

## **General Terms and Conditions of Sale and Delivery of HUECK Rheinische GmbH**

### **1. Scope of Application**

1.1 These General Terms of Sale and Delivery ("Terms") apply to all contracts for deliveries and services concluded by HUECK Rheinische GmbH (hereinafter referred to as "HUECK" or "we") with customers (hereinafter referred to as "Customer(s)"). These Terms apply only if the Customer is a business person as defined in sec. 14 German Civil Code ("BGB"), a legal entity under public law or a special fund under public law. The Terms apply in particular to contracts for the sale and/or delivery of movable goods ("Goods" or "Products"), irrespective of whether we manufacture the Goods ourselves or purchase them from other suppliers (sec. 433, 650 BGB). Unless otherwise agreed, the Terms in the version valid at the time of the Customer's order or in any case in the version last notified to the Customer in text form shall also apply as a framework agreement for similar future contracts without HUECK having to refer to them again in each individual case.

1.2 The present Terms apply exclusively. Deviating, conflicting or supplementary terms of the Customer or third parties become a part of the contract only if and to the extent that HUECK explicitly consented to such terms' applicability. This requirement for consent applies in any event, for example even if the Customer refers to his terms and conditions in the context of the order and HUECK does not expressly object thereto.

1.3 Declarations and notifications of legal relevance to be given by the Customer to HUECK in relation to the contract (e.g. setting a deadline, notification of defects, notice of withdrawal from the contract or notice of reduction of the purchase price) must be made in writing. In writing within the meaning of these Terms includes written form and text form (e.g. letter, e-mail, fax). Statutory form requirements and further proof, in particular in the case of doubts about the legitimacy of the declarant, remain unaffected. 1.4 Individual agreements (e.g. framework supply agreements, quality assurance agreements) and details in our order confirmation take precedence over these Terms. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.

1.5 References to the applicability of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these Terms.

1.6 The English version of these Terms is for information purposes only. In case of any inconsistencies between the German and English version of these Terms the German version shall prevail.

### **2. Conclusion of the Contract**

2.1 The offers made by HUECK are not binding and without obligation. A contract comes into existence only by the written confirmation of the order by HUECK or by performance of the order.

2.2 All agreements made between HUECK and the Customer for the purpose of performing a contract, which go beyond the scope of regulation of these Terms or deviate from these Terms, must be documented in writing in this contract or in an amendment contract. Any cancellation or modification of these Terms applies only to the relevant contract concluded.

### **3. Services by HUECK**

3.1 The scope of HUECK's services is determined exclusively by the individual contract.

3.2 The information provided by HUECK about its Products, in particular the illustrations, descriptions or drawings of the Products or services, including but not limited to the designs or patterns contained in printed materials, made in the offer or in the order confirmation, are for the purpose of describing the Goods or services only and are merely approximate, unless otherwise expressly designated as binding by HUECK. Unless limits for admissible deviations have been expressly defined in the order confirmation and designated as such, the normal deviations in the trade (production tolerances) are permissible.

3.3 HUECK describes the properties of the Goods exclusively in its legally binding offers, order confirmations and the related documents.

3.4 HUECK reserves without limitation all title and rights, particularly proprietary rights and copyright as well as other intellectual property rights, to drafts, offers, projects and the related drawings, sketches, schemes und descriptions, patterns, samples, designs, prototypes and similar deliverables and documentation, as well as to machines, parts and components, applications and

methods/processes and/or the related information, records and documents, and also to all other services of HUECK (hereinafter referred to as "HUECK Services"). HUECK has the exclusive right to file applications for intellectual property rights, such as patents, utility models, designs and/or trademarks. The Customer will not claim any rights, in particular any rights of prior use, with regard to the HUECK Services. Any related documentation may be used by Customer exclusively for the contractual performance. Such documentation must be returned to HUECK immediately upon completion of the contract or upon request.

