

General Terms and Conditions of Sale and Delivery
Hohner Maschinenbau GmbH
- Stand: 09/2023 -

1. Exclusivity

Our deliveries, performances, offers, commercial letters of confirmation, and order confirmations are exclusively subject to these General Terms and Conditions of Sale and Delivery (hereinafter referred to as "General Terms and Conditions"). Any terms and conditions of the customer, which are contrary to or deviate from our General Terms and Conditions shall not apply.

2. Conclusion of contract, product modifications

- 2.1 We are entitled to revoke our offers without providing any reason until we receive the declaration of acceptance (offers without engagement).
- 2.2 Orders shall be deemed accepted by us if we issue a written order confirmation or deliver the ordered products within a reasonable period of time.
- 2.3 Changes in construction and shape of our products by us are permissible as long as they do not result in a price increase and do not lead to a deterioration in quality.

3. Prices, price adjustments

- 3.1 Unless otherwise stated by us, all prices are pure selling prices plus shipping, assembly and packaging costs as well as value VAT at the statutory rate. The prices stated in our catalogues and brochures are non-binding prices excluding VAT. Any withholding tax shall be borne by the customer.
- 3.2 Our prices are subject to change. They are based on the wage, material, energy, and overhead costs at the time of the order confirmation/the confirmation letter. If these costs increase within four months between conclusion of the contract and delivery, for which we are obliged to provide evidence, we shall be entitled to increase the price correspondingly, unless we are in arrears with delivery, the increase in costs was foreseeable at the time the contract was concluded or we are responsible for the increase in costs for other reasons.
- 3.3 If we are contractually obligated to install, assemble and commission the products, the customer shall owe the reasonable costs associated therewith, including travel expenses and costs of accommodation.

4. Time of delivery, late delivery

- 4.1 Delivery times stated by us are minimum delivery times and therefore non-binding unless expressly agreed or expressly stated otherwise by us. Only agreed delivery times are binding.
- 4.2 Unless otherwise agreed, an agreed delivery period shall commence upon conclusion of the delivery contract, but not before clarification of all technical questions and provision of all documents, drawings, plans, necessary approvals, releases, specifications to be procured by the customer, and not before receipt of an agreed down payment. The delivery period shall be deemed to have been complied with if the goods have arrived undischarged at the named place of destination by the time of its expiry.
- 4.3 Agreed delivery times shall be extended appropriately in cases of force majeure or in the event of other obstacles to performance for which we are not responsible, such as delays in supplier delivery for which we are not responsible, serious health risks such as epidemics, war, terror, sovereign measures such as import or export restrictions. Force majeure is an external event caused by elementary forces of nature or by the actions of third parties, which is unforeseeable according to human insight and experience, cannot be prevented or rendered harmless by economically acceptable means, even by the utmost care reasonably to be expected in the circumstances, and cannot be accepted because of its frequency. In such cases, the customer shall be entitled to rescind the contract in whole or in part after having set a reasonable deadline of at least three months to no avail. Claims for damages are excluded in these cases. If the impediment to performance lasts longer than six weeks, we shall be entitled to rescind the contract without being liable for damages. In the cases referred to in Clause 4.3, the customer shall be obliged to declare, at our request and within a reasonable period of time, whether he will withdraw from the contract due to the delay in delivery after the expiry of the period of at least three months or whether he will insist on delivery.

- 4.4 If we are in default of delivery or performance (*Verzug*), we shall be liable, insofar as the customer proves damage, limited to the typically occurring, foreseeable damage. The limitation of liability shall not apply in cases of intent or gross negligence.

5. Delivery, packaging, return of goods and packaging

- 5.1 Partial deliveries are permissible insofar as they are reasonable for the customer.
- 5.2 Deliveries shall be made "Delivered Appointed Place" (DAP) (Incoterms (R) 2020).

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5.3 If the dispatch of the goods is delayed at the request of the customer, we shall be entitled to charge the customer storage fees for the duration of the delay in the amount customarily charged by a freight forwarder in the Tuttlingen area.

5.4 Insofar as we are obliged to take back packaging material, in particular transport packaging, on the basis of the German Packaging Act (*Verpackungsgesetz*), the customer shall return the corresponding material to our factory in D - Tuttlingen at its own expense and risk and shall bear the costs of any necessary disposal to a reasonable amount.

