

General Terms & Conditions of the company HDG Bavaria GmbH

§ 1 General provisions

- (1) All of our deliveries, services and offers, including those not expressly mentioned during negotiations, shall be made exclusive based on these terms and conditions. We do not recognize opposing terms and conditions not even if we make an explicit exception or refer to a letter from our contractual partner which refers to his terms and conditions. Our terms and conditions shall apply to all contracts with businesses, public corporations and public separate estates, including all future business relations, even if they are not subject to another explicit agreement. They shall also apply to contracts with users and will be modified in this regard at the respective points. Our terms and conditions enter into effect at the very latest with the acceptance of the goods.
- (2) Conditions which may contradict or deviate from our conditions shall only apply if we have expressly agreed to their use in writing.

§ 2 Offer, conclusion of contract and documents

- (1) Our salespeople, travelling salesmen or representatives shall not be authorized to make additional oral agreements or assurances over and above the content of the written contract. All of the conditions of this contract shall be stipulated in the written escrows. Our offers shall initially be subject to change and subject to a written order confirmation. There shall be no additional oral agreements.
- (2) Delivery time specifications shall be approximate and non-binding, unless an irrevocable agreement was explicitly agreed upon. Specifications for the delivery item (e.g. technical data, tolerance ranges, dimensions, weights etc.) and its representation are merely descriptions and designations which shall only be binding after we have explicitly confirmed them. We shall reserve the right to make standard technical and structural modifications to the delivery item, as long as they do not unacceptably infringe upon the purchaser or affect the serviceability of the purchase item.
- (3) Our offers shall be subject to change up to the time at which the contract is concluded.
- (4) We shall retain the property and copy rights for design drawings, models, estimates and other physical or non-physical business objects. They shall be handled with strict confidentiality at all times. They may not be made available to third parties without our agreement. If these obligations are breached, the purchaser shall be liable to the full extent of the law. Reference advertising using our name is only permissible with prior agreement.

§ 3 Prices

- (1) Our prices shall be calculated ex works, excluding loading and packing, plus the statutory value added tax. Unloading and storage shall be the responsibility of the purchaser. The cost of an arranged transport or other insurance shall be paid by the purchaser, barring other agreements. In the case of partial deliveries, each delivery may be billed separately.
- (2) Additional work, ordered outside of the actual contract, is calculated by HDG on an administrative basis.
- (3) Prices shall be based on the production costs at the time of written confirmation from the supplier. In case of an increase of these production costs to the date of supply due to increased taxes, prices of raw materials, auxiliary materials, energy, freight or wages, the supplier is entitled to make a corresponding adjustment to the agreed price.
- (4) If, on a delivery day lying four months after the conclusion of the contract, changes of the basic prices may occur (e.g. price increases for raw materials, stock, wages, transportation or storage costs), we reserve the right of a corresponding price adjustment according to the information of the purchaser. The price adjustment may only be made effective by us within two months of the named price increases. The individual costs and their increases must be weighted appropriately in creating the new price. Should individual elements of costs increase, while others decrease, this must also be factored into the creation of the new price. The purchaser shall not derive any right of withdrawal from such a price increase.
- (5) If a price has not been agreed upon by the conclusion of the contract, prices valid on the day of delivery shall apply.

§ 4 Terms of payment

- (1) Unless otherwise indicated in the order confirmation (or the invoice), the price (without deduction) shall be due for payment immediately after the invoice is received.
- (2) Should the purchaser fall into default of payment, we shall be entitled to charge default interest in the amount of 8 percentage points above the basic interest rate; if the purchaser is a user, this default interest shall be in the amount of 5 percentage points above the basic interest rate. We may thereby provide proof of a higher interest loss at any time and charge it. In the case of delay of payment, we shall also be entitled to nullify stipulated rebates, cash discounts and other benefits. We shall retain the right to require prepayments for further deliveries; we may render all accounts receivable from the contract due for payment.
- (3) Failure to uphold the terms of payment, delay or circumstances which might reduce the creditworthiness of the purchaser shall result in the immediate maturity of all our requirements.
- (4) The customer shall only have the right to offset counterclaims when his counterclaims are legally valid, undisputed or recognized by us.
- (5) The customer shall have the right to withhold payment if his counterclaim is legally valid, undisputed or recognized by us or if it refers to the same contractual relationship.
- (6) We shall not be obligated to accept exchanges and checks. In this regard, credit notes shall always be considered subject to redemption (for payment, not in place of fulfillment); they shall be carried out with the value applicable on the date on which we can dispose of the equivalent value. Exchanges shall be deducted with the charge of the discounts, stamp duty and bank charges, or entry charges calculated during forwarding.
- (7) We shall retain the right to further contractual or legal claims in the case of delayed payment.
- (8) With several outstanding invoices payments shall be charged first against the older claims. Should costs and interest already have been incurred then the payments shall be set-off against the costs, then the interest and finally against the principal service performed, in each case against the older claims first.

