Terms and Conditions of Business of Hermann Otto GmbH

I. General provisions

1. All offers, supplies and agreements are based exclusively on our Terms and Conditions of Business.
2. Our offers are subject to change. Contracts and agreements are not binding until they have been confirmed by us in writing, especially if they change the present Terms and Conditions. Agreements entered by our field service employees are only effective if they have been confirmed by us in writing.
3. We explicitly contradict the Terms and Conditions of Business and Purchase of the purchaser. We are not committed to them, even if we did not contradict them at the time the contract was concluded.
4. The purchaser is not permitted to set off counterclaims unless the counterclaims are undisputed or have been legally finalised. The purchaser is not entitled to a right of retention. This does not apply to business transactions with consumers, insofar as the right of retention is based on the same contractual relationship. A right to refuse performance on the part of the purchaser is excluded for business transactions with companies.
5. When contract manufacturing is carried out, if our customer has stipulated the recipes and/or equipment, it must assume liability for not infringing any third party industrial property rights owing to the production and/or equipment. If necessary, it must release us from potential third party claims on our first request.

II. Dispatch

1. Unless otherwise agreed, dispatch takes place at the expense and risk of the purchaser. When the goods are transferred to the forwarder or carrier or at the latest when the goods have left the factory or warehouse, the risk transfers to the purchaser. If the goods are damaged during transportation or the goods listed in the bill of lading are not delivered in full, the recipient of the goods must have the deliverer (in the case of dispatch by a carrier = the lorry driver; if sent by rail (Deutsche Bahn) = the receiving goods station) note it immediately in detail on the bill of lading and confirm same by signing it. The bill of lading with the note on damage must be handed over to us to enable us to assert claims for compensation on behalf of the purchaser; we are not committed to bring legal action to assert the claims, however we do commit ourselves to seizing such measures that enable the purchaser to assert claims by way of legal action. Even if free delivery to the receiving station of the purchaser has been agreed, the purchaser bears the transportation risk. If transport damage does occur, we give compensation to the same extent as we ourselves receive compensation for the transport damage. Compensation is given at our discretion either in the form of a free replacement delivery or a credit note for the amount to be reimbursed.
2. When dispatching the goods we are entitled to choose the means of conveyance and the shipping route without assuming any liability. This disclaimer does not apply if the Managing Director or Managing Directors or one of our executives has/have at least acted with gross negligence in the course of business transactions with companies or if the senior management or any one of our employees have acted with gross negligence in business transactions with consumers. We are only obliged to provide transport insurance if it is explicitly demanded. The purchaser must bear the costs.

III. Delivery period

1. The delivery period begins when the order has been confirmed, subject to availability and other contractual provisions.
2. Irrespective of our rights, if the purchaser is in arrears, the agreed term is extended by the period by which the purchaser is in arrears with its obligations under the present or past contracts. This applies analogously if a delivery date has been agreed.
3. If we fall behind, the purchaser must set an appropriate period of grace. When said period of grace expires the purchaser may cancel the contract if the goods have not been reported to be ready for dispatch by that time.
4. Any claims for compensation for a failure to meet delivery periods or dates are limited to the value of the contract unless the delay has been caused by the Managing Director(s) or one of our employees owing to negligence.
5. Cases of force majeure entitle us to delay delivery for as long as it is obstructed, plus a reasonable time for recommencing, or to cancel the contract owing to the part of the contract which has not been fulfilled. Strikes, lockout, riots and other circumstances which make delivery difficult or impossible are equivalent to force majeure, irrespective of whether they occur to us or one of our subsuppliers. The purchaser can demand a statement from us as to whether we want to cancel or deliver within a reasonable period. If we fail to make a statement, the purchaser is entitled to cancel the contract.

IV. Terms of payment

1. Our invoices are due for payment within 30 days of the invoice date without any discount.
2. If the target date is not met, we charge interest on arrears at a rate equivalent to the respective interest rate for short-term bank loans, but in the amount of 5 percent points p.a. above the respective base interest rate in the case of legal transactions in which no consumer is involved, at 8 percent points p.a. above the relevant base interest rate.

V. Retention of title to ownership

1. In business transactions with companies the entire goods delivered (goods subject to retention of title to ownership) remain our property until all accounts receivable arising from the business relations with the respective purchaser have been settled, even if payments are made for specifically designated accounts receivable. In dealings with consumers we retain ownership of the delivered goods until the outstanding purchase price has been paid.
2. The purchaser is entitled to process and sell the goods subject to retention of title to ownership by way of normal business transactions insofar as it is not in arrears with its payment. It is only entitled to resell or process the goods subject to retention of title to ownership providing that the accounts receivable from reselling or processing are transferred to us as stipulated in numbers 3 – 5. It is not authorised to dispose of the goods subject to retention of title to ownership in any other way.
3. The purchaser herewith assigns its accounts receivable from reselling and/or processing the goods subject to retention of title to us, irrespective of whether the goods subject to retention of title to ownership are sold to one or more purchasers or have been processed for one or more customers.
4. The purchaser is authorised to collect the accounts receivable from resale or processing assigned to us unless we revoke this authorisation, which we may do at any time. Insofar as our accounts receivable are due, the purchaser is under obligation to immediately pay the collected amounts to us. On no account is the purchaser authorised to assign the accounts receivable to any third party.
5. Unless we inform its customer ourselves, if we so request, the purchaser is under obligation to inform the customer immediately of the assignment of its accounts receivable to us and provide us with proof of such notification and send us the information and documents required for collecting the assigned accounts receivable together with this notification.
6. The purchaser is under obligation to inform us of garnishment or any other adverse action by a third party.
7. If the security backing the accounts receivable owing to the retention of title to ownership exceeds for debt for which security is required by more than 20%, at the request of the purchaser we are obliged to release securities at our discretion.
8. The authorisation of the purchaser to collect will be revoked if the terms of payment are not met or if the purchaser infringes contractual agreements, if the purchaser ceases to pay and if settlement or bankruptcy proceedings are opened.

