

# **General Terms of Delivery (ALB), Flaig und Hommel GmbH Verbindungselemente**

## **I. Governing Terms**

The individually negotiated contract agreements and our general terms of delivery shall apply exclusively to our supply of goods. Other general terms and conditions shall not be recognised even where a supply of goods has already taken place. For regular business transactions or blanket agreements, these general terms of delivery shall also apply to all future business until they are replaced by new terms of delivery. The purchaser expresses his consent to our terms by accepting our goods, if not before. All agreements must be made in writing. In the event that upon conclusion of the contract or after the delivery of goods it is found that the Customer is not or no longer creditworthy, Flaig und Hommel shall be entitled to cancel the contract or to demand immediate payment for the goods supplied. Any assignment of claims against us to third parties requires our written consent.

## **II. Advice**

Any form of verbal or written advice is provided by us to the best of our knowledge and on the basis of our experience. Details and information about the suitability and application of our goods shall be non-binding and shall not exempt the Customer from conducting its own inspections and tests. The Customer shall be responsible for complying with statutory and official regulations relating to the use of our goods.

## **III. Quotation, call order, quotation documents**

We can accept purchase orders within six weeks. Our quotations are non-binding unless specified to the contrary from the order confirmation. Call orders shall be concluded for a maximum term of 12 months with call order dates and quantities being specified when the order is placed.

We reserve title and copyright to all documents provided by us. Any disclosure or transfer to third parties shall require our written consent. In the event that the order is not fulfilled, all the documents are to be returned to us without delay on request. Documents belonging to the Customer may be disclosed to third parties to whom we intend to sub-contract goods or services. Purchase orders should be made in writing, telephone orders will be completed at the risk of the Customer.

## **IV. Price, Price Changes**

1. Our prices are “ex-works” exclusive of the value-added tax, duties, freight, packaging and insurance costs in force on the date of delivery. Value-added tax shall be shown separately in the invoice. The prices apply to the individual order, not backdated or for future orders. Follow-up orders shall be new orders.

2. We reserve the right to increase our prices within reason if, after the conclusion of the contract, costs increase, in particular as a result of collective wage- bargaining agreements, market prices or material price increases. Evidence of such increases shall be provided to the Customer on request.

## **V. Scope of Supply, measuring methods, intellectual property rights, data protection**

Our order confirmation shall be decisive for the content and scope of the contract. Part consignments shall be permitted as long as they do not result in disadvantages in use. They shall be payable separately on the basis of part invoices. In the event of the Customer being in default with payment for a part consignment, we shall be entitled to refuse to fulfil the remainder of the purchase order. For production reasons we reserve the right to supply quantities of a maximum of 10% above or below the ordered quantity within the limits of normal industry practice. Technical modifications shall be permitted if they are deemed to be necessary for production reasons, product update reasons, legislative requirements or other reasons. If the Customer becomes aware of changes, it must notify us immediately if it regards them as unacceptable. The measuring methods for inspections for which specific temperatures, times and other measuring or control values apply must be agreed and accepted by both parties before the start of deliveries. If no such agreements are made, our measuring methods shall apply. Orders based on drawings, sketches or other information supplied to us shall be completed at the risk of the Customer. If we breach intellectual property rights owned by third parties as a result of such purchase orders, the Customer shall exempt us from claims by the owners of such rights. The Customer shall be responsible for all further damages. We shall be entitled to process data in accordance with the German Federal Data Protection Law (Bundesdatenschutzgesetz).

## **VI. Delivery Deadline, Force Majeure, Default**

1. The delivery deadline shall commence no earlier than upon the sending of the order confirmation. The start of the delivery deadline specified by us shall require the prior clarification of all technical matters. Compliance with the lead time requires the prompt receipt of all documents, permits and approvals to be provided by the Customer, the prompt clarification and approval of plans, compliance with the agreed terms of payment and other obligations and the prompt supply of any items to be provided by the Customer. Otherwise the delivery deadline may be extended within reason. The lead times we specify are approximate. Using the requisite duty of care for the conclusion of relevant supply transactions, the delivery deadline is specified subject to the correct and prompt delivery of goods to us. Observance of our supply duties shall require the prompt and correct fulfilment of all cooperation duties on the part of the Customer.

