



HERPA MINIATURMODELLE

General Terms of Business valid from 01.04.2011

Placement of an order shall constitute acceptance of these terms and conditions.

§1 Validity of Terms

1. Our deliveries, services, and offers are carried out implicitly, explicitly and exclusively on the basis of these terms and conditions. They therefore apply to any and all future business relations, whether or not explicitly agreed upon again, and are deemed to be accepted at the earliest of either the placement of an order or acceptance of the goods and/or services ordered. Any and all contradicting statements of customers referring to their terms and conditions of business and/or purchase are hereby invalidated.

2. Any and all deviations from these terms and conditions are valid only when confirmed in written form by us.

§2 Offers and Conclusion of Contract

1. Any and all of our offers are subject to change without notice and shall not be binding on us. Declarations of acceptance of any and all orders, as well as any other dealings, must be confirmed in writing or by fax by us to become valid, for merchandise, this requirement is fulfilled by our delivery note accompanying the goods. This same requirement shall further apply to any and all supplements, amendments or supplementary agreements.

2. Any and all drawings, illustrations, weights, measures, and other data in reference to goods or services are only binding if explicitly agreed upon by us in written form; in no event shall they constitute an express warranty.

3. Our sales assistants and/or agents are not authorized to conclude verbal supplementary agreements and/or to make verbal promises which exceed the contents of the written contract or agreement.

§3 Prices

1. Except as otherwise agreed by us in written form, any and all prices stated in our offers are regarded as binding by us for a maximum of 60 days from the date of issue. The prices stated in our order confirmation and / or service agreement plus the legal VAT at the time of delivery are decisive. Additional deliveries and services will be charged separately.

2. Any and all prices are ex works Diethofen and include normal packaging, except as otherwise agreed by us in written form.

3. The prices stated are our recommended retail prices. The contracting party is free to set the prices valid for third parties. We do recommend however, not to exceed a 10% discount on the recommended retail price of current new releases and Collection items. For deliveries within the EU, the prices include the German, statutory value-added tax.

§4 Time of Delivery; Delays

1. We can only observe the agreed and contracted time of delivery if all data, licenses, and clearances (including any and all plans and sketches) are delivered to us by the customer at the agreed time, and if any and all conditions of payment and other obligations are fully met by the customer. In any case where these conditions are not fulfilled, the agreed and contracted time of delivery may be adequately extended; this does not apply in cases in which we are responsible for the delays otherwise.

2. Delays in delivery or service due to force majeure, such as mobilization, war, riots, and other events, including but not limited to strikes or lockouts, automatically extends the delivery periods in an adequate way. The same condition shall apply in cases where force majeure affects our suppliers or their suppliers.

3. In any event where we have fallen behind on our obligations, and if the customer can satisfactorily show that this has inflicted a damage upon him or her, the customer is entitled to a compensation of 0.5 % for each full week of delay, but to not more than a total of 5% of the amount of the bill concerning the deliveries or services which have been the subject matter of the delay.

4. A customer's claims for damages caused by a delayed delivery, as well as claims for damages instead of the delivery, in cases they exceed the limits named in number 3, are excluded in all cases of delayed deliveries, and that applies even after the expiration of a delivery date imposed on us. However, it does not apply in cases in which we are liable due to compulsory law because of deliberate acts, acts of gross negligence, or because we have injured the life, the body, or the health of a human; this does not imply any reversal of the burden of proof for the detriment of the customer. The customer can only cancel the contract – within the framework of the laws – in case we are responsible for the delay.

5. The customer is bound to declare within an appropriate period of time if he or she wants to withdraw from the contract because of the delay, and / or if he or she claims compensation instead of the delivery, or insists that the delivery be fulfilled.

6. We are entitled to partial deliveries and partial services at any time.

7. If shipment or delivery of goods is delayed by more than a month after we announced the goods were ready because of our customer's demand, we reserve the right to charge the customer a storage fee of 0.5 % of the sales price of the goods for each full and commenced month, but not more than a total of 5 %. Each of the two parties is free to prove that the actual storing cost was higher or lower.

8. The customer shall not refuse to accept deliveries because of minor defects.

§5 Risk

The risk passes on to the customer as soon as the consignment is handed over to the person carrying out the transportation, or leaves our warehouse for shipment. If shipment becomes impossible through no fault of ours, the risk passes on to the purchaser as soon as he is informed that the merchandise is ready for shipping.

