

# General Terms of Delivery and Payment for Industrial Contracts for the HOFFMANN MINERAL GmbH

## 1. Scope of Application

The parties hereto agree on the exclusive application of the following terms. We expressly contradict any General Terms incompatible with or diverging from our terms unless we agreed to them in writing in a particular case. The German version is expressly agreed on as solely authoritative. The English version is for working purposes only and not legally binding; it is not part of the contract.

## 2. Written Form Clause

Any verbal collateral agreements or undertakings altering or amending the contract have to be made in writing for purposes of evidence.

## 3. Prices

Our prices are in Euro, ex factory Neuburg (Danube), excluding VAT, freight charges, postage and insurance.

We are, without the customer's prior consent or approval, entitled to adjust the prices agreed upon to the increased cost of wages, materials and raw materials provided there is a period of time of more than 6 weeks between the conclusion of the contract and delivery and the increase in cost occurred after conclusion of the contract.

## 4. Terms of Payment

- a) Payment is due within 30 days after receipt of our invoice. We allow a 2 % cash discount on payments made within 14 days after receipt of the invoice. The customer is in default on the 31<sup>st</sup> day after receipt of the invoice or any equivalent demand for pay. As per this day we are entitled to default interest of 9 % above the actual basic interest rate of the European Central Bank, subject to proof of a higher damage.
- b) Bills of exchange, cheques, accepted bills and assignments will only be accepted upon special agreement and only by way of provisional performance and on condition of eligibility for discount. Discount charges will be invoiced from the day the amount of the invoice is due. The customer pays all the costs related these papers. They will only be credited to the orders upon encashment and after the risk of recourse has passed, expenses deducted.
- c) If a significant deterioration in the customer's financial status occurs after the conclusion of the contract which might endanger our payment claim or if such a significant deterioration becomes known to us after the conclusion of the contract, in particular – but not limited to – if a substantial order of attachment is served or other execution or insolvency proceedings are initiated, we are entitled to refuse delivery, to accelerate maturity of the whole balance remaining and to withdraw from any contract entered into with the customer unless the customer offers security at our discretion within ten calendar days of our demand. The same applies if the customer fails to comply with our terms of payment.

## 5. Prohibition of Set-off

Payment shall be made without set-off for any counterclaim other than an unchallenged one or one that has become final by a court decision. Any right of retention may also only be exercised under the aforesaid conditions.

## 6. Shipment and Transfer of Risk

The risk of accidental loss or accidental deterioration of the goods passes to the customer at the time of loading of the goods on to the first means of transport ordered by the customer. This also applies if we undertake to deliver the goods. The customer undertakes to collect the goods without delay after they have been reported ready for dispatch. In case of default it is at our discretion either to dispatch the goods or to store them at the customer's expense respectively.

## 7. Delay in Delivery

In case of any delay in supplying the goods through no fault of ours due to force majeure, illegal industrial action, administrative measures, non-delivery of supplies by third parties or other events we are not liable for, the customer shall grant an extension of time adequate under the circumstances. If we fail to meet the deadline, the customer is entitled to withdraw from the contract.

## 8. Liability for Defects and other Liability for Damages

- a) The customer is obliged to examine the goods without delay and to give us notice in writing within ten days after receipt of the goods of such defects as are obvious and recognisable by proper examination. In case of such defects that are not obvious and recognisable by proper examination, the customer shall give us notice in writing within ten days after discovery. If the customer fails to meet the deadline for notification, he is not entitled to any claims regarding the defects concerned.
- b) If the customer gives us notice of the defect in time, we shall rectify the defects or replace the faulty item (subsequent performance). Should the cost of subsequent performance amount to more than 50% of the value of the goods delivered, we are entitled to refuse a subsequent performance. In case of subsequent performance we shall bear the necessary expenses, in particular the costs of transport, labour and material, provided that such costs are not increased by the fact that the object of sale has not been taken to a location other than the place of performance.
- c) In case the subsequent performance fails, is not carried out in time or is refused, the customer is entitled to choose between withdrawal from contract, a reduction of the purchase price corresponding to the decrease in value caused by the defect (abatement) or – within the limits of the following paragraphs - claim of compensation instead of performance. In case of minor defects, the customer is not entitled to withdraw from the contract.
- d) We shall be liable in accordance with the legal provisions
  - if the customer claims damages on the grounds of wilful or gross negligence, including wilful or gross negligence on the part of our representatives or vicarious agents. Provided that we are not accused of wilful breach of contract, our liability for damages shall be restricted to foreseeable, typically occurring damage.
  - insofar as we culpably breach a material contractual obligation. In such case liability for damages shall be restricted to foreseeable, typically occurring damage.
- e) Our liability for a culpable loss of life, physical injury or damage to health remains unaffected; this shall also apply to statutory liability under the German Product Liability Act.
- f) Any further contractual or tortious liability, especially for damage to objects other than the goods delivered to the customer, for loss of profit or other financial damage is hereby excluded.

