

## CONDITIONS OF SALE



**The Supplier is H.M.T. (Hard Materials Technologies GmbH) with its headquarters in the Grand Duchy of Luxembourg**

### 1. General

1.1 The contract with the Customer shall be based exclusively on the General Terms and Conditions of Sale and Delivery ("GTC") set forth below.

1.2 These GTC shall apply exclusively. Any contradictory, supplementary or deviating terms and conditions of the Customer shall not be applicable unless the Supplier has expressly consented thereto in writing in the specific case. These GTC shall apply also in the case where the Supplier renders performance to the Customer without reservation, despite being aware of contrary or deviating terms and conditions of the Customer.

1.3 These GTC shall also apply to any future transactions with the Customer, without an express agreement being required in the specific case.

1.4 These GTC shall not apply where the Customer is a consumer within the meaning of the law.

### 2. Formation of contract

2.1 The Supplier's offers shall be non-binding. Where the offer specifies quantities, measurements or weights, or includes any drawings, these shall be deemed approximate only. Should the Customer require adherence to exact measurements, this must be explicitly stated in its order.

2.2 The contract with the Customer shall be formed through the Customer's placement of the order and the Supplier's confirmation of such order. The Supplier's order confirmation shall be authoritative for the content of the contract, provided the Customer has not objected thereto within 3 (three) working days of receipt. In the absence of a written order confirmation, the contract shall be formed through the actual execution of the order/delivery of the goods.

2.3 In case of doubt, the prices quoted by the Supplier shall be net prices ex works. Prices may be subject to increases based

on the statutory VAT as well as transport, insurance and/or packaging costs.

2.4 Quantities ordered may exceed or fall below the originally specified quantity by up to 10% (ten percent); the Supplier shall invoice the actual quantity delivered.

2.5 Where there is a change in the price of raw materials after conclusion of the contract, and more than 4 (four) months have elapsed between the contract's conclusion and the contractual delivery date, the Supplier shall have the right to adjust the agreed prices in line with the changes. If the agreed price increases by more than 10% (ten percent), the Customer shall have the right to rescind the contract within 2 (two) weeks after announcement of the price increase. In such a case, the Supplier will have the same right.

### 3. Delivery

3.1 In case of doubt, the delivery period shall commence upon receipt of the Customer's order, however not before clarification of all details necessary for the contract's performance, and not before all documentation, parts or materials to be provided by the Customer have been obtained. Where import and export formalities must be complied with, or the Supplier exerts any rights of retention, the delivery period and any other periods stipulated for the fulfilment of contractual obligations shall be extended by the corresponding period, and the Supplier shall not be in default.

3.2 Section 3.1, sentence 2 shall apply *mutatis mutandis* in cases of force majeure or other unforeseeable events occurring at the Supplier, its sub-suppliers or sub-contractors due to reasons for which the Supplier is not responsible (e.g. extraordinary natural phenomena, energy and raw material shortages, war, terrorist attacks, industrial disputes, operational disruptions through no fault, unrest, sovereign acts, etc.).

3.3 The Supplier shall have a right of retention for as long as the Customer is in default with any of its obligations under the present or any other contract entered into with the Supplier, except if such obligations are merely minor and do not affect



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the performance of the contract by the Supplier.

3.4 Unless agreed otherwise, the delivery deadlines shall be deemed met if the goods have been dispatched in due time or the Customer is informed that the goods are ready for delivery.

3.5 If, at the Customer's request, dispatch takes place at a later date than originally intended, the Supplier may nonetheless demand payment in the agreed manner and on the agreed date.

3.6 The Customer shall not be permitted to refuse partial deliveries unless acceptance thereof would be unreasonable for it, taking into consideration also the justified interests of the Supplier.

3.7 In the case of contracts for the Customer's continuous supply, the Customer must plan and request the required quantities in advance and in good time. Should the Customer fail to do so, the Supplier, after having set a grace period, shall be entitled to determine and deliver the quantities to be supplied itself.

### 4. Dispatch

4.1 Unless agreed otherwise, the risk shall pass to the Customer at the time the goods are handed over to the shipping company or freight carrier, however no later than at the time the goods leave the Supplier's factory.

4.2 The shipping route and means of transport shall be determined by the Supplier at its reasonable discretion. Insurance of the goods shall be separately requested and paid for by the Customer.

4.3 If it has been agreed that the Customer will collect or arrange for the collection of the goods, then such collection must take place without undue delay as soon as the Supplier has announced that the goods are ready for dispatch. Otherwise the Supplier shall have the right to place the goods in storage at the Customer's cost. The goods must be collected during the normal business hours of the Supplier.

4.4 If, based on another agreement within the meaning of section 4.1, the Supplier bears the risk even after the time referred to therein, the Customer shall report any transportation

damage to the transport company without undue delay and prepare a record of the damage jointly with the transport company.

4.5. Any order with an order value of less than 150,- EUR will carry a service charge of 15,- EUR.

### 5. Payment

5.1 The agreed price shall be due and payable strictly net and without discount within 30 (thirty) days of date of invoice.