5.5 Any return of goods shall be made as a debt to be discharged by the customer, unless there is a warranty case. A copy of the delivery note must be enclosed. In the event that goods are taken back without being legally obligated to do so, we shall charge reimbursement of expenses in the form of a handling fee in the amount of 20% of the purchase price. If only a part of the contractual object of performance is affected, the lump-sum compensation shall relate to that corresponding share of the purchase price. The right to claim higher expenses actually incurred shall remain unaffected. The customer reserves the right to prove that no or only minor damage has been incurred.

6. Terms of payment

6.1 Our deliveries are to be paid within 30 days, calculated from receipt of the invoice without deduction for us free of charge. We grant the customer a 2% discount for payment within eight days.

6.2 In cases of the defence of uncertainty (section 321 of the German Civil Code) or in the event of delayed payment by the customer in the total amount of more than EUR 1,000.00 we shall be entitled to revoke all payment terms granted and to render all claims immediately due and payable.

6.3 The customer shall not be entitled to withhold payment or to set off counterclaims unless such counterclaims have been legally established, acknowledged or are undisputed or unless there is notification of non-conformity the justification of which is obvious and unless the counterclaims stem from the same contractual relationship.

6.4 Payment discounts are subject to compliance with our terms of payment in accordance with this Clause 6. If these are not complied with, we are entitled to revoke payment discounts for the future at any time.

7. Retention of title

7.1 Title to the goods shall remain vested in us and shall not pass to the customer until all due claims stemming from the contract with the customer, or other deliveries or services to the customer, have been paid in full and received by us. Insofar as registration of the retention of title is required under foreign law, the customer shall take all measures to this end. If the value of the goods subject to retention of title and thus of the securities exceeds the value of the total claims by more than 10%, we shall release securities exceeding this amount at the request of the customer. The customer shall be authorized to sell or process, combine, or install the products in the ordinary course of business, but not to pledge or assign them by way of security. In the event of a deterioration of the customer's financial circumstances, we shall be entitled to prohibit the sale, processing and installation as well as the combining.

7.2 Resale shall only be permitted on condition that the customer (reseller) makes the reservation that title shall not pass to its customer until the latter has fully met its payment obligations in respect of the reserved goods (simple reservation of title). The customer hereby already assigns to us all claims arising from the resale up to the amount of our claim.

7.3 Processing, combination and installation of the reserved goods shall be carried out for us as manufacturer pursuant to §§ 946 ff. BGB, without obligating us. If the reserved goods are combined, mixed or processed with other items, we shall acquire co-ownership of the new item in the ratio of the invoice value of the reserved goods to the total value of the new item.

7.4 The customer undertakes to notify us immediately in the event of a suspension of payments, a significant deterioration of its financial circumstances and of seizures. The customer shall give the name of any creditor who has initiated seizures of the customer's assets and the address of such creditor. The customer shall bear all costs which have to be incurred in order to revoke the seizure of the goods by enforcement creditors and to recover the goods.

7.5 The customer shall hold the goods subject to retention of title in safe custody for us without remuneration; it shall not be entitled to establish a storage lien. It undertakes to insure the goods against usual risks such as fire, theft, water and transport damage to an appropriate extent. It hereby assigns to us its claims for compensation to which it is entitled against third parties from damage of the aforementioned kind to the amount of the invoice value of the goods.

8. Operating resources, custom-made products

8.1 Equipment manufactured/procured for the performance of the contract, e.g. tools with which parts are produced for the customer, shall remain/become our property, even if the customer bears costs for this, if industrial property rights arise in them or if they or their development/manufacturing method constitutes a trade secret, unless the transfer of ownership of the tools has been agreed. We are free to use these operating resources as we see fit.

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8.2 When commissioning custom-made products, the customer shall check that the custom-made products do not infringe any industrial property rights or copyrights of third parties due to its requirements and specifications (infringement of property rights). Insofar as such infringements of property rights are caused by the customer's requirements or specifications, the customer shall indemnify us in full against claims of third parties resulting from such infringements, also insofar as we have used vicarious agents.

