



## **GENERAL TERMS AND CONDITIONS OF PAUL GMBH & CO. KG AND PAUL & CO. HEROLZ GMBH**

### **§ 1 Area of Validity**

(1) The following Sales and Delivery Terms and Conditions shall be valid between Paul GmbH & Co. KG, 36396 Steinau an der Straße as well as Paul & Co. Herolz GmbH, 36381 Schlüchtern-Herolz, and their Customers.

(2) They shall be valid exclusively and for all services. We shall not recognise any Terms and Conditions which are opposing or deviate from our Sales and Delivery Terms and Conditions unless we had expressly approved their validity in writing.

(3) Our Sales and Delivery Terms and Conditions shall also then be valid if we, while being aware of Terms and Conditions of the Customer which oppose or deviate from our own Sales Terms and Conditions, unconditionally make the delivery to the Customer without having rejected his Contractual Terms and Conditions.

(4) All agreements which are concluded between us and our Customers for the purposes of the implementation of a contractual agreement shall be fixed in writing in this contractual agreement.

(5) Our Sales and Delivery Terms and Conditions shall be valid only for entrepreneurs in accordance with § 14 BGB [*German Civil Code*].

### **§ 2 Definitions**

(1) Services rendered in accordance with these Terms and Conditions encompass all deliveries rendered by us to our Customer in accordance with a purchasing agreement or in accordance with § 651 Para. 1 Clause 1 BGB (delivery of a work product) as well as work products and services which we provide (other services in accordance with an agreement for work and services or an employment agreement) including the services rendered in accordance with contractual agreements which contain elements of a purchasing agreement, an agreement for work and services or an employment agreement.

(2) Warranty claims in accordance with these Terms and Conditions shall encompass all claims of our Customers as the result of flawed services which we have rendered (§§ 433 f., 633 ff. BGB).

(3) Customers in accordance with these Terms and Conditions shall be considered to be all entrepreneurs who announce our interest in our services or utilise them in accordance with a contractual agreement.

### **§ 3 Conclusion of the Contractual Agreement**

(1) A contractual agreement regarding the implementation of the service ordered by the Customer (contractual object) shall be considered to have been concluded as soon as we accept the contractual offer submitted by the Customer (order) orally or in writing.

(2) The Customer shall be bound to a contractual offer which he has submitted in writing for 10 days after we receive it. Our acceptance shall be made by no later than the sending of our written order confirmation or the rendering of the ordered service.

(3) The Customer must promptly object to our written order confirmation in writing if he is not in agreement with its contents.

#### **§ 4 Prices and Payments, Security**

(1) Insofar as nothing to the contrary has been agreed in writing, our prices shall be understood to be for a delivery ex works; the place of performance shall not be changed by so doing. The prices shall contain no costs for shipping and packaging. The costs for any additional services requested by our Customer (e.g. mounting) as well as insurance shall also be charged.

(2) If a service or a partial service is rendered in accordance with the contractual agreement later than four months after the conclusion of the contractual agreement and the agreed price was not expressly designated as being a fixed price, then the listed prices that are valid on the date that the services are rendered shall be charged.

(3) Insofar as we are obliged to render preliminary services, we shall be entitled—even after the conclusion of the contractual agreement—to make our services contingent on the condition that our Customer has provided appropriate security for the counter-performance to be rendered by him if it becomes recognisable that our claim to the counter-performance has been put at risk owing to our Customer's lack of solvency.

(4) In the absence of special agreements, the payment must be remitted to our bank account within 10 days after receipt of the invoice without any discounts and without our incurring any costs from such payment. Bills of exchange shall be accepted only in accordance with special written agreements; their acceptance as well as the acceptance of checks shall be made only for payment satisfaction purposes subject to the charging of all debt collection and discount costs.

(5) If partial payments have been agreed or the purchase price is deferred, the entire remaining amount owed—without taking into consideration the due date of any bills of exchange provided to us—shall become immediately payable if the affected Customer is 14 days late with the payment of an instalment payment, in whole or in part, he discontinues his payments or a petition has been filed for the opening of bankruptcy proceedings with regards to his assets.

