



General Terms and Conditions of Sale H.C. Carbon GmbH (HCC) Status: 01.01.2017

1. Scope

1.1. Our terms and conditions are exclusively valid for any present and future contracts and any other service provisions. Regulations to the contrary or deviation from our terms and conditions are not accepted unless agreed in writing with HCC.

1.2. Our terms and conditions will apply in all cases despite the purchaser applying contrary terms and conditions, even though we may supply with full knowledge of differing terms and conditions from the purchaser's side.

1.3. Our terms and conditions are only valid regarding incorporated businesses and established companies and not private individuals as construed by the terms of § 310/1 BGB (German Civil Code).

2. Offers

2.1. Offers of HCC are without engagement. Documents like graphs, illustrations, technical data, references to standards and statements of advertising media that correspond to our offer are no indication of condition or warranties unless they are explicitly worded as such.

2.2. Any agreements that are concluded between HCC and the customer in order to effect the contract must be confirmed in writing in order to be legally binding.

3. Prices

3.1. Unless otherwise stated in the order confirmation, our prices are understood to be on the basis of EXW H.C. Carbon GmbH or EXW Rednitzhembach inclusive of customary packing and legal value-added tax.

3.2. Only rebates or other discounts which have been agreed in a written form when placing the order, will be valid.

4. Prices and terms of payment

4.1. Unless otherwise stated in our order confirmation the purchase net price (strictly net) falls due 30 days after invoice date. To avoid delays in a credit of your account, your payment remittance should detail the relevant sales invoice- no, your customer- no and our sales order- no.

4.2. The deduction of discount requires a special written agreement and assumes the full clearing of all mature debts at time of deduction of discount.

4.3. Cheques and B/E are only accepted after concluding a written agreement and only because of completion accepted against refunding of b/e and discounting charges.

4.4. In the case of a delay in payment of the customer we are without prejudice for assertion of a further average authorised to invoice interest rates amounting to respective interest rates of a bank, at least interest rates amounting to 8 per cent points beyond the base rate.

4.5. If it gets clear after conclusion of a contract that our pecuniary claim is due to desiderative ability of meeting financial obligations we are entitled of § 321 of German Civil Code. We are then also entitled to claim every non timebarred outstanding amounts. Regarding delayed payment we are moreover entitled to demand the supplied goods after an adequate extension of time and to prohibit further processing and further selling of the supplied material. The customer is able to anticipate against these legal consequences in effecting payment or provide us with a security. Insolvency regulations are not affected by these regulations.

4.6. The customer is only entitled of rights of charging up if his counterclaims are legally determined, indisputable or accepted by HCC. Moreover the customer has the right of retention if his counterclaim results from the same contract.

5. Default of acceptance

5.1. Does the customer face default of acceptance the risk of accidental loss or deterioration of the material passes on to the customer by the time when he faced default of acceptance.

5.2. Regarding default of acceptance of the customer we are entitled to stock the material which was not accepted at the customer's risk and expense. At storage in our own stock we charge

from every beginning month, starting 30 days after readiness for dispatch 1% of the invoice amount as storage charge. Regarding foreign stocks we charge our original costs. Optionally we are after granting an adequate extension time entitled to withdraw from the contract or to claim for compensation.

5.3. Further claims against the customer are reserved.

6. Delivery time, default in delivery

6.1. The time of delivery starts when submitting our order confirmation to the customer but not before adduction of documents, data, approval, clearance or agreed deposit that have to be furnished by the customer. Exception of a nonfulfilled contract is reserved.

6.2. Unless not deviatingly agreed, delivery time or delivery period are kept as long as the material left either our plant in Rednitzhembach before expiring date or if the readiness for dispatch is communicated to the customer.