5.2 The Supplier does not accept any payments by cheque or bill of exchange.

5.3 The Customer may only exercise rights of set-off or retention if the counter-claims alleged in this respect have been declared final and binding by a court of law or explicitly acknowledged by the Supplier.

5.4 If the Customer is in default of payment, the Supplier may, in accordance with section 6.2, prohibit the Customer from the resale, further use or processing of the goods supplied and demand the goods' return, as well as charge the Customer the statutory default interest plus any reminder and collection expenses. The right to assert higher damages claims based on default shall not be affected thereby.

5.5 The Supplier may demand advance payment for any future deliveries if the Customer is in default of payment, or circumstances subsequently come to light indicating that the Customer will not meet its payment obligation.

### 6. Reservation of title

6.1 The Supplier reserves title to the delivered goods until such time the Customer has paid the purchase price in full ("Reserved Goods"). If such reservation of title is of no force and effect under the laws applicable at the Customer's place of business, the Customer must expressly draw the Supplier's attention thereto and offer to provide it with equivalent security. The Supplier may also require the Customer to provide payment in advance or a letter of credit.

6.2 The Customer shall be granted the right to sell, use or rework/process the goods in the normal course of business; such right shall be revocable at any time.



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6.3 Any reworking/processing of the Reserved Goods by the Customer shall always be performed free of charge and in the name and on behalf of the Supplier. If the Customer processes the Reserved Goods with other objects not belonging to the Supplier, thereby forming a new item, the Supplier shall acquire co-ownership in the new item in proportion to the value of the Reserved Goods. The same shall apply where the Reserved Goods are mixed, combined or blended with other objects not belonging to the Supplier.

6.4 In the event of resale of the Reserved Goods or new item, the Customer here and now assigns to the Supplier by way of security the receivable – in the full amount or in the amount of the relevant co-ownership interest pursuant to section 6.3 – accruing to it from its own customers as a result of the resale. The Supplier hereby accepts such assignment. The Customer shall be obliged to comply with the disclosure requirements in connection with such assignment (particularly through corresponding entries in the books). The Customer shall be granted the right (revocable at any time) to collect the receivable on its account in its own name. Should the Customer fail to meet its payment obligation vis-à-vis the Supplier in due and proper manner, the Supplier shall have the right to inform the Customer's own customers of the assignment and collect the receivable itself. The Customer shall inform the Supplier of the name and address of its customer, including the amount and maturity of the assigned receivable, and shall assist the Supplier in the assertion and enforcement of the claim to the best of its ability. Where the Reserved Goods or the new item are resold together with other items for one total price, the assignment shall be restricted to the prorated invoice amount (including VAT) for the Reserved Goods included in the sale or, as the case may be, the co-ownership interest in the new item.

6.5 To the extent the value of the security exceeds the receivables to be secured by more than 20% (twenty percent), the Supplier shall release security at its discretion if so requested by the Customer.

6.6 Where the Reserved Goods or the new items are lost, sized,

destroyed or damaged, the Customer must draw attention to the Supplier's co-ownership/ownership and notify the Supplier without undue delay, thereby enabling the Supplier to assert its rights of co-ownership/ownership. The Customer hereby assigns to the Supplier in advance its resulting claims against each third party, specifically the damaging party or insurance company.

### **7. Notice of defects / warranty**

7.1 The Supplier represents and warrants that at the time of delivery the goods delivered conform to the agreements reached in each case, such as, for example, specifications, drawings, etc.

7.2 The Customer shall promptly inspect the goods after they have been delivered. Any defects detected during inspection must be reported without undue delay, however no later than within 14 (fourteen) days of delivery by providing exact details of the nature and extent of the defect. Defects which cannot be detected upon delivery despite careful inspection of the goods, must be reported promptly after being detected. The notice of defects must be given in writing, e.g. fax, email with confirmation of receipt, etc. The Customer shall provide the Supplier with an opportunity to examine the defects. Where notice of defects is not given in due time or at all, the goods shall be deemed accepted; the assertion of any claims or avoidance on grounds of mistake based on defects shall be precluded.

7.3 The Customer will be required to demonstrate that a defect exists. So long as it has not been demonstrated and expressly acknowledged by the Supplier that a defect exists, any repairs or replacements by the Supplier shall be carried out without acknowledging any legal obligation, and solely as a gesture of goodwill.

7.4 If the Customer has a right to cure performance the Supplier may, at its option, either repair or replace the defective goods. Should such cure fail or be refused, the Customer shall have the right to rescind the contract or claim reduction of the purchase price. The Customer shall have no further warranty

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rights.

7.5 The warranty shall not apply to defects resulting from normal wear and tear, failure to adhere to the Supplier's instructions (e.g. with respect to storage, use of the goods, etc.) or the fact that the Customer carried out modifications to the goods or performances, exchanged certain parts of the goods or used consumable supplies that do not correspond to the original specifications, or to defects attributable to incorrect materials, drawings, specifications, etc. of the Customer.

7.6 The limitation period for claims pursuant to section 7 shall be 12 (twelve) months from the date of delivery of the goods.