§6 Warranty

This is how we are liable for material defects:

1. In any event where goods are proven defective within the agreed or contracted warranty period, and if the cause for this defect existed at the time of the transfer of perils and/or risk, we will repair or replace the affected goods as required in our own judgment. Where the customer is a consumer, our liability is limited to the repair or replacement of the item(s) as per customer's judgment.

2. Claims because of material defects are limited to a period of 12 months. If the customer is a consumer, this period is extended to 24 months. That does not apply in cases in which longer periods are required by compulsory law.

3. Obvious defects have to be notified within 8 days of the goods' arrival, non-obvious defects have to be notified not later than 6 months after the arrival of the goods. If the customer is a consumer, the period for such complaints is extended to 6 months for obvious defects, and to 2 years for non-obvious effects.

In case these periods are exceeded, no liability can be accepted.

4. In cases of complaints regarding material defects, a customer may withhold appropriate and reasonable portions of the payment, according to the gravity of the defects. Payments can only be withheld if we have been notified about applicable defects and there is no doubt about the justification for withholding the payment. Where the complaint was not justified, we reserve the right to demand compensation from the customer for any and all losses.

5. Every customer has to grant us an appropriate period of time for repair or replacement.

6. In any event where appropriate repair or replacement fails, the customer may withdraw from the contract – irrespective of possible claims for compensation as per § 11.

7. Our liability does not apply to cases in which the performance or usability deviate only negligibly from the contract. Neither can we be held liable for natural wear or damages caused – after the passing of the risk – by ways of erroneous or negligent treatment of the goods, by overuse, by special external influences not implied in the contract, or by not reproducible software errors. In case the customer or a third party carries out changes or repairs in a non-expert manner, we cannot be held liable for such work and its consequences.

8. Any claims by the customer must be denied as far as they result from increased shipping, driving, labor, and materials cost caused by the fact that a good was transferred to another location than the customer's seat at the moment when the goods are to be restored to conformity with the contract – unless the transfer was required for the inherent use of the goods.

9. We are only liable to a customer in the sense of the law as far as our customer has not accorded his or her customer any liability claims that exceed those prescribed by the law. N° 8 is also valid as far as our customer pursues remedies against us.

10. For other liability claims, § 11 applies (Other liability claims). Further or other claims as provided for in this § 6 by a customer against us or an auxiliary person based on material defects are excluded.

§7 Reserved Property

1. All merchandise shall remain our property until fully paid for. If our customer is a company, this even remains applicable until all, even goods and services ordered in future, have been fully paid. If we accept that a customer returns the merchandise, that does not imply the cancellation of the contract; however, if the customer is a consumer, accepting returned merchandise implies a cancellation of the contract.

2. For business with companies, the following additional conditions apply:

The buyer has the right to resell the reserved property according to his or her business conditions, however pawning or transference of securities are not admissible. The claim against his or her customer which results from the sale is automatically ceded to us, plus the increased value which may be the result of processing the merchandise.

We do not publish the cession unless the buyer is at least two weeks in arrears with the payment, or unless a direct debiting mandate has been repealed. In such cases, the buyer is obliged to notify his or her customers about the cession, and to provide us his or her list of debtors without delay. In this case, we have the right to inspect the company's records to determine the names and addresses of its business partners and / or customers.

If the value of all the securities provided exceeds our claims by more than 20 percent, and if asked by the customer, we will renounce to the respective portion of the securities provided, according to our choice.

In case our customer does not effect the conditions of payment agreed, we have the right to take re-possession of the goods we delivered, no matter if they have been installed or assembled, or not. Our customer entitles us to take over the reserved merchandise at any location, and we also have the right to uninstall such goods. The respective holder of the merchandise has been obligated by our customer to hand the items over to us.

Our customer only remains the rightful holder of the reserved merchandise sold until we exercise our rights as the owner. When we take back the reserved merchandise, we credit its current value to the customer.

§8 Payment

1. If not agreed upon otherwise, our bills shall be paid without deductions. We are entitled to set payments of the customer against his or her previous debts, in spite of contrary instructions by the customer, and will inform the customer about the kind of clearing done. If costs and interests have accrued, we are entitled to clear the payment first to the costs, then to the interests and finally to the main services.

2. A payment is deemed made as soon as we have the money at our disposal. In the case of checks, the payment is deemed made as soon as the check is cashed.

