

# **General Terms and Conditions of Business and Payment**

## **§ 1 Scope of application**

The following General Terms and Conditions of Business and Payment shall apply to all contracts which HSB Normalien GmbH (hereinafter referred to as HSB) concludes for HSB.

General Terms and Conditions of Business and Payment of the Purchaser which are in conflict with these Terms and Conditions shall not be binding for HSB, even if they are used as a basis for the order with the claim of exclusive validity. Such terms of delivery and payment are expressly contradicted.

## **§ 2 Offers, scope of services and conclusion of contract**

HSB's offers are subject to change. A contract shall not be concluded until HSB has confirmed the order in writing or HSB has actually performed the service. The content of the order shall be determined exclusively by the order confirmation and these terms of delivery. Verbal agreements or promises shall only be valid if confirmed in writing by HSB.

HSB reserves the right to make changes to the design, the choice of materials, the specification and the type of construction even after the order confirmation has been sent, provided that these changes do not contradict either the order confirmation or the purchaser's specification.

HSB shall be bound by specially prepared offers for 30 calendar days.

Any statements in HSB's offers and/or order confirmations that are based on an obvious error, namely a typing or calculation error, shall not be binding on HSB.

## **§ 3 Delivery**

All goods will be delivered immediately, if available from stock and only while stocks last. The indication of delivery times is non-binding.

If an item is not available at short notice, the customer will be informed immediately by e-mail about the expected delivery time.

Delivery times shall be extended accordingly if the delay is caused by the occurrence of force majeure or other unforeseeable circumstances for which HSB is not responsible (e.g. natural disaster, strike, shortage of energy or raw materials, riots, embargo, travel warning issued by the German Foreign Office or the failure of suppliers to deliver or to deliver correctly or on time). If these events significantly impede delivery or make delivery impossible and if the disruption is not only of a temporary nature, HSB may withdraw from the contract in whole or in part. In this case, the buyer shall be released from his obligation to make counter-performance. HSB shall not be liable for delays or impossibility due to these events. HSB shall inform the buyer of the occurrence of such events. Any payments already made shall be refunded immediately. The legal claims of the buyer remain unaffected.

If the delay in delivery is based on a reason for which HSB is responsible, HSB shall only be liable for damages which have arisen due to this delayed delivery up to the amount of the value of the goods of this delivery. The assertion of further damages caused by delay is excluded.

#### **§ 4 Payment, Default**

The payment of the ordered goods is made on account or cash on delivery.

The customer is obliged to pay the invoice amount within 30 days after receipt of the goods. This also applies to partial deliveries.

If the buyer defaults on payment, HSB shall be entitled to charge default interest in the amount prescribed by law, reminder fees and other damages caused by late payment.

In the event of late payment, HSB shall be entitled to send subsequent orders cash on delivery at the customer's expense.

#### **§ 5 Retention of title**

The delivered goods shall remain the property of HSB until all current claims against the buyer - as well as future claims insofar as they are connected with the delivered items - have been fulfilled.

The Purchaser shall be entitled to resell the delivery items owned by HSB (reserved goods) in the ordinary course of business, but not to pledge or assign them as security or otherwise dispose of the delivery item.

In the case of resale, however, the buyer already now assigns all claims from this resale to HSB, regardless of whether the reserved goods are resold before or after processing or whether or not they are combined with real estate or movable property. If the reserved goods are resold after processing or together with other goods that do not belong to HSB or if they are connected with a piece of real estate or with movable objects, the buyer's claim against his customers shall be deemed assigned in the amount of the delivery price agreed between the buyer and HSB for the reserved goods.

The buyer shall be authorized to collect this claim even after the assignment. HSB's authority to collect the claim itself shall remain unaffected by this, but HSB undertakes not to do so as long as the customer duly meets his payment obligations. If the buyer makes use of the right to collect, HSB shall be entitled to the collected proceeds in the amount of the delivery price agreed between the buyer and HSB for the reserved goods.

Processing or transformation of the reserved goods shall be carried out for HSB as manufacturer in accordance with § 950 BGB (German Civil Code) without HSB being obligated.

If the reserved goods are processed with other objects, HSB shall acquire co-ownership of the new object in the ratio of the market value of the goods to the value of the other processed objects at the time of processing. The buyer shall keep the new object in safe custody for HSB free of charge with the care customary in the trade.

HSB undertakes to release the securities to which HSB is entitled upon request to the extent that their realizable value exceeds the claims to be secured by more than 25%.

## **§ 6 Offsetting, Retention**

The buyer shall only have a right of set-off if his counterclaims have been legally established or are not disputed by HSB. Furthermore, he shall only be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

## **§ 7 Acceptance, Warranty, Duty to Inspect**

The buyer shall be obligated to accept the delivery item produced in accordance with the contract as well as the services provided by HSB. If the buyer does not accept the delivery item immediately after he was aware of the readiness to perform or after he was requested to accept, HSB can set the buyer a reasonable deadline for acceptance. If the buyer does not accept the delivery item within this period, acceptance shall be deemed to have taken place.

