

# General Terms and Conditions of Sale and Delivery

Hirsch Armbänder GmbH  
Hirschstrasse 5, A-9020 Klagenfurt

## **1. Applicability and binding effect:**

- 1.1. The following terms and conditions shall apply to all orders accepted and fulfilled by us and shall be deemed accepted by the contracting party and legally binding upon placing of the order even if we do not expressly object to conflicting terms and conditions.
- 1.2. Unless specifically agreed otherwise in writing, by telex or fax, telecopy or e-mail upon conclusion of a contract, the following terms and conditions shall constitute a supplementary part of each contract concluded between us as seller/supplier and our customers as contracting party.
- 1.3. Our terms and conditions shall in any case prevail over general terms and conditions and/or general terms and conditions of purchase, if any, of the contracting party.
- 1.4. Modifications of and/or amendments to these General Terms and Conditions of Sale and Delivery or promises differing from the same shall require confirmation in writing, by telex or fax, telecopy, or by e-mail sent in accordance with the Signature Act [*Signaturgesetz*] and duly signed in order to be legally binding.

## **2. Offer and Conclusion of Contract:**

- 2.1. Any and all offers shall be non-binding unless expressly agreed otherwise by us and shall, as a matter of principle, be placed in writing.
- 2.2. A contract shall be deemed concluded upon our issuance of a written declaration of acceptance (also by fax, or e-mail as a pdf file) in the form of an order confirmation.
- 2.3. The product data contained in catalogues, brochures, mailings, advertisements, illustrations, price lists and the like shall only be relevant if explicitly referred to the order confirmation.
- 2.4. We reserve the right to subsequently correct any mistakes and/or errors.
- 2.5. We shall be obliged to render the ordered services once all technical, contractual and packaging details have been clarified and the contracting party has fulfilled its obligations and has brought about the legal prerequisites for performance.

## **3. Performance, delivery periods and dates:**

- 3.1. The delivery date shall be deemed observed upon issuance of a notice that the ordered goods are ready for shipment even if dispatch is not or not timely possible with no fault of ours or of the supplier factory.
- 3.2. Fixed delivery dates shall be subject to separate agreement.
- 3.3. In case that a delivery date or delivery period is exceeded we shall not be held liable in any way for any damage suffered or profit lost.
- 3.4. If delivery dates or delivery periods cannot be complied with for reasons for which the contracting party is responsible (e.g. late clarification of details, late receipt of documents and the like), the delivery date or commencement of the delivery period shall be postponed by the period of time the contracting party is in delay plus four weeks. We shall in any case be entitled to carry out partial or advance deliveries.
- 3.5. In case of a delay for which we are responsible, the contracting party shall have to grant us a reasonable grace period. Only after an unsuccessful expiration of such period shall the contracting party be entitled to rescind the unfulfilled part of the order, unless the goods have been notified to be ready for shipment before expiration of the grace period.  
This shall, in particular, apply if independent institutes identify defects of the goods or we are hindered to timely deliver the goods due to other executive measures (such as, e.g., seizure by customs authorities) and such measures that have not been caused by us and are not due to our fault.
- 3.6. If the contracting party fails to accept the goods made available in accordance with the contract at the place agreed in the contract or at the time contractually agreed, our performance shall be deemed rendered; and if the delay has not been caused by an act or omission on our part, we may either claim performance or rescind the contract after having granted a reasonable grace period for acceptance.

## **4. Delivery:**

- 4.1. Unless otherwise agreed, the delivery made by us shall be deemed sold "ex works" and our performance shall be deemed rendered. We shall be free to choose the route and means of transport (delivery at the risk of the contracting party) and any liability shall be excluded.
- 4.2. Events of *force majeure* (Article 14.) shall entitle us to delay performance of orders for the duration of the impediment without the contracting party being entitled to timely delivery or damages.
- 4.3. Excess or short deliveries due to production technology shall be accepted by the contracting party and shall not be considered inadequate delivery.
- 4.4. The contracting party shall be entitled to demand of us evidence of delivery until four weeks after the invoice date. Evidence of delivery requested later on shall not be provided by us and the goods shall be deemed received by the contracting party and the invoiced amount shall be deemed due.

