

# General Terms and Conditions of Delivery of HMT Hebing Maschinen-Technik GmbH

(as of 10/2018)

## 1. General

- 1.1 All our deliveries and services, in particular deliveries and services under purchase contracts, contracts for work and materials and contracts for work and services, including installation, assembly and services as well as consulting and other ancillary services (hereinafter the "**Delivery(s)**"), shall be made exclusively on the basis of these General Terms and Conditions of Delivery (hereinafter the "**Terms and Conditions of Delivery**"). Any terms and conditions of the Customer deviating from these Terms and Conditions of Delivery or from statutory provisions or supplementing these Terms and Conditions of Delivery or statutory provisions shall apply only if we expressly accept them in writing. We shall not recognize such conditions even if we do not object to them after receipt by us or if we carry out deliveries without reservation.
- 1.2 These Terms and Conditions of Delivery shall apply in business transactions with entrepreneurs within the meaning of § 14 BGB (German Civil Code), legal entities under public law and special funds under public law (hereinafter the "**Purchaser**").
- 1.3 These terms of delivery shall also apply to all our future deliveries for the purchaser within the framework of an ongoing business relationship.
- 1.4 For the interpretation of commercial clauses, the Incoterms in the version valid at the time of the conclusion of the contract shall apply.

## 2. Offers and conclusion of contract, form

- 2.1 Our offers are always subject to change and non-binding, unless we have expressly stated in a customer-specific offer that we are bound to it for a certain period of time. A contract is only concluded by an order of the customer and our written order confirmation or execution of the delivery.
- 2.2 We can accept an order from the purchaser within two weeks of its submission. Orders are binding for the customer until the expiry of this period. Our silence shall not constitute any reliance on the conclusion of a contract. If our order confirmation is received by the customer with a delay, the customer shall inform us thereof without delay.
- 2.3 Insofar as a confirmation letter from the customer deviates from our order confirmation, the customer shall specifically highlight the deviations as such; such deviations shall only become part of the contract insofar as we agree to them in writing.
- 2.4 Insofar as these Terms and Conditions of Delivery or the contract refer to a written form requirement, text form within the meaning of § 126 b BGB (e.g. fax or e-mail) shall be sufficient to comply with the written form requirement.

## 3. Acceptance

- 3.1 Deliveries shall only be subject to acceptance if this has been expressly agreed or if this results from statutory provisions.
- 3.2 Acceptance shall be at the expense of the Purchaser.
- 3.3 Unless otherwise agreed, acceptance shall take place within two weeks after notification of readiness for acceptance.
- 3.4 The Purchaser may not refuse acceptance due to insignificant defects.
- 3.5 If the customer does not carry out an agreed acceptance, which must take place before delivery, immediately after notification of readiness for acceptance, we shall be entitled to dispatch the delivery without acceptance and to invoice him as delivered.

