calculations and other files and documents.

### § 3 Prices, Delivery, Freight, Minimum Order

1. Unless otherwise agreed, the prices valid at the time of delivery shall apply.
2. Our prices are quoted in euro net ex works, excluding transport packaging and shipping packaging, plus statutory VAT and shipping costs, unless expressly agreed otherwise. Delivery shall be EXW Bad St. Leonhard (Incoterms® 2020), unless otherwise agreed in writing. The choice of shipping route and means of transport shall be made at the Seller's reasonable discretion. Shipment is made on behalf of and at the expense of the Buyer.
- 3.1 For deliveries to AT, DE, CZ, SK, HU, IT, SI and HR, a flat-rate shipping charge of EUR 30 shall apply. For net order values of EUR 600 or more, this flat-rate shipping charge shall not apply and delivery shall be CPT (Carriage Paid To) pursuant to Incoterms® 2020 to the place of destination designated by the Buyer.
- 3.2 For deliveries to NL, BE, LU, DK, SE, FI, ES, PT, LV, LT and EE, a flat-rate shipping charge of EUR 45 shall apply. For net order values of EUR 900 or more, this flat-rate shipping charge shall not apply and delivery shall be CPT (Carriage Paid To) pursuant to Incoterms® 2020 to the place of destination designated by the Buyer.
- 3.3 For deliveries of wide belts, the following shall apply deviating therefrom: irrespective of the net order value, a flat-rate shipping charge shall apply, whereby for wide belts transported upright up to a width of 1,620 mm a charge of EUR 60 shall be applied, for segmented wide belts up to a width of 2,300 mm a charge of EUR 120 shall be applied, and for segmented wide belts with a width exceeding 2,300 mm a charge of EUR 180 shall be applied.
- 3.4 For deliveries outside the EU, shipping costs shall be charged separately. Delivery shall be EXW Bad St. Leonhard (Incoterms® 2020), unless expressly agreed otherwise.
- 3.5 In the case of express deliveries, special transport or shipping methods requested by the customer, the actual additional costs incurred shall in all cases be charged separately.
4. The minimum order value per order shall be EUR 300 net. For orders below this amount, the Seller shall be entitled to charge a small-order surcharge of EUR 30.
5. The costs of special packaging, export packaging or customer-specific packaging solutions shall be charged separately. Returnable packaging (e.g. pallets, wire mesh boxes) shall be exchanged by the Buyer or, failing that, invoiced at market rates.



6. Partial deliveries shall be permitted insofar as they are reasonable for the Buyer. Each partial delivery may be invoiced separately.
7. We reserve the right to deliver up to +/-10% respectively +/- 1 pcs more or less than the quantity ordered for production-related reasons and to invoice accordingly.
8. If, in the period between conclusion of the contract and the delivery date, the costs relevant for price calculation (hereinafter referred to as the "cost factors") increase or decrease, we shall be entitled to adjust the prices at our reasonable discretion, subject to applicable mandatory law. A price adjustment (which shall include both price increases and price reductions) may be considered in particular if the following cost factors increase or decrease:
  - Freight costs
  - Surcharges for freight abroad
  - Energy surcharges
  - war-related or crisis-related surcharges
  - other verifiable cost factors

Any price adjustment shall be explained to the Buyer in a comprehensible manner upon request. The cost factors shall be offset against one another, meaning that increases in one cost factor shall be set off against reductions in other cost factors, and vice versa.

#### **§ 4 Payment Terms**

1. Unless otherwise agreed, payments shall be made to one of our accounts within 14 days from the invoice date with a 2% cash discount or within 30 days from the invoice date without deduction.
2. The statutory provisions shall apply with regard to default in payment.
3. If the Buyer is in default with payment of an invoice amount, all of our outstanding claims against the Buyer shall become immediately due and payable; in addition, we shall be entitled to make all outstanding delivery obligations subject to prior payment (advance payment) or the provision of appropriate security.
4. The Buyer shall only be entitled to rights of set-off or retention insofar as its counterclaim has been finally adjudicated or is undisputed.