#### **4. Prices and Terms of Payment**

4.1 Deliveries and services of HUECK shall be provided on the basis of HUECK's price list valid at the time of the order confirmation. If, between the date of the order confirmation and the date of delivery, also in the case of call orders, cost increases occur with regard to material, energy or labour costs and if these lead to a change in HUECK's purchase prices or cost prices, HUECK is entitled to adjust the price accordingly. HUECK shall inform the Customer of the adjusted price without delay. The Customer has the right to withdraw from the part of the order not yet performed within 8 days after receipt of this notification, unless HUECK confirms the delivery at the originally agreed price within 8 days after receipt of the withdrawal notice.

4.2 All prices are always "ex works", plus VAT at the respective statutory rate and do not include packaging and insurance.

4.3 All invoices are payable in Euro and due for payment immediately upon receipt of the invoice and delivery without any discount, unless otherwise agreed. Payments shall be deemed to have been made with effect of performance only when the amount has been credited to an account specified by HUECK and HUECK can freely and finally dispose of the amount.

4.4 In the case of deliveries to the territory of the European Community, the Customer has to provide his VAT identification number and to provide HUECK with all documents necessary to prove a tax-exempt intra-Community delivery (receipts, acknowledgements of receipt, etc.). In the event that HUECK is charged with an additional VAT payment due to incorrect or incomplete information provided by the Customer, HUECK is entitled to charge this amount to the Customer. If the incorrectness or incompleteness of the information is due to the Customer's fault, the Customer is obliged to compensate HUECK for the resulting damages.

4.5 The Customer shall be in default if the payment period granted in accordance with clause 4.3 is exceeded. During the period of default, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. The assertion of any further damage caused by default shall remain unaffected. HUECK's claim to the commercial interest on arrears (sec. 353 German Commercial Code – "HGB") vis-à-vis merchants remains unaffected.

4.6 The Customer is entitled to set-off or retention rights only to the extent that his claim has been finally adjudicated or is undisputed. In the event of defects in the delivery, the Customer's counter-rights shall remain unaffected, in particular in accordance with clause 8.6 sentence 2 of these Terms. Moreover, the Customer shall only be entitled to rights of retention in respect of claims arising from the same contractual relationship.

4.7 HUECK reserves the right to demand an advance payment or the provision of security in the amount of the invoice value of the delivery if, after the conclusion of the contract, reasonable and substantial doubts as to the solvency and creditworthiness of the Customer arise or circumstances become known which endanger the receivable. If the advance payment or security is not made within 2 weeks after the request, HUECK is entitled to withdraw from the contract without setting a further time limit. Further claims remain unaffected.

#### **5. Delivery Period and Delay in Delivery**

5.1 Delivery periods and dates are agreed individually or stated by HUECK upon acceptance of an order. Delivery periods start to run one week after receipt of the order, in case of an express order confirmation with its receipt by the Customer. They shall be deemed to have been complied with if the Goods have left the works or if the Customer has been notified that the Goods are ready for shipment before the expiry of the delivery period.

5.2 The observance of the delivery period is subject to the Customer's fulfilment of his contractual obligations, in particular the timely provision of basic materials to be procured by him and to be made available to HUECK for processing as well as documents, permits, releases, etc.. Furthermore, delivery periods and dates shall be extended by the period of time by which the Customer is in default with an agreed advance payment or the provision of a letter of credit.

5.3 If HUECK is unable to meet binding delivery dates for reasons for which HUECK is not responsible (non-availability of the performance), HUECK will inform the Customer thereof without undue delay and at the same time inform him of the expected new delivery date. If the performance is also not available within the new delivery period, HUECK is entitled to withdraw from the contract in whole or in part; HUECK will immediately refund any consideration already paid by the Customer. Non-availability of the performance exists, for example, in case of late delivery by HUECK's supplier, if HUECK has concluded a congruent hedging transaction, in case of other disruptions in the supply chain, e.g. due to force majeure, or if HUECK is not obliged to procurement in the individual case.

