

# General Terms and Conditions of HWU Lubtec GmbH & Co.KG (October 2020)

## 1. Scope

(a) These General Terms and Conditions ("GTC") shall apply to all deliveries and services of HWU Lubtec GmbH & Co.KG ("Seller") to its customers ("Buyer"), unless otherwise agreed in writing. Any Buyer's terms and conditions are hereby expressly rejected.

(b) A consumer in the sense of these GTC is any natural person who concludes a contract with the Vendor for purposes that are predominantly neither commercial nor self-employed (according § 13 German Civil Law Code [Bürgerliches Gesetzbuch] - BGB). A merchant (according § 14 BGB) is any natural or legal person or partnership with legal capacity who, when concluding a contract with the Seller, acts in the exercise of his commercial or independent professional activity. Orders using means of remote communication within the meaning of these GTC are orders which the consumer places with the Seller online, by e-mail, telephone or letter/fax.

## 2. Conclusion of Contract

(a) Offers of the Seller are subject to change. They contain an invitation to the buyer to submit an offer. Orders of the Buyer are binding for him. In the case of an order by consumers via remote means of communication, the receipt of the order will be confirmed immediately. This order confirmation does not constitute a binding acceptance of the order. Acceptance of the order is effected by sending a separate purchase confirmation. If the Buyer is not a consumer, the invoice shall be deemed to be a declaration of acceptance, unless the Seller sends a written confirmation of purchase to the contrary.

(b) The Buyer may call up, print and save these GTC before conclusion of the contract at <https://www.hwu-lubtec.de/footer/agb/>. They should also be sent to the Buyer who is a consumer as an attachment to the confirmation of purchase.

## 3. Quality, Quantities

(a) Standard Product quality is agreed. The quality of the Products shall be mainly determined by the written agreement of Seller and Buyer. In the absence of such an agreement, the description in the Seller's confirmation of purchase shall be decisive for the quality or, in the absence of a confirmation of purchase, the description in the Seller's delivery bill. Any quality characteristics of any samples or examples, analysis details or specifications are illustrative and not binding. They shall not apply unless agreed in writing. The Seller shall not grant any guarantee of quality or durability.

(b) In the case of collection on behalf of the Buyer, the measure determined at the shipping point (warehouse or similar) by weighing or measuring shall be binding for the determination of quantity. In the case of delivery by tank truck, the quantity indicated by its measuring device shall be authoritative, unless the Buyer proves its incorrectness.

## 4. Transfer of Risk

(a) The risk of accidental destruction and accidental deterioration or loss [Gefahr des zufälligen Untergangs und der zufälligen Verschlechterung] of the Products shall pass to the Buyer upon delivery of the Products. If the Buyer is a merchant, the transfer of risk in the case of sale by dispatch [Versendungskauf] shall take place upon delivery to the forwarding agent, the carrier or any other person designated to carry out the shipment.

(b) Buyer's default of the acceptance [Annahmeverzug] of the Products shall be treated in the same way as a handover in clause (a) above.

## 5. Delivery Schedules and Deadlines, Problems with Delivery

(a) If the Buyer is a merchant, Seller's delivery schedules are approximate schedules. If the Buyer is a consumer and the order was placed using means of distance communication, the Seller shall provide the Buyer with information as to the date by which it undertakes to deliver. If the Buyer is a merchant, partial deliveries shall be possible where Buyer can make use of the partial deliveries. Seller ensures the complete delivery amount of Product and Buyer does not incur or is not required to bear significant additional costs. If the Buyer is a consumer, the Seller is entitled to make partial deliveries to a reasonable extent.

(b) Seller shall not be liable for delivery delays, as long as they have been caused by circumstances that were not foreseeable [unvorhersehbare Umstände] at the time of the contract conclusion, that are beyond the Seller's control (and have not been caused by Seller's intent or negligence [Vorsatz oder Fahrlässigkeit], e.g. war, terrorist attacks, natural disasters, illness, pandemics, epidemics, industrial actions including strikes or lawful lockouts, governmental acts including quarantine restrictions or embargoes ("Force Majeure").

