

## **General Terms and Conditions of Sale and Delivery for Huss Park Attractions GmbH**

### **I. Sphere of validity**

The following terms and conditions shall apply at all times for all – including future – legal relationships between Huss Park Attractions GmbH (Hereinafter known as Supplier) and parties placing orders who are businessmen within the meaning of § 14 of the (German) Civil Code [BGB] (Hereinafter known as Buyers). These terms and conditions shall not apply to such transactions in which the Supplier acts as Buyer / placer of an order. Terms and conditions of the Buyer which are contrary to, or differ from, these terms and conditions shall only be recognised if their validity has expressly been agreed in writing.

### **II. Offer, Offer documents, Acceptance**

1. Offers shall be subject to change without notice at all times. Supply contracts shall only become valid in those cases in which applications or declarations of acceptance from the Buyer have been received by the Supplier and confirmed by him in writing. If the Supplier's order confirmation includes extensions, restrictions or other amendments normal in the industry, the Buyer's consent shall be regarded as having been given, if he does not object in writing within two weeks of receiving the order confirmation.

2. Supplements or amendments of contracts by the Buyer must be clearly marked as such and confirmed in writing by the Supplier to be valid. This shall also apply for the cancellation of the requirement for written form.

3. All the information – E.g. diagrams, drawings, colour samples, dimensions and weights, information on percentage content and performance data – made accessible to the Buyer in the course of setting up the contract and handling it only contain approximate or average values normal in the industry. The Supplier shall reserve the right to amend this information. Reference to documents shall only serve for purposes of illustration and shall not place the Supplier under an obligation to supply exactly the same equipment pictured or dimensions shown. During the delivery period the Supplier shall reserve the right to change structure or shape, use different designs as well as effect changes in the scope of delivery, provided that the modifications or differences are reasonable for the Buyer taking the interests of the Supplier into consideration. The characteristics stated in the documents shall only be binding in those cases in which this has been expressly agreed.

4. In so far as necessary characteristic features of the contractual products have not been expressly agreed between the parties to the contract, the Supplier shall be entitled to determine these characteristics by applying § 315 BGB as appropriate at his equitable discretion.

5. The Supplier shall reserve ownership rights and copyrights to all the documents named above. These documents are to be returned immediately upon request. They may not be used for other purposes without consent, in particular they may not be reproduced or made accessible to third parties in any media.

### **III. The Buyer's implementation regulations**

1. The Buyer shall have to ensure in good time and check at his own expense that third party rights shall not be breached as a result of using the goods, products, information etc. which are to be provided by him in the course of handling the contract. Sentence 1 shall apply for specifications, instructions as well as supplements by the Buyer within the meaning of Number II 2 for characteristic features of the subject-matter of the contract, unless they are the same as the Supplier's specification data sheets and production specifications. If the Buyer notes such infringement of rights, he shall have to notify the Supplier of this immediately in writing.

2. The customer is obliged to exempt the Supplier at first request from all claims asserted against the Supplier by third parties on account of legal breaches in accordance with the above number.

### **IV. Delivery period**

1. Deadlines and delivery periods are not binding if they have not been expressly confirmed as binding or as a fixed date by the Supplier. Delivery periods shall begin with the dispatch of the order confirmation, but not however, before the Buyer has furnished documents, licences, clearances that he is to provide or

before an agreed down-payment has been received. The delivery period will be observed if prior to its expiry, the agreed consignment has been dispatched, notification that the consignment is available has been made, or in the event that it has been agreed that consignments may be called off, the Buyer has been notified that a consignment is ready for call-off. In such cases it shall be the date on which the notification is dispatched which shall count.

2. If, at the Buyer's request, the subsequent changes are made to the original subject-matter of the contract, the delivery period shall be interrupted. A new and appropriate delivery period shall begin following the receipt of all the documents, licences and clearances relating to the modification.

3. Delay shall not occur, or will be interrupted, if the Supplier or his sub-suppliers are prevented from delivering in good time as a result of force majeure such as for example war, civil war, labour disputes, works stoppages or breakdowns, power cuts, delays in transportation, as well as other circumstances for which they are not to blame or are only to blame on account of ordinary negligence. Given this, the binding or non-binding delivery period shall be extended by an appropriate period of time, but by no less than 6 weeks however.