## 4. Transfer of risk, execution of delivery, deadlines

- 4.1 The risk of accidental loss and accidental deterioration shall pass to the Purchaser in the case of deliveries under a contract of sale or a contract for work and services upon separation of the goods and notification to the Purchaser that the goods are ready for shipment, at the latest upon leaving the supplying plant. In the case of deliveries and services under a contract for work and services, the risk of accidental loss or accidental deterioration of the delivery or service shall pass to the Purchaser as soon as the delivery or service is under the Purchaser's control, but no later than upon acceptance.
- 4.2 At the request of the customer, we offer to insure deliveries on his behalf and for his account.
- 4.3 Unless otherwise agreed, we shall determine the route and means of dispatch as well as the forwarding agent and carrier.
- 4.4 Our delivery obligations are subject to our proper and timely self-delivery by our suppliers.
- 4.5 Compliance with the agreed delivery dates shall be subject to clarification of all technical issues, timely receipt of all documents, approvals and releases to be provided by the Purchaser and compliance with the agreed terms of payment and other obligations of the Purchaser. If one of these prerequisites is not fulfilled in time or in full, the agreed delivery periods shall be extended accordingly.
- 4.6 The agreed delivery dates shall be deemed to have been met upon notification of readiness for dispatch to the Purchaser, even if deliveries cannot be dispatched on time through no fault of our own.
- 4.7 If collection by the Purchaser has been agreed, the delivery notified as ready for dispatch in accordance with the contract must be collected without delay; otherwise we shall be entitled to dispatch it at our discretion at the expense and risk of the Purchaser and to invoice it as delivered.
- 4.8 Insofar as the execution of deliveries is delayed by more than one week because the purchaser culpably violates obligations under the contract, we shall be entitled to demand a contractual penalty from the purchaser in the amount of 0, 2% of the net price of the delayed delivery per working day after the expiry of the one-week period, but no more than a total of 5 % of this net price. Our right to claim further damages under the statutory conditions shall remain unaffected. Contractual penalties already paid shall, however, be credited against any compensation for damages.
- 4.9 We are entitled to make partial deliveries insofar as these are reasonable for the customer.
- 4.10 Excess or short deliveries customary in the industry are permissible and shall be deemed to be in accordance with the contract. The same shall apply to early deliveries.
- 4.11 Events of force majeure shall entitle us to postpone delivery by the duration of the hindrance caused by the force majeure and a reasonable start-up period. Events of force majeure shall be deemed to include all events for which we are not responsible and which cannot be averted, in particular currency, trade policy, other sovereign measures, strikes, lock-outs, major operational disruptions (e.g. fire, machine breakdown, shortage of raw materials or energy) as well as obstruction of transport routes - in each case not only of short duration - which make delivery significantly more difficult or impossible. If events of force majeure or events equivalent thereto last longer than three months, both we and the Purchaser shall be entitled to withdraw from the contract. We shall inform the purchaser as soon as possible of the occurrence and end of such events.

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4.12 If the Purchaser has a claim for damages in addition to performance due to delay, the damages to be compensated shall be limited to an amount of 0,5% of the agreed net price of the deliveries affected by the delay for each full week of the delay in delivery, but in total to an amount of 5 % of this net price. These limitations shall not apply if the delay is due to intent or gross negligence.

4.13 Irrespective of the other statutory requirements, the customer shall only be entitled to withdraw from the contract due to non-compliance with delivery periods or dates if we are responsible for the non-compliance. If we have effected a partial performance, the customer may only withdraw from the entire contract if he has no interest in the partial performance.

## 5. Prices and payment, export

5.1 Unless otherwise agreed, our prices are net prices. Our prices are EXW (Incoterms 2010) plus the VAT valid at the time of invoicing, excluding the costs for packaging and freight.

5.2 Our invoices are due immediately and payable without deduction to our place of business (Bocholt).

5.3 If the Purchaser does not make any provision for repayment at the time of payment, any costs already incurred shall be repaid first with the payment, then any interest already incurred and then the main services. Among several main performance debts, the oldest shall be repaid first. In all other respects, Section 366 (2) of the German Civil Code shall apply.

5.4 We expressly reserve the right to refuse checks and bills of exchange. Acceptance is always on account of performance only. Discount and bill charges shall be borne by the customer and are due immediately.

5.5 In the case of deliveries abroad, all taxes, customs duties and other public charges to be paid abroad or when exporting abroad shall be borne by the customer or reimbursed to us.

5.6 In the event of default in payment on the part of the customer, we shall be entitled - without prejudice to further claims - to demand interest on arrears at the customary bank rates, but at least 9 percentage points above the base interest rate.

5.7 Insofar as we are not obligated to advance performance, we may withhold deliveries from the business relationship with the Purchaser due to our own due claims against the Purchaser until the performance due to us is effected.

5.8 If, after the conclusion of the contract, a significant deterioration in the financial circumstances of the customer becomes apparent which jeopardizes one of our claims, in particular in the event of suspension of payments, an application for the opening of insolvency proceedings against the assets of the customer or a protest of a bill of exchange or a check, we shall be entitled, in the event of an obligation to perform in advance on our part, to perform outstanding deliveries only against the provision of adequate security. If the customer fails to provide security within a reasonable period of time set by us, we shall be entitled to withdraw from the contract, notwithstanding any other rights of withdrawal. This shall not apply if the customer makes an advance payment.

