



General Terms and Conditions of Helmut Esselmann GmbH & Co.KG for the sale of brand-new and used objects of purchase Status November 2013

I. Conclusion of contract/Transfer of rights and obligations of the buyer

1) The following terms and conditions of sale shall apply exclusively; we do not recognise any terms and conditions of the buyer that conflict with or deviate from these unless we have expressly agreed to their validity in writing. The following terms and conditions of sale shall also apply if the seller carries out the delivery to the buyer without reservation in the knowledge of conditions of the buyer that conflict with or deviate from the seller's terms and conditions of sale.

2) All agreements made between the seller and the purchaser for the purpose of executing this contract are set out in writing in this contract. Alterations and amendments of the contract as well as ancillary agreements must be confirmed in writing by the seller in order to be effective. The waiver of this formal requirement must also be in writing.

3) The buyer is bound to the order for four weeks, beginning with the day of receipt. The purchase contract is concluded when the seller confirms acceptance of the order of the specified object of purchase in writing within the respective periods stated or executes the delivery. However, the seller shall be obliged to inform the purchaser without delay if he does not accept the order.

4) Transfers of rights and obligations of the buyer under the purchase contract require the written consent of the seller.

5) The seller reserves the property rights and copyrights to illustrations, drawings, calculations and other documents. This shall also apply to such written documents

which are designated as confidential. Any disclosure to third parties by the purchaser shall require the express written consent of the seller.

II. Leasing

Insofar as a leasing company is to enter into the purchase contract or take over the purchase contract in order to finance the purchase price, the leasing company's offer to enter into the contract or take over the contract without deviation from the conditions must be submitted at the latest 4 weeks before the agreed delivery date when a purchase contract is concluded. Helmut Esselmann GmbH & Co. KG shall be at liberty to reject the offer. If a leasing company has entered into the purchase contract in accordance with the preceding paragraph, the buyer shall notify the leasing company immediately of the delivery or partial delivery of the leased item.

If payment of the purchase price is delayed due to the involvement of a leasing company, the buyer shall be liable for all damages caused by delay and default.

III. Prices

1) Prices are quoted in EURO and, unless otherwise stated in the order confirmation, are ex works excluding packaging (freight and any insurance), which will be invoiced separately.

2) Statutory value added tax is not included in the seller's prices; it shall be shown separately in the invoice at the statutory rate on the date of invoicing.

3) The deduction of a discount requires a special written agreement.

4) Unless otherwise stated in the order confirmation, the purchase price for brand-new objects of purchase is payable net (without deduction) within 8 days of the invoice date. In the case of used objects of purchase, the purchase price shall be due for payment upon handover of the object of purchase and handing over or sending of the invoice. The statutory regulations concerning the consequences of default in payment shall apply.

5) The purchaser shall only be entitled to the right of set-off if his counterclaims have been legally established, are undisputed or have been recognised by the seller. In addition, the customer is authorised to exercise the right of retention insofar as his counterclaim is based on the same contractual relationship.

IV. Delivery and delay in delivery

1) Delivery dates and delivery periods, which can only be agreed upon non-bindingly, must be stated in writing. Delivery periods shall commence upon conclusion of the contract. The start of the delivery period stated by the seller for brand-new objects of purchase presupposes the clarification of all technical questions. Compliance with the seller's delivery obligation further presupposes the timely and proper fulfilment of the purchaser's obligation.