4. In the event of non-compliance with a non-binding or binding delivery period, default can only occur once a further period of 6 weeks has elapsed and after a single reminder has been sent out by the Buyer.

### **V. Making consignments available, Dispatch, Call-off**

1. Provided that nothing has been expressly agreed to the contrary, the Supplier shall not be obliged to carry out dispatch / transportation, assembly, installation / commissioning. Orders placed for spare parts too shall only be dispatched if this has been expressly agreed.

2. In the absence of an agreement to the contrary, the Buyer shall be obliged to collect the object to be delivered within 10 days from the dispatch of the notification that the object is ready for collection. The date of postmark / fax transmission report shall count as the date of notification. If the Buyer has not sent written notification within this period of time confirming the date on which he will collect the object to be delivered, the Supplier shall consequently be entitled to dispatch the object himself at the Buyer's cost and risk or commission a haulier to do it for him. In addition to this, once the 10-day period has expired, the Supplier shall be entitled to demand storage money amounting to 0.5% of the invoiced sum for each week commenced, up to no more than a maximum of 5% of the invoiced sum or to put the object to be delivered into storage with another company at the cost and risk of the Buyer.

3. If dispatch following call-off has been agreed, the call-off must be made within 10 days from the dispatch of notification that the goods are ready for call-off, Number V.2 Sentence 2 shall apply accordingly. Once this period has expired, the Supplier shall be entitled to take measures as stipulated in Number V.2. Sentence 3 as appropriate.

4. Upon request by means of written notification, the Supplier shall insure the object to be delivered at the Buyer's cost against transport and storage damage under his own transport insurance policy. This wish is to be notified prior to notification that the goods are ready for delivery or ready for call-off.

### **VI. Acceptance, Passing of risk**

1. Acceptance shall be regarded as having taken place if the Buyer has not lodged any complaints immediately upon taking receipt of the delivered goods, or within 10 days at the latest. If the Supplier has taken over assembly / installation / commissioning or if a trial period has been agreed, the above-named period shall consequently run from the end of the work carried out or from the end of the trial period.

2. If it has been agreed that acceptance of the object to be delivered is to take place in the Supplier's works, he shall notify the Buyer of the acceptance date, giving the Buyer one week's notice. If the trial run on the acceptance date is successful, the object to be delivered shall be regarded as having been accepted, even if the Buyer was not present at acceptance.

3. The risk of accidental loss or accidental deterioration shall pass over to the Buyer once 10 days have expired from the notification that the goods are ready for dispatch or call-off has been sent. Number V.2 Sentence 2 shall apply accordingly.

4. If the object to be delivered is sent to the Buyer at his request,

the risk of accidental loss or accidental deterioration shall consequently pass over to the Buyer when the object is handed over to a haulier, and no later than when the object leaves the works site / store. This shall apply regardless of whether the object is dispatched from the place of fulfilment or of whoever bears the cost of carriage.

#### **VII. Prices, Terms and Conditions of Payment and Default in payment**

1. All prices are in Euro ex Works Bremen excluding the costs of carriage, packing, insurance and value added tax. The value added tax at the statutory rate in force at that time as well as the costs of carriage, loading, packing, commissioning, and other costs shall be calculated and invoiced separately. The Supplier reserves the right to amend prices as appropriate as a result of changes in wages, materials and sales for consignments dispatched 3 months or later than the date on which the contract was signed.

2. All payments shall become payable upon acceptance of the objects to be delivered – or 10 days following the dispatch of notification that the object is ready for dispatch or ready for call-off – and receipt of invoice. They are to be paid in cash provided that nothing has been agreed to the contrary in writing. Number V.2 Sentence 2 shall apply accordingly.

3. Payment orders, cheques, and drafts will only be accepted for the purpose of fulfilment by separate agreement. All collection and discount fees shall have to be reimbursed by the customer.

