

**General Terms and Conditions of Sale and Delivery  
for *End Customers*  
(Consumers)  
of Henkelhausen GmbH & Co KG  
(status: July 2018)**

**1. Scope**

- 1.1 These General Terms and Conditions of Sale and Delivery of Henkelhausen GmbH & Co KG apply only to *consumers pursuant to Section 13 BGB [German Civil Code] (customers)* i.e. any natural person who concludes a legal transaction for purposes which primarily cannot be attributed either to their commercial or their independent professional activity.
- 1.2 The terms and conditions set forth below apply exclusively to our business relations with our customers, also with respect to information and consultancy.
- 1.3 If claims for damages are specified below, this shall in the same way also mean claims for the reimbursement of expenses within the meaning of Section 284 BGB.

**2. Information, consultancy, properties**

- 2.1 Information and consultancy regarding our products shall be provided solely on the basis of our experience to date. Values specified in this context shall be deemed average values. Any information about our products, especially the illustrations, drawings, measurement and performance data and other technical information in our quotations and brochures shall be deemed approximate average values.
- 2.2 Reference to standards, similar technical regulations and technical information, descriptions and illustrations of the delivery item in quotations and brochures shall only represent a general description of our products and not properties of our products which are owed.
- 2.3 Reference to standards, similar regulations and technical information, descriptions and illustrations of the delivery item in quotations and brochures resp. on the internet and in our advertising and to analyses or description of physical properties provided shall only represent a property of our products when we have expressly declared the quality to be a "*property of the product*". These are otherwise non-binding, general specifications of performance. This shall also apply to statements made by our employees unless otherwise agreed.

We shall assume no liability for the usability and/or eligibility for approval and/or registration and/or marketability of our products for the customer's intended purpose other than mandatory statutory liability unless we have agreed otherwise in writing with the customer.

We shall only give guarantees if we have designated an agreed property as "guaranteed" in writing.

- 2.4 We only assume an obligation to provide consultancy regarding our products and their use and/or services exclusively on the basis of a separate, written consultancy agreement.

**3. Conclusion of contracts, scope of delivery, acceptance**

- 3.1 Our quotations are subject to change. They are requests for orders.
- 3.2 The customer shall be bound by its order as a contract application for 14 calendar days - in the case of electronic purchase orders 5 working days (in each case at our registered office) - after our receipt of the purchase order unless the customer must expect to receive our acceptance on a regular basis at a later date (Section 147 BGB). This shall also apply to reorders of the customer.
- 3.3 A contract is created only when we confirm the customer's purchase order in writing or deliver the goods. In the latter case, the order confirmation shall be replaced by our invoice. If the customer orders the goods by electronic means, we shall confirm receipt of the purchase order immediately. Confirmation of receipt is not a binding acceptance of the purchase order. Confirmation of receipt can be combined with the declaration of acceptance.
- 3.4 If the consumer orders the goods by electronic means, we shall store the text of the contract and send it to the customer on request by email together with these General Terms and Conditions.
- 3.5 Purchase orders which do not reach a total order value of at least EUR 35.00 (**minimum order value**) shall not, in the absence of other express declaration by us, be accepted for delivery by us. The total

order value shall be determined by the net invoice price (purchase price less value added tax) specified in our respectively valid price list or in the respective price agreement between ourselves and the customer at the time of the purchase order. If a customer places several single purchase orders per shipping point for one delivery date, where each of which in itself does not reach the total order value and which are to be delivered to a single location, such purchase orders shall be combined when determining the total order value. Furthermore, when determining the total order value, only purchase orders which are sent from a single location shall be combined in a single purchase order.

- 3.6 All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. This shall also apply to the waiver of the written form requirement. Verbal agreements or amendments or modifications shall be void. This shall not affect the precedence of an individual agreement (§ 305b *BGB*) for individual agreements of whatever form, especially in written, text or verbal form.
- 3.7 We shall only be obliged to deliver from our own product stock.
- 3.8 If there is a delay in accepting the goods for a reason for which the customer is responsible, we shall have the right, after setting a reasonable extension period which has expired, at our option to request immediate payment of the purchase price or to rescind the contract or refuse performance and request damages in lieu of performance. The period must be given in writing. We must refer again in this to our rights under this clause.

We shall also have the right, beginning upon expiry of the period set in the written notice that the goods are ready for shipment, to store the goods and to invoice the customer for the damages incurred for this at 0.5% of the net invoice amount for the stored products for each full month or part thereof. This shall not affect the assertion of further rights. The customer shall have the right to prove that no costs or considerably lower costs were incurred.

