

**GENERAL TERMS OF SALE AND DELIVERY OF HERO GEARS A/S**  
**HERO GTSD2016 (General Terms of Sale and Delivery ver. 2016)**

**1 – Basis of agreement**

- The present terms of sale and delivery shall apply to any agreement in which HERO GEARS A/S is the seller/supplier. This shall also apply to the extent that Buyer during purchase negotiations or in Buyer's tender material or in Buyer's confirmation of the purchase has informed HERO GEARS A/S of other terms for the purchase, as all such terms shall be considered lapsed upon HERO GEARS A/S' final accession to the purchase.
- Amendments to or modifications of these terms shall be valid only if they have been agreed in writing in a separate document, approved and signed by both HERO GEARS A/S and the buyer. The document shall be appended to these terms.
- Offers given by HERO GEARS A/S shall be valid until the expiry of the time limit laid down by the specific offer. In the event that no time limit is provided, the offer shall be valid for 30 days from the date of the offer. The offer is made subject to the raw materials intended for the offer being unsold.

**2 – Price and terms of payment**

- All sales shall be made at the price on the date of the offer made by HERO GEARS A/S subject to increases in exchange rates as stated below.
- In the event of increases in exchange rates between the time of the making of the offer and delivery entailing additional costs for HERO GEARS A/S in connection with the delivery, HERO GEARS A/S shall be entitled to increase the purchase price accordingly. In this respect, the official exchange rate of Danmarks Nationalbank shall be applied.
- Packaging for packing the various products shall be included in the purchase price agreed. However, the cost of pallets and frames shall be invoiced separately.
- The purchase price shall be fixed exclusive of VAT, customs duties and any other tax or duty payable for the goods in Denmark or abroad. Such taxes and duties shall appear as separate items on the invoice.
- Payment shall be made at no later than 30 days from the invoice date.
- In the event of late payment, HERO GEARS A/S shall be entitled to charge default interest at the interest rate set out in the purchase agreement. Unless otherwise stipulated by the purchase agreement, default interest shall amount to 1.2% per commenced month.
- If the buyer fails to make payment punctually, HERO GEARS A/S may withhold any subsequent delivery to the buyer until all outstanding amounts have been paid. Costs con-

nected with the withholding and storing of goods, etc. shall be added to the outstanding amounts.

- The Buyer is not entitled to retain any part of the invoiced amount or to deduct any part of the invoiced amount as set-off for any counterclaims against HERO GEARS A/S, which have not in writing been approved and accepted by HERO GEARS A/S.

### **3 – Delivery and transport**

- Delivery shall be ex works so that the risk for the goods passes to the buyer when the goods are dispatched from HERO GEARS A/S.
- The method of dispatch shall be determined by the buyer, and the dispatch shall be made at the buyer's expense.

#### **Alternative**

- In the event that the buyer fails to determine a method of dispatch at the time of transport, or If Buyer at the time of transportation has not determined the means of shipment, HERO GEARS A/S can arrange usual safe transportation at the account of the Buyer. Shipment does, however, always take place at Buyer's risk and account.
- When a decision has been made about delivery to Buyer's location or any other location as advised by the Buyer, the goods must be delivered as close to the place of use as the lorry can possible come without danger of getting stuck or damaging other vehicles or surroundings or as close as the driver sees fit.
- If Buyer wishes to have the goods delivered at different location than Buyer's address, Buyer bears the responsibility for vandalism, theft or damage after such time, when the carrier has delivered the goods at the assigned location. In the relationship between Buyer and HERO GEARS A/S, delivery shall take place and risk of transfer shall pass when HERO GEARS A/S delivers the goods to the carrier.
- The carrier, who transports the goods, shall be informed immediately in case of visible damage and missing parcels and a note shall be entered on the consignment note. Otherwise, Buyer's right to complain to the carrier shall lapse.
- Expenses for waiting time, if any, in regard with unloading at Buyer's location or any other location as advised by the Buyer shall be paid for by the Buyer and Buyer must cover any expenses that follow as a consequence of not being able to receive the goods at the agreed time of delivery.
- Buyer must pay any additional expenses in connection with non-agreed part delivery.

### **4 – Delay**

- HERO GEARS A/S shall not be liable for delays as a consequence of force majeure, including but not limited to strikes, lock-outs, war, mobilisation, seizure, currency re-

strictions, transport obstacles, including obstacles caused by ice, restrictions on motive power, fire, export or import restrictions, short or late delivery from suppliers or other causes outside HERO GEARS A/S' control. In these events, punctual delivery shall be postponed until the expiry of the event but not more than three months, after which both parties shall be entitled to cancel the agreement without this being considered as breach.

- In the event of delay, the buyer shall make a complaint without undue delay. The buyer may only subsequently cancel the purchase if HERO GEARS A/S fails to deliver at least 30 days from a written demand to this effect from the buyer.
- The buyer is under no circumstances entitled to compensation for delays.