4. Prior to dispatch the Supplier shall be entitled to demand the submission of confirmation from a bank or other financial institution showing that the Buyer has deposited an irrevocable payment order with said bank or financial institution with the Supplier entered as beneficiary and that the payment order will be carried out as soon as the Supplier has notified that the object to be delivered has been accepted or has left his works. If, after the contract has been signed, substantiated doubts arise with regard to the solvency or creditworthiness of the Buyer or if the Supplier only becomes aware of such circumstances at this point in time, he may consequently demand payment in cash or the furnishing of a security prior to delivery. If the Buyer fails to comply with this demand, the Supplier may withdraw from the contract and / or demand compensation for damages instead of performance.

5. In the event of a delay in payment, the Supplier shall be entitled to default interest amounting to 8 percentage points above base rate at that time without sending out a payment reminder beforehand. If payment in instalments has been agreed, and if the Buyer is 14 days in default with the payment of an instalment, the entire residual debt shall consequently become due for payment immediately. If the Buyer is entered in the commercial register as a businessman, this shall also apply for example, if he stops making payments altogether or if an application is made to instigate insolvency proceedings on his assets. The Supplier shall reserve the right to assert another claim against the Buyer.

6. The offsetting with counter-claims by the Buyer shall only be allowed if they are uncontested, or have been declared final and absolute in a court of law. The Buyer shall only be entitled to rights of retention, provided that they are based on the same contractual relationship. In the event that there are defects, the Buyer shall only be entitled to a right of retention if he is entitled to refuse acceptance or the object to be delivered is manifestly defective. In such a case the Buyer shall only be entitled to retention provided that the retained sum is in reasonable proportion to the defects and the probable costs of subsequent fulfilment (in particular rectifying the defects).

#### **VIII. Retention of title**

1. The Supplier shall retain the title to all delivered objects (hereinafter known as goods subject to the retention of title) until all his claims from, and in connection with, the contract and current business relationships have been settled in full. At the Buyer's request the Supplier shall be obliged to waive the retention of title, if the Buyer has fulfilled all the claims connected with the goods subject to retention of title and this is incontestable and appropriate securities have been furnished for the remaining claims under the current business relationships. If the value of the goods subject to retention of title exceeds the value of the claims to which the Supplier is entitled against the Buyer by more than 20%, title shall consequently be assigned by the

Supplier to the Buyer at the Supplier's choice.

2. The Buyer shall be obliged to store the goods subject to retention properly and at his cost and insure them against theft, breakage, fire damage and water damage and other damage in accordance with standards of normal within the industry. The claims to remuneration are hereby assigned to the Supplier for the amount of the value of the goods subject to retention of title. The Supplier hereby accepts this assignment.

3. The Buyer is entitled to resell, process, mix or combine goods purchased for resale as well as sell them subsequently, in so far as, and provided that, this takes place in the course of his normal business operations and that the claim produced has not already been assigned to third parties. The Buyer may only dispose of other goods subject to the retention of title, in particular transport transactions, which are supplied by the Buyer for operational purposes, with the prior written consent of the Supplier. The Buyer is not allowed to pledge or assign goods subject to the retention of title by bill of sale as a security. The Supplier shall reserve the right to revoke the above named authorisations in the event that the Buyer has not fulfilled his payment obligation or has not done so on time or if there is another important reason for doing so. The Buyer has to notify the Supplier immediately in writing of third party seizures, in particular of the levy of execution or the exercising of a manufacturer's lien, and forward the minutes of the levy of execution to the Supplier. The third party is to be notified of the retention of title immediately. The Buyer shall bear all the costs to be incurred with cancelling the seizure and replacement, in so far as these can not be collected from third parties.

4. The Buyer assigns here and now to the Supplier all claims to which he is entitled from the resale and from the business relationship with his buyers in connection with the sale together with ancillary rights, and to be more precise, regardless of whether the goods subject to the retention of title are sold to one or more buyers. The Supplier accepts the assignment. If the Supplier is only entitled to co-ownership to the goods subject to the retention of title, or if the goods subject to the retention of title are sold together with goods to which the Supplier does not hold title, the claims shall consequently be assigned in proportion to the ratio of the value of the Supplier's co-ownership to the other goods or other co-ownerships to the goods subject to the retention of title existing at the point in time of the sale.