### 8. Damages

8.1 The Supplier shall not be liable for claims for damages and reimbursement of expenses asserted by the Customer – on whatever legal grounds – unless such claims are based on willful intent or gross negligence.

8.2 The Supplier shall assume liability for damage to property and pecuniary loss based on slight negligence only in the case of breach of a material contractual duty; liability shall, however, be limited to the amount of damages foreseeable upon conclusion of the contract. A material contractual duty in this sense shall be a duty which must necessarily be fulfilled to enable the proper performance of the contract, and on whose compliance the Customer would usually be entitled to rely.

8.3 The limitations and exclusions of liability referred to under sections 8.1 and 8.2 shall not apply where the Supplier's liability is mandatory owing to statutory provisions (e.g. in cases of injury to life, limb or health, product liability etc.).

8.4 All damages claims against the Supplier shall become statute-barred no later than 1 (one) year from knowledge or grossly negligent ignorance of the circumstances establishing the claim and the person liable to pay damages. This shall not apply where the Supplier's liability is mandated by statute (see sections 8.1 to 8.3).

### 9. Tools

Tools or molds which the Supplier produced or procured for the performance of the contract shall remain the property of the

Supplier, even if their manufacturing is invoiced to the Customer.

### 10. Plans, drawings, samples

10.1 Plans, drawings and other documentation of the Supplier ("Documents") shall be handed over to the Customer solely for purposes of conclusion of contract and, if applicable, its performance; the Customer shall not be granted any more extensive right of use to the Documents. The Supplier reserves title to such Documents. The Customer shall be obliged to return the Documents as soon as the Supplier requests their return, the contract negotiations fail or the Documents are no longer required for the performance of the contract.

10.2 Any samples ordered by the Customer will be invoiced by the Supplier unless it was expressly agreed that the sample would be free of charge, in which case section 10.1 shall apply *mutatis mutandis*.

10.3 Where the Customer hands over plans, drawings, samples or other documentation to the Supplier, the Supplier shall not be obliged to examine whether such documents themselves or the use thereof infringe third party rights. The Customer shall indemnify the Supplier against all third party claims based on infringements of industrial property rights in connection with the plans, drawings, samples or other documentation and/or the use thereof, and shall bear any costs incurred by the Supplier in this connection.

### 11. Compliance with laws; import / (re-) export control

11.1 The Customer undertakes to comply with any applicable laws and regulations as well as any official or court orders, particularly those relating to the prevention and combating of corruption, cartel and competition law, environmental protection, health, safety and fundamental rights of employees.

11.2 In addition, the Customer specifically undertakes to comply with the applicable provisions relating to import and (re-) export control, including the regulations on sanction lists and embargoes. With respect to the import, use or export of the delivery item by the Customer, it shall be incumbent on the Customer to procure all necessary approvals and other permits

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required under the relevant regulations on import and (re-) export control applicable to the Customer.

11.3 Where the Supplier is required to submit certain documents (e.g. end-user statements, import certificates) to a competent authority, and the Customer's cooperation is required for this purpose, the Customer shall, at the Supplier's request, be obligated to obtain and provide the Supplier with the documents and any other necessary information in good time. In case of delays due to the Customer's non-compliance with its duties of cooperation, or delays attributable to authorities, the deadlines to be observed by the Supplier will be extended by the appropriate time period.

11.4 In the event that delivery and the performances by the Supplier are permanently or temporarily prevented through impediments arising from applicable national or international regulations, specifically export control provisions, embargoes or other restrictions, or if any required permit is refused or revoked for reasons for which the Supplier is not responsible, the Supplier shall not be under any delivery and performance obligation. In such cases, the Customer cannot assert any claims for damages or other rights against the Supplier.

11.5 The Customer shall compensate the Supplier in accordance with statutory requirements for any damage suffered and expenses incurred through culpable breach of the obligations referred to under this section 11, and shall indemnify the Supplier against any related third party claims.

### 12. Confidentiality

12.1 The Customer shall treat as confidential and not disclose to third parties any and all secret information, documentation, Documents pursuant to section 10.1 and data (*inter alia* those of a commercial and technical nature) that are not in the public domain and of which it becomes aware in the course of the contractual business relationship with the Supplier, and shall use these solely in the context of the contractual business relationship with the Supplier.

12.2 The Customer's use of the company name or trademarks of the Supplier for advertising purposes or in giving references

shall be subject to the Supplier's prior written consent.

### 13. Miscellaneous

13.1 Amendments and supplements to the contract must be executed in writing. The foregoing also applies to any agreement concerning the waiver of the writing requirement.

13.2 This contract and any disputes arising therefrom shall be governed exclusively by Luxemburgish law to the exclusion of the UN convention on Contracts for the International Sale of Goods (CISG) and the exclusion of the conflict of laws provisions.

13.3 Place of jurisdiction for all disputes arising out of or in connection with this contract, including matters relating to its valid formation, performance and termination as well as its pre-contractual and post-contractual effects, shall be Luxembourg, Grand Duchy of Luxembourg.