

## General Terms and Conditions of Sale and Delivery

### I. Applicability/Written form

The following conditions apply to all offers and deliveries of HEYE International GmbH (hereinafter referred to as the "Supplier"). These terms and conditions apply exclusively to business customers. Deviating terms and conditions of the Purchaser that are not expressly accepted by the Supplier are not binding, even if the Supplier does not expressly disagree with them.

Only such declarations of intent can take legal effect for and against the respective parties that are issued in writing, unless something else is agreed subsequently.

Any alterations or amendments of this contract, including this clause on the written form, must be in writing to become effective. The same applies to supplementary and additional agreements.

Insofar as supply terms are used (e.g. EXW, CPT etc.), the content of these terms is specified by the current version of the INCOTERMS, unless deviating regulations are agreed subsequently.

Trade customs that have not expressly been agreed in writing by the parties are only considered agreed if these customs were known to the respective other contracting party.

### II. Offer and conclusion of contract

All offers made by the Supplier are not binding. The calculation of the offers is based on the provisions agreed in these terms and conditions.

Deviating conditions of the Purchaser only become binding, if the Supplier confirms these in writing in his order confirmation.

If an order, placed on the basis of an offer made by the Supplier, contains conditions that were not included in the offer, the conditions of the Supplier contained in the original offer still apply if the Supplier remains silent regarding the deviating conditions, executes the supply and the Purchaser does not immediately disagree following execution.

Insofar as the Supplier confirms an order at his conditions, without providing a separate offer, these conditions apply to the order to be executed, unless the Purchaser immediately disagrees with these conditions.

All information on products of the Supplier, in particular, the images, diagrams, quality, volume, weight, measurement and performance information contained in his offers and printed matter represent only approximate values and do not constitute a description as of the quality of the goods. Insofar as no limits are determined in the order confirmation in respect of permitted deviations, and none arise from specifications expressly acknowledged by the Purchaser, the usual deviations, common in the industry, are permissible. The characteristics, suitability, qualification and function as well as the intended purpose of the Supplier's goods are determined exclusively on the basis of his descriptions of performance and technical qualifications. Public statements or advertisements by the Supplier or by third parties do not represent information on characteristics of the goods. The Supplier reserves the right of proprietorship and copyright in respect of quotes, diagrams and documentation. These may not be made accessible to third parties. The Supplier may only make designs, designated as confidential by the Purchaser, available to third parties with the consent of the Purchaser.

Guarantees on the quality or durability of the Supplier's goods must be expressly characterised as such in the order confirmation. When supplying prototypes or samples, their quality is not considered guaranteed, unless this is expressly determined otherwise in the order confirmation. The same applies to the provision of analyses.

### III. Scope of supply

On principle, supply is effected ex works (EXW).

The written order confirmation of the Supplier and the Purchaser's declarations, confirmed in writing by the Supplier, are decisive in respect of the scope of supply. The Supplier reserves the right to alter construction and form of the delivery item, insofar as the delivery item is not altered significantly and the alteration is not

unreasonable with regard to the Purchaser.

Taxes, fees and other levies that may arise in the Purchaser's country or in the country that the delivery item shall be installed must be borne by the Purchaser.

Partial supply is permissible.

### IV. Price

The prices apply ex works, excluding packaging. Packaging is calculated depending on expenditure.

Insofar as additional supply duties were taken over by the parties through the agreement of trade terms INCOTERMS Group F, C, D or individual supply duties, the resultant costs will be charged separately to the Purchaser.

In the event that changes of material prices, wages, freight or other cost factors of the supply occurred between the date of presentation of the offer and dispatch ex works, which cannot be influenced by the Supplier, the Supplier reserves the right to a corresponding price adjustment.

### V. Payment conditions

Prices shall be presented in Euro.

