

General Terms and Conditions of Delivery and Performance

of Hauhinco Maschinenfabrik G. Hausherr, Jochums GmbH & Co. KG

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1. General Notes, Scope

- 1.1 Our deliveries and performances shall exclusively be subject to these general terms and conditions of delivery and performance („GTC“). The GTC shall apply to all future transactions and no additional reference to the GTC shall be required. Our GTC shall also apply if we are aware of contradictory, deviating or additional general terms and conditions of the contractor when accepting purchased goods from the contractor. General terms and conditions of the contractor which contradict, deviate from or exceed our GTC shall under no circumstances be binding for us, even if we do not explicitly object to such general terms and conditions of the contractor unless, however, we explicitly consent to their application in writing.
- 1.2 The legal relationship between us and the customer shall exclusively be governed by the signed written agreement and these GTC. Supplements and amendments to the written agreement, including these GTC, require the written form to be effective (§ 126 BGB). Oral agreements and particular understandings between the contractor and us do, however, prevail and shall be confirmed in writing.
- 1.3 Any declarations or notifications with binding effect given by the customer to us after conclusion of the agreement (e.g. setting of deadlines, notifications of defects, declarations of cancellation or reduction) must be given in writing.
- 1.4. References to the application of statutory provisions shall only be made for clarification purposes. Therefore, the statutory provisions shall apply to the agreement even without being referenced in these GTC unless such provisions are explicitly amended or excluded.

2. Offers and Conclusion of Contracts

- 2.1 Our offers to the customer are non-binding unless they are expressly indicated to be binding or they contain a particular time for acceptance. An order brought by the customer is considered a binding offer. The offer shall usually be accepted within four weeks at our discretion by submitting an order confirmation or by providing the ordered delivery or performance without any reservation to the customer.
- 2.2 The performance of our contractual obligations in respect of the supply of such components which are covered by public export regulations shall be subject to the required permissions by the respective competent authorities.
- 2.3 We may cancel the contract unless all permits and licenses required in respect of our contractual obligations are granted or provided by the customer within four weeks after the conclusion of the contract.
- 2.4 We reserve the right of ownership and the copyright as well as any other right in respect of any cost estimates, drawings, plans, illustrations, information about weights and measurements, performance and consumption data as well as technical data and descriptions and any other information and documents (together the “Information”). Any Information shall be treated strictly confidential and shall especially not be disclosed or made otherwise available to any third party

without our prior written consent. At our request, the customer shall either completely destroy or return any Information and reproductions thereof (including digital copies) to us. The customer shall either destroy or return all Information and reproductions thereof (including digital copies) to us without our particular request if the respective order is completed or if he does no longer require the Information in the context of the order or if negotiations do not result in the conclusion of a contract.

- 2.5 The documentation in relation to the offer, including illustrations, drawings, weights and measurements, performance and consumption data as well as technical data and descriptions provided in the respective product information or advertising material are non-binding. They may only be considered as descriptions and do not include any quality agreement and any guaranty of quality or durability pursuant to § 443 BGB (German Civil Code).
- 2.6 In case of a sale by sample or pattern, such sample or pattern only guarantee the professional sample production; they do not imply any guarantee for the quality or the duration of the goods to be delivered.

3. Prices, Terms of Payment, Default of Payment

- 3.1 The prices agreed upon conclusion of the contract, in particular the prices indicated in the order form or in the order confirmation, shall apply. Unless otherwise stated, prices shall be understood to be ex works including the loading, but exclusive of packaging and other costs. The services provided by us are billed according to the time effort based on the current applicable hourly rates. The current hourly rates are determined by our current pricelist which will be – in case it has not been incorporated into the order confirmation anyway – sent upon request immediately. All prices shall be net prices plus the applicable VAT. Any customs duties, fees, taxes and other public charges shall be borne by the customer. In case of foreign shipments further country-specific taxes may occur. In case of delivery by mail/courier or by rail, the risk and the costs of the delivery shall be borne by the customer.
- 3.2 For small orders below a merchandise value of 150,00 EUR a small order surcharge is applied.
- 3.3 We reserve the right to adjust our prices appropriately if changes in costs occur after conclusion of the contract, in particular due to labor agreements, price increases by our suppliers or fluctuations in the currency exchange rate. On request of the customer, we will substantiate the reasons for the price adjustment. The adjustment may not exceed 10% of the order value. If an adjustment exceeding 10% is required, we shall notify the customer in writing and the customer shall be entitled to withdraw from the contract within 14 days after the receipt of our notification. In this case, the customer shall pay for the costs and expenses that have already incurred. The right of price adjustment does not apply for goods and services which are to be delivered or provided within four months after the conclusion of the contract, unless they are delivered and provided under a continuing obligation.
- 3.4 Unless a different payment schedule is provided in the invoice, our invoices are to be paid as follows:
 - 50% of the total amount upon receipt of our written order confirmation,
 - another 30% of the total amount upon notification that the goods are ready for dispatch or - if the acceptance is carried out in our company – upon notification that the goods are ready for acceptance,

