

## General Terms and Conditions of Hailo Werk Rudolf Loh GmbH & Co. KG

### I. For Consumers

#### § 1 Scope, Data Protection

If the customer is a consumer as defined by Section 13 BGB (German Civil Code), the following general terms and conditions in the version valid at the time the order is placed shall apply exclusively for the business relationship between us and the customer. We do not accept deviating terms and conditions of the customer, unless we have expressly agreed to them in text form.

A consumer is any natural person who enters into a legal transaction for a purpose that can neither be attributed to their commercial nor their independent professional activities.

Statutory consumer protection rights are not affected by these general terms and conditions.

Insofar as required for business purposes, we are allowed to store and process the customer's data in our electronic data processing system within the scope of the applicable data protection laws (in particular section 28 BDSG (Federal Data Protection Act)).

#### § 2 Conclusion of Contract

Our offers are subject to change and without any obligation. The contract becomes effective if we accept the customer's order. At the latest, our acceptance shall take place with the receipt of the goods by the customer after shipment of the goods, respectively with our performance of the service at the customer's site. A visibly automated order confirmation shall not be deemed as contractual acceptance.

#### § 3 Delivery

Delivery shall be ex our warehouse to the agreed delivery address.

If a date of delivery or performance is delayed due to circumstances beyond our control, because of a failure to supply us with goods, or a failure to supply us in due time or in a proper manner despite proper congruent provision, our deadlines shall be extended in a reasonable manner. If we have informed the customer about the impediment to performance in due form and if it is not merely temporary in nature, we are allowed to withdraw from the contract completely or in part, because of the unfulfilled part of the contract.

Statutory claims of the customer shall remain unaffected.

#### **§ 4 Prices, Payment, Set-Off, Retention**

Unless agreed otherwise (e.g. within 10 days after receipt of invoice), payments shall be made in advance. Bills of exchange are not accepted, checks are only accepted as conditional payment.

The customer is only entitled to set-off if his counterclaims have been declared non-appealable or if they are uncontested by us. Furthermore, the client is only entitled to executing his retention right insofar as his counterclaim is based on the same contractual relationship.

#### **§ 5 Force Majeure Event**

In case of a Force Majeure event, our duties regarding delivery and performance shall be suspended; should any circumstances existing at the time of conclusion of the contract change in a material way, we shall be entitled to withdraw from the contract. The same applies in case of lack of raw materials or energy, labor disputes, official decrees or unpredictable traffic hold-ups or operational disruptions. If sub-suppliers or vicarious agents fail to supply us with goods or services, or if they do not supply us in due time or in a proper manner due to the aforementioned reasons, clause 3 para. 2 shall apply accordingly.

#### **§ 6 Retention of Title**

The delivered goods remain our property until complete payment has been made.

#### **§ 7 Warranty Claims and Liability for Damages**

In case of a defective delivery or service, the statutory provisions shall apply.

In case of supplementary performance of defective goods by means of a replacement delivery, the customer is obliged to return the initially delivered goods within 30 days at our cost. The defective goods shall be returned pursuant to the statutory provisions. We reserve the right to claim compensation for damages pursuant to the requirements regulated by law.

Unless otherwise provided below, further claims of the customer – irrelevant of the legal grounds – are excluded. Therefore, we are not liable for damages that did not occur on the delivered item itself; in particular, we are not liable for lost profit or other financial losses of the customer. Insofar as our contractual liability is excluded or limited, this also applies to the personal liability of employees, agents and vicarious agents.

The limitation of liability mentioned above does not apply if the cause of damage is based on intent or gross negligence, if persons have been injured, if there is a claim for damages pursuant to the Product Liability Act, or if we have assumed a guarantee.

Should we negligently breach a contractual obligation, the obligation to pay compensation for property damage is limited to the typically occurring damage. Contractual obligations are defined as material if they provide the customer with legal positions that must be granted to him by the contract according to its content and purpose and such obligations the fulfillment of which makes the proper execution of the contract possible in the first place and on the observance of which the customer regularly relies and may rely.

An assignment of the customer's claims regulated in sections 1 to 5 is excluded.

### **§ 8 Applicable Law**

The legal relationships between us and the customer as well as the relevant terms and conditions shall be governed by German law.

The provisions of § 6 do not affect mandatory regulations of the law of the country where the customer has his habitual residence, if and insofar as the customer has concluded a contract of purchase that cannot be attributed to the professional or commercial activities of the customer (consumer contract) and if the customer has performed the required legal acts for the conclusion of the contract of purchase in the country of his habitual residence.