## **5. Delivery and acceptance**

- 5.1. As a matter of principle, benefit, risk and accident shall pass to the contracting party upon dispatch of the shipment "ex works" (place of performance) unless expressly agreed otherwise on a case-by-case basis (e.g. by INCOTERMS).
- 5.2. In case we ship the sold goods to a different place than the agreed place of destination at the request of the contracting party, risk and accident shall pass to the contracting party as soon as we have made available the goods to the freight forwarder, carrier or to the other person or undertaking commissioned to ship the goods unless otherwise agreed (Clause 4.1.).
- 5.3. Claims vis-à-vis us for performance or damages or lost profit including deviations in colour and design which are customary in trade that are raised on grounds of failure to timely deliver the goods or in case of mass shipments (see Clause 12.2) shall be excluded.

## **6. Prices:**

- 6.1. Prices shall be net without any deductions and, unless agreed otherwise, shall be considered "ex works" exclusive of packaging, loading, and transportation costs.

- 6.2 Additional costs including transportation costs (CITES costs) which arise from a specific mode of shipment requested by the contracting party shall in any case be borne by the contracting party.
- 6.3 Ancillary costs, such as official charges, customs duties, price-adjustment levies, import and export duties and fees shall be borne by the contracting party unless otherwise stated or agreed.
- 6.4 The term "as before" [*wie gehabt*] and other similar terms used in orders shall only refer to the workmanship of our performance but not to prices and ancillary costs.
- 6.5 We shall be entitled to additionally invoice costs of taking back and/or disposing of packaging material and batteries. Waste disposal charges shall be excluded from regulations concerning rebates or cash discounts.
- 6.6 Tool costs shall be borne by the contracting party. The relevant tools will be used by Hirsch exclusively for execution of the orders placed by the contracting party. However, the tools shall remain the property of Hirsch.

## **7. Payment:**

- 7.1 The place of performance concerning payment to us shall be Klagenfurt.
- 7.2 Unless otherwise agreed, payments shall be made immediately upon issuance of the invoice without deductions and excluding any right of the contracting party to retention or offsetting against any counterclaims which we have not expressly accepted in writing.
- 7.3 In case the price is stated in hard currency (EUR, USD, SFR), default interest in the amount of 10% shall be payable for delay in payment, in case of all other currencies, default interest in the amount of 20% p.a. shall be payable. In addition, we shall be reimbursed for all costs of dunning, collection, investigation and obtaining of information, as well as, the costs of legal counsel called in by us.
- 7.4 Payment by bill of exchange shall be subject to our express consent. We shall accept bills of exchange and cheques as payment only subject to receipt of the counter-value.
- 7.5 Unless a special purpose is indicated, payments shall be credited to the oldest outstanding account receivable; for each individual claim payments shall be credited first to costs, then to interest and finally to principal.
- 7.6 Payment shall be deemed made at the date at which we are able to dispose of the same in the agreed currency.
- 7.7 In case of non-compliance with the agreed terms of payment or in case of delay in payment by the contracting party, we shall be entitled to grant a grace period. In case of an unsuccessful expiration of such grace period or in case the contracting party declares not to pay, we shall be entitled to declare all claims vis-à-vis the contracting party due for immediate payment (acceleration occurs) even if some claims are not yet due; furthermore, we may rescind the contract and/or request additional security.  
  
Agreed price reductions (in particular, discounts) shall lose their validity thereby and we shall be entitled to claim the full invoice amount. Our right to claim damages including reimbursement of all expenses already incurred in connection with the contracts which we rescind in such a case, independent of whether the contracting party is at fault or not, shall not be affected thereby.
- 7.8 In case circumstances occur due to which doubts regarding the creditworthiness of the contracting party arise, we shall, in addition, be entitled to declare all our accounts receivable due for immediate payment and to rescind all pending purchase and/or supply contracts as well as to claim damages on grounds of non-performance.
- 7.9 In case of delay on the part of the contracting party we shall also be entitled to a self-help sale in accordance with the provisions of commercial law.  
  