- another 10% of the total amount upon delivery and
- the remaining 10% of the total amount upon the startup or – if the acceptance is to be carried out at the customers place – upon acceptance.

If the acceptance of the goods does not take place within 14 days after receipt of the notification that the goods are ready for acceptance or – if the acceptance is carried out at the customers place – upon receipt of the goods, the goods shall be deemed to be accepted provided that the goods are constructed in accordance with the contract and the acceptance is not excluded with respect to the nature of the goods.

For the date of payment, the receipt of money on one of our accounts shall be decisive. If the customer does not pay on the due date, the outstanding amounts shall be subject to interest in the amount of 8% p.a. above the respective base rate (§ 353 HGB).

- 3.5 The customer shall only be entitled to set-off rights and to exercise any rights of retention if his claims have been finally settled or accepted by us. Any right of retention shall in addition only arise if the asserted claim relates to the same contractual relationship as our claim.
- 3.6 If the customer does not pay due invoices, exceeds a granted credit period or if the customer's financial circumstances deteriorate after the conclusion of the contract or if we become aware of negative information about the customer which might question the solvency or creditworthiness of the customer after conclusion of the contract, we shall be entitled to set the whole remaining debt of the customer due and - even if that means a change of the original contractual agreement - ask for advance payment or security or after a delivery ask for the payment of all claims relating to the same contractual relationship. This shall especially apply, if the customer ceases payments, if cheques cannot be cashed, if exchanges are not paid or if insolvency proceedings have been opened, have been applied for or have been rejected due to a lack of insolvency assets.
- 3.7 If the customer cancels the order, he shall reimburse all proven costs that have incurred up to this point. For the services provided by us, the current applicable hourly rates are decisive.

4. Time of Delivery and Performance, Delay in Performance

- 4.1 The agreed upon delivery periods and dates are meant to be approximately, unless a fixed delivery date was expressly agreed upon in writing. Particular delivery periods shall begin by sending our order confirmation. The delivery deadline is met if the goods have left our plant before the deadline has expired or if we have notified the customer that we are prepared to dispatch or we have offered to conduct the acceptance.

If delivery periods are exceeded for reasons which we are responsible for the customer shall be entitled to withdraw from the contract after an appropriate grace period granted by the customer has passed without success. The withdrawal shall be made in writing.

- 4.2 Unless a fixed delivery date was exceptionally agreed upon, we shall only be in default after a reasonable grace period granted by the customer has expired. We shall not be in default in cases of force majeure or other unforeseeable extraordinary circumstances beyond our control, such as stoppages due to fire, flooding, or similar circumstances, failure of production facilities or machines, late delivery or non-delivery by our suppliers or stoppages due to the shortage of raw materials, lack of energy or work, strike, lockout, difficulties with transport capacities, transport disruptions, interference by public authorities. If we are not able to fulfill our contractual obligations in time due to any of the aforementioned events, we shall be entitled to postpone the

delivery or performance for an additional period of time consisting of the duration of the hindrance and a reasonable start-up time. If the delay of performance takes more than two months, we as well as the customer shall be entitled to withdraw from the contract regarding the contractual volume affected by the delay without being subject to any claims for damages.