2. The delivery deadline shall be deemed to have been met if the consignment is shipped within the delivery deadline or notification has been given that the goods are ready for shipment. If the delivery is delayed for reasons that are the fault of the Customer, the delivery deadline shall be deemed to have been met if notification that the goods are ready for shipment is made within the agreed delivery period. In the event that an agreed lead time is not met, the Customer is required to set a subsequent delivery period of four weeks minimum. The period shall commence on receipt of written notification. In the event that the delivery obligation has not been fulfilled by the time the grace period expires, the purchaser

shall have the right to rescind the contract. The rescission must be declared in writing without undue delay after the expiration of the set grace period, at the latest within two weeks after the expiration of this time limit. The right to withdraw from the contract does not apply in the event that Flaig und Hommel is unable to comply with the subsequent delivery deadline for reasons beyond our control.

3. Unless otherwise agreed for orders on call, the Company agrees to grant a period of 6 months for full completion from the date of order. In the event that the period has expired without a call order being made we are entitled to either charge for the goods in question or to withdraw from the contract. Calls under call orders must always be timed so that the final delivery is made no later than one year after our receipt of the order.

4. War, civil war, export restrictions or trade restrictions resulting from a change in the political situation as well as strikes, lock-outs, operating breakdowns, operational restrictions and similar events, which make it impossible or unreasonable for us to fulfil the contract, shall be deemed to be forces majeures and shall release us from our duty to deliver the goods promptly. In these cases we shall be entitled to either extend the delivery deadline by the duration of the forces majeures or to cancel the contract in full or in part. The Customer shall not accrue any claims for compensation for the damage suffered as a result.

5. Our liability in the event of delays caused by intent or gross negligence on the part of ourselves, or our representative or agent shall be as per the statutory regulations. In cases of gross negligence, however, our liability shall be limited to the typical, foreseeable damage for this type of contract. Otherwise our liability for compensation in addition to fulfilment caused by delays shall be limited to 10% of the price and for compensation instead of fulfilment to 10% of the value of the goods and/or services. Additional claims by the Customer shall be excluded, even after any deadline for fulfilment has been set.

6. In the event of the Customer being in default with payment, we shall be entitled to retain additional consignments until all due accounts have been settled.

## **VII. Cancellation costs**

Where the Customer cancels an order after it has been placed, we may demand 10% of the sale price for the costs incurred for processing the order and for loss of profit, notwithstanding claims for higher actual costs. The Customer shall be at liberty to provide evidence that our costs were in fact less than this.

## **VIII. Packaging**

Unless agreement is made to the contrary, we shall determine the type and scope of packaging. The choice of packaging shall be made using the required care at our discretion. Single use packaging shall become the property of the Customer. The packaging will be charged at cost price and is not returnable.

## **IX. Transfer of Risk and Shipping**

1. The agreed delivery method is “ex-works”. The risk shall be transferred to the Customer as soon as the consignment has been handed over to the carrier or has left our premises for shipment. Even if delivery included has been agreed, shipment shall be at the risk of the Customer. If the shipment of the goods is delayed at the request of the Customer, the risk shall be transferred to it when we give notification that the goods are ready for shipment. Unless agreed to the contrary in writing, we shall choose the means of transport and the route. In the event of the goods being damaged or lost en route, an inspection shall be carried out immediately and we are to be notified of the results.
2. If the shipment or delivery of the goods is delayed at the request of the Customer and notwithstanding our right to provide evidence that our damages were higher, we shall charge storage fees of 1% of the invoice total for every month of part thereof subject to a maximum of 5% of the net total.
3. Return shipments may only be made using the carriers appointed by us. The cheapest means of transport is to be used for this purpose, taking transport safety into account.

## **X. Breach of Duty**

1. In the event of a breach of duty on the part of the Customer, in particular in the event of the Customer being in default with payment or failing to accept the consignment, Flaig und Hommel shall be entitled, after the elapse of a reasonable deadline set for the Customer to comply, to cancel the contract and to take back any goods or services as well as to claim compensation instead of fulfilment. This shall not affect the statutory regulations relating to the lack of necessity to set a deadline and to make other claims due to us under the law.
2. Only in cases where Flaig und Hommel are responsible for the breach of duty may the Customer withdraw from the contract in accordance with the statutory regulations; in the event of defects, however, the statutory regulations shall apply. In the event of a breach of duty, the Customer must declare within a reasonable period of time after being requested to do so by us whether they intend to cancel the contract as a result of the breach of duty or will insist on the delivery of the goods.
3. The Customer's right for compensation by mutual agreement remains unaffected.

