

## **General terms of business**

### **Terms of sale, supply and payment**

## **ALFRED HEYD GMBH & CO. KG**

**Issue date 03/2011**

### **1. Scope of application of the terms of supply and payment:**

- (1) The following terms only apply in transactions with entrepreneurs within the meaning of § 14 of the German Civil Code.
- (2) These terms form the exclusive basis for our offers and all agreements with us. They are deemed to be accepted on the issue of an order or at the latest on acceptance of the delivery.
- (3) Any of the customer's terms to the contrary, which we hereby expressly and finally refute, do not form part of the contract unless they have been expressly accepted by us in writing.
- (4) Our terms shall also apply to all future transactions.

### **2. Offer, formation of contract, order confirmation, ancillary agreements, cost estimates, specifications:**

- (1) Our offers are, if nothing is stated to the contrary, without obligation.
- (2) Formation of a contract of sale or acceptance of an order is followed by our written order confirmation or by our actual implementation of the supply or service.
- (3) If we have issued a binding written offer and if this has been accepted within the specified period by the customer, written order confirmation remains nevertheless decisive for purposes of evidence, unless the customer has immediately objected to it.
- (4) Amendments and ancillary agreements must be in writing.
- (5) Cost estimates are not binding without express declaration to that effect. If in the contract no binding price is agreed, the charging of costs up to 10 % higher or lower without notification is permitted. Greater discrepancies than this are subject to immediate notification.
- (6) Information contained in or accompanying a brochure, catalogue, cost estimate, offer or our website, as well as illustrations, drawings, dimensional and weight specifications are only binding if they are expressly stated as such. The same applies to specifications on suitability for use, in particular details on performance.
- (7) Details provided by us regarding the goods, their purposes etc. shall only be for descriptive or identification purposes and shall not be any warranty of quality in the legal sense.

### **3. Obligations of protection: drawings, certificates, models, samples**

- (1) Design documentation which we issue in the form of documents, drawings or samples, are our property and are subject to copyright protection. Such documentation shall not be passed on to third parties without approval and shall be returned to us at any time on request.

(2) Drawings, models, matrices, templates or samples developed by us in performance of the order or made available by us shall remain or shall become our property.

(3) The customer expressly undertakes not to copy or to reveal or make available to third parties information, documents and items made available to him or developed by us, without our prior written approval, or to use them for any other purpose extraneous to the order. Any illicit use shall be subject to compensation.

(4) The customer undertakes to return all originals as well as all copies (if any) of documents and items made accessible together with the cost estimate or offer at our request at his own expense at any time by sending them to us. The same applies without special request, if the order is not completed. Rights of retention of any kind in this respect are excluded.

#### **4. Price rules, price amendments, subsequent amendments, export rules:**

(1) Where prices are not agreed in a binding manner in writing, the prices stated in our order confirmation shall be understood to be exclusive of the statutory rate of VAT, applicable from time to time, otherwise the prices according to our price list current at the time shall apply.

(2) Where no agreement has been made to the contrary, our prices are understood – even for deliveries to other countries – to be in EUROS exclusive of packaging, VAT, dispatch and insurance costs ex works (EXW Incoterms® 2010) and shall apply only for the appropriate individual order. They also only apply to the listed services. Special services shall be paid for separately.

(3) We shall package the goods properly and securely for the customer. Expenses shall be invoiced for by agreement and paid for by the customer. A refund shall be given on return of packaging if a returnable packaging system has been agreed. We shall also be pleased to undertake dispatch, customs formalities and insurance for the customer. We shall invoice these expenses according to actual expenditure.

(4) Where not otherwise agreed (e.g. fixed prices), both contracting partners shall reserve the right to amend the price if more than four months have elapsed between pricing agreement and performance of the order, and if the prices of raw materials, upstream supplier prices, wages, transport costs, tax rates or other cost factors have changed by more than 5%, provided always the specific changes could not have been foreseen at the time of formation of the contract.

(5) If we encounter unforeseeable production difficulties during the course of performance of the order which would permit adherence to the design or tolerances stipulated by the customer only at considerable additional cost, we are entitled to increase the price accordingly after consultation, or to withdraw from the order if, within an appropriate period of time, no agreement on a new price could be reached. The same applies in favour of the customer if considerably reduced costs arise due to changes in the order.