- 4.3 In any case of delay, our liability shall be limited pursuant to clause 9.
- 4.4. If the dispatch is delayed upon request of the customer, he shall be charged with the monthly costs of the storage commencing one month after he is notified that we are ready to dispatch. If the goods are stored in our plant, the customer shall pay at least 3% of the total invoice per month or part thereof but not more than 20% of the total invoice. The customer is expressly entitled to prove that no storage costs or less storage costs have incurred compared to the aforementioned fixed rate. Further statutory claims for reimbursement shall remain unaffected.
- 4.5 If reasonable for the customer, we shall be entitled to provide partial deliveries and performances within the agreed period of delivery and performance.
- 4.6 Meeting our periods of delivery and performance requires the due and proper performance of the contractual obligations by the customer, in particular the supply of goods to be prepared by the customer, furnishing of documents, permissions and releases as well as the receipt of any stated payments in advance. The objection of the non-fulfilled contract remains unaffected.

5. Transfer of Risk, Transport and Packaging, Receipt

- 5.1 Deliveries will be at our discretion unpacked from our plant or storage, unless stated otherwise between us and the customer in writing. In this case, the risks of accidental loss and deterioration of the goods shall be transferred to the customer when the customer is notified about the goods being available for collection ("availability for dispatch"). If the customer demands the dispatch of the goods, the risks of accidental loss and deterioration of the goods shall be transferred to the customer when the goods are handed over to the carrier. The customer shall also bear the risks of accidental loss and deterioration of the goods in case of partial deliveries or if we exceptionally assumed additional services such as freight charges or the transportation. If the dispatch is delayed due to circumstances caused by the customer, the risk shall be transferred to the customer on the date when the goods were available for dispatch.
- 5.2 In case of a dispatch of the goods to the customer, the modifications of dispatch are - unless stated otherwise - chosen at our discretion. At the customer's request, we will insure the dispatch at his costs against theft, breakage, transport, fire and water damages as well as any other insurable risks.
- 5.3 If acceptance is required, the date of acceptance shall be decisive for the transfer of risks. The acceptance shall be conducted on the contractual date of acceptance without undue delay, or alternatively, after notification of the customer that the goods are available for acceptance. If the acceptance is not conducted within two weeks after our notification about the goods being ready for acceptance the risk shall be transferred to the customer after the expiration of this period.
- 5.4 Notwithstanding his rights under clause 8, the customer is required to accept the supplied goods or, if acceptance is required, to accept the delivery, also if the goods show minor defects.
- 5.5. The customer may refuse a required acceptance if the defect contradicts or reduces the ordinary and/or the contractually agreed use of the work and/or its value. If the goods are defective but the defects do not entitle the customer to refuse the acceptance, the customer

may accept the goods under reservation of his right to claim remediation. The customer shall notify us of his refusal of the acceptance or any reservations concerning the acceptance in writing without undue delay stating the details and the description of the named defect.

- 5.6 If the customer is in default of acceptance or fails to fulfill his cooperation obligations, in particular the acceptance of the goods, the collection of the goods after receipt of our notification about availability for dispatch of the goods or the rejection of the acceptance of the goods due to reasons for which the customer is responsible, we shall be entitled to claim compensation for any damage and any additional expenses resulting from this default (e.g. storage costs, wasted tender expenses for tests, etc.). For this purpose, we shall be entitled to charge a lump sum compensation amounting to 3% of the total invoice amount for each futile attempt to tender the goods or futile attempt to deliver a specific delivery as well as for each month of additional storage. Our right to claim further damages as well as our statutory claims shall remain unaffected; any paid lump compensation shall, however, be offset against further monetary claims. The customer is entitled to claim that we have suffered no damage at all or that the actually suffered damage is significantly below the aforementioned amount of liquidated damages.
- 5.7 Non-returnable packaging shall not be taken back by us. Instead, we undertake to inform the customer about a third party who will accept the packaging materials in compliance with the Packaging Directive.

