

# General Terms & Conditions of Sale (R3 Nov 2018)

## 1. Applicability, Scope

1.1. The General Terms and Conditions of Sale on hand (hereinafter referred to as “GTS”) apply to all existent and future contractual relationships of HQW Precision GmbH (hereinafter referred to as “HQW”) with customers.

1.2 The GTS of HQW apply exclusively. Deviating, contradicting or amending conditions used by other contracting parties will only be deemed part of the contractual agreement if and only insofar as HQW expressly consents to their inclusion in the contract in writing. This consent shall be required in any case, especially so when HQW renders its services without making any reservation. In determining the scope and content of all deviating, contradicting or amending conditions included, the written confirmation of HQW is decisive.

1.3 References to the application of statutory regulations are for the purpose of clarification only. Even without such references the statutory regulations shall apply, insofar as they have not been directly amended or expressly excluded by this GTC.

## 2. Conclusion of Contracts, Content

2.1 Offers of HQW Precision are subject to confirmation and without any obligations unless they are expressly marked as binding.

2.2 Legally relevant declarations and notifications of the contractual partner towards HQW which have to be made or are submitted after conclusion of the contract (such as setting of deadlines, notices of defects, withdrawal or reduction declarations) shall only be valid if made in written form.

2.3 Offer related documents of HQW, such as drawings or illustrations, technical specifications, references to standards as well as statements in advertising material shall not be treated as a declaration or warranty towards specifications unless expressly stated as such.

## 3. Pricing

3.1. The prices of HQW do not include costs and expenses for packaging, freight, loading and unloading, transport, insurance, mounting, assembly and initial operation / commissioning. The related costs and expenses are to be borne by the customer, unless expressly provided for otherwise in written form in our offer.

3.2. Concerning prices of HQW the prices in force on the delivery date apply plus statutory VAT charges in force on such date.

## 4. Delivery Times

4.1 Dates and deadlines of HQW for deliveries are always approximate dates or deadlines unless expressly provided for otherwise in writing. Dates and deadlines are deemed as observed if the goods to be delivered have left the business site before such date or within such deadline. Services or deliveries shall not become due until the customer has taken all required cooperation tasks or concessions. In such cases the delivery dates and deadlines shall be postponed until all required cooperation tasks have been taken and / or receipt of concessions.

4.2 HQW is not liable for an impossibility or a delay in delivery, insofar as such incidents are due to force majeure or other events which have been unpredictable at the time of the contract's conclusion and which are beyond HQW's responsibility. This also applies to incidents which occur in the sphere of suppliers if HQW is not at fault concerning provisional care. HQW will inform its contractual party about such circumstances after acquiring positive knowledge of these circumstances and will communicate a new delivery time in due course. Should the performance of the contractual obligations become wholly or partly unreasonable or impossible for either party, the respective party shall be entitled to withdraw from the contract.

## 5. Deliveries, Shipment Passing of Risk, Partial Delivery

5.1 Upon handing over the goods to the delivery carrier, haulage contractor or other personnel designated to execute the delivery and at the latest at the time of leaving the place of sale, storage or place of delivery in case of drop-ship business, the risk of incidental loss or worsening shall be passed to the customer. In case of delays in delivery or acceptance of the goods for reasons for which HQW is not responsible the risk shall be passed to the customer at the time of receipt of a ready-to-ship notification or similar. The decision on packaging material and form of packaging shall be in the discretion of HQW. Packaging or delivery regulations of the customer shall not be binding unless expressly agreed on in writing between the parties.

## 6. Notice of Defects

6.1 Items delivered by HQW are deemed approved unless HQW has received a written complaint within 5 working days after delivery concerning obvious or other defects that have been identifiable on a diligent examination. With regard to defects that have not been obvious, all items are deemed to be approved unless HQW has received a written complaint within 5 working days upon detection of the defect or earlier, if the defect has been identifiable under normal use of the delivered item.

## 7. Due Dates, Default of Payment

7.1 Invoices of HQW are due for immediate payment, in case of partial deliveries in the proportional amount unless expressly otherwise agreed in writing. Shipment of the goods can only occur after receipt of pre-payments or cash-on-delivery, unless agreed otherwise in writing.

(a) Should the customer not fulfill its payment obligations or be in default of payment, HQW is entitled to claim default interest in the amount of 5 % above the base interest rate set by Deutsche Bundesbank. The right to claim further damages remains unaffected.

(b) HQW is further entitled to declare further claims against the customer due for immediate payment, if facts or incidents arise which indicate a deterioration of the financial situation of the customer.

## 8. Right of Refusal, Off-Set of Payments

Withholding of payments towards HQW based on potential counter-claims and / or the off-set of payments with potential counter-claims is not permitted, unless the potential counter-claims have been accepted, legally ascertained or due for decision.

## 9. Invoicing, Reconciliation of Accounts

Objections against our accounting, account excerpts, account reconciliations of HQW have to be filed in written form within an exclusion period of 3 weeks after receipt of the respective document. The timely shipment of the notification is sufficient. In case that no timely objection is filed, it is deemed as approval. Should an obvious error in the document emerge afterwards, especially with regard to calculation errors, both parties are entitled to claim correction of the document based upon statutory regulations.

## 10. Reservation of Title

10.1 Any and all goods of HQW remain property of HQW until all current and future claims of HQW have been settled and payment documents such as financial promissory notes have been finally accepted.

10.2 The customer is entitled to resell and process the items in the ordinary course of business.

10.3 In case of reselling and / or processing, blending or combining of the items the reservation of title shall also cover all goods that have been fabricated by the items' processing, blending or combining at their full value, whereas HQW shall be deemed producer of these fabricated goods. If the processing, blending or combining is effected with third party goods and their title remains retained, HQW acquires co-ownership in the ratio of the invoiced value of the processed goods.

