

Business Conditions

General Terms and Conditions of Delivery and Payment of Hornung GmbH

I. General and Conclusion of Agreement

1. Unless otherwise agreed in writing, our deliveries shall be subject exclusively to the conditions below. On receipt of the goods at the latest, our General Terms and Conditions shall be taken as accepted. The customer's purchasing terms and conditions are hereby expressly excluded, nor shall they commit us in any way even if they are not expressly excluded at the time of conclusion of the agreement. In the event of amendments or other subsidiary agreements, the remaining conditions shall retain their full validity.
2. Our offers are always without obligation. In order to be valid, all transactions, orders and other agreements require our confirmation in writing. Our written order confirmation or agreement shall determine the nature and scope of the delivery.

II. Price and Invoicing, Terms of Payment etc.

1. Our normal terms of payment are as follows: If no agreement to the contrary is reached, 10 days net cash after date of invoice.
2. Unless otherwise agreed, our prices are to be understood in Euros, ex works, excluding packaging.
3. The customer may only set off payment against counterclaims which are undisputed or legally determined.
4. If payment deadlines are exceeded, default interest of 9% above the base interest rate will be due without the need for a special reminder.
 - 4a. A discount deduction is inadmissible as long as older invoices are still outstanding. We are entitled, in spite of the customer's contrary provisions, to charge payments initially to the customer's older debts; we will inform the customer about the type of settlement made. If costs and interest have already been incurred, we are entitled to charge the payment first to the costs, then to the interest and finally to the main service.
5. In the event that cheques have not been encashed, either in whole or in part, by the date on which invoices are due for payment, all our unpaid claims shall be due immediately. We shall only be obliged to make further deliveries if the entire unpaid balance is settled immediately and if cash in advance is provided for the entire amount of the goods to be delivered.

III. Retention of Title

1. Title shall be retained on all delivered goods (reserve items) until all claims against the customer, for whatever legal reason, have been met in full. This is also then applicable when separate claims of our claims have been included in a current invoice and the account has been balanced and accepted. Any contingent treatment or processing of the reserve items shall be performed by the purchaser on behalf of the seller, without any obligation being placed on the latter as a result. In the event that the reserve items are joined, blended or processed by the customer with other items which do not belong to us, we shall have title to the new object in the proportion of the value of the reserve item to the other items used for joining or processing at the time of such joining or processing.
2. Claims owing to the customer through further sale are herewith already assigned to us together with all accessory claims. In the event of the sale of reserve items together with other items or the sale of processed reserve items (section 1, 2nd sentence) the claim is herewith assigned to the extent of our invoice amount for the reserve items.
3. In the event of resale abroad, the entire invoice amount shall be due for payment before the goods leave the country.
4. Excess Safeguarding Clause. Provided that the existing collateral security exceeds the debt claims to be secured by more than 15 %, the seller shall undertake to release the appertaining security to the purchaser upon request.

IV. Delivery Schedule and Unforeseen Circumstances

1. The schedule for deliveries and performance shall begin on the day on which agreement is reached between the customer and the supplier in writing. Maintenance of this schedule is subject to provision in due course of all documents, authorisation and releases, to be supplied by the customer, the acceptance and approval of plans, observance of agreed payment schedules and other obligations. In the event that these conditions are not met punctually, the delivery schedule may be extended accordingly.
2. The delivery schedule is deemed to have been maintained if the goods are ready for delivery or fetched within the agreed delivery and performance schedule. In the event that delivery is delayed at the fault of the customer, the delivery schedule is deemed to have been met if the Supplier notifies readiness for dispatch within the said schedule.
3. In the event of unforeseen hindrances outside of our control which occur either with us or with our own suppliers, such as force majeure, transport disruptions, strikes and lockouts and other operating disruptions which we are unable to prevent, the delivery schedule shall be extended accordingly.
4. In the event that the customer does not collect the ordered goods within 14 days of notification of readiness for dispatch or after shipment, we shall be entitled, after allowing an additional period of 14 days, to withdraw from the agreement and/or claim for damages on account of non-fulfilment.
5. In the event that dispatch of the ordered goods is delayed at the request of the customer and with our agreement, he shall be charged for the costs of storage in our factory, a minimum of 0.5 % of the invoice value, for every month or part thereof, starting from the month following notification of readiness for dispatch.

V. Transfer of Risk

1. Complaints can only be taken into account if submitted within 8 days of receipt of the goods. Delivered goods will only be accepted in return in their original packing. Illustrations and brochures etc. are not binding. Measurements and utilisation data are only to be regarded as approximate and are also not binding.
2. The risk shall pass to the customer, even in the event of delivery carriage-paid, as soon as the ready delivery is dispatched or collected. Unless the customer has given special dispatch instructions, delivery may be made at our discretion by the most suitable means. On request of the customer the delivery will be insured at his cost against breakage, transport and damage from fire or water.
3. In the event that dispatch or delivery is delayed at the request of the customer or for reasons for which he is responsible, the risk shall pass to the customer for the period of the delay, however at the request of the customer, we shall arrange the insurance cover he requires at his expense.

