

General terms and conditions of HA-BE Gehäusebau GmbH

(Version: May 2018)

1. Scope

- 1.1 These terms and conditions of sale shall apply to companies, legal entities under public law and public-law special funds.
- 1.2 Our deliveries and services are exclusively rendered on the basis of the terms and conditions set forth below.
- 1.3 The terms and conditions of the partner shall not be valid, unless they are expressly accepted by us.
- 1.4 These terms and conditions of sale shall also apply to all future business transactions with the partner to the extent that they are legal transactions of a related nature.

2. General provisions

- 2.1 Any oral agreements made between the contracting partners shall be individually confirmed in writing without delay.
- 2.2 Unless otherwise specified, our offers shall be valid for a period of three months and upon placement of the order, prices shall remain valid for a period of twelve months from the date thereof, except for the material price surcharge as described in clause 7.2 below. Orders shall only be binding upon our order confirmation.
- 2.3 Information and illustrations contained in brochures and catalogues are approximate values customary in the industry, unless they are explicitly defined by us as binding.

3. Long-term and call-off agreements, price adjustment

Upon request, we shall conclude long-term agreements with our partners.

- 3.1 These agreements, also referred to as general agreements, are supply agreements on specified product items which shall be supplied in a specified quantity within a defined period of time with firmly agreed batch sizes and delivery intervals at a fixed price.
- 3.2 The agreed total order quantity within the specified contractual period concluded under the long-term agreement shall be binding. The risk shall be borne by the partner.
- 3.3 Firmly scheduled order quantities and delivery intervals cannot be changed within the time frame to be determined on a case-by-case basis.
- 3.4 If interim storage is agreed, the partner shall bear the risk of acceptance and/or modification costs for the manufacturing batch which is in store and under production, in the case of cancellation or technical modifications to the product.
- 3.5 Irrespective of the contractual term and/or volume of the agreed contractual quantity, the fixed price of the parts shall be valid for a maximum period of twelve months, calculated from the commencement date of the agreement. Thereafter, the prices of the parts under the long-term agreement shall be renegotiated. If no agreement is reached, each of the partners shall be entitled to terminate the agreement without adherence to a period of notice. However, in the case of agreed interim storage, the contractual partner must accept the specified batches.
- 3.6 If any unforeseen change occurs in the case of long-term agreements (agreements with a term of more than six months) with regard to labour, energy or other costs, each contracting partner shall be entitled to request negotiations on an adequate adjustment of the price against proof of the cost changes. If no agreement is reached within a period of six weeks, each of the partners shall be entitled to terminate the agreement without adherence to a period of notice, however, subject to acceptance of the agreed minimum order quantities under the respective supply agreement.
- 3.7 The following rule shall apply to changes in material costs:
 - 3.7.1 The purchase price comprises the product price and a supplement for input materials defined as material price surcharge (MPS), which is stated separately.
 - 3.7.2 The MPS is the difference between the daily official material price and the material price basis, multiplied by the weight of the material used, plus a surcharge of 15%, calculated 2 (two) days after receipt of the order.
 - 3.7.3 If the price for input material compared to the base value changes by +/- 5%, the MPS shall be adjusted accordingly. Reviews are made on a quarterly basis.
- 3.8 If no binding order quantity is agreed, our calculation shall be based on the non-binding order quantity expected by the partner for a defined period of time (yearly quantity in accordance with the offer).
- 3.9 If the partner purchases less than the yearly quantity, we shall be entitled to reasonably increase the unit price. If the partner purchases more than the yearly quantity, we shall reduce the unit

price accordingly, provided that the partner has announced the additional requirement at least two months before delivery.

- 3.10 In the case of call-off supply agreements, binding quantities must be notified to us by call-off at least two months before the delivery date, unless otherwise agreed.
- 3.11 Any additional costs caused by our partner due to delayed call-off or subsequent changes to the call-off in terms of time or quantity shall be borne by the partner; in this respect our calculation shall be decisive.