(6) The Customer may offset against our payment claims only with claims which are undisputed or have been legally upheld. Such a Customer may assert a right of retention only if his counterclaim is based upon the same contractual relationship.

#### **§ 5 Delivery Timeframes, Delivery, Transfer of Risk**

(1) The service timeframes and service deadlines which we prescribe shall be considered to be only approx. data insofar as they have not been expressly designated in writing as being “fixed”.

(2) Service timeframes shall begin to run 3 working days after the sending of the written order confirmation; in the absence thereof, upon the conclusion of the contractual agreement. Moreover, a pre-requisite for the beginning of the service timeframes shall be that the documents to be provided to us by the Customer and any agreed advance payment and/or any agreed payment has been received by us.

(3) The Customer may submit a written demand to us, by no earlier than 4 weeks after the exceeding of a payment timeframe that has not been designated as being “fixed” and/or a payment deadline which has not been designated as being “fixed”, to render contractual performance within an appropriate timeframe which must be at least 10 working days. Upon the lapsing of such a notice period, we shall enter into delivery default.

(4) A delivery date or a delivery timeframe shall be considered to have been met if, before its lapsing, in the case of a sales shipment, the goods to be delivered have been handed over to the carrier; in the case that the Customer has agreed to pick up the goods, the Customer has been notified in writing that the goods are ready for pick-up and otherwise when the goods have been received by the Customer.

(5) If, upon the Customer's request, the goods to be delivered are shipped, we shall be entitled, but not obliged without the Customer's express instruction, to insure the goods against transport risk at the Customer's expense.

(6) In the event of delivery default, we shall be liable in accordance with the statutory directives insofar as the delivery default is based upon a contractual violation resulting from our own intentional wrongdoing or gross negligence. We shall be responsible for any fault upon the part of our own representatives or our own vicarious agents. Insofar as the delivery default is based upon a contractual violation based upon our own gross negligence, our liability to pay damage compensation shall be limited to the foreseeable, typically-occurring direct average damages.

(7) We shall also then be liable in accordance with the statutory directives insofar as the delivery default for which we are responsible is based upon the culpable violation of an essential contractual obligation; however, in this case, our liability to pay damage compensation shall be limited to the foreseeable, typically-occurring direct average damages.

(8) We shall be liable in accordance with the statutory directives insofar as the underlying contractual agreement is considered to be a fixed commercial transaction in accordance with § 286 Para. 2 No. 4 BGB or § 376 HGB [*German Commercial Code*]. We shall also be liable in accordance with the statutory directives insofar as, as the result of a delivery default for which we are responsible, the buyer shall be entitled to assert that he is no longer interested in the continued fulfilment of the contractual agreement.

(9) The delivery shall be made ex Steinau warehouse (FCA in accordance with Incoterms 2010) where the place of performance also is.

(10) The risk of the accidental destruction and the accidental deterioration of the goods shall be transferred to the Customer by no later than their handover to the Customer. However, in the case of a sales shipment, the risk of the accidental destruction and the accidental deterioration of the goods as well as the delay risk shall already be transferred upon the delivery of the goods to the shipper, the freight forwarder or the other person or company commissioned with the implementation of the shipment. Insofar as delivery acceptance has been agreed, this shall be prevailing for the transfer of risk. Otherwise, the statutory directives regarding contractual law for work and services shall also be valid for an agreed delivery acceptance. It shall equate to a handover and/or delivery acceptance if the contractual partner finds himself in delivery acceptance default.

## **§ 6 Partial Deliveries, Call-Off Orders**

(1) Insofar as not all goods are in stock, we shall be entitled to make partial deliveries.

(2) If the Customer orders goods which must be supplied, in accordance with the contractual agreement, in partial deliveries to be designated by him (call-off orders), each called-off portion shall be considered to be an independent delivery in accordance with these Terms and Conditions.

(3) With the case of call-off orders, the Customer shall be obliged to call off all of the goods within the agreed call-off timeframe from us. Any quantities not allocated during this timeframe shall be considered to have been called off by no later than 31/12 of the current calendar year and shall be accordingly delivered.