In want of special agreements, payment is to be made in cash, without any deductions free to the paying office of the Supplier:

- at an order value of up to EUR 25,000,00 (inclusive) within 30 days from the invoice date strictly net
- at an order value of more than EUR 25,000,00

1/3 down-payment when placing the order; the remainder after delivery, within 30 days from the invoice date. Within 30 days after placement of the order, an irrevocable, confirmed letter of credit by a large German bank must have been issued in respect of this residual amount, including all attendant costs and receivables for supplementary orders, which is due on presentation of the customary documentation.

If the payment is processed on a cheque, bill of exchange, letter of credit against documentation, documentation against bill of acceptance or similar basis, this processing is independent of the underlying business. The Purchaser is therefore obliged to abstain from any interventions into the cash flow, in particular in the event of a formal complaint.

The Supplier reserves the right to utilise payments by choice to settle the oldest amounts invoiced, in addition to the relevant default interest and costs, namely in the following sequence: costs, interest, principal claim.

If the due date(s) is/are exceeded, interest of at least 8 percentage points above the base interest rate applies.

This does not affect the right of the Supplier to claim additional damages caused by the delay.

The Supplier may demand pre-payments or sureties, in particular in respect of supplies still outstanding, if the Supplier gains knowledge of circumstances, which result in substantiated and considerable doubt as to the solvency or creditworthiness of the Purchaser.

The withholding of payments or the offsetting of the Purchaser is not permitted, insofar as this does not apply to legally valid or undisputed receivables.

Bills of exchange and cheques are accepted only by special arrangement and, in that case may be used for payment only. The costs for discounting and collection are borne by the Purchaser. Payments are only considered made, once the amount is finally available in the Supplier's account.

If the Purchaser does not fulfil his obligations, discontinues payment or if he suffers a not insignificant deterioration of economic conditions, the entire outstanding amount is due immediately. This applies also to bills of exchange with a later due date.

### VI. Delivery period /Term of delivery

The delivery period commences with the sending of the order confirmation, however, not before the provision of the documentation, permits, releases, etc. by the Purchaser, or before receipt of an agreed down-payment.

The term of delivery is considered observed if the consignment, which is ready for

operation, is ready for dispatch within the agreed term of delivery and time of performance and the Purchaser is notified of this. Insofar as set-up and installation by the Supplier has been agreed, the supplier can only default in respect of set-up and installation, following readiness for dispatch.

Unforeseen events, outside the intention of the Supplier, e.g. stoppages, strikes, lockouts and the occurrence of unforeseen hindrances – in the Supplier's or sub-supplier's works – extend the term of delivery correspondingly, even then, if they occur during a delay in delivery. The same applies if official or other permits of third parties and documentation necessary for delivery by the Supplier or information of the Purchaser, required for execution of the delivery, are not received in a timely manner.

If a binding term of delivery is stated in the contract, and the Supplier does not make the delivery within the agreed period, the Purchaser can demand compensation for the delay in performance of 1/2% and at the most 5% of the value of that part of the overall performance, which is not met in time, due to the delay. If the Purchaser demands compensation for the delay in performance of more than 1/2%, he must prove the actual damage caused by the delay to the Supplier. Any additional damages demanded of the Supplier are based on point X, clause 13.

Any claim for damages due to a delay in performance shall be offset against the final account.

If dispatch is delayed for reasons not due to the Supplier, the Purchaser is charged for the storage costs arising during storage on the Supplier's premises, at least, however, 1/2% of the invoice total for every month of storage, commencing one month after notification of readiness for dispatch. If the Purchaser defaults in acceptance, the passage of risk occurs, at the latest, on notification of readiness for dispatch.

The Supplier may, however, dispose of the delivery item otherwise, after provision and fruitless expiry of an appropriate term, and supply the Purchaser with a corresponding longer term.

#### **VII. Passage of risk/Insurance/Acceptance**

At the latest, risk passes to the Purchaser on dispatch of the objects to be supplied, even if partial deliveries are made or the Supplier has yet to fulfil other services, due to special agreements.

