

## General Terms and Conditions of Sale and Delivery

### 1. General provisions

- 1.1 These General Terms and Conditions of Sale and Delivery (hereinafter referred to as "General T&Cs") apply to Hoffmann u. Voss GmbH, Textilstr. 3-5, 41751 Viersen (hereinafter referred to as "we/us").
- 1.2 These General T&Cs apply exclusively to businesses within the meaning of Section 14 of the *Bürgerliches Gesetzbuch (BGB)* [German Civil Code] (hereinafter referred to as "Buyers") i.e. natural persons or legal entities, which, in respect of the purchase of goods, are acting in the performance of their commercial or independent professional activities.
- 1.3 These General T&Cs apply exclusively to all contracts concluded between ourselves and the Buyer concerning the delivery of goods. Differing Terms and Conditions of Purchase or other differing Terms and Conditions of the Buyer shall not apply, unless we have expressly recognised them in writing or text form. Our silence regarding such differing Terms and Conditions shall not be deemed in particular to be consent, and this shall also apply to future contracts.

### 2. Quotation, conclusion of contracts, scope of delivery

- 2.1 Our quotations are subject to change and are not binding. If the Buyer places a delivery order based on quotations subject to change, a contract shall be concluded, also in day-to-day business, only by our order confirmation in writing or text form if the Buyer requests such confirmation. In all other cases, the contract shall be concluded by delivery of the goods. If an order confirmation is provided, this alone shall govern the content of the contract, in particular the scope of delivery and date of delivery.
- 2.2 Prices and performance data and other declarations or assurances shall be binding for us only if they have been made or confirmed by us in writing or text form and expressly identified as "binding" or "firm".
- 2.3 Any documents, drawings, indications of weight, samples etc. enclosed with our quotation are only approximately applicable. In particular, these are neither a guarantee nor is hereby a procurement risk assumed, unless this is expressly indicated in writing or text form as "guaranteed by law" respectively "assumption of a procurement risk". Any reference to standards and similar technical regulations as well shall not constitute any specification of properties of our products, unless this is expressly identified as a "property of the product".
- 2.4 We shall only be obliged to deliver from our own stock (obligation to deliver from stock).
- 2.5 We are entitled to deviations in quantity (excess or short deliveries) to the extent customary in the trade and reasonable for the Buyer but not more than a 5% deviation from the contractually agreed quantity.
- 2.6 In the absence of other written agreement, our deliveries shall comply in their quality with the statutory

requirements applicable to the respective product at our registered office. Compliance and compatibility with any laws and official requirements deviating from this applicable at the place of delivery or, if different from this, at the Buyer's registered office shall not be owed, unless this was expressly agreed by the parties in writing. The same shall apply to statutory and official requirements in territories to which the product is resold or delivered by the Buyer.

### 3. Product samples, samples, customised products

- 3.1 Properties of samples shall only become an integral part of the contract if this was expressly agreed in writing or text form.
- 3.2 If agreed, we shall provide the Buyer with sample specimens or samples of the ordered products. A sample specimen or sample shall serve only as an illustrative item. The properties of sample specimens or samples shall only become an integral part of the contract if this was expressly agreed in writing or text form (see paragraph 3.1). The Buyer shall not be entitled to utilise and pass on test versions, sample specimens or samples. Our test versions, sample specimens or samples shall remain our property, unless a purchase was expressly agreed, and they may be neither utilised nor made accessible to third parties without our consent in writing or text form. All copyrights and other property rights to test versions, sample specimens or samples shall remain with the holders of the rights despite their being provided.

### 4. Prices

- 4.1 Prices are euro prices, unless otherwise stated, and do not include value added tax. This shall be invoiced separately at the respectively valid rate according to respectively applicable tax provisions.
- 4.2 Unless otherwise agreed in writing or text form, prices are ex works or ex our warehouse (EXW Incoterms 2020) and exclude in particular packaging and shipping costs as well as customs duty and freight.
- 4.3 We shall be entitled, at our reasonably exercised discretion (Section 315 *BGB*, subject to judicial review according to Section 315 (3) *BGB*), to increase the prices for our deliveries and services unilaterally where production costs, material costs and/or procurement costs, wage and ancillary wage costs, social security contributions as well as energy costs and costs due to statutory requirements, environmental charges, currency regulations, changes in customs duties and/or other public charges increase if these have a direct or indirect impact on the costs of our contractually agreed deliveries and services and increase by more than 5% and if more than 2 months elapse between conclusion of the contract and delivery/service. An increase as mentioned above shall be excluded if the increase in costs for individual or all of the above-mentioned factors is set off by a reduction in costs for other of the mentioned factors with respect to the overall cost burden for the

