

General Terms and Conditions of HELORA Oberflächentechnik GmbH

§ 1 General information - scope of application

1. Our terms and conditions of sale apply exclusively to all deliveries and services. We do not recognise any terms and conditions of the customer that are contrary to or deviate from our terms and conditions of sale unless we have agreed to their assertion in writing. Our terms and conditions of sale also apply if we carry out the delivery to the customer in the knowledge of the customer's terms and conditions that conflict with or deviate from our terms and conditions of sale.
2. All agreements made between us and the customer for the purpose of executing this contract are set out in writing in this contract.
3. Our terms and conditions of sale only apply to companies, legal entities under public law or special funds under public law within the meaning of § 310 par. 1 BGB (German Civil Code).
4. Our general terms and conditions also apply to all future business with the customer.

§ 2 Offer, acceptance and order documents

1. Our offers are always subject to change without notice. Incoming orders can be accepted by us within two weeks. Acceptance on our part shall be exclusively in writing, by fax or e-mail or by execution of the work.
2. We reserve the right of ownership and copyright to illustrations, drawings, calculations and other documents. This shall also apply to such written documents that are designated as confidential. The customer requires our express written consent before passing them on to third parties.
3. The subject of the order is only those services that have been expressly ordered by the customer. Additional services, which are provided after consultation with the customer, will be invoiced separately. This applies in particular to all costs arising from subsequent change requests by the customer.

§ 3 Prices and terms of payment

1. The prices are ex works excluding packaging, transport and postage. The statutory value-added tax at the respective applicable rate shall be added to the prices.
2. The deduction of a discount requires special written agreement.
3. Unless otherwise stated on the order confirmation or invoice, the purchase price (without deduction) is due for payment within 30 days of the invoice date. If payment is not made within 30 days of delivery, the customer shall be in default without further explanation on our part. The legal regulations regarding the conse-

quences of default of payment shall apply.

4. The customer shall only be entitled to offsetting rights if his counterclaims have been legally established, are undisputed or have been recognised by us. Furthermore, he is only entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

§ 4 Delivery time and acceptance

1. Information about the delivery time and delivery dates are non-binding, unless they have exceptionally been promised bindingly in writing.
2. In the event of a written promise, the beginning of the delivery time stated by us requires the clarification of all technical questions.
3. Compliance with bindingly agreed delivery times and delivery dates is subject to the timely provision of all items to be supplied by the customer, in particular the materials to be coated, any necessary test equipment, test gauges, documents, permits and releases, as well as the complete and correct fulfilment of other co-operation obligations by the customer. If this is not the case, the periods and deadlines shall be extended accordingly. This shall not apply if we are responsible for the delay.
4. The delivery dates and delivery times bindingly agreed upon shall be extended appropriately as long as the customer is in arrears with a due payment or does not carry out an action necessary for the fulfilment of the order. The same applies in case of change requests by the customer. We reserve the right to the objection of non-performance of the contract.
5. If the customer is in default of acceptance or if he culpably violates other obligations to cooperate, we are entitled to demand compensation for the damage incurred by us, including any additional expenses. Further claims or rights are reserved. Insofar as the above conditions are met, the risk of accidental loss or accidental deterioration of the delivery item shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's delay.

This shall also apply if the deterioration or destruction of the delivery item has occurred only through slight fault on our part, on the part of our employees or vicarious agents. If impossibility of performance occurs during acceptance or debtor's delay or if the delivery item deteriorates or is lost without this being due to intent or gross negligence on our part or on the part of our employees or vicarious agents, the customer shall remain obliged to provide consideration.

6. The delivery time or delivery date shall be deemed to have been complied with if the object of performance has left our factory by the end of the delivery period or by the delivery date or if notification of readiness for dispatch has been given.

§ 5 Transfer of risk and dispatch

1. The risk is transferred to the customer at the latest when the delivery parts are dispatched, even if partial deliveries are made or we have assumed other services, e.g. the shipping costs or delivery.
2. At the request of the customer, we will insure the shipment at his expense according to his specifications.

§ 6 Rights in case of defects, exclusion of warranty

1. The customer's claims for defects require that the customer has properly fulfilled its obligation to inspect the goods and give notice of defects in accordance with § 377 German Commercial Code (HGB). In particular, the customer is obliged to arrange an inspection of the incoming products in terms of type and scope and also with regard to any deviations in colour, number of items and fitting accuracy. Recognizable defects are to be notified to us in writing or text form immediately or in case of delivery ex works at the latest seven calendar days after collection from the works or storage location, otherwise after delivery, and hidden material defects immediately after discovery.
2. Unless expressly agreed otherwise, we provide a warranty for material defects for a period of **twelve months**, calculated from the date of transfer of risk, or in the case of refusal by the customer to accept or take delivery, from the date of receipt by the customer for acceptance of the goods. This does not apply to claims for damages arising from a guarantee, the assumption of a procurement risk within the meaning of § 276 BGB (German Civil Code), in the case of claims for injury to life, limb or health, fraudulent, intentional or grossly negligent conduct on our part, or if in the cases of § 478 BGB (recourse in the supply chain with a consumer as end user) or if otherwise a longer limitation period is stipulated by mandatory law. § 305 b BGB (priority of the individual agreement) remains unaffected. A reversal of the burden of proof is not associated with the above provision.
3. Our warranty (claims arising from breach of duty in the form of poor performance in the event of material defects) and the resulting liability is excluded, unless defects and associated damage are demonstrably due to faulty material, faulty design, defective execution, faulty manufacturing materials. Unless otherwise separately agreed, the material and construction of the parts processed by us shall be provided by the customer. We do not assume any liability for the quality of the materials, designs and manufacturing materials provided by the customer.
4. The above (§ 6 No. 3) shall not apply in the event of malicious, grossly negligent or intentional action on our part, or injury to life, limb or health, the assumption of a guarantee, a procurement risk in accordance with § 276 BGB (German Civil Code) or liability in accordance with a legally binding liability situation.
5. Claims for defects do not exist in the case of only insignificant deviation from the agreed or usual quality or usability. If the customer or a third party repairs the products delivered or processed by us, we shall not be liable for the consequences arising therefrom.