#### **4. Delivery time**

- 4.1 Binding delivery dates and periods must be agreed expressly as binding. We shall make every endeavour to meet delivery dates and periods that are not binding or approximate (ca.).
- 4.2 Delivery periods shall begin with the customer's receipt of our order confirmation but not before all economic, technical and logistical details about the execution of the order have been clarified with the customer and all other requirements to be fulfilled by the customer have been met, in particular advance payments or prepayments agreed have been made. This shall apply accordingly to delivery dates. If the customer has requested changes after placing the order, a new delivery period shall begin with the original period agreed, in the absence of such with a reasonable period when we confirm the change.
- 4.3 Deliveries may be made prior to expiry of the delivery time unless a specific delivery data has been expressly agreed. The delivery date shall be deemed the date on which the goods are reported ready for shipment, otherwise the date on which the goods are sent. The date of delivery for an obligation agreed to be performed at the creditor's place of business shall be deemed the date of delivery at the agreed place of delivery.
- 4.4 If we default in delivery, the customer can set a reasonable extension period and, after this elapses without result, rescind the contract in whole or in part. Damage claims and/or claims for the reimbursement of expenses for delayed delivery or non-fulfilment, for whatever reason, shall exist only as stipulated in paragraph 10.

#### **5. Delivery subject to availability, force majeure and other obstructions**

- 5.1 If we do not receive deliveries or services from our sub-contractors to provide a delivery or service which is due from us under the contract, despite due and proper stocking prior to conclusion of the contract with the customer in terms of quantity and quality under our delivery or service agreement with the customer (*congruent stocking*) or it is incorrect or not in due time for reasons for which we are not responsible or events of force majeure occur of significant duration (i.e. of longer than 14 calendar days), we shall notify our customer immediately in writing or text form. In such case, we shall have the right to postpone the delivery for the duration of the obstruction, or to rescind the contract in whole or in part for that part of the contract not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk according to Section 276 *BGB*. Events of force majeure are strikes, lock-outs, official intervention, energy shortages and shortages of raw materials, transport bottlenecks or obstructions through no fault of our own, company obstructions through no fault of our own, e.g. due to fire, water and damage to machinery, and any other obstructions which, when considered objectively, were not caused by our negligence.
- 5.2 If a delivery date or a delivery period is agreed with binding force and the agreed delivery date or the agreed delivery period is exceeded by more than 30 calendar days due to events according to 5.1., the customer shall have the right to rescind the contract for that part of the contract not yet fulfilled if

the further delay in delivery is objectively unreasonable for the customer.

## **6. Shipment and passing of risk**

- 6.1 Unless otherwise agreed, it is agreed that the obligation shall be performed at the debtor's place of business (collection by the customer at our registered office). Unless otherwise agreed, an agreed shipment of goods by ourselves shall be sent uninsured at the risk and expense of the customer and ex our registered office resp. warehouse in Krefeld.
- 6.2 The risk shall pass to the customer, in the case of an obligation agreed to be performed at the debtor's place of business, upon the goods being handed over to the customer and leaving our warehouse resp. the premises of our registered office in Krefeld, if an obligation to be performed at the debtor's place of business where the debtor must dispatch the goods has been agreed, upon the goods to be delivered being handed over to the forwarding agent, carrier or firms otherwise entrusted to carry out the shipment, and, where an obligation to be performed at the creditor's place of business has been agreed, upon delivery to the agreed place.
- 6.3 If a shipment is delayed because we assert our right of retention due to the customer's default in payment in whole or in part or due to another reason for which the customer is responsible, the risk shall pass to the customer at the latest as of the date of receipt of the notice stating that the delivery is ready for shipment.

## **7. Warranty**

- 7.1 Our liability for damages in respect of breach of duty due to defective performance in the form of material defects shall be excluded unless material defects and damages connected therewith can be proved to be due to defective material, defective design or defective execution of our products. Warranty and liability in particular shall be excluded with respect to the consequences of incorrect use or wear and tear of our delivered products, excessive use or unsuitable treatment and care. This shall not apply in the case of in the case of a fraudulent, intentional or grossly negligent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for the absence of defects, the assumption of a procurement risk pursuant to Section 276 *BGB* or mandatory statutory basis for liability, and in the event of the right of recourse in the supply chain with a consumer (Section 13 *BGB*) as final consumer (recourse against suppliers - Sections 478 *BGB*).
- 7.2 If a product is defective, the customer shall have the right to request supplementary performance by remedy of the defect (rectification) or by delivery of a product free of defects (replacement delivery). In the case of a replacement delivery, the customer shall return the defective product to us in accordance with statutory provisions.

Replacement delivery shall be excluded from the outset for certain products which were custom-made for the customer and in the case of electronic components, preset controllers and control devices. This shall not affect the customer's right to reduction in price and rescission if rectification fails.

- 7.3 Warranty and liability shall otherwise be governed by statutory provisions.