5.4 The occurrence of default in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Customer is required.

5.5 The rights of the Customer pursuant to clause 10 of these Terms and HUECK's statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

## **6. Delivery**

6.1 Delivery of the Goods shall be made "ex works" unless otherwise agreed. The Customer shall bear the shipping costs. If HUECK bears the shipping costs, this does not change the time of passing of the risk. The Goods are insured only upon the Customer's express request and at the Customer's expense.

6.2 The risk of accidental loss and accidental deterioration of the Goods shall pass to the Customer at the latest upon handover. In the case of a sale by dispatch to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass to the Customer upon delivery of the Goods to the forwarding agent, the carrier or any other person or institution designated to effect the shipment.

6.3 HUECK is entitled to make partial deliveries as far as these are reasonable for the Customer.

6.4 After notification that the Goods are ready for shipment, the Goods must be called or collected without undue delay, at the latest within 14 days. If the dispatch of the Goods is delayed for reasons attributable to the Customer, the passing of the risk shall take place upon notification to the Customer that the Goods are ready for dispatch. The Customer bears all costs after the passing of the risk.

6.5 If the Customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Customer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this purpose, we shall charge a lump-sum compensation of EUR 100.00 per calendar day, starting with the delivery deadline or - in the absence of a delivery deadline - with the notification that the Goods are ready for dispatch. The proof of higher damages and our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; provided, however, that the lump sum shall be credited against further monetary claims. The Customer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum.

## **7. Reservation of Title and Rights**

7.1. HUECK retains title in the Goods delivered (Reserved-Title Goods) until the payment of all accounts receivable arising from the business relations with the Customer. In the event that the Customer has a current account, the reserved title acts as security for HUECK's claim to the balance of account.

7.2 The Customer is entitled to resell the Reserved-Title Goods only in the normal course of business. The Customer already now assigns to HUECK its receivables and rights arising from the resale of the Reserved-Title Goods. HUECK hereby accepts the assignment. Until any revocation on the part of HUECK, the Customer is authorised to collect the receivables assigned in its own name. This does not affect HUECK's right to collect the assigned receivables itself. HUECK may revoke the authority to collect the receivable if circumstances become known that are capable of considerably diminishing the credit-worthiness of the Customer or the Customer is in default with payment. At the request of HUECK, the Customer is obliged to notify the third party of the assignment for the purpose of payment to HUECK and to provide the information and to surrender the documents that HUECK requires to assert its rights against the third party.

7.3 Any processing or treatment of the Reserved-Title Goods always takes place for HUECK as owner of the item. In the event of their being processed, combined or mixed with third-party items by the Customer, HUECK acquires title to the fraction that represents the value of the Reserved-Title Goods in proportion to the value of the other goods used by the Customer at the time of processing, combining or mixing. If the Reserved-Title Goods are combined or mixed with a main item belonging to

the Customer or third parties, the Customer also already now assigns its rights to the new item to HUECK. If the Reserved-Title Goods are combined or mixed with a main item of third parties, the Customer also already now assigns its rights to remuneration against the third parties to HUECK. The Customer assigns to HUECK receivables that accrue to it from a third party as a result of the linking of the Reserved-Title Goods with real estate. HUECK hereby accepts the aforementioned assignments.

7.4 The Customer has no rights of disposal of the Reserved-Title Goods of any kind other than the aforementioned disposals, in particular, no rights to pledge or assign the goods as security.

7.5 The Customer must notify HUECK in writing without delay if the Reserved-Title Goods are attached by third parties or otherwise claimed and notify the third party of the reservation of title.

7.6 The Customer is obliged to treat the Reserved-Title Goods with care; in particular, the Customer is obliged to insure the same adequately at its own expense against theft, destruction or damage.

7.7 If the realisable value of the aggregate securities held by HUECK exceeds the value of the receivables secured by more than 10%, HUECK is obliged to release securities to this extent at its discretion if the Customer so requests.

