



## **1 BASES AND SCOPE**

1.1 These Terms and Conditions of Sale and Delivery (hereinafter "Terms and Conditions of Sale") shall govern all contracts for the manufacture, sales and delivery of goods as well as the performance of development services by Hirschmann Automotive GmbH having its principal place of business in Rankweil, Austria, and the affiliated companies thereof belonging to the Hirschmann Automotive Group (hereinafter the "Hirschmann") unless expressly agreed otherwise. These Terms and Conditions of Sale shall also apply to all future contracts, even if they are not separately agreed again in individual cases.

1.2 Deviating terms and conditions of the Buyer shall not be binding on Hirschmann unless Hirschmann has expressly approved their application in writing. There shall be no need for Hirschmann to object to any deviating terms and conditions of the Buyer in the individual case. Under no circumstances shall the conduct of Hirschmann, such as, for instance, any acts of performance of the contract, silence or the unconditional transmission of an order confirmation, be construed as consent to such terms and conditions of Buyer.

## **2 OFFER**

2.1 All offers submitted by Hirschmann are subject to confirmation and non-binding.

2.2 Any contents deviating from the offer shall only become part of the contract if expressly acknowledged by Hirschmann to be binding when confirming the order.

## **3 CONCLUSION OF CONTRACT**

3.1 A contract is deemed concluded once Hirschmann after receiving of an order has dispatched to the Buyer either a written confirmation of the order or a delivery.

3.2 Where the order confirmation or the documents referenced therein deviate from declarations previously made by the Parties, such deviations will be deemed approved unless the Buyer expressly objects to the respective deviation in writing within a reasonable period of time, but not later than five (5) working days after receiving such order confirmation.

3.3 Once the contract has been concluded, changes to the order on the part of the Buyer shall only be possible subject to Hirschmann's approval and subject to indemnification.

3.4 The performance of a number of services over a prolonged period of time shall not give rise to a continuing obligation or any other right to obtaining further services unless and until expressly agreed so by the Parties in writing.

## **4 PRICES**

4.1 Prices are quoted ex Works or ex Warehouse of Hirschmann and do not include packing, freight/carriage, insurance, taxes and duties (such as value-added tax or customs duties). Any such costs shall be borne by the Buyer and shall be charged extra by Hirschmann or the competent authority unless expressly agreed otherwise.

4.2 All prices are based on the presumptions present at the time of the offer. In the event of a significant change in cost-relevant circumstances (e.g. increase in raw material, material, labor, customs or transport costs, change in technical requirements), Hirschmann reserves the right to increase the price accordingly. A significant change is indicated by a cost increase of at least 5% in comparison to the date of the quotation or the last price adjustment.

4.3 The annual quantities quoted in the offer constitute the basis for the calculation of the offered prices. If, however, the actually called off quantity of parts per year falls significantly below the quoted annual quantities, despite consideration of the offered flexibility, Hirschmann reserves the right to adjust the prices accordingly and with retrospective effect due to reduced call offs.

## **5 DELIVERY**

5.1 Delivery of the goods shall be ex Works or ex Warehouse of Hirschmann in accordance with INCOTERMS

2020. The delivery period is met when the goods are made available at the place of performance of delivery. Where special terms such as FCA or suchlike are agreed, the interpretation pursuant to the standard terms of the International Chamber of Commerce in Paris (INCOTERMS) in its 2020 version shall prevail.

5.2 Hirschmann delivery dates and deadlines shall only be binding if explicitly confirmed as binding in writing.

5.3 Where circumstances occur on Hirschmann's side (and/or also on the subcontractor's side) which are unforeseeable or which are independent of the intention of the Parties, such as, for instance, all events of force majeure, which prevent compliance with a period agreed for delivery, such period shall in any case be extended by the period during which such circumstances prevail; such circumstances being understood to include, without limitation, armed conflict, interference and prohibitions by the authorities, delays in transportation and customs clearance, damage to or loss of goods in transit, shortage of energy and raw materials, labor conflicts as well as default of a material and/or, hard-to-replace subcontractor on Hirschmann's side. None of the above shall entitle the Buyer to assert claims for indemnification or other claims against Hirschmann.

