

## **TERMS AND CONDITIONS OF SALE AND DELIVERY**

### **for foreign transactions of Hueck GmbH & Co KG Revised version 2016**

The following terms and conditions apply to commercial transactions with those of our customers who are domiciled abroad.

#### **1. Choice of law/ General**

**1.1** The legal relationships arising on the basis of offers/ quotations and contract conclusions for our deliveries or service provisions as well as all claims arising out of or in connection with offers/ quotations and contracts for delivery are governed by the **United Nations Convention on Contracts for the International Sale of Goods (UN Sales Law)**, if and to the extent that the regulations contained therein are not supplemented, amended or modified by the provisions set out hereinafter.

**1.2** This legal framework also applies to all future business relationships.

**1.3** We hereby object to any counter confirmation by the customer making reference to such customer's own terms and conditions of business. This also applies in the case that the customer requires a certain form to be observed for such an objection.

**1.4** Terms and conditions that deviate from these Terms and Conditions of Sale and Delivery are only valid if they are confirmed by us in writing.

#### **2. Use of our products, application examples, specialist-planning services**

**2.1** HUECK system profiles and the corresponding accessories were developed for applications in professional metal construction. Our products are destined for processing by specialist metal construction companies, specialist window manufacturing companies and the like which are familiar with the recognized state of the art standards especially in the field of metal, door, window, separation wall and façade construction, which have knowledge of all applicable DIN standards and guidelines issued by guilds and professional associations.

**2.2** All general documents issued by HUECK dealing with the combination, assembly, array and processing of our products as well as reports on combinations and installations already implemented only constitute application proposals which do not contain any binding technical conclusion or statement as regards any specific cases of application. The customer, when using such documents, is obliged to carefully consider himself from time to time and for each individual case whether the proposals are suitable and appropriate in each and every respect for his specific application because it is impossible to cover in such documents the multitude of installation and strain situations occurring in practice. In case of doubt, the customer is obliged to require our technical support for his specific application.

**2.3** If the customer requires binding information in particular as regards the installation of the components or structural engineering problems such as statics, fixation, heat insulation, moisture guard, fire protection, noise insulation etc. the customer must engage professional consultancy firms, specialist planning firms or experts. Such specialist planning and services are not included in our offer nor are they part of the sales contract concluded with us unless we have explicitly agreed with the customer to that effect in writing.

### **3. Contract conclusion, proper delivery by sub-suppliers**

**3.1.** Our offers/ quotations are binding unless they are explicitly designated as made without engagement and subject to change.

We reserve the right to make technical changes to our products within reasonable limits and to adjust our products to any subsequently applicable standards.

**3.2.** The contract is concluded subject to the condition that we receive timely and correct delivery from our own suppliers and sub-suppliers. This only applies in the case that the non-delivery is not attributable to us. Non-delivery is deemed not attributable to us especially in the case that an appropriate congruent covering transaction is concluded.

### **4. Pricing, costs of transport and packaging, partial delivery**

**4.1.** The prices indicated in our offers/ quotations are in EUROS unless explicitly stated otherwise. In case the period between contract conclusion and delivery date exceeds three months, we reserve the right to adjust the agreed upon prices in the event of an unforeseen increase in the prices for primary material or wages. If the customer does not agree to the price adjustment, both parties will be entitled to withdraw from the contract.

**4.2** Prices confirmed for an order will in no case be binding for any repeat orders or follow-up orders for parts of the same kind.

**4.3** The minimum order value is € 50.00.

**4.4** The prices are exclusive of insurance, transport, transport packaging and value-added tax. We deliver carriage paid if the order value (net, exclusive of VAT and separately itemized ancillary remuneration) is EUR 1,500.00 at least. If the order value is less, the costs of transport are at the customer's expense.

**4.5** We do not charge the costs of one-way packaging; we do not accept return of such one-way packaging, unless we are obliged to accept return according to the provisions of the "Verpackungsverordnung" (German Packaging Rules).

Reusable transport packaging such as steel baskets and steel frames are charged at replacement cost. If the customer returns such packaging in reusable condition freight paid, the customer will be credited for the amount charged.