4. Confidentiality

- 4.1 Each of the contracting partners shall use all documents (also including samples, models and data) and knowledge received under the business relationship only for their mutually intended purposes and maintain secrecy vis-à-vis third parties with the same due care that they normally apply to their own documents and knowledge, if the other contracting partner has defined them as confidential or has an obvious interest to maintain secrecy in this respect.
- 4.2 This obligation shall commence upon first receipt of the documents or knowledge and shall end 36 months after the business relationship has been terminated.
- 4.3 This obligation does not apply to documents or knowledge which are generally known or were already known to the contracting partner without a secrecy obligation at the time of receipt, or which are thereafter communicated by a third party authorised to disclose such documents or knowledge, or are developed independently by the receiving contracting partner without the use of such confidential documents or knowledge of the other contracting partner.

5. Drawings and specifications

If either contracting partner provides the other partner with drawings or technical documents relating to the goods to be supplied or the production of the same, they shall remain the property of the submitting contracting partner. The passing on to third parties shall not be permitted without the express written consent of the submitting contracting partner. In all other respects, the confidentiality provisions set down herein (clause 4) shall apply.

6. Samples and means of production

- 6.1 The production costs for samples and means of production (tools, programmes, moulds, templates, etc.) shall be invoiced separately from the goods to be supplied, unless otherwise agreed. The terms of payment set out under clause 8.1. may deviate as the case may be. This shall also apply to means of production which must be replaced as a result of wear and tear.

Upon request, we shall prepare initial sample test reports for our partners. The costs arising therefrom shall be charged separately.
- 6.2 The costs for maintenance and proper storage as well as the risk of damage or destruction of the production means shall be borne by us.
- 6.3 If the partner discontinues or terminates cooperation during the manufacturing period of samples or production means, all productions costs incurred up to that time shall be borne by the partner.
- 6.4 Even if already paid by the partner, the means of production shall remain in our possession at least until completion of the supply agreement or performance of agreed deliveries. Thereafter, the partner shall be entitled to reclaim production means, if an arrangement regarding the date of release has been made by mutual consent and the partner has fully complied with its contractual obligations.
- 6.5 We shall store the means of production in safe custody without charge for a period of three years after the final delivery to our partner. Thereafter, we shall request our partner in writing to inform us on the intended further use within a period of six weeks. Our storage obligation shall end, if no instructions have been received within the six-week period and no new order has been placed.
- 6.6 Customer-related means of production shall only be used for supplies to third parties with the prior written consent of our partner.

7. Prices

- 7.1 Our prices are quoted in EUR and subject to the applicable value added tax at the current statutory rate. The prices shall apply in accordance with the Incoterm referred to in clause 9.1 (delivery). Packing costs shall be invoiced separately, unless otherwise specified in the offer.
- 7.2 The purchase price comprises the product price and a supplement for input materials defined as material price surcharge (MPS), which is stated separately. The MPS is the difference between the daily official material price and the material price basis, multiplied by the weight of the material used, plus a surcharge of 15%, calculated 2 (two) days after receipt of the order.