delivery/service (cost balancing). If above-mentioned cost factors are reduced, without the reduction in costs being set off by the increase in cost factors other than those mentioned above, the reduction in costs shall be passed on to the Buyer through a price reduction. If the new price based on our right to adjust prices as stated above is 25% or higher than the original price, the Buyer shall be entitled to rescind contracts not yet executed in full with respect to the part of the contract not yet fulfilled. The Buyer can, however, assert this right only immediately after notification of the increased remuneration.

## 5. Terms of payment, retention, set-off

- 5.1 Unless otherwise agreed in writing or text form, all payments shall be made free payment office at the latest within 14 calendar days of the invoice date without deduction. Periods for payment shall be deemed met if the amount is at our disposal within the payment deadline. If transaction fees are incurred outside the SEPA area, these shall be borne by the Buyer (unless otherwise agreed in writing).
- 5.2 In the event of default in payment, default interest of 9 percentage points above the respective base interest rate when the claim for payment becomes due shall be charged. The right to assert damage beyond this is reserved.
- 5.3 The Buyer shall have no right of retention if it is not based on the same contractual relationship and the set-off against disputed claims or claims which have not been recognised by declaratory judgment shall be excluded. We shall be entitled to avert the exercise of a right of retention by provision of security, also by guarantee.
- 5.4 We shall be entitled to request securities or advance payments to an appropriate extent from the Buyer for our delivery.
- 5.5 In the case of the first transaction, a delivery shall be made, unless otherwise agreed, only after advance payment.

## 6. Retention of title

- 6.1 We shall retain title to the goods (goods subject to retention of title) until all claims against the Buyer, to which we are entitled, have been met, even if payment has been made for individual goods. Pledging or assignment of goods subject to retention of title as security is not admissible.
- 6.2 The Buyer now already assigns to us, by way of precaution, the future claims against the Buyer's customers arising for us from resale, without the need for specific declarations at a later date, in the event of the admissible resale of goods subject to retention of title in the ordinary course of business, until payment of all our claims. The assignment shall also cover balance claims resulting from existing current account relationships or upon termination of such relationships of the Buyer with the Buyer's customers. If goods subject to retention of title are resold together with

other items, without a unit price being agreed for the goods subject to retention of title, the Buyer shall assign to us, with priority over the remaining claim, that portion of the total price claimed or the total rent, which corresponds to the value of the goods subject to retention of title invoiced by us. The Buyer shall be authorised to collect the assigned claims from the resale until this is revoked. The Buyer shall not, however, be entitled to dispose of the assigned claims in another way e.g. by assignment. At our request, the Buyer must notify the customer of the assignment and deliver the documents required to assert our rights against the customer, e.g. invoices, to us and provide the required information.

- 6.3 If the Buyer processes goods subject to retention of title, transforms them or combines them with other items, they shall be processed, transformed or combined for us. We shall become direct owner of the article produced by processing, transformation or combination. If this is not possible for legal reasons, we and the Buyer agree that we shall become the owner of the new article at any time during processing, transformation or combination. The Buyer shall keep the new article for us with the due diligence of prudent commercial judgment. Articles created from processing, transformation or combination shall be deemed goods subject to retention of title. Where an item is processed, transformed or combined with other items that do not belong to us, we shall be entitled to co-ownership of the new article in the amount of the portion resulting from the ratio of the value of the processed, transformed or combined goods subject to retention of title to the value of the new article. If the new article is sold or rented, the Buyer herewith assigns to us by way of precaution the Buyer's claim with all ancillary rights against the Buyer's customer arising from the sale or rental without the need for specific declarations at a later date. The assignment shall only apply, however, in the amount which corresponds to the value of the processed, transformed or combined goods subject to retention of title invoiced by us. The portion of the claim assigned to us shall have priority over the remaining claim.
- 6.4 If the value of the security exceeds our claims against the Buyer from the ongoing business relationship in total by more than 20%, we shall be obliged, at the Buyer's request, to release securities, to which we are entitled, at the Buyer's option.

