

## General terms and conditions

Herzog Maschinenfabrik GmbH & Co. KG

### I. General information, documents, material samples

1. All deliveries and services for companies, legal persons under public law and special estates under public law are subject to these conditions of delivery and any other separate contractual agreements. These conditions of delivery apply exclusively. Any deviating, opposing or supplementary general terms and conditions of the customer shall only then and to the extent become part of the contract if and to the extent to which we expressly agree to their applicability. This requirement for consent applies in any and all cases, for example also if we provide a delivery to a customer despite knowledge of the customer's general terms and conditions. Unless agreed otherwise, these conditions of delivery shall also apply to any future deliveries and services to the customer without us having to refer to them again in each case.
2. Any and all information in the catalogues, price lists, quotes and advertisement brochures is non-binding. Changes and errors are reserved.
3. We reserve title and copyrights to any and all documents submitted to the customer in connection with placement of the order, such as samples, quotes, drawings and similar as well as to physical and immaterial information – also in electronic form. These must not be made accessible to third parties. We agree to only make any information and documents labelled as confidential by the customer accessible to third parties subject to the consent of the customer.
4. Any documents that form a part of an offer, such as images, drawings, weights and dimensions, are only approximations, unless suitability for a contractually agreed purpose requires accuracy. These are not guaranteed characteristics but descriptions and specifications of the delivery or service. The customer shall be solely responsible for any documents he has to submit, for example drawings, gauges, samples or similar. The customer guarantees that no execution documents submitted by him violates any rights of third parties within the Federal Republic of Germany or at the place of delivery. If we are being held liable by a third party based on such a violation, the customer shall be obliged to indemnify us against these claims on first written request. In the event of damage claims of third parties, the customer may prove that he was not responsible for the violation of the third-party rights.
5. Any material samples the customer makes available to us must be delivered to us free and must be accompanied by the corresponding safety data sheets. Material samples we receive that are not requested to be returned at the time of delivery or within four weeks after shipping, may be destroyed by us.
6. Samples shall only be provided in return for a charge.

### II. Conclusion of contract, scope of delivery, delivery period

1. Our offers are non-binding and subject to change. An order for deliveries and services placed by the customer shall be deemed a binding contract offer. Unless set out otherwise in the order, we shall have the right to accept this contract offer by order confirmation within two weeks after we received it.
2. The scope of delivery shall be subject to our written order confirmation.
3. Periods and dates envisaged by us shall always be approximations only, unless a fixed period or specific date was guaranteed or agreed.
5. A bindingly guaranteed or agreed fixed delivery period shall commence on the date of the written order confirmation or, if an advance payment was agreed, upon receipt of the advance payment (value date). The delivery period shall be deemed complied with if the contractual object was reported to be ready for shipping ex works to the customer by the time the period expires. Deviating provisions may be agreed in the order confirmation.
6. We shall accept no liability for impossibility of the delivery or for delayed delivery or service caused by force majeure and due to other circumstances that could not have been foreseen at the time of contract conclusion (e.g. breakdowns of all kinds, especially industrial action, legitimate lockouts, lack of workers, official orders, material shortages etc., also at sub-suppliers, as well as incorrect or delayed delivery by sub-suppliers) unless we are responsible for any such. We shall immediately inform the customer of start and estimated end of such impediments. Should such events make a delivery or service considerably more complicated or impossible for us and provided that the interruption is not only temporary, we shall have the right to withdraw from the contract. In the event of temporary impediments, the delivery and service periods shall be extended or delivery and service days shall be postponed by the duration of the impediment plus an appropriate lead time. If the customer cannot be reasonably expected to accept the delivery or service due to the delay, he may withdraw from the contract by written declaration towards us.
7. The customer is solely responsible for suitability of the installation site, for obtaining the required permits and compliance with any and all provisions under planning, construction and operating regulations as well as for the preparation of the installation site (especially foundations and other preliminary work). The same shall apply to accessibility of the installation site for the required lifting and installation machinery.

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### III. Prices and payment

1. Unless subject to a special arrangement, prices shall be purely net ex works including loading at the works, but excluding packaging, insurance or other ancillary costs. Value added tax at the respective statutory rate shall be added to the prices.
2. If no special agreements were concluded, the payment must be effected without deductions within 30 days of the invoice date. The customer shall only have a right to withhold payments or to offset against counterclaims if his counterclaims are undisputed or were legally determined.

### IV. Place of performance, transfer of risk, acceptance

1. The delivery shall take place ex our place of business; our place of business shall also be the place of performance for delivery and any supplementary performance.
2. The risk shall be transferred to the customer when the delivered item has left our works premises, also if we provide partial deliveries or other services, e.g. have assumed the shipping costs or delivery and assembly. Deviating provisions may be agreed in the order confirmation.
3. If shipping or acceptance is delayed or does it not take place as a result of circumstances we are not responsible for, the risk shall be transferred to the customer on the day on which the delivered item is ready for shipping and on which we informed the customer thereof. We agree to take out any insurances at the costs of the customer which the customer requested.

