

General terms and conditions of sale and delivery (T&Cs of the KVI [the Plastics Processing Industry]) of hehnke GmbH & Co KG

The following phrasing reflect the non-binding recommendation for terms by the General Association of the Plastics Processing Industry [the "Gesamtverband kunststoffverarbeitende Industrie e.V."] dated 29 April 2002. In addition to this, the Incoterms shall apply in the version that is current from time to time.

Scope

1. The following terms and conditions shall only apply in respect of businesses, legal entities under public law, or special funds under public law.
2. The Customer's terms and conditions, including in particular any conditions of purchase, delivery and payment, shall not apply where they contradict the Supplier's terms and conditions.

I. Application

1. Any order shall only become binding upon the Supplier's order confirmation. Any changes or amendments shall be made in writing. All offers shall be subject to change, unless they have been described as fixed offers.
2. In the case of ongoing business relations, these conditions shall also apply to any future business, even if they are not explicitly referred to, provided that the Customer did receive them as part of a previous order which was confirmed by the Supplier.
3. Any terms and conditions of the Customer are hereby excluded, unless that these are expressly accepted by the Supplier.
4. In the event that individual provisions of this agreement should be or become invalid or unenforceable, this shall not affect the remainder of this agreement.

II. Prices

1. Unless otherwise specified, prices shall be ex works, excluding freight, taxes, customs duties and packaging, plus the statutory Value Added Tax.
2. The prices do not include any costs for requalification of products and components. Costs for such services shall be charged separately!
3. In the event that the decisive cost factors change significantly after the offer has been made, or after order confirmation, the Supplier and Customer shall discuss an adaptation of the prices and the cost shares for products and moulds.
4. Where it has been agreed that the price is dependent on the part-weight, the final price shall be determined by the shot weight of the approved outturn samples.
5. Where the Supplier takes on new orders (= follow-on orders), the Supplier shall not be bound by previous prices.

III. Obligation to deliver and to take delivery

The delivery periods begin after receipt of all the reference material needed for the execution of the order, punctual provision of the requisite materials, where applicable, and agreed down payments. The notification that the goods are ready for shipment shall constitute compliance with the time period for delivery, if the shipment is delayed or has become impossible through no fault of the Supplier.

2. Where an agreed delivery time is not met through the fault of the Supplier, and unless this was either grossly negligent or deliberate, then, after an appropriate extension period and to the exclusion of any further claims, the Customer shall be entitled to demand compensation for the delay or to withdraw from the contract. Any such compensation for delay shall be limited to a maximum of 5% of that part of the

delivery that did not occur as contractually stipulated. Rescission of the contract shall be excluded in cases where the Customer itself is in default of acceptance. The Customer's right to provide proof of higher losses is reserved.

3. Reasonable part deliveries and reasonable deviations from the order amounts of up to 10 % in either direction shall be permitted.
4. In the case of call orders without specified term, production lot sizes, or acceptance date, the Supplier can request a binding commitment about these, no later than three months after order confirmation. In the event that the Customer does not comply with this request within three weeks, the Supplier shall be entitled to grant an extension period of two weeks, following which the Supplier may rescind the contract and/or claim compensation.
5. If the Customer fails to comply with its obligation to take delivery, then, without prejudice to any further rights, the Supplier shall not be bound by the rules on emergency sales, but shall be entitled to freely sell the delivery product after notifying the Customer thereof.
6. In the event of force majeure [Höhere Gewalt], the Supplier shall be entitled to delay the delivery by the length of the interference and a reasonable lead-time, or to withdraw from the contract in respect of the not yet performed elements, either completely or in part. Matters such as industrial action, lock-out or unforeseeable, unavoidable circumstances, such as business disruption, which would make it impossible for the Supplier to deliver on time, in spite of having made reasonable efforts, shall have the same effect as force majeure; the burden of proof for this shall lie with the Supplier. The foregoing shall also apply in cases where the aforementioned disruptions occur during a delay, or where they affect a sub-contracted supplier.

The Customer shall be entitled to demand that the Supplier declare within two weeks, whether the Supplier wishes to rescind the contract, or deliver within a reasonable extended period. If the Supplier fails to declare its intention, the Customer shall be entitled to withdraw from the non-performed part of the contract.

The Supplier shall notify the Customer immediately if a case of force majeure, as set out in sub-section 1, occurs. The Supplier shall keep the inconvenience to the Customer to a minimum, where necessary by releasing the moulds for the duration of the disruption.

