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Project Management New Parts

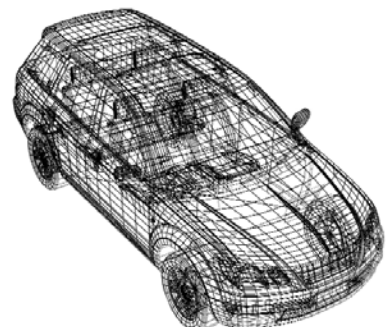
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1. General

1.1 The following General Terms of Sale and Supply ("GTSS") apply to all current and future supplies and other services including any consultancy services and information of HellermannTyton Holdings GmbH and branches ("the Company"). This will also apply even if the Company does not refer the Buyer to them again in subsequent transactions. The Buyer's terms and conditions shall not form part of a contract even if the Company does not expressly raise objections. Rather these GTSS shall apply exclusively.

1.2 Quotations by the Company are made without obligation. A duty to supply will not exist until the Company issues a written Company confirmation of order.

1.3 All agreements that are made between the Company and the Buyer shall be put in writing in the contract.

1.4 In case of doubt Incoterms 2000 shall prevail for the interpretation of trade terms.

1.5 The Buyer may only assign to third parties claims against the Company arising from this contract with the prior express consent of the Company.

1.6 Where individual provisions of these General Terms of Sale and Supply are or become ineffective, this shall not affect the validity of the rest of the provisions. The invalid provision shall be replaced by such existing provision as is common practice in the trade for this event and, where there is no permissible one that is common practice in the trade, the corresponding statutory provision.

2. Prices and payment conditions

2.1 Unless otherwise agreed in writing, prices are understood, ex works or ex Company warehouse exclusive of packaging. Value Added Tax at the current statutory rate will apply. For minimum orders under 150 Euros (net less Turnover Tax) the Company will charge a minimum order surcharge of 25 Euros (net) per order.

2.2 All invoices – subject to any divergent written agreement in individual cases – are payable within thirty days of date of invoice.

2.3 Payments must be made free of charge, in the agreed currency and with provision of the account number, exclusively to the Company's accounts shown in the invoice. They must be made on the date due free of charge and without any deduction. Completion for payments of all types is the date on which the Company has unrestricted access to the payment.

2.4 The Company is not obliged to accept bills of exchange or cheques. If permitted they will only be accepted subject to possible discounting against payment of all charges. The Company is not obliged to submit bills of exchange or cheques on time or to lodge protests.

2.5 In the event of payment default by the Buyer, default interest of 8 (eight) percentage points p.a. over the current basic interest rate according to § 247 BGB [German Civil Code] shall be chargeable. The claiming of further loss caused by default is reserved.

2.6 Rights of set-off or retention shall be available to the Buyer only if his counterclaims are legally established, unchallenged or recognised by the Company. This restriction shall not apply to the § 320 BGB right of retention.

2.7 In the event of a petition to commence insolvency proceedings against the Buyer's assets, if the Buyer has initiated out-of-court proceedings to settle the debt or has stopped payments, or if the Company is aware of other circumstances which substantially reduce the credit-worthiness of the Buyer and appears to threaten fulfillment by the Buyer of the counter-performance, the Company is entitled to seek security by advance payment or bank guarantee (at the Buyer's choice) for outstanding supplies by fixing a period of at least one week and to delay supply until the security is made. The Company is further entitled after the fruitless expiry of a reasonable period of grace to withdraw from this contract or to demand compensation for non-fulfilment of contract. In this case the Company may also withdraw the authority to resell together with the authorisation to collect under 5.3 and 5.5 and the right to handle and process, combine and mix goods already supplied under 5.2 and 5.3 and also to demand the return of the goods supplied.

3. Supply and acceptance

3.1 The Company's duty to supply is conditional on it receiving delivery that is complete, correct and on time in as far as the Company obtains the goods as complete or as components of the goods from a subcontractor. This does not apply if the Company is responsible for nondelivery or delay.

3.2 The Buyer shall bear the risk and cost of shipment of the goods ex works/ex warehouse as well as the cost of any transport insurance. This will also apply if shipment is by a carrier chosen by the Company.