**4.4** We are entitled to make partial deliveries within reasonable limits without prior agreement with the customer.

## **5. Terms of payment**

**5.1.** Unless otherwise agreed, our invoices are due and payable within 30 days without deduction.

**5.2.** The customer is obliged under the contract to pay the purchase price within 30 days from receipt of the goods. After expiry of such period, the customer is deemed to be in default of payment (“Verzug”).

We are entitled, notwithstanding any payment reference or terms and conditions of the customer to the contrary, to set off any payment received against the customer’s older debts first. If costs and interest have already accrued, we will be entitled to set off any payment received against accrued costs first, then against accrued interest and lastly against the principal claim.

**5.3.** Payment is only deemed made if and as soon as we can dispose of the amount in question. If payment is made by paper documents for which we reserve the right from time to time to accept or reject them, payment is only deemed made if the paper document has been cashed. The costs and expenses incurred in connection therewith are borne by the customer.

**5.4.** The customer is obliged to pay interest on any monetary debt during the time of default at a rate of 8 percentage points above the base interest rate according to § 247 BGB (German Civil Code). We explicitly reserve the right to assert claims for compensation of any further damage incurred as a result of the default which however needs to be specifically evidenced.

**5.5.** If the customer fails to comply with his payment obligations including but not limited to the failure to cash a cheque or if the customer stops payments at all or if, after contract conclusion, we become aware of any other circumstances which render the customer’s creditworthiness questionable to an extent that is relevant for the business relationship, we will be entitled to accelerate maturity of all remaining outstanding debts of the customer, even if we have accepted cheques or bills. In this case, we will also be entitled to claim prepayment or the provision of security/ collateral.

**5.6** The customer is only entitled to assert retention rights if the customer’s counter-claim is based on the same legal relationship.

## **6. Delivery times, delay in delivery, proper delivery by sub-suppliers**

**6.1.** Delivery times and dates need to be agreed upon at least in text form (“Textform” in terms of German law). Delivery times run from the day on which the parties agree upon the delivery time or date. The delivery times will not start to run before all details of the order execution have been clarified in full. If delivery is agreed to be made on the basis of the customer’s planning documents, the delivery times will not start to run before the complete planning documents have been handed over.

- 6.2.** Compliance with the delivery times/ dates requires fulfilment of the contractual duties by the customer.
- 6.3.** We are not responsible and cannot be held liable for any delay in delivery or service provision that is due to force majeure or other events which essentially impede or hinder delivery or render delivery impossible (this includes for instance strike, lock-out, official orders by authorities etc.) – even if they occur with our own suppliers, sub-suppliers or their suppliers and even if the delivery times or dates have been bindingly agreed between us and the customer. In this case, we are entitled to postpone delivery or service provision by the duration of the hindrance plus an adequate start-up time or to withdraw from the contract, in whole or in part, with regard such part of the contract as has not yet been fulfilled at that time.
- 6.4.** If the duration of the hindrance should exceed 2 calendar months, the customer will be entitled, after grant of a reasonable grace period, to withdraw from the contract with regard to such part of the contract as has not yet been fulfilled at that time. If the delivery time is extended or if we are released from our obligation to deliver, the customer will not be entitled to assert claims for damages based on this.
- 6.5.** We are only entitled to rely on the circumstances specified in sec. 6.3 and 6.4 if we have informed the customer of the occurrence of such circumstances without undue delay (“unverzüglich”).
- 6.6.** If we fail to comply with a firmly agreed delivery date, the customer will only be entitled to assert claims for damages or withdraw from the contract after an adequate grace period to be granted by him has expired without result. If, in this case, the customer claims compensation of damage, we will be liable without limitation with respect to the customer’s claims for compensation of damage, if any, incurred as a result of a covering purchase undertaken by him. Further damage, if any, is only eligible for compensation up to the amount of the order. This restriction does not apply to fixed date transactions (“Fixgeschäft” in terms of German law) which are explicitly agreed and designated as such as well as in any case of intentional or grossly negligent conduct by our executive employees.
- 6.7.** In the case of non-delivery by our own suppliers or sub-suppliers that is due to circumstances which are not attributable to us, both we and the customer are entitled to withdraw from the contract.
- 6.8.** If the customer is in default of acceptance of the goods to be delivered, he will be liable to pay flat-rate compensation in the amount of 3% of the value of the goods with regard to which the customer is in default of acceptance but in no case more than 10% of the value of the overall order. The customer is free to prove that Hueck has incurred less damage only and, vice versa, Hueck is free to claim compensation of any specified higher damage which however needs to be evidenced.