IV. Packaging and Despatch, Transfer of Risk and Default of Acceptance

1. Unless otherwise agreed, the Supplier shall choose the packaging, the method and the route of despatch.
2. The risk shall be transferred to the Customer when goods leave the works even when the delivery is freight paid. Where there are delays in despatch attributable to the Customer, the risk shall be transferred as soon as the Customer is informed that goods are ready for despatch.
3. At the written request of the Customer, the goods shall be insured at his expense against such risks as the Customer specifies.

V. Retention of Title

1. The deliveries shall remain the property of the Supplier until all entitlements the Supplier has against the Customer have been fulfilled, even if the purchase price for specific claims has already been paid. In the case of a running account, the retention of title to the deliveries (reserved goods) shall be deemed a security for the balance invoice of the Supplier. If in the context of the payment of the purchase price the Supplier becomes liable on the basis of bills of exchange, then the retention of title shall not be extinguished until such time as the bill of exchange has been redeemed by the purchaser.
2. Any processing by the Customer shall be at the instruction of the Supplier, and shall not confer any rights of ownership pursuant to section 950 of the German Civil Code [BGB]; the Supplier shall become a co-owner of any goods thus created, proportionate to the net invoice value of its goods as compared to the net invoice value of the goods to be processed, and this share in the ownership shall serve to secure the Supplier's claims as per sub-section 1.
3. Where the Customer processes (combines/mixes) goods with other goods, which do not belong to the Supplier, the provisions of sections 947 and 948 of the German Civil Code [BGB] shall apply, leading to a situation where the Supplier's co-ownership share in the new product is now considered as reserved goods for the purposes of these terms and conditions.
4. The Customer shall only be entitled to sell reserved goods onwards in the usual course of business and on the condition, that the Customer also agrees a retention of title as per sections 1 to 3. . The Customer shall not be entitled to any other types of disposal of the reserved goods, including in particular pledging them or assigning them as security.
5. In the event of an onward sale of the goods, the Customer hereby assigns all claims arising out of such onward sale, as well as any other legitimate claims against its customer, and together with all ancillary rights, to the Supplier, until such time as all claims of the Supplier has against the Customer have been satisfied. Upon request by the Supplier, the Customer shall without delay provide the Supplier with all information and any documentation which is required in order to assert the rights of the Supplier as against the Customer's customer.

6. Where the reserved goods are sold onwards by the Customer as per section 2 and/or 3, together with other goods which do not belong to the Supplier, then the assignment of the claim to the purchase price shall be limited to the value of the invoice for the Supplier's reserved goods.

7. Where the value of the Supplier's securities exceed the suppliers total claims by more than 10%, the Supplier shall, at the request of the Customer, release securities of the Supplier's choosing to that extent.

8. The Supplier must be notified immediately in the event that distraint is levied on any of the reserved goods by a third party. Any intervention costs arising as a result of this shall be borne by the Customer, unless they are borne by the third party.

9. In the event that the Supplier exercises its right of retention of property, as set out in the above provisions, by recovering the reserved goods, the Supplier shall be entitled to freely sell or auction off the goods. Asserting the right of retention and in particular the request for surrender of the goods, signify a rescission of the contract. Taking back the reserved goods is done at the price obtained, but in any event at no more than the agreed delivery prices. This does not affect any further rights to damages, including in particular loss of profit.

10. The option of setting off any counterclaims the Customer might have is excluded for all conceivable eventualities, unless any such counter-claims are undisputed or have been legally determined to be valid and binding.

11. The Supplier shall be entitled to assign its claims arising from delivery and service for the purposes of financing. We have assigned any current and future claims arising from this business relationship, as well as any ancillary rights (such as, for example, our right to retention of title), to Close Finance GmbH, Große Bleiche 35-39, 55116 Mainz, Germany.

12. In the event that the Customer is late with a payment, all other claims shall immediately fall due for payment, without any separate notice of default being required.

VI. Liability for material defects

1. The type samples shall be decisive as far as the quality and execution of the products is concerned, such type samples to be provided by the Supplier to the Customer upon request for inspection. Any reference to technical norms serves the purpose of defining services, and shall not be construed as a guarantee of quality.

2. Where the advice provided by the Supplier to the Customer was not part of the services contracted for, the Supplier shall only be liable for the suitability and functionality of the product to be delivered, if this has been expressly agreed in advance.

