

销售条款

定义

“公司”是指海格曼商贸(上海)有限公司
“合同”是指公司和“客户”之间订立的任何有关销售和采购产品的合同
“客户”是指其所下产品订单被公司接受的个人或公司
“产品”是指由公司向客户提供或将供应给客户的货物或服务

订购

下单时, 请对所需采购产品的数量、公司产品号、相关描述予以明确说明。对于在本目录或报价中不能找到相应公司产品号的产品, 请提供该产品的描述, 如果可能的话, 也请提供制造商产品号。完整而正确的信息能够保证您的订单被及时而准确地执行。

交货

所有产品交货方式为“DDP客户方交货点”, 即交货后交货(客户指定目的地), 除非在合同中特别说明规定。
客户认可所有产品由公司从公司供应商处采购。
公司声明保证自装运产品之日(即公司自产品交付客户之日)起的一年内, 将产品所有权和出售权转交于客户。

分批交货

客户同意接受在公司无法一次完成整张订单的情况下, 允许分批或者以商业单位按比例交货。

发票

客户同意并接受公司于交货后即开票或公司最晚不超过交货日三十天内开票。客户同意并接受公司不对任何“未收到发票”负责除非公司在正常交货日的45天内收到客户未收到发票的正式书面通知。

检验, 瑕疵和交货不能

客户应在收货后立即检验产品, 除非自交货起的7天内收到书面通知, 否则公司不对任何产品的瑕疵负责。如果客户收到受损包裹, 则应当在打开前拍下该包裹的照片, 并通知公司以便确认。
公司在发货时对所有托运产品的数量予以确认并记录, 如果客户不能提供数量不符的证据, 则公司默认客户所收到的产品数量与该数量相等。除非在超过正常交货日的三天内公司和承运人收到正式书面通知, 否则公司不对任何“交货不能”产品负责。公司对于“交货不能”和瑕疵产品所承担的责任仅局限于在合理的时间内替换产品, 或者返还货款。

描述

本目录中的所有产品规格、图片、重量、尺寸、大小以及其他信息旨在提供产品的一般信息, 不构成合同的一部分。如有产品描述与制造商提供的描述不同, 则以后者为准。
公司本着负责的态度保证产品技术信息的准确性, 但是无论是否由于公司的疏忽造成的技术信息有误或者遗漏, 公司都不负有违约或者侵权责任。公司能够有权对产品信息进行更改调整, 作为一项长期改进项目或者使之更符合相关法规规定。

风险与所有权转移

产品损坏和遗失之风险于交货之时起转移至客户承担。只有当公司收到货款以及合同中所规定的其它款项的全部金额(现金或者可实时动用资金)后, 产品的所有权才转移至客户拥有。
在产品的所有权转移至客户拥有前, 客户必须作为公司的受托人以的信托方式持有产品。如果客户未能按时付款, 或客户决定停业, 或法院命令其破产, 或有一个被任命的破产管理人来处理客户的全部资产或承担责任的, 或者客户面临破产结业, 则公司有权取回产品并可为此目的进入客户的任何房产。无论何时, 本目录为公司独有财产。

价格

所有在报价单和/或相关材料上的报价均以刊印时为准, 且仅作为刊印时的参考价格。价格可能随时改变、更新, 恕不另行通知。如对报价有任何疑问, 请以电话或信函方式向最近的公司营业点咨询。

付款

所有款项都应以款到发货方式支付现金, 除非在此特别说明或者由公司和客户特别达成的“付款期”。在付款期限内没有付款的, 则公司将将对每30天内未付款的发票余额及过期帐款加收1.5%的滞纳金(如果1.5%高于法律许可的最大比率, 则以后者为准)。所有根据此条款规定, 从客户处收回款项所产生的费用(包括但不限于法律费用, 法定权益, 律师费和收款人花费)应由客户承担。公司保留其独有酌情决定权, 包括(a)暂停出货; 或者(b)当公司对于客户的按时支付能力产生怀疑时, 可修改该客户的信用额度。

