

# General Terms and Conditions of Sale and Delivery for hubergroup Deutschland GmbH

As of February 2015

## 1. Validity of the terms and conditions

The following terms and conditions are valid for the period of the business relationship, i.e. also for future orders. The purchaser's counter-claims referring to his own terms and conditions of purchase are hereby rejected. Any divergences from the terms and conditions shall be expressly confirmed by the vendor.

## 2. Delivery

2.1. Deliveries are made "ex works" from the manufacturing site quoted in the order confirmation (Celle or Kirchheim) and on the purchaser's own account and risk. In case the manufacturing site is not mentioned or agreed upon, the purchaser shall consult the vendor. We reserve the right to supply and charge for additional quantities due to manufacturing processes, up to 2.5 kilogram or 10% of the quantity ordered per article. It is agreed that the quantity of goods supplied in this way shall be regarded as compliant with the contract.

2.2. Shipping and packaging costs shall be charged to the purchaser, unless agreed otherwise; even if a different arrangement is made with regard to shipping and packaging costs, the risk shall remain with the purchaser.

2.3. If an event of *force majeure* occurs in relation to the vendor or its suppliers, the agreed delivery dates shall be extended by the period covered by the event, plus a reasonable start-up period. *Force majeure* includes disruption to operations due to official intervention, difficulties with energy supply and raw materials, strikes, lock-outs, accidents, unforeseeable production problems and other events that make delivery considerably more difficult. If an event of *force majeure* results in extension of the delivery date by more than thirty days, either contracting partner may withdraw from the contract.

2.4. If the vendor falls behind schedule with deliveries due to reasons for which it is responsible, the purchaser shall be entitled to withdraw from the contract after unsuccessful expiration of a reasonable period of grace that the purchaser allows. The purchaser is only entitled to claims for compensation due to default under the conditions of and subject to point 4 of these terms and conditions. Compliance with the delivery dates requires that the purchaser fulfils all his duties and obligations properly and in due time.

2.5. If the purchaser is delayed in accepting the goods or if he breaches other obligations to cooperate, the vendor shall be entitled to demand compensation for the loss that it incurred and any additional expenses.

## 3. Warranty

3.1. The purchaser is required to check the goods for defects without delay upon delivery, in particular to ensure that the goods correspond to the order data.

3.2. Before commencing the print run, the purchaser must also satisfy himself appropriately that the goods are suitable for their intended purpose.

3.3. The purchaser must notify the vendor of any defects in writing, no later than ten days after the goods have been received; defects that cannot be found within this period, even if a careful check is made, shall be notified to the vendor in writing without delay, although no later than a cut-off period of one year from the date of delivery.

3.4. If the notification of defects is justified, the vendor is required to offer a refund or replacement delivery, at its discretion. If the replacement delivery is unsuccessful, the purchaser is entitled to withdraw from the purchase contract or to reduce the purchase price. More extensive warranty claims can only be considered under the conditions of and subject to point 4 of these terms and conditions.

3.5. The purchaser's claims arising from defects in the supplied items and due to other deviations from the order data (Section 434 para. 3 BGB (German Civil Code)) shall become time-barred within one year from the date of delivery. This shall also apply to claims for compensation, unless they shall remain unaffected by limitations under point 4.

## 4. Limitation of liability

4.1. Any claims for compensation by the purchaser against the vendor and/or against its performing agents or vicarious agents are precluded, on whatever legal grounds.

4.2. This does not apply if the vendor is in culpable breach of a material contractual obligation (cardinal obligation). Liability is at all events limited to the loss that is typical for the specific breach of duty, that is foreseeable for the vendor and that is reasonable based on the circumstances, in particular with regard to the value of the supplied goods.

4.3. The limitations described above do not apply to claims for compensation under the Product Liability Act [*Produkthaftungsgesetz*]; they also do not apply to losses resulting from injury to life, body or health that are due to culpable breach of duty by the vendor or its legal representatives/performing agents and to other losses that are due to grossly negligent or wilful breach of duty by the vendor or its legal representatives/performing agents.

## 5. Prices, payment, opposing rights of the purchaser

5.1. Unless agreed otherwise, the agreed prices are invariably net prices (excluding VAT, which will be added to the prices).

5.2. Invoices are payable thirty days after the date of receipt, without deductions, or within ten days with 2% discount from the invoice amount.

5.3. Bills of exchange and pre-dated cheques are only accepted on the basis of a special agreement and even then only on account of performance and with full charging of all the relevant expenses that are incurred.