VI. Warranty Claims

Warranty claims shall be recognised, if the defect has been reported to us in writing within 12 months of the delivery date. To the exclusion of further claims – subject to section VII – we will provide a warranty as follows:

1. We shall have the option to either replace or to carry out repairs free of charge on all those parts which prove to be defective due to circumstances which occurred prior to the transfer of risk. The discovery of such defects must be reported to us immediately in writing. Replaced parts become our property.
2. If we have to supply according to drawings, specifications, samples etc. provided by the customer, then the customer carries the risk for the suitability for the intended purpose. Decisive for the condition of the goods conforming to the agreement is the point in time of the transfer of risk according to section V.
3. If a final inspection of the goods has been agreed or an inspection of the first sample, then customer's complaints will not be recognised later concerning defects which the customer should have noticed at the final inspection or inspection of the first sample if it had been carried out with due care and attention.
4. We must be given an opportunity to confirm the defect the complaint is being made about. Rejected goods must be returned to us immediately on demand. We will bear the transport costs if the customer complaint is justified. If the customer does not comply with these obligations or makes changes to the rejected goods without our agreement, then he forfeits any claims under warranty of quality.
5. Only in urgent cases, in which operational security is endangered or to prevent a disproportionate amount of damage being incurred, does the customer have the right to remedy the defect or have it remedied by a third party and to demand compensation from us for expenses thus incurred, whereby we must be informed immediately.
6. Of costs incurred due to the rectification of defects or the replacement delivery, providing the complaint proves to be justified, we will bear the costs for the replacement goods including transport and also reasonable costs for disassembly and assembly.
7. Within the framework of legal provisions, the customer has the right to withdraw from the contract if, taking the legal exceptions into consideration, we do not successfully make use of a reasonable period of time given to us for rectification of defects or a replacement delivery due to a exhibitory defect. If the defect is insignificant, then the customer only has the right to claim a reduction of the contractual price. In all other cases the right to a reduction of the agreed price is excluded.
8. No warranty will be given in the following cases in particular: Unsuitable or inappropriate use, faulty installation or start-up by the customer or a third party, natural wear and tear, incorrect or negligent treatment, maintenance not carried out correctly, unsuitable construction work, unsuitable foundation, chemical, electrochemical or electrical influences providing we are not liable for them.
9. If the customer or a third party reworks the goods incorrectly, then we are not liable for the consequences arising from this. The same applies to changes made to the delivery item without our prior agreement.
10. We only provide a warranty for accessories added on within the framework of the warranty provided by our supplier.

VII. Liability

1. If we are responsible for the customer not being able to use the delivery item as stipulated in the contract as a consequence of suggestions made and consultations carried out before or after the contract was concluded which were omitted or carried out incorrectly or through infringing upon other subsidiary obligations - in particular instructions for operating and maintaining the delivery item - then to the exclusion of further claims made by the customer, the stipulations in sections VI and VII. 2 apply correspondingly.
2. For damages, which have not been incurred by the delivery item itself, we only accept liability - whatever legal reasons are given - in the case of
 - intent,
 - gross negligence by executive employees,
 - culpable injury of life, body, health,
 - malicious silence with regard to a defect or the non-existence of which had been guaranteed
 - defects of the delivery item for which liability must be accepted according to the German Law on Product Liability for damages to persons or property with regards to privately used objects.In the case of culpable infringement of essential contractual obligations, we also accept liability for gross negligence of non-executive employees and in the case of slight negligence, in the latter case limited to reasonable, foreseeable damages typical to a contract. Any further claims shall be excluded.

VIII. Statutory Limitation

All claims made by the customer - for whatever legal reasons - are subject to a limitation period of 12 months. For wilful or fraudulent behaviour and for claims based on the German Product Liability Law, the legal limitations apply. They shall also apply to defects in a building structure or for delivery items that were used in accordance with the normal use for a building structure and caused its defectiveness.

IX. Place of performance and jurisdiction

1. Place of fulfilment and exclusive place of jurisdiction for all claims arising out of this agreement, including proceedings related to cheques or documents, shall be Neu-Isenburg / Germany.
2. German law shall be applicable to matters arising out of this Agreement.

X. Validity of the Agreement

Should one or more of the provisions of this Agreement be or become invalid for any reason, the provisions should be interpreted to ensure that the commercial aim of the original, invalid provision is upheld. The validity of the remaining provisions shall remain unaffected.