5. The Buyer shall be entitled and obliged to collect the claims from reselling, for as long as this authorisation is not revoked. He shall have to pay over to the Supplier the collected amounts immediately to the value of the claims to which the Supplier is entitled. The collection authority of the Supplier shall not be affected by the Buyer's collection authority, however, it shall not be exercised for as long as the Buyer fulfils his payment obligations properly and there is no other important reason. The Buyer's collection authorization shall lapse as soon as he stops making payments. Upon request the Buyer shall have to notify the debtor that the claims have been assigned showing them the assignment and hand over all other information and documents to the Supplier as wished by the latter.

6. In the event of default in payment by, doubts in the solvency or creditworthiness of, the Buyer as well as in the event that an affirmation is submitted in lieu of an oath (§ 807 of the (German) Code of Civil Procedure [ZPO]) by the Buyer, the Supplier shall also be entitled without setting a time limit, to demand the surrender of the goods subject to the retention of title and to collect them. The Buyer shall not be entitled to an adverse right of possession. Demanding the surrender of the goods subject to the retention of title shall not constitute a declaration of withdrawal from the contract unless this is expressly stated.

7. In the event of default in payment the Supplier may withdraw from the contract. If he is also entitled to a claim to compensation for damages instead of performance, and he takes repossession of the goods subject to retention of title, the Buyer shall consequently be remunerated for the normal sales value of the goods subject to the right of retention at the point in time at which they are repossessed and this shall be offset together with instalments already paid against the claim to the payment of the purchase price still existing. Upon request by the Buyer immediately after the Supplier has taken repossession of the goods, this figure may be calculated by a publically appointed and sworn expert subject to the retention of title. The Buyer shall bear all the costs of the goods subject to the retention of title being taken back and sold. In the absence of proof, the costs of sale shall

equal 5% of the normal sale price, unless a figure to the contrary can be proven by either party to the contract.

**8.** While the goods are still subject to the retention of title it shall be forbidden for the Buyer to modify the delivered objects or to have them modified without the prior written consent of the Supplier. Minor cosmetic changes not affecting technical function or statics are excluded from this requirement for written consent. The Buyer shall be obliged to exempt the Seller from third party claims for compensation for damages for each modification, regardless of whichever legal reason on which such claims are based, unless the Buyer can prove that the damage would have occurred even without the modifications.

#### **IX. Liability for defects and compensation for damages**

**1.** The Buyer is obliged to report manifest defects in writing immediately, and no later than 10 days from receipt of the delivered object or performance, and concealed defects are to be notified immediately upon discovery. The proper fulfilment of this obligation is a precondition for warranty claims by the Buyer with the exception of the rights under § 634 No.4 BGB. Additional statutory duties of inspection and notification shall not be affected by this.

**2.** Should, in spite of all the care taken, the delivered goods have a defect which already existed at the point in time at which risk was passed over, the Supplier shall consequently repair the goods or replace them as he sees fit subject to defects being notified on time in accordance with the above Number IX.1. If the repair is unsuccessful, the Buyer may consequently withdraw from the contract or reduce the remuneration irrespective of any compensation claims for damages he may assert. However, a repair will only have been unsuccessful after the second attempt has been unsuccessful. In the event of malicious concealment of a defect or in the event of a quality guarantee being taken over at the point in time at which risk is passed over, the Buyer's rights shall be determined in accordance with the law of Germany.

**3.** Warranty claims will not exist for just minor differences in the agreed quality, or in cases in which the impairment of use is only minor, or for natural wear and tear as well as for damage occurring after the passing of risk as a result of incorrect or negligent handling, excessive loads, unsuitable machinery materials, defective construction work, unsuitable foundations, or as a result of specific external influences which were not expected in accordance with the contract. This also applies for the damage caused by chemical, electro-chemical or electrical influences for which the Supplier is not to blame, improper storage or transport, inadequate, incorrect or insufficient information about the intended operating conditions such as for example, medium, pollution of the medium, temperature, pressure etc. Liability under a warranty will also be excluded for damage resulting from the interaction with unsuitable products furnished by the Buyer or from design stipulated by the Buyer or from modifications to the delivered object carried out by the Buyer or third parties.

