

## Standard Terms of Sale and Delivery

### I. Scope of Application

HP FOAM's Standard Terms of Sale and Delivery apply to all present and future business with customer, to the exclusion of customer's conditions and counter confirmations, even where these have not been specifically rejected.

### II. Offers and Documentation

- (1) HP FOAM's offers are at all times subject to alteration, unless otherwise stated in the order confirmation.
- (2) Representations made in catalogues, price lists, electronic communications and in the internet are only contractually binding to the extent expressly indicated as such.
- (3) Oral agreements must be confirmed in writing.
- (4) HP FOAM reserves owner's and originator's rights to pictures, drawings, calculations and other data and documentation; these shall not be made available to third parties without HP FOAM's prior written consent.

### III. Delivery Time

- (1) Indications as to delivery time mean delivery ex works. HP FOAM is entitled to make part deliveries.
- (2) Delivery time starts to run on receipt of all documentation, drawings, circuit diagrams, permits, clearances, specifications and other support to be provided by customer. HP FOAM reserves the right to correct and timely delivery by its own contract suppliers.
- (3) In cases of force majeure and other impeding circumstances beyond HP FOAM's control, delivery time is extended by the period of delay and obstruction, plus a reasonable lead-time. The same applies to existing delays in delivery.
- (4) When there is more than temporary impediment to performance of contract because of circumstances for which HP FOAM is not responsible, HP FOAM is entitled to withdraw, partly or wholly, from the contract.
- (5) Where delivery time is not met because of circumstances for which HP FOAM is responsible, customer grants HP FOAM an extension of at least 14 days in writing. Where HP FOAM does not deliver within the extended time limit, customer shall intimate at HP FOAM's request and within a reasonable period of time whether it insists on delivery, withdraws from the contract and/or asks for damages in lieu of delivery.
- (6) Where delivery is delayed because of circumstances for which HP FOAM is responsible, the customer's right to damages is limited to a lump sum in compensation amounting to 0,5 % of net contract value for each full week of delay, with a maximum ceiling of 5 % of net contract value, unless HP FOAM proves lower damage. The foregoing limitation of liability is inapplicable in the case of intentional misconduct or gross negligence on HP FOAM's part.

### IV. Delivery

- (1) Delivery is ex works. Risk passes on dispatch from works.
- (2) Packaging is charged separately at cost. Packaging is unreturnable and must be disposed of by customer at his own expense. At customer's request, shipment will be insured at customer's expense.

### V. Prices and Payments

- (1) All prices are in Euro, unless otherwise agreed. Prices are exclusive of statutory value added tax. This is invoiced as a separate item at the statutory rate prevailing on day of delivery.
- (2) The agreed purchase price shall be paid within 14 days from date of invoice without deductions. Discount requires prior written agreement.

- (3) Where delivery date is 4 months after conclusion of contract, HP FOAM may adjust purchase price, insofar as costs for labour and raw material have increased.

### VI. Liability for Defects

- (1) Customer's warranty rights are conditional on complying with its duty to inspect goods and notify HP FOAM of any defects in accordance with para 377 of the German Commercial Code (HGB).
- (2) In case of defects, HP FOAM has a choice of remedying the defect or replacing the defective item.
- (3) Where replacement or repair is unsuccessful, customer has a choice of claiming reduction of purchase price or withdrawing from contract. Customer has no right to withdraw from contract in case of minor defect.
- (4) HP FOAM's liability in damages and for remedying defects is governed by clause VII.
- (5) Limitation period is one year after passing of risk. This also applies to claims for consequential loss or damage. The limitation period for recourse under paras 478, 479 of the German Civil Code remains unaffected.

### VII. Liability for Damages and Compensation for unnecessary Expense

- (1) HP FOAM is liable only for damages and/or compensation for unnecessary expense, irrespective of the legal basis for such claims, including culpa in contrahendo, breach of contractual duties and liability claims in tort for compensation for damaged goods, where HP FOAM, its legal representatives and employees have acted with intent or gross negligence, or where there has been a breach of duty that fundamentally prejudices the objective of contract.
- (2) In the absence of intentional misconduct, HP FOAM's liability in damages is limited to foreseeable damage typically associated with the nature of goods affected. Damages for indirect loss, production downtime or loss of use and loss of profits are excluded.
- (3) HP FOAM's liability in the event of damage to life, limb and health remains unaffected; the same applies where HP FOAM is liable under product liability laws or other mandatory regulations.
- (4) Any exclusion or limitation of HP FOAM's liability extends to any personal liability of HP FOAM's employees, its legal representatives and agents.

### VIII. Retention of Title

- (1) HP FOAM reserves title to all goods delivered until receipt of full payment of all claims arising out of its business relations with customer, including those arising after delivery. This also applies where payment is made for specific delivery. Where there are mutual accounts with customer, retention of title relates to the balance of accounts.
- (2) On conclusion of the contract, customer assigns to HP FOAM all claims against third parties arising out of the resale of HP FOAM's goods, including all ancillary rights. The assignment covers the amount of HP FOAM's invoice, plus a surcharge of 15 %. Customer remains entitled to recover claims arising from such resale, in so far as it complies with his duties to pay HP FOAM.

### IX. Set-off and Right of Retention

- (1) Customer is only entitled to set-off claims, when its counterclaims are legally recognised or have not been contested by HP FOAM.
- (2) Customer is entitled to exercise a right of retention only to the extent that its counterclaim is based on the same contractual relationship.

**X. Intellectual Property Rights, Data Protection**

(1) Where it is alleged that the manufacture according to specifications, drawings or models of customer infringes third party intellectual property rights, HP FOAM may cease production. In this case, customer shall be obliged to indemnify and hold harmless HP FOAM on first demand from any third party claims and all damage resulting therefrom, provided that HP FOAM notifies customer without undue delay and leaves legal proceedings and eventual settlements to customer.

(2) HP FOAM is authorised to store and process data relating to the parties' business.

**XI. Place of Performance, Jurisdiction, Applicable Law and Partial Invalidity**

(1) The contractual relationship between HP FOAM and its customers shall be governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) Place of performance is Chemnitz. The Chemnitz courts shall have exclusive jurisdiction for all disputes arising out of the business relationship. HP FOAM has, however, at all times the right to instigate legal proceedings at customer's place of business.

(3) Alterations and amendments and side agreements to the contract must be made in writing. This shall also apply to any waiver of this requirement as to written form.

(4) Where one or several conditions of these terms or an agreement with customer are or become wholly or partially invalid, the validity of the remaining clauses is not impaired. In such a case, the parties are obliged to replace the invalid provision by a valid provision that most closely meets the economic purpose of the invalid provision.

Thalheim, January 2019