## **XI. Terms of Payment and Default**

1. Invoices for delivery of goods are payable within 14 days from the date of invoice at 2% discount or within 30 days in full. We expressly reserve the right to accept bills of exchange or cheques. Cheques and bills of exchange will only be accepted on account of payment and shall only be classed as payment once deposited in the bank. No discount is granted on payment by bill of exchange. All payments are to be made without charges. If paying by cheque or bill of exchange, the purchaser is responsible for the payment of all discount charges, collection fees and any other bank charges, even where this has not been expressly agreed. If the purchase price is deferred, are part payments approved or is the payment deadline exceeded, then, without warning, the customer will be charged standard bank interest rates, but no less than 2% above the respective base rate from the European

Central Bank. Payments shall initially be set off against costs, then against interest and then used to settle the oldest main debt. The Customer waives his right to stipulate how his payments are to be used.

2. In the event of delayed payment, we can demand default interest amounting to 9 % p.a. over the current base interest rate, according to Section 247 of the German Civil Code. Higher damages may be evidenced. The supplier only holds offsetting and withholding rights if the counter-claim, on which the performance refusal, offsetting or withholding right is based, is undisputed or has been established by a court of law.

3. If we are made aware that a protest has been made against the Customer's bill of exchange, enforcement proceedings have been initiated against it or some other deterioration in its assets has taken place, we may lodge claims immediately for debts which are not yet payable and those for which a bill of exchange or cheque has been supplied. In these cases and if due invoices are not paid despite our issuing a reminder, we may demand payment in advance of security for future consignments of goods.

## **XII. Inspection and Complaint Obligations, Defects**

1. A complaint pursuant to § 377 of the German Commercial Code (HGB) shall only be regarded as timely when it is received by us immediately, no later than within a period of five working days from receipt of the goods. In the case of concealed defects this period shall commence from the time of discovery. The complaint shall not exempt the Customer from their payment obligations. In the case of defective goods we are entitled to rectify the defect at our discretion or to supply replacement goods within a reasonable deadline set by the Customer. In the event of defect rectification we shall cover any costs up to the agreed payment limit for the consignment. Even in cases of urgency, the Customer may not attempt to rectify the goods themselves or to return or to destroy them without the prior written consent from Flaig und Hommel. In the event that our attempts to rectify the defect or to supply replacement goods fail, the Customer shall be entitled at their discretion to withdraw from the contract or to reduce the price.

2. Product description issued by the manufacturer alone shall be deemed to have been agreed as the characteristics of the goods. Claims for defects shall not be accrued for minor deviations from the agreed characteristics. Public statements, claims or publicity by the manufacturer shall also not constitute contractually agreed characteristics. The Customer shall not receive guarantees in the legal sense from us. Details in product descriptions and product specifications, notwithstanding their registration as characteristic details in the sense of § 434 of the German Civil Code, shall in no circumstances constitute guarantees for the characteristics of the goods or for the fact that the goods have a certain characteristic for a certain period of time.

3. Recourse claims on the part of the Customer against us according to § 478 of the German Civil Code shall only exist as long as the Customer has not made any agreements with their clients, which exceed the statutory regulations.

4. The statute of limitations for claims and rights relating to defects shall be one year. However, this statute of limitations shall not apply in the cases described in § 438 Para. 1 No. 1 of the German Civil Code (legal defects on immovable goods), § 438 Para. 1 No. 2 of

the German Civil Code (structures, goods for structures), § 479 Para. 1 of the German Civil Code or § 634a Para. 1 No. 2 of the German Civil Code.

5. The statutes of limitations set out in number 4 shall also apply to all compensation claims made against us relating to the defect – regardless of the legal basis for the claim. Where compensation claims of any type are made against us and are not related to the defect, the statute of limitations set out in number 4 sentence 1 shall apply.

6. The statutes of limitations set out in numbers 4 and 5 shall not apply in the event of intent should we have deliberately not mentioned a defect, for compensation claims in the event of death, injury or damage to the health or freedom of a person, for claims under the Product Liability Law, for a grossly negligent breach of duty or where major contract duties have been breached.

