

General business terms

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1 Scope

- 1.1. The following General Terms and Conditions of Sales, Delivery and Payment ("GBT") shall apply exclusively to all of our offers, deliveries and services.
- 1.2. Our terms of sale shall apply exclusively; we shall not acknowledge any opposing terms and conditions of the buyer or terms and conditions which deviate from our terms of sale unless we had expressly approved their validity in writing. Our terms of sale shall also apply if with the knowledge of opposing terms and conditions of the buyer we carry out the delivery to the buyer without reservations.
- 1.3. The following GBT shall only apply towards persons, who upon conclusion of the contract act while performing their commercial or independent professional activity (companies within the meaning of § 14 BGB [Civil Code]).
- 1.4. If our GBT have been introduced into the business with the buyer they shall also apply without renewed express indication to all other business relations between the buyer and us insofar as not otherwise agreed in writing.

2 Offer – offer documents

- 2.1. Our offers are freely revocable and merely to be understood as a request to submit offers by the buyer within the meaning of § 145 BGB insofar as they are not described as fixed offers. A contract shall only be concluded through our written order confirmation or through delivery of the ordered goods.
- 2.2. Oral information and warranties, brochures and advertising statements no matter of what kind, in particular descriptions, diagrams, drawings, samples, details of quality, condition, composition, performance, consumption and usability as well as dimensions of the contractual goods, are without obligation, insofar as they have not expressly been described as binding. They do not represent a warranty or guarantee promise, no matter of what kind unless they are confirmed in writing by us. The right is expressly reserved to tolerances in quantities, weights, numbers of units and dimensions which are customary for the industry.
- 2.3. We reserve the ownership rights and copyrights to drawings and other documents (also data carriers); they may not be made accessible to third parties without express written consent and are to be returned immediately upon request or if the order is not placed.
- 2.4. All agreements, collateral agreements, warranties and amendments to the contract must be made in writing. This shall also apply to the exclusion of the written form agreement itself.

3 Prices – terms of payment

- 3.1. All payments are to be made exclusively to us in EURO. Possible risks with exchange rates shall be for the account of the buyer.
- 3.2. Insofar as not otherwise agreed our list prices and cargo tariffs which are applicable on the day of the delivery shall apply.
- 3.3. The applicable rate of value added tax is not included in our prices. It is invoiced additionally in the applicable rate on the day of the invoicing.
- 3.4. Insofar as not otherwise derived from the order confirmation our prices shall apply “ex works“ (EXW, Incoterms 2000). Freight, customs, secondary import duties and packaging costs must be paid additionally by the buyer. The packaging shall be invoiced separately at the cost price.
- 3.5. More reasonable prices can be achieved through the acceptance of packaging units (VPE).
- 3.6. We are entitled to increase the remuneration unilaterally by a reasonable amount (§ 315 BGB) in the event of the increase in material procurement costs, wage and secondary wage costs as well as energy costs and costs through environmental stipulations, if there are more than four months between conclusion of the contract and delivery.
- 3.7. Insofar as we enter into framework orders and release orders we reserve the right to adjust the prices in case of substantial fluctuations in material prices within the term of confirmed framework orders and release orders for orders which have not yet been executed with a period of notice of four weeks if our costs increase in particular through increases in material prices, wage increases or increase in the energy costs in total by more than 5 percentage points. If the price increase is more than 10 percentage points the buyer is entitled to cancel the contract.
- 3.8. The minimum order value per invoice is Euro 50.-- net.
- 3.9. Insofar as not otherwise derived from the order confirmation the purchase price is due and payable without any deduction within 30 days after receipt of the invoice unless deviating payment agreements were agreed with the buyer.
- 3.10. The buyer can only offset or assert a right of retention if its claims are undisputed or have been determined final and absolute.
- 3.11. Down payments which are made shall not be deemed as partial satisfaction. We only accept cheques after prior agreement and as conditional payment. Interest and costs shall be for the account of the buyer. Payment through bill of exchange is not permitted.