## 7. Delivery, force majeure, delivery subject to own receipt of delivery, storage

- 7.1 Specified delivery times are not binding unless otherwise agreed in writing or text form. Where delivery dates and periods are not binding or approximate (*circa*, about etc.), we shall use our best efforts to comply with them. Delivery periods agreed as binding in writing or text form shall commence upon receipt of the order confirmation by the Buyer but not before all details about the execution of the order have

been clarified and all other requirements to be fulfilled by the Buyer are met. The same shall apply to delivery dates. Deliveries shall be admissible before expiry of the delivery period. Delivery periods shall only be binding when they are expressly designated as binding.

7.2 If, for reasons for which we are not responsible, we do not receive deliveries or services from our subcontractors to provide our deliveries or services owed according to the contract, despite proper and adequate stocking in terms of quantity and quality under our delivery or service agreement with the Buyer, they are incorrect or not in due time or events of force majeure occur of not insignificant duration (i.e. of longer than 14 calendar days), we shall notify the Buyer in writing or text form in due time. In such case, we shall be entitled to postpone the delivery for the duration of the obstruction or to rescind the contract in whole or in part for the part not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk. Events of force majeure are strikes, lockouts, official intervention, epidemics and pandemics, energy shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions through no fault of our own, e.g. due to fire and water damage and damage to machinery, and any other obstructions which, when considered objectively, were not culpably caused by us.

7.3 If a delivery and/or service date or delivery and/or service period is agreed with binding effect and the agreed delivery or service date or the agreed delivery and/or service period is exceeded due to events according to paragraph 7.2 above, the Buyer shall be entitled, after a reasonable grace period has elapsed without effect, to rescind the contract for the part not yet fulfilled. The Buyer shall have no further claims, in particular claims for damages, in this case, if we have met our foregoing duty to provide information. The above provisions pursuant to sentence 1 and 2 of paragraph 7.2 shall apply accordingly if the Buyer cannot be objectively expected to adhere further to the contract for the reasons stated in paragraph 7.3, also without contractual agreement of a fixed delivery and/or service date.

7.4 If shipment is delayed at the Buyer's request or for reasons, for which the Buyer is responsible, we shall be entitled to store the goods, beginning upon expiry of the reasonable period set in writing or text form in the notice that the goods are ready for shipment, at the Buyer's risk of loss and deterioration of the goods, and to invoice the costs incurred for this at 0.5% of the net invoice amount of the stored goods for each full week or part thereof (up to a maximum amount totalling 10% of the net invoice amount of the stored goods). The stored goods shall only be insured at the Buyer's specific request. The assertion of further rights shall remain unaffected. The right is reserved for the Buyer to prove that no costs or substantially lower costs have

been incurred.

## **8. Passing of risk**

8.1 Unless otherwise agreed, the risk of accidental loss or accidental deterioration of the goods shall pass to the Buyer upon the delivery item being handed over by us to the freight forwarder, carrier or third parties otherwise designated to carry out the shipment. This shall also apply if partial deliveries are made or we have taken over other services (e.g. shipment).

8.2 If shipment is delayed due to circumstances for which the Buyer is responsible or the shipment is made at the Buyer's request at a later date than the agreed delivery date, the risk shall pass to the Buyer from the date of notification that the delivery is ready for shipment for the period of the delay. We shall be obliged, at the Buyer's request and expense, to effect the insurances requested by the Buyer.

8.3 Deliveries shall not be insured against theft, breakage, transport and fire damage without specific request by the Buyer. If the Buyer requests the conclusion of an insurance policy, this shall be concluded at the Buyer's expense. The Buyer must provide any cooperation required.

## **9. Claims for defects**

9.1 The Buyer must inspect the goods immediately after receipt, insofar as this is feasible in the ordinary course of business, and, if a defect is found, notify us immediately in writing or text form. Defects shall be documented pictorially, if possible, and transmitted to us. By negotiations on any notices of defects, we shall not waive the objection that the notice was not in due time, unfounded in fact or otherwise insufficient.

