



**Gebr. Heinemann**  
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Gebr. Heinemann Verwaltungs SE  
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Headquartered in: Hamburg, Germany  
Registered in: Germany at Hamburg  
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Kay Spanger, Raoul Spanger  
Board of directors: Claus Heinemann,  
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# General Sales Conditions

## Gebr. Heinemann SE & Co. KG

### 1. Applicability

- 1.1 These General Terms and Conditions of Sale (hereinafter the "General Terms and Conditions") apply to all business transactions with our customers (hereinafter individually "Buyer"). These General Terms and Conditions apply only if Buyer is an entrepreneur (Unternehmer, as defined in § 14 of the German Civil Code (BGB)), a public entity, or a public special trust (öffentlich-rechtliches Sondervermögen).
- 1.2 For purposes of commercial transactions we assume that Buyer has the legal right to trade with undeclared/declared goods as well as non-tax-paid goods.
- 1.3 Our General Terms and Conditions shall have exclusive applicability. Any General Terms and Conditions of Buyer different from, in conflict with, or in addition to our General Terms and Conditions shall be part of the contract only if and to the extent we have expressly consented to their applicability in writing. This consent requirement shall apply in all cases, for example also if we make delivery with knowledge of Buyer's General Terms and Conditions and without any reservation of rights.
- 1.4 The General Terms and Conditions as amended from time to time shall also apply to any future business transactions with the same Buyer, whether or not we state as much in a particular case; we will promptly notify Buyer of any changes to our General Terms and Conditions.

### 2. Offer and Acceptance

- 2.1 Our offers are subject to change and are non-binding. Drawings, images, dimensions, weights or other performance specifications are binding only if expressly agreed in writing.
- 2.2 By placing an order Buyer makes a binding offer to enter into a contract. Unless otherwise stated in the order, we shall have the right to accept the offer within one week from receipt.
- 2.3 Offers may be accepted by us either in writing (e.g., by order confirmation) or by delivering the ordered goods to Buyer.

### 3. Delivery, Transfer of Risk, Place of Performance

- 3.1 The delivery period shall be as agreed in each case or as specified by us when accepting the offer. Otherwise, the delivery period shall be approximately 3 weeks from the contract date.
- 3.2 In the event that we are unable to meet binding delivery periods for reasons beyond our control (unavailability of performance), we shall promptly notify Buyer thereof informing Buyer of the anticipated new delivery period. If performance is also unavailable within the new delivery period, we shall have the right to rescind the contract in whole or in part; any payments already made by Buyer will be promptly refunded. Unavailability of performance within the meaning of this provision shall include, without limitation, any untimely delivery of goods by our suppliers if we have entered into congruent cover transactions (Deckungsgeschäft).
- 3.3 If demanded by Buyer, goods shall be shipped to a different destination at the cost of Buyer (shipment transaction). Unless otherwise agreed, we shall have the right to select the method of shipment (including, without limitation, the carrier, shipping route, and packaging).



3.4 The risk of accidental loss and accidental deterioration of the goods shall transfer to Buyer at the latest when the goods are delivered. In case of a shipment transaction the risk of accidental loss and accidental deterioration of goods, as well as the risk of delayed delivery, shall transfer already when the goods are turned over to the carrier, shipping company or other person or entity entrusted with shipment of the goods.

3.5 The place of performance is Hamburg, Germany.

#### 4. Prices and Payment Terms

4.1 Unless otherwise agreed in a particular case, our current net prices in effect on the contract date shall apply.

4.2 In case of a shipment transaction (Section 3.3) Buyer shall be responsible for the costs of shipment from the warehouse as well as the costs of any shipping insurance desired by Buyer. Buyer also shall be responsible for any customs duties, taxes and other public charges. Shipping and other packaging within the meaning of the German Packaging Regulations (Verpackungsordnung), with the exception of pallets, shall not be returned to us, but rather shall become the property of Buyer.

4.3 The purchase price is due and payable within 14 days from the invoice date.

4.4 Buyer shall have no right to offset any counterclaims or to refuse performance based upon any counterclaims unless such counterclaims have been established by a final and conclusive court judgment or are undisputed. If delivery is defective, Buyer's remedies, including, without limitation, those provided for in Section 6.3 of the General Terms and Conditions, shall remain unaffected thereby.

4.5 If Buyer has authorized payment under the SEPA Direct Debit Business to Business Scheme, Buyer shall be provided with advance information about each direct debit at least three days prior to the due date.

#### 5. Retention of Title

5.1 We hereby retain title to all sold goods until all of our present and future claims under the contract of sale and the ongoing business relationship (secured claims) have been paid in full.

5.2 Prior to payment in full secured goods shall not be pledged or assigned for security purposes to any third parties. Buyer shall provide us with prompt notice if and to the extent that any secured goods are subject to any third-party claims.