4 Delivery time

- 4.1. Periods of delivery and dates shall only apply as approximate if they have not been expressly marked as binding in our letter of confirmation.
- 4.2. Periods of delivery shall begin to apply with the receipt of our order confirmation by the buyer, however not before all details for the execution of the order have been clarified and all other pre-requisites which are to be satisfied by the buyer (e.g. provided goods, releases, documents, down payments) exist; the same shall apply to delivery dates. If the buyer has requested any changes after the order has been placed then a new period of delivery shall begin with the confirmation of the change by us.
- 4.3. Agreed delivery dates shall not be deemed as fixed deadlines. The period of delivery shall be deemed as observed if the object of delivery has left our plant or the buyer is informed that the goods are ready for shipment by the time that it expires insofar as the shipment is delayed or impossible without this being our fault.
- 4.4. If the acceptance of the goods or the shipment is delayed for a reason for which the buyer is responsible we are entitled at our choice to request immediate payment of the purchase price or cancel the contract or reject the satisfaction after setting and expiry of a 14-day final deadline and demand damages instead of the whole service. The deadline must be set in writing. We do not have to refer to the rights from this clause again herein. In the event of the request for damages the damages which are to be paid amount to at least 15 % of the net delivery price. Both parties reserve the right to prove a different amount of damages or the non-occurrence of damages.
- 4.5. If an agreed period of delivery is not observed due to our fault then the buyer is entitled after expiry of a reasonable final deadline and under the respective pre-requisites of §§ 280, 281, 284, 286, 323 BGB to assert the rights regulated therein. The damages due to default is limited to a maximum of 5% of that part of the delivery which was not carried out as per contract. A cancellation is excluded if the buyer itself is in default of acceptance. The buyer reserves the right to prove higher damages. Further claims of the buyer shall only exist according to § 8 below. If we have not provided the service on a date as determined in the contract or within a deadline as determined per contract then the buyer can only cancel the contract if it bound its interest in the service to the punctual service in the contract.
- 4.6. Deliveries before expiry of the delivery time and reasonable partial deliveries as well as reasonable deviations from the ordered quantities up to plus/minus 10% are permitted.
- 4.7. Deemed as day of delivery is the day of the notification that the goods are ready for shipment, otherwise the day upon which the goods are shipped.
- 4.8. We shall not be in default as long as the buyer is in default with satisfying obligations towards us, also those from other contracts.
- 4.9. Subject to other written agreements the acceptance shall be deemed – insofar as such is envisaged as per contract or by law – as carried out within 10 days after delivery.

- 4.10. We shall inform the buyer in writing in time if we do not receive, do not properly receive or not in time a delivery or service from our sub-suppliers for reasons for which we are not responsible, or in case of events of force majeure. In this case we are entitled to postpone the delivery by the duration of the impediment plus a reasonable start-up time or cancel the contract in full or in part owing to the part which has not yet been satisfied insofar as we have satisfied our afore-mentioned information obligation and have not assumed the procurement risk. Deemed equivalent to force majeure are strike, lock-out, official interventions, shortage of energy and raw materials, transport bottlenecks which are not our fault, impediments to operation which are not our fault for example through fire, water and machine damages and all other impediments, which when considered objectively have not been culpably caused by us. Both parties can however cancel a concluded contract in full or in part if one of the afore-mentioned events leads to a delay in delivery of more than three months beyond the agreed deadline. Further claims of the contractual parties are excluded.

5 Packaging, shipment, passing of risk and acceptance

- 5.1. Insofar as not otherwise agreed we shall choose packaging, type of shipment and shipment route.
- 5.2. Our deliveries are made ex works in the absence of a deviating agreement.
- 5.3. Upon written request of the buyer the goods will be insured at its costs against risks which are to be described by it.
- 5.4. The risk of the accidental loss or the accidental deterioration shall pass to the buyer when the goods which are to be delivered are handed over to the buyer, the carrier, the freight forwarder or the other enterprises which are determined to carry out the shipment, by no later however than when they leave our plant, the warehouse or the branch. Even if we assume the transport costs the risk of the transport shall remain with the buyer.
- 5.5. If the shipment is delayed due to the fact that we exercise our right of retention as a result of full or partial default of payment of the buyer or for any other reason for which the buyer is responsible then the risk shall pass to the buyer by no later than from the date of notification that the goods are ready for shipment.