6.3. Delivery time prolongs adequately at industrial action, especially at strike and lock out, as well as at incidence of unforeseen impediments, which are beyond our control, as long as such impediments have demonstrably influence on completion or delivery of the product. This is also valid if those circumstances occur at our suppliers (e.g. at mines). We will inform the customer about such circumstances immediately. If execution of the contract is unacceptable for one of the parties involved it is possible to withdraw from the contract.

6.4. We are liable up to legal requirements, as long as the default in delivery is based upon a deliberately or grossly negligent violation of the contract justifiable by HCC; a default of our agencies or our auxiliary persons has to be assigned to HCC; as long as the default of delivery is not based upon a grossly negligent violation of the contract justifiable by HCC our liability for compensation is limited to the predictable, typically occurring damage.

6.5. We are also liable up to legal requirements, as long as the default of delivery justifiable by HCC is based upon the culpably violation of an essential contractual obligation; in this case the liability for compensation is limited to the predictable, typically occurring damage.

6.6. Further legal claims by the customer are reserved.

7. Execution of delivery, frame contracts

7.1. As long as not agreed otherwise the risk of accidental loss or deterioration of the material passes on to the customer at takeover of the material by a freight forwarder or carrier, at the latest at time of leaving Rednitzhembach premises. All our deliveries are covered by a transport insurance.

7.2. We are entitled to execute partial shipments to a reasonable extent.

7.3. Regarding frame contracts, that means contracts based on a fixed quantity, which should be delivered if necessary in partial deliveries in a fixed period of time we are entitled to produce or to instruct somebody to produce the whole quantity in one single production. Desired modifications by the customer can not be taken into account after placing the order unless this is agreed explicitly. Regarding frame contracts we already have the right of default of acceptance if the customer violates its acceptance duty regarding single partial deliveries. At release of partial deliveries § 377 HGB (German Commercial Code) for analysing and reworking duties of the customer is valid as well as figure 3.3. each delivery regarding price adjustment for itself.

8. Property and copyright

8.1. We reserve the property and copyrights on illustrations, samples, calculations, graphs and similar documents – also in electronic way. Before the customer passes such documents on to third persons he explicitly has to ask HCC for written approval.

8.2. As long as HCC delivers according to illustrations, models, samples or other documents submitted by the customer he is responsible that trade mark rights of third persons are not violated. Should third persons refer to trade mark rights and prohibit production and delivery of such material, HCC is entitled, without being obliged to check legal position, to stop any activity and is authorised to claim damages at default of the customer. Moreover, the customer is obliged to indemnify HCC immediately from claims of third parties.

9. Retention of title

9.1. We reserve the property in the goods until all invoices of the delivery contract are settled. At reactions of the customer that are contrary to the contract, especially regarding delayed payment, we are entitled to revoke the material. With the withdrawal of the material by HCC a cancellation of the contract is executed. After having revoked the material HCC is entitled to make use of the material, the revenue less adequate costs is to be deducted from the customers debts.

9.2. The customer is obliged to handle the material accurately; he is especially obliged to cover at his own costs adequate insurance to the replacement value against fire, water and theft damages.

9.3. At distraint or other interference of third persons the customer has to inform us immediately in written form so that we can bring suit according to § 771 ZPO. As long as the third person is not in a position to compensate costs of HCC of a judicial and extrajudicial claim according to § 771 ZPO the customer is liable for the loss that HCC faces.

9.4. The customer is entitled to sell the material in legal course of business but already at this point the customer has to make assignments which he faces in the resale to buyers or third persons in the amount of our outstanding money (=invoice amount), independent if the material was resold without or after being processed. The customer is still entitled to collect these receivables after assignation. Our authority of collecting these receivables is hereof unaffected. We commit ourselves that we do not collect receivables unless the customer discharges all his payment obligations from his revenues, does not delay payment, especially no existent application upon insolvency or composition proceedings or bankruptcy. Should this be the case we are entitled to know the assigned receivables and their debtors, the customer has to disclose all necessary data for collection and has to hand out the necessary documentation as well as he has to inform the debtors (third persons) about the assignments.