3. If the customer is in arrears, we are entitled to charge interests in the amount of 7.5% in excess of the basic interest rate. We reserve the right to claim higher compensations for damages caused by the delay. The customer has the right of proving that no damage has been caused, or considerably smaller damage than we claim.

We may charge reminding costs of 8.00 Euros per reminder.

4. If circumstances become known which raise doubts that the purchaser is credit-worthy, especially if his or her checks cannot be cashed, or when a customer stops effecting payments, we are entitled to render his whole remaining debts due, even if we have accepted checks. Additionally, in such a case, we are entitled to demand advance payments or securities.

5. The customer is not entitled to demand clearing debts against counterclaims, unless the counterclaim is undisputed or becomes final. The customer is only entitled to keep back goods or money if he raises counterclaims concerning the same contract.

§9 Changes in Construction

We reserve the right to carry out changes in the construction at any time; we are, however, not obliged to carry out these changes in products delivered before.

§10 Patents, etc.

1. We will hold the purchaser and his customers harmless from claims regarding breaches of copyrights, trademarks and patents in Germany – within the delay indicated in §6 n° 2 – , unless the design of the product or the part in breach comes from the purchaser. Our obligation for indemnification is limited to the amount of a predictable damage. A further prerequisite for indemnification is that the customer informs us about such claims in writing, does not recognize the breach, and leaves taking legal action to us, and that the asserted violation of rights exclusively results from the construction of our products, independent from and without the use of other products.

2. We have the option of releasing ourselves from the obligations accepted in n° 1

(a) by acquiring the necessary licenses concerning the rights said to be violated, or

(b) by providing a changed product (or parts of it) to the customer, which, when exchanged against the product or (parts of the product), ensures no claims of violation persist, or

(c) by taking back the product delivered and returning the price agreed.

In case all this is impossible for us at reasonable conditions, our customer is entitled to cancel the contract or to abate the price according to the law.

3. Indemnities and compensations are regulated by § 11.

4. In addition to customer's rights as per n° 2, in cases of infringements of third party's rights, § 8 n° 4, 5, and 9, shall apply accordingly .

5. In cases of other defects of title, the regulations of § 8 apply accordingly.

6. Further or other claims by the customer because of defects of title other than those ruled in § 10, against us or against our auxiliary person, are excluded.

§11 Other Claims for Compensation

1. Claims for damages or compensation by customers (from now on called „claims for compensation“) are excluded, no matter for what reason, especially because of duties resulting from obligations, and because of unlawful acts.

2. This does not apply in cases in which liability is compulsory, such as requirements of product liability laws, in cases of deliberate acts or gross negligence, because of the loss of a life, damage to the body or health, or because of an infringement of substantial duties from the contract. The liability for the infringement of essential duties from the contract is, however, limited to predictable damages typical for the contract, except if liability is essential in cases of deliberate acts or gross negligence, or because of the loss of a life, damage to the body or health. These regulations do not imply a reversal of the burden of proof to the detriment of the customer.

§12 Impossibility of Performance; Amendment of the Contract

1. If delivery is impossible, the customer is entitled to compensation, except in cases in which we are not responsible for this impossibility. In all cases, claims for compensation are limited to 10 percent of the value of the part of the delivery which cannot be delivered or carried out because of the impossibility. This restriction does not apply if liability is essential in cases of deliberate acts or gross negligence, or because of the loss of a life, damage to the body or health. These regulations do not imply a reversal of the burden of proof to the detriment of the customer. The customer's right to cancel the contract remains unaffected.

2. As far as unpredictable events in the sense of §4 n°2 considerably change the content of the delivery, or have a significant impact on our company, the contract shall be adjusted in good faith. In cases when such an amendment would not be economically reasonable, we reserve the right to cancel the contract. If we decide to make use of that right of cancellation, we have to notify the customer without delay as soon as we realize the impact of the event. This even applies if we have already agreed upon to delay the delivery.

§13 Governing Law, Legal Venue, Partial Annulment

1. These terms of business and the complete legal relationship between us and the purchaser are governed by the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

2. If the customer is a qualified businessman, Nuremberg shall be the sole legal venue for all law suits resulting directly or indirectly from this contract. However, we reserve the right to file the suit at the legal seat of the customer.

3. These terms of business remain binding, even if single aspects of such terms are, or become, legally invalid.