6 Reservation of title

- 6.1. We reserve the right to the ownership to all objects of delivery and order and goods delivered by us (hereinafter jointly "Reserved Goods") until all of our claims from the business relationship with buyers including the claims which are incurred in future from subsequently concluded contracts have been settled. This shall also apply to a balance for our benefit if individual or all claims are included by us in a current account and the balance has been drawn.
- 6.2. The buyer must sufficiently insure the Reserved Goods in particular against fire and theft. Claims against the insurance from a damaging event which effects the Reserved Goods are hereby already assigned to us in the amount of the value of the Reserved Goods.

- 6.3. The buyer is entitled to resell the delivered goods in customary business transactions. It is not permitted to make other disposals, in particular pledges or granting of collateral ownership. If the Reserved Goods are not paid by the third party buyer immediately in case of resale the buyer undertakes to only resell under the reservation of title. The entitlement to resell the Reserved Goods shall cease to apply without further ado if the buyer suspends its payment or is in default of payment towards us.
- 6.4. The buyer hereby now already assigns us all claims including collateral and secondary rights which are accrued from or in connection with the resale of Reserved Goods against the end buyer or against third parties. It may not reach any agreement with its buyers which in any way exclude or impair our rights or destroy the advance assignment of the claim. In the event of the sale of Reserved Goods with other objects the claim against the third party buyer shall be deemed as assigned in the amount of the delivery price agreed between us and the buyer insofar as the amounts, which relate to the individual goods, cannot be determined from the invoice.
- 6.5. The buyer remains entitled to collect the goods assigned to us until our revocation which is permitted at all times. Upon our request it undertakes to provide us the information and documents which are necessary for collecting assigned claims and, insofar as we do not do this ourselves, to inform its buyers of the assignment to us immediately.
- 6.6. If the buyer includes claims from the resale of Reserved Goods in a current account relationship which exists with his buyers then it hereby now already assigns a recognised final balance, which is produced for its benefit, to us in the amount which corresponds with the total amount of the claim from the resale of our Reserved Goods which is transferred to the current account relationship.
- 6.7. If the buyer has already assigned claims from the resale of the goods delivered by us or to be delivered by us to third parties in particular owing to real or unreal factorings or reached other agreements, based on which our current or future collateral rights can be impaired according to § 8 it must inform us thereof immediately. In the event of an unreal factoring we are entitled to cancel the contract and demand that already delivered goods are handed over; the same applies in the event of a real factoring, if the buyer cannot dispose freely over the purchase price of the claim according to the contract with the factor.
- 6.8. In case of conduct which is in breach of the contract, in particular with default of payment we are – without us having to cancel the contract previously – entitled to take all Reserved Goods back; in this case the buyer is without further ado obliged to hand-over the goods insofar as he is not just responsible for an insignificant breach of duty. We may access the business premises of the buyer at all times during the normal business hours in order to determine the stocks of the goods delivered by us. The taking back of the Reserved Goods is only deemed a cancellation of the contract if we expressly declare this in writing or this is envisaged by mandatory statutory provisions. The buyer must inform us immediately in writing of all accesses of third parties to Reserved Goods or claims which have been assigned to us.
- 6.9. If the value of the collateral which exists for us according to the afore-mentioned provisions exceeds the secured claims in total by more than 10 % we are obliged at the request of the buyer to insofar release collateral items at our choice.