9.5. The processing of the material by the customer is always done for HCC. Is the material processed with other items that are not possessed by HCC we gain joint ownership on the new object in the proportion of the value of the material (total invoice amount) to the other processing items to the time of processing. For objects to be generated from processing the same as for conditionally supplied material is valid.

9.6. Is the material mixed inseparably with other materials that do not belong to HCC we gain joint ownership on the new object in proportion of the value of the merchandise (total invoice amount) to other mixed objects at time of mixing. If it results that the object of the customer is the main aspect of the mixed object it is said to be agreed that the customer transfers proportional ownership to HCC. The customer keeps the single or joint ownership for HCC. The customer also makes assignments which are in connection with premises against a third person for securing our claims against the customer.

9.7. We commit ourselves that we release the entitled securities insofar to the customer if the realisable value of our securities does not exceed the assignments that are to be secured by 10 %; the choice of released securities is at HCC.

10. Liability for faulty goods

10.1 If the customer wants to assert his claims to remedy of defects, he has to meet his due check-up and reprimand incumbencies previously.

10.2 If there is a short to the good, the customer is entitled to subsequent performance in form of removal of defects or delivery of a new good, free from defects. In case of removal of defects we are bound to bear all required expenditure for the purpose of removal of defects, particularly freight, transport, labour and material costs, as far as they do not increase as a result of delivering the goods to another place as the stipulated place of delivery. If the subsequent performance fails, the customer has the choice of/ between rescission or abatement.

10.3 We are liable according to the legal requirements, if the customer asserts claims for damages being based on intention or culpable negligence, as well as intention or culpable negligence of our representatives and vicarious agents. If we are not accused for deliberate contract violation, the liability on compensation is limited on the predictable, typically anticipating damage.

10.4 We are liable according to the legal requirements if we violate an essential contractual obligation culpably; in this case, the liability on compensation is limited on the predictable, typically anticipating damage.

10.5 If the customer is entitled to a claim of compensating the damage instead of the performance, our liability is also limited on compensation of the predictable, typically anticipating damage.

10.6 The liability concerning culpable harming of life, body or health remains unaffected; this also applies to the compulsory liability according to the Product Liability Act (Produkthaftungsgesetz).

10.7 If there is arranged nothing deviant protrusively, liability is excluded.

10.8 The statute of limitation for claims to remedy of defects is 12 months from transfer of perils.

11. Joint liability

11.1 An advanced liability on compensation as appointed in clause 10. is excluded, regardless of the origin of the lodged claim. This also applies to claims for damages from negligence on the date of contract, because of other breaches of duty or tortious claims for compensation of property damages in accordance with § 823 BGB (German Civil Code).

11.2 The restriction according to clause 11.1 also applies, as far as the customer claims for a performance of useless expenses instead of the compensation of a damage.

11.3 As far as the liability of compensation towards us is excluded or restricted, this also applies to the private liability of compensation of our white and blue collar workers, employees, representatives and vicarious agents.

12. Data processing and data storage

The customer accepts that we process and store data electronically on media concerning the transaction in goods, payment transaction as well as personal data of the customer.

13. Concluding provisions

13.1 It applies the Right of the Federal Republic of Germany. The provisions of the UN Law of Purchase do not apply.

13.2 Place of performance for all duties arising out of the contract is our plant in Rednitzhembach. Schwabach is the exclusive (place of) jurisdiction for all differences out of the contract.

13.3 The German version of this conditions of sale is decisive in case of doubt.

13.4 If there are parts of this contract with the customer including these conditions of sale which are or will become invalid, the validity of the other provisions is not affected. The completely or partly invalid arrangement should be replaced by an arrangement which comes closest to the industrial accomplishment of the invalid one. The same applies in the case of loopholes/gaps in the contract including these conditions of sale.

**H.C. Carbon GmbH
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