3. Claims of faults must be lodged immediately, and in writing. In the case of hidden defects, any such claim shall be lodged immediately after becoming aware of the defect. In either case, unless otherwise agreed, any claims for defects shall become time-barred 12 months after the risk has passed. Where mandatory statute law provides for longer periods as per section 438 sub-section 1 (2) of the German Civil Code [BGB], section 479, sub-section 1 of the BGB and section 634a sub-section 1(2) of the BGB, those periods shall apply.

4. Where a complaint about a defect is justified, the Supplier shall provide supplementary performance; the quality and finish that can be expected are determined by the outturn sample which was approved in writing by the Customer. In the event that the Supplier fails to comply with this obligation within a reasonable period of time, or where repeated attempts to remedy the fault are unsuccessful, the Customer shall be entitled to reduce the purchase price, or to rescind the contract. The only further claims that exist, including in particular claims for reimbursements or damages for losses or consequential losses caused by the defects, shall be as stipulated in the provisions in VII. Any replacement parts shall be posted back to the Supplier on request, not pre-paid.

5. Any unauthorised reworking or inappropriate processing shall result in the loss of any claims for defects. The Customer shall only be entitled to rectify problems with goods where this is necessary in order to prevent disproportionately serious damage, or where the Supplier has failed to rectify problems in time, and only after having first notified the Supplier thereof; in such cases, the Customer shall be entitled to claim reasonable compensation.

6. Any usual wear and tear resulting from normal, contractual use shall not give rise to any warranty claims.

7. Claims for recourse pursuant to sections 478 and 479 of the German Civil Code [BGB] shall only be permissible if the Customer's use of this course of action was justified, and only to the extent set out by law, however, this does not apply to any ex gratia agreements that have not been agreed with the Supplier, and it is a prerequisite that the duties and obligations of the party seeking recourse, including in particular proper compliance with the complaints procedure, have been complied with.

VII. General limitations of liability

In any cases where instead of being governed by these terms and conditions, the Supplier is under an obligation to compensate for losses or reimbursements, on the basis of contractual or statutory claims, the Supplier shall only be liable to the extent that the Supplier, its management or agents or servants have acted intentionally or grossly negligently, or where it concerns death, personal injury or damage to health. The strict liability pursuant to the Produce Liability Act, as well as the liability for compliance with a quality guarantee shall remain unaffected. Moreover, this does not affect the liability for the culpable breach of material obligations under the contract; however, other than in the cases stipulated in the first sentence hereof, that liability shall be limited to the foreseeable losses that would be typical for a contract like this. The foregoing provisions do not result in any change of the burden of proof to the detriment of the Customer.

VIII. Terms of Payment

1. All payments are to be made in € (EURO) and shall be made exclusively to the supplier.
2. Unless otherwise agreed, the purchase price for deliveries or other services shall be payable within 14 days from the date of the invoice with a 2% discount, or within 30 days from the date of the invoice without discount. Any discount shall only be granted if all earlier invoices that have fallen due and are not disputed, have been settled.
3. Unless expressly agreed otherwise, the purchase price for injection moulds shall be payable in part payments of 33% upon receipt of the order confirmation, 34% upon mould proving and delivery of the first defective parts including a measurement report, and 33% upon production release of the tool, but in any event no later than 6 weeks after delivery of the initial sample, provided that the delay of the production release was not caused by the Supplier. All payments shall be due within 10 days without deductions.
4. The supplier shall be entitled to issue a final invoice if the following conditions are met:
 - 4.1 When the tool is approved by the Customer on the basis of a submitted Initial Sample Test Report (ISRT).
 - 4.2 If there is no response from the Customer within 6 weeks after submission of the ISRT.
 - 4.3. If a change to the tool is ordered, without the Supplier being given sufficient time to ensure that the product ordered complies with this by the order date.
 - 4.4. If the Supplier has information to the effect that the Customer is insolvent.
5. Payments for wage labour for tool design and processing shall be payable without deduction within 30 days.
6. If the agreed payment date is missed, interest shall become payable at the statutory rate of 8 percentage points above the ECB base rate, unless the Supplier can show higher losses. The Customer's right to provide proof of lower losses is reserved.
7. The right to refuse cheques or bills of exchange is reserved. Cheques and bills eligible for rediscounting shall only be accepted on account of performance; any costs connected with this shall be borne by the Customer.
8. The Customer shall only be entitled to set-off or to exercise a right of retention, if its claim is undisputed or has been validly determined by a court.
9. Continued non-compliance with the payment conditions, or circumstances which give rise to serious doubts as to the creditworthiness of the Customer shall result in all claims of the Supplier falling due immediately. In addition to this, the Supplier shall, in such circumstances, be entitled to demand payment up front for any remaining deliveries, and shall be further entitled to rescind the contract, if a reasonable period has expired without success.

