

## Terms of Sale and Delivery

As at 15.11.2007

### Terms of Sale and Delivery

Our Terms of Sale and Delivery form part of all offers and contracts. Customer's purchasing conditions are only binding on us if they have been expressly confirmed by us in writing.

#### I. Offer and conclusion of contract

1. The order is only deemed to be accepted if it has been confirmed by us in writing. Until such time, our offer is subject to alteration.
2. Alterations or additions on the part of the customer compared to the original order and all supplementary agreements reached by the parties to the contract with regard to the order also require our written confirmation in order to be valid.
3. To observe the written form, it is sufficient to make the additions, alterations or supplementary agreements reached available to the customer in the text in quoted but unsigned form.

#### II. Delivery

Goods are shipped at the expense and risk of the customer. The customer also bears the risk when carriage paid delivery is agreed. The customer is to arrange for insurance of the goods during transport at his expense. In the case of free delivery, the freight payment is to be regarded as an expense incurred on behalf of the customer.

#### III. Packaging

Packaging is invoiced at cost. Boxes returned carriage paid in perfect condition are credited at two thirds of the invoiced value unless otherwise agreed in writing.

#### IV. Delivery time

1. The agreed delivery time becomes binding as soon as all details of execution have been clarified and both parties agree on all conditions of the transaction. Their observance assumes the fulfilment of the contractual obligations of the customer.
2. If the delivery period is exceeded, the customer shall to grant a reasonable grace period. Failure to complete delivery within the grace period constitutes a delay in delivery. Our liability for a delay in delivery in the case of simple negligence is limited to the net invoice value (excluding VAT, freight and packaging costs) of the delayed delivery/part shipment.
3. The delivery period is extended to a reasonable extent if we are prevented from effecting delivery on schedule due to unforeseeable circumstances which cannot be averted despite due care in the individual case and which demonstrably have a considerable effect on completion or delivery of the product or service. This also applies if the reason for prevention occurs under the same conditions with a subcontractor. Such grounds are, in particular, production outages, delays in the delivery of components and raw materials, strikes and lockouts. In such cases we are only liable to the customer for intent and gross negligence as described in paragraph 2, sentence 2.
4. If the delivery/performance becomes impossible, we will immediately inform the customer of this and reimburse payments already effected. We are then entitled to withdraw partially or fully from the contract. Our liability is limited in accordance with paragraph 3, sentence 4 in connection with paragraph 2, sentence 2. If we are not supplied by subcontractors to such an extent that we can meet our delivery obligations on schedule and/or in full, we are entitled to adapt our delivery/performance obligation and carry out part shipments if and in so far as the customer can be reasonably expected to accept them.

#### V. Liability for defects

We are liable for defects as follows:

1. Those parts or services which become unusable or the usefulness of which is considerably impaired within 12 months, calculated from the day of the passage of risk as a result of a circumstance which existed before the passage of risk, in particular due to faulty construction, defective material or poor workmanship are to be repaired or replaced at our discretion. The customer must report the detection of such defects in writing immediately after receipt of the goods at their destination. Claims under the warranty require that the customer correctly fulfil his due obligation of inspection and complaint in accordance with sections 377, 378 HGB (German Commercial Code).
2. The customer shall fulfil his contractual obligations, in particular the agreed payment conditions. Complaints do not entitle the customer not to fulfil his own contractual obligations, to offset charges or assert a right of retention unless the legitimacy of the complaint is recognised or finally decided with legal effect and without reservation.
3. The customer shall grant us the necessary time and opportunity to eliminate defects using equitable discretion. If the customer definitively refuses a possible repair which he can reasonably be expected to accept, we are exempted from all liability for defects. If a reasonable period of additional time granted by the customer to eliminate defects is not observed by us or if the repair fails or is impossible, the customer

is entitled to the statutory warranty rights.