2) In the case of brand-new objects of purchase, the buyer may request the seller to deliver six weeks after a non-binding delivery date or a non-binding delivery period has been exceeded; in the case of used objects of purchase, the buyer may request the seller to deliver within two weeks after a non-binding



delivery date or a non-binding delivery period has been exceeded. The seller shall be in default upon receipt of the request. If the buyer is entitled to compensation for damage caused by delay, this shall be limited to a maximum of 1.5% of the agreed purchase price in the event of slight negligence on the part of the seller. If, in addition, the buyer wishes to withdraw from the contract and/or claim damages in lieu of performance, he must set the seller a reasonable deadline for delivery after expiry of the above non-binding delivery period or exceeding of the non-binding delivery date in accordance with sentence 1. If the buyer has a claim for damages in lieu of performance, the claim shall be limited to a maximum of 5% of the agreed purchase price in the event of slight negligence. If the buyer is a legal entity under public law, a special fund under public law or an entrepreneur who is acting in the exercise of his commercial or independent professional activities when concluding the contract, claims for damages in case of slight negligence are excluded. If, while the seller is in default, delivery becomes impossible by chance, the seller shall be liable with the limitations of liability agreed above. The seller shall not be liable if the damage would also have occurred if the delivery had been made on time.

3) Force majeure or disruptions of operation occurring at the seller's or its suppliers' premises which temporarily prevent the seller, through no fault of his own, from delivering the object of purchase on the agreed date or within the agreed period shall change the dates and periods specified in clauses 1 to 3 of this section by the duration of the disruptions of operation caused by these circumstances. If such disruptions lead to a delay in performance of more than four months, the buyer may withdraw from the contract. Other rights of withdrawal remain unaffected.

4) In the case of brand-new objects of purchase, the seller reserves the right to make changes to the design or shape, deviations in colour and changes to the scope of delivery during the delivery period, provided that the changes and deviations are reasonable for the buyer,

taking into account the interests of the seller. Insofar as the seller uses signs or numbers to designate the order or the ordered object of purchase, no rights can be derived from this alone.

V. Acceptance

1) The buyer is obliged to inspect and approve the object of purchase within 14 days of receipt of the notice of availability. In the event of non-acceptance, the seller may exercise his statutory rights.

2) If the seller claims damages, these shall amount to a flat rate of 15% of the purchase price. The compensation shall be higher if the seller proves a higher damage.

VI. Reservation of proprietary rights

1) The object of purchase shall remain the property of the seller until settlement of the claim to which the seller is entitled on the basis of the purchase contract. If the buyer is a legal entity under public law, a special fund under public law or an entrepreneur who is acting in the exercise of his commercial or self-employed professional activity when concluding the contract, the reservation of title shall also remain in force for claims of the seller against the buyer from the current business relationship until settlement of the claim to which the seller is entitled in connection with the purchase. At the buyer's request, the seller is obliged to waive the reservation of title if the buyer has fulfilled all claims in connection with the object of purchase in an incontestable manner and adequate security exists for the remaining claims from the current business relationship. For the duration of the reservation of title, the seller shall have the right to possession of the vehicle registration document / registration certificate part II.

2) In the case of the sale of used objects of purchase, the seller may withdraw from the purchase contract in the event of delay of payment by the buyer. The buyer may neither dispose of the object of purchase nor contractually grant use to third parties.

3) In the case of the purchase of brand-new objects of purchase, the following shall apply in addition:

a) The treatment or processing of the goods delivered by the seller shall be made for the seller as manufacturer within the meaning of § 950 BGB (German Civil Code) without obligating the seller. The goods resulting from treatment or processing shall also be deemed to be goods subject to reservation of title within the meaning of these terms and conditions. If the seller's goods are mixed or processed with other goods not belonging to him, the seller shall be entitled to co-ownership of the item created by mixing or processing in proportion to the sum of the invoice values of the seller and the third-party goods used. The new item is not to be regarded as the main item within the meaning of Paragraph 947 Section (2) BGB.

b) For the duration of the reservation of proprietary rights, the buyer is entitled to possession and use of the object of purchase as long as he fulfils his obligations arising from the reservation of title in accordance with the following provisions of this section and is not in default of payment. If the buyer defaults on payment, the seller may withdraw from the purchase contract. If, in addition, the seller is entitled to compensatory damages instead of performance and if the seller takes back the object of purchase, the seller and the buyer agree that the seller shall remunerate the usual sales value of the object of purchase at the time of taking it back. At the request of the buyer, which can only be expressed immediately after the object of purchase has been taken back, a publicly appointed and sworn expert will determine the normal sales value of the object of purchase at the seller's discretion. The buyer shall bear all costs of taking back and recycling the object of purchase. The realisation costs shall amount to 8 % of the normal sales value without proof. They shall be set higher or lower if the seller proves higher costs or the buyer proves lower costs.