§ 5 Delivery time and obstacles to delivery

- (1) The delivery period shall begin with the sending of the order confirmation, but not before the purchaser furnishes the documents, approvals and releases to be procured, as well as any agreed prepayment and clarification of all technical questions.
- (2) Delivery deadlines shall be considered as met if prior to deadline expiry the delivery item has left our factory or if we have informed the customer that the order is ready for shipment.
- (3) If unforeseen obstacles arise which are out of our control and which we cannot avoid despite reasonable care appropriate to the circumstances regardless of whether they arise for us or a subcontractor – such as force majeure (e.g. war, fire and natural disasters), delays in the delivery of essential raw materials, etc. – we shall reserve the right to partially or completely withdraw from the delivery contract or to extend the delivery period for the duration of the interference. The same rights shall apply in the case of strikes or blockades which affect us or our subcontractors. We shall inform the purchaser of these circumstances immediately and refund the payments he has made without delay.
- (4) Correct and timely deliveries by our own suppliers shall be reserved. We shall notify the purchaser in the event of delays. Should we not receive deliveries from our suppliers in a correct and timely manner, which we are not responsible for, our service deadlines shall be extended by a corresponding period. Alternatively, regarding the undelivered items, we shall also be authorized in this case to declare our withdrawal from the contract. Unless prohibited under the competition law, we shall cede our claims against the purchaser to the supplier because of non-contractual supply. Any additional damage claims and claims for reimbursement for expenses made to us by the purchaser shall be excluded.
- (5) In the event of a delivery delay, the purchaser may set an appropriate extension period and if this lapses without successful delivery, he may withdraw from the contract; in the case of the impossibility of delivery of our part he shall be entitled to do so without setting a deadline. All claims for damages shall be excluded (including any consequential losses) without prejudice to paragraph 5 of section 10, which shall not purpose the reversal of the burden of proof; the same shall apply for reimbursement of expenses.
- (6) If a firm deal was agreed upon, we shall be liable according to the legal stipulations; the same shall apply if the purchaser can claim that his interest in the fulfillment of the contract has ceased to apply because of a delay for which we were responsible.
- (7) If delivery is delayed at the request of the purchaser, the resultant storage costs shall be charged to him beginning one month after notice of readiness for delivery.

§ 6 Transfer of risk, acceptance of goods and partial deliveries

- (1) If the purchaser is a contractor, in the case of debt collectible by the creditor, the purchaser shall bear the risk of accidental ruin or deterioration of the wares upon singling out of the faulty wares and their agreed upon provision; the same shall apply in the case of debt involving transfer upon transfer of the wares to the carrier; in the case of debt discharged at the creditor's domicile, the risk shall be transferred when the items leave the factory grounds; this shall also apply in cases where HDG has additionally undertaken delivery and installation. The same shall apply in the case of a delay of the creditor. If the buyer is a user, the buyer shall bear the risk of accidental ruin or deterioration of the wares also in cases of mail order purchase or in the case of debt discharged at the creditor's domicile only upon transfer of the wares to the buyer.

Shipping

All shipments shall be made to the best discretion of the supplier at the expense of the purchaser. We shall choose the method of delivery. The purchaser shall not be entitled to claim any compensation whatsoever for the chosen method. Postal consignments under 2 kilograms shall be handled franked, the supplier shall reserve the right to charge these postage costs.

Shipping to foreign countries

Shipments to foreign countries shall be subject to appropriate additional general conditions of sale for export and other additional special arrangements. In addition, the Incoterms 2010 shall be deemed to be agreed upon, the supplier shall be free to resort to these.