7.8 If HUECK – for any reason whatsoever – is entitled to withdraw from the contract and if HUECK exercises this right, HUECK may recover the Reserved-Title Goods, sell the same and set off any proceeds of sale against any claims held against the Customer.

7.9 If the aforementioned agreed reservation of title should not be legally valid under the law of the state in which the Reserved-Title Goods are located or processed, it is hereby agreed that it is substituted by the most approximate legally possible form of security under the law of the relevant state.

7.10 If, contrary to clause 3.4 above and in accordance with an individual agreement, HUECK should be obliged to grant any rights to intellectual property rights to the Customer, any such grant of rights shall, pursuant to sec. 158 para. 1 BGB, not become effective until the Customer has paid the agreed compensation in full. HUECK shall be free to allow the use of such rights at an earlier point of time in its sole discretion, whereas such a possible provisional allowance does not lead to a grant or transfer of rights.

## **8. Material Defects**

8.1 Unless otherwise determined below, the statutory provisions govern the rights of the Customer in the event of material defects or legal defects in the Goods (including wrong or short delivery, improper assembly/installation, defective instructions). In all cases, the statutory provisions on the sale of consumer goods (sections 474 ff. BGB) and the rights of the customer under separately issued guarantees shall remain unaffected. With regard to defects of title due to infringement of industrial property rights (e.g. patents, utility models, trademarks and other labelling rights as well as designs) or copyrights, the provisions in Clause 9 shall apply with priority.

8.2 The basis of HUECK's liability for defects is, above all, the agreement on the quality and the intended use of the Goods (including accessories and instructions). All product descriptions which are the subject matter of the individual contract shall be deemed to be an agreement on the quality of the Goods.

8.3 Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory regulation whether a defect exists or not (sec. 434 para. 3 BGB). The Customer cannot derive any further rights from defects as to quality which do not or only insignificantly impair the value and the fitness of the Goods for the use recognisable to HUECK.

8.4 HUECK shall generally not be liable for defects of which the Customer is aware at the time of the conclusion of the contract or is not aware due to gross negligence (sec. 442 BGB). The Customer's claims based on defects presuppose that he has complied with his statutory duties to examine the Goods and to give notice of defects (sections 377, 381 HGB). In the case of building materials and other Goods intended for installation or other further processing, an inspection must in any case be carried out immediately before installation or processing. If a defect becomes apparent upon delivery, inspection or at any later time, HUECK must be notified thereof in writing without undue delay. In any case, obvious defects must be notified in writing within 5 working days after delivery and defects which are not recognizable during the inspection must be notified within the same period after discovery. If the Customer fails to carry out the proper inspection and/or to give notice of defects, HUECK's liability for the defect which was not or not timely or not properly notified shall be excluded in accordance with the statutory provisions.

8.5 If the delivered Goods are defective, HUECK may first choose whether HUECK will effect supplementary performance by remedying the defect (repair) or by delivering a non-defective good (replacement delivery). If the type of subsequent performance chosen by HUECK is unreasonable for

the Customer in the individual case, the Customer may reject it. HUECK's right to refuse subsequent performance under the statutory conditions remains unaffected.

8.6 HUECK is entitled to make the subsequent performance owed conditional upon the Customer paying the due selling price. However, the Customer is entitled to withhold a part of the selling price that is reasonable in relation to the defect.

8.7 The Customer shall give HUECK the time and opportunity required for the subsequent performance owed, in particular to hand over the Goods complained of for inspection. In the event of a replacement delivery, the Customer shall return the defective Goods to HUECK upon HUECK's request in accordance with the statutory provisions; however, the Customer shall not be entitled to return the Goods. Subsequent performance does not include the dismantling, removal or de-installation of the defective item, nor the installation, mounting or fitting of a defect-free item if HUECK was not originally obliged to perform such services.

8.8 HUECK shall bear or reimburse the expenses incurred for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, in accordance with the statutory provisions and these Terms if a defect is actually present. Otherwise HUECK may claim from the Customer reimbursement of the costs incurred due to the unjustified request to remedy the defect if the Customer knew or could have known that there was actually no defect. Claims of the Customer to the bearing or reimbursement of removal and installation costs by HUECK for the purpose of subsequent performance are excluded.