- 6.10. The Reserved Goods shall be processed for us as manufacturer within the meaning of § 950 BGB however without obliging us. If the Reserved Goods are processed or inseparably connected with other objects which do not belong to us then we shall acquire the co-ownership to the new object in the ratio of the invoice value of our goods to the invoice values of the other processed or connected objects. If our goods are connected with other movable objects to form one uniform object, which is to be seen as the main object then the buyer hereby now already assigns us the co-ownership hereto in the same ratio. The buyer shall keep the ownership or co-ownership in safekeeping free of charge on our behalf. The co-ownership rights which are produced according to this shall be deemed as Reserved Goods. Upon our request the Buyer is obliged to provide us the information which is necessary for pursuing our ownership or co-ownership rights at all times.

7 Warranty

- 7.1. We shall be liable for defects of quality and title to the delivered object according to the following provisions.
- 7.2. Certain properties shall principally only be deemed as warranted by us if we have expressly confirmed this in writing. A guarantee shall only be deemed as assumed by us if we have described a property as »guaranteed« in writing.
- 7.3. Statements from us are only then to be seen as assumption of a guarantee for a condition if they are expressly described as such.
- 7.4. Identifiable defects are to be reported by the buyer in writing immediately, by no later however than 8 days after provision of the service – also with regard to part of the services which can be used by the buyer –, hidden defects immediately, by no later than within the warranty period stated in Subclause 7.6. Defects which are identifiable upon delivery must moreover be reported towards the respective transport company or deliverer and the recording of the defects arranged for by this party on the shipping documents, in particular the bill of lading. A copy of the bill of lading is to be forwarded to us immediately in this case. Complaints of defects must contain a description of the defect which is to be specified as much as possible. A complaint which is not in line with the deadline or form excludes all claims of the buyer for warranty. Insofar as deficiencies in the number of units and weight were clear upon delivery already according to the afore-mentioned duties for inspection, the buyer must report these defects towards the transport company or deliverer when receiving the goods and have the complaint certified. A complaint which is not made in line with the deadline or form also excludes insofar all claims of the buyer for warranty.
- 7.5. Special forms are to be completed for reports of defects to hydraulic hose lines which can be requested directly from us or downloaded via the Internet under <http://www.held-hydraulik.de>. This form is to be completed in full and submitted to us together with the written report of defects.
- 7.6. All claims for defects shall become statute-barred insofar as not otherwise agreed within 12 months after passing of risk. There shall be no limitation to the claim if the delivered object has been used for a building in line with its customary method of use and caused its defectiveness as well as in the event of § 478 BGB (Claim for recourse). The statute of limitations shall apply instead.

- 7.7. Insofar as not otherwise determined in this § 7 our warranty for defects of quality and title is limited to subsequent performance. Within the framework of our obligation to subsequent performance we are at our choice entitled to subsequent improvement or to substitute delivery. If we do not satisfy this obligation within a reasonable period of time or if subsequent improvement fails despite repeated attempts the buyer is entitled to reduce the purchase price or cancel the contract. Cancellation of the contract is excluded insofar as there is only an insignificant defect. In addition, insofar as we have made faultless partial deliveries, a cancellation of the whole contract is only permitted if as proven the interest of the buyer in the provided partial deliveries no longer exists. Further claims, in particular claims for reimbursement of expenses or damages, shall only exist within the framework of the regulations concerning § 8 below. Replaced parts are to be returned to us at our costs upon request.
- 7.8. The buyer must send us, or the nearest customer branch which is recognised by us for the respective product field, the faulty goods at his risk for subsequent improvement or substitute delivery unless the return dispatch is not possible according to the type of the delivery. We shall bear the transport costs which are incurred for the purpose of subsequent performance insofar as the complaint proves to be justified, however only from the location at which the purchased goods were delivered in the domestic country as intended and a maximum only up to the amount of the purchase price. Replaced objects of delivery or parts thereof shall pass to our property or remain our property. Remedies to defects at the place of installation shall only be made within the framework of special agreements according to our valid service conditions.
- 7.9. The buyer must give us the time and opportunity which is necessary for the subsequent improvement or substitute delivery. The buyer shall only be entitled to remedy the defect itself or have this remedied by third parties in urgent cases when there is a risk to the operating safety, the avoidance of disproportionately high damages or with delay in the remedying of defects by us after prior notification to us and request from us the reimbursement of the necessary costs.
- 7.10. The warranty obligation shall lapse if the buyer has changed the delivered goods and the defect is clearly a result of this change. Neither shall we be liable for damages which were suffered through improper use or intentional destruction.
- 7.11. Claims for recourse according to §§ 478, 479 BGB shall only exist insofar as the assertion of the claim by the consumer was justified and only to the statutory extent, not however for goodwill regulations which were not coordinated with us and presume the compliance with own duties of the party entitled to the recourse, in particular the observance of possible responsibilities to make a complaint.
- 7.12. The further processing or the installation of goods delivered by us shall always be deemed as a waiver of the report of a defect insofar as the defect was identifiable.
- 7.13. A warning is to be sent by the buyer concerning other breaches of duties immediately in writing by setting a reasonable deadline for these to be corrected before asserting further rights.
- 7.14. If a defect is reported unjustifiably we are entitled to request reimbursement of the expenses incurred to us hereby from the buyer.