(6) If, due to circumstances beyond our control, after formation of the contract, additional services are required or the agreed content of the services has to be amended or supplemented, the additional expense beyond the agreed price shall be remunerated. If the additional service or amendment requires an additional expenditure of time, clause 6 (4) shall apply correspondingly.

(7) In all cases of application of clause 4 (6) both contracting parties shall have the right to request adjustments to the price originally agreed. If a new pricing agreement cannot be reached and if the customer nevertheless requests performance of the order, we are entitled to charge the amended price offered by us. If a specific price has not been offered, the additional expenses for our services, additional materials, components or bought-in parts required are to be invoiced on the basis of the original costing for the contract.

(8) Where, by way of an exception, foreign currencies are specified in offers, the offers only apply to the time of issue. Should the exchange rate with the EURO change, we reserve the right to adjust the value of the offer accordingly.

## **5. Delivery period, part supplies, call-off contracts, default in acceptance**

(1) Delivery periods specified in our brochures, cost estimates and offers are stated subject to the reservation that our supplying factories and upstream suppliers are able to meet the obligations they have entered into towards us and subject to our being able to deliver in any other circumstances.

(2) Delivery periods or dates confirmed by us only become binding delivery dates if they have been expressly agreed to be binding. Where no agreement has been made to the contrary, earlier delivery may be made in any case.

(3) The sole decisive factor governing adherence to the delivery period or date is notification of readiness for dispatch.

(4) We may perform orders in reasonable part deliveries which must be paid for separately in accordance with our terms of payment. If payment for a part delivery is delayed, we may suspend further performance of the order.

(5) We are entitled to set a reasonable period for the acceptance of the goods and, once this period has expired without result, we may, at our discretion, dispose otherwise of the deliverables and deliver to the customer within a reasonably extended period.

(6) Call-off orders, where nothing has been agreed in writing to the contrary, shall be placed at least 14 days before the desired delivery date. If no acceptance period has been agreed, we are entitled to deliver and to invoice the quantity ordered in full 6 months after issue of the order confirmation, if by that time no notice to proceed with delivery has been given or no other agreement has been made. If the customer accepts the order quantities only in part, we are entitled to waive the acceptance obligation and to charge a supplement for a reduced quantity for the supplied part of the goods and charge this subsequently.

(7) If the customer should not accept goods that have been reported as ready for dispatch in good time or should it not give notice to proceed with delivery of goods subject to call-off supply, we shall be entitled to either store the goods at the customer's cost and risk and request payment of the purchase price, or to refuse performance of the contract after a reasonable period of time has elapsed, and to request compensation instead of counterperformance. Our legal rights in the case of default in acceptance by the customer remain unaffected.

## **6. Cooperation of the customer, subsequent required changes, effects on price and performance period**

(1) Each delivery period commences only after clarification of all the details required for the performance of the order and provision of the necessary documents and after receipt of payment where payment is due at the same time as issue of the order.

(2) If the customer has to contribute accessories or material, the delivery period shall not commence before we have received such. The same applies in relation to other agreed or necessary obligations of cooperation on the part of the customer.

(3) If the manufacture or delivery, for reasons for which the customer is responsible, is temporarily prevented or delayed, the delivery period shall be extended accordingly by the substantiated duration of the hindrance. In the calculation of the extension, a corresponding run-up time for the resumption of performance shall be taken into account. The customer's entitlement to performance or claims in lieu of performance during the period of hindrance shall be excluded. Upon modifications or supplements subsequently requested by the customer the delivery period shall be extended in a reasonable way.

(4) If the manufacture or delivery is delayed for these reasons or at the request of the customer, any additional costs thereby incurred by us shall be charged directly on and shall be paid for by the customer.

(5) If, at the request of the customer, we have undertaken to procure parts that would normally be supplied by the customer, the delivery period shall be extended by the period required for such procurement unless we are responsible for the delay in the supply of the procured parts.