From exercise of our rights provided for in this Clause, no liabilities on our part vis-à-vis the contracting party, in particular, no claims for damages vis-à-vis us, shall arise.
- 7.10 If the contracting party's registered office is situated outside of Austria, the contracting party shall be obliged to comply with EU regulations on turnover tax on imports. This shall include, but not be limited to advising the VAT number to us without separate request. The contracting party shall be obliged, upon our request, to provide us with the necessary information on its capacity as entrepreneur, on use and transport of the goods delivered, as well as, regarding the obligation to submit data for statistical purposes.
- 7.11 The contracting party shall be obliged to reimburse us for any expenses, in particular for handling charges, which are incurred by us due to insufficient or incorrect information provided by the customer in connection with turnover tax on imports.

## **8. Retention of title:**

- 8.1 Until full payment of the purchase price and of all of our ancillary claims, in particular, interest and costs, the sold goods shall remain our property. Retention of title shall extend also to by-products resulting from processing
- 8.2 Claims of the contracting party under a resale of goods the title to which is retained shall be assigned to us in the amount of the invoice for the goods subject to retention already upon conclusion of individual contracts. They shall serve as a security for us to the same extent as the goods the title to which is retained. Despite such assignment, the contracting party shall be entitled to collect the assigned accounts receivable for us in escrow. In case of delay in payment of his contracting party, our contracting party shall be obliged to make available to us the documents necessary for collection of the assigned claims and we shall be entitled to revoke our contracting party's power to collect claims in escrow.
- 8.3 As long as we retain title to the goods, the contracting party shall be obliged to store them properly and to maintain insurance against loss and depreciation, fire and theft, storage damage and water damage and to restrict transferability of such insurance policy in our favour.
- 8.4 The contracting party shall be obliged to make entries into the books which show the retention of title and to notify us of third-party seizure (in particular, attachments and the like) to goods the title to which is being retained or to assigned accounts receivable without delay. Likewise assignment of accounts receivable of the contracting party from us shall also be documented in an appropriate form (if appropriate, by means of an entry into the books) and notified to the customer of the contracting party not later than upon issuance of the invoice. In such a case, the contracting party shall be obliged to notify third parties of our rights and reimburse us all costs related to safeguarding our rights, including costs for legal counsel, if applicable.

## **9. Warranty:**

- 9.1 The warranty period shall commence at the time the risk passes until six months after delivery.
- 9.2 As resellers, we shall only warrant to the extent of the scope of liability of the manufacturer, supplier factory and/or producer. We shall not assume any further warranties and/or compensations.
- 9.3 Warranty shall apply to expressly ordered qualities of our products or qualities usually assumed, but shall not extend to specific procedures or purposes of the contracting party.

- 9.4. Warranty claims shall in any case expire immediately upon resale, further processing or repair by the contracting party.
- 9.5. We shall only accept returns if they are free of charge for us and are either in the original packaging or a correspondingly safe substitute packaging. As a matter of principle, customised products shall not be taken back.

#### **10. Defects:**

- 10.1. The goods delivered by us shall immediately upon delivery be inspected by the customer for defects and any defects identified shall be notified to us immediately. Such notice shall be made in writing, by telex or fax or telegram not later than 8 days after delivery (by e-mail only as a pdf file).
- 10.2. In case defected goods are delivered which can be repaired we may, at our option, either improve or replace the goods or grant a price reduction.
- 10.3. In case of irreparable defects we may, at our option, offer either replacement of the goods or a price reduction. Any further claims against us, in particular rights to cancellation of contract, damages and/or substitute performance shall be excluded.
- 10.4. We shall not accept any notices of defects if the goods are not at their place of destination or in the state of dispatch.
- 10.5. The products delivered shall only offer the degree of security which may be expected on the basis of licensing provisions, operating manuals, regulations of the manufacturer, etc. and other information given.