9.2 The goods are free of material defects in particular if they meet the Buyer's specifications. Only characteristics transmitted and agreed between ourselves and the Buyer in writing through the exchange of data sheets shall become a specification of the Buyer. It is assumed that the goods are free of objective defects if the subjective requirements are met.

9.3 If the Buyer fails to provide this notification, the goods shall be deemed approved, unless the defect is one that was not recognisable during a proper inspection. Sections 377 *et seq.* HGB [German Commercial Code] shall furthermore apply.

9.4 Obvious damages sustained during transport or other defects recognisable already at the time of delivery must also be confirmed by the deliverer's signature on the respective transport document when delivery is accepted. The Buyer must ensure that a corresponding confirmation is provided.

9.5 Supplementary performance shall be provided at our option by remedying the defect or supplying an article free of defects. If supplementary performance fails, the Buyer shall have the right, at the Buyer's option, to make a reduction or rescind the contract. The right to assert damages according to Article 10 of these

General T&Cs shall remain unaffected by this.

- 9.6 Place of rectification is the place to which we have delivered as agreed. If the costs of supplementary performance increase due to the fact that the Buyer has transferred the goods to a place other than the place of our delivery, the costs incurred as a result shall be borne by the Buyer.
- 9.7 Claims for defects shall become statute-barred within one year after the passing of risk pursuant to Article 8 of these General T&Cs. This shall not apply if we are responsible for fraudulent intent, intent or gross negligence and in the cases pursuant to paragraph 10.2 (a) - (e) below. The limitation periods arising from Sections 438 (1) No 2, 445b (1) and 634a (1) No 2 *BGB* shall remain unaffected.
- 9.8 Our warranty and liability arising therefrom shall be excluded if defects and damages connected therewith cannot be proved to be caused by defective goods or instructions on use. In particular, warranty and liability arising therefrom shall be excluded with respect to the consequences of incorrect storage, for example the consequences of the effects of heat, cold, moisture or UV radiation on the goods that do not correspond to the intended, average standard influences. This shall not apply in the case of fraudulent or intentional conduct on our part or injury to life, limb or health or liability under the *Produkthaftungsgesetz* [German Product Liability Act].

## 10. Liability

- 10.1 We shall not be liable, in particular not for claims by the Buyer for damages or reimbursement of expenses, for whatever legal reason, and/or in the case of breach of duty arising from the obligation and from tortious acts.
- 10.2 The above exclusion of liability shall not apply:
- (a) in the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
  - (b) in the case of violation of material contractual obligations; material contractual obligations are obligations, the fulfilment of which defines the contract, and on which the Buyer may rely;
  - (c) in the event of injury to life, limb and health, also by legal representatives or vicarious agents;
  - (d) where we have assumed a guarantee for the quality of the goods or the existence of a contractual performance or a procurement risk;
  - (e) in the case of liability under the *Produkthaftungsgesetz* or other mandatory statutory basis for liability.
- 10.3 If we or our vicarious agents are responsible only for slight negligence and none of the cases in paragraph 10.2 (a), (c), (d) and (e) above exists, our liability shall be limited in amount, also in the case of violation of material contractual obligations, to the damages which were foreseeable and typical for the contract when the contract was concluded.
- 10.4 Our liability is limited in amount for each individual

event of damage to a maximum liability coverage of EUR 1,000,000.00. This shall not apply if we are responsible for fraudulent intent, intent or gross negligence, for claims due to injury to life, limb or health and in the case of a claim based on a tortious act or an express, assumed guarantee or assumption of a procurement risk according to Section 276 *BGB* or in cases of different higher liability coverage mandatory by law.

10.5 Any further liability shall be excluded.

10.6 Exclusion resp. limitation of liability pursuant to paragraphs 10.1 - 10.5 above and paragraph 10.7 shall apply to the same extent in favour of our executive and non-executive employees and other vicarious agents as well as our subcontractors.

10.7 If the Buyer is entitled to damage claims according to this Article 10, these shall become statute-barred upon expiry of the limitation period applicable to warranty claims for defects pursuant to paragraph 9.7 of these General T&Cs. Paragraph 10.2 of these General T&Cs shall apply accordingly. The limitation periods arising from Sections 438 (1) No 2, 445b (1) and 634a (1) No 2 *BGB* shall remain unaffected.