The Supplier is authorised to insure the delivery item against theft, breakage, fire, water and other damages at the cost of the Purchaser, unless the Purchaser has proven to have concluded such insurance.

Insofar as the Supplier contracts packaging or forwarding companies in his own name at the cost of the Purchaser and delivery ex works, in accordance with the agreement of the parties, the Supplier is only liable in the event of deficient packaging or forwarding services, if he can at least be charged with gross negligence in the selection of the companies commissioned.

It is by special agreement only that the Supplier is obliged to check the packaging and/or forwarding services.

The Purchaser undertakes to record any damages caused by transport as fact, on arrival, insofar as the Supplier owes him transport or packaging as performance, as an exception.

Insofar as the Supplier repairs the machine (parts) etc. delivered, as a result of damage through packaging or forwarding, the Purchaser is charged the cost on assignment of the Supplier's claims from the packaging and/or forwarding contract.

Such repairs are only effected against a prior declaration of absorption of costs, which, for export orders, is to be immediately included in the existing letter of credit, on request of the Supplier.

The Supplier undertakes to be of assistance to the Purchaser with regard to the enforcement of its claims against the respective packaging or forwarding company, insofar as this is headquartered in Germany.

Insofar as vicarious agents of the Supplier are active in respect of the fulfilment of contractual obligations, the Supplier is only liable for their faults if these can, at least, be charged with gross negligence. Any additional liability of the Supplier is based on point X, clause 13.

Supplied objects must be accepted, even if they have insignificant deficiencies,

irrespective of the rights deriving from point X of these conditions.

#### **VIII. Retention of title**

All goods supplied remain the property (conditional commodity) of the Supplier, until the Purchaser has settled all existing receivables and such arising on conclusion of the contract.

A processing of the conditionally sold goods shall be carried out for the Supplier as manufacturer within the meaning of Sec. 950 BGB (German Civil Code) without imposing any obligation on the Supplier. Processed goods are considered conditional commodities in accordance with this point. In the event of processing, amalgamation and mixing of the conditional commodity with goods of other origin by the Purchaser, to produce a new item or a mixed stock, the Supplier is entitled to joint ownership, namely at the ratio of the invoice value of the conditional commodity at the time of delivery to the value of the other processed or mixed goods. The jointly owned share is considered conditional commodity in accordance with this point.

If the conditional commodity is amalgamated with other objects and if an object belonging to the Purchaser can be considered the primary object in compliance with section 947 German Civil Code, it is already agreed that a share in ownership is transferred to the Supplier at the ratio of the invoice value of the conditional commodity to the value of the primary object and that the Purchaser holds the object for the Supplier, free of charge. The jointly owned share is considered conditional commodity in accordance with this point.

The Buyer shall keep the conditionally sold goods in safe custody for the Supplier. Upon request, the Supplier shall be allowed to take stock and adequately mark the conditionally sold goods at all times at the respective place of storage. The Purchaser must immediately advise the Supplier of any attachments or other encroachments of the Supplier's rights by third parties, while providing all details required by the Supplier to take legal action against these.

The Purchaser may only dispose of the conditional commodity through ordinary business activities at his usual conditions and with an agreement of retention of title to the scope determined by the Supplier, if it has been ensured that the receivables from the resale are transferred to the Supplier, in accordance with this point.

The Purchaser herewith already surrenders the receivables from the resale of the conditional commodity, even in the context of contracts for work and services or contracts on the delivery of movable property to be produced, including all ancillary rights. These serve as a security for the conditional commodity of the Supplier. The Purchaser is only entitled to assign the receivables to a third party with the prior written approval of the Supplier.

If the Purchaser disposes of the conditional commodity together with other goods not delivered by the Supplier, the surrender of receivables from the resale only applies to the volume of the invoice value of the conditional commodity of the Supplier at the time of delivery. With regard to the disposal of goods in which the Supplier holds joint ownership in accordance with this point, the surrender of receivables applies to the extent of this jointly owned share.