## General Terms and Conditions of Hailo Werk Rudolf Loh GmbH & Co. KG

### II. For Entrepreneurs

#### § 1 Scope, Data Protection

If the customer is an entrepreneur as defined by Section 14 BGB (German Civil Code), the following general terms and conditions in the version valid at the time the order is placed shall apply exclusively for the business relationship between us and the customer. We do not accept deviating terms and conditions of the customer, unless we have expressly agreed to them in text form.

An entrepreneur is defined as any natural or legal person or a partnership having legal capacity, which carries out commercial or independent professional activities upon entering into a legal transaction. A partnership having legal capacity is a partnership capable of acquiring rights and incurring obligations.

Insofar as required for business purposes, we are allowed to store and process the customer's data in our electronic data processing system within the scope of the applicable data protection laws (in particular section 28 BDSG (Federal Data Protection Act)).

#### § 2 Offers, Amendments, Commercial Terms

Our offers are subject to change and without any obligation; a contract shall be concluded only if we confirm the order in writing (Section 126b BGB) or if we have completed the order. A visibly automated order confirmation shall not be deemed as contractual acceptance.

Amendments and additions to and/or the cancellation of a contract or of these terms must be in writing.

Insofar as commercial terms pursuant to the International Commercial Terms (INCOTERMS) have been agreed, the INCOTERMS 2010 shall apply.

#### § 3 Passing of Risk, Mode of Shipment, Delivery Dates

Unless agreed otherwise, we deliver and perform EXW (ex works) our warehouse to the address indicated in the order confirmation and we determine shipping method, dispatch route and carrier.

Partial delivery or partial performance is admissible insofar as it is not unreasonable for the customer.

The prerequisite for the beginning of the delivery or performance period indicated by us shall be the clarification of all technical questions as well as the customer fulfilling all of his obligations in due time and in a proper manner.

If an agreed delivery or performance deadline is exceeded for reasons not imputable to us, the customer has to set a reasonable period of grace for the delivery or performance in text form. This period of grace shall be at least three weeks. Should delivery or performance not take place after the period of grace has expired and the customer therefore wishes to withdraw from the contract or to claim damages in lieu of the performance, he shall be obliged to expressly inform us in text form by setting another reasonable period of grace and by demanding the delivery or performance. Upon our request, the customer shall be obliged to declare within a reasonable period of time whether he withdraws from the contract due to the delay of the delivery or performance and/or whether he claims compensation for damages in lieu of the performance or whether he insists on the delivery respectively performance.

If a date of delivery or performance is delayed due to circumstances beyond our control, because of a failure to supply us with goods, or a failure to supply us in due time or in a proper manner despite proper congruent provision, our deadlines shall be extended in a reasonable manner. If we have informed the customer about the impediment to performance in due form and if it is not merely temporary in nature, we are allowed to withdraw from the contract completely or in part, because of the unfulfilled part of the contract.

#### **§ 4 Force Majeure Event**

In case of a Force Majeure event, our duties regarding delivery and performance shall be suspended; should any circumstances existing at the time of conclusion of the contract change in a material way, we shall be entitled to withdraw from the contract. The same applies in case of lack of raw materials or energy, labor disputes, official decrees or unpredictable traffic hold-ups or operational disruptions. If sub-suppliers or vicarious agents fail to supply us with goods or services, or if they do not supply us in due time or in a proper manner due to the aforementioned reasons, clause 3 para. 5 shall apply accordingly.

#### **§ 5 Prices, Payment, Set-Off, Retention**

Our prices are EXW (ex works) our warehouse. Our prices do not contain – unless agreed otherwise – the costs for packaging, insurance, freight and sales tax.

If the delivery or performance date is more than three months after conclusion of the contract, we are entitled, after notification of the customer in due time and prior to performing the service or delivery of the goods, to adjust the price of the goods or service in such a way as is necessary due to the general price development that is beyond our control (such as exchange rate fluctuations, currency regulations, changes of

the customs regulations, significant increase of material or production costs ) or as required due to changes of suppliers. In case of delivery or performance within three months, the price valid at the date the contract was concluded shall apply. In case of framework contracts with price agreements, the three-month period shall start with the conclusion of the framework contract.

Unless agreed otherwise, the customer has to pay the agreed compensation 10 days after delivery of the goods or performance of the service without any deductions. After expiry of this period, the customer is in default pursuant to Section 286 para. 2 no. 2 BGB.

We may demand down payments or payment in advance if the customer places an order for the first time, if the customer is based abroad or for deliveries abroad, or if there are reasons to have doubts regarding the timely or complete payment by the customer. If one of the aforementioned conditions occurs after conclusion of the contract, we are entitled to revoke agreed payment terms and payment shall become due immediately.

The customer may only offset with non-appealable or uncontested counterclaims. The customer shall only have retention rights insofar as they are based on the same legal transaction.

