

HUMMEL AG Terms of Sale & Delivery

§1 General, Scope of Application

1. These General Terms of Sale & Delivery shall apply only if the seller is an entrepreneur (Sect. 14 of the German Civil Code), a public corporation or a special trust managing public assets.
2. For all the goods and services we provide, the following Terms of Sale & Delivery shall apply exclusively. Any additions made and any diverging general terms of business specified by the customer shall apply only if they have been confirmed by us in writing. This applies similarly to any amendments made to these Terms. If we make a delivery unconditionally, or otherwise fail to respond to the customer's divergent general terms of business, this shall not be interpreted as recognition by us of such terms, even if we are aware of them. Express repudiation of the customer's divergent terms is not required. This shall not apply for individual agreements reached on a case-by-case basis.
3. In the case of continuous business relationships, these Terms shall also apply to all future transactions, unless other arrangements are expressly agreed.

§2 Contract Closure

1. Our quotations are without obligation. We reserve the right to make technical alterations and changes in shape, color and/or weight to a reasonable degree.
2. On placing an order for goods, the customer bindingly declares its intention to buy the goods ordered. We are entitled to accept the offer to conclude a contract constituted by the order within two weeks of receiving it. Our acceptance may be declared either in writing or by delivering the goods.
3. If the customer orders the goods electronically, we shall immediately confirm receipt of the order. This confirmation of receipt does not constitute a binding acceptance of the order. The confirmation of receipt may be combined with a specific acceptance of the order.
4. Closure of the contract is subject to our receiving correct and punctual deliveries from our own suppliers. This does not apply in the event that we are not responsible for non-delivery, especially if we have concluded a contract with our supplier for a product or service which is identical to the product or service which the customer has ordered ("covering purchase"). The customer will be informed without delay if performance cannot be rendered; counter-performance will be returned without delay.
5. Place of performance is the location of our registered headquarters.

§3 Reservation of Title

1. We reserve title to the goods delivered until all our receivables under the ongoing contractual relationship with the customer have been settled in full. If the value of all the security to which we are entitled exceeds the value of all our collateralized claims by more than 10%, then we shall release a corresponding portion of the security at the customer's request, whereby we shall be free to choose which items of security to release.
2. The customer is under obligation to treat the goods with care. If maintenance or servicing is required, the customer shall have this done regularly at its own expense.
3. The customer is under obligation to immediately notify us about any third-party interference with the goods, e.g. attachment, or if the goods are damaged or destroyed. The customer must notify us without delay if the goods change hands or if it moves its place of business.
4. In the event of any breach of contract by the customer, in particular in the event of default in payment or any violation of the obligations laid down in Items 2 and 3 of this provision, we shall be entitled to withdraw from the contract and demand surrender of the goods. This shall not affect any of our claims going beyond this.
5. The customer is entitled to resell the goods in the ordinary course of business. It here and now assigns to us up to the invoiced amount all its receivables from third parties accruing to it by reason of the resale. We accept this assignment. After effecting assignment, the customer is authorized to collect the receivables. We reserve the right to immediately collect the receivables ourselves in the event of the customer failing to duly perform its payment obligations and defaulting in payment.
6. If the goods are worked or processed by the customer, this shall be deemed done in our name and to our instructions at all times. If the goods are processed with items not belonging to us, then we shall acquire co-ownership of the new item, to the extent of the value of the goods we delivered in proportion to the other items processed. The same applies if the goods are combined with other items not belonging to us.