If the assigned receivables are included in a current invoice, the Purchaser already surrenders part of the balance including the final balance from the current account to the Supplier, in correspondence with the amount of the receivables.

Until revoked, the Purchaser is entitled to collect receivables from resales, in accordance with this point.

If the Purchaser does not meet his obligations from this contract or other contracts with the Supplier or if circumstances become known to the Supplier, which impact on the creditworthiness of the Supplier, then

- the Supplier can prohibit the resale, the processing of the conditional commodity and its mixing or amalgamation with other goods;
- the Supplier can withdraw from this contract; in this case the right of the Purchaser to own the conditional commodity is forfeited and the Supplier can demand return of the conditional commodity; the Supplier is then entitled to enter the premises of the Purchaser and to take possession of the conditional commodity at the cost of the Purchaser and to utilise it in the best possible

manner through a sale by private contract or auction, irrespective of the payment and other obligations of the Purchaser; the Supplier credits the revenues from utilisation to the Purchaser's payables, after deduction of relevant costs; the Supplier will pay any surpluses to the Purchaser;

- the Purchaser must, on request, advise the Supplier of the names of the debtors of the receivables assigned to the Supplier so that the Supplier can disclose the assignment and collect the receivables; all revenues from assignment due to the Supplier must immediately be forwarded to same on receipt, if and as soon as receivables of the Supplier are due in respect of the Purchaser;
- the Supplier is entitled to withdraw the direct debit authority issued.

If the value of the securities due to the Supplier exceeds the receivables by a total of more than 20%, the Purchaser can request a corresponding release of securities, in which case the choice is made by the Supplier.

If the legal effectiveness of the retention of title depends on a specific registration or other conditions, the Purchaser must bring about these conditions and inform the Supplier of this immediately as well as offer support to the Supplier.

If a retention of title does not come into being as a result of failing to meet this obligation, the Purchaser must pay the resultant damages. If the retention of title is not permitted in the host country, the Purchaser is obliged to inform the Supplier of this and to provide an equivalent security.

Insofar as a failure to comply with this obligation leads to the fact that the goods delivered have no security cover, the Purchaser must pay the resultant damages.

#### **IX. Set-up and installation**

If the set-up and/or installation at the final destination are to be effected by the Supplier, this must be agreed separately.

Insofar as nothing to the contrary has been agreed, the Supplier is solely responsible for set-up and installation of the delivery item at the set-up site prepared by the Purchaser.

The Purchaser shall provide assistants such as locksmiths, crane operators, other skilled trade workers or unskilled labourers at his cost, including a sufficient quantity of generally required tools. The Supplier accepts no liability for actions caused by the negligence of the Purchaser's staff, insofar as these do not, on concrete instruction, execute a specific activity in the context of the Supplier's obligations.

The Supplier is not liable for the work of his staff, if the employees rendered activities outside the contractually agreed services.

Power, water and other energy are provided by the Purchaser at his cost.

If, due to no fault of the Supplier, a delay or interruption occurs in the set up or implementation of the machine or the technicians of the Supplier are prevented from working, the Purchaser must pay all additional costs arising from the delay, interruption or work interference. This does not affect the obligation to observe the agreed terms of payment. The Purchaser will pay the Supplier the cost rates for working time and surcharges for overtime, working at night, on Sundays and public holiday, for work under extreme conditions and for planning and monitoring, agreed on placement of the order. Preparation, travel and transit times, as well as feedback are considered to be working time.

In addition, the following costs are paid separately:

- a.) Costs for the transport of the necessary tools and appropriate personal luggage;
- b.) Accommodation allowance for working time as well as days off and public holidays.

#### **X. Claim for defects/Liability**

The Supplier guarantees that his deliveries are not deficient in respect of processing or material at the time of the passage of risk and that they correspond with a possible quality guarantee, which must be issued expressly and in writing. Prior to the delivery item leaving his premises, the Supplier shall execute a performance test, which is recorded in a test protocol that is sent to the Purchaser. The agreed performance parameters are considered met on execution of the proof of performance, at the latest, however, on acceptance of the system.