7. The statute of limitations shall commence in all cases on the delivery of the goods or the acceptance of the services.

8. Unless expressly specified to the contrary, the statutory regulations relating to the start of the statute of limitations, the suspension of the period, the suspension and the restart of the periods shall not be affected

### **XIII. Liability**

1. Our liability in the event of intent or gross negligence on the part of ourselves or our representative or agent shall be as per the statutory regulations. In addition we shall only accept liability under the Product Liability Law in the event of death, injury or damage to the health of a person or as a result of the culpable breach of major contract duties. Claims for compensation based on a breach of major contract duties, however, shall be limited to the typical foreseeable damage for this type of contract. Even in cases of gross negligence, our liability shall be limited to the typical foreseeable damage for this type of contract unless one of the exceptions set out in sentence 2 of this number 1 applies.

2. Liability for damage caused by the goods on the Customer's property, for example to other goods, shall be completely excluded, however. This shall not apply if intent or gross negligence applies or in the event of death, injury or health damage to a person.

3. The provisions of numbers 1 and 2 above shall extend to compensation in addition to the goods or services and compensation instead of the goods or services regardless of the legal grounds, in particular as a result of defects, breach of duties from the debt relationship or for illegal actions. It shall also apply to claims for the reimbursement of expenses paid in vain. Liability for being in default, however, shall be regulated as described in number VI.45, liability for impossibility as described in number XIV

4. Possible compensation claims shall be restricted to the cover of our product liability insurance policy and to a maximum amount of 1 million Euros and to the cover of our recall insurance to an amount of 0.5 million Euro. This shall not apply where liability is mandatory in cases of intent, gross negligence and in cases of death, injury and health damage to a person.

5. In cases where our liability for compensation is excluded or limited, this shall also apply to all claims by the Customer due to culpability at the conclusion of the contract, breach of

secondary duties or claims on the part of the Customer on the basis of manufacturer liability according to § 823 of the German Civil Code. The same shall apply in the event of impossibility. Where our liability is excluded or limited, this shall also apply to the personal liability of our staff, workers, colleagues, representatives, agents and vicarious agents.

#### **XIV. Impossibility**

Our liability in the event of the goods or services being impossible due to intent or gross negligence on the part of ourselves or our representative or agent shall be as per the statutory regulations. However, in cases of gross negligence our liability shall be limited to the typical foreseeable damage for this type of contract unless one of the exceptions set out in sentence 5 of this provision applies. In addition our liability for impossibility shall be limited to compensation and the reimbursement of costs incurred in vain up to a maximum of 10% of the value of the goods/services. Other claims by the Customer if the goods/services become impossible shall be excluded. This restriction shall not apply if intent or gross negligence applies or in the event of death, injury or health damage to a person. The Customer's right to withdraw from the contract shall not be affected.

#### **XV. Contract Amendment**

The contract may be amended in the event of unforeseen events, which considerably change the commercial importance or the content of the goods or services or should have a major effect on our business. If this is not commercially reasonable, we are entitled to withdraw from the contract.

#### **XVI. Tools, Customer-supplied Goods**

1. Tools and special equipment manufactured by us and paid for by the Customer shall be the Customer's property but shall remain in our possession. We may use these tools and special equipment for other purposes or scrap them after two years of the customer not buying any products manufactured with those tools from us. In this event, the Customer waives its right of compensation.

2. We shall only accept liability for intent and gross negligence in cases of claims by the Customer relating to the damage or destruction of the Customer's goods supplied to us or sent to us for processing; liability for simple negligence shall be excluded. Normal wear and tear shall be excluded from liability. The Customer shall take out an "off-site insurance policy" for the required sums for items provided by them. The Customer shall be responsible for inspecting and assuring the quality (for example material, trueness to size, etc.) for customer-supplied products, for example raw material, blanks, etc. We shall only conduct a receiving inspection to establish quantity and identity and a visual inspection to identify obvious transport damage. We shall not be obliged to conduct any other inspections.

## **XVII. Reservation of Title**

1. Flaig und Hommel shall reserve title to the supplied goods until all the accounts receivable from our business relationship with the Customer at the time that the contract is concluded have been settled (in cases of bills of exchange or cheques until they have been honoured), including all accounts receivable for follow-up orders, re-orders or spare part orders. If the value of the security rights accrued by us exceeds the value of all the secured claims by more than 20%, we shall release an appropriate part of the security rights at the request of the Customer.