5.4. In the event that the purchaser is in default of payment, default interest at the rate of nine percentage points above the base rate of interest in accordance with Section 247 BGB (German Civil Code) may be charged.

This is without prejudice to assertion of further losses (Section 288 para. 4 BGB).

5.5. The purchaser may only offset payment claims or refuse to make payments due to counterclaims if these counterclaims are recognised or established with legal effect.

5.6. Furthermore, a right of retention may only be exercised if the counterclaims are based on the same contractual relationship.

## 6. Retention of title

6.1. All the goods supplied to the purchaser remain the property of the vendor until complete settlement of all the vendor's claims arising from the business relationship. In a current account, the retention of title serves as collateral for the receivable. If bills of exchange or cheques are used for payment, the account shall only be settled when they have been discharged or encashed, respectively. If the purchaser settles the vendor's receivables resulting from delivery of goods by means of refinancing using bills of exchange/cheques, retention of title to the supplied goods shall remain in place until the purchaser has paid the bills of exchange issued by the vendor for this purpose and, as a result, the vendor's liability in respect of the bills of exchange has lapsed.

6.2. Processing of the supplied goods shall be undertaken for the vendor as producer without this giving rise to a liability for the vendor. The purchaser's reversionary interest continues in the transformed item. If the goods are mixed inseparably with other goods that are not owned by the vendor, or are combined into a new item, the purchaser at this stage transfers co-ownership of the new item to the vendor as collateral for the vendor's claims. Co-ownership shall be in the ratio of the value of the goods subject to retention of title to the other processed or mixed goods, subject to the requirement that the purchaser shall maintain the co-ownership on behalf of the vendor. This shall apply even if the items belonging to the purchaser are regarded as main items.

6.3. The purchaser is entitled to sell the goods (co-)owned by the vendor in the ordinary course of business. The purchaser at this stage assigns to the vendor the receivables resulting from the re-sale as collateral for the vendor's claims, in the amount of the *pro rata* value of the goods subject to retention of title or the value of the co-ownership in the object of the purchase agreement with the third party. The purchaser shall be entitled to collect the claims.

6.4. The purchaser is not entitled to re-sell the goods as described in 6.3. if the purchaser's customer has effectively precluded assignment of the claim against him.

6.5. The purchaser's entitlement to dispose over the goods subject to retention of title and to collect the assigned receivables shall not apply if he breaches his contractual obligations, in particular if he is in default of payment; furthermore, if he gets into financial difficulties. In these circumstances the vendor can exercise its right to collect the assigned receivables and demand that the purchaser provides all the information required for collection purposes, surrenders the relevant documentation and notifies the debtors concerning the assignment. The vendor is then furthermore entitled to demand immediate delivery of the goods subject to retention of title and to liquidate them, to the exclusion of the right of retention, without setting a period of grace or providing a statement of withdrawal from the contract; the proceeds of the liquidation shall be offset against the purchaser's liabilities, after deduction of expenses.

6.6. If the vendor's collateral, as measured on the basis of the current market value of the goods subject to retention of title and the nominal amount of the assigned receivables, exceeds the receivables to be secured by 30%, the vendor shall, on the request of the purchaser, release additional collateral. The vendor shall choose the collateral to be released.

6.7. The purchaser shall handle with care the goods (co-)owned by the vendor and shall insure the goods against fire, water and theft at the re-purchase price, at his own expense. The purchaser must notify the vendor immediately about any and all events that could adversely affect the vendor's title to the goods or the rights to the receivables assigned to it (e.g. seizures, filing for insolvency). All costs incurred as a result shall be borne by the purchaser.

## 7. Applicable law, place of performance and place of jurisdiction, final provision

7.1. This contract and these terms and conditions are subject to German law, to the exclusion of the UN convention on the international sale of goods (CISG).

7.2. The place of performance for all obligations of the parties resulting from this contract is Kirchheim, except if delivery is served from Celle factory. In this aforementioned case, the vendor's place of performance for the obligations of delivery is Celle. The exclusive competence of the Regional Court of Munich I is agreed for any and all disputes arising from this contractual relationship. The vendor is nonetheless entitled to sue the purchaser also at the latter's place of business.

7.3. If a provision is or should become invalid or unenforceable, in whole or in part, the validity of the remaining provisions shall not be affected. Invalid or unenforceable provisions shall be replaced by an arrangement that implements the purpose pursued by the invalid or unenforceable provisions as far as possible.