The Purchaser must carefully examine the delivered goods, immediately after arrival at its final destination, even if prototypes or samples were sent previously. In so doing, the quality of the goods, in particular, must be examined. In the event that crates,

cardboard boxes or other containers are delivered, random samples should be taken. The delivery is considered authorised if no claim for defects is received within ten (10) days after receipt of the goods at their final destination or, if the defect was not discernible during the examination, within ten (10) days after its detection in writing or by fax, with a precise description of the defect, by the Supplier. Claims for defects must always be addressed directly to the Supplier.

Damages in transit must immediately be pointed out to the forwarding agency; the duty of disclosure of the General Terms and Conditions of German Forwarding Agents apply. At the discretion of the Supplier, defective parts must be either repaired or re-supplied, at no charge. Replaced parts enter into the ownership of the Supplier. If the Purchaser is given deficient installation instructions, the Supplier is only obliged to supply installation instructions free from any defects and only if the defect in the installation instructions hinders proper installation.

Claims for defects of the Purchaser have a limitation period of one year from delivery of the goods.

In respect of significant parts produced by a third-party, the liability of the Supplier is restricted to the assignment of the claims for surrender to suppliers, insofar as these have an independent functional value and the remaining delivery item does not become unfunctional through this and the recourse of the suppliers does not remain without success.

Warranty is excluded if damages are caused through:

- Unsuitable, improper use
- Faulty installation or implementation by the Purchaser
- Natural wear and tear
- Unsuitable operating resources, replacement materials
- Chemical, electro-chemical and electric impact.

Negotiations on claims for defects can only suspend the expiry of warranty periods by special agreement of the Supplier.

The Purchaser must provide the Supplier with the time and opportunity required to remove the defects, at his discretion. If he refuses to grant this, the Supplier is exempt from the liability for defects.

If the second attempt to remedy one and the same defect has failed, the Purchaser can provide an appropriate period of grace for the remedying of defects in writing, with the note that he refuses the remedying of the defect after expiry of this term. On expiry of this term the Purchaser can refuse the remedying of defects and demand a corresponding reduction of purchase price or withdraw from the contract. It is only in the case of minor defects that the Purchaser does not have the right of withdrawal. If the Purchaser chooses to withdraw from the contract, after failed subsequent performance, he may not claim damages on the grounds of the defect.

If the defective part is vital to the functioning of the overall delivery item (machine, system), withdrawal from the overall contract is only possible if the defective part significantly impacts on the function of the overall system. This applies, in particular, if the defective part negatively impacts on the production result.

Insofar as the Purchaser finally refuses the remedying of a defect, he may make use of the rights mentioned in this section.

The limitation periods of warranty claims for remedial work and installed replaced parts are equivalent to those of the original delivery item. However, they can, at the earliest, expire three months after installation.

Additional claims of the Purchaser against the Supplier and his vicarious agents are excluded. The Supplier is only liable in respect of claims for damages due to culpable activities, for whatever legal reason, i.e. delay, defective delivery, breach of duties from an obligation or of duties at contract negotiations, unlawful acts, product liability (excluding liability arising from the German Product Liability Act), in the event of intent or gross negligence. Liability for slight negligence is excluded, unless the purpose of the contract is put considerably at risk through the breach. In any case, the Supplier is only liable for typical damages foreseeable on concluding the contract. This restriction does not apply to physical injuries suffered by the Purchaser. Personal liability of the legal representatives, vicarious agents and staff of the Suppliers is excluded in respect of damages caused by these through slight negligence.

The Purchaser must inform the Supplier of particular circumstances, which may lead to damages when applying or using the delivery item.