- If the price for input material compared to the base value changes by +/- 5%, the MPS shall be adjusted accordingly.
- 7.3 Our minimum order value (excluding MPS) amounts to EUR 250.00 for each purchase order item.
- 7.4 Prices within the EU
- The prices are quoted in EUR. By referencing the value added tax identification number, delivery is carried out as a tax-exempt intra-Community delivery. All other stipulations set out under clauses 7.1 to 7.3 remain unchanged.
- 7.5 Prices with regard to third countries
- The prices are quoted in EUR. Delivery is carried out as a tax-exempt export delivery. All other stipulations set out under clauses 7.1 to 7.3 remain unchanged.
- 8. Terms of payment**
- 8.1 All invoices are due for payment within 14 days with 2% discount or within 30 days net from the date of invoice.
- 8.2 In the event that we indisputably delivered partly defective goods, our partner is nevertheless obligated to render payment for the non-defective part. In all other respects, the partner may only offset payment against counterclaims that are legally established or undisputed. The partner shall only be entitled to assert a retention right to the extent that its counterclaim is based on the same contractual relationship.
- 8.3 In case of delayed payments, we shall be entitled to charge default interest in the amount of the rate that we are debited by the bank for current account overdrafts, however at a minimum of eight percentage points above the applicable annual base rate of the European Central Bank.
- 8.4 If payments are in default and after having notified the partner in writing, we may discontinue fulfilment of our obligations until receipt of payments.
- 8.5 In the event of repeated default of payment, protested cheques or bills of exchange, or if well-founded doubt exists regarding the solvency of the partner, we shall be entitled to perform delivery only against cash in advance.
- 8.6 Bills of exchange and cheques shall only be accepted upon agreement as well as only on account of performance and subject to their discountability. Discount charges shall be calculated from the due date of the invoice amount. Liability for the timely presentation of the bill of exchange and cheques, and for protesting a bill of exchange shall be excluded.
- 8.7 If it becomes apparent after conclusion of the agreement that our claim for payment is jeopardised due to the lack of the partner's financial capacity, we may refuse performance and set a reasonable deadline for the partner, within which the partner has to pay step by step against delivery or provide security. If the partner refuses to comply with these demands or the deadline has expired without success, we shall be entitled to withdraw from the agreement and claim damages.
- 9. Delivery**
- 9.1 Unless otherwise agreed, we shall carry out delivery FCA Altheim in accordance with Incoterms 2010. The notification of readiness for dispatch or collection issued by us shall be decisive for the compliance with the delivery date or delivery period.
- 9.2 The delivery period/delivery date commences with the dispatch of our order confirmation and shall be extended accordingly, if the prerequisites set out in clause 15 (Force majeure) are present. This shall be conditional on the complete receipt and review of the technical documentation (e.g. drawing).
- 9.3 Partial deliveries are permissible to a reasonable extent and shall be invoiced separately.
- 9.4 Within a tolerance of 10 percent of the total order quantity, production-related excess or short deliveries shall be permissible. Depending on their volume, the total price shall change accordingly. In this respect, the order shall be deemed complied with.
- 10. Dispatch and passing of risk**
- 10.1 Goods notified as ready for dispatch shall be taken over immediately by the partner. Otherwise, we shall be entitled to dispatch the goods at our discretion or store them at the cost and risk of the partner.
- 10.2 Unless otherwise agreed, we shall choose the means and the route of transport.
- 10.3 Upon delivery to railway companies, the forwarding agent or carrier and/or commencement of storage, however, no later than upon leaving the works or warehouse, the risk shall pass to the partner, even if we have assumed the task of delivery.
- 11. Delays in delivery**
- 11.1 If we can foresee that delivery of goods is unable to be carried out within the delivery period, we shall immediately inform the partner in writing of the delay by stating the reasons, and if possible, the presumed time of delivery.
- 11.2 If delivery is delayed due to any of the circumstances set forth in clause 15 (Force majeure), or by acts or omissions of the partner, an appropriate extension of the delivery period shall be granted on account of such events.