In cases of Force Majeure performance shall be suspended for so long as the event of Force Majeure is continuing and taking into account a reasonable phase-out time. The Seller is obliged to inform the Buyer of the occurrence of any Force Majeure event as soon as the Seller has notice or has learned of the event. In case of a Force Majeure event exceeding 4 (four) consecutive calendar weeks either Party shall have the right to immediately terminate the contract.

(c) Aside from Force Majeure as defined in clause 4 (b) the Seller shall not be liable for any delivery delays occurring as a result of Seller's failure to receive Product or correct Product or for whatever reason despite the conclusion of a congruent cover transaction (Deckungsgeschäft). Seller shall provide Buyer with prompt notice of any incorrect or delayed delivery from his Supplier. Seller shall be obliged to assign any claims against his suppliers at the Buyer's request.

## 6. Acceptance

(a) If Buyer fails to take delivery of Product fully or partly Seller may place the corresponding quantities fully or partly in storage at Buyer's sole costs. Following expiration of any applicable deadline for Buyer's acceptance of goods, Seller shall have the right to terminate the contract in part or in full and demand compensation instead of performance [Schadensersatz statt der Leistung].

(b) Buyer guarantees that the fueling, transport and storage equipment used for collection of Product are in perfect condition and are operated in compliance with all public and civil law safety requirements applicable.

(c) The Buyer shall comply with all applicable legal requirements when collecting the Products especially with regards to the storage and transport of the Products. Furthermore, Buyer shall comply with the Seller's instructions at the collection location.

## 7. Prices

(a) Unless otherwise agreed, the prices include energy tax, customs and contributions to the German National Petroleum Stockpiling Agency (Erdölbevorratungsverband) or similar fees, but do not include value added tax at the statutory rate. In the case of consumers, the price shall also include value-added tax at the statutory rate.

(b) In case any changes in transport costs, stock or handling fees or changes caused by additional, higher or lower taxes or other fees on the Products or changes of Seller's purchase costs due to state action in any supplying country, after the conclusion of the agreement, prices shall be adjusted accordingly. If the Buyer is a consumer, the above provision shall only apply if Seller and Buyer agree at the time of conclusion of the contract that there should be a period of more than four months between conclusion of the contract and delivery or provision of the service or if a continuing obligation exists. In case of any price increase of more than 3 (three) % the Buyer shall be entitled to rescind from the agreement, regardless of whether he is a merchant or a consumer. Buyer shall give Seller written notice of rescission within 7 (seven) days from written information about the price increase.

## 8. Defects

(a) If the Buyer is a merchant, in case of a defect Seller may in its sole discretion choose between rectification of the defect [Nachbesserung] or replacement delivery. Otherwise, the Buyer has the right to choose. If the rectification or a replacement is not possible, Buyer shall have the right to demand a reduction of the purchase price or terminate the agreement. In case of slight defects, however, the Buyer has no right of withdrawal.

(b) If the Buyer is a merchant, he is obliged to examine the Products forthwith after delivery and inform Seller immediately of any defects. If any defect appears subsequently to delivery (concealed defect) [verdeckter Mangel] it must be reported forthwith following its discovery.

(c) In case the Products are mixed/ comingled [Verbindung/ Vermischung] with other goods and are no longer distinguishable, the Buyer shall have no right to raise any claims for defects in the absence of proof that the defect is attributable to the Product. If the Buyer is a consumer and a material defect becomes apparent within six months of the passing of risk, it shall be assumed that the purchased item was already defective at the time of the passing of risk, unless this assumption is incompatible with the nature of the item or the defect.

(d) To examine any defect Seller and Buyer agree that for any sampling, the analysis must be based on at least 1 (one) liter or one kilogram of the respective Products and shall be sampled either in the presence of Seller's representative or witnessed by an expert appointed by the Seller.

(e) Buyer shall secure any of the Seller's rights towards the transport agents (e.g. haulers) and shall immediately take the steps necessary to secure evidence.

## 9. Liability

(a) Supplier's liability is excluded apart from cases of willful misconduct [Vorsatz] and gross negligence [grobe Fahrlässigkeit].

(b) The above mentioned liability restriction in subparagraph 9. (a) of these Terms does not apply in the event of Buyer's claims derive from product liability [Produkthaftung] or an injury of life, body or health [Schäden an Leib, Leben oder Gesundheit] attributable to Seller or where essential contractual obligations [wesentliche Vertragspflichten] (obligations whose compliance is essential for due performance of the agreement and on whose compliance the Buyer regularly relies or is allowed to rely) are breached. In this case the liability is only limited to foreseeable damages that are typical for this kind of agreement [vorhersehbare und vertragstypische Schäden].

