

General Terms and Conditions of Business
Verpackungswerk HUCKSCHLAG GmbH & Co. KG
Hemsack 12, D-59174 Kamen
→ hereinafter called "HUCKSCHLAG" ←
As of 01.01.2006. Valid as last amended

Preamble

Sales and deliveries by HUCKSCHLAG shall take place only in accordance with the following Terms and Conditions, which shall be solely authoritative for the content of the contract. Provisions deviating from these Terms and Conditions, including in particular the buyer's terms and conditions of business, shall become effective only as a result of HUCKSCHLAG's written acknowledgement. Amendments or supplements to a contract, as well as collateral agreements shall be binding only if they have been acknowledged in writing by HUCKSCHLAG.

I. Terms and Conditions of Sale

1. Conclusion of a Contract

HUCKSCHLAG's offers shall be subject to change without notice. A contract shall be brought about only as a result of HUCKSCHLAG's written acknowledgement of the order. If the delivery is carried out without the buyer having received an order acknowledgement beforehand, a contract shall be deemed brought about when the delivery is taken receipt of under these Terms and Conditions.

2. Prices

The agreed prices are ex works, exclude packaging and are always subject to change without notice.

II. Terms of Delivery

1. Transportation

The goods shall be shipped on the buyer's account and at the buyer's risk, even if delivery carriage-paid has been agreed upon. Unless a specific agreement has been made, the transportation and the packaging shall be selected by HUCKSCHLAG at its best discretion and without liability for selecting the cheapest means of shipment. In any event, transportation insurance shall be taken out by the buyer.

2. Delayed Delivery

a) HUCKSCHLAG shall make utmost efforts to adhere to the agreed delivery dates. However, HUCKSCHLAG shall provide no warranty for this. The buyer shall not be entitled to derive damage claims of any kind, in particular claims to compensation for indirect loss, from any delay in delivery, except where HUCKSCHLAG is at fault for wrongful intent or gross negligence.

b) If HUCKSCHLAG is hindered in adhering to the delivery period as a result of unforeseen circumstances that lie beyond HUCKSCHLAG's sphere of influence and could not have been averted with the diligence of a prudent merchant (force majeure), the delivery date shall be appropriately extended by the duration and scope of such hindrances, unless performance has become definitively impossible. In particular, operational disruptions as a result of fire, water or similar circumstances, loss of production facilities, machinery, energy or transport facilities, strike, lockout etc., regardless of whether these circumstances occur at HUCKSCHLAG or at its presuppliers or suppliers, shall be deemed to be force majeure.

c) If the delivery date is extended, the buyer shall be entitled to rescind the contract insofar as it has set HUCKSCHLAG a reasonable grace period for performance.

d) If HUCKSCHLAG fails to meet a delivery date through its own fault, the buyer shall, in the event of default, only be entitled to a right of rescission, and only after having set a reasonable grace period.

3. Impossibility of Delivery

a) The buyer shall not be entitled to derive damage claims of any kind, in particular claims to compensation for indirect loss, from any failure to deliver, except where HUCKSCHLAG is at fault for wrongful intent or gross negligence.

b) In the event of definitive impossibility or in the event of inability to perform for the reasons specified above under II, 2.b), HUCKSCHLAG shall be released from its obligation to perform.

c) If HUCKSCHLAG is at fault for being unable to perform, the buyer shall, in the event of default, only be entitled to a right of rescission.