### V. Retention of title

1. We reserve title to the delivered item until any and all claims against the customer under the business relationship, including any future claims, also under contracts that were concluded at the same time or later, have been fulfilled. This shall also apply if individual or all claims of the supplier were listed and balanced in a current invoice.
2. The customer shall have the right to resell the delivered item in the course of normal business operations. However, he already now assigns any and all claims including any ancillary rights he is entitled to towards the purchaser or a third party under such resale to us. The customer shall remain authorised to collect this claim also after assignment. Our right to collect the claims ourselves shall remain unaffected; we do, however, agree to not collect the claim for as long as the customer fulfils his payment obligations. We may demand the customer to disclose to us all assigned claims and the corresponding debtors, to provide us with all information necessary for collection, to submit to us all associated documents and to inform the debtors of the assignment. If the delivered item is resold together with other items that do not belong to us, the customer's claim towards his customer shall be deemed assigned to us to the amount of the delivery price we agreed with the customer. We agree to release the securities we are entitled to to the extent that their realisable value exceeds the claims that are to be secured, provided they were not yet fulfilled, by more than 10 per cent.
3. We shall have the right to insure the delivery item against theft, breakage, damage caused by fire or water or other damage at the costs of the customer unless the customer himself can prove that he took out insurance.
4. The customer must neither pledge nor assign the delivered item as security. In the event of pledging or seizure or other third-party injunctions, the customer must inform us thereof immediately.

### VI. Warranty

1. The customer's rights in regard to material defects and defects of title (including incorrect delivery and short delivery as well as improper installation or defective installation instructions) are subject to statutory provisions, unless regulated otherwise below.
2. The main basis of our warranty is the agreement concluded regarding the characteristics of the goods. Deemed agreements regarding the characteristics of goods are any and all product descriptions that are the subject matter of the respective contract. If no characteristics were agreed, the decision whether a defect is present or not shall be made in accordance with statutory regulations (section 434 clause 1 second and third sentence *BGB* [*Bürgerliches Gesetzbuch*, German Commercial Code]).
3. Warranty claims of the customer are subject to the condition precedent that he complied with his statutory examination obligations and obligations regarding giving notice of defect (sections 377, 381 *HGB* [*Handelsgesetzbuch*, German Commercial Code]). If a defect is revealed during an inspection or at a later point, we must be notified thereof immediately.
4. If the delivered item is defective, we shall initially have the right to choose whether we provide a supplementary performance by removal of the defect (rectification) or whether we deliver an item free from defects (replacement delivery). Our right to refuse a supplementary performance in accordance with statutory provisions shall remain unaffected.

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5. We shall have the right to make the supplementary performance owed dependent on the customer making any outstanding payments. The customer shall, however, have the right to retain a part of the payment that stands in appropriate proportion to the defect.
6. The customer must give us the necessary time and opportunity for the supplementary performance owed; especially, he shall hand over to us the reported delivered item for inspection purposes. In the event of a replacement delivery, the customer shall return the defective item in accordance with statutory provisions. The supplementary performance shall include neither the removal of the defective item nor the repeated installation, provided that we were not responsible for the original installation.
7. Any costs incurred in the inspection and the supplementary performance, especially transport costs, road charges, labour costs and material costs (not: removal and installation costs) shall be assumed by us if the item is actually defective. Otherwise, we shall be entitled to demand the customer to reimburse any costs incurred as a result of the unjustified demand for removal of defects (especially inspection and transport costs), unless the customer was incapable of determining that no defect was present.
8. If the supplementary performance is unsuccessful or if an appropriate time limit for the supplementary performance that had to be set by the customer expired unsuccessfully or if no such time limit has to be set pursuant to statutory provisions, the customer may withdraw from the contract or may reduce the payment amount. However, no right of withdrawal applies in case of only minor defects.
9. We do not assume warranty for damage that was caused by any of the following: inappropriate or improper use, incorrect assembly or putting into operation by the customer or third parties, natural and customary wear and tear, incorrect or negligent handling, excessive stress, improper maintenance, unsuitable operating material as well as chemical, electrochemical or electrical influences – unless we are responsible for these, changes to the delivered item without our prior approval.
10. Also in the event of defects, claims of the customer for compensation or reimbursement of fruitless expenditures shall also only be valid in accordance with section VIII and are otherwise excluded.