2. If the Customer breaches the contract, in particular if it is in default with payments, we shall be entitled to retake possession of the goods. Our retaking possession or pledging the goods shall not constitute cancellation of the contract unless we expressly confirm this in writing. We shall be entitled to resell the goods and set off the proceeds of this resale against the accounts receivable from the Customer, minus reasonable reselling costs. The Customer undertakes to treat the goods with care. In particular it undertakes to insure them adequately at their new value at its own expense against fire, water, storm, burglary and theft. Any security claims accrued in the event of damage must be assigned to us. Where servicing and inspection work is required, the Customer shall complete this work promptly at its own expense.

3. The Customer may not pledge the goods or transfer title to them by way of security. In the event of seizures or other action by third parties, the Customer must notify us immediately in writing so that we can lodge a lawsuit in accordance with § 771 of the German Code of Civil Procedure (ZPO) and shall also provide us with all the information and documents required by us to protect our rights. Enforcement officers and third parties are to be notified of our property. If a third party is unable to reimburse us with the court and out of court costs of a lawsuit pursuant to § 771 of the German Code of Civil Procedure, the Customer shall be liable for any losses we incur, notwithstanding claims for other compensation relating to the damage, modification or destruction of the goods themselves.

4. The Customer may resell or process the goods as part of its normal business operations. It hereby assigns all accounts receivable up to the grand total of our invoices including value-added tax accrued by it from the resale against its clients or third parties regardless of whether the goods were resold without or after being processed. We hereby accept this assignment. The Customer undertakes to notify us of any assignment ban in force with third parties at the time that the order is placed. If the Customer fails to meet this obligation or if the third party does not approve this agreement, we shall be entitled to cancel the contract. In the event that the Customer and its clients have a current account relationship, the advance assignment of accounts receivable shall also refer to the acknowledged balance and, in the event of the bankruptcy of the client, to the "causal" balance which then exists. The Customer may collect the accounts receivable even after the assignment. Our authority to collect the account receivable ourselves shall not be affected by this. We shall not collect the account receivable ourselves as long as the Customer meets its payment obligations from the revenues it receives, is not in default and no application has been lodged to open insolvency proceedings

5. Upon request, the Customer shall provide us with a precise list of the accounts receivable which are due to us, including the names and addresses of the clients, the amount of the various accounts receivable, invoice dates, etc. and to provide us with all the information required to claim the assigned account receivable and to enable us to check this information.



6. Where the goods are processed or modified by the Customer, this work shall be carried out on our behalf. Where the goods are processed with other items, which do not belong to us, we shall acquire co-ownership to the new goods proportionate to the value of the goods we supplied to the value of the other goods at the time of the processing. The same shall apply to the goods resulting from the processing as for the goods supplied with reservation of ownership. If the processing, connection or mixing procedure takes place in such a way that the Customer's item must be regarded as the main item, it is hereby agreed that the Customer shall transfer proportionate co-ownership to us. The Customer shall maintain the sole ownership or co-ownership thus accrued on our behalf.

#### **XVIII Acceptance of the order**

Acceptance of the order (shipments and services) is subject to the proviso that fulfilment is not being restricted by any national or international regulations, particularly export control regulations, sanctions and embargoes or any other restrictions. The contract partners shall obligate themselves to provide all information and documentation needed for the export/ domestic shipment/ import. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question; because of this and of above mentioned transgression of deadlines, any claims for damages shall be excluded. By accepting our products, the customer guarantees that all European, national and US export regulations are complied with.

#### **XIV. Place of Jurisdiction, Place of Performance, Miscellaneous**

1. The place of jurisdiction is our registered place of business in Aldingen. We may also sue the Supplier before the court that is competent for the latter's registered office. The place of performance is our place of business, unless otherwise stipulated in the order.
2. All legal issues arising between the buyer - including when the buyer's registered office is located abroad - and the Seller shall solely be governed by the laws of the Federal Republic of Germany to the exclusion of any conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. If any stipulations are invalid this shall not affect the remaining validity of the contract. The invalid provision shall be reinterpreted or supplemented so that the intended economic purpose is achieved.
4. The German version of these General Terms of Delivery is legally binding.
5. Unless individually contractually regulated, our german technical delivery conditions (TL) apply