If the Supplier is obliged to pay compensation to the Purchaser, for whatever legal grounds, agreement exists on the fact that this or several claims jointly may not exceed the maximum amount of one and a half times the order value of the delivery, on which or in connection with which the compensation is claimed. This restriction applies neither to physical injuries suffered by the Purchaser nor to grossly negligent or intentional breaches of duties by the Supplier or his vicarious agents.

If set-up and/or installation are included in the obligations, alongside delivery, then delivery and deliverables are, on principle, separate in respect of warranty. Insofar as claims for damages arise from defective installation or set-up, the Supplier is only liable if he or his vicarious agents can at least be charged with gross negligence.

In respect of the delivery items produced on his premises, the Supplier is only liable for the breach of industrial property rights issued in Germany and only to the extent that he supports the Purchaser in his (out of) court dispute with the holder of the industrial property right, reimburses the costs of the industrial property rights proceedings and exempts him from the claims for damages awarded him by a legally binding judgement.

With regard to such parts of the delivery item not produced on the premises of the Supplier, liability is restricted to the assignment of the claims, which the Supplier holds against his sub-suppliers.

#### **XI. Impossibility of performance/Adjustment of agreement/Withdrawal**

If the Supplier or Purchaser are unable to perform, then the current provisions of the German Civil Code apply, with the following provisos:

If the impossibility of performance is due to the Supplier, the Purchaser can claim damages. However, the claim for damages is limited to 10% of the value of that part of the delivery or service, which cannot commence proper operation due to the impossibility of performance.

Additional claims for damages require that the Supplier at least acted in gross negligence in causing the impossibility of performance. Any additional claims for damages are based on point X, clause 13.

Such claims for damages are excluded if the Supplier is able to re-supply the substantiated performance within an appropriate term and immediately advises the Purchaser of this. Insofar as this results in the term of delivery being exceeded, the rights of the Purchaser are based on the provisions on delays in delivery.

If, in the event of an additional agreement on installation/set-up, the Supplier is unable to perform for reasons not due to him, the Supplier is entitled to payment of the costs already spent in preparation or fulfilment of the performance, irrespective of any additional entitlements.

If unforeseen events considerably alter the economic importance of the delivery or services, or impact on the business of the Supplier to a significant degree, the agreement shall be appropriately adjusted, insofar as this corresponds with good faith. Insofar as this is not economically viable, the Supplier has the right to withdraw.

If the delivery item is returned as a result of the violation of the contract by the Purchaser, the Supplier is entitled to invoice the Purchaser for a reduction in value for the first half year of utilisation of 25% and 5% for every additional half year, irrespective of any additional entitlements.

#### **XII. Prohibition of assignment**

The Purchaser may not assign his claims in respect of the Supplier to a third party without the express agreement of the Supplier.

#### **XIII. Applicable law, place of fulfillment, jurisdiction and arbitration tribunal**

This contract is governed by the laws of the Federal Republic of Germany. Neither the UN-treaty (CISG) nor any other existing or future bilateral or international treaties, even if implemented into the German law, shall be applicable.

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce Paris by an arbitral tribunal appointed in accordance with the said Rules.

Every party nominates one arbitrator. The arbitrators nominate a chairman. The

arbitration procedure will be conducted in English, if the delivery took place outside of Germany.

The arbitrators decide upon equitable discretion only if the parties expressly agree.

Apart from this the Supplier can take recourse to the regular courts as well. Place of Jurisdiction shall be at the Supplier's choice either Bückeberg, Germany, or the company seat of the customer.

#### **XIV. Final provisions**

If individual clauses of these provisions are ineffective, they shall be replaced by such effective clauses, the economic effect of which is closest to that of the ineffective clauses.

The dissolution of the contract, for whatever reason, does not result in the loss of rights of the parties that arose during the term of the contract until dissolution thereof.

With regard to the applicability of terms and conditions of delivery, the purchase contract is equivalent to a contract on the delivery of objects to be produced.

Obernkirchen, August 8th, 2005