- (2) Delivered objects shall be accepted by the purchaser, even if they have non-essential defects, without prejudice to his rights from sections 8 - 10. Partial deliveries shall be permissible, provided they are acceptable to the purchaser.

§ 7 Retention of title

- (1) Until full payment of the purchase price and settlement of all and any claims resulting from the business with contractors and all and any future claims in context with the purchased items as well as all and any future claims resulting from the business, the goods shall remain our property. The retention of title shall also apply to replacement and exchange parts, even when they are installed, since this does not make them essential components according to section 93 of the German Civil Code. In the case of a current account relationship (business relationship), we shall retain ownership until all payments from the existing current account relationship have been received; the reservation shall refer to the recognized account balance; in these cases the provisions of section 7 shall apply.
- (2) In the case of breach of contract by the purchaser, especially in the case of late payment, we shall be entitled to recover the goods after setting a suitable period of grace without result. The mere reclaiming of goods shall represent a withdrawal from the contract only if a deadline we have set has expired without result and the withdrawal has been explicitly declared. The costs arising from the withdrawal of goods (particularly transport costs) shall be charged to the purchaser. In addition, we shall be entitled to forbid the purchaser to resell or process, connect or mix the goods delivered under retention of title and to rescind the direct debit authorization (section 7 5). The purchaser shall only be entitled to demand the delivery of the goods withdrawn without an express announcement of withdrawal after full payment of the purchase price and all costs.
- (3) The purchaser shall be obligated to handle the goods with care (including the required inspection and maintenance tasks). Moreover, the purchaser shall be obliged to insure the goods at his own expense against fire, water and theft at replacement value.
- (4) The purchaser shall not be allowed to pledge the delivery items and claims in lieu, nor to assign them by way of security nor to abandon them. In the event of distraint or other actions by third parties, the purchaser must notify us immediately in writing, so that we can file suit according to section 771 of the Code of Civil Procedure. The purchaser must bear any costs remaining from this suit in spite of winning a legal dispute in accordance with section 771 of the Code of Civil Procedure.
- (5) The purchaser shall have the right to resell, process or mix the purchase item in the normal course of business; thereby, however, he shall already cede all claims from the resale, processing, mixing or any other legal grounds (particularly insurance policies or impermissible actions) for the amount of the final invoice (including VAT), as well as all ancillary rights. If we are co-owners of the delivered goods due to retention of title, the claims shall be ceded in proportion to the co-ownership share. If the delivered goods are resold along with the goods of a third party which are not the property of the purchaser, the resulting claims shall be ceded to us in the proportion of the final invoice amount for our goods to the final invoice amount for the third party's goods. If the ceded claim is accepted in a current account, the acceptor shall already cede a corresponding portion of the balance (including the final balance) from the current account to us; if interim balances were drawn upon and it has been agreed to carry them forward, the claim we are entitled to from the interim balance according to the applicable regulation shall be treated as ceded to us for the next balance. The purchaser shall retain the right to collect these receivables after cession, while our authorization to collect the receivable ourselves shall remain unaffected. We shall be obligated, however, not to collect the receivable as long as the purchaser's fulfillment of his obligation from the collected redemption is not late in payment, and no request for the opening of insolvency proceedings has been made. If this is the case, however, the purchaser shall be obligated to notify us of the claims assigned and their debtors, to furnish all particulars required for collection, to hand over pertinent records and to advise the debtors (third parties) of the assignment. This shall also apply if the purchaser resells, processes or mixes the purchase item in breach of contract.
- (6) The retention of title shall also extend to the full value of the finished products resulting from processing or modification of our goods, whereby these processes shall take place for us so that we are deemed to be the manufacturer. If the property right of a third party remains in effect during processing or modification of his goods, the purchaser shall concede co-ownership to us in proportion to the objective value of these goods; it shall be already agreed that the purchaser keeps the goods safe for us in this case. If our reserved goods are connected with other movable objects or inseparably mixed, and if the other object is to be regarded as the main object, the purchaser shall transfer co-ownership to us proportional to his share insofar as he owns the main item; the purchaser shall keep the created (joint) property safe for us. The same shall apply to objects created in this way as for those delivered with retention of title.
- (7) The purchaser also shall assign to us the receivables for securing our claims against him, which are created against a third party by the combination of the delivery items with real property. Cession shall occur with priority over the rest.
- (8) The securities to which we are entitled shall not be recorded if the estimated value of the securities exceeds the nominal value of the demands to be secured by 10%; it shall be incumbent on us to decide which securities were released.
- (9) If the validity of the retention of title is connected to particular preconditions or formalities in the country of destination, the purchaser shall be responsible for their fulfillment.

