

## General Terms and Conditions of Sale of the companies

**HIMMEL Antriebstechnik GmbH & Co.KG**  
**hoelschertechnik-gorator GmbH & Co.KG**  
**LAT Maschinen- und Antriebstechnik GmbH & Co.KG**  
**Himmel GmbH**  
**Himmelwerk GmbH**  
**HIMMEL Tür- und Torantriebe GmbH & Co.KG**  
**PVG Pumpenvertrieb Gescher GmbH,**  
**WABE Wasseraufbereitung GmbH & Co.KG**



### Sect. 1 General provisions, scope of application

(1) The present General Terms and Conditions of Sale ("AVB") apply to all business relationships with our customers („Buyer“). The AVB shall apply only if the Buyer is an entrepreneur (Sect. 14 BGB), a legal person under public law, or a special fund under public law.

(2) The AVB apply particularly to contracts relating to the sale and/or delivery of movable goods („Goods“), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (SS. 433, 651 BGB).

(3) The present AVB apply exclusively. Deviating, opposing, or supplementary general terms and conditions of the Buyer shall become an integral part of the contract only and inasmuch as we expressly approve their application. This requirement of approval shall apply generally, for example if we deliver to the Buyer without reservation despite having knowledge of the Buyer's general terms and conditions.

(4) Individual agreements concluded with the Buyer in individual cases (including side agreements, supplementary agreements, and amendments) shall always take precedence over the present AVB. The contents of such agreements shall be determined by written contract, resp. our written confirmation, subject to counterevidence.

(5) Legally significant declarations and notices (e.g. setting of deadlines, notices of defects, notice of termination or reduction of the purchase price) that must be made to us by the Buyer after the conclusion of contract shall be effective only in written form.

(6) References to the application of statutory provisions shall serve for clarification only. Even without such clarification, statutory provisions shall apply unless they are directly modified, or expressly excluded in the present AVB.

### Sect. 2 Conclusion of contract

(1) Our offers are subject to change and non-binding. This shall apply likewise in the case that we provide catalogues, technical documentation (e.g. drawings, plans, calculations, computations, references to DIN standards), other product descriptions or documents – in electronic form, too – to the Buyer and to which we reserve all title and copyrights.

(2) The Buyer's order of the Goods shall be deemed a binding offer to conclude a contract. Unless otherwise determined in the order, we are entitled to accept said offer to conclude a contract, within 2 weeks from our receipt of it.

(3) Acceptance can be declared either in writing (e.g. by confirming the order) or by delivering the Goods to the Buyer.

### Sect. 3 Delivery time and late delivery

(1) The delivery term is agreed individually, resp. specified by us when accepting the order.

(2) In the event that we are unable to meet binding delivery periods for reasons for which we are not responsible (non-availability of the service) we will inform the Buyer forthwith and at the same time notify him of the prospective new delivery time. If the service is not available within the new delivery period, either, we are entitled to partly or fully withdraw from the contract; we will refund forthwith any counter-performance of the Buyer already rendered. A particular example of non-availability is the case of late

delivery to us by our suppliers in the event that we effected a congruent covering purchase, that neither we nor our supplier are at fault, or that we are under no procurement obligation in the individual case.

(3) Default in delivery on our part shall be subject to statutory law. In all cases, however, a reminder by the Buyer is required. In the event that we default on delivery, the Buyer may demand liquidated damages for the loss/damage he suffered through our default. The amount of liquidated damages for each full calendar week of default shall be 0,5% of the net price (value of the delivery), however in total not exceeding 5% of the value of the delivery value of the Goods delivered late. We reserve the right to prove that the Buyer suffered no loss/damage at all or only a loss/damage of significantly lower value than the amount of liquidated damages stipulated herein-above.

(4) The Buyer's rights under Sect. 8 of the present AVB and our statutory rights, in particular in the case of an exclusion of the obligation to perform (e.g. on the grounds that performance and/or subsequent performance is impossible or unreasonable), shall not be affected

### Sect. 4 Delivery, passing of the risk, acceptance, default in acceptance

(1) Delivery is ex works in Gescher, Germany, which is also the place of performance for the delivery and any subsequent performance. On the Buyer's request, and at his expense, the Goods are dispatched to a different destination ("sales shipment" (German: *Versendungskauf*)). Unless otherwise agreed, we are entitled to determine the form of shipment (in particular the carrier, shipping method, packaging).