§4 Prices

1. Unless specifically agreed otherwise, our prices are ex works excluding packaging.
2. Packaging shall be charged at cost price. Packaging materials are not taken back.
3. Value-added tax [Mehrwertsteuer] at the statutory rate in force at the time is payable on top of the prices quoted; if advance payments are made by arrangement, then value-added tax must be added to the advance.
4. The buyer shall bear the transport costs ex works as well as the costs for any transport insurance requested. Any customs duties, fees, taxes and other public levies shall be borne by the buyer.
5. No additional costs are incurred on the customer when orders are placed using telecommunications.
6. Prices for our electro-technical products made of brass are based on the metals exchange quotation for MAS 58 of EUR 150. If this quotation moves up or down by EUR 12.50, then the prices for items made of brass shall be corrected by making a mark-up or mark-down of 5% in each case. The metals exchange quotation is given in the daily press.
7. For small quantities having a value of less than EUR 75, an extra EUR 25 is charged on top of the prices (small order surcharge).

§5 Payment

1. Unless otherwise agreed, all payments must be made free of charges to the paying agent specified. 2% discount is granted for payments made within 14 days of the date of invoice. Otherwise payments are due net cash within 30 days.
2. For delivery contracts exceeding EUR 25,000 in value, we shall be entitled to demand an advance payment amounting to 10% of the purchase price. Said advance payment shall fall due and must be paid within 14 days of an invoice being issued.
3. If in default, the customer must pay interest on the amount owed. The rate of default interest shall be 8% p.a. above the base rate. We reserve the right to prove and claim any higher interest losses.
4. We only accept bills of exchange by special agreement and only by way of performance. The customer shall pay all and any costs connected with the bill of exchange. We shall not be liable for effecting protest in good time.
5. Retaining payments or offsetting any of the customer's counterclaims which are disputed and have not been declared res judicata is not permitted.

§6 Passing of Risk, Dispatch

1. Risk shall pass to the customer at the latest on the items of delivery being dispatched, even if part deliveries are made or if we have assumed other services, e.g. consignment costs or transportation.
2. If dispatch is delayed due to circumstances for which the customer is responsible, then risk shall pass to the customer at the time when the goods are ready for dispatch.
3. At the customer's request, we shall insure the consignment in accordance with its instructions and at its expense.
4. Default in acceptance by the customer shall be deemed equivalent to delivery.

§7 Acceptance

The customer may not refuse to accept the goods due to minor defects.

§8 Material Defects, Limitation

Our liability for material defects shall be governed by the following provisions:

1. At our own option, we shall repair or replace free of charge any items or services which prove defective during the period of limitation, notwithstanding the time they have been in operation, insofar as the cause of the defect already existed at the time of passing of risk.
2. Claims for material defects shall become statute-barred after 12 months. This does not apply where longer periods are prescribed in the German Civil Code (Sect. 438 (1) no. 2: buildings and things used for buildings; Sect. 479 (1): recourse claims; Sect. 634a (1) no. 2: defects in construction work), or in cases of mortal injury, bodily harm or health damage, or of fraudulent concealment of a defect, or if we are guilty of willful or grossly negligent breach of duty. The statutory regulations on the suspension of the statute of limitations and on the suspension and commencement of the limitation period shall remain unaffected.
3. Claiming for defects requires that the buyer has complied with its statutory obligations to inspect the goods and report any defects (Sections 377 and 381 of the German Commercial Code). If a defect becomes apparent either during the inspection or thereafter, this must be reported to HUMMEL AG without delay in a written complaint. The complaint shall be deemed made punctually provided it is reported within 2 weeks, whereby to meet this deadline it shall suffice to send in the complaint in good time. Irrespective of this, the customer must report any obvious defects to us within a period of 2 weeks after receipt of the goods (notice of defects); failure to comply with this requirement shall bar the assertion of any such claims for material defects. To meet the deadline it shall suffice to send in the complaint in good time. The customer bears the full onus of proof for all the requirements for asserting claims, in particular proof of the defect itself, of the time at which the defect was discovered, and of the notice of defects being sent in good time.
4. When a notice of defects has been filed, the customer may withhold payments to an extent which is in reasonable proportion to the material defects which have occurred. The customer may only withhold payments on filing a notice of defects if there is no doubt about the complaint's justification. If a complaint is filed without justification, then we shall be entitled to demand that the customer refund the expenses thus incurred on us.

