General Terms and Conditions of HEP GmbH

General terms
The following conditions only apply to business people and corporate bodies or special funds under public law.
Regardless of the order value, deliveries are carried out solely according to the following delivery conditions.
The customer’s purchasing or other conditions shall only apply if they have been confirmed by us in writing.

Delivery
Our offers are subject to change and non-binding. A contract is deemed concluded if and when we confirm the purchase order in writing or by telephone.
In case a specific delivery time is agreed upon, the delivery period shall begin upon receipt of all documents necessary for completion of the order and the payment, if so agreed (advance payment). Moreover, delivery is carried out within a period of approx. 1 month.

The risk of delivery is transferred to the customer as soon as the goods are despatched from our distribution warehouse and do not include VAT, postage, packing or insurance of value. Packing shall be invoiced at cost.

Unless otherwise agreed in writing, the prices indicated are ex works Schalksmühle or ex distribution warehouse and do not include VAT, postage, packing or insurance of value. Packing shall be invoiced at cost.

Guarantee and customer’s complaint
The customer shall inspect the goods immediately upon receipt. Claims for defects shall only apply if defects are reported immediately by the customer in writing within 7 days from date of delivery at the latest. In case of hidden defects the complaint is to be submitted within 7 days upon their identification. In the event that defects are discovered by third parties, the customer’s first report of the defect commences upon receipt of that information within the scope of the statutory or agreed warranty period.
For all those parts that turn out to be defective due to circumstances that occurred before the transfer of risk are the reserve of the right, at our option, either to repair or replace them free of charge. The identification of such defects is to be reported to us in writing immediately. Replaced parts shall become our property.

For the realisation of all repairs and replacement deliveries that seem necessary to us, the customer shall grant, in agreement with us, the necessary time and opportunity. Otherwise we shall be exempted from liability for the consequences arising therefrom. It is only in urgent cases, e.g. when the operating safety is at risk or excessive damage is to be prevented – in the event of which we shall be informed immediately – that the customer shall be entitled to remedy the defect himself or have it remedied by a third party, and to request from us compensation for the necessary expenditures.

Of the costs arising from repairs or replacement deliveries we shall bear – if the complaint turns out to be justified – the costs of the replacement including shipping and packing.

Within the scope of the legal provisions the customer shall be entitled to withdraw from the contract, if we fail to remedy or replace the goods within a reasonable time.

In view of the customer’s respective underlying claim, the same shall apply to the exercise of the right to refuse performance and to liens.

Contract changes
Contractual amendments, changes or subsidiary agreements require our written confirmation in order to become effective.

Other

Place of fulfilment is Schalksmühle as our head office, place of jurisdiction is the Local Court of Lüdenscheid/County Court of Hagen. We reserve the right, at our option, to claim against the customer at his general place of jurisdiction.

Should one or several of the preceding provisions be or become ineffective, the effectiveness of the other provisions shall not be affected. Ineffectual provisions or those that are not applicable shall be replaced by such provisions that are closest to the economically desired purpose of the dropped provision.

The customers’ and suppliers’ data are saved and processed within the scope of the business relation.

HEP GmbH
April 2012

Other liabilities
If the customer cannot use the delivery item according to contract due to our fault and in consequence of negligent or incorrect execution of recommendations and consultation carried out before or after the conclusion of the contract, or through the breach of other contractual secondary obligations – particularly instructions for the operation and maintenance of the delivery item – the following shall be valid subject to the exclusion of further claims of the customer:
For damage that has not occurred on the delivery item itself we shall be liable for whatever legal reasons only in the case of willful intent, gross negligence, non accidental injury of life, health and limb, in the case of defects that have been fraudulently concealed or the absence of which had been guaranteed; for defects of the delivery item, we shall be liable to the extent that we are liable for personal or material damage on privately used items according to the Product Liability Act. In the event of undue breach of essential contractual duties we shall also be liable in the case of gross negligence of non-executive employees and in the case of slight negligence, in the latter case liability shall be limited to the reasonably foreseeable damage typical for a contract. Further claims are excluded.

Retention of title
We shall reserve title to the goods delivered pending the full settlement of all claims including all accessory claims against the customer from the business relation and including claims accruing in the future.

The customer shall be entitled to resell the items delivered with retention of title within the scope of a proper course of business. However, as of now, he shall assign to us all claims accruing from sales to his customers or to third parties. This shall apply, irrespective of whether the reserved goods are sold with or without treatment or alterations. Until cancelled, the customer shall remain authorised through us to collect the outstanding accounts assigned to us. We commit ourselves to not collecting the outstanding accounts as long as the customer meets his obligations to pay.

Moreover, the customer shall not be entitled to pledge the goods delivered under retention of title as security or to dispose of them otherwise.

We commit ourselves to releasing the securities he is entitled to on request of the customer, if their value exceeds our total claims to be secured against the customer by 20 %.

A repurchase of the goods under retention of title or a pledge of this merchandise through us is not considered to be a withdrawal from the contract.

If we make use of the retention of title by repurchasing the goods in accordance with the preceding provision, we shall be entitled to sell the merchandise by private contract or by auction. The reserved goods shall be repurchased at the proceeds generated, yet maximally at the delivery price agreed. We reserve the right to further claims for damages, particularly loss of profit. On repurchasing the goods, a lump sum shall be agreed, namely for merchandise in its original packing that is still part of the current sales line, it shall be 80 % of the amount invoiced; for merchandise that has to be newly packed, 70 % of the amount invoiced and for merchandise that is no longer part of the current sales line, 50 % of the amount invoiced. We shall also be entitled to pay the current, proven damage instead of the lump sum at any time.

Offsetting and liens
The customer shall only be entitled to offset claims that have been accepted by us or that have been kept pending under dispute. In view of the customer’s respective underlying claim, the same shall apply to the exercise of the right to refuse performance and to liens.

Offsets shall not be possible to the extent that accessory claims against the customer from the business relation and including claims accruing in the future.

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