- 11.3 The partner shall only be entitled to withdraw from the agreement, if we are responsible for non-compliance with the delivery date and the partner has granted us a reasonable period of grace without success.
- 12. Retention of title**
- 12.1 We shall reserve the right to retain ownership of the delivered goods until all claims arising from the business relationship with the partner have been satisfied.
- 12.2 The partner shall be entitled to sell these goods in the ordinary course of its business, as long as the partner fulfils its obligations resulting from our business relationship in good time. However, the partner may neither pledge the reserved goods nor assign them by way of security. It shall be obligated to safeguard our rights, if the reserved goods are resold on credit.
- 12.3 In the event that the partner breaches its contractual duties, particularly, if payments are delayed, we shall be entitled to withdrawal and to recovery of the goods, after the reasonably set period for performance granted to the partner has elapsed without success; the legal provisions with regard to the dispensability of setting time limits shall remain unaffected. The partner shall be obligated to hand over the respective goods.
- 12.4 We shall be entitled to withdraw from the agreement, if insolvency proceedings are initiated with regard to the assets of the partner.
- 12.5 The partner shall already here and now assign to us as security all claims and rights deriving from the sale or, where we have permitted the partner to do so, from the hiring out of goods, in which we are justified to title, and irrespective of whether the reserved goods were resold without or after processing. We hereby accept this assignment.
- 12.6 Any further treatment or processing of the reserved goods shall always be carried out by the partner on our behalf. If the reserved goods are processed or inseparably mixed with other objects not belonging to us, we shall acquire the joint ownership in the new objects in a ratio of the invoice value of the reserved goods (invoice amount plus value added tax) to the other processed or mixed objects at the time of the processing or mixing.
- 12.7 If our goods are combined or mixed inseparably with other movable objects to one single unit and the other object is deemed the main object, the partner shall transfer to us the joint ownership on a pro rata basis, to the extent that the partner is the owner of the main object. The partner shall safeguard the ownership or joint ownership created therefrom on our behalf. In all other respects, the same shall apply to the objects created by processing or combining and/or mixing as to the reserved goods.
- 12.8 In case of enforcement measures by third parties with regard to the reserved goods, the claims assigned to us or other securities, the partner shall immediately inform us by submitting all documents necessary for intervention. This shall also apply to interferences of any other nature.
- 12.9 If the value of the existing securities exceeds the total secured claims by more than 20 percent, we shall insofar be obligated to release securities of our choice at the request of the partner.
- 13. Material defects**
- 13.1 The quality of the goods shall be exclusively subject to the agreed technical delivery specifications. If we are to deliver pursuant to drawings, specifications, samples, etc. of our partner, it shall bear the risk as to the suitability for the intended purpose of use. The moment of the passing of risk shall be conclusive for the contractually agreed condition of the goods in accordance with clause 10.3.
- 13.2 We shall perform our deliveries in compliance with the prevailing applicable statutory regulations of the European Union and the Federal Republic of Germany as amended, e.g. the REACH Regulation (Regulation (EC) No. 1907/2006), the law concerning the taking back and environmentally friendly disposal of electrical and electronic devices (*ElektroG*) as national implementation of the Directive 2002/95/EC (RoHS), and the Directive 2002/96/EC (WEEE), and the law concerning end-of-life vehicles as national implementation of the EU Directive 2000/52/EC.
- 13.3 We shall inform the partner without delay of significant modifications of the goods, particularly due to the REACH Regulation, their delivery capability, possible use or quality, and coordinate suitable measures with the partner in individual cases.
- 13.4 We shall neither assume liability for material defects resulting from unsuitable or improper use, faulty assembly work and/or setting into operation by the partner or third parties, normal wear and tear, faulty or negligent treatment, nor for the results of improper modifications or repair works made by the partner or