5.9 The prices stated in the offer and order confirmation are based on raw material prices, salaries, taxes, social security contributions and freight costs (hereinafter the "**Cost Factors**") valid at the time of conclusion of the contract. These Cost Factors have a direct impact on the selling price of our goods. If Cost Factors increase by a total of five percent or more between the conclusion of the contract and delivery, we may increase the selling prices of our goods accordingly, but by no more than five percent, unless this is unreasonable for the Buyer. If the cost factors decrease by a total of five percent or more between conclusion of the contract and delivery, we shall reduce the selling prices of our goods accordingly, but by a maximum of five percent. If the increase or decrease of one of the cost factors is compensated by

another, there will be no increase or decrease of the sales price.

5.10 The customer shall only be entitled to rights of set-off and retention insofar as its counterclaims have been legally established or are undisputed or the customer's claim arises from the same contractual relationship as our claim and is in a reasonable relationship to the latter.

## 6. Retention of title, property rights

6.1 We shall retain title to the delivered goods (reserved goods) until all claims against the customer arising from the business relationship have been satisfied in full.

6.2 The customer may only resell the goods subject to retention of title in the ordinary course of business. The customer is not entitled to dispose of the reserved goods in any other way, in particular to pledge them or assign them as security.

6.3 The purchaser has the right to further process goods subject to retention of title. This further processing shall be carried out free of charge and exclusively for us as manufacturer within the meaning of § 950 BGB (German Civil Code), without obligating us. The processed goods shall be deemed to be goods subject to retention of title.

6.4 In the event of processing, combination or mixing with goods which are not our property, we shall acquire co-ownership of the new items. The extent of this co-ownership shall be determined by the ratio of the invoice value of the reserved goods to the invoice value of the other goods. If our ownership lapses as a result of combining or mixing, the customer shall already now transfer to us the ownership rights to which he is entitled in the new item to an extent corresponding to the invoice value of the goods subject to retention of title and shall hold them in safe custody for us free of charge. Our co-ownership rights shall be deemed to be reserved goods.

6.5 The customer hereby assigns to us the claim from a resale of the reserved goods. If the reserved goods are sold by the customer together with other goods not supplied by us, the assignment of the claim from the resale shall only apply in the amount of the resale value of the reserved goods. In the event of resale of goods in which we have co-ownership shares, the assignment of the claim shall apply in the amount of the resale value of these co-ownership shares.

6.6 The customer is authorized to collect the claims assigned to us from the resale of the reserved goods.

6.7 We shall be entitled to revoke the permission to resell according to clause 6.2 and the authorization to collect according to clause 6.6 if a) the customer is in default with payments arising from the business relationship; b) the customer has disposed of the goods subject to retention of title outside the ordinary course of business; or c) after conclusion of the contract, a significant deterioration in the customer's financial circumstances becomes apparent which puts one of our claims at risk, in particular in the event of suspension of payments, an application to open insolvency proceedings against the customer's assets or a bill or check protest.

6.8 If goods subject to retention of title are installed as an essential component in the real estate of a third party by the purchaser or on his behalf, the purchaser hereby assigns to us any claims for payment against the third party or the party to whom it relates, together with all ancillary rights, including the granting of a security mortgage.

6.9 If goods subject to retention of title are installed as an essential component in a property of the purchaser, the purchaser hereby assigns to us the claims arising from a sale of the property with all ancillary rights.

6.10 We undertake to release the securities to which we are entitled at the request of the customer insofar as the realizable value of the securities exceeds the claims to be secured by a total of more than 10%.

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- 6.11 The customer shall insure the goods subject to retention of title against fire, breakage, water damage and theft at his own expense and provide us with evidence of this upon request.
- 6.12 The customer must notify us immediately of any seizure of the reserved goods or other interventions by third parties.
- 6.13 Withdrawal from the contract is not required to assert the reservation of title. Any return of goods shall always be made only as a precaution; this alone shall not constitute a withdrawal from the contract.
- 6.14 Upon request, the purchaser is obliged to provide us with a list of the whereabouts and storage location of all goods subject to retention of title and of his claims against third-party debtors, together with copies of invoices.
- 6.15 We reserve ownership rights going beyond the goods delivered as well as all utility model rights, design rights, patent rights, trademark rights, copyrights, personal rights and other industrial property rights, in particular to the illustrations, drawings and other documents, designs, design proposals, templates, work documents, molds, copyrights, know-how and calculations as well as software provided by us in physical or electronic form.