IX. Moulds (tools)

1. The price for the moulds shall also include the costs of providing samples but not the costs of checking and subsequent adjustments nor for changes requested by the Customer. In the event that due to the Supplier the provision of further samples becomes necessary, the costs therefor shall be borne by the Supplier.
2. Unless there is an agreement to the contrary, the Supplier shall retain ownership of the moulds created for the Customer either by the Supplier itself, or by a third party commissioned by the Supplier to produce those moulds. The moulds shall only be used for the Customer's orders, provided the Customer fulfils his payment and acceptance obligations. The Supplier shall only be under an obligation to replace these moulds free of charge, if this is required in order to fulfil the output quantity agreed with the Customer. The Supplier's obligation to keep the moulds shall expire 2 years after the last part-delivery from that mould and after prior notice has been given to the Customer.

3. In the event that the contract stipulates that the Customer should become the owner of the moulds, then ownership of the moulds passes to the Customer upon full payment of the purchase price. The hand-over of the moulds to the Customer is replaced by the Supplier's obligation to store them. Regardless of the Customer's legal claim to hand-over and of the life of the moulds, the Supplier shall be entitled to sole possession of the moulds, up until such time as the contract comes to an end. The supplier shall mark the moulds as someone else's property and insure them, if the Customer so requests, at the Customer's expense.

4. In the case of the Customer's own moulds as per sub-section 3 and/or moulds made available on a loan basis by the Customer, the Supplier's liability in respect of storage and care is confined to such care as he would take of his own affairs. The costs for maintenance and insurance shall be borne by the Customer. The supplier's obligations shall expire after the order has been completed, if the Customer fails to collect the moulds within a reasonable period. Where the Customer has not fulfilled his contractual obligations in full, the Supplier shall, in any event, have a right of retention to the moulds.

X. Provision of Materials

1. Where the materials are provided by the Customer, they are to be delivered at the Customer's cost and risk plus an appropriate surcharge for quantity, but in any event no less than 5 %, in good time and in perfect condition.

2. If the Customer fails to comply with these conditions the delivery period shall be extended accordingly. Other than in cases of force majeure, any additional costs arising, including any additional costs for any interruptions in production incurred thereby shall be borne by the Customer.

XI. Industrial property rights and legal defects

1. Where the Supplier is asked to deliver based on drawings, models, patterns, or using parts provided by the Customer, the Customer warrants that no third-party trademark rights are infringed thereby in the destination country. The Supplier shall notify the Customer of any rights it is aware of. The Customer shall indemnify the Supplier against any claims from third parties, and compensate the Supplier for any losses incurred. If a third party asserts a trademark right and forbids the Supplier to manufacture or deliver, then the Supplier shall be entitled, without having to investigate the legal position, to suspend work until such time as the legal position has been clarified by the Customer and the third party. In the event that such a delay makes it unreasonable to expect the Supplier to continue with the contract, then the Supplier shall be entitled to rescind the contract.

2. Any drawings and patterns provided to the Supplier, but which did not result in an order, shall be returned upon request; otherwise the Supplier shall be entitled to destroy these three months after submission of an offer. This obligation shall apply to the Customer accordingly. The party that is entitled to destroy such items, shall give the contract partner sufficient notice of this intention to destroy the items before doing so.

3. The Supplier shall be entitled to the copyright and, where applicable, industrial property rights, including in particular all rights of use and exploitation, in respect of all models, moulds and contraptions, designs and drawings produced by either the Supplier itself, or by a third party commissioned by the Supplier to do so.

4. In the event that there are any other legal defects, No. VI. shall apply accordingly.

XII. Place of Performance and Place of Jurisdiction

1. The place of performance shall be the location of the Supplier plant.

2. The place of jurisdiction shall be either the location of the Supplier's registered office, or the registered office of the Customer; the choice shall be up to the Supplier, and this shall also apply to legal proceedings in respect of documents, bills of exchange, or cheques.

3. German law shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980 (Federal Gazette [BGBl.] 1989 p. 586) for the Federal Republic of Germany (Federal Gazette [BGBl.] 1990 p. 1477) is hereby excluded.