10.8 There is no connection between the reversal of the burden of proof and the foregoing provisions.

## 11. Confidentiality

- 11.1 The Buyer undertakes to keep confidential all facts, documents and (product) knowledge, of which the Buyer becomes aware in the course of performing the contractual relationship with ourselves, and which contain technical, financial, business or market-related information about our company or our products, if we have designated the respective information as subject to confidentiality or there is an obvious interest in its confidentiality (hereinafter referred to as "Confidential Information"). The Buyer shall use the Confidential Information solely for the purpose of implementing and performing the contractual relationship with ourselves according to the contract. This obligation of the Buyer shall commence upon receipt of Confidential Information for the first time.
- 11.2 The Buyer shall oblige its personnel, who process or come into contact with the Confidential Information, to maintain confidentiality in the same way. Disclosure of Confidential Information to third parties by the Buyer shall require our express and prior consent in writing or text form.
- 11.3 The foregoing obligation to maintain confidentiality shall not exist if it is proved that the respective Confidential Information:
- (a) is state of the art in the public domain or this information becomes state of the art without action by the Buyer; or
  - (b) was already known to the Buyer or is disclosed by a third party authorised to disclose it; or
  - (c) is developed by the Buyer without action by ourselves and without utilisation of other information or knowledge acquired through the

- contractual contact; or  
(d) must be disclosed due to mandatory statutory provisions or court or official orders.

## 12. Export control / Product approval / Import regulations

- 12.1 In the absence of any contractual agreements to the contrary with the Buyer, the delivered goods are intended for placement on the market for the first time within the Federal Republic of Germany.
- 12.2 The export of certain goods by the Buyer from there may be subject to an authorisation requirement e.g. because of their nature or intended purpose or final destination. The Buyer shall be obliged to check this and to comply strictly with the relevant export regulations and embargos for these goods, especially of the European Union (EU), Germany respectively other EU Member States and, if applicable, the USA or Asian or Arab countries and all third countries concerned, if the Buyer exports the products supplied by us or has them exported.
- 12.3 The Buyer shall in particular check and ensure, and, on request, provide proof to us that:
- (a) the goods provided are not intended for use in armaments, nuclear facilities or weapon technology;
  - (b) no companies and persons specified on the US Denied Persons List (DPL) are supplied with goods of US origin, US software and US technology;
  - (c) no companies and persons specified on the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with products of US origin without relevant authorisation;
  - (d) no companies and persons are supplied who are specified on the List of Specially Designated Terrorists, Foreign Terrorist Organisations, Specially Designated Global Terrorists or the EU Terrorist List or other relevant negative lists for export controls;
  - (e) no recipients are supplied that violate other export control regulations, especially of the EU or the ASEAN countries;
  - (f) all early-warning notices of the competent German or national authorities of the respective country of origin of the delivery are complied with.
- 12.4 Goods supplied by us may only be accessed and used if the above-mentioned checks and assurances have been carried out respectively provided by the Buyer; otherwise the Buyer must refrain from carrying out the intended export and we shall not be obliged to perform.
- 12.5 Where goods supplied by us are passed on to third parties, the Buyer undertakes to bind such third parties in the same way as in paragraphs 12.1-12.4 and to notify them of the need to comply with such legal provisions.
- 12.6 The Buyer shall at the Buyer's expense ensure, where delivery outside the Federal Republic of

Germany is agreed, that the goods to be supplied by us comply with all national import regulations of the country, unless we have expressly assumed this obligation.

- 12.7 The Buyer shall indemnify us against all damages and expenses resulting from the culpable violation of the foregoing obligations pursuant to paragraphs 12.1-12.6.