- g) In case of any breach of precontractual obligations or any impediment to performance already existing at the time the contract is concluded (§§ 311 par.2, 311a BGB, German Civil Code), our liability is limited to compensation for damage through or loss incurred by relying on the validity of a declaration.
- h) Clauses d) – g) also apply to our tortious liability and claims to damages resulting from other breaches of obligations as well as claims to reimbursement of useless expenses according to § 284 BGB (German Civil Code).
- i) § 445b BGB, German Civil Code, remains unaffected by the aforementioned clauses b) – h).
- j) The aforementioned exclusions or limitations of liability also apply to the personal liability of our employees, workers, freelancers, representatives and vicarious agents.

## 9. Limitation of Actions

Our liability for a customer's claims based on defects is limited to 1 year after delivery, clause 8a) notwithstanding, unless we acted fraudulently. The period of limitation in case of delivery recourse according to §§ 445a, 445b BGB (German Civil Code) remains unaffected.

## 10. Costs

The customer shall bear the costs of packaging material and the fees for pallets incurred by us. The costs of the return shipment of packaging material shall also be borne by the customer. These costs include costs for packaging, loading, transport to our factory in Neuburg/Danube and unloading, in which case he has to conclude a transportation contract in his own name and for his own account. In case the transport wrappings returned to us are not reusable he also pays the costs for recycling.

The Customer shall take back and properly dispose of all packaging within the meaning of Section 15 (1) of the German Packaging Act (VerpackG) at its own expense. If the Purchaser fails to comply with this obligation, we shall dispose of the packaging at the Purchaser's expense without setting a further deadline.

Foreign customers additionally pay the customs duties, charges, taxes and duties incurred.

## 11. Retention of Title

The goods remain our property until payment has been received in full for any claims hereunder and all future deliveries. The customer is entitled to process and resell the goods only in the ordinary course of business and on condition that the resale takes place under retention of title and without a covenant not to assign. The customer herewith assigns to us all claims resulting from a resale of goods received from us hereunder or in the future up to the amount of payment in full. He remains entitled to collect the assigned claims until revoked.

If the customer takes his claim resulting from a resale into a current account with a third party, his claim from this account agreement is herewith assigned to us in full; upon balancing the accepted balance is assigned to us up to the amount of the original claim from the account agreement. In case of a current account agreement, retention of title and assignment are deemed to be a security for our current account claim.

If the customer resells goods still in our property together with other goods not in our property, he shall assign his claims resulting from this sale to us to the extent the goods supplied by us form part of the sale.

In case of intermixture or processing of goods supplied by us, the customer shall transfer to us the ownership of the respective finished or semi-finished products as security up to the amount of the value of the raw material supplied by us plus the wages and overhead expenses incurred by the customer.

On the customer's request we shall release securities if and as far as the total of the securities given by the customer exceed our total claim resulting from the business connections by more than 20 %.

## 12. Export Control

The Customer undertakes to comply with any and all applicable Export laws and Regulations adopted by the EU, the EU-member states and the USA.

The Customer especially agrees to carry out a Denied Party Screening and warrants that

- no person, company or organization mentioned in the EC Anti-Terror Regulations as amended (EC-Regulation No. 2580/2001 and EC-Regulation No. 881/2002 as amended) will be directly or indirectly supplied with the contractual products;
- no person, company or organization mentioned in the US Sanctions Lists (including without limitation the Denied Persons List, Entity List, SDN-OFAC as amended) will be directly or indirectly supplied with the contractual products;
- the products and product related data supplied hereunder are not intended and/or used for military, nuclear or armaments purposes;
- no military consignees will be supplied.

The Customer furthermore agrees to document its screening measures and to furnish proof of it at our request.

The Customer's failure to comply with the above mentioned export laws and regulations shall constitute a substantial infringement of the Customer's obligations hereunder and entitles us to terminate the contract without prior notice for good cause.

The Customer shall be liable for damages for any loss caused by the premature termination of the contract. The Customer's liability shall include loss of profit as well as incidental and consequential damages.

The Customer shall indemnify us and hold us harmless against any and all liability, claims, demands, costs (including expert's and attorney's fees), damages and fines arising out of or in any way connected with any infringement of the compliance obligations set forth above.

## 13. Authorised Economic Operator

As an AEO certified company we are requested to advice the customer to assess the safety of the supply chain in his sphere of influence and, if required, to improve it. The compliance with the regulations of the Anti-Terrorism Ordinance, Dual-Use Regulation and the Foreign Trade Regulation should be respected. All necessary available measures must be taken to ensure maximum security of the supply chain.

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

Unless otherwise stated in the confirmation of order, place of performance is at our place of business. Place of jurisdiction for any and all lawsuits, including proceedings based on a bill of exchange or an unpaid cheque, is at our place of business. We are also entitled to take legal action against a partner at his place of business.

This agreement shall be governed exclusively by the laws of the Federal Republic of Germany. The UN Convention on Contracts for International Sale of Goods dated 11 April, 1980 (CISG) is not applicable.