**4.** The Buyer is not entitled to assert claims and rights on account of defects if he has failed to pay due payments and the due amount is in a reasonable proportion to the value of the consignment suffering from with defects.

**5.** Replaced parts shall become the property of the Supplier and are to be handed over to him without him having to ask for them. Quality defects may be asserted for the replacement part and the repair up until the period of limitation for the delivered objects expires.

**6.** The costs of the subsequent fulfilment owed shall be borne by the Buyer to the extent that they have increased as a result of the delivered object having been relocated to a site other than the place of acceptance. First of all the Buyer shall have to forward parts about which he is making a complaint at his cost and risk. If he is entitled to a claim under warranty, the repair and /or replacement part will be provided free of charge and the costs of dispatching the parts he complained about shall be reimbursed. If the Buyer demands that the repair be carried out at the place of acceptance, he shall consequently have to pay an appropriate remuneration for the travel expenses and labour of the fitters plus out-of pocket expenses, provided that the Buyer is not entitled to a warranty claim or if it was not possible to send the defective part to the Supplier.

**7.** The Buyer shall only have a claim under the right of recourse against the Supplier in so far as the Buyer has not made any agreements in excess of the warranty claims compulsory under

the law of Germany with his buyer. Number IX.6 above shall apply for the scope of the Buyer's right of recourse.

**8.** Compensation claims for damages instead of performance shall be restricted to 20% of the agreed net price. Liability for default damages shall be limited to foreseeable damage typical for this type of contract, up to a maximum of 5% of the value of that part of the overall performance, which cannot be used on time or cannot be used for the purpose for which it was intended as a result of the delay. The Buyer's other compensation claims for damages against the Supplier, his legal representative or assistants shall be precluded - regardless of whatever legal reason on which they are based - in particular on account of the breach of a duty under the relationship created by the law of obligations and illegal act. The above limitations of liability shall not apply in cases of intent, breach of fundamental contractual obligations, or loss of life, physical injury or impairment to health, for liability under the (German) Product Liability Act, the warranties taken over, or in cases in which liability is compulsory under the law of Germany. In addition to this, Number IX.8 Sentence 3 shall not apply in cases of gross negligence. A change in the burden of proof is not associated with the arrangement under Number IX.8.

**9.** A period of limitation of one year shall apply for claims and rights asserted on account of defects in goods and services - regardless of whatever legal reason on which they are based - and the period of limitation for the supply of used things shall be 6 months. In the cases of Number IX.8 Sentence 4 and 5 and in § 438 Section 1 No. 1 and 2, § 479 Section 1 or § 634a Section 1 No. 2 BGB the statutory periods shall apply. In all cases of compensation claims for damages asserted by the Buyer which are not associated with a defect in the goods and services, the above sentences shall apply accordingly.

#### **X. Final Provisions**

**1.** Claims by the Buyer based on the contract can only be assigned to third parties with the prior written consent of the Supplier, unless they are claims based on a bilateral mercantile transaction within the meaning of § 354 a of the (German) Commercial Code [HGB].

**2.** The place of fulfilment and exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship including legal action based on documents, cheques and bills of exchange shall be Bremen, provided that the Buyer is a registered businessman. However, the Supplier is also entitled to take legal action against the Buyer at his general place of jurisdiction.

**3.** All legal relationships between the Buyer and Supplier shall be governed exclusively by the Law of the Federal Republic of Germany. The application of the standard UN law on sales (CISG) is ruled out.

**4.** The Buyer's personal data shall be saved with the assistance of electronic data processing for the purposes of handling the contract and providing customer support. The above is to be regarded as notification in accordance with § 33 I of the (German) Federal Data Protection Act.

**5.** Should individual provisions of these terms and conditions of sale and delivery or the contracts based on them be or become completely or partially invalid, the parties to the contract shall consequently undertake to agree an arrangement with which the aim and objective of the invalid provision is largely achieved.

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