#### **§ 5 Delivery Time**

1. The delivery period shall be agreed individually and shall be indicative only and not legally binding unless expressly confirmed in writing as binding.
2. The delivery period shall commence on the date of our order confirmation or, in the event of a subsequent amendment to the order, on the date of confirmation of such amendment. It shall be deemed complied with if, by its expiry, the delivery item has left the works or the Buyer has been notified that it is ready for dispatch.
3. Compliance with the agreed delivery time is subject to the timely and proper fulfilment of the Buyer's contractual obligations. The defence of non-performance of the contract remains reserved.
4. Goods ordered on call shall be stored by us free of charge for a maximum of three months and, after expiry of this period, tendered to the Buyer subject to a reasonable deadline. If acceptance is not taken thereafter, we may withdraw from the contract and claim damages in lieu of performance.
5. If the Buyer is in default of acceptance or culpably breaches other duties to cooperate, we shall be entitled to claim compensation for the loss thereby incurred, including any additional expenses.

#### **§ 6 Packaging, Shipping, Risk during Transport**

1. Unless otherwise stated in the order confirmation, delivery shall be EXW Bad St. Leonhard (Incoterms® 2020).
2. Shipment shall be at the Buyer's risk, including where carriage is free of charge. The risk of accidental loss of or accidental deterioration in the goods sold shall pass to the Buyer upon handover of the goods to the first carrier; in the event of delay in shipment for reasons not attributable to us, risk shall pass upon notification that the goods are ready for dispatch.
3. The risk of accidental loss of or accidental deterioration in the goods sold shall also pass to the Buyer at the time when the Buyer is in default of acceptance or debtor's default. Further claims remain reserved.



4. We shall be free to choose the means of transport. Any additional costs arising from an expedited or special mode of transport requested by the Buyer shall be borne by the Buyer.
5. Packaging shall be in accordance with customary trade practice; for goods from finished goods stock, packaging shall be based on the applicable packaging units. Transport packaging and other packaging shall not be taken back, insofar as legally permissible. Euro pallets are excluded. The Buyer shall be obliged to ensure proper disposal of the packaging at its own expense unless mandatory statutory take-back or participation obligations apply.
6. If the Buyer so requests, we shall cover the delivery by transport insurance; the costs incurred in this respect shall be borne by the Buyer.
7. Cases of force majeure shall release the contracting parties from their contractual performance obligations for the duration of the disruption and to the extent of its effects. Force majeure means any event lying outside the sphere of influence of the respective contracting party by which that party is wholly or partially prevented from performing its obligations. This includes, in particular, labour disputes, civil unrest, official measures or similar unforeseeable and unavoidable events. The contracting parties shall be obliged, within reasonable limits, to inform each other without undue delay of the occurrence and cessation of force majeure and to adapt their obligations to the circumstances in good faith. If the delivery period is exceeded by more than three months or if a long-term impossibility of delivery becomes apparent, either party shall be entitled to withdraw from the contract.

## § 7 Retention of Title

1. The delivered goods shall remain our property (reserved goods) until all claims arising from the business relationship with the Buyer have been paid in full.
2. If the reserved goods are processed, combined, mixed or blended by the Buyer, we shall acquire co-ownership of the newly created item in the proportion that the invoice value of the reserved goods bears to the invoice value of the other processed items at the time of processing.

If the reserved goods are processed, combined, mixed or blended with other items not belonging to us in such a way that the other item is to be regarded as the principal item, we shall acquire proportionate co-ownership of the principal item insofar as it belongs to the Buyer.

3. The Buyer shall be entitled to resell the reserved goods in the ordinary course of business.
4. The Buyer hereby assigns to us, already now, all claims in the amount of the invoice value of the reserved goods arising from the resale against its customers or third parties, irrespective of whether the reserved goods have been resold without processing or after processing.

We hereby irrevocably accept this assignment.

The Buyer shall remain authorised to collect the claim even after the assignment. Our right to collect the claim ourselves shall remain unaffected. However, we undertake not to collect the claim as long as the Buyer meets its payment obligations.

5. The Buyer may neither pledge the reserved goods nor assign them by way of security. In the event of attachments or other interventions by third parties, the Buyer shall notify us immediately in writing and provide all information required to safeguard our rights.
6. The Buyer shall be obliged, at its own expense, to insure the reserved goods adequately at replacement value against fire, water, theft and other damage. The Buyer hereby assigns to us, already now, all claims for compensation under this insurance in the amount of the invoice value of the reserved goods.
7. In the event of a breach of contract by the Buyer, in particular default in payment, a substantial deterioration in financial circumstances, the opening of insolvency proceedings or rejection for lack of assets, we shall be entitled, after setting a reasonable deadline, to withdraw from the contract and take back the reserved goods.

In such case, the Buyer shall be obliged to surrender the goods. We shall be entitled to realise the returned goods; the proceeds of realisation shall be credited against the Buyer's liabilities, less reasonable realisation costs.

