

General Terms and Conditions of HellermannTyton GmbH relating to the production of customer-specific tools

Preamble

The contracting parties hereby agree that for the purpose of processing the customer's orders HellermannTyton shall produce itself or have produced any tools or tool components used exclusively or predominantly for the production of the customer's orders. The contracting parties hereby agree that the following provisions shall govern the ownership of the tools, treatment of the tools as well as the delivery of components produced by the tools in question:

1. Subject matter of the Agreement

1.1 On behalf and in the name of the contracting partner, HellermannTyton shall acquire tools in accordance with the order confirmation.

1.2 In the absence of any agreement to the contrary, the contracting party shall reimburse HellermannTyton for the purchase price for the tool within 30 days of the invoice date, net without any deductions. To the extent that amortization payments on the price of components have been agreed, the provisions of the order confirmation shall apply.

1.3 HellermannTyton shall clearly identify the customer as the owner or prospective owner of the tool in question by visibly marking the latter and to indicate such ownership in the event of attachment.

2. Copyright and know-how

2.1 The parties are in agreement that HellermannTyton shall hold copyrights to any drawings and sketches, even if the latter are furnished with the customer's logo, to the extent that HellermannTyton contributed to the preparation of such drawings. To the extent that the tools or moulds in question include HellermannTyton's know-how, HellermannTyton shall have the exclusive right to such know-how. Should the supply/delivery relationship be terminated, HellermannTyton shall only grant the right to use any know-how, patents or utility models in the event of a remuneration-based licensing agreement to be concluded separately.

2.2 Any patent and utility model rights shall be held by the respective applicant of such patents/utility models. HellermannTyton is hereby granted the right to reproduce all moulds and tools to the extent required by HellermannTyton for the processing of orders; this also applies even if HellermannTyton is not the applicant. HellermannTyton is hereby irrevocably entitled to exercise such reproduction right and the right to use any patents, know-how and utility models even if the supply/delivery relationship with the customer has been/will be terminated, with HellermannTyton being entitled, however, to execute orders on behalf of other customers using the same tool or mould.

3. Ownership of the tool

3.1 HellermannTyton shall retain ownership of the tool upon full payment. HellermannTyton shall mark the tool in such a manner as to indicate the customer's expectant right of ownership thereof.

3.2 Upon full payment of the tool, ownership rights shall pass to the customer. HellermannTyton shall mark the tool accordingly. However, HellermannTyton shall have the right of possession of the tool for the duration of the supply relationship. This shall apply beyond the term of the supply relationship until such time as HellermannTyton has either accepted the termination of the supply relationship or termination has been legally established. The right to remove the tool in question prior to termination shall not apply on principle.

4. Care, maintenance and insurance

4.1 HellermannTyton is responsible for care and maintenance and undertakes to carry out such care and maintenance in accordance with the principles of a prudent business person.

4.2 HellermannTyton undertakes to adequately insure the tool against the typical risks.

5. Sampling

HellermannTyton undertakes to carry out initial sample tests of the tool, the results of which shall be conveyed to the customer without delay. If dissatisfied with the quality, the customer shall notify HellermannTyton thereof without delay, at the latest within seven days following receipt of sampling notification. HellermannTyton shall take all measures deemed necessary vis-à-vis the producer of the tool to assure adequate quality and design of the tool. Risk shall pass upon dispatch of the quality assurance documentation plus seven days' time to file an objection or – whichever is the earlier date – at the time of departure ex works.

6. Right of inspection

The customer may inspect the tool during normal business hours subject to appropriate advance notice, generally at least three working days. HellermannTyton is entitled to deny admittance of any persons jeopardizing safety and security of the plant.

7. Replacement of the tool

If the minimum output quantity in accordance with the order confirmation has not yet been achieved, HellermannTyton shall bear the replacement costs, but at most for a period of 15 years following completion of the original tool. If the minimum amount of output is exceeded, the customer shall bear the appropriate costs. The payment terms set out in the order confirmation shall apply accordingly.

8. Tool modifications

8.1 Should the customer request the tool to be modified after initial sampling has been completed, he shall reimburse HellermannTyton for all resultant additional expenses and costs incurred. Should this lead to changes in labor expenditure or material consumption by more than 5%, the contracting parties shall unanimously adjust the material price for components produced, corresponding to the changes in such costs or expenditure.

8.2 A modification of the tool does not result in an adjustment of the minimum output quantity or any time limits at HellermannTyton's expense. In case of any doubt, the customer shall reimburse the tool adjustment costs (one-off payment) without delay upon HellermannTyton's request. A corresponding invoice issued by HellermannTyton is due and payable net, without any deductions, within 30 days.

9. Termination of the Agreement

9.1 Upon notification of the customer requesting discontinuation of production, the latter shall – subject to any express provisions – be obliged to accept a delivery quantity equivalent to the requirement for 12 weeks relative to the purchase quantity averaged over the last 12 months.

9.2 Should the supply relationship be terminated before the tool has been paid in full, HellermannTyton may exercise a right to retain the tool until the tool costs have been paid in full.

9.3 Furthermore, the customer may only demand return of the tool after all of HellermannTyton's receivables associated with the supply agreement have been paid. This particularly applies to payment of all invoices for the tool, any deliveries already made, to the acceptance to deliver all finished components in accordance with the obligation under the supply agreement as well as payment of all raw materials procured exclusively for the execution of the supply agreement and unable to be used as parts of other orders on a timely basis.