c) The buyer may only sell the seller's property, including the goods resulting from mixing, treatment or processing, in



the ordinary course of business under his normal terms and conditions. The buyer shall only be entitled to resell the goods if he ensures that the claims arising therefrom, including all ancillary rights, are transferred to the seller in the amount of the value of the goods subject to reservation of title. The buyer shall not be entitled to dispose of the goods subject to reservation of title in any other way, including their pledging and transfer by way of security, or to dispose of the claims which he has assigned or transferred to the seller in any other way.

If the goods subject to reservation of title are sold by the buyer, alone or together with goods not belonging to the seller, also within the framework of contracts for work and services and contracts for work and materials, the buyer hereby assigns to the seller the claims arising from the resale in the amount of the value of the goods subject to reservation of title with all ancillary rights and with priority over the rest. To the same extent, the buyer hereby assigns to the seller any claims against third parties to which he is entitled on any other legal grounds in connection with the goods subject to reservation of title. If goods subject to reservation of title which are co-owned by the seller are resold, the buyer hereby assigns to the seller his claim from the resale in the amount corresponding to the seller's equity value in the co-ownership. The seller accepts the aforementioned assignments. The value of the goods subject to reservation of title in this sense is the seller's invoice value plus a security surcharge of 20 %, which, however, is not taken into account insofar as third party rights oppose it. The assignment of claim also extends to a balance claim.

d) Insofar as agreed upon conclusion of contract, the buyer shall immediately take out property insurance with an appropriate deductible for the duration of the reservation of proprietary rights with the proviso that the seller is entitled to the rights from the insurance contract. If the buyer fails to comply with this obligation,

the seller may take out the property insurance himself at the buyer's expense, disburse the premium contributions and collect the parts of the claim arising from the purchase contract. The benefits from the property insurance, unless otherwise agreed, shall be used in full for the reinstatement of the object of purchase. If, in the event of severe damage, the seller waives repair, the insurance benefits shall be used to repay the purchase price, the prices for ancillary services and for costs advanced by the seller.

e) The buyer shall be obliged to keep the object of purchase in proper condition for the duration of the reservation of proprietary rights, to have all maintenance work and necessary repairs provided for by the seller carried out without delay - apart from emergencies - by the seller or by a specialist workshop recognised by the seller for the servicing of the object of purchase.

f) The seller authorises the buyer, subject to revocation, to collect the claim from the resale. The seller shall not make use of his own authority to collect as long as the buyer also meets his payment obligations towards third parties. At the seller's request, the buyer shall name the debtors of the assigned claims and notify them of the assignment. The seller is hereby authorised to notify the debtors of the assignment himself.

g) In the event of compulsory enforcement measures by third parties against the goods subject to reservation of title or the assigned claims, the buyer shall expressly point out the reservation of title and inform the seller without delay, handing over the documents necessary for objection. With cessation of payments, application for or opening of insolvency proceedings or judicial or extrajudicial composition proceedings, the rights to resell for utilization or recycling and the authorisation to collect the assigned claims shall expire; in the event of a protest of a cheque or a bill of exchange, the authorisation to collect shall also expire.

VII Material deficiencies

1) If the buyer is a legal entity under public law, a special fund under public law or an entrepreneur who is acting in the exercise of his commercial or independent professional activity when concluding the contract, he must inspect the delivery immediately after receipt and notify the seller in writing of any defects or incompleteness as well as the possible absence of guaranteed features within 8 days at the latest. After this period, complaints which were recognisable upon careful inspection can no longer be asserted.