## **7 Force majeure, obstructions to performance beyond the control of either party**

(1) If we have been hindered in making deliveries due to force majeure, the delivery period shall be automatically extended by such period of time the hindering event continued plus a reasonable run-up time. Force majeure is equivalent to circumstances beyond our control which render delivery unreasonably difficult or temporarily impossible and could not have been foreseen by us at the time the delivery date was agreed. Examples for such events are labour disputes, official measures, unavoidable shortages of raw-material or power, significant operating disruptions due to damage to the entire factory or significant sections, or due to failure of essential production facilities or unavailability of significant numbers of employees due to pandemic, serious transport disruptions e.g. road blockades, strikes in the transport sector, general travel and flight prohibitions. This also applies if such circumstances affect upstream suppliers. The circumstances described release us from any liability even if they occur during an already existing delay. We shall notify the customer of such circumstances as quickly as reasonably possible. Notification may not be made if the customer is already aware of the circumstances. Should such circumstances last for longer than 3 months, we shall also have the right to withdraw from the contract. At the request of the customer, we shall declare whether we intend to withdraw or to deliver within a reasonable period of time to be specified by us. Claims for compensation by the customer in such circumstances are excluded. Both parties may withdraw from the contract without obligation to pay compensation if it is established that performance of the contract has become impossible due to such circumstances.

(2) If the manufacture or supply or our services is temporarily prevented or delayed due to reasons beyond our control, the delivery (or performance) period is extended accordingly by the substantiated duration of the hindrance. In calculating the extension of the delivery period, an appropriate run-up period shall be taken into account for the resumption of performance negotiations. Any claims of entitlement of the customer to performance or claims in lieu of performance during the period of hindrance are excluded.

## **8 Default, limitation of liability**

(1) If no express deadline is agreed, delay in delivery shall only commence after issue of a reminder. The customer may withdraw from the contract only after a reasonable period has elapsed. Even after such a period has elapsed, the customer is obliged to accept delivery unless the declaration of withdrawal has been received by us before the supplied item has been dispatched or before readiness to dispatch has been communicated.

(2) If we, our legal representatives or our assistants are responsible for malicious intent or gross negligence in respect of the occurrence of delay, or if we had guaranteed a fixed date for delivery, or if the interest of the customer in the supply can be proved to have been lost on account of the delay, we are liable in accordance with the applicable provisions of the law.

(3) Should the delay in delivery be based on the culpable infringement of an essential obligation under the contract, non-compliance with which puts at risk the contractual purpose, liability is limited to foreseeable, typical damages. Otherwise, liability is excluded.

(4) Damages due to loss of production, costs due to downtime, lost profits or contractual penalties promised to third parties arising or caused due to late delivery to the customer or

his customers shall only be compensated for if a binding delivery date has been agreed and where the customer, on agreement of the date, has made written reference to the damages and costs risked at the time of agreement of the delivery date. Such reference is not required if we have guaranteed a fixed date for delivery or if we knew the specific circumstances at the time the delivery date was agreed.

#### **9. Dispatch clause, delivery, transport and transfer of risk:**

(1) If no other dispatch clause has been agreed, delivery shall be understood, in the case of delivery by one of our factories in the Federal Republic of Germany, to be ex such works (EXW Incoterms® 2010). In the case of delivery by a third party company assigned by us to manufacture the item, delivery shall take place, under the same dispatch clause, from such operating premises as named in our order confirmation or on formation of the contract specified by both partners as the location of dispatch.

(2) Should the customer require delivery by us, packaging, loading and dispatch shall take place at our discretion and always at the expense and risk of the customer. If no express agreement is made concerning packaging, dispatch route, dispatch method and method of transport, we shall make the choice for the customer, with due professional care and diligence. Where our employees or agents assist in packaging, loading and unloading or transport, they shall act at the risk of the customer as his assistants.

(3) "Free" deliveries (deliveries for which we assume the freight and any ancillary costs) shall not otherwise affect the dispatch clause EXW Incoterms® 2010 and the terms based on it in this section.

(4) The risk in any case shall pass to the customer (even in the case of FOB and CIF transactions) as soon as the goods have left our factory even where adequate part deliveries are being made. We only assume transport risk where an arrival clause has expressly been agreed (DAP, DAT, DDP Incoterms® 2010). If the dispatch is delayed for reasons beyond our control, or due to the customer's conduct, the risk shall pass to the customer with our notification of readiness for dispatch to the customer.

(5) We recommend that the customer takes out transport insurance. We are entitled to take out transport insurance but – even in the event of delivery abroad – are under no obligation to do so. The transport insurance costs shall be at the expense of the customer.