6. Software

- 6.1 Our customer is granted a permanent, simple, non-exclusive right to use our software products and the accompanying documents. Sublicensing is not permitted. The software will be provided for use on the delivered item for which it is intended. The software must not be used on more than one system. In the case of a breach of this license provision, we shall be entitled to charge usual usage fees. Any further claims shall remain unaffected.
- 6.2 We are not obliged to provide the source codes of the software products unless there is a legal obligation to provide the source code.
- 6.3 The customer is allowed to edit our software products only within the scope legally permitted. The customer is not entitled to remove or change the information about the manufacturer, especially copyright notes, without our prior approval.
- 6.4 Any other rights to the software and to the documentation, including the copies, remain with the deliverer or the software supplier.

7. Retention of Title

- 7.1 The delivered goods remain our property until full payment of the purchase price as well as of all our other present or future claims against the customer arising out of the business connection. The inclusion of the purchase price against the customer in a current invoice and the recognition of a balance shall not affect this retention of title.
- 7.2 The customer is obliged to handle the delivered goods with care as long as we reserve our title; he is particularly obliged to insure them at his own expense to the replacement value against loss, damage or destruction, e.g. damages through fire, water and theft. The customer assigns

his rights arising out or in connection with the insurance contracts to us by now. We accept this assignment.

- 7.3 The customer is not entitled to pledge or assign the goods which are our property by way of security. However, subject to the provisions given below, he shall be entitled to resell the delivered goods in the ordinary course of business. The preceding sentence shall not apply if and to the extent the customer has effectively assigned or pledged the claims arising against the other party from the resale of the goods to a third party in advance or if the customer agreed to a prohibition of assignment with a third party in advance.
- 7.4 As collateral for all our claims listed in clause 7.1, the customer hereby assigns to us all claims, including all future and conditional claims, resulting from the resale of the goods supplied by us and all subsidiary rights to the extent of the value of the goods supplied and with priority over all other claims against him. We hereby accept this assignment.
- 7.5 As far as the customer fulfills his payment obligations towards us, he is authorized to enforce the claims against his customers which he assigned to us within the ordinary course of his business. However, he shall not be entitled to agree with his customers on a current account relationship or a prohibition of assignment regarding these claims or to assign or to pledge them to third parties. If, in violation of the preceding sentence, a current account relationship exists between the customer and the purchaser of our goods under retention of title, the claim previously assigned by the customer shall also relate to the confirmed balance and, in case of insolvency, to the existing balance of the current account.
- 7.6 At our request, the customer shall be obliged to provide evidence of his claims assigned to us and to notify his debtors of such assignment and to request them to pay to us up to the amount of our claims against the customer. We shall also be entitled to notify the customer's debtors of the assignment ourselves and to enforce the respective claims against them. However, we undertake not to make use of this entitlement as long as the customer duly fulfills his payment obligations without delay, as long as there has been no application for the opening of insolvency proceedings and the customer does not stop the payments. If, however, one of the cases mentioned above occurs we shall be entitled to require the customer to inform us about the assigned claims and the corresponding debtors, to provide all information required to collect the debts and to hand over the corresponding documents.
- 7.7 In the case of attachment or other interventions by third parties the contractor shall notify us without undue delay.
- 7.8 The processing or the alteration of the goods supplied by us under retention of title shall always be done by the customer on our behalf without giving rise to any liabilities on our part. If the goods supplied by us under retention of title is processed together with additional material not in our ownership, we shall acquire co-ownership of the resulting goods in proportion to the value of our goods to the other processed materials at the time of the processing (regarding the total invoice including value added tax). The provisions applicable to the goods supplied under retention of title shall also apply to the goods resulting from the processing. If the goods supplied by us under retention of title is inseparably mixed or combined with additional goods not in our ownership, we shall acquire co-ownership of the resulting goods in proportion to the value of our goods to the mixed or combined materials at the time of the mixing or the combination (regarding total invoice including VAT). If the mixing or the combination occurs in a way that the customer's resulting item is to be deemed as the main item, it shall be agreed that the customer transfers prorated co-ownership to us. The customer shall retain the arising sole ownership or co-ownership for us. The customer shall be entitled to sell the goods resulting from processing, alteration, mixing or combination in the ordinary course of business, as long as he

duly complies with his obligations under the business relationship with us. However, the customer shall under no circumstances be entitled to sell the new products, to utilize them otherwise while agreeing with his customer not to assign them, to pledge or to assign them by way of security. The customer by now assigns by way of security his claims to us arising out or in connection with the sale of these new products to which we have property rights in proportion of our part of the property in the sold products. If the customer combines or mixes the delivered goods with a main item, he hereby assigns his claims against the third party to the extent of the value of our goods to us. We hereby accept this assignment.