8.9 In urgent cases, e.g. in the event of a risk to operational safety or to prevent disproportionate damage, the Customer has the right to remedy the defect himself and to claim from HUECK reimbursement of the expenses objectively necessary for this purpose. HUECK must be informed immediately of any such self-execution, if possible in advance. The Customer does not have the right to eliminate the defect itself if HUECK would be entitled to refuse a corresponding subsequent performance according to statutory provisions. This shall also apply in case of defects of title.

8.10 If a reasonable period to be set by the Customer for subsequent performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Customer may withdraw from the purchase contract or reduce the purchase price according to the statutory provisions. In the event of an insignificant defect, however, there shall be no right of withdrawal.

8.11 Claims of the Customer for reimbursement of expenses according to sec. 445a para. 1 BGB are excluded, unless the last contract in the supply chain is a purchase contract with a consumer (sections 478 , 474 BGB) or a consumer contract for the provision of digital products ( sections 445c p. 2, 327 para. 5, 327u BGB). Claims of the Customer for damages or reimbursement of futile expenses shall also exist in the case of defects only in accordance with clause 10 and are otherwise excluded.

8.12 If the Customer does not comply with HUECK's operating and maintenance instructions, if parts are replaced or materials are used which do not comply with the original specifications or if unqualified personnel interferes with the Goods, HUECK's liability for defects shall lapse to the extent that the defect has arisen as a result therefrom. If there is a defect and if one of the above cases is given, the Customer has to prove that the defect was not caused by one of the above situations.

## **9. Intellectual Property Rights and Copyright**

9.1 Unless otherwise agreed and subject to the provisions of clause 9.4 and clause 11 below, HUECK is obliged to perform a delivery free of third-party intellectual property rights (in particular patents, designs, trademarks and similar rights) and copyrights (hereinafter referred to as "IP Rights") in the country where the delivery is effected to solely.

9.2 Should a third party assert justified claims against the Customer for the infringement of IP Rights by means of the delivery performed by HUECK and used by the Customer in accordance with the respective agreement, HUECK shall, at its sole option and at its costs, (a) amend or replace the affected Product as to not infringe the respective third party rights any more, while still functioning as a pressing tool, (b) deliver an alternative or similar product or a product equivalent as to its functions, or (c) make available the necessary use rights by way of concluding the relevant license contract. Should HUECK not succeed to provide for any one out of these remedies within a reasonable period of time, Customer shall have the right to withdraw from the contract, claim a price reduction corresponding to the loss of value caused by the defect, or – within the scope of clause 10 below – claim compensation instead of performance.

9.3 Any of the aforesaid obligations for HUECK shall persist only if and to the extent that the Customer immediately notifies HUECK of a third party claim in writing, does not acknowledge an infringement, and enables HUECK to decide on the defensive measures and settlement negotiations in its own discretion. Should the Customer cease the use of the delivery in view of mitigation or for any other good reason, the Customer is obliged to inform the respective third party in writing about the fact that such a suspension of use does not represent an acknowledgement of any IP Rights infringement.

Should the Customer violate its obligations emanating from this clause 9.2 negligently or deliberately, the Customer shall be liable to HUECK for the damage arising in that regard.

9.4 With regard to an infringement of a patent or utility model alleged by a third party, the provision in clause 9.2 shall apply only to the extent that the infringement of a claim under patent or utility model law is asserted with respect to the Product delivered by HUECK as such in its respective concrete composition or design. In contrast, HUECK does neither warrant that the methods applied by the Customer by using the Products supplied by HUECK for the production of deliverables, and/or any deliverables produced by the Customer when using/applying the Products supplied by HUECK do not infringe third party IP rights, in particular patent or utility model rights, nor does HUECK assume any liability in that regard. Rather, the Customer shall, at its own initiative, peruse and make sure that the intended use of the Products supplied by HUECK and/or the deliverables emanating from such use do not infringe third party IP Rights, particularly patent or utility model rights. Should the Customer violate these obligations negligently or deliberately and a third party assert claims for the infringement of its IP Rights either by means of the delivery of HUECK-Products to Customer, or by these Products' use by the Customer, or by the deliverables emanating therefrom, Customer shall indemnify and hold HUECK harmless in view of any and all claims of such third party, in particular reimburse HUECK for any damage that HUECK incurred due to the respective third party claim.