(6) Upon receipt of delivery, the customer shall ensure that the goods can be unloaded without delay. We reserve the right to pass on the carrier's charges for hours spent waiting and for return of freight.

(7) Claims for compensation for damages due to failure to comply with delivery instructions or due to defective packaging of the supplied item are excluded unless we, our legal representatives or assistants are guilty of malicious intent or gross negligence.

(8) In the event of damage or loss of the delivered item en route, the customer shall immediately cause the carrier to provide a statement of facts.

#### **10. Terms of payment, discount, settlement, deterioration in financial circumstances, default in payment, offsetting and counterclaims, authority to collect**

(1) Where nothing has been agreed to the contrary in writing, we grant thirty days from the date of invoice for the payment of receivables due immediately, for net payments without deduction. For payments received within 14 days we grant a 2 % discount on the net value of the goods. There shall be no right to a discount if any invoices are overdue.

(2) Incoming part payments or payments without identification of the invoice shall be immediately offset against any interest claims and then against the oldest late receivables.

(3) Part deliveries shall in each case be paid for separately in accordance with our terms of payment.

(4) Should the customer fall into default with due payments or if circumstances become known to us which substantiate doubts regarding the ability of the customer to pay or regarding the customer's creditworthiness, we are entitled, regardless of the terms of payment previously agreed, at our discretion, either to request a reasonable advance payment or the provision of adequate security. In cases of doubt, payments are considered appropriate which are accepted as cash transactions or are regarded as incontestable in insolvency proceedings. If such a request is not complied with, we have the right, after a reasonable period has elapsed, to refuse performance of the contract and to request compensation instead of counterperformance.

(6) If the date for net payment is missed, we shall be entitled, regardless of our other statutory entitlements, to charge interest at the rate of 8 % above the basic interest rate of the ECB applicable from time to time. In case of default in payment, we have the right, from that time, to charge interest at the rate of 8 % above the basic interest rate of the ECB, but not less than 12 %. Proof of lower or higher damages due to default shall be permitted.

(7) The customer may only set-off counterclaims if these are undisputed or have been legally established or if a pending lawsuit is not delayed by the set-off. The same applies in relation to the application of the customer's rights of retention. However the customer is only permitted to exercise a right of retention if it is based on the same contractual relationship as the claim asserted by us.

(8) A payment shall only be considered to have been made if and when we have clear funds at our disposal. Payments to employees or assistants or dispatch staff are only effective if and when the amount of the payment is transferred to us with debt-discharging effect. Only people who hold corresponding written certification of authority to collect funds shall be authorised to collect payments.

## **11. Retention of title (extended, prolonged), safekeeping obligations, factoring, utilisation**

(1) Until complete payment of all receivables from supplies and services payable to us by the customer now or in the future, the following securities shall be provided to us which we will release on request at our discretion where their value exceeds the total of all our claims by more than 10 %:

(2) The goods shall remain our property.

(3) Retention of title continues if individual claims are included in a current account and the balance has been drawn or acknowledged (current account retention). In the case of several transactions, retention of title shall only continue if a delivery has been paid for but there is still an outstanding balance from other deliveries (extended retention of title).

(4) Any and all processing or reworking of deliverables shall be deemed to take place on behalf of us as the manufacturer, but without any obligation on our part. The customer is entitled to process in the ordinary course of business the goods which are subject to our retention of title provided always that the customer is not in default of payment. Should the supplied items be combined with objects, substances or other outside stocks even for a third party as manufacturer, we shall acquire co-ownership in the new object in the proportion of the value of our supplied items to the outside stocks at the time of processing.

(5) If the supplied items are mixed or combined with objects, substances or other outside stocks belonging to the customer, we shall acquire co-ownership in the new object in the proportion of the value of the item supplied by us to the outside stocks at the time of the mixing or combining.

(6) Should our (co-)ownership cease to exist due to mixing, combining or processing, it is hereby agreed that the customer's (co-)ownership in the single object shall be transferred to

us proportional to the value (invoiced value). The customer shall safeguard the (co-)owned object free of charge. The customer shall be obliged, as keeper, in particular to safeguard the supplied items and to maintain them and ensure that they present no risk to persons or other objects. Any possible risks shall be properly covered by insurance.