§ 8 Warranty of quality and title

For transactions with other firms, liability shall be excluded upon purchase of used items; for transactions with users, the liability shall be limited to one year for the purchase of privately owned items. For the purchase of new items, the following rules shall apply. We shall be liable for defects in the delivery in the following manner, provided the purchaser is a trader, but only if the examination and notification duty from section 377 of the German Commercial Code has been properly fulfilled (notification of defects must be asserted in writing):

- (1) To the extent that there is a defect in the purchase item, we shall be authorized to rectify the defect or to deliver an object free of defects (subsequent performance). If the purchaser is a contractor, this right shall be our option. The precondition for this in dealings with contractors shall be that the defect is not insignificant. The replaced parts shall become the property of HDG. Should one or both of the types of subsequent performance be impossible or disproportionate, we shall be entitled to refuse them. We shall be entitled to refuse subsequent performance if the purchaser does not fulfill his payment obligations to an extent appropriate to the defect-free part of the service. Upon remedy of defect, we shall covenant to bear any and all cost and expenses required for the purpose of remedy of the defect, in particular, transportation, shipping, labor and material cost to the extent that they will not increase due to the fact that the delivery items were shipped to a place other than the contractually agreed place of delivery.
- (2) Should the subsequent performance specified in paragraph 1 be impossible or fail, the purchaser shall have the option to either lower the purchase price accordingly or to withdraw from the contract according to the legal regulations; this shall particularly apply in the case of culpable delay or refusal of subsequent performance, including when this fails for the second time. Further claims by the purchaser based on whatever legal grounds shall be excluded or limited according to section 10. The same shall apply to claims from default at the conclusion of the contract.
- (3) The purchaser must give HDG the necessary time and opportunity to make repairs and replacement deliveries. HDG can, using equitable discretion, decide what work is necessary. Only in urgent cases (e.g. if operating safety is impaired or in order to prevent disproportionately large damages), for which even the setting of a short time limit is not possible, or if HDG is delayed in remedying the defect, the purchaser shall be entitled to remedy the defect himself or with third party assistance and to demand reimbursement of the costs thereby incurred from HDG. We, however, must be immediately notified of this.
- (4) There shall be no warranty for damage due to the following causes: inappropriate or improper use, faulty installation by the purchaser or a third party, normal wear and tear, faulty or careless handling, excessive use, unsuitable operating materials, unsuitable heating material, defective construction work, inappropriate foundation, substitute material, chemical, electrochemical or electrical influences (provided we are not responsible for them), improper modifications or maintenance work by the purchaser or a third party without prior approval from us.
- (5) Claims due to defects when purchasing new items shall expire in the day-to-day dealings with contractors within one year after delivery of the purchased item, providing no deliberate intent, no gross negligence and no damage to life, limb or health may be attributed to us. For transactions with users however, the statutory period of limitation shall amount to two years. For an item used according to its normal application for a structure, and which is responsible for the defectiveness of the said structure, the claim shall only become invalid after five years. Claims for price reduction or the execution of the right to withdraw from the contract shall be excluded as soon as the subsequent performance claim has become invalid. The purchaser may, however, in the case of sentence 3, refuse to pay the purchase price insofar as he

is entitled to do this on the basis of the withdrawal or reduction; in the case of disqualification from withdrawal and a subsequent refusal of payment, we shall be entitled to withdraw from the contract. A reversal of the burden of proof shall not be intended.

- (6) Assurances and guarantees shall only be effectively granted if we provide them explicitly and in writing.