10.4 The customer hereby assigns any and all claims that may result from the resale, blending or processing of the goods against third parties to HQW in the amount of the potential co-ownership (cipher 10.3) as security. The customer remains entitled to collect the debts for the statement of HQW as long as the payment obligations towards HQW are fulfilled or this collection right is cancelled. The customer is not entitled to assign those claims against third parties, not even for the purpose of factoring the claims, unless an obligation of the factoring partner is established simultaneously to deliver payment directly to HQW in the amount equaling the claim against the customer at that time.

10.5 Third party accesses or seizures to items in HQW's property have to be communicated to HQW in writing immediately.

10.6 The reservation of title and its exercise does not lead to a withdrawal from the contract.

10.7 In case the contracting party's is in default of payment or its behavior is contrary to the contractual obligations, HQW is entitled to reclaim the items which are subject to reservation of title with written notification and are further obliged to resell the items and deduct the sales price from the open claims or set-off the open claims against the market value of the items or acquisition costs, whereas appropriate handling fees can be deducted.

10.8 Should the collateral value exceed the claims of HQW by more than 20% a partial release of collateral will be declared in HQW discretion upon demand of the customer.

## 11. Intellectual Property Rights, Copyright

11.1 Insofar as HQW's services include technical advisory, especially preparation technical solutions, patterns and drawings, formulas, development and improvement of products, HQW hereby reserves all rights to such services and results.

11.2 Any and all disclosure or passing of, including forwarding for mere display (in whole or in part) is not permitted and entitles us – while all other claims remain unaffected – to demand surrender of the produced or achieved items. The customer is obliged upon demand to immediately supply HQW with all information and documentation required for the due enforcement of HQW's rights. Any patterns, drawings, models, samples or forms produced by HQW are to be returned to HQW upon demand, latest and without explicit demand if the order is not awarded to HQW.

## 12. Breach of Duties

12.1 The statutory rights of the customer pursuant to Sec. 437 Nr. 1 German Commercial Code shall apply according to the following regulations:

12.1.1 If and insofar as delivered items should be not usable in whole or in part as a result of defects, HQW will at its discretion decide to either remedy the deficiencies or replace the items free-of-charge (hereinafter jointly referred to as “supplementary performance”). HQW will further bear any direct costs for disassembly and installation. HQW will not bear any disassembly and installation costs if works are carried out in Foreign countries. HQW will further not bear any costs for disassembly and installation if the costs are not reasonable in view of the delivery value of the defective items. All other costs have to be borne by the customer. HQW will not be responsible for defects which are corresponding to the normal wear and tear of the usage time, faulty installation or improper use.

12.1.2 The customer is obliged to grant HQW adequate time and opportunity to exercise the supplementary performance as it appears necessary to HQW. Only in cases of urgent threats to operational safety or to prevent disproportionate damages or in cases where HQW is in default of supplementary performance the customer shall be entitled to perform supplementary performance itself or to claim costs for supplementary performances delivered by third parties.

12.2 Further statutory rights of the ordering party shall be applicable in accordance with the following provisions:

HQW shall only be liable in the following cases:

- (a) intentional breach of contract
- (b) breach of contract in cases of gross negligence of legal representatives and performing agents
- (c) culpable injury of life, body or health
- (d) fraudulent concealing of defects or breach of guarantees of properties of goods
- (e) culpable breach of fundamental contractual obligations – restricted to the reasonably foreseeable and predictable damages
- (f) insofar as there is statutory liability pursuant to the Product Liability Act for personal or material damages to privately used goods.

12.3 Insofar as not provided otherwise in cipher 12.1 and 12.2, the liability of HQW is excluded.

12.4 The customer is obliged to prove that the conditions of the claims raised are met and carries the burden of proof with regard to the occurrence of a breach of contract. This also applies to defaults on HQW's side.

12.5 Claims for defects towards HQW shall lapse 12 months after commissioning, at the latest 24 months after the passing of risk to the customer under the condition that the product is used in a single-operational-usage.

### 13. Scope of Liabilities of HQW

Towards non-consumer customers the liability of HQW is restricted to the foreseeable and predictable damage, except for cases of intentional breach or gross negligence. the liability of HQW for failure of achieving warranted specifications is restricted to the extent that HQW is only liable as the warranted specification was deemed to secure the customer against the damage occurred. There is no additional liability for consequential damages. The liability of HQW further ceases insofar as the customer is insured, except for intentional breaches.

### 14. Place of Performance, Place of Jurisdiction, Applicable Law

14.1 Place of performance for all contractual obligations shall be Hamburg.

14.2 The exclusive – also international – place of jurisdiction for any and all disputes arising directly or indirectly under or in connection with this contractual relationship or its conclusion shall be Hamburg, as far as permitted.

14.3 The laws of the Federal Republic of Germany shall apply, also in relation to Foreign contractual partners excluding the international private law. The application of the International Convention on the Sale of Goods (CISG) is expressly excluded. Requirements and impacts of the reservation of title pursuant to cipher 10 above are however subject to the law applicable at the location of the item, to the extent that the choice of law in favor of German law is impermissible and invalid.

14.4 Should any provision contained in these General Terms and Conditions be or become fully or partly invalid or unenforceable, the validity of all remaining provisions will remain unaffected. The provision that is invalid or unenforceable in full or in part shall be replaced by a provision which leads to an economic effect that comes closest to the economic effect provided for by the invalid or unenforceable provision. If the invalidity or unenforceability is based on a regulation governing performance or timing specifications, the legally admissible degree which comes as close as possible to that of the invalid or unenforceable provision shall apply.