- 7.9 We undertake to release the securities held by us to the extent that (i) the estimated value of our securities exceeds our secured claims against the customer by more than 20 % (ii) the realizable value of our securities exceeds our secured claims against the customer by more than 10 %; we are entitled to determine the securities to be released.
- 7.10 If the customer is in breach of the contract, in particular if he delays the payment by more than 10 % of the invoice amount for a period of at least 30 days after the due date and the receipt of the invoice, we shall be entitled to seize the delivered goods in order to utilize them or to stipulate an additional period for the customer to comply with the contractual obligations. In case of delayed payment the additional period does not need to exceed two further weeks. In case of the utilization of the goods, the utilization proceeds reduced by reasonable utilization costs shall be offset against the customer's debts according to § 366 para. 2 BGB (German Civil Code).
- 7.11 This clause 7 shall apply *mutatis mutandis* to such items in which we acquire sole ownership or co-ownership due to the processing or combination or mixing of the goods.

8. Warranty, Customer's Right in case of Defects

- 8.1 The description of the goods in the individual contract shall be exclusively decisive in relation to the quality of the goods. In the absence of any quality agreement, the existence or non-existence of a defect shall be assessed according to the applicable statutory provision (§ 434 para. 1 sentence 2 und 3 BGB).
- 8.2 The goods supplied by us must be examined carefully immediately after delivery to the customer or to a third party appointed by him (§ 377 HGB). The goods are considered to be accepted unless obvious defects or other defects which could be discovered during the immediate inspection are notified to us in writing within five days after the delivery of the goods to the customer or the third party or otherwise within five days after the discovery of the defect or any earlier date at which the defect was recognizable without a closer examination by the customer in course of the normal use of the goods. In addition, the customer is obliged to notify us in the event of visible quality defects. If the customer fails to inspect the goods and/or report any defects as required, we shall not be liable for any defect which were recognized and for any defect which could have been discovered if the goods had been duly inspected. The customer shall be able to exercise his rights in respect of a defect only as long as the respective goods have not been mixed and/or processed by the customer, provided that, however, the customer is able to prove the defect still after the mixing or processing of the goods or the defect becomes recognizable only after the mixing or processing.
- 8.3 If the delivered goods are defective, we shall be entitled to remedy the defect by delivery of non-defective goods (replacement). Our right to refuse the chosen remedy according to statutory requirements remains unaffected. The customer is obliged to give us time and opportunity for the remedial measure, in particular he is obliged to hand over the defective goods to allow us a

proper inspection. He is obliged to provide adequate assistance, in particular to load the defective goods for our collection.

- 8.4 We may not be held liable for defects resulting from faults not in our responsibility, as for example in case of improper use or handling of the goods, excessive use, incorrect operation, incorrect assembly or incorrect commissioning by the customer or by a third party, incorrect maintenance, wear and tear, the use of inappropriate equipment, changes or repair without our prior approval or in cases when the customer does not give us the appropriate opportunity to repair the goods.
- 8.5 Expenses required for the inspection of the goods such as in particular transport charges, travel costs, labour costs and material costs, shall be borne by us if a defect actually exists. If the customer's claim for remediation turns out to be unjustified, we shall be entitled to demand reimbursement of the resulting costs from the customer.
- 8.6 If the remediation fails after the second attempt or if an appropriate period of time to be set by the customer for remediation has expired without success or if such an additional period is not required according to applicable law, the customer shall be entitled to withdraw from the contract or to reduce the price. However, if the defect is not material, the customer shall not be entitled to withdraw from the contract.
- 8.7 The customer shall be entitled to claim damages or substitution of futile expenditures based on our fault only subject to clause 9.
- 8.8 The customer shall be entitled to claim compensation pursuant to § 478 BGB (German Civil Code) to the extent only that he did not agree with his customers on claims exceeding those granted by applicable statutory law.

