



## **General Terms and Conditions of Sale (Status 05/2004)**

### **1. Scope**

Any supply and performance by Hella KGaA Hueck & Co. and their subsidiaries (hereinafter referred to as "HELLA") shall exclusively be regulated by the General Terms and Conditions of Sale at hand (hereinafter referred to as "GTCS"). Differing terms, in particular general terms and conditions of contractual partners, shall only be effective if HELLA explicitly and in writing has confirmed them before the conclusion of the contract. This rule also applies, if HELLA did not object the general terms and conditions of contractual partners in the individual case. The GTCS apply to the contract at hand as well as to any future contracts.

### **2. Written Form**

Oral statements need to be confirmed in writing to be effective.

### **3. Offers**

- 3.1 Offers by HELLA are subject to confirmation.
- 3.2 Any illustrations, drawings, calculations and further documents and data – notwithstanding on which data media they are recorded – are subject to retention of title and copy-right in favour of HELLA; third persons shall have no access to them. Any transfer to third persons shall be subject to prior explicit and written approval by HELLA.

### **4. Terms of Delivery / Default**

- 4.1 Terms of delivery and delivery dates are not binding, unless the parties have otherwise agreed upon in writing. HELLA shall be entitled to partial delivery.
- 4.2 Damage claims for default by the Purchaser are excluded, unless HELLA, its agents or auxiliary persons did act on intention or gross negligence. At all events, damage claims are limited to typical contractual damages.
- 4.3 If HELLA is delayed in performance (default) and the Purchaser sets a reasonable time limit of at least 14 days within which to make performance and rejects performance after the expiry of the time limit, the Purchaser shall be entitled to withdraw from the contract if HELLA did not perform within the time limit.

### **5. Force Majeure and Excusable Impossibility**

In case of force majeure and excusable subsequent impossibility by HELLA or its contractors, in particular operational faults of traffic or in business, defect of energy, strike or lockout, HELLA shall be entitled to delay delivery for the time of the disturbance and the scope of its effects. In case the events continue for more than 6 weeks or HELLA, as a consequence of the disturbance, is unable to perform, both the Purchaser and HELLA shall be entitled to withdraw from the contract.

### **6. Prices**

- 6.1 Calculation of the deliveries is based on the prices determined by HELLA effective at the day of delivery plus turnover tax pursuant to legal requirements. Specified prices are calculated ex factory, excluding costs for package, dispatch and/or customs duty. These costs are charged separately.

- 6.2 HELLA reserves the right to adequately raise prices, if the costs increase after the conclusion of the contract, in particular due to an increase of labour costs, i.e. for tariff resolutions or changes of material costs. These shall be proven to the Purchaser, if so required.

## **7. Dispatch**

- 7.1 The dispatch of goods – even with partial delivery – is made on account and at the risk of the Purchaser. This rule also applies if in the individual case HELLA bears the freight charges. The risk passes to the Purchaser at the time the good is handed over to the carrier.
- 7.2 Freight charges are not disbursed in advance. The carrier of the transport is elected at HELLA's option without any obligation to choose the best-priced dispatch. By choosing the carrier, HELLA does not assume the risk of transport.
- 7.3 If goods are delivered at the expense of HELLA, the risk passes from HELLA to the Purchaser at the time the goods are handed over to the carrier.
- 7.4 In case the purchased good shall be exported, the Purchaser shall be obligated to provide all documents necessary for the export (i.e. authorisations for export and custom etc.) at his own expense. HELLA shall not be liable for legal admissibility of the export of the goods and accordance with legal and technical provisions of the country of importation. Furthermore, HELLA shall not be liable for the standard of goods according to the technical standards required by the country of importation.

## **8. Outer Packing**

Outer packing - cases or special boxes - that has been charged shall be credited to the Purchaser with 2/3 parts of the charge in case of a freight paid return, and if the outer packing arrives at HELLA in good condition and can - for its nature - be used again.

## **9. Compensation for Tools Costs**

The right of property regarding tools, produced or acquired by HELLA especially for the production of the goods that shall be delivered to the Purchaser, remains with HELLA unless the transfer of title of the tools has been agreed upon explicitly and in writing. The Purchaser shall not be entitled to assignment of the tools even though the Purchaser completely paid the costs for the production of these tools.

## **10. Warranties for Defects**

- 10.1 Unless otherwise agreed in these General Terms and Conditions or an individual agreement, the statutory provisions on liability for defects shall apply.
- 10.2 Defects of the delivery shall be reported to HELLA in writing without undue delay – as soon as they can be detected within ordinary course of business. Insofar, HELLA waives its defense of delayed notice of defects.
- 10.3 Unless otherwise provided by law, claims of the Purchaser for defects of new and reproduced goods shall be time-barred after the expiration of two years, in case of used parts after the expiration of one year since the delivery of the goods.
- 10.4 If the reclamation is justified and made in due time, HELLA shall remedy defects at its own choice, generally by charge free replacement or repair ("ex post performance"). In case ex post performance is impossible, fails, or does not take place within due course determined by the Purchaser, the Purchaser may reduce payment or demand cancellation of the contract. This rule also applies, if HELLA rejects ex post performance due to unreasonable high costs. In order to determine whether costs of ex post performance are unreasonably high, in particular, the proportion between the value of the good in proper condition and the necessary costs for ex post performance shall be taken into consideration.