5. We are to be given an opportunity first of all to effect post-performance within a reasonable period. Post-performance does not include either de-installing the defective item or its renewed installation, if installation was not among our original obligations.
6. If post-performance fails, then the customer may withdraw from the contract or reduce the price, notwithstanding any entitlement to compensation in accordance with § 11.
7. Claims for defects shall not exist in cases of only minor departures from the agreed quality characteristics; of only slightly reduced usability; of natural wear and tear; of damage sustained after the passing of risk due to wrong or negligent handling, overloading, unsuitable means of operation, defective construction work, ground unsuitable for building, or specific external factors for which no provision was made in the contract; or in cases of software errors which cannot be reproduced. If the customer or any third party makes improper modifications or repairs, then similarly no claims for defects shall apply to such modifications or repairs or to any consequences thus ensuing.
8. The customer's claims to expenditures required for post-performance, in particular the costs for transportation, travel, labor and materials, are excluded insofar as these expenditures increase due to the object of delivery subsequently having been moved to some place other than the customer's establishment, unless such removal is in compliance with its designated use. If a defect is indeed the case, we shall bear any expenses required for testing and post-performance purposes, in particular freight costs, travel costs, labour costs and costs for materials (not however de- and re-installation costs). However, if it emerges that the buyer's request for elimination of a defect is unfounded, we may demand that the buyer reimburse the costs thus incurred.
9. The customer's rights of recourse to us in accordance with Sect. 478 of the German Civil Code (entrepreneur's recourse) only exist insofar as the customer has not reached any agreements with its own customer going beyond statutory claims for defects. Item 8 above shall apply accordingly to the scope of the customer's recourse under Sect. 478 (2) of the German Civil Code.
10. In all other respects, § 11 (Other Compensation Claims) shall apply. Asserting on us or on our vicarious agents any claims for material defects other than or going beyond those regulated in this § 8 are excluded.

§9 Copyrights & Intellectual Property Rights; Defects in Title

1. Unless otherwise agreed, we are bound only in the country of the place of delivery to effect deliveries devoid of third-party intellectual property rights and copyrights (referred to hereinafter as "protective rights"). If a third party legitimately sues the customer because protective rights are infringed by our goods or services being put to contractual use, we shall be liable vis-à-vis the customer as follows during the period stipulated in § 8 Item 2:
 - a) In respect of the goods or services concerned, we shall at our option and at our own expense either obtain a right of use, or make modifications such that the protective right is not infringed, or provide a substitute. If we are unable to do this on reasonable terms, then the customer shall be entitled to its statutory right to withdraw from the contract or reduce the price.
 - b) Our obligation to afford compensation shall be governed by § 11.
 - c) Our aforementioned obligations shall only prevail provided the customer informs us immediately in writing about the claims being asserted by the third party and does not acknowledge any infringement, and provided all defensive measures and settlement negotiations are reserved for us. If the customer discontinues using the goods or services delivered in order to minimize the damage or for other important reasons, then it shall be under obligation to point out to the third party that such discontinuation of use does not imply any acknowledgement of an infringement of protective rights.
2. Claims by the customer are excluded insofar as it is responsible for the infringement of the protective rights.
3. Moreover, the customer's claims are excluded insofar as the infringement of the protective rights is due to the customer's particular specifications or some form of use not anticipated by us, or is due to the customer altering the goods or services delivered or using them together with products not supplied by us.
4. In the event of infringements of protective rights, the customer's rights governed by Item 1 a) above shall in all other respects be regulated mutatis mutandis by the provisions of § 8 Items 4, 5 and 9.
5. In the event of any other defects in title, the provisions laid down in § 8 shall apply by analogy.
6. Asserting on us or our vicarious agents any claims for legal defects other than or going beyond those for which provision is made in this § 9 is excluded.