- 7.15. No warranty claims exist in particular in the following cases: unsuitable or improper use, faulty assembly or putting into operation by the buyer or third parties, natural wear and tear, faulty or negligent handling, improper service, unsuitable equipment, faulty construction work, unsuitable building foundation, mechanical, chemical, electro-chemical, electrical and comparable influences which do not correspond with the envisaged, average standard influences.
- 7.16. No claims for defects shall exist with just an insignificant deviation from the agreed or customary condition or usability.
- 7.17. The recognition of defects of quality always requires a written form.

8 Liability

- 8.1. We shall only be liable for damages, no matter for what legal grounds,
- 8.1.1. insofar as we, our executives or vicarious agents are responsible for wilful intent or gross negligence
 - 8.1.2. in case of culpable injury to life, the body, health
 - 8.1.3. in case of culpable breach of essential breaches of contract
 - 8.1.4. in case of defects, which we maliciously failed to disclose or the absence of which we guaranteed
 - 8.1.5. insofar as liability is assumed according to the Product Liability Law for physical injuries or property damages to privately used objects.

A further liability for damages is – irrespective of the legal nature of the asserted claim-excluded. This applies in particular to the reimbursement of indirect damages (this comprises e.g. follow-up damages, missed profits as well as consequential losses) and claims for damages from fault upon conclusion of the contract of positive breach of contract or claims in tort according to § 823 BGB.

- 8.2. In case of culpable breach of essential contractual duties we shall however only be liable limited to the typical, reasonably foreseeable damages for the contract. The typical foreseeable damages for the contract are to be carried in the amount of the contractual value of the service concerned.

9 Export

- 9.1. The delivered goods are subject to the export control regulations of the Federal Republic of Germany which are applicable to them. The buyer undertakes to comply with these provisions as well as possible other provisions of the country to which the goods are delivered.

10 Place of performance, place of jurisdiction, applicable law, miscellaneous

- 10.1. The place of performance for all contractual obligations is the registered seat of our company. The exclusive place of jurisdiction for all disputes is the court of jurisdiction for the registered seat of our company. We are however also entitled to file action against the buyer at its general place of jurisdiction.
- 10.2. The law of the Federal Republic of Germany shall apply exclusively to these GBT and the whole legal relations between us and the buyer. The application of the UN convention governing the international sale of goods (CISG) as well as international private law is excluded.
- 10.2. Should individual provisions be or become invalid the validity of the other provisions shall not be impaired hereby. The parties shall then be obliged to agree upon a new provision which shall as far as possible correspond with the intention pursued with the invalid provision or provision which became invalid.
- 10.3. Amendments to these GBT must be made in writing. The written form requirement can likewise only be excluded in writing.

11 Federal Data Protection Law

- 11.1. We are entitled to save all data of the buyer received in connection with the order/contractual processing for own purposes by complying with the Federal Data Protection Law.

Status: 01.07.2007