

Terms of sales and delivery
Hermann Paus Maschinenfabrik GmbH

§ 1

Preface – Scope of application

(1) We deliver and work exclusively according to our terms of sales and delivery; opposed or from our terms differing terms of customer are not accepted unless we had explicitly agreed in writing to their application. Our terms of sales and delivery are also valid if we execute delivery to our customer without reservation in knowledge of opposed and from our terms differing terms of customer.

(2) All our prices are quoted ex works, excluding forwarding and packing costs, custom duties, taxes or other public dues related to the goods.

(3) We reserve our right to modify our prices accordingly if, after conclusion of contract, cost reduction or cost increase occur, especially in case of tariff agreements or modified material prices. We will prove these modifications to the customer on request.

(4) The value added tax is not included in our prices; it shall be declared in its legal height on the invoice on the day of issue.

§ 2

Offer – offer documents – order confirmation

(1) Our offer is subject to change and does not commit us to accept the order.

(2) Purchaser is bound to his order for 15 days.

(3) Contract is solely concluded by our written order confirmation.

(4) Drawings and drafts as well as weights and measures are considered as proximate and are non-binding.

(5) We reserve our ownership and copyright of drawings, drafts, calculations and other documents. This shall also be valid for such kind of written documents marked as “confidential”. Before submitting these documents to third parties, the customer has to require our explicit written agreement.

§ 3

Prices – terms of payment

(1) Our prices are subject to change unless no fixed price has been agreed explicitly.

(2) All our prices are quoted ex works, excluding forwarding and packing costs, custom duties, taxes or other public dues related to the goods.

(3) We reserve our right to modify our prices accordingly if, after conclusion of contract, cost reduction or cost increase occur, especially in case of tariff agreements or modified material prices. We will prove these modifications to the customer on request.

(4) The value added tax is not included in our prices; it shall be declared in its legal height on the invoice on the day of issue.

(5) Cash discount deduction requires a special agreement in writing.

(6) Unless otherwise specified in the order confirmation, the purchase price shall be due (strictly net) for payment within 30 days from invoice date. The legal regulations regarding the consequences of default of payment are valid.

(7) Set-off rights are solely entitled to the customer if his counterclaims have legally been determined, are undisputed and recognized by us. Additionally he is only insofar entitled to practise a right of retention if his counterclaim is based on the same contractual relationship.

§ 4

Delivery period

(1) Unless otherwise specified explicitly and in writing, we do not take any obligation to comply with delivery periods and delivery dates – even not from stock. The specification of delivery period is non-binding in any case.

(2) If a delay of delivery has been agreed explicitly and in writing, it starts at conclusion of contract. Keeping our obligation to deliver provides proper and in time compliance of the customer’s obligations. Exception of the non complied contract remains reserved.

(3) If the customer comes in default of acceptance or if he violates culpably other obligations to co-operate we shall have the right to claim compensation for the insofar occurred loss, including possible additional expenditures. Further claims and rights remain reserved.

(4) Provided that the assumptions of (3) exist, the danger of an incidental break-up or an incidental worsening of the purchase subject shall be devolved to the customer at that point of time when he had come in default of acceptance or default of the debtor.

(5) As far as delivery periods or dates had been agreed bindingly in writing, we shall be liable according to the corresponding legal regulations, in case that the delay in delivery was caused by us due to an intentional or grossly negligent violation of contract; defaults of our representatives or servants shall be imputed to us. In case that the delay in delivery is based on a grossly negligent violation caused by us our compensation liability shall be limited to the predictable, typically occurring damage.

(6) In case of an explicitly and in writing agreed fixed business we take liability according to the legal regulations.

(7) We shall also be liable according to the legal regulations if we are responsible for a delay in delivery due to a culpable violation of an essential contractual obligation; however, in this case the compensation liability shall be limited to the predictable, typically occurring damage.

§ 5

Transfer of risk – forwarding and packing costs

(1) Unless otherwise specified, delivery ex works is agreed.

Terms of sales and delivery
Hermann Paus Maschinenfabrik GmbH

(2) If forwarding is agreed, the goods will always be shipped at the consignee's risk – even in case of carriage free forwarding.

(3) Special agreements are valid for returning package.

(4) If requested by customer we will cover the delivery by corresponding insurance; the customer shall bear the corresponding costs.

§ 6
Liability for defects

(1) The customer's rights to claim damages for any defects provides that he performed his examination and notice of non-conformity properly according to § 377 HGB (German Commercial Code).

(2) As far as a defect of the purchase subject exists, we shall be obliged, according to our choice, to do supplementary performance in terms of removal of defects or in terms of delivering a new subject free of defects. In case of supplementary performance or replacement delivery we shall be obliged to bear any charges required for the purpose of supplementary performance, especially travel and transport expenses, working and material expenses, insofar as these expenses are not increased by delivering the purchase subject to another place than the place of performance.

(3) If rectification of defects fails the customer shall have the right to demand rescission or reduction according to his choice.