## **§ 7 Quantity Deviations**

(1) Our Customer shall be obliged to accept the goods, which we are obliged to provide or the work product which we are obliged to render, within 14 days after the receipt of the notification of availability and/or the notification of completion. The Customer may not refuse to make delivery acceptance owing to minor defects.

(2) Production-related delivery overages and delivery underages within a tolerance of 5 % of the overall order quantity shall be permitted; the total price shall change accordingly.

## **§ 8 Reservation of Ownership Rights**

(1) We reserve ownership to the purchased goods until the settlement of all existing payment claims from the business relationship with the Customer. This shall also then be valid if such payment claims

have been integrated by us and/or the Customer into a running invoice and the balance has been struck and has been acknowledged.

(2) The Customer must promptly notify us of debt enforcement measures undertaken by third parties with regards to the goods subject to the reservation of ownership or payment claims assigned in advance subject to the submission of the documents required for an intervention and issuance of the information required in this regard.

(3) The Customer shall be obliged to handle the goods subject to the reservation of ownership with due care and to insure them at replacement value at his own expense against damages from fire, water and theft. In the event that our (co-)ownership is put at risk as well as in the case of the discontinuation of payments by the Customer, the Customer shall be obliged to undertake all measures and cooperative actions required for the verification of our ownership rights. In the event of payment default upon the part of the Customer or a major violation of his obligations in accordance with the reservation of ownership agreement, we shall also be entitled to take direct possession of the goods belonging to us at the Customer's expense in order to secure our payment claims or undertake suitable measures for labelling and safeguarding our ownership rights. We may also commission the assistance of third parties in order to undertake the work activities specified in this paragraph.

(4) If we withdraw from the contractual agreement in accordance with § 323 BGB, we shall be entitled to exploit the reserved goods by private sale insofar as this is possible. The Customer shall have the right to, at his own expense, demand the commissioning of an expert in order to determine the value of the reserved goods; we shall be obliged to offset the amount of the value of the reserved goods which is determined by this expert when billing our payment claims to the Customer. In cases of doubt, the expert must be appointed by the Chamber of Industry and Commerce which is competent for us.

(5) The Customer shall be entitled to process the reserved goods, to combine or mix them with other goods or to sell them during ordinary business dealings. The Customer must expressly notify the third party of this reservation of ownership. Any pledging or assignment by way of security of the reserved goods shall not be permitted. In this sense, an ordinary business transaction shall not be considered to exist if the assignment of the Customer's payment claim against the third party, who receives ownership rights through the aforementioned measure, is excluded.

6) The Customer already now assigns to us today, for security purposes, all of his payment claims against third parties (third-party debtors) which he acquires through the sale, the processing or reworking, or the mixing of the reserved goods. We hereby accept the assignment. However, the Customer shall remain entitled to collect these payment claims as long as he fulfils his obligations owed to us. Nonetheless, we may demand at any time that the assigned payment claims be collected via a special account and, upon receipt thereof, immediately be remitted to us. Upon request, the Customer shall also be obliged at any time to provide us with the data about the assigned claims (particularly the amount of the payment claim as well as the name and address of the third-party debtor) which are required for debt collection purposes. If the reserved goods are resold together with other goods and indeed regardless of whether without or after processing, combining, mixing or blending, then the aforementioned agreed assignment in advance shall be valid only with regards to a top-priority partial amount of the invoiced value of the reserved goods which are resold together with the other goods. (7) Any processing and reworking of the reserved goods shall be undertaken by the Customer for us without this creating any obligations for us. In the event of the processing, combining, mixing or blending of the reserved goods with other goods not belonging to us, we shall be entitled to the hereby-created co-ownership stake in the new goods based upon the proportional value of the reserved goods to the value of the remaining goods at the time of the processing, combining, mixing or blending. If the Customer acquires sole ownership to the new goods, then it shall be mutually agreed between the Customer and us that the Customer shall grant us co-ownership to the new goods based upon the proportional value of the processed and/or combined, mixed or blended reserved goods to the value of the remaining goods and the Customer shall safeguard them for us upon a free-of-charge basis.