9. Liability

- 9.1 We are only liable for damages – irrespective of their legal basis – in case of willful intent and gross negligence. In cases of minor negligence we shall only be liable
- a) for damages resulting from death, physical injury or harm to human health;
 - b) for losses arising from the breach of material contractual obligations. Material contractual obligations shall be (i) the obligation to deliver in a timely manner the goods free of material defects as well as (ii) the duties with respect to the provision of advice, protection and care which shall allow the customer the contractual use of the goods and (iii) the duties for protection of life and limb of the personnel of the customer or third parties and for protection of the property of the customer from material damages. In the event of this lit. b), our liability shall be limited to the reimbursement of such damages which were reasonably foreseeable at the time of the conclusion of the contract as typical results from a breach of the contract. In particular, we shall not be liable for the contractually unforeseeable loss of profits or other contractually unforeseeable indirect damages.
- 9.2 If we are liable for the breach of a material contractual obligation according to clause 9 b), our aggregate liability shall be limited to 1,5 times the total invoice amount, unless, however, we have acted intentionally or grossly negligent.
- 9.3 The exclusions and limitations of liability provided in these GTC shall be valid to the same extend for our agencies, legal agents, employees or other assignees.

- 9.4 If we provide technical information or exceptional consulting services and the information or services are not owed under the contract, the information or services shall be provided free of charge and we shall be exempt from any liability whatsoever in this regard.
- 9.5 The limitations of liability mentioned in these GTC shall not apply in the event of deceit or if we assumed a guarantee for the quality of the material. The same shall apply with respect to the customer's claims according to the German Product Liability Act.

10. Statute of Limitation

- 10.1 The customer's claims regarding defects of the delivered goods or the performed services – including claims for the compensation of damages and frustrated expenditures – shall become time-barred within the statutory limitation periods.
- 10.2 Any other claims of the customer against us shall become time-barred within one year.
- 10.3 If the customer or another customer in the supply chain has satisfied an end-customer's claims based on defects of new goods delivered by us which were also supplied to the end-customer as new products, any claims pursuant to §§ 437 and 478 para. 2 BGB (German Civil Code) shall become time-barred not earlier than two months after the time at which the customer or another customer in the supply chain has satisfied the end-customer's claims, unless, however, the customer could have successfully objected to the claim with the argument that the claim had been time-barred. The customer's claims regarding defects of the delivered goods shall in any event become time-barred if and to the extent the claims of the customer's customer regarding the defects of the goods delivered by us become time-barred and in any event after five years from the day where we delivered such goods to the customer.
- 10.4 The provisions in para. 1-3 shall not apply to claims based on the loss of life, personal injury or damage to the health of a person nor to claims pursuant to the German Product Liability Act nor to claims resulting from a defect of title in the goods supplied by us which are based on a right *in rem* of a third party due to which the restitution of the goods supplied by us can be demanded. They do further not apply to the limitation of our customer's claims which are based on fraudulent concealment on our side. In these cases, the claims shall become time-barred within the statutory limitation periods.

11. Place of performance, place of jurisdiction

- 11.1 The place of performance and venue for all claims between us and merchants or legal entities under public law or special fund under public law shall be Sprockhövel, unless mandatory statutory law provides otherwise. We reserve the right to bring a court action against the contractor at his legal court of jurisdiction.
- 11.2 The legal relationship between us and the contractor or between us and a third party shall exclusively be governed by the laws of the Federal Republic of Germany, as it applies to merchants in Germany. The provisions for the international sale of goods (CSIG) and the German private international law shall be excluded.

12. Final Regulations

- 12.1 Should any provisions of these GTC be invalid or impracticable or overruled by special agreements, the other provisions of these GTC shall remain unaffected.
- 12.2 The assignment of contractual claims by the customer to third parties shall - unless otherwise stated in these GTC - require our consent. This does not apply for monetary claims.
- 12.3 As a matter of public relations, the customer may only refer to us if we have in advance consented in writing.
- 12.4 Any personal data of the customer arising from our mutual business relationship is stored in accordance with the German Data Protection Act.
- 12.5 This document is a convenience translation of the German "Allgemeine Bedingungen für Lieferungen und Leistungen". In any event the German version shall prevail.