## 13. Product liability and product recall

- 13.1 The Buyer shall inform us immediately about product faults, complaints from customers, authorities or the market in general as well as risks when using our goods that become known to the Buyer. For the avoidance of doubt, it is noted that the Buyer is also obliged in this respect to give notification of defects immediately. In the event of a product recall becoming necessary or other market correction measures required as a result thereof, the Buyer must support us appropriately and follow the measures ordered by us as far as reasonable. The Buyer must in particular cease distribution of the goods concerned, inform customers known to the Buyer as specified by us and return to us all products of the recalled type which are in the Buyer's possession.
- 13.2 If any third-party claims asserted directly against us arising from product or producer's liability are causally attributable to the fact that the Buyer has changed goods supplied, especially their quality, processed them and/or removed or altered warning notices on them (hereinafter referred to collectively as "Product Changes"), the Buyer must indemnify us in full against such claims, including attorneys' fees and/or court costs necessarily incurred by us in the course of this, or reimburse them to us, unless the Buyer is not responsible for the Product Changes causing the claims. This shall apply accordingly if official claims are asserted against us, for which the Product Changes are the cause. If indemnification is ruled out due to the nature of the claim, the Buyer must reimburse us for all costs, damages etc. incurred as a result of the official measure. In the event of Product Changes, the Buyer's claims against us under warranty, for reimbursement of costs related to recall or product warning or other damages resulting from the Product Change shall be excluded, unless we have caused the corresponding damages intentionally or through gross negligence.
- 13.3 The Buyer shall have a claim for reimbursement of costs, damages etc., which are incurred by the Buyer in the course of voluntary or officially ordered market correction measures, only according to Articles 9 and 10 of these General T&Cs.

## 14. Data protection

In respect of the Buyer's personal data, we shall observe the relevant statutory provisions, in particular the General Data Protection Regulation (GDPR). Personal data of the Buyer shall be collected, stored, processed and used by us if, insofar as and as long as

this is necessary to establish, perform or terminate the contract with the Buyer. Further collection, storage, processing and use of the Buyer's personal data shall take place only if a legal provision requires or permits this or the Buyer has consented to this. The Buyer is aware that the collection, processing and use of contact data of the Buyer's contact persons (name, e-mail addresses etc.) based on Art. 6 (1) b) GDPR is necessary to implement measures prior to entering into a contract and to fulfil the contract with the Buyer. We shall be entitled in particular to transfer data to third parties if and insofar as this is necessary to implement measures prior to entering into a contract and to fulfil the contract (e.g. for delivery, invoicing or buyer support) pursuant to Art. 6 (1) b) GDPR or to fulfil a legal obligation within the meaning of Art. 6 (1) c) GDPR. Furthermore, we shall forward such data to third parties (e.g. debt collection agencies) as appropriate also for the purpose of enforcing claims in conformity with Art. 6 (1) b) and/or f) GDPR. In addition, our privacy policy applies which is available at <https://hoffmann-voss.de/en/data-protection-declaration/>.

costs of the proceedings, including the remuneration of the arbitrators. Place and place of jurisdiction of the arbitration tribunal is Viersen, Federal Republic of Germany. The arbitration proceedings shall be conducted in German.

15.5 The law of the Federal Republic of Germany shall apply, to the exclusion of the UN Sales Convention (CISG).

**Status: January 2025**

## 15. Final provisions

15.1 Contracts concluded with us may only be transferred to third parties with our consent in writing or text form. The same applies to the claims arising from contracts concluded with us.

15.2 Amendments to and modifications of these General T&Cs shall only be valid when given in writing. This shall also apply to this requirement of written form. The precedence of an individual agreement pursuant to 305b BGB shall remain unaffected by this.

15.3 Place of performance for deliveries and payments is Viersen.

15.4 All disputes between ourselves and the Buyer arising from and in connection with the contract shall be settled exclusively, at our option, either before the ordinary court of law (local or regional court) respectively having jurisdiction for Viersen, Federal Republic of Germany, or an arbitration tribunal subject to the following provisions. In the event of litigation as defendant i.e. the assertion of claims by the Buyer against ourselves, we shall be obliged to inform the Buyer of the choice of competent court (ordinary jurisdiction or arbitration tribunal) upon first request at any time in writing but in any case before the Buyer takes legal action. In the event that the arbitration tribunal is chosen, a final decision on the disputes shall be made according to the Arbitration Rules of the International Chamber of Commerce (ICC). The arbitration tribunal shall comprise three arbitrators, whereby one arbitrator shall be designated by each party and the two arbitrators designated by the parties shall then jointly appoint a representative as third arbitrator. An arbitration award made can, on application of a party, be declared enforceable by the competent national court. There is no appeal against the award of the arbitration tribunal. The award shall also include a decision on the