(8) Insofar as the value of the security to which we are entitled in accordance with these Business Terms and Conditions exceeds the payment claims to which we are entitled against the Customer by more than 10 %, we shall, upon the Customer's request, be obliged in this regard to release the security of our choice in a proportional amount.

## **§ 9 Quality Features**

(1) It has been agreed with the Customer that the quality features of the goods shall be as prescribed in our respective product specifications or the product specifications of the respective manufacturer. In addition, any public statements, promotions or advertising from the respective manufacturer shall constitute no contractual quality features. This shall also be valid for such promotions, statements or advertising slogans upon our part.

(2) Warranties shall only then be provided if they are provided in text form, if we use the term "warranty" in quality feature agreements or, based upon the context, there is no doubt that such a warranty is supposed to be provided.

(3) Our data in catalogues, brochures, etc. shall be considered to be approximate values that are customary for the industry unless we have expressly designated them as being binding.

(4) In the event that we provide quality feature data, the relevant norms shall be valid including the therein-regulated tolerances.

(5) The absence of grease and/or of rust film shall be owed only if this has been expressly agreed in writing.

(6) If wage labour is implemented or materials, semi-finished goods or tools or other parts are provided by the Customer, then we shall not be obliged to inspect the parts that have been provided. The Customer shall be obliged to examine the suitability for the contractual purpose. The Customer acknowledges the customary scrap rate as having been agreed. In each case, a scrap rate of up to 5 % of the overall materials quantity shall be permissible and contractual. In the event that the defect in a supplied part or material should result in a part that we have manufactured being defective or unusable, then the Customer must nonetheless pay the agreed wages. If we or third parties should suffer damages as the result of the unsuitability of such a supplied part or material, then the Customer must be responsible for this and indemnify us from any third-party damage compensation claims.

## **§ 10 Liability for Defects**

(1) The Customer's claims for defects shall require that the Customer has properly fulfilled his obligations to examine and make notification of defects in accordance with § 377 HGB. The prompt notification of defects must be made in writing.

(2) Insofar as the purchased goods have a defect, we shall be entitled to fulfil the Customer's claim for subsequent performance, as we so choose, in the form of the elimination of the defects or through the delivery of new flawless goods. If the attempt at subsequent performance fails, then the Customer shall be entitled, as he so chooses, to demand either the rescission of the contractual agreement or a reduction of the purchase price. The elimination of the defect must be undertaken within an appropriate timeframe. If the elimination of the defect is not undertaken within an appropriate timeframe, then the Customer must, upon written request, declare within a two-week timeframe whether he shall withdraw from the contractual agreement or continue to demand contractual fulfilment. If contractual fulfilment is not demanded in a timely manner, the claim for contractual fulfilment shall be forfeited insofar as we have notified the Customer in writing of this consequence when requesting the submission of a declaration.

(3) Deviating from § 438 Para. 1 No. 3 BGB, the general statute of limitations period for claims arising from material and legal defects shall be one year after delivery. Insofar as delivery acceptance has been agreed, the statute of limitations period shall begin to run upon delivery acceptance. The statute of limitations period in accordance with Clause 1 shall not be valid for cases of the loss of life, physical

injury or damage to health, or the violation of an essential contractual obligation insofar as we have maliciously concealed a defect or provided a warranty for the quality features of the goods and for claims of the contractual partner in accordance with the *Produkthaftungsgesetz* [German Product Liability Act].

(4) If, however, the goods encompass a building structure or a product which, based upon its customary usage, has been used for a building structure and has caused its defectiveness (building material), the statute of limitations period shall, in accordance with the statutory directives, amount to 5 years after delivery (§ 438 Para. 1 No. 2 BGB). Unaffected shall also remain the statutory special directives for third-party in rem surrender claims (§ 438 Para. 1 No. 1 BGB), in the event of malice upon our part (§ 438 Para. 3 BGB) and for claims in supplier recourse during the final delivery to a consumer (§ 479 BGB).