5.3 Buyer shall have the right to sell and/or process secured goods in the ordinary course of business. In such case the following additional provisions shall apply:

(a) The retention of title shall also extend, at full value, to products resulting from the processing, commingling or combination of our goods, and we shall be deemed the manufacturer of such products.

(b) Buyer hereby fully assigns to us all claims against third parties resulting from a sale of the goods or products. We hereby accept this assignment.

(c) In addition to us, Buyer shall have a continued right to collect claims. We agree not to collect claims as long as Buyer fulfills its payment obligations to us, is not in default with payment, no petition for insolvency is filed, and Buyer's ability to render performance is not otherwise impaired. Should this be the case however, we shall have the right to demand that Buyer disclose to us the assigned claims and their obligors, provide us with all information necessary to collect the claims, deliver to us all related documentation, and notify the obligors (third parties) of the assignment.

(d) If the collectible value of the security interests exceeds our claims by more than 10%, we shall release security interests of our own choice upon the demand of Buyer.

#### 6. Buyer's Claims Based On Defects

6.1 Buyer's claims based any defects in quality or in title (including delivery of the wrong goods, delivery of an insufficient quantity of goods, improper installment of goods, or defective installation instructions) shall be governed by applicable law, unless otherwise provided below. In all cases the statutory special provisions applicable when goods are ultimately delivered to consumers shall remain unaffected thereby (recourse against supplier under §§ 478 and 479 of the German Civil Code (BGB)).

6.2 Any claims of Buyer based on defective goods delivered in a commercial transaction are conditional upon compliance with Buyer's legal obligation to inspect the goods and report any defects (§§ 377 and 381 of the German Commercial Code (HGB)).



6.3 If we are required to render remedial performance because delivered products are defective, we shall have the right to make remedial performance conditional upon Buyer's payment of the purchase price when due. Buyer shall however have the right to withhold such part of the purchase price as is reasonably proportionate to the defect.

6.4 Buyer shall have no claims for expectation or reliance damages except as provided in Section 7.

#### **7. Liability**

7.1 We shall be liable – whatever the legal basis – for any damages caused by willful or grossly negligent actions or omissions. We assume liability for damages caused by ordinary negligence only if such damages

(a) involve harm to life, limb or health, or

(b) result from a material breach of contract (breach of obligation the performance of which is essential for due performance of the contract and on the performance of which the other party may reasonably rely); in such case our liability shall however be limited to reasonably foreseeable damages.

7.2 The limitations of liability set forth in Section 7.1 shall not apply if we fraudulently conceal a defect or if we have made a warranty for a particular quality of the goods. The same shall apply to any claims Buyer may have under the German Product Liability Act (Produkthaftungsgesetz).

#### **8. Limitation of Claims**

8.1 Notwithstanding § 438 para. 1 no. 3 of the German Civil Code (BGB) the general limitation period for any claims based upon defects in quality or in title shall be one year from delivery.

8.2 The foregoing limitation period shall also apply to any non-contractual claims for damages Buyer may have based upon defective goods.

8.3 This Section 8 shall not apply to claims arising from harm to life, limb or health. The limitation periods set forth in the German Product Liability Act (Produkthaftungsgesetz) likewise shall remain unaffected.

#### **9. Embargoes and Sanctions**

Without prejudice to any other rights, we shall have the right to rescind contracts if the performance of such contracts would be in violation of any national and/or international foreign trade laws or regulations, such as embargoes or sanctions.

#### **10. Data Protection**

In compliance with our obligations under the Federal Data Protection Act (Bundesdatenschutzgesetz) we hereby advise Buyer that we process data of our customers and sales transactions for our own internal purposes at a central location and in a data processing center within the company. All data are processed in compliance with the provisions of the Federal Data Protection Act (Bundesdatenschutzgesetz) as well as the German Online Media Act (Telemediengesetz). For more details, please refer to the "Privacy Statement" section on our homepage at [www.gebr-heinemann.de](http://www.gebr-heinemann.de).

#### **11. Choice of Law, Venue and Jurisdiction**

11.1 These General Terms and Conditions, as well as all rights and obligations between us and Buyer, shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, with the exception of German conflict of laws provisions and international uniform laws, including, without limitation, the UN Convention on Contracts for the International Sale of Goods (CISG).

11.2 The exclusive venue and jurisdiction for any and all disputes arising directly or indirectly from the agreement between the parties – including disputes with buyers residing or domiciled in a foreign country – shall be in the courts of Hamburg, Germany.

#### **12. Severability**

12.1 If any provision of these General Terms and Conditions, or any provisions in any other contracts between the parties, is or becomes invalid, the validity of the remaining provisions of these General Terms and Conditions or other contracts shall remain unaffected thereby.

12.2 In the event of any conflicts between the German version of these General Terms and Conditions and any foreign-language version of these General Terms and Conditions, the German version shall be controlling.