(4) We take liability according to the legal regulations insofar that the customer asserts compensation claims based on intention or grossly negligence, including intention or grossly negligence of our representatives or servants. As far as we are not accused of intended violation of contract the liability for compensation shall be limited to the predictable, typically occurring damage.

(5) We take liability according to the legal regulations insofar that we violate an essential contractual obligation culpably; but even in this case the liability for compensation shall be limited to the predictable, typically occurring damage.

(6) Liability because of culpable injury of life, body or health remains unaffected; this shall also be valid for the mandatory liability according to the Product Liability Act.

(7) Unless beforehand otherwise regulated, liability shall be excluded.

(8) Limitation period for the right to claim damages for any defects shall be 12 months, accounted from the time of transfer of risk.

§ 7
Joint liability

(1) Further than in (6) designated liability for compensation shall be excluded – regardless the legal nature of the asserted claim. This shall be valid especially regarding claims for compensation due to default at conclusion of contract because of other violations of obligations or because of illegal claims for compensation

of damages of property according to § 823 BGB (German Civil Code)

(2) The limitation according to (1) shall also be valid insofar that the customer in place of claiming compensation demands compensation of useless charges instead of performance.

(3) As far as the liability for compensation towards us is excluded or limited, this shall also be valid regarding the personal liability of compensation of our clerks, employees, collaborators, representatives and servants.

§ 8
Reservation of property rights

(1) We reserve our property of the purchase subject until receipt of all payments from the business relationship or from an existing current account relationship with the customer respectively. In case of the customer acts contrary to contract, especially in case of delayed payment, we shall have the right of redemption of the purchase subject. Redemption of the purchase subject by us means a cancellation of contract. We shall have the right to utilise the purchase subject on its redemption. The revenue of utilisation has to be imputed to the customer's account payables – less the appropriate charges of administration.

(2) The customer is obliged to handle the purchase subject carefully; he shall be especially obliged to insure it on his own costs for damages occurring by fire, water and theft; insurance has to be sufficient for replacement value. If maintenance and inspection works are necessary, the customer has to execute these works on his own costs and in time.

(3) In case of garnishments or other engagements of third parties the customer has to inform us immediately in writing in order to enable us to bring suit according to § 721 ZPO (Code of Civil Procedure). If the third party is not able to compensate the judicial and extra-judicial costs of a lawsuit according to § 721 ZPO (Code of Civil Procedure), the customer shall be liable for the losses concerning our company.

(4) The customer has the right to resell the purchase subject within the framework of a proper business development; however, he already now has to assign any claims in the height of the final invoice amount (including VAT) of our claim, that accrue him from the re-sale towards his buyer or third parties, and that independently from the fact if the purchase subject has been resold without or after its processing. The customer remains authorized to collect the claim, even after the assignment. Our authority to collect the claim ourselves remains unaffected thereof. However, we do oblige ourselves, to collect no claim as long as the customer complies his payment obligations from his proceeds of sale, as long as he does not come in delay of payment and especially as long as no opening of a composition or insolvency proceeding has been applied for or stoppage of payment exists. But, if this was the case, we shall have the right to demand the customer to give us notice about the assigned claims and their debtors, including any information being necessary for collection, to hand out all corresponding documents and that the customer informs the debtor (third party) about the assignment.

Terms of sales and delivery
Hermann Paus Maschinenfabrik GmbH

(5) Processing or modification of the purchase subject by the customer shall always be done for us. In case the purchase subject was processed by items being not owned by us, we shall gain common ownership to the new subject in relation of the value of the purchase subject (final invoice amount, incl. VAT) to the other processed items at time of processing. For the subject generated by processing, incidentally the same is valid as for the subject delivered under reserve.

(6) In case the purchase subject has been merged inseparably with other, not owned by us, items, we will gain common ownership to the new subject in relation of the value of the purchase subject (final invoice amount, incl. VAT) to the other merged subjects at the time of merging. In case the merging is done in a way that the customer's subject has to be considered as the main subject, the agreement shall be valid that the customer transfers proportional common ownership to us. The customer shall store the so generated sole or common ownership in safe custody.

(7) We do oblige ourselves to release the us owing deposits on demand of customer insofar that the realizable value of our deposits exceeds the claims that shall be assured by more than 10 %; die choice of the releasable deposits fall to us.

§ 9

Choice of law - Jurisdiction – Place of fulfilment

(1) All purchasing and delivery contracts according to the guideline of these terms are exclusively subject to the tangible civil right of the Federal Republic of Germany; application of the UN purchasing right is excluded.

(2) Exclusively the Civil Procedure Law of the Federal Republic of Germany may be applied in any judicial arguments arising from purchasing and delivery contracts according to the guidelines of these terms, supplemented by the relevant international regulations.

(3) If the customer is a tradesman, our business location also is the place of jurisdiction; however we have the right to take legal action at the court of the customer's residence.

(4) Unless otherwise specified in our order confirmation, the place of fulfilment is our business location at 48488 Emsbüren.