#### **11. Trademarks and industrial property rights:**

- 11.1. The names "Hirsch" and "Hirsch-Armbänder" are registered trademarks and are subject to trademark protection.
- 11.2. In connection with ordinary business transactions we grant the customer permission to use the registered trademarks Hirsch and Hirsch-Armbänder in business.
- 11.3. Any detrimental use of our registered trademark and/or word-picture mark (logo), and any infringement of our trademark right shall result in claims for damages on our part. No trademarks of Hirsch, be they registered or not registered, shall be used in advertising materials or other publications in connection with distribution of information to third parties without our prior written consent.

#### **12. Samples and copyright:**

- 12.1. The samples provided to us by the customer are models and we shall realise the same to the best of our knowledge and belief. In this respect, we would like to point out that leather is a product of nature.
- 12.2. Consequently, we shall not be liable for any differences in colour and/or print or for particular properties, provided that such differences occur in a form that is customary in trade and even if they do not occur on the basis of the same technical documents as the models. We shall be liable for proper manufacturing, but not for the correctness of the samples provided to us.
- 12.3. Hirsch is the sole owner of the displays (wristwatch strap sales displays) developed by Hirsch and the pertaining intellectual property rights (protection of registered designs, trademark protection, patents, etc.), of the know-how, design, technology and technique of the said displays.
- 12.4. The technology developed by us in connection with the development and production of the displays, as well as, the know-how is protected for us (Hirsch) on a worldwide basis. The said displays may only be put up on the premises of the contracting party at the place determined by us and must be equipped by the contracting party fully and exclusively with our high-quality products, in particular with Hirsch wristwatch straps in original design.
- 12.5. A one-off fee for use of the displays, which shall remain our property, shall be paid by the contracting party, which shall be due for payment upon acceptance of the displays by the contracting party.
- 12.6. If such displays are not fully and exclusively equipped with our high-quality products, we shall be entitled to immediately collect the said displays and in this case, the contracting party shall be obliged to immediately return the said displays to us.
- 12.7. In case of damage to, loss of and/or use of the displays not in accordance with the agreement the contracting party shall be obliged to pay a contractual penalty in the amount of EUR 500, which shall not be subject to a judicial right of reduction. We reserve the right to assert any claims exceeding the aforementioned amount.
- 12.8. If Hirsch constructs customised solutions or develops plans and/or models, they shall be intellectual property of Hirsch and may not be made available to other manufacturers without Hirsch's express consent. In particular, patented processes and protected designs, which are marked as such, shall be subject to international protection regulations. Hirsch shall take legal action for infringement thereof.

#### **13. Liability and damages:**

- 13.1. We shall only be liable for damage to items belonging to the contracting party which has occurred directly in the course of performance and which was caused by us by gross negligence or intent. Any other claims of the contracting party, in particular for any additional damages, including any consequential damage caused by a defect, shall be excluded.
- 13.2. The products delivered by us shall only offer the degree of security which may usually be expected on the basis of licensing provisions and other information.
- 13.3. The right to tolerances customary in trade with regard to quantities, measurements, form and design (leather is a product of nature) shall always be reserved.
- 13.4. Both liability for negligence and compensation for consequential damage and pecuniary loss, as well as, compensation for savings not made or lost interest and/or for damage due to third-party claims vis-à-vis the contracting party shall be excluded.
- 13.5. The obligation to compensate for property damage according to the Product Liability Act [*Produkthaftungsgesetz/PHG*] shall be excluded.
- 13.6. In case of non-fulfilment of obligations imposed on the contracting party under these General Terms and Conditions of Sale and Delivery as well as in case we are held liable with regard to damage caused by such products which have been put into the market by the contracting party, the contracting party shall in any case be obliged, irrespective of fault, to fully indemnify and hold us harmless (including any costs of legal counsel or proceedings). If the contracting party has paid compensation to a third party under product liability law with regard to a product delivered by us, any right of recourse to us shall be excluded.
- 13.7. We shall only be liable for damage to items which belong to the contracting party and were taken over by us in the course of performance for processing and if such damage was caused by gross negligence on our part. Any other claims of the contracting party, in particular claims for compensation for any further damage, including consequential damage caused by a defect, shall be excluded except for cases of gross negligence or intent on our part.