9. Remedies, unjustified notification of non-conformity

9.1 In the event of only insignificant non-conformities, the customer shall only be entitled to reduce the purchase price. In such cases, there shall be no further legal remedies. The customer shall not be entitled to refuse acceptance of goods due to insignificant non-conformities.

9.2 The customer shall examine deliveries for shortages and recognizable non-conformities without undue delay and notify us thereof in writing (*Textform*) in the sense of section 126b of the German Civil Code without undue delay, at the latest, however, within seven days after the passing of risk. Non-conformities that cannot be detected shall also be reported without undue delay after discovery in writing (*Textform*) in the sense of section 126b of the German Civil Code, at the latest no later than seven days after discovery. The notification periods shall apply in the same manner to direct deliveries to third parties named by the customer; in such cases, the customer shall also ensure that a notification of non-conformities is made in due time.

9.3 To the extent that we are liable for non-conformities, we shall be entitled and obliged, at our discretion, to repair or replace the goods free of charge up to three times within a reasonable period of time, provided that the customer notifies us thereof in due time, provided that the cause of the non-conformity already existed at the time of the passing of risk. The customer shall be obliged to prove this. We reserve the right to raise a statute of limitations objection. If the supplementary performance fails, the customer may rescind the contract or reduce the remuneration without prejudice to any claims for damages pursuant to Clause 10.

9.4 Claims for non-conformity shall become barred by the statute of limitations after one year. This shall not apply in cases of injury to life, body, or health, intentional or grossly negligent breach of obligation by us or our vicarious agents, in case of fraudulent concealment of a defect, or the assumption of a guarantee. The statutory provisions on suspension of expiry, suspension, and recommencement of the periods under the German statute of limitations (sections 203 et seq. of the German Civil Code) shall remain unaffected.

9.5 Claims by the customer for expenses incurred for the purpose of cure, in particular transport, travel, labor, and material costs, shall be excluded to the extent that expenses are increased because the goods have been taken to a place other than the customer's place of business.

9.6 The customer shall only have a right of recourse against us pursuant to Section 478 of the German Civil Code (BGB) to the extent that the customer has not entered into any agreements with its customer exceeding the statutory claims for defects. For the scope of the customer's right of recourse, Clause 9.5 shall apply *mutatis mutandis*.

9.7 Claims for damages due to non-conformities shall be governed by Clause 10. The customer shall not be entitled to any legal remedies beyond the claims set forth in Clause 9 in connection with Clause 10.

9.8 If the customer's notification of non-conformity is unjustified, we shall be entitled, in cases of intent or gross negligence, to demand reimbursement from the customer for our expenses and other damages incurred.

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10. Damages

- 10.1** Claims for damages and reimbursement of expenses by the customer (claims for damages) shall be excluded, irrespective of the legal grounds, in particular due to the breach of obligations arising from the contractual obligation and from tort.
- 10.2** The limitation of liability pursuant to Clause 10.1 shall not apply in cases of liability under the German Product Liability Act (*Produkthaftungsgesetz*), intent, fraudulent intent, gross negligence, injury to life, body or health, insofar as we have assumed a guarantee, or due to the breach of fundamental contractual obligations. Contractual obligations are fundamental insofar as their fulfilment makes the proper execution of the contract possible in the first place and when the customer may regularly rely on compliance with such obligations. In the event of a breach of fundamental contractual obligations, however, our liability shall be limited to the foreseeable damage typical for the contract, unless there is intent, fraudulent intent, or gross negligence, or injury to life, body, or health. The limitation of liability to the foreseeable damage typical for the contract shall also apply to cases of wasted expenses, loss of profit, and other financial losses. A change in the burden of proof to the disadvantage of the customer is not effected by these rules.
- 10.3** Claims for damages due to non-conformities (Clause 9) shall become barred by the statute of limitations according to Clause 9.4.
- 10.4** The provisions of this Clause 10 shall also apply to any personal liability of our legal representatives, employees or vicarious agents.

11. Assignment, applicable law, jurisdiction

- 11.1** The customer may only transfer his rights from contracts concluded with us to third parties with our consent.
- 11.2** The contractual relationship shall be governed by German law other than rules of private international law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.