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(c) These limitations of liability shall apply as well to breaches of obligations by the Seller's legitimate representatives [gesetzliche Vertreter], agents [Erfüllungsgehilfe] or subcontractors [Verrichtungsgehilfe] and their private liability.

### **10. Payments, Assignment, Offsetting, Retention**

(a) Purchase price payments shall be due, if not agreed otherwise, immediately and apart from that within the agreed payment period. The payment date shall be specified on the invoice.

(b) The invoice value date shall be at the due date the latest. Discounts or other deductions shall not be applicable. Bank drafts and checks shall only be acceptable as payment where previously agreed in writing; in which case a payment shall only be considered accomplished when said payment is no longer subject to any kind of claw back, reclamation and funds have been irrevocably received. If the Buyer is a merchant and direct debit payment via SEPA is agreed the pre-notification period shall be reduced to 1 (one) day.

(c) If payment date is exceeded and the Buyer is a merchant, Seller shall be entitled (without prior notice) to charge interest at a rate of 9 (nine) percentage points above the base rate [Basiszins] in addition to any and all his legal rights.

(d) If the Buyer is a merchant, Seller shall have the right to unilaterally demand immediate payment prior to maturity for all open invoices on: Buyer's failure to comply with the agreed payment terms for previous deliveries, in case of a decline in Buyer's creditworthiness or where Buyer's ability to make payments when due is uncertain or where the agreed credit limit is exceeded. In the above mentioned cases Seller shall be also entitled to terminate the agreement in part or in full on notice and to demand compensation from Buyer in lieu of performance [Schadensersatz statt Leistung]. If the Buyer is a consumer, the above provisions shall only apply if (i) the Buyer is wholly or partially in default with at least two consecutive part payments, (ii) the Buyer is in default with at least 10 percent of the cash payment price of the goods in the case of a contract term of up to three years or at least 5 percent of the cash payment price of the goods in the case of a contract term of more than three years and (iii) the Seller has unsuccessfully set the Buyer a two-week deadline for payment of the amount in arrears with the declaration that if payment is not made within the deadline, the Seller will demand the entire remaining debt.

(e) If the Buyer is a merchant, Buyer shall have no right to assign claims against Seller without Seller's prior written consent.

(f) Buyer may only offset claims which are undisputed or which are legally enforceable. If the Buyer is a merchant, the Seller reserves the right to offset Buyer's claims against any claims of Seller's affiliates (defined according to § 15 of the German Stock Corporation Act) [verbundene Unternehmen], including but not limited to the parent company, sister companies and subsidiary companies. Consumers shall be entitled to set off against the Seller's claims if they make complaints or counterclaims arising from the same purchase contract.

(g) If the Buyer is a merchant, he may only assert rights of retention resulting from the same contractual relationship where the claims are undisputed or legally binding. If the Buyer is a consumer, he may assert rights of retention if and to the extent that these are based on the same contract as the Seller's claims against the Buyer.

### **11. Retention of title**

(a) Title to the Products shall remain with Seller until final payment has been received by Seller. If the Buyer is a merchant, final payment means Buyer has paid any and all receivables due and owing resulting from the Seller's and Buyer's business relationship in general.

(b) Buyer agrees to safeguard the Products free of charge with the due care and attention of a reasonably prudent market participant. Buyer shall inform Seller forthwith about any third party rights or claims or other encumbrances on the property and, if applicable, shall take measures to secure Seller's rights.

(c) If the Buyer is a merchant, Buyer shall have the right to resell the goods in the normal course of business as long as Buyer properly fulfills his obligations towards Seller. Besides the case where of § 354a German Commercial code [Handelsgesetzbuch] (HGB) applies, the resale of Product is not permissible where Buyer has agreed a prohibition of assignment with Buyer's customer. Buyer shall assign to Seller all receivables and rights deriving from the sale to its customer. Where Buyer and his customer agree to the assignment, and Buyer has a current account relationship with his customer, the amount of the gross invoice in the current account demand shall be assigned to Seller and after successful balancing the gross invoice shall be replaced by the acknowledged balance, which shall then be assigned.