## **6 TRANSFER OF RISK AND PLACE OF PERFORMANCE**

6.1 The place of performance for the delivery of goods shall be the works or the warehouse of Hirschmann. Risk and title shall pass to the Buyer as the delivery is made available for pick-up at the works or the warehouse of Hirschmann. This shall apply also in cases where transportation is performed or organized by Hirschmann.

6.2 In the event of loss or damage during transport, the Buyer shall be responsible for submitting a complaint with the carrier.

## **7 PAYMENT**

7.1 Payments shall be made without any deductions, with all bank charges paid, to Hirschmann's bank account, in the agreed currency (generally EUR) and within 30 days of the date of issue of invoice.

7.2 Any payment will be deemed made on the day Hirschmann can dispose of the amount.

7.3 The Buyer is not entitled to withhold or offset payments on the basis of warranty claims or other counterclaims.

7.4 If the period allowed for payment is exceeded, Hirschmann, without prejudice to any other rights it may have, shall have the right to declare due any and all claims outstanding under this transaction or any other transactions and charge default interest at a rate of 9.2% p.a. for such amounts as from the respective due date and assert further costs (including without limitation collection costs and other reasonable costs of taking appropriate legal steps).

7.5 Hirschmann reserves title to any and all goods delivered by it until payment in full of the invoiced amounts plus possible interest and costs, and has the right to make known and, where possible or required, file or register such reservation of title with the authorities in Austria and abroad at its discretion until receipt of payment in full. To provide security for Hirschmann's claim to the purchase price, the Buyer herewith assigns to Hirschmann its claim from the resale of goods subject to a reservation of title – even where such goods have been processed, transformed or mixed - and agrees to make a corresponding note in its books or on its invoices. Upon request, the Buyer shall notify Hirschmann of the claim assigned as well as of the name of the debtor, provide all particulars and documentation required by Hirschmann for collecting the claim and notify the third-party debtor that the claim has been assigned. In the event of the goods subject to a reservation of title being attached or becoming the object of other demands, the Buyer is obligated to point out Hirschmann's title to the goods and notify the latter without delay.

# TERMS AND CONDITIONS OF SALE AND DELIVERY of the Hirschmann Automotive Group



HIRSCHMANN  
AUTOMOTIVE

## 8 COMPLAINTS, WARRANTY, LIABILITY

8.1 Hirschmann warrants that the goods supplied by Hirschmann shall be free of defects and conform to the specifications agreed at the time of handover of the goods. The warranty period shall be twelve (12) months, starting with the handover of goods.

8.2 Any defects shall be notified to Hirschmann by the Buyer expressly in writing within a reasonable period of time, obvious defects or delivery of merchandise other than the stipulated goods within 5 working days, at the latest, and hidden defects within 5 working days of being discovered, at the latest; otherwise claims under warranty or claims for damages based on the defect as such and claims based on error concerning the absence of defects of the item can no longer be asserted. If a defect is present and/or the goods do not conform to the agreed specifications, Hirschmann shall provide replacement or repair the defect at its own cost. An obligation of Hirschmann to compensate any further costs that may be incurred in connection with defective goods, including, but not limited to, costs of assembly and disassembly, is excluded.

8.3 In the context of all of the above remedies available under warranty, the Buyer is obligated to observe the principle of cost minimization. Hirschmann is granted the right to choose such method for remedying the defect as is most favorable for Hirschmann as regards costs.

8.4 If Hirschmann does not comply with its warranty obligation within a reasonable period of time or if subsequent performance fails, the Buyer is entitled to reduce the price by an appropriate amount or – in case of major defects – rescind the contract, but in either case only with respect to the defective delivery.

8.5 Moreover, warranty claims shall expire forthwith if the Buyer or any third party modifies and/or performs repairs on the goods without the written approval of Hirschmann.

8.6 By mutual agreement, the special recourse available to an entrepreneur who has granted a warranty to a consumer is limited to the term of the statutory warranty periods.