4. No warranty is given for damage which is due to natural wear, incorrect treatment, insufficient maintenance, excessive strain or use of unsuitable operating materials.
5. a) Incorrect alterations and repair work carried out on our goods/services by the customer or third parties exempt us from liability for consequences of this.
- b) Costs incurred by the customer as a result of the elimination of defects subject to guarantee by third parties are only reimbursed if elimination by the third party has been previously approved by us or could not be postponed for reasons of operational safety or to prevent further damage.
- c) Further claims of the customer against us and our vicarious agents are excluded if the repair has led to an elimination of the defect.
- d) If the customer asserts claims for compensation which do not constitute bodily injury and/or damage to health or loss of life, we are only liable for cases of intent and gross negligence. If we cannot be held responsible for intentional violation of the contract, liability is limited to the foreseeable damage which may typically occur. This regulation also applies if we culpably violate typical, important contractual obligations.
6. In the event of resale, the customer is obliged to agree guarantee conditions with his customer with the same content in so far as permissible by law. If he fails to do so, the customer has to exempt us accordingly in the event of assertion of claims by a third party.
7. Warranty declarations are not issued to the customer. Warranty liability to the end consumer remains unaffected.
8. If the customer receives erroneous assembly instructions, we are only obliged to supply correct assembly instructions and only if the error in the assembly instructions prevents correct assembly.

#### VI. Further liability

1. Liability for compensation beyond that described in section V. is excluded, irrespective of the legal nature of the asserted claim. This comprises claims based on contract and tort. The limitation of liability does not apply to physical injury and damage to health or loss of life attributable to us.
2. Claims for compensation due to impossibility remain unaffected. The same applies if the liability is imperative based on the provisions of the product liability act. If compensation liability is restricted or excluded for us, this also applies to the legally permissible extent with regard to the liability of our employees and vicarious agents.

#### VII. Exclusion of onward delivery to the USA, exemption from liability

The customer is not entitled to forward our goods directly or indirectly to the USA, US territories and Canada. If claims are asserted against us due to such a delivery to the USA, US territories and Canada based on warranty and/or product liability, the customer exempts us from all resulting claims.

#### VIII. Reservation of title

We reserve the right to ownership of the delivered goods until full payment of our claims from the business relationship, including any refinance bills or reverse bills of exchange. The customer is entitled to dispose of the delivered goods in the ordinary course of business.

In addition, it is agreed:

1. Our ownership extends to the new products created by further processing of the conditional commodity. In the case of processing, connection or mixing with items which do not belong to us, we acquire co-ownership in accordance with sections 947, 948 BGB. No claims against us arise for the customer from processing the conditional commodity for us and from its storage.
2. From now on the customer assigns all claims from the sale of conditional commodities from our current or future deliveries of goods including bills of exchange and cheques to us to safeguard the relevant claims in accordance with paragraph 1. In the case of the resale of goods of which we have co-ownership in accordance with paragraph 2, sentence 2, the assignment is restricted to the proportion of the claims which corresponds to our share of co-ownership. If a conditional commodity is sold together with other items for a total price, the assignment is restricted to the proportional amount of our invoice (including VAT) for the conditional commodity included in the sale. In the case of processing in the context of a contract for work performed, the claims for the proportional amount of our calculation (including VAT) for the conditional commodity also processed are already assigned to us now.
3. As long as the customer is prepared and able to correctly fulfil his obligations to us, he may dispose of the goods which we own in the ordinary course of business and collect the claims assigned to us himself. He may only carry out assignments as securities, pledges and assignments of claims, also in the way of a sale of claims, with our prior written commission; this also applies to export business. If we consider that the realisation of our claims is endangered, the buyer has to inform us at our request of the stocks of the conditional commodity and enable us to take them back, in addition, he has to inform his customers of the assignment and supply us with all necessary information and documents. When conditional commodities are taken back, a withdrawal from the contract only exists if this is expressly declared in writing.
4. If the value of the securities existing for us exceeds the claims to be secured by more than 20 %, we will also release appropriate securities ourselves or arrange for their release at our discretion at the request of the customer.