## 7. Duty to examine and to give notice of defects

- 7.1 Upon delivery, the Purchaser shall immediately inspect the goods with regard to quantity and packaging and shall note any complaint in this respect on the delivery bill or the consignment note. Otherwise, the quantity and packaging shall be deemed to be in accordance with the contract. Immediately after delivery of the goods, the Purchaser shall arrange for a random quality inspection and shall open the packaging for this purpose. This clause 7.1 shall only apply to purchase contracts and contracts for work and materials.
- 7.2 We must be notified in writing of any visible material defects without delay, but no later than five days after delivery of the goods. Concealed material defects must be reported to us in writing without delay, but no later than five days after their discovery. Otherwise the goods shall be deemed to have been approved. This clause 7.2 shall only apply to purchase contracts and contracts for work and materials.
- 7.3 After performance of an agreed acceptance of the delivery by the Purchaser, the notification of material defects which were recognizable at the time of acceptance shall be excluded.
- 7.4 The notice of defect shall precisely describe the type and extent of the defect.
- 7.5 The purchaser is obligated to make the rejected goods or samples thereof available to us immediately upon request for the purpose of inspection. Such an inspection may be carried out by us, our suppliers or any other third party designated by us for this purpose.

## 8. Deficiencies

- 8.1 If the delivery is defective at the time of the transfer of risk, we shall be entitled to subsequent performance at our discretion by repair or subsequent delivery.
- 8.2 Merely minor or customary deviations in dimensions and designs - in particular also in the case of repeat orders - shall not constitute a defect unless exact compliance has been expressly agreed. Technical improvements as well as necessary technical modifications shall also not constitute a defect, unless they contradict the purpose of the contract.
- 8.3 The place of performance for subsequent performance shall be our place of business (Bocholt). We shall not be obliged to reimburse transport costs borne by the customer as expenses for the purpose of subsequent performance insofar

as the expenses increase because the goods have subsequently been taken to a place other than the place of receipt.

- 8.4 In the event that subsequent performance has failed with respect to the respective defect, the Purchaser shall be entitled, at its option and subject to the statutory requirements, to reduce the purchase price or to rescind the contract. Subsequent performance shall be deemed to have failed if at least two attempts at subsequent performance have been unsuccessful. Clause 9 shall apply to claims for damages due to defects. Further claims of the Purchaser shall be excluded.
- 8.5 Rectification of defects or replacement deliveries shall be carried out by us as a matter of principle as a gesture of goodwill and without recognition of a legal obligation. An acknowledgement with the consequence of a new start of the limitation period shall only exist if we expressly declare it to the customer. With the exception of an expressly declared acknowledgement, no new limitation period shall commence with the rectification of defects or replacement delivery.
- 8.6 With any agreements on the quality of the goods, we do not assume any guarantee or any other quality risk within the meaning of the law.
- 8.7 Any delivery of used items agreed with us in individual cases shall be made to the exclusion of any warranty for material defects.
- 8.8 Claims for defects shall not exist due to damage occurring after the passing of risk as a result of incorrect or negligent handling, non-compliance with our operating or maintenance instructions, excessive stress, unsuitable operating materials, unauthorized modification to the supplies, use of spare parts not complying with the original specifications, natural wear and tear or due to external influences not within our sphere of responsibility which were not assumed under the contract (e.g. chemical or electrochemical influences).
- 8.9 Claims under a right of recourse against us by the customer pursuant to § 478 of the German Civil Code (BGB) are excluded insofar as the customer has agreed with his purchaser on rights in respect of defects that go beyond the statutory provisions.

## 9. Liability

- 9.1 Claims for damages and reimbursement of expenses by the customer, regardless of the legal basis, are excluded.
- 9.2 The exclusion of liability according to the above clause 9.1 shall not apply:
  - a) in the event of liability under the Product Liability Act;
  - b) in cases of intent or gross negligence;
  - c) in case of culpable injury to life, body or health;
  - d) in the event of a breach of material contractual obligations, i.e. obligations the fulfillment of which is a prerequisite for the proper performance of the contract and the observance of which the customer regularly relies on and may rely on. However, liability for breach of material contractual obligations shall be limited to compensation for the foreseeable damage typical for the contract, unless we are liable due to intent or gross negligence, injury to life, limb or health or under the Product Liability Act.
- 9.3 Insofar as our liability is excluded or limited in accordance with the above clauses, this shall also apply to the corresponding personal liability of our employees, vicarious agents and legal representatives.
- 9.4 A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions.
- 9.5 For damage caused by delay, Clause 4.12 shall take precedence over this Clause 9.