VI. Instructions for use

1. In view of the fact that our products are used under very varied working conditions and for different applications, our instructions for use can only constitute general guidelines. If special requirements are made, which are beyond the scope of the applications and working conditions mentioned in the instructions for use, we are prepared to give more extensive advice for the purpose of support; however this does not constitute any kind of legal commitment on our part. Irrespective of this, owing to the many types of applications for our products and the varying conditions under which they are used, it is always necessary for the user to previously check all the product properties considered important for the respective purpose, and to verify them in practice. The information in the relevant up-to-date technical data sheet must be taken into account for this purpose.
2. Information on the amount to use given in our instructions for use represents average values taken from practical experience.

VII. Notification of defects, liability

1. All statements about suitability, processing and application of our products, technical advice and other information are given to the best of our knowledge; however, they do not release the purchaser from the obligation to carry out its own tests and experiments. If specific qualities or the assumption of any warranties have been agreed, they are only binding for us if they have been made explicitly in writing in the contract. The current technical datasheet – as can be accessed from our homepage on the Internet – is relevant for any claims for defects with regard to the quality and application of the product. It can also be made available in other ways at any time, if requested. If the seller deviates from instructions given there, we exclude any claim for defect or any other form of liability.
2. Business purchasers must inspect the goods delivered immediately for any defects and, if a defect is discovered, notify us immediately thereof in writing. If we do not receive notification, the goods are considered accepted. For purchasers who are not consumers this applies both to visible and invisible defects. If the purchaser is a consumer, he or she must lodge a complaint about obvious, visible defects within 14 days.
3. If the goods we deliver are defective and the purchaser gave notification of the defect within the time limit, we will replace the goods free of charge if the defect already existed when the risk was transferred. If post-performance fails the purchaser has the right to choose between reduction of the payment and cancellation of the contract. Paragraph 5 below applies to any claims for damages or reimbursement of expenses.
4. In case of complaint the purchaser must grant us the opportunity to verify the complaint by sending material samples to us immediately if we so request. If the purchaser infringes this obligation, the purchaser is not entitled to claim for defects unless the infringement of this purchaser obligation neither hinders our verification of the cause of the damage nor makes it more difficult. We will assume the costs for sending us material samples and of sampling itself if the material delivered was defective. This does not prejudice cancellation or return rights which may ensue from consumer protection rights.
5. We assume liability towards the purchaser for compensation – irrespective of the legal reason be it under contract or owing to tort – only in cases of intent, gross negligence, owing to injury of life, the body or health or because an agreed quality is lacking or because of the infringement of important (cardinal) contractual duties or other mandatory statutory regulations. Compensation for the infringement of important contractual duties is restricted to foreseeable damage typical for the contract and, in this case, to a maximum of 500,000.00 euros. This applies unless our legal representative or our vicarious agents have acted with intent or gross negligence or if it is a case of injury of life, the body or health. A shift in the burden of proof to the disadvantage of the purchaser is not implied by the above provisions. The provisions above apply analogously to compensation for futile efforts.
6. The time limit for claims for defects is one year from delivery of the goods unless it is a case of a consumer goods sale or the law stipulates a longer mandatory limitation period in some other way.

VIII. Liability for compensation for damage due to culpability; reimbursement of expenses

1. Insofar as liability presupposes culpability, our liability for compensation, irrespective of the legal grounds – be it based on a contract or a tort – is restricted in compliance with the following provisions. A shift in the burden of proof to the disadvantage of the purchaser is not implied.
2. We do not assume liability for ordinary negligence, insofar as it does not constitute a breach of important contractual duties. Important contractual duties are, in particular, the obligation to deliver the object of delivery punctually and without any major deficits, and the protection obligations for the benefit of the purchaser, in particular for health and life.
3. Insofar as the grounds make us liable for compensation for damages, this liability is restricted to damage which we predicted to be a potential consequence of a breach of contract at the time the contract was concluded, or which we should have foreseen, had we applied due diligence. Our duty to compensate for material damage and further financial losses resulting from it is limited to a sum of maximally € 500,000 per claim. In the course of business with entrepreneurs liability for damages caused by delay is limited to the value of the order.
4. The above exemptions from and limitations of liability also apply to the compensation for wasted expenditure on the part of the purchaser.
5. The above exemptions from and limitations of liability apply to the same extent to our organs, legal representatives, employees and other vicarious agents.
6. Insofar as we give technical information or advice, and this information or advice is not part of the performance or services we owe under the terms of contract, we do so free of charge and to the exclusion of any liability.
7. The above limitations do not apply to liability for intentional acts, to guaranteed quality features, to injury to life, body or health or under the terms of the Product Liability Act.

IX. Place of performance and legal venue

1. The place of performance for both parties to the contract is D-83413 Fridolfing if the purchaser is an entrepreneur. For all disputes arising from the business relations – including bill of exchange and cheque issues – in the case of business transactions with traders the legal venue is D-83278 Traunstein.

X. Final clauses

1. German law alone shall apply to the business relationship with our customers; foreign law is excluded under all circumstances. The UN Convention on Contracts for the International Sale of Goods (CISG) is not however applicable.
2. If our customers export our merchandise to territories outside the Federal Republic of Germany, we assume no liability if third-party industrial property rights are infringed. The purchaser is obliged to pay damages caused by us exporting the merchandise if we did not supply it explicitly for export purposes.

OTTO CHEMIE
Sealants • Adhesives

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