信用申请

客户需填写本目录中所附的信用申请表, 或者向公司索取表格并填写。公司可酌情赋予客户不同的信用额度, 并且可随时减少, 暂停或者撤销此信用额度, 且勿需事先通知。

品质保证条款

任何由产品制造商颁发的保证书仅为制造商而非公司所有。自产品所有权转移至客户拥有之日起, 如果公司有制造商或者供应商对于产品品质的保证(无论明示或暗示, 并且可转移), 则公司会将其转移至客户所有, 公司授权客户依据该保证直接向制造商或者供应商提出并且解决索赔事宜。

公司不提供其它任何明示或暗示的保证条款(包括但不限于商业适用性, 特定目的之适用性), 及在此之下未作说明的产品及服务。如果品质受损, 客户方的唯一赔偿仅局限于维修或替换产品或服务, 或者退回货款, 具体采用何种方式由公司决定。无论何时公司都不对任何特殊的, 惩罚性的, 衍生的, 或间接之损害负责, 包括但不限于财产损失, 利润和收益损失, 利用率和时间的损失等, 无论这种损害是基于合同或侵权, 或者由于不履行或者滞后履行合约义务而引起, 无论公司是否曾告诉其损害发生之可能性。如果具备有效管辖权的法院认为保证条款, 责任, 以及补救方法的全部或部分限制由于某种原因不可执行, 则客户当同意无论何种情况下公司对于客户所负之责任不超过所指产品或服务价值。

责任

任何由于未能提供建议或信息或提供不正确的建议或信息所引起的损害、损失或者费用支出公司将不承担任何责任, 而不论该损害是否归因于公司、其雇员、代理人或合同分包者的过失或疏忽。
这些条款列明了公司关于产品的全部责任, 并且替代并排除有关质量或适用于产品任何特定目的的所有其它明示或暗示的法定的或非法定的品质保证、条款、条件和责任等, 除法律默示规定的且依法又不能被排除的所有。这些销售条款不排除或者限制公司由于疏忽或者欺骗歪曲事实引起的死亡或者个人伤害所应负的责任。
公司所有基于合同, 侵权(包括过失或者违反法定职责), 误传等引起的所有责任应当仅限于维修, 替换或者由公司决定退回客户所支付的货款。公司不对任何间接或者非直接的损失和损害(无论是利润损失, 经营业务损失, 商誉损失等), 费用支出或者其它对于无论何种因合同造成, 或与合同有关的索赔(无论是是否因公司, 公司雇员, 代理人或合同分包者之过失所造成)。

原产地

除非另外得到确认, 本目录中的任何内容不可被认为代表了产品或产品任何部分的来源地, 生产地或制造地。

不可抗力

如果公司因任何不可控制事件的发生而延误或者导致不能履行某些条款, 则公司有权在此期间暂停履行合约, 公司无需承担责任。
公司及其员工以及其转包商为独立的承包商, 任何个人或者转包商在任何时候或以任何目的, 不能被视为客户方的雇员或代理商。
客户不因产品或服务瑕疵向第三方或者任何与公司没有直接合同关系的个人负责。公司不对次要来源信息的错误或遗漏负责。

适用法律

所有有效性, 解释以及执行或者由此产生之争议应适用中华人民共和国法律并依之解释。任何因本合同而产生的争议应友好协商解决。协商不成的, 任何一方可向上海有管辖权的法院提起诉讼予以解决。本合同的中文文本具有相同的效力, 本合同的中文文本具有相同的表述, 如有矛盾, 则以中文表述为准。

退回产品

如果事先已征得公司同意, 且产品处于可转卖的状态或者仍使用制造商的最初包装, 则在支付期前退回的产品可以被接收。公司给予客户信用, 其金额基于采购该产品的价格减去任何再储存费用, 运费以及其它相关费用。如果该订单为工厂特别订制或按照客户的要求更改制作的产品则不可退回。

General Sales Terms & Conditions

Definitions

“Company” means Hagemeyer Commerce & Trade (Shanghai) Co., Ltd.
“Contract” means any contracts between the Company and the Customer for the sale and purchase of Goods.
“Customer” means the person(s) or company whose order for the Goods is accepted by the Company.
“Goods” means any goods or services that the Company is to supply to the Customer.

