

# General Terms and Conditions of Sale with Data Processing License of HAPPICH UK Ltd.

## 1. Exclusive validity and acknowledgement of our General Terms and Conditions of Sale:

1.1. All of our offers are based on our General Terms and Conditions of Sale. The acceptance of all purchase orders shall be subject to these terms and conditions. Any other general terms and conditions of the purchaser or regulations by the purchaser, which are not in conformance with our General Terms and Conditions of Sale or agreements, shall only be binding if they have been expressly acknowledged by us in writing.

1.2. Upon placement of the order or acceptance of delivery, the purchaser shall acknowledge the validity of our General Terms and Conditions of Sale, both for the particular transaction in question, as well as for all future transactions.

## 2. Offers – Subsidiary Agreements – Content of Agreement

2.1. Our offers shall be without obligation, meaning that an agreement shall only come into existence at the time when we accept the purchase order. We may accept the purchase order within a time period of three weeks after receipt of same.

2.2. Subsidiary agreements to our offers and confirmations of orders, as well as agreements entered into with our traveling representatives and agents, must be confirmed by us before they shall become valid.

2.3. In cases of doubt, only our expressed written confirmation of the order shall be binding with regard to the content of the agreement.

## 3. Prices

3.1. Our prices shall apply for the delivery ex works or warehouse exclusive of freight, packaging, insurance, customs and other fees and excluding value added tax, unless we have expressly indicated that a specified price shall include the value added tax.

3.2. The stipulated prices are based on the applicable wage, material and energy costs at the time the agreement is entered into. Should these costs increase before the time at which the order is actually carried out, we reserve the right to charge a price that has been respectively increased over the stipulated price, based on the percentage share of these costs.

## 4. Shipping

Unless we receive special shipping stipulations, the products shall be shipped in accordance with the shipping method deemed most appropriate in our estimation. The product shall be shipped to the account and at the risk of purchaser. If products are to be shipped to the purchaser upon the purchaser's request, any risk of incidental destruction or incidental deterioration of the product shall be transferred to the purchaser upon delivery of the product to the company commissioned to handle the shipment, at the latest however upon leaving the plant or warehouse, regardless of whether the shipment is carried out from the place of fulfillment, or whether the supplier carries out the shipment through the services of a vicarious agent and regardless of who is responsible for the transportation costs. If the product is ready for shipment and if the shipment or the acceptance of shipment is delayed for reasons falling outside our area of responsibility, then the risk shall be transferred to the purchaser at the time of receipt of notice that the order is ready for shipment.

## 5. Delivery dates and deadlines

5.1. Agreed delivery dates and deadlines for our deliveries shall not be construed as a transaction for delivery by a fixed date as specified in § 376 (1) of the German Commercial Code.

5.2. A delivery date or delivery deadline shall be deemed met if the product has left our delivery plant or warehouse upon expiration of the delivery date. In the case of the forwarding option, timely notification of readiness to ship vis-à-vis the purchaser is sufficient.

5.3. In the event of unforeseen obstacles that cannot be avoided despite reasonable effort to comply with the specific conditions at hand – whether they may arise within our operations or at those of one of our suppliers – such as force majeure, intervention by official authorities, energy supply difficulties, strike or lock-out, the delivery date shall be extended accordingly – even within the time period of a delay in delivery. We shall advise the purchaser immediately in the event of any such circumstances. The right to appropriate, as well as timely independent deliveries shall be reserved. Revisions to the delivery agreement, which impact the delivery date, shall affect an appropriate extension of the delivery date. An obstacle that exceeds a period of three months with no specific end in sight shall grant the purchaser and us the right to withdraw from the agreement, if the agreement cannot be honoured by us as a result of the obstacle.

5.4. If we find that there will be a delay in the delivery, the purchaser may withdraw from the agreement, provided he has granted us a suitable grace period in writing of at least four weeks and provided that the product has not left the delivery plant or warehouse at the expiration of this time period. If the forwarding option has been selected, the timely notification of readiness to ship vis-à-vis the purchaser is sufficient.

5.5. We shall only be held liable for damages related to delay or impossibility of performance to the extent to which the damages are the result of a deliberate action or due to gross negligence on the part of our management or one of our employees. Under all other circumstances the purchaser shall have the exclusive right of rescission.

## 6. Liability for Defect

We shall assume the following warranty:

6.1. The purchaser shall notify us immediately in writing upon discovery of any defects in the delivered products. The notification period for defects that can be detected in the course of a normal business transaction investigation is a maximum of one week and for other defects a maximum of twelve months from receipt of the product by the purchaser. If the purchaser should fail to provide immediate or timely notification of a defect, or if the product is modified after the defect has been detected or could have been detected, the purchaser shall thereby lose all warranty rights.