3.3 The risk passes to the Buyer with the start of loading the goods onto the vehicle - even in the case of carriage-paid deliveries.

3.4 Should the goods be ready to be shipped and dispatch or assignment of space and/or acceptance is delayed on grounds beyond the Company's control, the risk passes to the Buyer upon receipt by the Buyer of notification of readiness to ship.

3.5 The Buyer may not return part shipments of a reasonable size and must pay for these immediately upon receipt of the part shipment. Objection to a part shipment does not entitle to a refusal of further supplies under the same or other contract. The Company reserves the right to over or under supply by 10% of the quantity ordered in the case of special orders. The actual quantity supplied will be invoiced in each case.

3.6 The Buyer will also be in default of acceptance if the supply is only offered by the Company in writing, Section 294 BGB is therefore contracted out. The other legal conditions for delay in acceptance are not affected.

3.7 The Buyer must promptly accept goods notified as ready for shipment under the terms of the contract. Otherwise the Company is entitled either to ship the goods at the risk and cost of the Buyer or place the goods in store and to invoice after a period of grace of one week has elapsed, as the Company chooses. The same will apply if the goods have not been retrieved in full or in part within the period agreed for retrieval.

3.8 If the Buyer falls more than one month behind in fulfilling the obligations resulting from the above arrangements the Company can, notwithstanding rights that extend further, demand from the Buyer a contract penalty of 5 (five) percent of the invoice value in place of fulfilment of contract, and sell the goods stored elsewhere. The contractual penalty must be calculated against the compensation the Buyer would have to pay if the situation arose. The Buyer must repay any quantity discount granted on earlier deliveries.

3.9 The Buyer must also notify the Company promptly of any damage in transit but no later than one week from receipt of the goods even if the Company is not responsible for shipping.

4. Delivery periods and deadlines

4.1 A condition of the due fulfilment of contractual obligations is observance of delivery periods and deadlines. Delivery periods start with the date of the Company's confirmation of order but not before clarification of all details for execution of the order and receipt of all materials required for execution of the order and of other details to be supplied by the Buyer and the receipt of any payment agreed.

The delivery period will also be considered to have been met if the goods leave the works or warehouse at the time agreed or notification of readiness to ship has been sent to the Buyer but the goods have not been shipped on time for reasons for which the Company is not responsible. The above arrangements will apply to the delivery deadlines respectively.

4.2 Even when there is agreement on the definition of time for performance according to the calendar or a time is calculable according to the calendar after a preceding event, default will not apply until a reminder is received by the Company.

4.3 Unpredictable events outside the control of the Company such as war, risk of war, unrest, the use of violence by third parties against persons or property, intervention involving sovereignty including currency and commercial policy measures, employment disputes at the Company or its suppliers or shipping companies, interruptions to the transport links provided, fire, shortages of raw materials, shortage of energy and other non-fault operating problems at the company or its suppliers will extend fixed delivery periods and deadlines by the duration of the obstruction. This will also apply to the extent the Company is already behind with deliveries or to the extent that the foregoing obstructions to delivery were already present before conclusion of the contract but the Company was not aware of them. The Company will advise the Buyer immediately of obstructions of the type mentioned above.

4.4 If delivery delays caused by the above last longer than two months both parties will be entitled to withdraw from the contract. The Buyer may only withdraw if the Company, at the former's request, fails to state within a week whether it wishes to withdraw or make delivery within a reasonable period. The same right to withdraw arises independent of the above period, if completion of the contract has become unreasonable for one of the parties taking account of the delay.

5. Reservation of ownership

5.1 All goods delivered shall remain the property of the Company (reserved goods) until complete and final fulfilment (i.e. only after final release from any joint liability for bills of exchange or cheques) of all claims arising from the business connection for whatever legal reason. The same shall also apply in respect of any future or conditional claims arising from contracts entered into concurrently or later within the context of the business connection. Reserved ownership shall serve to secure Company claims arising from a competitive relationship where there is a current account.