**6.9** Sec. 6.8 applies *mutatis mutandis* in the case that the customer fails to undertake any contributory or cooperative acts which he is obliged to perform. This pertains in particular but is not limited to the customer's cooperation regarding the opening of letters of credit or concerning measures relating to the import or export of goods or technical issues.

## **7. Delivery quantities, contracts for call-off delivery**

**7.1** Systems profiles are delivered in manufactured lengths of approx. 6,500 mm. Any excess delivery resulting therefrom by up to 10% or short delivery by up to 5% of the ordered quantity or call-off quantity is deemed to constitute proper fulfilment of the contract, which is usual practice in this trade.

Systems profiles and assembly groups are delivered in manufactured lengths of approx. 6,500 mm. If the customer orders product series accessories in quantities that deviate from the packing units indicated in the price lists, we will confirm and deliver as if the next bigger packing unit was ordered.

**7.2** In the case of contracts for continuous delivery upon call, we are entitled to manufacture the total quantity ordered at any time during the contract term according to our production planning and scheduling unless the parties have explicitly agreed otherwise. Subsequent changes of the ordered goods are no longer possible after the total quantity has been manufactured.

**7.3** The customer is obliged under the contract to portion and schedule the ordered quantity and accept delivery thereof during the contract term. If the ordered quantity has not been accepted during the contract term, we will be entitled, without prejudice to our further statutory rights and claims, to demand acceptance of delivery and payment of the entire remaining quantity. Upon expiry of the contract term, the customer is deemed to be in default ("Verzug") of acceptance of the unscheduled portion of the ordered quantity that has not been called off.

**7.4** If no contract term or term for acceptance of delivery has been agreed upon, in the case that the customer has failed to make a call-off within a usual call-off period, we will be entitled to fix a time limit for further call-off. After such time limit has expired without result, we will be entitled, without prejudice to our further statutory rights and claims, to demand acceptance of delivery and payment of the entire remaining quantity.

**7.5** In the case of call-off contracts covering a period of more than 3 months, adequate price adjustment is deemed agreed upon in case unforeseeable major changes in costs or quantities occur during the term of the call-off order. This applies but is not limited to changes in the market price for aluminium. The agreed prices cannot be adjusted for other reasons; this applies in particular in the case that a lower-price offer from a competitor is available.

## **8. Passing of risk, formal approval of the goods**

- 8.1.** Our deliveries are made ex works (EXW INCOTERMS 2010) Lüdenscheid. The risk passes to the customer as soon as the delivery has been handed over to the person carrying out the transport or has left our warehouse for being shipped. This also applies if we have agreed to pay the costs of the transport. If dispatch becomes impossible with no fault on our part, the risk passes to the customer upon notice of readiness of the goods for dispatch.

We do not take out a transport insurance policy.

We choose the mode of dispatch in our sole discretion unless otherwise stipulated by individual agreement between the parties.

If the goods are damaged during transport, a legally binding confirmation of breakage needs to be issued by the forwarder resp. the Bundesbahn (German Federal Railways) immediately after receipt of the delivery.

- 8.2.** If the parties have agreed that the goods are to be inspected with regard to special parameters or under special conditions or that the goods are to be formally approved, the inspection or formal approval will take place in our works from where delivery is made. All costs of formal approval, travelling and accommodation expenses of the customer are borne by himself. If the customer renounces any agreed upon formal approval, the goods are deemed formally approved upon the passing of risk.

## **9. Non-compliant goods, warranty, return of goods**

- 9.1.** We give warranty for the goods delivered by us in accordance with the provisions set out hereinafter which exhaustively stipulate the applicable warranty provisions and do not constitute guarantees in terms of law. In the case of trading goods/ goods for resale, manufacturer's guarantees, if any, remain unaffected by these provisions.

- 9.2.** The warranty period is 12 months. It runs from the passing of risk.

- 9.3** If our technical information sheets/ bulletins and installation or assembly instructions are not observed or if changes are made to the products, both warranty and liability for defects will lapse. The same applies in the case of defects of final products which were manufactured by the customer using our systems profiles provided that construction parts, metal fittings and accessory parts from third-party manufacturers were used for the production.

These restrictions do not apply if the customer proves that the defect complained about is not due to the said circumstances.