(d) If the Buyer is a merchant, Seller authorizes Buyer subject to revocation, to collect the assigned receivables in the course of normal business. Seller may not collect the assigned claims as long as the Buyer fulfills its payment obligations towards the Seller, remains current in its payments, no application for an insolvency proceeding is raised and the Buyer did not otherwise in default or breach of the agreement. In case any of the before mentioned cases occurs the Seller can request the Buyer to immediately disclose the assigned receivables and their debtors as well as to provide Seller with all necessary information and the respective documents for

collecting the receivables and to inform debtors of the assignment and to inform the Buyer's customers. Furthermore, the Seller shall have the sole right to revoke the Buyer's authorization to collect the assigned receivables.

(e) If the Product(s) is (are) mixed or comingled with any third party goods, Seller will alone or jointly own the new goods in the ratio of the gross invoice value of the Product(s) subject to retention of title to the other goods. If the goods are mixed or comingled with other goods of the Buyer, Seller will be entitled to the co-ownership of the mixed goods in the ratio of the gross invoice value of the other goods to the goods subject to the retention of title, which are kept for the Seller by the Buyer. Clause 11 (a) to (d) shall apply in the same way to the resulting product as to the purchased goods delivered under retention of title.

(f) Insofar as the value of assigned receivables exceeds Seller's total payment demands by more than 10 (ten) %, Seller will release the corresponding proportion of receivables upon written request from Buyer. The realizable value or nominal value of the receivables shall be the basis for the valuation of securities.

### **12. Statute of Limitation**

If the Buyer is a merchant, Buyer's claims resulting from quality defects or defects in title will become time-barred 1 (one) year from the date risk in Product has been transferred. Any claims for injuries, loss of life, damages to body or health [Schäden an Leib, Leben oder Gesundheit], as well as damages caused by Seller's intent [Vorsatz] or gross negligence [grobe Fahrlässigkeit] or resulting from product liability [Produkthaftung] shall be exempted from above mentioned time limitation and be subject to the respective applicable statutory time bars.

### **13. Data Protection**

(a) In the course of the business relationship with the Buyer the Seller processes Buyer's company related data as well as its personal data.

(b) For the purpose of contract performance, offer preparation, business correspondence, invoicing and raising possible claims resulting from the contractual agreements the Seller processes the contact details of the Buyer and/or the Buyer's employees, e.g. name, address, email, telephone number according to Art. 6 Subparagraph 1 Sentence 1 lit. (b) of the General Data Protection Regulation [DSGVO – Datenschutz-Grundverordnung] (GDPR). Contact information and data are stored also in the Seller's customer data base for marketing purposes. Where necessary the Seller may process any personal data beyond the contract term for purposes of the development and maintenance of the business or customer commercial relationships subject to Seller's justified interest as determined according to Art. 6 Subparagraph 1 Sentence 1 lit. (f) GDPR.

(c) The Seller shall be entitled to process the Buyer's personal data as long as are necessary for the limited purposes set out in the preceding paragraph (b) and in compliance with data retention or documentation obligations under applicable tax or commercial law (Article 6 Paragraph 1 Sentence 1 lit. (c) GDPR).

(d) The Buyer shall be entitled at any time to demand information from the Seller on the personal data stored by the Seller concerning his person (Art. 15 GDPR), to demand their correction under the conditions of Art. 16 GDPR, their deletion under the conditions of Art. 17 GDPR and/or the restriction of their processing under the conditions of Art. 18 GDPR. Without prejudice to further rights, the Buyer shall also have the right to appeal to the competent supervisory authority.

(e) More information about the Seller's data processing principles can be found in the general data protection information published on its website.

### **14. Miscellaneous**

(a) If the Buyer is a merchant or a public entity or a special fund under public law the Parties agree that all legal disputes against the Seller arising from agreements based on these GTC shall be subject to the courts at the Seller's general place of jurisdiction. The Seller shall also be entitled to commence proceedings at the Buyer's general place of jurisdiction.

(b) The law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

(c) Any reference to INCOTERMS without the year published shall be deemed to mean the version of INCOTERMS in effect at the time of deal conclusion with merchants.