9.5 Should any other defects of title occur, clauses 9.1 to 9.3 apply accordingly. Customer shall not have any other or further claims for defect of title to be asserted against HUECK or HUECK's vicarious agents.

## **10. Other Liability**

10.1 Unless otherwise agreed in these terms and conditions, including the following provisions, the liability of HUECK for a breach of contractual and non-contractual duties is determined by the pertinent statutory provisions.

10.2 Within the scope of fault- based liability HUECK is liable for damages - for whatever legal reason - in cases of intent and gross negligence. In case of simple negligence HUECK is liable, subject to a milder liability standard according to legal provisions (e.g. for diligence in one's own affairs; immaterial breach of duty), only

a) for damages resulting from death or injury of body or health;

b) for damages arising from the breach of a fundamental contractual duty; in this event, however, the liability of HUECK to compensate for damages is limited to the foreseeable damages that would typically have occurred. Deemed to be a fundamental contractual duty for this purpose is an obligation without which proper performance of the contract would be impossible and on the performance of which the contractual partner regularly relies and is entitled to rely.

10.3 All other claims of the Customer based on contract or tort are excluded. For this reason, HUECK is not liable for damage that did not occur to the Goods delivered themselves; HUECK is similarly not liable for lost profits or other economic loss of the Customer.

10.4 The limitations of liability resulting from clauses 10.2 and 10.3 above shall also apply vis-à-vis third parties as well as in case of breaches of duty by persons (also in their favour) for whose fault we are responsible according to statutory provisions. The limitations shall not apply to the extent that a defect has been fraudulently concealed or a guarantee for the quality of the Goods has been given and to claims of the Customer under the Product Liability Act (Produkthaftungsgesetz). Declarations as to the quality of HUECK's Products shall in case of doubt constitute a guarantee only if HUECK has expressly designated them as such.

10.5 The Customer may only withdraw from or terminate the contract on account of a breach of duty which does not consist in a defect if HUECK is responsible for the breach of duty. A free right of termination of the Customer (in particular pursuant to sections 650, 648 BGB) is excluded. Apart from that, the statutory requirements and legal consequences shall apply.

## **11. Statute of Limitations**

11.1 Notwithstanding sec. 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If an acceptance has been agreed, the limitation period shall commence upon acceptance.

11.2 If, however, the Goods are a building or an object which has been used for a building in accordance with its usual use and which has caused its defectiveness (building material), the period of limitation shall be 5 years from delivery in accordance with the statutory provision (sec. 438 para. 1 no. 2 BGB). This shall also not affect any other special statutory provisions on limitation (in particular sec. 438 para. 1 no. 1, para. 3 and sections 444 BGB, 445b BGB).

11.3 The aforementioned limitation periods of the sales law also apply to contractual and non-contractual claims for damages of the Customer based on a defect of the Goods, unless the application of the regular statutory limitation period sections 195, 199 BGB) would lead to a shorter limitation period in the individual case. Claims for damages by the Customer pursuant to clause 10.2 sentence 1 and sentence 2 a) as well as pursuant to the Product Liability Act shall, however, become statute-barred exclusively in accordance with the statutory limitation periods.

## **12. Manufacturing according to Customer's Instructions**

12.1 In the event of manufacturing according to the Customer's drawing, samples or other instructions of the Customer, HUECK gives no warranty and accepts no liability for the operability of the Product or for other defects, if these circumstances are due to the instructions of the Customer.