2) Claims of the buyer due to material defects on brand-new objects of purchase shall become statute-barred in accordance with the statutory provisions in two years, in the case of used objects of purchase in one year from delivery of the object of purchase to the customer. If the buyer is a legal entity under public law, a special fund under public law or an entrepreneur who is acting in the exercise of his commercial or independent professional activity when concluding the contract, a limitation period of one year shall apply for brand-new objects of purchase; in the case of used objects of purchase the sale shall be made to the exclusion of any warranty. In the event of fraudulent concealment of defects or the assumption of a guarantee for the quality, further claims shall remain unaffected.

Parts subject to natural wear and tear as well as glass are excluded from the warranty. Installations and conversions by third parties after approval and acceptance as well as consequential damage resulting from such installations and conversions by third parties are excluded from the warranty. We do not provide any warranty for axles, tyres, assemblies or other deliverables that are indicative of a third-party manufacturer, but hereby assign our claims against the third-party manufacturer to the buyer. The buyer hereby declares acceptance.

3) The following applies to the handling of a remedy of defects:



- a) The buyer may assert claims for the remedy of defects with the seller. In the case of verbal notifications of claims, the buyer shall be provided with a written confirmation of receipt of the notification.
- b) In the event of a warranty claim, the buyer shall, at the seller's discretion, make the defective parts available for repair in the seller's supplier company or to the technician sent by the seller. If a technician is sent, the buyer shall bear the travel costs incurred.
- c) Replaced parts become the property of the seller.
- d) For the parts installed to remedy the defect, the buyer may assert claims for material deficiencies based on the purchase contract until the expiry of the limitation period of the object of purchase.

4) Claims for a remedy of defects shall not be affected by change of ownership of the object of purchase.

VIII. Liability

1) If the seller is liable under the statutory provisions in accordance with these terms and conditions for damage caused by slight negligence, the seller's liability shall be limited:
Liability shall only exist in the event of a breach of material contractual obligations, the fulfilment of which is a prerequisite for the proper performance of the contract and compliance with which the contractual partner may regularly rely on, and shall be limited to the typical damage foreseeable at the time of conclusion of the contract. This limitation shall not apply in the event of injury to life, limb or health. Insofar as the damage is covered by an insurance policy taken out by the buyer for the relevant case of damage (with the exception of fixed sum insurance), the seller shall only be liable for any associated disadvantages of the buyer, for example higher insurance premiums or interest disadvantages until the settlement of the claim by the insurance company.
The same applies to damage caused by a defect in the object of purchase.

2) Irrespective of any fault on the part of the seller, any liability of the seller in the event of fraudulent concealment of the defect, from the assumption of a guarantee or a procurement risk and under the Product Liability Act shall remain unaffected.

3) Liability due to delay in delivery is conclusively regulated in section III.

4) The personal liability of the legal representatives, vicarious agents and employees of the seller for damage caused by them through slight negligence is excluded.

IX. Place of performance, place of jurisdiction and applicable law

1) The place of jurisdiction for all present and future claims arising from the business relationship with merchants, including claims arising from bills of exchange and cheques, shall be Hamm/Westphalia.

2) The same place of jurisdiction shall apply if the buyer does not have a general place of jurisdiction in Germany, moves his place of residence or habitual residence out of Germany after conclusion of the contract or if his place of residence or habitual residence is not known at the time of filing the action.

3) The relations between the contracting parties shall be governed exclusively by the law applicable in the Federal Republic of Germany. The uniform laws on the international purchase of movable property or goods and on the conclusion of such contracts shall not apply.

4) Should any of the above provisions or parts thereof be or become invalid or should a loophole be found in a contract concluded on the basis of these terms and conditions of delivery and payment, this shall not lead to the invalidity of the remaining provisions or parts thereof; rather, a provision shall apply which the contracting parties intended or would have intended according to the sense and purpose of the contract if they had considered this point.