- 9.3.** The customer is obliged to notify us in text form ("Textform" in terms of German law) of any obvious defect or non-compliance of the goods with the contractual requirements without undue delay ("unverzüglich") but in no case later than within eight calendar days from receipt of the goods delivered, precisely specifying the defect or non-compliance in question. Any defect or non-compliance with the contractual requirements which, even in the case of careful inspec-

tion, cannot be detected within this period, must be reported to us in text form (“Textform” in terms of German law) without undue delay (“unverzüglich”) after detection whereby such defect or non-compliance needs to be specified precisely. If this provision is not complied with, the goods are deemed approved.

The full burden of proof regarding all conditions of the claims asserted lies with the customer, including but not limited to conditions such as the defect or non-compliance of the goods as such, the time of its detection and the timeliness of the notice of defect or non-compliance.

- 9.5.** If the goods are not compliant with the contractual requirements, we may provide subsequent performance (“Nacherfüllung”) at our choice either by way of subsequent remedy (“Nachbesserung”) or by way of substitute delivery (“Ersatzlieferung”).
- 9.6.** If the subsequent performance (“Nacherfüllung”) fails after grant of a reasonable grace period (“Nachfristsetzung”) by the customer, the customer will be entitled at his choice either to claim reduction of the price (“Minderung” in terms of German law) or to withdraw of the contract leading to mutual restitution by the parties of the things already received under the contract (“Rücktritt” in terms of German law). In the case of a minor defect or non-compliance with the contractual requirements the customer is not entitled to withdraw from the contract.
- 9.7** If, after subsequent performance (“Nacherfüllung”) has failed, the customer chooses to withdraw from the contract (“Rücktritt”) for non-compliance with the contractual requirements, he will not be entitled to any additional claim for damages based on this defect.

If, after subsequent performance (“Nacherfüllung”) has failed, the customer chooses compensation of damage, the goods will stay with the customer if this is reasonably acceptable for him. The amount of damages is limited to the balance between the purchase price and the value of the defective goods. This does not apply if the defect or non-compliance with the contractual requirements is due to any fraudulent conduct on our part.

- 9.8** In default of any explicit agreement to the contrary, the question of whether or not the systems profiles, construction parts, metal fittings and accessories to be delivered are compliant with the contractually agreed quality is to be answered solely on the basis of our product specifications and – if available – the acceptance drawing signed by the customer as a sign of approval and – if available – the sample presented to the customer for approval. The sample presented to the customer for approval is only intended to confirm the acceptance drawing; the presentation of the sample does not constitute a quality specification. Public statements, promotions or advertising as well as proposals for applications contained in our advertising documents do not constitute an additional quality description of the goods in terms of the contract concluded.
- 9.9.** If, for instance when designing profiles, we manufacture on the basis of specifications provided by the customer, any liability for the fitness or suitability of the product for the intended use of our product, its proper construction or compliance with safety regulations and construction regulations as well as for the fitness or suitability of the material or substances used is excluded.

- 9.10.** Only our direct customer is entitled to warranty claims against us; the customer is not allowed to assign such warranty claims.
- 9.11.** HUECK established a quality management system that is certified according to DIN-EN ISO 9001. All products are continuously controlled and inspected during the manufacturing process in accordance with our QM manual. The customer is entitled to request information regarding the mode and scope of the production-accompanying quality controls. Any quality control measures going beyond those provided for by our QM manual need to be separately agreed upon in writing between the customer and us whereby the control parameters and control methods to be applied need to be specified in detail.
- 9.12.** Our quality management system does not release the customer from his obligation to properly inspect any incoming goods.
- 9.13.** Any return of goods that is not due to a defect of the goods will not be accepted by us unless we have made a specific individual agreement to that effect with the customer beforehand.

#### **10. Use of third-party products, customer's duty to inform**

- 10.1.** The customer is only allowed to use in connection with the products manufactured by him HUECK product series designations or the name HUECK or protected trademarks or other signs of HUECK vis-à-vis other parties involved in the construction and/or in the customer's advertising if exclusively HUECK series profiles, construction parts, metal fittings and accessory parts were used for the production.
- 10.2.** Moreover, the customer is only allowed to adopt statements and information from our selling documents for his own products if he exclusively used HUECK series profiles, construction parts, metal fittings and accessories for their production. In the event that the customer manufactures products by using construction parts, metal fittings or accessory parts from third-party manufacturers, HUECK does not accept any responsibility or liability for that such products comply with the technical statements and information provided by HUECK.