(7) Supplied items in which we have (co-)ownership, will be referred to hereinafter as reserved goods.

(8) The customer is entitled to sell the reserved goods in the ordinary course of business provided that he is not in default of payment. There shall be no charging or transfer of title of the reserved goods by way of security.

(9) The customer hereby assigns to us by way of security, such assignment to include all ancillary rights, securities and retained ownership, any and all claims the customer may have regarding the reserved goods such as receivables from onward supplies and services or claims for compensation of damages arising out of an onward sale as well as claims for other legal reasons (such as balance from the current account, installation, insurance, tortious acts etc.). Whether the installation was carried out by us, by the customer or by assistants of one or the other of the contracting parties shall not affect the assignment. The customer is given authorisation, which may be revoked at any time, to collect the receivables assigned to us on his account and in his own name. Such authorisation to collect payment may be revoked by us if the customer does not duly honour his obligations of payment to us. It shall be cancelled, without any declaration of revocation being necessary, if there is default of payment for an invoice or if insolvency is filed for by the customer (own application) or against the customer (outside application).

(10) If reserved goods are sold together with other goods at an overall price, the aforementioned assignment shall only occur to the amount of the invoice value of the reserved goods or to the amount of the co-owned value. Should the customer receive a cheque or bill of exchange for the sale of the reserved goods, he hereby assigns the cheque or bill of exchange to us until all receivables have been fully settled. The customer undertakes to have a duty of care in safekeeping the cheque or bill of exchange for us.

(11) Only upon our prior approval shall the customer be entitled to sell to a factor the receivables assigned to us arising from business transactions with his customers by way of true factoring. The receivable from the factor is hereby assigned to us to the amount of the invoiced value of the reserved goods concerned. On payment of the purchase price for the receivable by the factor, our receivable from the contractual relationship concerned against the customer becomes due immediately and without discount.

(12) In the event third parties have access to the reserved goods, the customer shall indicate our ownership and shall notify us immediately. Costs and damages arising due to such access, where they cannot be collected from the accessing third party, shall be borne by the customer.

(13) In the event of non-contractual conduct by the customer – in particular default in payment – we are entitled to take back the reserved goods. The customer hereby agrees to return the reserved goods in this event. Should the reserved goods be on the premises of a third party, the customer hereby assigns to us his claims against the third party for their return. Should the third party be entitled to make substantiated claims to the reserved goods, these shall be taken into account. As an indirect owner of the reserved goods, the customer hereby entitles us – until such entitlement is revoked – to access his premises and property.

(14) The taking back and charging of the reserved goods by us or the disclosure of assignment of security shall not be considered as withdrawal from the contract.

(15) The customer is obliged, at our request, to provide information concerning all transferred receivables, in particular a list of debtors with names, addresses, sum of the receivables, date and number of the invoices and to make immediately available on request the information and documentation required for the assertion of the claims.

(16) We are entitled to claim the reserved goods and stocks of the customer that are subject to our actual influence as security and to utilise them at our discretion after unsuccessful offer of a suitable transfer fee.

(17) For the evaluation of all securities, their realisable value (security value) is decisive. If this cannot be reasonably determined within a adequate period, we are entitled to use, for the evaluation of the security of the goods, their delivery price without taking into account additional services, VAT, discounts, rebates and freight and other ancillary costs. Their nominal value is the decisive factor in the evaluation of receivables.

## **12 Property rights of third parties, confidentiality**

(1) Where our supplies must be in accordance with CAD data, drawings, sketches, models, samples, technical specifications or other guidelines provided to us by the customer, the customer alone shall bear responsibility for the consequences of his specifications. In particular it shall be responsible for ensuring that, through the production and delivery of the supplied items, no property rights of third parties are infringed. We are not obliged to the customer to check whether any intellectual property rights of third parties are being infringed by our processing of the specifications.

(2) Where we are prohibited by third parties due to intellectual property rights from producing and supplying items produced according to the instructions of the customer, we shall be entitled, without being obliged to investigate the legal situation, ruling out any claim from the customer, to cease production immediately and to disassociate ourselves from the supply. Costs already incurred by us in implementing the order shall be reimbursed by the customer. In all such circumstances the customer undertakes to indemnify us from claims for restitution of costs and claims for damages from third parties and shall compensate us in full for any costs incurred by us on account of such infringement or the assertion of any intellectual property rights of third parties.