## **8. Prices, payment terms**

- 8.1 All prices are in principle quoted in euros including packaging and including value added tax to be borne by the customer at the respective legally valid rate. We accept cash payment and bank transfer as means of payment.
- 8.2 All prices are ex works resp. ex warehouse and in principle quoted gross in euros, and exclude packaging for shipment by sea or air, freight, postage and, if a transport insurance was agreed, insurance costs but include value added tax (if incurred by law) to be borne by the customer at the respective legally valid rate, and exclude any country-specific charges in the case of delivery to countries other than the Federal Republic of Germany, and exclude customs duties and other fees and public charges for the delivery/service. Unless otherwise agreed with the customer, the valid prices follow from our general price list respectively valid when the contract is concluded between ourselves and the customer.
- 8.3 Our invoices are payable within 14 calendar days of delivery of the products without any deduction unless otherwise expressly agreed. The date payment is received by us or credited to our account shall be deemed the payment date.
- 8.4 Unless otherwise agreed, we shall have the right to request the customer to make an advance payment when ordering of up to 30% of the net purchase price (purchase price less value added tax).
- 8.5 Freight and transport costs shall be charged to the customer unless otherwise expressly agreed.

## **9. Retention of title**

- 9.1 We shall retain title to all goods delivered by us (hereinafter referred to as a whole as "goods subject to retention of title") until all our claims under the contract concluded are paid.
- 9.2 The customer must notify us immediately in writing or text form of any third-party attachment of goods subject to retention of title. If attempts are made to attach the goods subject to retention of title, the customer shall indicate our title to third parties prior to payment in full.

## **10. Exclusion and limitation of liability**

- 10.1 We shall be fully liable if the customer's damage is due to a fraudulent, intentional or grossly negligent breach of duty by ourselves or our legal representatives or vicarious agents, in the event of the assumption of a guarantee for the quality of the product, the assumption of a procurement risk according to Section 276 *BGB* and in the case of injury to life, limb or health. This shall also not affect liability under the *Produkthaftungsgesetz* [German Product Liability Act] and other cases of mandatory statutory liability
- 10.2 Furthermore, we shall be liable for the violation of material obligations in the case of slight negligence. Material contractual obligations are obligations which determine the contract, the fulfilment of which the customer may rely on. In such case, we shall be liable, however, only for the foreseeable damage typical for the contract.

We shall not be liable for the violation of non-material contractual obligations in the case of slight negligence unless this relates to a damage claim for injury to limb, life and health, in the case of the assumption of a guarantee for the quality of the product, the assumption of a procurement risk according to Section 276 *BGB* and in the case of fraudulently concealed defects. This shall also not affect liability under the *Produkthaftungsgesetz* and other cases of mandatory statutory liability.

- 10.3 If our liability is excluded or limited, this shall also apply to the personal liability of our employees, bodies and vicarious agents.
- 10.4 There is no connection between the reversal of the burden of proof and the foregoing provisions.

## **11. Returns**

- 11.1 The return of products delivered is in principle excluded other than in warranty cases Art. 7) i.e. in the case of delivery of defective products, taking account of the provisions of these General Terms and Conditions of Sale and Delivery or other mandatory legal reasons. An exception shall apply only in such cases where the net invoice amount of the respectively delivered product is at least EUR 35.00 and it is not a case of products custom-made for the customer, electronic components, preset controllers or control devices or if otherwise expressly agreed.
- 11.2 The condition for a return is the return, carriage paid, and the approval of the products after examination carried out by us.

## **12. Place of performance, applicable law**

- 12.1 Unless otherwise agreed, place of performance for all contractual obligations is our company's registered office in Krefeld.
- 12.2 The law of the Federal Republic of Germany shall apply exclusively, to the exclusion of the UN Sales Convention (CISG), to all legal relations between the customer and ourselves.

## **13. Dispute settlement procedures**

The EU Commission provides a platform for out-of-court dispute settlement procedures. This gives consumers the opportunity first to clarify disputes in connection with their online purchase order out of court. The dispute settlement platform is available at: <https://ec.europa.eu/consumers/odr/>. Apart from this, Henkelhausen GmbH & Co. KG does not take part in dispute settlement procedures before a consumer arbitration service (Section 36 *VSBG - Gesetz über die alternative Streitbeilegung in Verbrauchersachen* [German Law on Dispute Settlement for Consumers]).

### **Note on data protection**

In accordance with the provisions of the *Bundesdatenschutzgesetz (BDSG)* [Federal Data Protection Act] and the General Data Protection Regulation (GDPR), we draw attention to the fact that our accounting is maintained on EDP equipment and we also in this context store data received as a result of the business relationship with the customer. We comply with data protection regulations. Customer data are used exclusively for the purpose of implementing the contract/purchase order.