## IX. Payment conditions

1. The invoice amounts are payable within 10 days with 2 % cash discount or after 30 days net unless otherwise agreed.
2. If different payment conditions become necessary for time reasons to those stated in our offers and order confirmations, these come into effect without the need for prior notice.
3. The retention of amounts owed to us due to any additional claims and offsetting with counter-claims are not permitted unless these claims are undisputed or decided with legal effect.
4. If after conclusion of the contract there are doubts concerning the creditworthiness of the customer, we can make the continuation of the deliveries dependent on the immediate payment of the purchase price and outstanding claims. We can also demand immediate payment for invoice amounts not yet due and, if we have not yet delivered, payment before delivery.
5. If we accept bills of exchange, discount and bank charges are borne by the buyer.
6. We accept no responsibility for punctual presentation and protests. Bill of exchange payments do not constitute cash payments.

## X. Obligations in the event of resale

1. If advance payment has not yet been effected, our customer is obliged in accordance with the assignment agreed in paragraph IX. no. 6 to regard payments received for the goods resold by him as received for us and to pay them to us. He is also obliged at our request to send us a written declaration of assignment of his claim against his customer in the amount of the debt and a letter of notification to the customer involved without delay. We also assert the right to the goods commissioned by our customers with third parties.
2. The customer has to include all product information, in particular operating instructions and assembly instructions, on delivery of the product purchased by the customer and submit them to the end customer. The customer is to obtain confirmation of receipt from the end customer.

## XI. Place of fulfilment place of jurisdiction, arbitration proceedings

The place of fulfilment is Wangen.

The place of jurisdiction for all disputes resulting from this contractual relationship is the District Court of Ravensburg. However, as the plaintiff we are also entitled at our discretion to bring an action at the court responsible for the registered seat of the defendant.

The parties to the contract have the right to appeal to the court of arbitration of the Chamber of Industry and Commerce of Lake Constance-Upper Swabia (Germany) without recourse to the ordinary courts of law in accordance with the of the relevant valid rules of arbitration.

## XII. Binding nature of the contract

In the event of legal ineffectiveness or changes of individual points of the provisions, the remainder of the contract remains binding.

The parties to the contract will immediately replace an ineffective regulation with a new regulation which most closely reflects the economic purpose of the ineffective regulation. The contract is exclusively based on the valid law of the Federal Republic of Germany.

## XIII. The customer agrees

to storage by us of company and personal data in the course of business transactions.

(The currently valid Terms of Sale and Delivery can be viewed on our website and printed out at any time)

## Guarantee conditions

The quality management system introduced by Hymer Leichtmetallbau GmbH & Co. KG meets the requirements of ISO 9001:2008. All Hymer products are made of best quality materials and must meet the highest standards of quality. We can therefore offer a guarantee as follows:

### 1. Guarantee period

Hymer SC 80 ladder range	= 15 years
Hymer SC 60 ladder range	= 10 years
Hymer SC 40 ladder range	= 5 years

For all other product groups of the ladder and tower ranges, a guarantee period of 5 years applies, with a warranty period of 2 years for customer-specific solutions. We refer here to our guarantee details on the relevant product pages in this catalogue.

For all other ranges (e.g. commodities, ALU-PRO and Alpe), as well as products of the automotive engineering sector, the statutory warranty rights apply.

### 2. Terms of guarantee

- a. The guarantee begins on the day of purchase. Invoices or receipts serve as proof of purchase.
- b. The guarantee is exclusively restricted to material defects of aluminium and steel parts.
- c. The guarantee does not cover the hinges on any ladders.
- d. The guarantee does not cover damage due to natural wear, incorrect treatment or modifications of the product.
- e. In the event of a warranty claim, we will repair or replace at our discretion.
- f. These guarantee conditions apply to all Hymer products listed under point 1 purchased after 01 April 2008.

### 3. Return

The guarantee holder shall return the product for inspection or general determination of the warranty case at his expense and risk to the place of fulfilment (Hymer-Leichtmetallbau, Wangen, Germany). If the guarantee claim is accepted, Hymer-Leichtmetallbau will reimburse the cost of the cheapest means of transport.

**S** = standard range

**G** = equipment range

**Written information on the products and images thereof may differ from the actual design in individual cases. Errors, and the right to make design modifications and vary prices in the case of changes in raw material prices remain reserved.**