This does not apply if and to the extent that the customer demonstrates that the non-compliance with technical statements or information is not due to the use of such third-party products.

- 10.3.** If the customer uses construction parts, metal fittings or accessory parts other than those from the HUECK supply range, he is contractually obliged to explicitly inform any architects, specialist planners, site/ construction managers, initial suppliers or service providers and builders/ building owners involved in the project about the composition of the customer's products before the project is implemented.

## **11. Limitation of liability**

- 11.1.** We are only liable for damages based on a defect or non-compliance of the goods with the contractual requirements if such defect or non-compliance is due to intentional or negligent causation on our part.
- 11.2.** In the case of intentional or negligent breach of duty, our liability is limited to a maximum amount of € 50,000.00
- 11.3.** The limitation of liability as stipulated hereinbefore does not apply to claims of the customer based on product liability, nor in the case of an injury of the customer's life or limb or health that is attributable to us nor in the case of loss of the customer's life.
- 11.4.** Customer's claims for damages become time-barred after expiry of one year, with the limitation period running from the delivery of the goods. This does not apply to claims of the customer based on product liability.

## **12. Reservation of title**

- 12.1.** We reserve title to the delivered goods until all claims from the business relationship have been satisfied in full, including any interest and costs incurred. The customer is obliged, upon our request, to ensure special storage and insurance of the goods delivered subject to reservation of title and produce appropriate evidence if requested by us.

## **13. Industrial property rights, copyrights**

- 13.1.** The customer is responsible and liable for that products that were manufactured by us according to the customer's specifications do not infringe industrial property rights of third parties. If, with regard to the manufacturing or delivery of such products, a third party asserts claims against us for alleged infringement of such third party's industrial property rights, the customer will be obliged to indemnify us against all such claims. In this case, we will only conduct defense action if we are requested to do so by the customer who will then be obliged to bindingly promise to bear the costs of such an action. In this case, we are entitled to request security for the costs of the action.
- 13.2.** The customer is not allowed to use any documents and drawings provided by us as well as any of our construction services and proposals for the design and manufacturing of aluminium profiles, windows, doors and façades for purposes other than those agreed between the parties. The customer is not allowed to make them available to third parties or publish them without our consent.

#### **14. Manufacturing equipment, tools, confidentiality**

- 14.1.** Manufacturing equipment (tools, moulds, patterns, manufacturing facilities) are deemed to include all items and equipment which are manufactured for the production of ordered profiles to be manufactured on the basis of drawings or samples (based on particular specifications) and whose purpose is to enable or facilitate the manufacturing process. If it is agreed between the parties that the customer bears the costs of their manufacturing in whole or in part, such costs will generally be charged separately upon presentation of the initial sample.
- 14.2.** The customer does not acquire title to resp. ownership of the manufacturing equipment manufactured by us even if he bears the costs associated therewith in whole or in part.
- 14.3.** Both we and the customer are mutually obliged to treat any and all commercial and technical information and data that are not generally known but have become mutually known to them in the context of their business relationship as business secrets. Both we and the customer are not allowed to provide or otherwise make available drawings, models, patterns, moulds, samples or other similar items to third parties. It is only permitted to copy such items within the limits of the operational requirements and within the limits of copyright law.

#### **15. Data protection**

The handling of the business relationship is supported by appropriate data processing equipment. The customer data (address, delivered goods, quantity of delivered goods, prices, payments, cancellations etc.) are collected in an automated file and stored until the termination of the business relationship. The customer is hereby informed of such storage. Legal basis: §§ 28, 33 BDSG (German Federal Data Protection Act).

#### **16. Place of performance (“Erfüllungsort”), place of jurisdiction**

Place of performance (“Erfüllungsort”) for all claims arising from the contractual relationship or in connection therewith is Lüdenscheid, Germany.

Place of jurisdiction for all disputes arising out of or in connection with the contractual relationship including actions based on bills (“Wechselklagen“) is the court having jurisdiction over Lüdenscheid, Germany; this is without prejudice to the parties’ right to sue the respective other party at the place of general jurisdiction applicable to it (“allgemeiner Gerichtsstand”).