## § 6 Retention of Title

Goods sold remain our property until all claims arising from the business relationship have been settled ("Reserved Goods").

If the Reserved Goods are machined or processed by the customer, our retention of title shall extend to the complete new object. In case of processing, combining or mixing with third-party property by the customer, we acquire joint ownership of the new products to that part representing the invoiced value of our goods in relation to the total value of the other goods which have been processed, combined or mixed.

If the Reserved Goods are combined or mixed with a main object ("Hauptsache") of the customer or third parties, the customer shall in addition hereby transfer his rights to the new object. If the customer combines or mixes the Reserved Goods with a main object of a third party for a consideration, he shall hereby assign his claims for remuneration against the third party.

The customer shall be entitled to resell Reserved Goods within the scope of a regular business transaction. If the customer sells these goods without receiving the complete purchase price in advance or step by step against delivery of the purchased object, he shall agree on a retention of title with his customer according to these terms. The customer shall hereby assign his claims from this reselling as well as the rights to the retention of title agreed by him to us. Upon our request, the customer is obliged to inform the purchasers about the assignment and to provide us with the necessary

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information and any documents required for the enforcement of our rights against the purchasers. Despite the assignment, the customer shall only be authorized to collect the receivables from reselling the goods, as long as he properly fulfills his liabilities towards us.

If the value of the collateral provided exceeds our claims by more than 10 percent, we are obliged to release collateral, at our discretion, upon request by the customer.

### **§ 7 Rights of the Customer in Case of Defects**

We only warrant conformity of the products delivered and services provided by us with the applicable German regulations and standards.

We do not provide any warranty for the compliance with other national regulations. In case of use of the goods abroad, the customer undertakes to check conformity of the products with the relevant legal systems and standards by himself and to make modifications if necessary.

The customer cannot claim any rights based on defects of our delivery and performance if the value or the suitability of the delivery and performance is only insignificantly reduced.

Insofar as the delivery or performance is inadequate and the customer has fulfilled the requirement to check and to give notice of defects of section 377 HGB (German Commercial Code), we will deliver at a later stage or rectify the defect (supplementary performance). For this purpose, the customer shall grant us a reasonable period of time of at least 10 working days.

The customer may claim compensation for the expenses necessary for the purpose of supplementary performance if the expenses do not increase due to the delivered item having been transported to another place than the original place of delivery, unless the transport is in accordance with its intended use.

If the supplementary performance fails, the customer may reduce the remuneration or withdraw from the contract. However, withdrawal is only admissible if the customer expressly declares the withdrawal to us in advance in text form by extending another reasonable period of grace.

Any rights of recourse of the customer pursuant to section 478 BGB against us shall only exist insofar as the customer has not made any arrangement beyond the statutory claims for defects.

### **§ 8 Liability for Damages**

Unless otherwise provided below, claims of the customer beyond the provisions in clause 7 – irrelevant of the legal grounds – are excluded. Therefore, we are not liable for damages that did not occur on the goods themselves; in particular, we are not liable for lost profit or other financial losses of the customer. Insofar as our contractual liability is



excluded or limited, this also applies to the personal liability of employees, agents and vicarious agents.

The limitation of liability mentioned above does not apply if the cause of damage is based on intent or gross negligence, if persons have been injured, if there is a claim for damages pursuant to the Product Liability Act, or if we have assumed a guarantee.

Should we negligently breach a contractual obligation, the obligation to pay compensation for property damage is limited to the typically occurring damage. Contractual obligations are defined as material if they provide the customer with legal positions that must be granted to him by the contract according to its content and purpose and such obligations the fulfillment of which makes the proper execution of the contract possible in the first place and on the observance of which the customer regularly relies and may rely.

Apart from that, our liability for damages is excluded.

An assignment of the customer's claims regulated in clauses 7 and 8 is excluded. Section 354a HGB (German Commercial Code) remains unaffected.

## **§ 9 Limitation Period**

The limitation period for claims based on defects of our delivery and performance as well as for claims because of our liability for damages shall be one year. This shall not apply if, pursuant to sections 438 para. 1 no. 2 (buildings and objects for buildings), 479 para. 1 (right of recourse) and 634a para. 1 no. 2 BGB (defects or deficiencies in the construction), longer time limits are stipulated as well as in cases of injury to life, body or health, in case of a deliberate or grossly negligent breach of duty on our part and in case of claims for damages pursuant to the Product Liability Act.

## **§ 10 Miscellaneous**

If the customer is a merchant, legal person under public law or a special fund under public law, our place of business shall be the place of jurisdiction; if we take legal action, the general place of jurisdiction of the customer shall also apply.

The law of the Federal Republic of Germany shall apply for all legal relationships between the customer and us.

(Status: November 2016)