§ 9 Contracts for work and services

- (1) We shall be liable for service deficiencies based on the contract for work and services according to section 8 1 – 4, 6. The purchaser shall legally be entitled to self-remedy of defects according to the standards of section 637 of the German Civil Code; the claim shall be excluded if we may also refuse the subsequent performance.
- (2) The claims to subsequent performance, damages and reimbursement of expenses shall become invalid one year after receipt, provided that we are not responsible for any intent, gross negligence or damages to life, limb or health. This shall not apply to constructions or works where their success depends on the performance of a planning or monitoring service; in this case the limitation period shall be five years. Claims for self remedy, price reduction or the execution of the right to withdraw from the contract shall be excluded as soon as the claim for subsequent performance has become invalid and we invoke this. The purchaser may, however, in the case of sentence 3, refuse to pay the purchase price insofar as he is authorized to do this on the basis of the withdrawal or reduction; in the case of disqualification from withdrawal and a subsequent refusal of payment, we shall have the right to withdraw from the contract. A reversal of the burden of proof shall not be intended.
- (3) Estimates must be refunded, without prejudice to a different individual agreement.
- (4) For contracts regarding the delivery of items to be manufactured or produced, section 8 shall apply.
- (5) Accordingly, section 10 shall apply for defects in contractual services.

§ 10 Withdrawal of the purchaser and other liability on our part

- (1) The purchaser's legal right of withdrawal shall - excepting the provisions in paragraphs 8 and 9 – be neither excluded nor limited. Likewise, the legal or contractual rights and entitlements owed to us shall neither be excluded nor limited.
- (2) We shall be fully liable only for damages caused intentionally or by gross negligence (including his legal representatives and assistants) and for injuries caused to life, limb or health. We shall also be fully liable for the granting of guarantees and assurances, if a defect covered thereby activates our liability. Also, no restriction on liability without fault shall exist (particularly according to the Product Liability Act). A possible liability due to the Product Liability Law according to section 478 f. of the German Civil Code shall stay untouched.
- (3) For other culpable violations of fundamental contractual obligations (cardinal obligations), our remaining liability for foreseeable damage typical for this contract shall be limited. Otherwise liability shall be excluded, regardless of the legal grounds (particularly claims from the violation of primary and secondary obligations, reimbursement of expenses, with the exception of those according to section 439 II of the German Civil Code, as well as impermissible acts and other tortuous acts).
- (4) The same (exclusions, limitation and exceptions to these) shall apply for claims based on fault at the conclusion of the contract.
- (5) The aforementioned provision shall be applied accordingly in case of any reimbursement of expenses.
- (6) An exclusion or limitation of our liability shall also be applicable to our legal representatives and agents.
- (7) A reversal of the burden of proof shall not be intended. Cardinal obligations shall be essential contractual obligations, i.e. liabilities which lend the contract its character and upon which the contract partner may rely; this thus involves the essential rights and duties which make up the requirements for the fulfillment of the contract and which are indispensable for achieving the purpose of the contract.

§ 11 Place of performance, place of jurisdiction, applicable law, contractual language and allocation of burden of proof

- (1) The place of performance and settling place shall be the place of dispatch (works or storage location).
- (2) The place of jurisdiction shall be our place of business, provided the purchaser is also a salesperson, legal person under public law or a public separate estate. The same shall apply if the purchaser has no general place of jurisdiction within the country. We shall be entitled to bring an action against the purchaser at other admissible places of jurisdiction.
- (3) With regard to all claims and rights from this contract, the non-unified laws of the Federal Republic of Germany (German Civil Code, German Commercial Code) shall be applied. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be expressly excluded. The language of the contract shall be German.
- (4) The legal allocation of the burden of proof shall not be altered by any of the clauses agreed upon in all of the terms and conditions.

§ 12 Other provisions

- (1) Changes to the contract may only become effective with our approval.
- (2) All agreements between ourselves and the purchaser must be recorded in writing. Writing shall also apply to all amendments and / or additional agreements before or after the conclusion of the contract. This requirement shall also apply to the cancellation of this clause.
- (3) Should the individual provisions of these terms and conditions be completely or partially invalid or null and void, the rest of the provisions shall remain unaffected. The contractual partners shall be obligated to agree to a regulation through which the economic spirit and purpose of the invalid or null and void provision may be substantially achieved.
- (4) We shall handle all of the purchaser's data exclusively for transactional purposes according to the applicable data protection regulations. The purchaser shall also have the right, upon written request, of information regarding his personal data which has been compiled, processed and used.
- (5) All concepts and rules shall be understood as neutral regarding sex and otherwise free of discrimination in the sense of the General Equal Treatment Act (AGG).
- (6) For the purpose of finding a decision on subject of an explanatory statement, implementation or termination of a contractual relationship we impose or use plausibility values of credit reporting agencies, whose calculation incorporates customer data.