12.2 The Customer indemnifies HUECK against all claims of third parties, also arising from product liability, for damages resulting from Goods manufactured according to instructions from the Customer, unless HUECK is responsible for the damage.

12.3 The Customer warrants to HUECK that the production and delivery of the Product according to its instructions do not infringe any intellectual property rights of third parties. The Customer must compensate HUECK for any damages caused by the assertion of intellectual property rights and indemnify HUECK against all claims of third parties based on such an infringement of intellectual property rights, unless the infringement of intellectual property rights lies solely in the manufacturing process used by HUECK.

12.4 HUECK is entitled to withdraw from the contract if an item sent in by the Customer for processing cannot be processed or only with disproportionately great difficulties. If the difficulty in processing is only discovered in the course of the relevant examination, the Customer must compensate HUECK for the costs incurred for the examination.

## **13. Confidentiality**

Any offers, draft, patterns, drawings, samples, models, laboratory press sheets, prototypes, documentation on machines, parts and components, applications and methods/processes and/or similar documentation, including respective verbal information, made available to Customer by HUECK, as well as information made or becoming available to Customer in any other manner shall be held by Customer strictly confidential. Customer must not use or make available such information to third parties either directly or indirectly, in whole or in parts, unless the proper and usual use of the Products to be delivered by HUECK requires to do so. In any event, such confidential information must not be made available to third parties without HUECK's explicit approval. Customer shall take all necessary precautionary measures to keep HUECK's confidential information confidential in any event. This includes but is not limited to ensuring that in case confidential information is made available to employees, executive staff or any other person, these people are provided with confidential information subject to corresponding confidentiality obligations only. These confidentiality obligations shall continue in force even after termination of the contract and shall cease in effect only if and once the knowledge contained in the confidential information in question becomes generally available.

## **14. Place of Performance/Place of Jurisdiction/Governing Law**

14.1 Place of performance for both delivery and payment is Viersen.

14.2 Place of jurisdiction for all legal disputes regarding the validity, formation and termination of the individual contracts between the Customer and HUECK, as well as for all rights and duties under these contracts, is Viersen, if Customer's permanent registered office is in an EU Member State, Iceland, Norway or Switzerland. HUECK may also bring a claim at the general place of jurisdiction of the Customer. If Customer's permanent registered office is in any other state, any and all legal disputes arising from and/or in connection with the business relationship with the Customer and/or the present Terms, including, in particular, its conclusion, validity, violation and/or termination, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one arbitrator appointed by mutual agreement between HUECK and the Customer, in lack of an agreement appointed in accordance with the said Rules. The arbitration shall be held in Zurich, Switzerland. The language to be used in the arbitral proceedings shall be English. The award shall be final and binding and HUECK and the Customer waive any possible right to appeal the same before any national, supra- or international state and/or other courts and/or authorities.

14.3 Notwithstanding the present arbitration agreement, HUECK reserves the right to seek injunctive relief, assert claims for interim relief and/or other claims suitable for securing HUECK's rights before

any authorities of any kind - including state courts - in any jurisdiction and in any territory HUECK deems appropriate.

14.4 The governing law of the Federal Republic of Germany as it applies to legal relations between domestic parties applies to all legal relations between the Customer and HUECK to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

## **15. Concluding Provisions**

15.1. HUECK's data protection declaration, which can be viewed by the Customer at [www.hueck-rheinische.com/datenschutzerklaerung](http://www.hueck-rheinische.com/datenschutzerklaerung), provides information on the handling of personal data of the Customer or employees of the Customer as well as the rights of affected parties.

15.2 Should any provision of the contract concluded between the Customer and HUECK or in these Terms of sale and delivery be invalid or if a loophole is found, this shall not affect the validity of the remaining provisions. In place of the invalid provision or in order to fill the gap, an appropriate provision shall apply which - as far as legally possible - comes as close as possible to what the contracting parties intended or would have intended according to the meaning and purpose of the contract if they had considered the point.