(2) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer no later than upon delivery of possession. In the case of sales shipment, however, the risk of accidental loss and accidental deterioration of the Goods, and the risk of delays, shall pass to the Buyer already upon delivery of the Goods to the carrier, the freight forwarder, or any other person or organisation selected for shipment. If it is agreed that an acceptance procedure must be carried out, the risk shall pass thereupon. For the rest, the statutory provisions relating to contracts for work and labour (German: *Werkvertragsrecht*) shall apply *mutatis mutandis* to the agreed acceptance procedure. The Buyer's default in acceptance shall be deemed equal to delivery of possession, resp. acceptance.

(3) If the Buyer defaults in acceptance, if he fails to perform a contributory act, or if our delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to demand compensation of the resulting damage/loss, including additional expenses (e.g. storage costs). For this purpose, we charge a lump sum compensation in the amount of 0.5% of the net price (value of the delivery) per full calendar week, however in total not exceeding 5% of the value of the delivered goods, and commencing with the delivery term, resp. – in the absence of a delivery term – upon the notification that the Goods are ready for dispatch.

Neither the right to prove that any loss/damage suffered is of higher value nor our statutory claims (in particular reimbursement of expenses, reasonable compensation, termination) shall be affected; the lump sum, however, shall be offset against additional monetary claims. The Buyer is permitted to prove that no loss/damage or only loss/damage of significantly lower value occurred.

### Sect. 5 Prices and terms of payment

(1) Unless otherwise agreed in the individual case, our current prices as at the time of the conclusion of contract shall apply, namely ex storage, plus the statutory value-added tax.

(2) In the case of sales shipment (Sect. 4 Para. (1)), the Buyer shall bear the transportation costs ex storage and the costs of any transport insurance requested by the Buyer. The Buyer shall bear all customs duties, charges, taxes, and other public dues.

(3) Unless otherwise agreed in the individual case, the price shall be due and payable within 14 days from rendering the invoice and delivery, resp. acceptance of the Goods. However, in an ongoing business relationship, we are entitled at all times to perform full or partial delivery against advance payment only. We will declare a corresponding proviso when confirming the order, at the latest.

(4) Upon expiration of the above-said payment term, the Buyer is in default. During default, the purchase price shall bear interest at the statutory default rate for interest. We reserve the right to claim additional damage/loss caused through default. Our right to claim commercial maturity interest (Sect. 353 HGB) vis-à-vis merchants shall not be affected.

(5) The Buyer is entitled to setoff and retention rights only to the extent that his claim is *res judicata* or undisputed. In the event that the delivered goods are defective, the Buyer's counterclaims, in particular those arising under Sect. 7 Para. (6) Sentence (2) of the present AVB, shall not be affected.

(6) If it becomes evident after the conclusion of contract (e.g. by filing for the institution of insolvency proceedings) that our claim to the purchase price is at risk due to the Buyer's insufficient capacity to perform, we are entitled to refuse performance in accordance with statutory law and – after setting a time limit, where necessary – to withdraw from the contract (Sect. 321 BGB). In the case of contracts relating to the manufacture of non-fungible goods (single-piece production) we may declare withdrawal forthwith; the statutory provisions relating to the dispensability of setting a time limit shall not be affected.

## Sect. 6 Retention of ownership

(1) We retain our ownership of the sold Goods until all our current and future receivables resulting from the purchase contract and a given ongoing business relationship (secured claims), have been fully paid.

(2) The Goods under retention of title may not be pledged to third parties, nor transferred as security, before full payment of the secured claims. The Buyer shall inform us forthwith in writing if a motion for the institution of insolvency proceedings was filed or in the case of third party attachment (e.g. seizure) of the goods we own.

(3) In the event that the Buyer acts in breach of the contract, in particular in the case of non-payment of the due purchase price, we are entitled to withdraw from the contract in accordance with statutory law and/or demand surrender of the Goods on the grounds of our retained ownership. The claim to surrender of the Goods does not at the same time include our declaration of withdrawal; we are rather entitled to merely demand surrender of the Goods and to reserve our right of withdrawal. If the Buyer fails to pay the due purchase price we may only exercise said rights if we previously granted the Buyer a reasonable time limit for payment or if the setting of a time limit is dispensable under statutory law.