9.4 The right to terminate the Agreement for good cause shall remain unaffected by the above.

9.5 In the event of justified early withdrawal, HellermannTyton shall be entitled to charge development costs incurred as a non-recurring amount. Early withdrawal occurs if the three-fold amount of the annual quantity projected is not accepted.

10. Force majeure

Force majeure, labor disputes, unrest, official measures and other unforeseeable, unavoidable and serious events shall release the contracting parties from their performance obligations for the duration of the disruption and within the scope of its consequences. This shall also apply if such events occur at a time when the contracting party concerned is in default. The contracting parties are obliged to provide, within reasonable bounds, the required information without delay and to adjust their obligations to the changed circumstances in good faith.

11. Proprietary rights

11.1 If HellermannTyton's supplies are to be effected on the basis of drawings, models or samples provided by the customer, the latter shall warrant that no third parties' industrial property rights are infringed thereby. The customer undertakes to draw HellermannTyton's attention to any such rights known by him. The customer shall hold HellermannTyton harmless from any third-party claims and shall pay compensation for loss or damage incurred. The same obligations apply to HellermannTyton reversely.

11.2 In the event that any third party asserts ownership of an industrial property right and forbids HellermannTyton the production and distribution thereof, the latter shall be entitled to suspend production, without examining the legal position. HellermannTyton shall notify the customer thereof without delay. Accordingly, all delivery periods agreed shall be extended by the time period of the resultant delay plus an appropriate start-up period for the resumption of production.

11.3 Any designs, drawings, stencils, samples, models, design proposals as well as confidential information of HellermannTyton or the customer may not be forwarded to third parties without the consent of the person such documents originate from.

11.4 Any drawings and samples placed at HellermannTyton's disposal not relevant to this order, shall be returned upon request, failing which HellermannTyton may destroy such drawings and samples three months after submission of the quotation.

12. Terms of delivery for components produced

12.1 HellermannTyton shall deliver ex works (Incoterms 2000). Delivery dates are non-binding in principle. In principle, default occurs after a reminder has been issued; this also applies to binding delivery dates.

12.2 The quality of the components produced shall meet the standard usually achievable in the ordinary course of business, using the tool.

12.3 Liability for material defects shall be in force for a period of 12 months after passage of risks. In the event of an increase in the costs incurred for the remedy of defects resulting from the tool being taken to a place other than the place of delivery, the customer shall bear the additional costs.

12.4 Any claims for damages and reimbursements for costs asserted by the customer, regardless on whatever legal grounds, also claims based on tort or defects or consequential damages caused by defects, culpable breach of accessory contractual duties or lost profit shall be excluded. This shall not apply if the management, senior managers or vicarious agents of HellermannTyton have acted with willful intent, gross negligence, caused injury to life, body or health, liability on grounds of failure to fulfill a material contractual duty applies or liability pursuant to product liability legislation is mandatory. Material contractual duties refer to those duties whose violation may jeopardize the purpose of the agreement, e.g. in the event of considerable delay, any material violation of duties of cooperation, disclosure and confidentiality or in the event of any material violation of duties constituting essential elements of the agreement. In the event of any violation of material contractual duties not caused by willful intent or gross negligence and which does not constitute an act of injury to life, body or health or any quality assurance violation, HellermannTyton's liability shall be limited to compensation equivalent to the foreseeable damage normally expected to arise in such cases. Should the customer on his part provide any material for the production of the products it has ordered, HellermannTyton shall insure such material only against theft. Liability for any loss or deterioration of such material shall only apply in the event of willful intent or gross negligence. The statutory provisions governing burden of proof shall remain unaffected by the above.

13. Confidentiality

13.1 The contracting parties undertake to treat in strict confidence any and all information and business records, in particular formulations, market, customer and product information, received from the other contracting party in connection with the joint projects. This obligation excludes any information proven to have already been at the disposal of the other party at the time it was communicated to the latter, has already been public knowledge without this obligation having been violated, or is intended to be disclosed to third parties in accordance with the Agreement. Disclosure made to government agencies and courts of law due to mandatory statutory provisions or legally binding administrative acts shall be permissible, however. Any disclosure in connection with instituting/defending legal proceedings shall be subject to prior coordination and consultation between the parties.

13.2 The duty of confidentiality shall also apply to new, undisclosed combinations and evaluations of information already known and disclosed to the other party.

13.3 Information that is to be kept secret may only be used for the purpose of this cooperation. The contracting parties undertake to ensure that their respective employees observe confidentiality.

13.4 The duty of secrecy shall also apply to information already exchanged between the parties during the preparation of the Agreement and remain in force beyond termination of the cooperation for an additional two years.

13.5 Any violation of confidentiality shall entitle the other contracting party to claim damages.

14. Place of performance and jurisdiction

The place of jurisdiction and performance shall be HellermannTyton's registered office. German law shall apply; UN law of purchase and sale is excluded.

15. Miscellaneous

15.1 HellermannTyton's General Terms and Conditions of Delivery, as amended, shall apply, unless otherwise stipulated in this tool agreement.

15.2 Should one or more provisions of this Agreement be invalid, this shall not render the Agreement invalid in its entirety. The contracting party shall mutually agree to replace the invalid provision by such valid provision that corresponds most closely in economic and legal terms to the purpose of the invalid provision. The same shall apply with respect to unintentional contractual loopholes.

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