§10 Impossibility, Adjusting the Contract

1. If delivery is impossible, the customer shall be entitled to demand compensation, unless the impossibility of performance is beyond our control. However, the customer's entitlement to compensation shall be limited to 10% of the value of that part of the delivery which cannot expediently be put into operation due to the impossibility. This limitation does not apply insofar as liability is mandatory in instances of intent or gross negligence, or in cases of mortal injury, bodily harm or health damage; this does not imply any reversal of the onus of proof to the customer's disadvantage. The customer's right to withdraw from the contract remains unaffected.
2. If unforeseeable events (force majeure, e.g. mobilization of troops, war, revolt or similar events, e.g. strikes or lockouts) substantially alter the economic significance or content of the delivery or have a substantial impact on our business processes, the contract shall be reasonably adjusted in good faith. If this is not acceptable in business terms, then we shall have the right to withdraw from the contract. If we want to exercise this right of withdrawal, then we must immediately notify the customer to this effect on realizing the impact of the event, even if an extension of the delivery period had initially been agreed.

§11 Other Compensation Claims

1. Claims by the customer to damages and to the reimbursement of costs (referred to hereinafter as "compensation claims") for whatever legal cause, in particular based on tort or on a violation of contractual obligations, are excluded.
2. This does not apply if liability is mandatory, e.g. under product liability law, in instances of intent or gross negligence, in cases of mortal injury, bodily harm or health damage, or for a breach of cardinal duties. However, compensation claims for a breach of cardinal duties is limited to the foreseeable damage typical for the type of contract, unless intent or gross negligence apply, or unless liability for mortal injury, bodily harm or health damage applies. The above provisions do not imply any reversal of the onus of proof to the customer's disadvantage.
3. Insofar as the customer is entitled to compensation claims under this § 11, such claims shall become statute-barred on expiry of the limitation period applying to claims for material defects laid down in § 8 Item 2. In the case of compensation claims under product liability law, the statutory regulations on limitation shall apply. This shall not apply if, in any individual case, applying the standard period laid down in the statute of limitations (Sections 195 and 199 of the German Civil Code) means that the period of limitation is shorter.

§12 Conditions for Returns

After giving prior approval, we shall take back deliveries on the following conditions:

1. All parts that are returned must be sent back in their original packaging, must be new, must be to the latest product specifications, and must be in saleable condition.
2. Returns must be sent freight paid. The customer is responsible for the parts returned being properly packed. If parts returned are damaged due to their being improperly packed, then they cannot be taken back.
3. The parts returned have to originate solely from us. We will not sort boxes containing items from different manufacturers; instead they shall immediately be returned unprocessed to the customer at its own expense.
4. Articles not listed in our latest program cannot be either taken back or exchanged.
5. Refunds or credit notes shall be issued on deduction of a handling fee. This fee is 15% of the value of the goods to be taken back, or at least EUR 150. In addition, any freight costs which we have paid for the delivery as a whole shall be deducted from the amount credited.
6. Approval for returns shall be given at our own discretion.

§13 Tool Costs

By contributing towards the costs for tools, the customer shall not acquire any entitlement to the tools themselves.

§14 Venue, Governing Law

1. If the customer is a registered merchant, exclusive venue for all and any disputes arising directly or indirectly from the contractual relationship shall be at the location of our registered headquarters in 79211 Denzlingen. However, we are entitled to file claims at any other admissible place of jurisdiction.
2. Legal relations in connection with this contract shall be governed by German law, excluding CISG (United Nations Convention on Contracts for the International Sale of Goods).

§15 Binding Overall Contract

If any provisions of the contract with the customer – including these Terms of Sale & Delivery – are or become ineffective in whole or in part, this shall not affect the validity of the remaining provisions. The provision which is ineffective in whole or in part shall be replaced by a clause which achieves the business purpose of the invalid provision as nearly as possible. This does not apply if adhering to the contract would imply an intolerable hardship for either party.