(3) The customer shall ensure absolute confidentiality concerning all matters not in the public domain with respect to parties outside of our company and third parties not involved. This concerns all data that has been disclosed, the results of work arising from the business relationship and the intended legal and economic purposes of the results of work, where facts that have not already been made public are affected. The agreed obligation of confidentiality refers also in particular to know-how that has been assigned by us in particular in the context of the business relationship. The customer is obliged to place all organisations, employees, assistants and other third parties who are of necessity concerned with our trade secrets under a similar appropriate obligation of confidentiality and to monitor compliance with the obligation.

## **13. Complaints, obligation of investigation and notification of defects**

(1) Complaints regarding obvious damages, incorrect deliveries and other recognisable defects and incomplete deliveries must be notified in writing immediately after delivery. At our request, evidence of the complaint shall be furnished by sending the item supplied which is the subject of complaint, a sample component and/or of an informative test report.

(2) The goods shall be inspected during the normal course of business after they are received at their destination. The supply is considered to have been approved if we have not been notified in writing of any apparent defects, or if no defects identifiable on routine inspection have been found before installation or further processing or within a limitation period of 8 days after receipt of the goods at their destination.

(3) We shall be notified in writing of any defects not apparent during the course of routine inspection as soon as they become apparent – at the latest within 6 months of receipt of the supplied item – under the same conditions.



#### 14. Warranties, procurement agreements, tolerances, claims for defects, limits and periods for warranty claims:

- (1) **Warranty statements** must be included in the order confirmation and expressly identified as such, or agreed subsequently in writing.
- (2) Information concerning characteristics of the supplied item, its processing and use, concerning specific dimensional accuracy and compliance with EN or DIN standards or other technical regulations shall only become part of the contract if they have been expressly agreed in the individual case. We accept no responsibility whatsoever for the suitability of the item supplied for a specific purpose unless we have guaranteed this expressly in writing.
- (3) In the event of production in accordance with drawings or other guidelines provided by the customer, we shall only be liable – regardless of other warranty and liability restrictions – for performance in accordance with the guidelines or drawings.
- (4) If the ordered goods are specially produced for the customer, we are entitled, by way of derogation from the order quantity, to deliver up to a maximum of 10 % more or less, if no agreement has been made to the contrary.
- (5) **Claims on account of defects** are excluded for differences in quality, dimensions, density, weight etc. if such differences do not exceed normal industry and material deviations, and in particular if they are within the range of tolerances of quality guidelines or standards. This also applies to tolerance for defects in the case deliveries of quantities (ratio of the number of units of defective goods to the overall quantity supplied). Special requirements for exact dimensional accuracy, tolerance for defects or special test criteria for the reduction of the tolerance for defects must be stated and expressly confirmed by us in the order.

(6) We accept no liability for defects or damages based on the following causes:

- Defective or absence of cooperation by the customer
- Incorrect or negligent use and handling or further processing
- Failure to comply with the operating instructions
- Incorrect storage
- Defective assembly or incorrect commissioning by the customer or third parties
- Lack of trial operation
- Natural wear and tear
- Defective or absence of maintenance
- Use of unsuitable lubricants or operating equipment
- Unsuitable environmental conditions
- Chemical, electronic or electrical influences

where the causes are not due to our fault.

(7) Excluded from the **warranty** are defects that were not notified until after the goods were processed or finished despite their defectiveness having been apparent.

(8) In the case of justified complaints made in good time, we shall provide, at our discretion, reworking or replacement.

(9) For replacement supplies, we shall be allowed a suitable period in particular for the production of new parts to replace the parts which have been the subject of complaint.

(10) In the case of repair, we shall bear the necessary expenses, where these are not increased because the supplied item is located at a place other than the place of delivery. Additional costs incurred due to claims for defects having to be fulfilled outside the Federal Republic of Germany, without our having been aware of this at the time of conclusion of the

contract, shall be borne by the customer. We are entitled to charge an appropriate advance on the expected additional costs. Where remuneration is on the basis of work carried out, the standard work times stipulated for our own performance shall only be accepted at the costs of labour normal in the appropriate country.

(11) Should the defect not affect fitness for purpose and if no significant defect is present, we are entitled to grant a price reduction instead of subsequent performance.