6.2. A defect of a portion of the delivered products does not entitle the purchaser to reject the entire delivery.

6.3. In cases where a duly reported notification of defect is justified and if requested by us, the purchaser shall return the rejected product at our expense. In this case we shall deliver a replacement product in flawless condition, but only – in the event that we have requested the return of the rejected product – after we have received said returned product. Instead of providing a replacement product, we may also select the option of providing a reworking of the defective product. Should the delivery of a replacement and/or reworked product fail or not be possible or reasonable, then we shall have the option of either withdrawing from the agreement with regard to the defective product or of lowering the purchase price. The purchaser may impose in writing a time period of ten days in which we are to exercise this option, which shall begin at that point in time when we shall receive back the defective product, at the earliest. If we should fail to exercise this option within the designated time period, it shall be transferred to the purchaser.

If the reworked or replacement product should prove unsuccessful, the purchaser may request, at his option, either a reduction of the purchase price or a withdrawal from the agreement. The same shall apply if we should experience a delay in the delivery of the reworked or replacement product and not be able to provide said services within the rescheduled period of an additional four weeks.

6.4. In the event of delivery of rubber profiles, the guidelines as specified in DIN 7716 shall apply for the storage, maintenance and repair and cleaning of the product. We shall not accept responsibility for any damages resulting from non-compliance with this regulation.

6.5. Liability for defects for the delivered products as outlined in the above paragraphs shall be final. Ongoing warranty claims, in particular claims for damages, shall be excluded unless the damage in this case is based on an intentional act or gross negligence of our management or of one of our employees. This shall apply also in the case of a delivery of replacement product or the reworking of a defective product.

6.6. The subject matter of the agreement shall pertain exclusively to the products sold with its respective properties and features, as well as the intended use in accordance with the accompanying product description and/or according to the specifications in our sales brochures. Other or ongoing properties and/or features or an intended use that is over and above that proposed shall only then be deemed approved if expressly confirmed by us in writing.

6.7. Under no circumstances shall we assume responsibility that the product ordered will be suitable for its intended use by purchaser, or that it can be used or processed under the conditions as set forth by the purchaser or his sub-purchaser, but rather it is the purchaser's own responsibility to check this on his own before the respective application or processing. We shall not be responsible for errors which may arise from the documentation submitted by purchaser (drawings, models and the like).

6.8. In the event that the purchase of our products is intended for subsequent sale to third parties, the purchaser shall be obligated to pursue the appropriate advertising for the product. The purchaser shall be aware that any improper advertising with regard to properties of the product could lead to claims for damages. The purchaser agrees to indemnify us against any consequences such advertising may cause and he shall be further obligated to repay any claims for damages against us that may arise as a result of the violation of this obligation.

## 7. Limitation of liability

In the event of a merely negligent violation of obligation by us or by our agents, our liability

shall be limited to the foreseeable damages typical of the contract. In any event our liability according to the product liability law and other claims shall remain unaffected.

## 8. Invoicing – Payment

8.1. We issue invoices as soon as the ordered products are ready for shipment or ready to be picked up. Delays in shipment or in the collection of the products that are not our responsibility shall not postpone the due date of the invoice.

8.2. Where not otherwise stipulated, our invoices shall be due within 30 days after the date of invoice. If purchaser pays the entire invoice in cash or by check within 8 days after the date of invoice, he shall be entitled to a 2% discount. The discount shall be granted only on the actual value of the product invoice itself and not on the value added tax. A discount reduction will not be granted if the purchaser has outstanding accounts payable that are due to us and that are not fulfilled at the same point in time at the latest.

8.3. If after entering into the agreement circumstances should become known to us which put the purchaser's credit worthiness in question, we may at our option demand either cash in advance or collateral. The same shall apply if the purchaser does not meet an incumbent payment obligation due to us by the due date. If either of these situations should arise, the sum total of our accounts receivable due from the purchaser, even from other business transactions, shall become due immediately. In cases where we may have accepted checks or bills that are not yet due, we shall be able to demand immediate payment upon return of the bill.

8.4. If the purchaser fails to pay by the due date, we may charge interest in the amount of the costs of the current credit of our house bank, up to a maximum of 8 percentage points above the current basic interest rate of the European Central Bank. The purchaser may present evidence, however, that we have not suffered any loss or that our loss is substantially lower than the lump sum amount.

8.5. In cases where we accept checks or bills, this shall always be done for the sake of payment only but not in place of settlement. In these instances we do not need to vouch for timely payment or acts of protest. The costs of discounting, payment for taxes and forfeiture are to be borne by the purchaser, who must repay these amounts immediately upon request.

8.6. The purchaser shall only be entitled to offset rights if his counterclaims are determined to be final and absolute, undisputed or acknowledged by us. The purchaser shall only be entitled to a right of retention insofar as his counterclaim is based on the same contractual relationship.

## 9. Retention of title

9.1. The products delivered by us shall remain our property until such time as full redemption of all outstanding accounts receivable arising from the contractual relationship with the purchaser, including those in a current invoice status, shall be made. Cash payments, bank transfers and payments by check, which are transacted based on the transmittal of a bill issued by us and accepted by purchaser, shall only be considered as payment in accordance with Item 8.5 Clause 1, when the bill from the purchaser/acceptor has been cashed and when we as issuers are completely released from the liability of the bill.