Ordering

When placing an order, please state the quantity, the Company part number, and the description of the item(s) to be purchased. If the catalogue and/or quotation do not show the Company part number, give a description of the item and include, if applicable, the manufacturer’s part number. Giving complete and correct information ensures that each order will be completed promptly and accurately.

Delivery

All goods shall be shipped under DDP terms, unless otherwise specified in the contract.
Customer acknowledges and agrees that products will be ordered by Company from vendors of Company.
The Company represents that from the date of goods transfer to the Customer, within one year, the Company has title thereto and the right to sell the product(s) delivered to Customer.

Partial Delivery

Customer agrees to accept partial or pro rata deliveries in commercial units as full performance under Customer’s purchase order in the event that Company is unable to fill Customer’s entire order.

Invoice

Customer agrees and accepts Company invoicing after the delivery, or Company invoicing no later than 30 days after the delivery. Customer agrees and accepts Company should not be liable for any non-receivable of invoice unless written notice of non-receivable of invoice by Customer is given to Company within 45 days after the delivery.

Inspection, defects and non-delivery

The Customer must inspect the Goods as soon as is reasonably practicable after delivery and the Company shall not be liable for any defect in the Goods unless written notice is given to the Company within 7 days of delivery. If the Customer receives a damaged parcel, the Customer should take photographs of the parcel to confirm the damage and notify the Company immediately prior to opening the parcel.
The quantity of any consignment of Goods as recorded by the Company upon dispatch from the Company’s place of business shall be conclusive evidence of the quantity received by the Customer on delivery, unless the Customer can provide conclusive evidence to the contrary. The Company will not be liable for any non-delivery of Goods unless written notice is given to the Company and the carriers within 3 days of the date when Goods should have been delivered in the ordinary course of events. Any liability of Company for non-delivery or defective Goods shall be limited to replacing the Goods within a reasonable time or to refund any monies already paid in respect of the Goods.

Description

All specification, drawings and particulars of weights, dimensions, capacity or other details printed in any publications are intended to give a general idea of the Goods, but will not form part of the Contract. If the description of any Goods differs from the manufacturer’s description, the latter shall be deemed to be correct.
The Company shall take all reasonable steps to ensure the accuracy of technical details relating to Goods, but accepts no liability in contract or tort or under statute or otherwise for any error or omission in such technical detail whether caused by the Company’s negligence or otherwise. The Company may make changes to the Goods as part of a continuous program of improvement or to comply with legislation.

Risk of Ownership

The risk of damage to or loss of Goods will pass to the Customer when the Goods are unloaded at the Customer’s premises. Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due in respect of the Goods or under any other Contract.
Until ownership passes to the Customer, the Customer must hold the Goods on a fiduciary basis as the Company’s bailee. If payment is not received in full by the due date, or the Customer passes a resolution for winding up or a court shall make an order to that effect, or a receiver is appointed over any assets or the undertaking of the Customer or an execution or distress is levied against the Customer, the Company shall be entitled, without previous notice, to retake possession of the Goods and for that purpose to enter upon any premises occupied or owned by the Customer.
This Catalogue remains the sole and exclusive property of the Company at all times.

Prices

All prices on printed publications and/or materials are based on date of printing and/or publishing, and for reference only. These prices are subject to change and can be updated at any point of time without notice. For questions regarding price quotation, contact the nearest Company Office.

Payment

Payment for all amounts due hereunder shall be paid by TT / Advance before delivery unless otherwise specified herein or unless otherwise expressly agreed to by Company and Customer (the “Payment Date”). Payments not received within the Payment Date will be subject to a late fee of 1.5%, or the maximum lawful rate, whichever is lower, of the outstanding invoice balance for each 30-day period or portion thereof past due. All costs of collecting any moneys due from Customer under the terms and provisions hereof, including but not limited to, legal expenses, legal interest, attorney’s fees and collector’s expenses, shall be paid by Customer to Company. Company reserves the right in its sole discretion, either (a) to withhold shipments or to impose of (b) to impose any credit limits on Customer’s purchases when Company deems itself insecure with respect to customer’s ability to pay for the purchase order from time to time.