(5) The aforementioned statute of limitations periods under sales law shall also be valid for contractual and non-contractual damage compensation claims upon the part of the contractual partner which are based upon a defect in the goods unless the application of the standard legal statute of limitations period (§§ 195, 199 BGB) would result in a shorter statute of limitations period in the individual case. In each case, the statute of limitations periods under *Produkthaftungsgesetz* shall remain unaffected. Otherwise, exclusively the legal statute of limitations periods shall be valid for damage compensation claims upon the part of the contractual partner in accordance with § 8.

## **§ 11 Damage Compensation**

(1) Insofar as nothing to the contrary is prescribed in these General Business Terms and Conditions including the following provisions, we shall be liable for a violation of contractual and non-contractual obligations in accordance with the relevant statutory directives.

(2) We shall be liable to pay damage compensation—regardless of the legal reason—in the event that we commit intentional wrongdoing or gross negligence. In the event that we commit simple negligence, we shall be liable only

a) For damages arising from the loss of life, physical injury or damage to health,

b) For damages arising from the violation of an essential contractual obligation (an obligation whose fulfilment only then makes possible the proper implementation of the contractual agreement at all and upon whose fulfilment the contractual partner regularly relies and may rely); in this case, however, the liability shall be limited to the payment of compensation for the foreseeable, typically-occurring damages.

(3) The liability restrictions prescribed in Para. (2) shall not be valid insofar as we have maliciously concealed a defect or provided a warranty for the quality features of the goods. The same shall be valid for claims of the contractual partner in accordance with the *Produkthaftungsgesetz*.

(4) In the event of a contractual violation which does not encompass a defect, the contractual partner may withdraw from or terminate the contractual agreement only if we are responsible for the contractual violation. An unrestricted right of termination upon the part of the contractual partner (particularly in accordance with §§ 651, 649 BGB) shall be excluded. Otherwise, the statutorily-prescribed requirements and legal consequences shall be valid.

## **§ 12 Force Majeure**

(1) Force majeure, labour struggles, civil unrest, government measures, deliveries that fail to be made by our suppliers and other unforeseeable, unavoidable and grave events shall release us as well as our Customers (contractual partners) for the duration of the disruption and in the scope of its effectiveness from the obligations to render contractual performance.

(2) This shall also be valid if these events occur at a time in which the affected contractual partner is in default unless he has caused the default based upon his own intentional wrongdoing or gross negligence.

(3) The contractual partners shall, insofar as this is reasonable, be obliged to promptly provide the required information and adapt their obligations to the changed circumstances in good faith.

### **§ 13 Export and Export Controlling Directives**

The Customer shall be obliged to follow all relevant German and international legal directives before any intended exporting and particularly to obtain an exporting licence that is required in accordance with the respectively-valid foreign trade law of the Federal Republic of Germany, the European Union and/or the United States of America. The Customer shall be responsible for the fulfilment of the aforementioned export controlling provisions—including by his end customers—and shall indemnify us from liability in this regard.

### **§ 14 Place of Performance, Choice of Laws, Legal Venue, Written Form Requirement**

(1) The place of performance for all obligations arising from the contractual relationship shall be the respective place of departure for the goods.

(2) For these General Business Terms and Conditions and all legal relationships between us and the contractual partner, the law of the Federal Republic of Germany shall be valid subject to the exclusion of international uniform law—particularly of the United Nations Convention on Contracts for the International Sale of Goods. The requirements and consequences of the reservation of ownership in accordance with § 8 shall be subject to the law that is valid for the respective storage location for the goods insofar as, in accordance therewith, the affected choice of laws is impermissible or ineffective in favour of German law.

(3) If the contractual partner is an entrepreneur in accordance with the *HGB [German commercial code]*, a juridical person under public law or a special foundation under public law, the exclusive—including international—legal venue for all disputes arising, directly or indirectly, from the contractual relationship shall be Hanau. However, we shall also be entitled to take legal action in the contractual partner's general legal venue.

(4) In the event that individual clauses of these Terms and Conditions should, in whole or in part, be invalid or ineffective, this shall not affect the validity of the remaining clauses and/or the remaining sections of such clauses.