4. Defects

a) Defect-related complaints shall be lodged in writing with HUCKSCHLAG.

b) If the ordering party delivers templates, samples, specimens or similar submissions to HUCKSCHLAG, goods delivered by HUCKSCHLAG shall be deemed to be defect-free insofar as they correspond to these submissions. The same shall apply, if the ordering party has accepted templates, samples, specimens or similar submissions made by HUCKSCHLAG.

c) HUCKSCHLAG's warranty shall be limited to HUCKSCHLAG rectifying or replacing, at its own option, free of charge any delivery item defective at the time of the passage of risk. If rectification or replacement is not possible or is delayed beyond a reasonable period or fails for other reasons for which HUCKSCHLAG is at fault, the buyer may, at its option, rescind the contract or assert a price reduction.

d) Warranty claims of the buyer on the basis of defects shall be excluded, if the buyer failed to detect the defects within one week of delivery and lodge a complaint in writing without undue delay. In the case of hidden defects, the buyer must lodge a complaint in writing within one week of becoming aware thereof. After a period of twelve months from the time of the passage of risk has expired, claims based on hidden defects shall be wholly excluded.

e) Further liability, in particular for loss that has not ensued from the goods delivered, shall be excluded, except where HUCKSCHLAG is at fault for wrongful intent or gross negligence.

f) HUCKSCHLAG has taken out product liability insurance. Liability for defect-related consequential loss may be taken on only insofar as such loss is covered by this insurance. HUCKSCHLAG shall not take on any liability beyond the insurance cover.

5. Retention of Title

a) The goods delivered shall remain HUCKSCHLAG's property until all the buyer's liabilities arising from the business relationship with HUCKSCHLAG, including in particular any balance on an open credit account, have been fully paid.

b) As long as the buyer is not in arrears, the buyer shall be authorised, until this is revoked, to sell in the ordinary course of business the goods that are under retention of title. In case the goods under retention of title are sold, the buyer hereby assigns to HUCKSCHLAG in advance the claim, along with all ancillary rights, to which it is entitled against its customer from such sale. If the buyer's customer insists on a prohibition of assignment, the buyer shall promptly inform HUCKSCHLAG thereof.

c) In the event of processing with goods still owned by a third party, the seller shall acquire co-ownership of the new items. The scope of this co-ownership shall ensue from the ratio of the invoiced value of the goods delivered by the seller to the invoiced value of the other goods.

6. Moulds (Tools)

a) Unless otherwise agreed upon, the buyer shall bear the cost of producing the moulds (tools) used for manufacturing moulded parts. Ownership of the moulds (tools) shall pass to the buyer at the time of payment. In this respect, HUCKSCHLAG shall, instead of handing over the moulds (tools) to the buyer, be obliged to retain these.

b) HUCKSCHLAG undertakes to properly maintain and service the tools at its own expense. Costs incurred as a result of wear and tear or changes to the mould, as well as insurance costs shall be borne by the buyer. Huckschlag's duty to retain the mould shall expire 12 months after the last subdelivery from the mould has been carried out. After this period has expired, HUCKSCHLAG shall be entitled to return the mould, or have the mould scrapped, at the buyer's expense.

c) HUCKSCHLAG shall surrender the mould at the buyer's request. Exception: HUCKSCHLAG may, with due regard being given to the retention of title under II, Section 5 of these Terms and Conditions, assert a right of retention.

III. Payment Terms

1) Due Date

Payments shall be immediately due, net, when the buyer receives the goods or defaults on taking receipt of the goods. Tool costs and tool alteration costs shall be payable, net, immediately upon completion. Deviating payment terms must be in writing.

2) Cash Discount

If a cash discount is agreed upon, the allowance of a cash discount shall be conditional upon the payment of all invoices that have fallen due beforehand.

IV. General Provisions

1) Place of Performance

59174 Kamen / Westfalen is the place of performance for delivery and payment.

2) Choice of Law, Place of Jurisdiction

German law shall apply. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded. If the customer is a merchant, 59174 Kamen / Westfalen is the exclusive place of jurisdiction for all disputes in connection with this business relationship.

3) Severability Clause

If a provision in these Terms and Conditions is ineffective, the other provisions shall remain unaffected hereby. Such ineffective provision shall be deemed replaced with a provision that most closely reflects in a legally effective manner the spirit and purpose of the ineffective provision. The same shall apply to any omissions in these Terms and Conditions.