(4) The Buyer is entitled until further notice as under lit. (c) herein-below to resell the Goods that are under retention of title in the ordinary course of business and/or to process them. In this case, the provisions herein-below shall apply in addition.

(a) The retention of title extends to the products created by processing, commingling, or combination, with our Goods at the full value of the former, whereby we shall be deemed the owner thereof. In the event that following processing, commingling, or combination, with the goods of third parties, the ownership title of such third parties survives, we shall obtain co-ownership in proportion to the invoice values of the processed, commingled, or combined goods. Otherwise, the same shall apply to the produce thus created as applies to the Goods that are under retention of ownership.

(b) As security, the Buyer herewith assigns to us in full, resp. in the amount of our co-ownership share as stipulated herein-above, any claims against third parties that result from reselling the Goods or the produce to us. We accept the assignment. The Buyer's obligations specified under Para. (2) shall apply likewise to the assigned claims.

(c) The Buyer shall remain entitled alongside us to collect the receivables. We agree to not collect the receivables as long as the Buyer meets his payment obligations to us, if he is not deficient in his capacity to perform, and if we do not exercise our retention of ownership by exercising one of the rights under Para. (3). If, however, the aforementioned does occur we may demand that the Buyer disclose the assigned receivables and their debtors to us, provides us with all information required for collection, surrenders all associated documents, and notifies the debtors (third parties) of the assignment. Furthermore, we are entitled in such a case to

revoke the Buyer's right to resell and to process the Goods of which we have retained ownership.

(d) If the realisable value of the securities exceeds our receivables by more than 10% we shall release securities of our choice on the Buyer's request.

## Sect. 7 Defective delivery

(1) Unless otherwise agreed herein-below, statutory law shall apply to the Buyer's rights in the case of defects in quality and in title (including wrong and short delivery and in the case of improper assembly or defective assembly instructions). In all cases, the special statutory provisions relating to final delivery of the Goods to a consumer (recourse against the supplier under SS. 478, 479 BGB) shall not be affected.

(2) Our liability for defects is based primarily on the agreed quality of the Goods.

(3) Where no quality was agreed, the existence of a defect shall be determined on the basis of statutory provisions (Sect. 434 Para. (1) Sentence (2) and (3) BGB). However, we assume no liability whatsoever for any public statements by the manufacturer or by other third parties (e.g. advertising statements).

(4) The Buyer's rights based on defects are subject to the condition that he fulfilled his statutory obligations of inspection and notification of defects (SS. 377, 381 HGB). If a defect emerges during inspection or thereafter, we shall be notified thereof immediately in writing.

(5) If the delivered item is defective we may firstly choose whether to render subsequent performance either by remedying the defect (subsequent remedy) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions shall not be affected.

(6) We are entitled to made the owed subsequent performance conditional upon the payment of the due purchase price. However, the Buyer is entitled to retain a part of the purchase price in an amount that is reasonable in proportion to the defect.

(7) The Buyer shall give us the time and opportunity required for rendering the subsequent performance owed, in particular to hand over the rejected Goods for inspection. In the case of replacement delivery, the Buyer shall return the defective item to us in accordance with statutory law. Subsequent performance comprises neither de-installation of the defective Goods nor re-installation if originally we were not obliged to install them.

(8) We will bear the necessary costs of inspection and subsequent performance, in particular transportation costs, workmen's travel, labour costs and the cost of materials (not: de-installation and installation) if a defect actually exists; in this context we will not bear the additional costs that result from bringing the Goods to a location other than the place of subsequent performance (cf. Sect. 4 Para. (1) Sentence (1)). If in fact no defect exists we may demand that the Buyer reimburse us for the costs (in particular inspection and transportation costs) caused by the Buyer's unjustified request for defect rectification, unless the absence of a defect was not discernible for the Buyer.

(9) In urgent cases, e.g. if operational safety is at risk or to avert unreasonable damage/loss, the Buyer is entitled to remedy the defect himself and to demand that we reimburse him for the expenses that are objectively necessary to do so. He shall notify us immediately in advance of such self-help. The right to self-help shall not apply if, under statutory law, we were entitled to refuse corresponding subsequent performance.

(10) If subsequent performance fails or if a reasonable period of time to be set by the Buyer for subsequent performance expires fruitlessly or is dispensable under statutory law, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, no right of withdrawal applies.