Credit Application

The customer should complete the credit application form enclosed in the catalogue or available from any of the Company office. Any credit limit granted to the Customer shall at all times be discretionary and may be reduced, suspended or withdrawn at the discretion of the Company at any time without prior notice.

Warranty

Any warranty issued by the manufacturer of products shall be solely that of the manufacturer and not of the Company. Company hereby assigns to Customer, as of the date that title passes to Customer for such product, all of the manufacturer’s or vendor’s warranties, express or implied, if any and if assignable, with respect to the product, and Company hereby authorizes Customer to make or settle any claims under such warranties directly with any such manufacturer or vendor.
Company makes no other warranties, express or implied (including, without limitation, any warranty of merchantability or fitness for a particular purpose) not specified herein with respect to products furnished or services performed hereunder. Customer’s exclusive remedy for breach of any warranty hereunder shall be limited to repair or replacement of the product or re-performance of the service or return of the purchase price, at the option of Company. In no event shall Company be liable for any special, consequential, exemplary punitive, incidental or indirect damages, including without limitation damages to property, for loss of profits or income, loss of use or loss of time, whether in contract, tort, or otherwise resulting from ITS performance, non-performance or delay in performance of its obligations Hereunder whether or not Company had notice of the possibility of such damages occurring.

In the event that a court of competent jurisdiction should hold that the limitations of warranties, liabilities and remedies contained herein, or in any portions thereof, are unenforceable for any reason, Customer expressly agrees that under no circumstances shall the total liability of Company to Customer exceed the value of the specific product or service at issue.

Liability

The Company shall not be liable for any damage, loss or expense resulting from the failure to give advice or information or the giving of incorrect advice or information whether or not due to the negligence of the Company, its employee’s agents or subcontractors.
This General Sales Terms and Conditions set out the entire liability of Company to the Customer in respect of the Goods and shall be in lieu and to the exclusion of all other warranties, condition, and other terms implied by statute or common law save for any implied terms which by law cannot be excluded. Nothing in this General Sales Terms and Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company’s negligence or fraudulent misrepresentation.
The Company’s total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise shall be limited to repairing, replacing or at the Company’s option refunding monies already paid in respect of the Goods. The Company shall not liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise) cost, expenses or other claims for consequential compensation whatsoever (whether caused by the negligence of the Company, its employees, agents or subcontractors) which arise out of or in connection with any Contract.

Country of Origin

Unless otherwise confirmed, nothing in our publications (i.e. catalogue, brochure) on quote is to be taken as a representation of the source of origin, manufacture, or production of the Products or any part thereof.

Force Majeure

If Company’s performance of any terms or provisions hereof shall be delayed or prevented because of any event which is not within the reasonable control of Company, Company may, at its option, suspend performance during the period such cause continues, and no liability shall attach against Company on account thereof.
The status of Company and its personnel and any subcontractors is and will be that of independent contractors and no such personnel or subcontractors will, at any time or for any purpose, be deemed employees or agents of Customer.
Company is not liable, for alleged defects in products sold or services performed, to third parties or anyone with whom it does not have a direct contractual relationship. Company is not liable for defects in information provided by secondary sources.

Governing Law

The validity, interpretation, and performance hereof and any dispute connected herewith, shall be governed and construed in accordance with the laws of China.
Any dispute arising from or in connection with this Contract shall be resolved in friendly negotiations. If negotiations fail, either party can submit a claim to the People’s Court in Shanghai for final and binding settlement of the claim.
The English language text and the Chinese language text of this contract shall be equally authentic. The contract is presumed to have the same meaning in each authentic text. Where a comparison of the authentic texts of the contract discloses a difference of meaning which the rules of statutory interpretation ordinarily applicable do not resolve, the meaning of the Chinese text shall prevail.

Returned Goods

Returns will not be accepted unless authorized in writing by the Company. The products must be in the original manufacturer’s package and free of damage in new condition. Credit will be issued based on Customer’s purchase price for the returned product less any vendor restocking charges, freight, or other expenses of disposal. Orders that were factory special orders or otherwise fabricated and altered to accommodate Customer are not returnable.