- third parties without our consent. The same shall apply to defects that diminish the value or suitability of the goods only to a minor extent.
- 13.5 Material defect claims of the partner are subject to a twelve-month limitation period after delivery of the thing. This shall not apply insofar as the law prescribes longer periods, please refer to section 438 (1) no. 2 German Civil Code (BGB) (buildings and items used for buildings), section 438 (3) BGB (fraudulent concealment of a defect) and section 445b (1) BGB (right to recourse).
- 13.6 If acceptance of goods or an initial sample test was agreed, the notification of defects which could have been discovered by the partner upon careful acceptance or initial sample testing shall be excluded.
- 13.7 We shall be given the opportunity to locate the notified defect. Unless otherwise agreed in individual cases, the rejected goods shall be returned to us without delay; we shall assume the transportation costs, if the notification of defects is justified. If the partner fails to meet these obligations, or carries out modifications to already rejected goods without our consent, it shall lose its rights, if any, to claim compensation for defects.
- 13.8 The claims of the partner arising from defects shall be subject to the proper fulfilment of its legal inspection and complaint obligations. In the event of justified defect notification within the deadline, we shall either repair the rejected goods or deliver a faultless replacement.
- 13.9 If we fail to meet these obligations within a reasonable period of time, the partner may set a deadline for us in writing, during which we shall comply with our obligations. After fruitless expiry of this deadline, the partner may request a reduction of the price, withdraw from the agreement or carry out the necessary remedial work itself, or have it carried out by a third party at our cost and risk. Reimbursement of costs shall be excluded to the extent that expenditures increase due to transport of the goods to another destination after performance of our delivery, unless the same corresponds to the intended contractual use of the goods.
- 13.10 The partner's claim pursuant to section 439 (3) BGB to demand reimbursement of expenses for removing the defect and installing or affixing the improved or newly delivered goods, if the partner has installed the defective thing in a manner consistent with its nature and purpose into another thing upon transfer of risk or affixed it to another thing, shall be governed by the following provisions:
- Such costs for dismantling and installing are only deemed necessary,
- if the dismantling and installation and/or affixing involves products of the same kind,
 - if proof has been furnished to us by the partner through suitable evidence at least in text form,
 - and if the costs have been calculated on market-based conditions.
- Excluded within the context of supplementary performance pursuant to section 439 (3) BGB are,
- a claim by the partner for advance payment for dismantling and installation costs,
 - the setting off of reimbursement claims by the partner for dismantling and installation costs against our due and payable purchase price claims or any other payment claims without our express written consent,
 - claims of the partner, which exceed the necessary dismantling and installation costs, in particular costs for consequential damage due to defects such as loss of profit, costs for breakdowns or additional costs for replacement purchases.
- If the expenses asserted by the partner within the meaning of section 439 (3) BGB in the individual case are disproportionate, in particular in relation to the purchase price of the goods in a condition free of defects and taking into consideration the seriousness of the defect, we shall be entitled to refuse reimbursement of these expenses.
- 13.11 Recourse claims of the partner against us shall only exist pursuant to section 445a BGB insofar as the end customer of the partner is a consumer within the meaning of section 13 BGB.
- 14. Other claims, liability**
- 14.1 Unless otherwise specified in the following, additional and further-reaching claims of the partner against us shall be excluded. This shall apply in particular to claims for damages for breach of duties arising from the contractual obligation and from tortious acts. Therefore, we shall assume no liability for damage that has not been incurred in the delivered goods themselves. In no event shall we assume liability for lost profits or other monetary losses of the partner.
- 14.2 The foregoing limitations of liability shall not apply in cases of wilful intent, gross negligence of our legal representatives or executive officers, or for culpable breach of material contractual duties. In the event of culpable breach of material contractual duties, our liability shall be limited to the typical and reasonably foreseeable damage in accordance with the agreement – except in cases of wilful intent or gross negligence of our legal representatives or executive officers.
- 14.3 Furthermore, the limitation of liability shall not apply in cases where liability is mandatory pursuant to the German Product Liability Act for personal injury or damage to property of privately used objects caused by defects in the goods delivered. Likewise, it shall not apply to injury of life, body or health or in the absence of warranted qualities and features, if and to the extent that the very purpose of the respective warranty was intended to protect the partner against damage that has not been incurred in the delivered goods themselves.
- 14.4 To the extent that our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff members, legal representatives, and agents.
- 14.5 Statutory regulations with respect to the burden of proof shall remain unaffected thereof.
- 15. Force majeure**
- 15.1 Force majeure, labour disputes, unrest, failure to deliver on the part of our suppliers and any other unforeseeable, unavoidable and serious events shall release the contracting partners from their duty to perform for the duration of the disturbance and to the extent of their effect.
- 15.2 This shall also apply if the events occur at a time in which the contracting partner in question is in default, unless such partner has caused the delay with wilful intent or gross negligence.
- 15.3 The parties to the agreement shall be obligated, to the extent reasonable, to pass on the required information immediately, and to adapt their obligations in good faith to the changed circumstances.
- 16. Place of performance, place of jurisdiction and applicable law**
- 16.1 Unless otherwise specified in the order confirmation, place of performance shall be our registered place of business.
- 16.2 Place of jurisdiction for all legal disputes, also within the context of proceedings concerned with bills of exchange and cheques, shall be our registered place of business. We shall also be entitled to sue at the registered place of business of the partner. The proceedings shall be conducted in the German language.
- 16.3 The contractual relationship shall be governed exclusively by the law of the Federal Republic of Germany.
- 16.4 Application of the United Nations Convention of April 11, 1980 on contracts for the international sale of goods (CISG – "Vienna Convention") shall be excluded.
- 17. Severability**
- Should any individual provisions of this agreement be or become invalid, this shall not affect the validity of the remaining provisions in other respects. The invalid provision shall be replaced by a valid provision which comes closest to the legal and commercial purpose originally intended by the parties.
- 18. Written form, partial invalidity**
- Supplementary agreements to this agreement have not been concluded. Any amendments and/or supplements must be in writing to become effective and shall be signed by the parties to the agreement. This shall also apply to the waiver of the written form requirement.