## **5 – Defects**

- Defects that have been or should have been discovered as part of the buyer's duty to inspect shall be covered by the provisions of clause 6.
- In respect of other defects in the goods delivered discovered within 12 months of delivery, the buyer shall make a complaint without undue delay, as the right to rely on remedies of breach will otherwise lapse. HERO GEARS A/S shall not be liable for defects discovered after 12 months.
- Where a complaint is made of such defects, HERO GEARS A/S shall at its own discretion either deliver goods in replacement or remedy the defect so as to bring the product into a condition required by the agreement.
- In the event that delivery of goods in replacement or remedy fails to make good the defect, the buyer shall be entitled to demand a proportionate reduction in the total purchase price based on the value of the defective item(s) of the delivery.
- The buyer shall only be entitled to cancel the agreement and/or claim compensation if the defect has occurred as a consequence of fraud or gross negligence on the part of HERO GEARS A/S, and any compensation shall not exceed the amount paid for the delivery.
- Where HERO GEARS A/S processes a product supplied by the buyer, HERO GEARS A/S shall only be liable to pay compensation corresponding to the amount the buyer has to pay for the processing.
- HERO GEARS A/S shall not be liable for defects occurred as a consequence of general wear and tear, wrong or unusual use, excess strain, lack of maintenance and attempts to make repairs, adjustments and changes not performed by HERO GEARS A/S or without the written consent of HERO GEARS A/S.
- Similarly, HERO GEARS A/S shall not be liable for defects if their cause can be traced to the technical drawings, instructions, appendixes and other material produced by the

buyer in connection with or as a consequence of the buyers placing of orders. If HERO GEARS A/S has assisted the buyer in preparing calculations for the construction of the products delivered, HERO GEARS A/S shall not be liable for the correctness of the calculations, as the buyer is responsible for producing precise work descriptions and drawings. HERO GEARS A/S shall under no circumstances be liable for ensuring that the operational capabilities of the product delivered suit the buyer's purpose.

## **6 – Duty of inspection**

- Upon delivery, the buyer shall without undue delay make ordinary inspections of the products delivered and check whether the quantities are correct and check for defects.
- In the event that this inspection uncovers defects in the products delivered, the buyer shall make a complaint to HERO GEARS A/S without undue delay. The complaint shall be written on the consignment note or another transport document and shall be confirmed in writing to HERO GEARS A/S.
- In the event that the buyer fails to make a complaint without undue delay, the right to make a claim as a consequence of the defect shall be lost.
- Subsequently, the buyer shall launch investigations to check the products delivered so that any other defects are reported not later than 30 days after delivery.
- In the event that such defects are proven, the buyer shall make a complaint without undue delay as the buyer will otherwise lose the right to make claims in relation to these defects.
- Defects that should have been discovered in connection with the buyer's duty to inspect may not be notified after the expiry of the above deadlines.

## **7 – Return**

- Manufactured goods are not accepted for return. Buyer is furthermore not entitled to return goods and deliveries from HERO GEARS A/S without previous written agreement.

## **8 – Liability**

- HERO GEARS A/S' liability in respect of defects, delay or any other basis shall be limited to compensation for the items which HERO GEARS A/S has or should have delivered, cf. clauses 4-5 above. Consequently, HERO GEARS A/S shall not incur any liability for any kind of consequential damage, including but not limited to liability for costs of reinstallation or reassembly and liability for indirect losses such as operating losses, lost earnings, etc.
- However, HERO GEARS A/S shall incur product liability for products delivered to the extent that it is prescribed by mandatory statutory provisions in the Danish act on product liability.

- In no case there can be made claims which exceed the limits of HERO GEARS A/S's Insurance Policy no. E7349930247, Topdanmark Forsikring A/S, Borupvang 4, 2750 Ballerup. A Copy of this will be sent upon request.
- Both parties shall without undue delay inform the other party if any third party makes a claim under the Danish act on product liability.
- If HERO GEARS A/S is sued by a third party, Buyer shall accept that HERO GEARS A/S can summon the Buyer.

## **9 – Anticipated breach**

- Bankruptcy proceedings, suspension of payments, moratorium, voluntary composition or compulsory composition scheme in relation to the buyer shall be considered as material breach, and HERO GEARS A/S shall in such cases be entitled to cancel the agreement and claim compensation.

## **10 – Intellectual property rights**

- All forwarded drawings and descriptions shall remain the property of HERO GEARS A/S and cannot without authorization be copied, reproduced, surrendered or in any other way be brought to the attention of third parties.
- HERO GEARS A/S reserves the right to pass on any drawings and technical specifications from the buyer to sub-contractors to the extent that this is necessary to make delivery.
- In general, all technical material will be treated confidentially and in accordance with the legislation on intellectual property rights.

## **11 – Governing law**

- All issues and disputes arising in connection with the purchase agreement shall be resolved according to Danish rules of law.

## **12 – Legal venue**

- Any disagreement between the Parties regarding the interpretation of the general terms of sale and delivery, which cannot be settled amicably, shall be settled at Danish venue under Danish law at The Maritime and Commercial Court (In Copenhagen).
- Should one or more of the stipulations of these terms of sale and delivery be deemed invalid, this shall not affect the validity of the agreement and the remaining stipulations, which shall remain in force. Any invalid stipulations shall be interpreted in detail based on the purpose of the agreement and the stipulation which shall remain in force and any invalid stipulations shall be interpreted in detail based on the purpose of the agreement and the invalid stipulation.