(12) Further-reaching rights and claims of the customer arising from product defects shall be subject to the condition that we are in default with subsequent performance on account of significant defects and an appropriate period of grace has elapsed or two attempts at reworking the same cause of defect have failed. Even after the period of grace has elapsed, we are entitled to provide subsequent performance until a final declaration has been received from the customer rejecting any further services from us.

(13) Where these conditions are met, the customer may request, instead of withdrawal and demanding compensation instead of the performance, to carry out the work himself or have it carried out by a substitute, and demand restitution of the costs of this, provided that this does not exceed the net order value for the defective part of the supply.

(14) The **warranty period** for all supplies is **1 year** from delivery of the supplied item to the customer. In the case of default in acceptance, the period commences with our storage of the goods for the customers.

(15) The notification of defects, subsequent correspondence, measures for the investigation of defects and subsequent performance shall not interrupt or delay the elapsing of the period of limitations. Such effects shall be subject to express agreement in each individual case.

## **15 Liability**

(1) Mandatory statutory provisions on product liability shall remain unaffected.

(2) Due to the statutory requirements, we are liable for infringements of warranty, personal damages or where we, our legal representatives or our assistants are guilty of malicious intent or gross negligence.

(3) Where we negligently infringe an essential contractual obligation, non-compliance with which jeopardises the contractual purpose, our obligation to pay compensation is limited to the restitution of normal, foreseeable damages.

(4) Purely monetary damages, in particular lost profits (damages due to interrupted operations or down time), will not be compensated for.

(5) Further-reaching claims for damages, on any legal basis, shall be excluded.

(6) Where our liability is excluded or limited, this also applies to the personal liability of our employees, staff, temporary workers, representatives and assistants.

## **16. Technical modifications:**

Technical modifications serving an improvement to the goods may be made by us without the prior approval of the customer.

## **17. Data processing:**

We hereby state that data is processed within our company concerning business transactions and we reserve the right to transfer the data necessary for the obtaining of credit security to the insurer.

## **18. Law governing contracts of purchase with international customers:**

The law of the Federal Republic of Germany, excluding the law on the United Nations Convention on Contracts for the Sale of International Goods and Services (UN purchasing law) shall apply to these terms of business and the entire legal relationship between the customer and us.

### **19. Language of the contract, rules of interpretation**

(1) Where no express agreement is made to the contrary, the language of the contract is German. If, associated with the order confirmation in German, there exists a version in the language of the customer or another foreign version, only the German version shall be authoritative for interpretation of the contract. If an order confirmation only exists in a foreign language, its content, translated into the German language, shall be authoritative for its interpretation.

(2) If there should be disagreement between the contracting parties concerning the wording of a translation according to clause (1), a publicly-appointed sworn translator of documents shall be engaged jointly and at the cost of both parties, whose translated text shall be authoritative for the interpretation of the contract.

(3) If the contracting partners cannot agree on a translator according to clause (2), the person shall be appointed by the President of the District Court of Heilbronn or a director of the chamber of commerce and industry in Heilbronn. Both contracting parties shall have the right to apply for such appointment.

(4) If the issue of contract interpretation or the valid version cannot be clarified mutually, the competent court shall determine the basis of interpretation independently.

### **16. Place of performance, court jurisdiction:**

(1) Where the customer is a merchant within the meaning of § 1 of the German Commercial Code, a legal entity under public law or a special trust fund under public law, the place of performance for our supply obligations for delivery ex works is the appropriate factory. In the event of delivery ex warehouse, this is the appropriate warehouse location. Only in case of supplies with an agreed arrival clause (DAP, DAT, DDP Incoterms® 2010), our place of performance shall be the stated destination. The place of performance for the customer's obligations is our company headquarters in Bietigheim-Bissingen.

(2) Where the customer is a merchant within the meaning of § 1 of the German Commercial Code, a legal entity under public law or a special fund under public law, or is not based in the Federal Republic of Germany, Bietigheim-Bissingen is the court with exclusive jurisdiction to resolve any disputes arising directly or indirectly from the contractual relationship. In any event we are also entitled, at our discretion, to take action at the courts local to the customer.

Bietigheim-Bissingen, date

**Alfred Heyd GmbH u. Co. KG**

Issue date: 03/2011