8.7 Subject to mandatory law, Hirschmann shall be liable for damage arising under this contract, from its goods and from its services if proven to have acted with intent or gross negligence. Liability for slight negligence, compensation for consequential damage and pecuniary damage, savings and/or profits not made, loss of interest, line stoppages, compensation for loss of production and for damage arising from third parties asserting claims against the Buyer are excluded. This exclusion of liability shall not apply to personal injury and product liability claims.

Within the scope of the above limitations, Hirschmann shall be liable for damage to property only up to the amount of the benefits paid by Hirschmann's third-party liability insurance, to the extent that such damage was not caused by Hirschmann intentionally or by blatantly gross negligence.

8.8 The statute of limitations for damage claims shall be 12 months as from gaining knowledge of the damage and the party causing it.

## 9 SAMPLES AND PROTOTYPES

9.1 If agreed, goods shall be individually developed, manufactured and delivered to the Buyer by Hirschmann in accordance with Buyer's requirements. In the course of such development activities, Hirschmann shall produce development samples or prototypes of the goods (hereinafter "Samples"). These Samples shall be made available to the Buyer solely for the purposes of examination, evaluation and/or review of development progress. The Samples are therefore unsuitable for productive use, further processing by the Buyer and incorporation into the Buyer's products as well as for any serial delivery. Any such use of the Samples by the Buyer shall therefore be at the Buyer's own risk and to the

exclusion of any warranty and liability of Hirschmann for such use.

9.2 Hirschmann warrants only that the Samples have the characteristics expressly agreed with the Buyer in writing and corresponding to the respective development stages or sample classes. Beyond this, Hirschmann shall not assume any warranty for further characteristics of the Samples and/or liability for circumstances, damage and other consequences in connection with them.

## 10 INTELLECTUAL PROPERTY RIGHTS

10.1 If goods are manufactured by Hirschmann on the basis of design specifications, drawings, models or other specifications provided by the Buyer, the Buyer shall indemnify and hold Hirschmann harmless in respect of the infringement, if any, of protective rights and, if so requested by Hirschmann, shall join the respective proceedings as a party or intervener at its own cost and litigate for the benefit of Hirschmann.

10.2 All intellectual property rights related to the goods and/or developments manufactured by Hirschmann and delivered to Buyer (in particular patent rights, trademark rights, design rights, copyrights and/or other design rights, technical know-how, inventions, ideas, samples, models, drawings, etc.) shall remain exclusively with Hirschmann. Buyer shall only be entitled to use the goods to the extent permitted in accordance with the purpose of the contract. In particular the offer documentation and project documentation as well as the execution specifications including, but not limited to, drawings, sketches and other technical documentation, and also samples, models, pictures and illustrations and the like shall always remain the intellectual property of Hirschmann and are subject to the relevant statutory provisions regarding reproduction, imitation and competition, etc. The aforementioned documentation and objects shall be treated as confidential and be neither exploited nor disclosed to third parties by the Buyer; Hirschmann may demand their return at any time. They shall be returned to Hirschmann without immediate effect if the Buyer places an order with a third party.

## 11 CONFIDENTIALITY AND DATA PROTECTION

11.1 The Parties undertake to treat as strictly confidential any and all information, documents, drawings, models, samples and similar items which are not in the public domain and which become known to them as a result of the business relationship. These may not be handed over or otherwise made accessible to unauthorized third parties. The duplication of such information, documents and objects shall only be permitted within the scope of the operational requirements for the fulfillment of the business relationship of the Parties. Subcontractors shall be obligated accordingly.

11.2 Both Parties are each responsible in their own sphere for complying with the relevant data protection provisions.

## 12 SEVERABILITY CLAUSE

Should individual provisions of these Terms and Conditions of Sale be ineffective, the remaining provisions hereof shall not be affected thereby. The ineffective provision shall be replaced with a valid provision coming as close as possible to the goal sought to be achieved. This shall also apply to any gaps in these Terms and Conditions of Sale.

## 13 VENUE AND APPLICABLE LAW

The Parties agree, with binding effect for themselves and their legal successors, that the venue for all disputes directly or indirectly arising from the contracts entered into by and between the parties, from the deliveries or with regard to these Terms and Conditions of Sale shall be Feldkirch, Austria. Austrian law shall apply exclusively, regardless of its conflict of laws rules. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.