8. At our request, the Buyer shall be obliged to provide precise information on the whereabouts of the reserved goods and on the assigned claims and their debtors, and to hand over to us all documents required for the assertion of our rights.
9. We undertake to release the securities to which we are entitled at the Buyer's request insofar as their realisable value exceeds the claims to be secured by more than 10%.

To the extent permitted under applicable law, the above retention of title provisions shall apply.



## § 8 Warranty:

1. As a matter of principle, the statutory provisions shall apply to the Buyer's warranty claims unless otherwise provided below.
2. Notices of defects by entrepreneurial customers must be made without undue delay and in writing, stating the reasons. If the duty to inspect and give notice is breached, the goods shall be deemed approved.
3. In the event of justified defects notified in due time, we shall, at our option, have the right to remedy the defect or make a replacement delivery within a reasonable period. The Buyer shall grant us the time and opportunity required for such remedy or replacement delivery.
4. If remedy or replacement delivery fails after two attempts, or is impossible or involves disproportionate effort, the Buyer may, at its option, demand a price reduction or withdraw from the contract, provided that the defect is not merely minor.
5. Warranty shall be excluded in cases of
  - natural wear and tear
  - improper handling, storage or use
  - excessive or non-contractual use
  - chemical, electrochemical or electrical influences
  - failure to observe operating, maintenance or installation instructions.
6. The warranty period shall be 12 months from the transfer of risk.
7. If a notice of defect proves to be unjustified, the Buyer shall reimburse us for all costs incurred in the course of the inspection.
8. Insofar as the Buyer itself grants warranty vis-à-vis its customers, it may assert recourse claims against us only if it has not agreed with its customers on any terms exceeding the statutory warranty claims.

## § 9 Liability and Damages:

1. We shall be liable for damage only in cases of wilful misconduct or gross negligence on the part of our legal representatives, senior employees or other vicarious agents. Liability for slight negligence shall, to the extent permitted by law, be excluded.
2. Liability for personal injury (death, bodily injury, damage to health) shall remain unaffected by the limitations of liability set out above in clause 9.1.
3. Liability for consequential damage resulting from defects, in particular loss of profit, production downtime, business interruption, loss of data, loss of interest income or pure financial loss, as well as other indirect and consequential damage, shall be excluded unless such damage was caused intentionally or by gross negligence on the part of our legal representatives or senior employees.
4. To the extent permitted by law, our liability shall be limited, per claim, to the net invoice amount of the affected delivery.  
  
This shall not apply to personal injury or to damage caused intentionally or by gross negligence on the part of our legal representatives or senior employees.
5. Insofar as we should be responsible for product damage under the Austrian Product Liability Act (Produkthaftungsgesetz, PHG), we shall be liable in accordance with the statutory provisions.  
  
The Buyer undertakes to indemnify us against third-party product liability claims insofar as the cause lies within its sphere of responsibility, in particular in cases of improper use, alteration of the goods or insufficient passing-on of product information.  
  
Claims for damages against us shall, to the extent permitted by law, become time-barred within 12 months from the date on which the damage and the party causing the damage became known.  
  
This shall not apply to personal injury or to damage arising from intentional or grossly negligent conduct by our legal representatives or senior employees; in such cases the statutory limitation periods shall apply.
6. Any further claims of the Buyer against us or our vicarious agents due to a defect or on other legal grounds, irrespective of the legal basis (contract, tort, etc.), shall be excluded unless mandatory statutory provisions provide otherwise.

## § 10 Data Protection:

1. We process the Buyer's personal data in accordance with the General Data Protection Regulation (GDPR) and the Austrian Data Protection Act (DSG).



2. Within the framework of the statutory provisions, the Buyer shall have the right at any time to request rectification and/or erasure of the data stored concerning it.
3. The Buyer is aware that, according to the current state of the art, data protection in connection with data transmission via the internet cannot be fully guaranteed.

In particular, emails do not constitute secure communication, as the technical possibility of reading their content cannot be excluded.

**§ 11 Jurisdiction, Applicable Law, Place of Performance:**

1. All contractual relationships with the Buyer shall be governed exclusively by Austrian law, to the extent permitted by law, excluding its conflict-of-law and referral rules. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. The place of jurisdiction shall be the court with subject-matter jurisdiction for 9462 Bad St. Leonhard.
2. Unless otherwise agreed, the place of performance shall be 9462 Bad St. Leonhard.