## 10. Statute of limitations

- 10.1 The limitation period for claims and rights due to defects in

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the delivery shall be one year from the statutory commencement of the limitation period. Deviating from this, the statutory limitation period shall apply

a) in the case of § 438 para. 1 no. 1 a) (right in rem of a third party) and b) (right entered in the land register), §§ 438 para. 1 no. 2 BGB, 634 a para. 1 no. 2 BGB (building; item which has been used for a building in accordance with its customary manner of use and has caused its defectiveness or planning/supervision services for a building), in the case of recourse claims in accordance with § 4 45b para. 1 BGB and in the case of fraudulent intent;

b) as well as for claims for damages additionally in case of liability due to intent or gross negligence, injury to life, body or health or according to the Product Liability Act.

10.2 For other claims of the Purchaser against us, the regular limitation period shall be reduced to two years from the statutory commencement of the limitation period. This shall not apply to claims for damages in the cases specified in clause 10.1 b).

## 11. Technical notes

We are not obliged to provide technical assistance or technical advice. Advice concerning the preparation of the goods for use, which we give orally, in writing or by means of tests, is given to the best of our knowledge and belief; nevertheless, it is not binding - also in relation to third parties. The risk of applicability, use and suitability shall be borne solely by the customer.

## 12. Foreign trade law

12.1 The performance of the contract with the Purchaser is subject to the proviso that no obstacles due to national or international regulations of foreign trade law as well as no embargos and/or other sanctions prevent the performance.

12.2 When passing on the goods delivered by us or the services rendered by us (including technical support of any kind) to third parties in Germany and abroad, the Purchaser shall comply with the respective applicable provisions of national and international (re-) export control law. In any case, he shall observe the (re-) export control regulations of the Federal Republic of Germany, the European Union and the United States of America.

12.3 To the extent required for export control inspections, the Purchaser shall, upon request, immediately provide us with all information regarding the final recipient, final destination and intended use of the goods delivered or services rendered by us as well as any export control restrictions in this respect.

12.4 The Purchaser shall fully indemnify us against all claims asserted against us by authorities or other third parties due to the Purchaser's failure to comply with the aforementioned export control obligations and undertakes to compensate us for all damages and expenses incurred by us in this connection, unless the Purchaser is not responsible for the breach of duty. A reversal of the burden of proof is not associated with this.

## 13. Confidentiality

13.1 The Customer shall treat our documents (in particular offer documents, drawings, product descriptions, samples and cost estimates) and our business and trade secrets (hereinafter: "Information") as confidential. In particular, he shall not be entitled to pass on information to third parties or make it available to third parties without our prior written consent. Insofar as we have consented to the passing on of orders to third parties, the latter shall be obliged to do so accordingly in writing. The obligation to maintain secrecy shall continue to apply for a period of ten years after termination or completion of the contract. It shall not apply insofar as information

a) was already known to the customer at the time of conclusion of the contract or becomes known at a later date without this being based on a breach of a confidentiality obligation or b) was already known to the public at the time of conclusion of the contract or becomes known to the public at a later date or c) must be disclosed due to statutory obligations or by order of a court or an authority.

13.2 Upon our request, the Purchaser shall immediately return to us all information in its possession, in particular the documents relating thereto, and - to the extent technically feasible - destroy or delete all copies thereof; however, the Recipient may keep one copy in the office of its legal counsel for documentation purposes.

13.3 The use of the contract for advertising purposes is not permitted without our prior consent.

## 14. Other

14.1 The place of performance for all liabilities is our registered office (Bocholt).

14.2 The invalidity of individual provisions of these Terms and Conditions of Delivery or other contractual components shall not affect the validity of the remaining provisions.

14.3 The courts having local jurisdiction for our place of business (Bocholt) shall have exclusive local jurisdiction. However, we shall remain entitled to sue the customer at his general place of jurisdiction or at any other competent court. The aforementioned provisions on the place of jurisdiction shall also apply to actions in bill of exchange and check litigation.

14.4 All legal relations between us and the Purchaser shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention/CISG).