5.2 Treatment and processing of reserved goods occur for the Company as manufacturer within the meaning of Section 950 BGB without placing an obligation on the latter. The treated/processed goods shall apply as reserved goods to secure Company claims within the meaning of 5.1. In the event of treatment/processing, linking or mixing of the reserved goods by the Buyer with other goods not belonging to the Company, the Company shall have joint ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used. If Company ownership of the reserved goods expires by linking, mixing or treatment/processing of the reserved goods the Buyer will transfer the title held by him in the new part or item to the extent of the invoice value of the reserved goods and will hold it for the Company free-of-charge with the care of a diligent businessman. The joint title rights accruing will also apply as reserved goods as security for Company claims within the meaning of No. (5.1).

5.3 The Buyer may only sell the reserved goods in the normal course of his business and only on his normal terms of business provided that concurrently the claims under the resale pass to the Company as per 5.4 to 5.6. The Buyer is not entitled to other dispositions [disposals] of the reserved goods, in particular to a pledge or transfer by way of security. The above authorisation will expire in the event of the Buyer's default of payment. The authorisation may also be cancelled by the Company in the cases listed in 2.7, by a breach of the foregoing obligations and in the case of non-payment of an invoice when due. In these cases the Buyer is also prohibited from treating and processing the reserved goods and linking or mixing it with other goods.

5.4 The demands and other claims including the Buyer's collateral rights arising from the resale of the reserved goods are now, i.e. with the agreement of these GTSS, assigned to the Company, who hereby accepts the assignment. They will serve to secure the Company's claims to the same extent as the reserved goods. If the reserved goods are sold by the Buyer with other goods not supplied by the Company, the claim arising from the resale is assigned in the ratio of the invoice value of the reserved goods to the invoice value of the other goods. When goods are sold to which the Company has joint title under 5.2, the Company shall be assigned a part corresponding to its share under the joint title.

5.5 As long as the resale authority has not been cancelled, the Buyer meets his payment obligations towards the Company and is not in breach of any other fundamental contractual duties (cf. 7.2 in this connection), the Buyer is entitled to collect any claims from resale. The Buyer is not entitled to assign or pledge any claims to third parties – including the sale of any claims to factoring banks. The Buyer shall notify the Company immediately of any detriment to its rights through third parties by delivering any documents required for intervention. Any intervention costs incurred shall be borne by the Buyer.

5.6 After cancellation of the resale authority and/or the authorisation to collect the Buyer shall, at the Company's request, undertake to supply information on the status of the reserved goods and assigned claims and to inform his purchaser of the assignment to the Company (in as far as the Company does not do this itself) and to give the Company the information and documents necessary for collection. The Company may, if the Buyer is more than two weeks in arrears with his payment obligations to the Company, demand the return of the reserved goods and collect the demands and other claims assigned to the Company. Furthermore, the Company may use the reserved goods to satisfy its claims as soon as the Company has withdrawn from the contract or the conditions for a claim for compensation on the grounds of non-fulfilment have arisen. The right of the Buyer to possess the reserved goods expires under the foregoing conditions. In said cases the Company will be entitled to enter the Buyer's property and retrieve the reserved goods after giving notice in advance and arranging a time.

5.7 If the collectible value of the existing securities exceed the secured claims by a total of 10 (ten) percent the Company, at the Buyer's request, will undertake to release securities to that extent as the Company elects.

6. Nature of the goods and warranty

6.1 To the extent that the Company places test pieces or sample at the disposal of the Buyer or receives them from the Buyer, or quotes analyses, DIN provisions, other domestic or foreign quality standards or gives other details on the quality of the goods these shall merely serve to specify in more detail the works the Company is to provide. No guarantee of quality is linked thereto.

6.2 In particular, the Company does not undertake to check whether the goods meet or are suitable for the specific purpose intended by the Buyer.

6.3 The Buyer must inspect the goods delivered without delay with the care it considers reasonable and (if necessary by way of a test process) check the quality of the goods supplied and raise a claim for any identifiable defects without delay but no later than 7 (seven) days of receipt of the goods in writing (as far as possible and reasonable enclosing samples) quoting the invoice, manufacture and shipping number. Hidden defects must be similarly notified immediately they are discovered. Otherwise the goods will be deemed approved without reservation. Any further obligations of the Buyer under Section 377 HGB [German Commercial Code] will not be affected.