The buyer shall assume an obligation to inspect and give notice of defects in accordance with § 377 of the German Commercial Code (HGB) with regard to all deliveries and services of HSB. If a contract for work and services is concluded, § 377 HGB shall apply analogously. After acceptance of the service or transfer of risk of the product, the buyer must immediately inspect the product for its functionality and immediately notify HSB in writing of any defects found, at the latest within a period of 10 days, in a comprehensible form. In all other respects § 640 Para. 2 BGB shall apply. The buyer is obligated to provide HSB with all information and verifiable documents that are necessary for the determination of the defect. The defective items shall be kept ready for inspection by the contractor in the condition in which they are at the time of the determination of the defect. If the delivery item or the service is defective, the Purchaser's claims shall be limited to removal of the defect or reduction of costs at the discretion of the Contractor.

In the event of any notice of defect, HSB shall be entitled to inspect and test the performance complained about. If a notice of defect by the buyer proves to be unjustified, he shall be obligated to reimburse HSB for all expenses incurred in this connection - e.g. travel and shipping costs.

In the event of the existence of a defect, HSB shall be entitled, at its discretion, to first make two attempts to rectify the defect (subsequent performance). HSB shall grant justified notices of defect rectification or cost reduction in the event that the rectification fails. Further rights of the buyer are excluded. In the event of gross negligence, damages shall be limited to foreseeable damages. If a part delivered by a buyer is damaged during further processing by HSB, the compensation shall be limited to the further processing of the part or to the further processing of a new part delivered by the buyer.

No liability shall be assumed for non-recognizable defects in goods or parts (e.g. material defects) supplied by the customer. The purchaser bears the full risk that the correct material specifications and dimensions are entered in the documents, drawings and samples submitted by him or that the correct sample is submitted. The aforementioned also applies to the functionality or the functional capability of the parts manufactured according to plans, drawings, samples, etc.

If HSB uses material in accordance with the customer's specifications, HSB shall not be liable for any defects, damage or consequential damage due to the fact that the material used is defective and/or it subsequently transpires that this material is not suitable for the purpose intended by the customer.

HSB shall not assume any warranty for damage caused by the Purchaser due to unsuitable or improper use, faulty assembly, faulty commissioning, faulty handling, faulty installation, natural wear and tear, excessive stress, faulty construction work, faulty electromechanical or electrical influences as well as special external influences or if modifications are made without HSB's consent.

Furthermore, the warranty obligation shall not extend to defects which are attributable to improper handling, storage, maintenance or cleaning. If, in the above-mentioned cases, defect rectification measures are carried out at the instigation of the purchaser, the purchaser shall pay an expense allowance. In addition to the cost of materials and labor, this shall also include other customary expenses. Liability for material defects which do not or only insignificantly affect the value or the usability shall be excluded.

Insignificant, reasonable deviations in dimensions and designs do not entitle to warranty rights, unless absolute compliance has been expressly agreed. Technical improvements as well as necessary technical modifications shall therefore be deemed to be in conformity with the contract insofar as they are reasonable and do not constitute a deterioration of the fitness for use.

## **§ 8 Limitation of liability**

Claims for damages arising from positive breach of contract, culpa in contrahendo and tortious acts which are not simultaneously based on the breach of a main contractual obligation by HSB shall be excluded both against HSB and against its vicarious agents or assistants unless the damage was caused intentionally or by gross negligence. This shall not apply to claims for damages arising from defects in the contractually assumed suitability, which are intended to protect the buyer against the risk of foreseeable damage typical for the contract. Claims for damages in accordance with the law on liability for defective products shall remain unaffected, as shall liability for damage to life, limb or health.

## **§ 9 Storage of data, data protection**

HSB collects and stores the data of the buyer necessary for the business transaction. HSB shall observe the statutory provisions when processing the personal data of the buyer.

All data shall be treated as strictly confidential. Data will only be passed on to third parties if this is absolutely necessary for the execution of the contract. Details can be found in the HSB privacy policy, which can be accessed [here](#).

## **§ 10 Applicable law, place of jurisdiction and final provisions**

The law of the Federal Republic of Germany shall apply to these terms and conditions and the entire legal relationship to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

For all disputes arising from the contractual relationship as well as the business relationship, the headquarters of HSB shall be the agreed place of jurisdiction.

The place of performance for all obligations arising from the contract shall be the head office of HSB.

The contract concluded between HSB and the buyer contains all agreements made between the parties regarding the subject matter of the contract. Verbal subsidiary agreements do not exist. Amendments must be made in writing and must be signed by an authorized representative of HSB.

### **§ 11 General Provisions**

The invalidity of individual provisions of these General Terms and Conditions of Purchase shall not affect the validity of the remaining provisions.

Amendments and supplements to the contract and/or these general terms and conditions of purchase as well as collateral agreements must be made in writing.

### **§ 12 Supplier identification, summonable address**

The summonable address and the address of HSB for complaints and other declarations of intent is:

HSB-NORMALIEN GmbH, Industriestr. 4, 74193 Schwaigern, Tel. (+49)7138/812749-0, Fax (+49)7138/812749-90,

[www.hsb-normalien.de](http://www.hsb-normalien.de), [info@hsb-normalien.de](mailto:info@hsb-normalien.de)