(11) Claims of the Buyer to damages, resp. reimbursement of futile expenses, even in the case of defects, shall exist only as stipulated under Sect. 8 and are otherwise excluded.

## Sect. 8 Other liability

(1) If nothing else results from the present AVB, including the provisions herein-below, we shall be liable under statutory law in the case of a breach of contractual and extra-contractual obligations.

(2) We shall be liable for damages – whatever the legal grounds – within the scope of liability for fault in the case of wilful intent and gross negligence. In cases of ordinary negligence, we shall be liable under statutory law (e.g. for care in own affairs) - subject to the proviso of a lower standard of liability - only

- a) for damage/loss resulting from injury to life, the body, or health,
- b) for damage/loss resulting from a not insignificant breach of a material contractual obligation (obligations the fulfilment of which are *conditio sine qua* no for the performance of the contract and on the observance of which the other contracting party regularly relies and may rely); in this case, however, our liability is limited to the foreseeable damage/loss that typically occurs.

(3) The limitations of liability that result from Para. (2) shall apply likewise in the case of a breach of an obligation by, resp. for the benefit of, persons for whose fault we are responsible under statutory law. They shall not apply in the event that we fraudulently concealed a defect or granted a guarantee for the quality of the Goods, or to claims of the Buyer under the German Product Liability Act (German: *Produkthaftungsgesetz*).

(4) The Buyer may withdraw from the contract, or terminate it, on the grounds of a breach of an obligation that does not consist of a defect if we are responsible for the breach. The Buyer's right to freely terminate the contract (in particular under SS. 651, 649) is excluded. For the rest, statutory law and the statutory legal consequences apply.

### **Sect. 9 Limitation**

(1) Contrary to Sect. 438 Para. (1) No. (3) BGB, the general limitation period for claims based on defects in quality and in title is one year from delivery. Where an acceptance procedure has been agreed, the limitation period commences upon acceptance.

(2) If the Goods consist of a building or an item that, according to the item's purpose, is typically used for a building, and the use of which has resulted in the defectiveness of the building (construction material), the limitation period shall be 5 years from delivery in accordance with statutory law (Sect. 438 Para. (1) No. (2) BGB). This shall have no effect on other special statutory provisions relating to limitation (in particular Sect. 438 Para. (1) No. (1), Para. (3), SS. 444, 479 BGB).

(3) The limitation periods under Sales Law set forth hereinabove shall apply likewise to contractual and extra-contractual damages claims of the Buyer that are based on a defect of the Goods, unless the application of the regular statutory limitation period (SS. 195, 199 BGB) would lead to a shorter limitation period in the individual case. Damages claims of the Buyer under Sect. 8 Para. (2) Sentences (1) and (2)(a), and under the German Product Liability Act, however, shall be subject to the statutory limitation periods.

### **Sect. 10 Use of software**

(1) Where software is part of the delivery, the Buyer is granted a non-exclusive right to use the software supplied, including its documentation. It is supplied for use on the Goods intended for such purpose. Using the software on more than one system is prohibited.

(2) The Buyer may reproduce, edit, or translate, the software, or change it from its object code to its source code, within the statutory limits only (SS 69 et seq. UrhG). The Buyer is not entitled to remove manufacturer information – in particular copyright notices – or change it without our express prior approval.

(3) All other rights to the software and to the documentation, including copies thereof, shall remain with us, resp. the software supplier. Granting sub-licences is prohibited.

### **Sect. 11 Choice of law and place of jurisdiction**

(1) The present AVB and the contractual relationship between us and the Buyer shall be governed by the laws of the Federal Republic of Germany, to the exclusion of uniform international law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is a merchant as defined by the German Commercial Code („HGB“), a legal person under public law, or a special funds under public law, the exclusive – and international - place of jurisdiction for all disputes directly or indirectly arising from the contract shall be our place of business in Gescher, Germany. The same shall apply if the Buyer is an entrepreneur as defined under Sect. 14 BGB. In all cases, however, we are also entitled to file an action at the place of performance of the delivery obligation stipulated in the present AVB, resp. in a prevailing individual arrangement, or at the Buyer's general place of jurisdiction. Prevailing statutory provisions, in particular those relating to exclusive jurisdiction, shall not be affected.