6.4 No claims for defects will apply if the Buyer fails to grant third party rights of recourse, processes defective goods without prior quality control or supplies goods claimed as defective to third parties without giving the Company the opportunity to check the claimed defects. The same will apply to inappropriate or improper use of the goods, faulty assembly or commissioning by the Buyer or third parties, improper modifications to the goods supplied, natural wear and tear and faulty or careless handling.

6.5 And if claims for defects or complaints are justified, the Company undertakes at its choice either to repair or remedy the defect or supply a replacement. In the event of repair, the Buyer shall pay the extra costs that are due to the goods delivered being taken to a place other than the place of performance.

6.6 Should the repair chosen by the Company repeatedly be unsuccessful; should it be unreasonable to expect such of the Buyer; should it be refused by the Company or be delayed beyond a reasonable period on grounds within the Company's control, the Buyer may – notwithstanding any claims for damages – withdrawal from the contract or reduce the purchase price.

6.7 Warranty claims for the goods expire within one year after passing of the risk. This shall not apply where the law prescribes longer time limits pursuant to § 438, sub-section 1, No. 2 BGB (Building Works and Items for Building Works), § 479 sub-section 1 BGB (Recourse Claim) and § 634 a sub-section 1 No. 2 BGB (Structural Defects) or where the Company is liable for malice aforesaid.

6.8 Further, claims for damages are limited under No. (7).

7. Limitation of claims for damages and reimbursement of expenses

7.1 The Buyer's claims for damages and reimbursement of expenses against the Company or the Company's employees, representatives and agents, on whatever legal grounds, are precluded, unless the aforementioned are held liable for malice aforesaid, gross negligence, guarantee given, risk of sourcing accepted, harm to life, body, health or fundamental contractual duties. This shall also apply to any claims for damages arising from incorrect supplier declarations. This ruling does not shift the burden of proof to the Buyer.

7.2 The Buyer's claims for damages and reimbursement of expenses against the Company or the Company's employees, representatives and agents, for breach of fundamental contractual duties are limited to the contractually typical, foreseeable harm, unless held liable for malice aforesaid, gross negligence, guarantee given, risk of sourcing accepted or harm to life, body or health. Fundamental contractual duties will be deemed to mean such duties as, when violated, threaten the purpose of the contract, e.g. in cases of substantial delay, considerable infringement of cooperation, notification or confidentiality obligations or in the case of considerable violation of obligations that may determine the success or failure of the contract. This arrangement does not shift the burden of proof to the Buyer.

7.3 Contractual claims for damages and reimbursement of expenses against the Company or its employees, representatives and agents, on whatever legal grounds, shall expire after one year at the latest. The special arrangement for warranty claims for the goods in No. (6.7) is not affected.

7.4 Where the Company is liable imperatively under the Product Liability Act of 15 December 1989 for damage to property or personal injury caused by a product's defects, the provisions of the Product Liability Act shall prevail. The foregoing rules shall still apply for an internal settlement under § 5 sentence 2 of the Product Liability Act.

8. Intellectual Property Rights and Data Protection

8.1 The Company reserves the copyright in drawings and other design materials. These may not be made accessible to third parties. Where the Company manufactures goods to the Buyer's drawings, samples or other details and infringes third-party intellectual property rights thereby, the Buyer shall indemnify the Company against all linked claims.

8.2 The Company is entitled to adapt and store within the meaning of the Federal Data Protection Act such data about the Buyer as is received in connection with the business association – even when such originates from third parties.

9. Place of performance, jurisdiction and applicable law.

9.1 Ternesch shall be the place of performance for delivery and payment.

9.2 Elmshorn shall be the forum for any legal disputes arising from or about the existence and validity of this contract including those arising from cheques or bills of exchange – insofar as the Buyer is a trader or a public corporation or a statutory undertaking. However, the Company may sue the Buyer at any other jurisdiction that is given under the Code of Civil Procedure.

9.3 The contractual relationship shall be governed by the law of the Federal Republic of Germany. The provisions of the UN Treaty on International Trade (CISG) are excluded.

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