6. The acknowledgement of breaches of duty in the form of material defects must always be in writing. § 305 b BGB (priority of the individual agreement) remains unaffected.
7. As there is a defect of performance, we shall be entitled to subsequent performance in the form of rectification of the defect or delivery of a new, defect-free object. In the case of rectification of defects, we are generally entitled to two attempts at rectification.

In the event of a replacement delivery, the customer is obliged to fully comply with his obligations to cooperate, in particular to provide us with the raw parts for the coating.

8. If the rectification of defects or subsequent performance fails, the customer is entitled to withdraw from the contract or demand a price reduction.
9. In the event of unsuitable or improper use by the customer or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, chemical, electrochemical or electrical influences, no claims for defects shall exist unless we are responsible for them. If the customer or third parties carry out improper modifications, no warranty claims shall exist for these and the resulting consequences, irrespective of any claims for damages. The exclusion of liability shall also apply if the defect is due to a substance or material supplied by the customer. The same applies if the service provided by us was performed according to the customer's instructions.

§ 7 Liability and compensation

1. Subject to the following exception, we shall not be liable, in particular not for claims of the customer for compensation or reimbursement of expenses - irrespective of the legal basis - in the event of breach of duties arising from the contractual obligation.
2. The above exclusion of liability according to § 7 I **does not apply:**
 - a) for own intentional or grossly negligent breaches of duty and intentional or grossly negligent breaches of duty by legal representatives or vicarious agents;
 - b) for the breach of essential contractual obligations; "essential contractual obligations" are those whose fulfilment characterises the contract and on which the customer may rely, sometimes referred to as "cardinal obligations";
 - c) in case of injury to limb, life and health also by legal representatives or vicarious agents;
 - d) in case of delay, if a fixed delivery and/or fixed performance period was agreed;
 - e) as we have assumed the guarantee for the quality of our work performance or goods or the existence of a performance success or a procurement risk within the meaning of § 276 German Civil Code (BGB);

- f) in the event of legally binding liability, in particular the Product Liability Act.
3. In the event that we or our vicarious agents are only guilty of slight negligence and there is no case of the above paragraphs 2c, 2d, 2e, 2f, we are also liable for the violation of essential contractual obligations (see 2 b) only for the contract-typical and foreseeable damage.
 4. Our liability is limited to a maximum liability amount of € 1,000,000.00 (in words: one million euros) for each individual case of damage. This does not apply if we are charged with malice, 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 a guarantee or the assumption of a procurement risk in accordance with § 276 BGB (German Civil Code) or in cases of legally mandatory, deviating higher liability sums. Any further liability is excluded.
 5. The exclusions or limitations of liability according to the above paragraphs (1.) to (4.) apply to the same extent in favour of our organs, owners, our executive and non-executive employees and other vicarious agents and any subcontractors.
 6. A reversal of the burden of proof is not associated with the above provisions.

§ 8 Retention of title, right of retention

1. We reserve the title to all goods and objects to which we have acquired ownership or become owner within the scope of the processing until all claims arising from the business relationship with the customer, including future claims arising from contracts concluded at a later date, have been settled.
2. We are entitled to a right of retention on all goods and objects sent by the customer which are in his ownership until all our claims arising from the business relationship with the customer, including future claims arising from contracts concluded at a later date, have been settled.

§ 9 Access fiction

All declarations on our part to the customer shall be deemed to have been received from two calendar days after dispatch, unless they concern declarations of particular significance, in particular cancellations, rescissions, contestation or other declarations which cause a not inconsiderable disadvantage to the customer.

§ 10 Place of jurisdiction and applicable law, written form, severability clause

1. If the customer is a merchant, our registered office in Schwäbisch Gmünd is the place of jurisdiction. However, we are also entitled to sue the customer at any other given place of jurisdiction.

2. All legal relations between the customer and us arising from and in connection with this contract shall be governed exclusively by the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
3. Changes and additions to the contracts concluded with the customer must be made in writing. This also applies to the exclusion of the written form agreement itself. The priority of the individual agreement (§ 305 b BGB) in written, textual or oral form remains unaffected.
4. Should any provision of this contract be or become ineffective, invalid or impossible to implement in whole or in part for reasons of the law of general terms and conditions according to §§ 305 to 310 BGB, the statutory provisions shall apply.

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