9.2. Any acquisition of title by the purchaser in the handling or processing of the products delivered by us shall be excluded. Any eventual handling or processing of the reserved property by the purchaser for us shall not incur any type of liability to us as a result. In the event that our reserved property shall be processed with other objects not belonging to us, we shall acquire co-ownership of the new item in proportion to the other processed objects at the time of processing. In the event that the item supplied by us shall be inseparably combined, mixed or blended with other items not belonging to us, then we shall acquire co-ownership of the new item in proportion to the value of the reserved property to the other combined, mixed or blended objects at the time of the combining, mixing or blending. If the combining, mixing or blending shall occur in such a way, that the item of purchaser comes to be viewed as the main item, then it shall be hereby stipulated that the purchaser will transfer co-ownership to us on a proportional basis. The purchaser shall keep the sole ownership or co-ownership property that shall be brought about in this way in custody for us.

9.3. All accounts receivable of the purchaser arising from a further sale of products for which we have ownership or co-ownership, shall be transferred from the purchaser to us already at this time, whereby we thus accept this transfer, regardless of whether the product is sold without or after handling or processing or combining or whether it is sold to one or several sub-purchasers. In those cases where the products sold do not completely belong to us, or where they are sold together with products not belonging to us, the transfer shall include the counterclaim in the amount of the invoiced value of our products only.

The purchaser may collect the transferred accounts receivable but may not transfer them, not even in a factoring transaction. We can recall this authority if the purchaser does not fulfill an obligation incumbent upon him on our behalf in a punctual manner, or if circumstances should become known to us which may cause our rights to appear jeopardized. The collection authority of the purchaser shall automatically expire if the purchaser stops payment, is called before the court for disclosure of his financial circumstances, or if legal conciliation or bankruptcy proceedings are initiated with regard to his property, or if he is endeavoring to reach settlement out of court.

At our request the purchaser must report the act of transfer of the transferred accounts receivable to the debtors, notify us of the debtors and of the amounts owed them, and deliver to us the documents required for the enforcement of the transferred accounts receivable.

9.4. The purchaser may only sell, handle, process or combine products of other origin with products that are within our ownership or co-ownership (reserved property) within the scope of normal business operations. Disposition of the product is only permissible by way of sale and only with the provision that the accounts receivable of the purchaser from the disposition transaction, as specified above, be transferred to us. The purchaser shall not be authorized to arrange for other disposals of our products, and may not pledge them nor assign them by way of security. The purchaser must notify us immediately of any impending or already completed access by third parties to the reserved property or transferred accounts receivable. Any costs incurred to us from the intervention shall be borne by purchaser.

9.5. Should the purchaser be in default in the fulfillment of an obligation secured by the retention of title, either in whole or in part, or should we be made aware of circumstances which cause our rights to appear jeopardized, we shall be able to demand the surrender of the products delivered by us, without the need to have previously declared withdrawal from the sales contract according to § 449 (2) BGB (German Civil Code) or to have set a deadline for fulfillment of the payment obligation according to § 323 (1) BGB. The continuance of the sales contract and the obligations of purchaser shall remain unaffected by any such demand and surrender of products. If the conditions of § 323 (1) BGB are given, then we shall have the right to claim damages from the purchaser for non-fulfillment in the amount of 25% of the invoice amount of the products. This shall not rule out the presentation of evidence of damages of a lower amount by purchaser or of a higher amount by us.

9.6. The retention of title is subject to a condition subsequent, so that upon full payment of all of our accounts receivable from the business relation, the ownership of the reserved property shall transfer to the purchaser and the transferred accounts receivable shall fall to him without delay. We shall undertake to release the collateral due (products and receivables) according to the above regulations at our option insofar as their value exceeds the claims being secured by more than 20%.

## 10. Data Processing License

We shall have the right to process all of the legally protected data pertaining to the purchaser within the scope of the relevant statutory regulations.

## 11. Place of Performance – Place of Jurisdiction – Applicable Law

11.1. The place of performance for the delivery or service to be provided by us is the principal place of business of our respective plant.

11.2. The exclusive place of jurisdiction for all disputes from and regarding the agreement, as well as for bill and check procedures, shall be Wuppertal (Germany). We also reserve the right, however, to bring an action against purchaser at another place of jurisdiction having validity for purchaser. In cases where the purchaser is not a businessman, a legal entity of public law or a separate estate under public law, but has a general domestic place of jurisdiction, these provisions shall apply in cases where the purchaser transfers his principal place of business or habitual residence from the Federal Republic of Germany, or if his principal place of business or habitual residence is not known at the time the action is brought forward.

11.3. For foreign business transactions the entire contractual relationship shall be subject to the laws of the Federal Republic of Germany, provided it is not mandatory that a different legal system intervenes. The validity of the Uniform Law regarding international purchase of mobile goods and the Uniform Law regarding entering into international sales contracts for mobile goods is excluded.

## 12. Partial Ineffectiveness

If individual provisions of these General Terms and Conditions of Sale, for whatever reason, are or become ineffective, the effectiveness of the remaining provisions shall remain unaffected. Ineffective clauses shall be replaced by new clauses that come closest to those which are desired by the contractual parties.