## VII. Property rights

1. We guarantee that the delivered item is free from industrial property rights or copyrights of third parties. Each party to the contract shall immediately inform the respective other party to the contract if claims are asserted against it based on the violation of such rights. If the delivered item violates any industrial property right or a copyright of a third party, we shall at our choice and at our costs modify or exchange the delivered item so that third-party rights are no longer violated, but with the delivered item still exhibiting the features agreed in the contract, or we shall obtain a right of use for the customer by concluding a licence agreement. If we do not achieve any of the above within an appropriate period, the customer shall have the right to withdraw from the contract or to reduce the payment by an appropriate amount. Any damage claims of the customer shall be subject to the limitations set out in section VIII of these general terms and conditions.
2. In the event of legal infringement by products of other manufacturers that we delivered, we shall, at our choice, assert the claims against the manufacturers and sub-suppliers for account of the customer or shall assign such claims to the customer. In such events, claims against us shall only be valid in accordance with this section VII, provided enforcement of the aforementioned claims against the manufacturers and sub-suppliers at court was unsuccessful, or if such enforcement at court is futile, e.g. due to insolvency.
3. We have no obligation to assume liability under this section if the violation of industrial property rights or copyrights is caused by an instruction of the customer or if the violation is the result of the customer making unauthorised changes to the delivered item or the customer using the delivered item in a non-contract compliant manner.

## VIII. Other liability

1. Unless stated otherwise in these conditions of delivery including the following provisions, we shall assume liability for any violation of contractual and non-contractual obligations in accordance with statutory provisions.
2. We shall be liable for compensation payments – irrespective of the legal grounds – under fault-based liability in the event of deliberate action and gross negligence. In the event of simple negligence, we shall assume liability in accordance with statutory provisions, subject to a lower liability level (for example for due care in own matters) only in the event of
  - a) damages caused by injury to life, limb or health,
  - b) damages caused by a not just minor violation of a major contractual duty (a duty the fulfilment of which makes the proper implementation of the contract possible in the first place and fulfilment of which the contractual partner will and can regularly rely on); in this case, however, our liability shall be limited to the reimbursement of the foreseeable, typically incurred damage.
3. The liability limitations set out in clause 2 shall also apply to a breach of duty on the part or in favour of persons whose faults we are legally obliged to assume responsibility for. They shall not apply if we have concealed a defect with fraudulent intent or gave a guarantee for the characteristics of the goods; neither shall they apply to claims under product liability law.
4. The customer can only withdraw from and cancel the contract due to a breach of duty that does not constitute a defect if we are responsible for this breach of duty. A free right of withdrawal of the customer (especially in regard to sections 651, 649 *BGB*) is excluded. Apart from the above, statutory provisions and legal consequences apply.

## IX. Statute of limitations

1. In deviation from section 438 clause 1 number 3 *BGB*, the general statute of limitations for claims based on material defects and defects of title is one year after delivery. If acceptance was agreed, the statute of limitations shall commence upon acceptance.
2. If, however, the delivered item is a building or an item that was used for a building in accordance with its usual use and if it caused the defect of the building (building material), the statute of limitations shall be five years after delivery in accordance with statutory regulations (section 438 clause 1 number 2 *BGB*). Any further special statutory provisions regarding the statute of limitations shall remain unaffected as well.
3. The above statutes of limitations under purchase rights shall also apply to any contractual and non-contractual damage claims of the customer that are based on a defect of the delivered item, unless the application of the regular statute of limitations (sections 195, 199 *BGB*) would result in a shorter statute of limitations in individual cases. Damage claims of the customer in accordance with section VIII number 2 first sentence and second sentence letter a) as well as under product liability law shall exclusively become time-barred in accordance with statutory provisions regarding the statute of limitations.

All claims of the customer – irrespective of their legal grounds – shall become time-barred after 12 months. Statutory time limits shall apply to deliberate or fraudulent behaviour as well as to claims under product liability law.

## X. Use of software

If the scope of delivery includes software, the customer is granted a non-exclusive right to utilise the software including its documentation. The software is provided for use on a specified delivered item. Any use of the software on more than one system is prohibited. The customer may only copy, edit, translate or convert the software from the object code into the source code as permitted by law (sections 69 a et seqq. *UrhG* [*Urheberrechtsgesetz*, Copyright Act]). The customer agrees to not remove information affixed by the manufacturer – especially copyright notices – or to edit the software without our express prior permission. All other rights to the software and the documentation including the copies shall remain with us or the supplier of the software. Sublicensing is prohibited.

## XI. Applicable law, place of jurisdiction

1. These conditions of delivery and any and all legal relationships between us and the customer shall be exclusively subject to the law of the Federal Republic of Germany excluding international uniform law, especially the United Nations Convention on Contracts for the International Sale of Goods.
2. If the customer is a businessman in terms of the *Handelsgesetzbuch*, a legal person under public law or a special estate under public law, the exclusive – also international – place of jurisdiction for any disputes directly or indirectly arising in connection with the contract shall be our place of business in Osnabrück. We shall, however, have the right to bring action at the general place of jurisdiction of the customer.