- 10.5 The Purchaser shall be entitled to damage claims for defects of the good delivered only pursuant to No. 11.
- 10.6 Claims for defects do not arise, if the defect is based on an infringement of instructions regarding operation, maintenance, or installation, improper or inappropriate use, incorrect or careless treatment, natural deterioration or improper encroachment upon the good by the Purchaser or any third person.
- 10.7 Information given in catalogues, specifications or other details on the product shall not constitute guarantees for condition or durability, unless they have been identified in the individual case as guarantees in writing.

## **11. Liability**

- 11.1 In case HELLA caused a damage by negligence (other than gross negligence), a damage claim against HELLA pursuant to statutory provisions only arises if material contractual duties have been infringed. This damage claim is limited to typical contractual damages. This limitation does not apply to infringements of life, body, and health.
- 11.2 Irrespective thereof, HELLA shall be liable for fraudulent concealment of a damage, acceptance of a guarantee or the exercise risk and pursuant to the German Liability for Products Act ("Produkthaftungsgesetz").
- 11.3 Liability in case of default is exclusively regulated by No. 4 above.
- 11.4 Personal liability for legal agents, auxiliary persons, and other persons belonging to HELLA is excluded for damages caused by their easy negligence.

## **12. Payments and Credit Standing**

- 12.1 Invoices by HELLA are payable without deduction within 30 days since the invoice date.
- 12.2 Sales representatives and field staff are only entitled to receive payments if they are authorized in writing.
- 12.3 All accounts by HELLA fall due immediately, if the Purchaser does not meet the conditions of payment for reasons accruing from his responsibility or if the Purchaser stops payment.
- 12.4 Moreover, HELLA shall be entitled to demand prepayments for open deliveries and to withdraw from the contract after a reminder and an adequate period of grace, or to demand claims for non-performance. Furthermore, after a reminder and expiry of an adequate period of grace, HELLA may enjoin the Purchaser from reselling the good and may return the delivered good at the expense of the Purchaser.
- 12.5 The retention of payments or the setoff with counterclaims of the Purchaser are excluded, unless HELLA explicitly and in writing admitted them or unless they have been approved in a legally binding way.

## **13. Retention of Title**

HELLA reserves the title to all delivered goods until payment is completed; in this context all deliveries are considered to be a coherent delivery transaction. In case of a running account the reserved title is considered to cover the balance of account of HELLA. If the Purchaser connects the goods with other items in such a manner that the connected goods are legally considered to be a single item, and if the other item is considered to be the main item, the Purchaser by now transfers the correspondent joint ownership to HELLA, as far as the Purchaser is the owner of the main item. In case the Purchaser sells the delivered good according to the terms of the contract, by now he assigns to HELLA all claims against the third purchaser deriving from the purchase, including all subsidiary claims until complete repayment of all these claims. In case of sound cause (such as default of payment) and, if HELLA so requires, the Purchaser shall disclose the assignment to the third purchaser and shall inform HELLA about all necessary facts and documents to assert the claims. HELLA shall release its securities, insofar as their value exceed 20 percent of the secured claims.



#### **14. General**

- 14.1 In case one of the contractual parties stops payment or is adjudged bankrupt and insolvency proceedings have been opened or it applied for a judicial or non-judicial composition proceeding, the other party shall be entitled to withdraw from the part of the contract that has not yet been performed.
- 14.2 If any of the provisions of this Terms and Conditions or any further agreement is or becomes invalid, the remaining provisions of the contract shall remain effective. In lieu of the ineffective provision, the parties shall agree upon a provision which comes as close as possible to the economic outcome of the invalid provision.
- 14.3 All provisions shall exclusively be subject to the law of the Federal Republic of Germany, unless explicitly otherwise agreed upon in writing. The UN Convention on the International Sale of Goods of 11 April 1980 shall not apply.
- 14.4 Place of performance shall be the domicile of that Company of the Hella Group involved in the supply contract as Seller.
- 14.5 HELLA shall be entitled to save and process data of the Purchaser for the execution of the business relationship observing the regulations of the German Federal Data Protection Act ("Bundesdatenschutzgesetz").
- 14.6 Place of jurisdiction for all legal disputes arising from the contractual relation shall be the domicile of that Company of the Hella Group involved in the supply contract as Seller. HELLA shall be entitled to file a suit at any other competent court.