13.8. We shall, in principle, be liable for loss of or damage to an item to be repaired by us, however such liability shall be limited to repair and/or compensation for the value of the item to be repaired or the delivery item. We shall be liable for further claims only in case of intent.

**14. Force majeure:**

14.1. Upon occurrence of events of force majeure, such as strike, lack of raw materials or fuel, disturbance of transports and the like, we shall be entitled to postpone shipment for the duration of the impairment and a reasonable start-up period, or to rescind the contract in whole or in part. This shall not give rise to any liabilities on our part vis-à-vis the contracting party, in particular not to claims for damages vis-à-vis us.

14.2. Non-delivery or not timely delivery by our suppliers shall rank equal to force majeure provided that the cause lies not within our scope of responsibility.

**15. Data protection:**

15.1. By means of our data protection information we shall inform our contracting parties about

- the nature, scope, duration and purpose of collection, processing and use of personal data necessary for processing of orders and accounting;
- their right to object to the creation and use of their anonymised user profile for the purposes of advertising, market research, and design of our product range in accordance with demand;
- the passing on of data to undertakings commissioned by us which are subject to statutory provisions of data protection, for the purpose of evaluation of credit standing and shipment of goods and for the duration of the same;
- their right to receive information on their personal data stored by us free of charge;
- their right to correction, deletion and blocking of their personal data stored by us.

15.2. Any collection, processing and use of personal data going beyond that described in Clause 15.1. shall be subject to the consent of the contracting party. The contracting party shall have the possibility to give such consent prior to placing its order. The contracting party shall have the right to revoke its consent at any time with effect for the future.

**16. Rescission of the contract:**

16.1. We shall be entitled to rescind the contract if

- despite granting of a grace period execution of the delivery and/or commencement or continuation of performance is further delayed for reasons for which the contracting party is responsible;
- doubts concerning the liquidity of the contracting party exist and if upon our request the contracting party neither makes any advance payment nor furnishes appropriate security prior to shipment (see Clause 7.7.);
- an extension of the delivery period due to the aforementioned circumstances would in total be longer than half the delivery period originally agreed.

16.2. For the aforementioned reasons rescission of the contract may also be declared with regard to an outstanding part of the delivery and service.

16.3. If insolvency proceedings are opened over the assets of a contracting party or if a petition for initiation of insolvency proceedings is dismissed for lack of sufficient assets, the other contracting party shall be entitled to rescind the contract without granting a grace period.

16.4. Notwithstanding our claims for damages, partial services or services already rendered shall be accounted for and due for payment in case of a rescission of the contract.

This shall also apply to the extent the delivery and service has not yet been accepted by the contracting party and/or to preliminary services already rendered by us. We shall, however, also be entitled to claim return of items already delivered.

**17. Place of jurisdiction:**

17.1. The place of jurisdiction concerning all disputes shall be Klagenfurt.

**18. Applicable law:**

18.1. All purchase and service contracts shall exclusively be subject to Austrian law.

**19. Other provisions:**

19.1. If individual provisions of the contract or of these General Terms and Conditions Sale and Delivery should be ineffective in whole or in part, the remaining provisions shall remain effective. The parties undertake, in case of partial ineffectiveness, to replace the ineffective provisions by provisions which come as close as possible to the purpose of the ineffective provision.

19.2. In case that contracts or the General Terms and Conditions of Sale and Delivery are drawn up in German and in a different language, the German version shall prevail. Our English-language General Terms and Conditions shall apply to contracts drawn up in English.

Klagenfurt, November 2004

Hirsch Armbänder GmbH