



***Terms of Sale and Delivery
Hartmetall-Werkzeugfabrik
Paul Horn GmbH***

As of 30.04.2019

I.

Applicability

1. The following terms of sale and delivery only apply if our customer is a business operator (under Section 14 of the German Civil Code), a legal person under public law or a special fund under public law.
2. Our terms of sale and delivery shall apply to all current and future business dealings with our customers that are concerned with ordering, delivering and paying for tools and other products, and with the provision of services. They shall apply automatically without having to refer expressly to them again.
3. Any differing, conflicting or supplementary business terms and conditions of the customer shall not form part of the contract, even if we do not expressly reject their applicability in individual cases. Any differing, conflicting or supplementary business terms and conditions shall only apply if and insofar as we have expressly agreed to them. This shall also apply in cases where we provide deliveries or services unconditionally despite being aware of the customer's business terms.

II.

Offer, placement of order and conclusion of contract

1. Our offers are only binding if they are expressly designated as such.

The offer does not constitute a guarantee concerning the condition of the contractual item or an assumption of the procurement risk.

Public statements, recommendations or advertisements by our company do not represent descriptions of the condition of the actual contractual item.

The content of our written confirmation or written acceptance of the order, including these sales and delivery conditions, shall be definitive in governing the legal relationships between us and the customer. Our written confirmation or written acceptance of the order



contains a full record of all understandings concerning the contractual item. Verbal promises made by us or verbal understandings reached prior to conclusion of the contract shall, unless otherwise expressly agreed, be replaced by the content of the written confirmation or written acceptance of the order.

With the exception of managing directors and authorised officers of the company (*Prokurists*), our employees are not entitled to enter into verbal understandings that differ from the content of the written contract.

2. We reserve title and/or copyright to all illustrations, drawings, sketches, designs, calculations, models and other documents and items that we make available to the customer in connection with the offer or placement of the order. The customer must not copy or reproduce these documents and items or make them accessible to third parties without our express consent. At our request, said documents and items are to be returned to us without delay.
3. The contract shall only come into effect following our written confirmation or written acceptance of the order or when the order is fulfilled by us.

Even in the case of orders placed electronically, the contract shall only come into effect at the time of our written confirmation or written acceptance of the order.

4. We reserve the right to make technical changes on the basis of legal regulations or on the basis of developments in science and technology, provided that this does not unreasonably impair the usability of our goods for the contractually intended purpose or unreasonably impair any conflicting interests of the customer.

We reserve the right to alter the form, dimensions, colour and/or weight as is customary for the industry, provided that this does not unreasonably impair the usability of our goods for the contractually intended purpose or unreasonably impair any conflicting interests of the customer.

If an order is placed for non-standard tools or products, then the quantity allotted for each delivery may be up to 10% lower or higher than the quantity ordered, provided that this does not unreasonably impair any conflicting interests of the customer.



III.
Prices

1. All prices are ex works (EXW) and exclusive of packaging, freight, postage and the relevant statutory VAT. This shall also apply to agreed partial deliveries and express deliveries.

The prices shall apply to the scope of supply and services detailed in our written confirmation or written acceptance of the order. Any additional or special services will be billed separately.

2. In cases where our deliveries or services are based on our list prices and the delivery or service is provided more than four months after conclusion of the contract, the valid list prices at the time of delivery or service provision shall apply.
3. Where there is an increase in our production costs (material prices and wages) between the time when the contract comes into being and the time of delivery or service provision, we shall be entitled to increase the agreed price in line with the material price and wage increase if the delivery or service is not due to be provided within four months of the contract coming into effect. If a delivery or service is due to be provided within four months of the contract coming into effect but is only provided after four months for reasons that are attributable to our customer, we shall likewise be entitled to increase the agreed price in line with the material price and wage increase.
4. Non-standard tools and products are subject to a surcharge due to the special manufacturing involved; this surcharge is to be agreed before the order is placed.

IV.
Payment conditions

1. Payments shall be made in EURO without deductions of any kind and free of transaction charges to our company's designated bank account, by cheque or bank transfer (IBAN/SWIFT), no later than 30 days after the invoice date. This shall also apply to partial deliveries.
2. If payment is received within 14 days of the invoice date, a discount of 2% shall be granted.



3. If the customer defaults in its payment obligations, default interest shall be charged at a rate of 9 percentage points above the base rate. We reserve the right to impose further claims for damage caused by default.
4. Offsetting of claims against counter claims of the customer shall be excluded, unless the counter claim is undisputed, has been established as final and absolute or is ready to be decided.

The assertion of a right of retention by the customer shall be excluded, unless the right of retention is based on the same contractual relationship, or unless the right of retention is based on a counter claim that is undisputed, has been established as final and absolute or is ready to be decided.

5. If the customer defaults on a payment that is due (i.e. the payment is not made due to circumstances attributable to the customer), the purchase price for all deliveries and services provided thus far shall become payable immediately. With regard to outstanding deliveries and services, we may demand payment or security prior to delivery or provision of the service.

If a significant deterioration in the customer's financial position occurs or becomes known after the contract is concluded, we shall be entitled to insist on payment or security deposit before we provide outstanding deliveries or services.

V.

Reservation of title

1. We reserve title to all delivered items until all receivables arising from the business relationship with the customer have been paid in full (goods subject to reservation of title).
2. We shall be entitled to insure the delivery item against theft, breakage, fire, water and other damage at the customer's expense, unless the customer can provide proof that it has already obtained such insurance itself.
3. The customer shall be entitled to process and sell the goods that are subject to reservation of title in the ordinary course of business. The customer is not permitted to pledge the goods that are subject to reservation of title or to transfer ownership thereof by way of security.



In the event of distraints and seizures or other forms of access by third parties, the customer must notify us without delay. The customer shall be liable for all costs that we incur in connection with asserting our title.

4. If we withdraw from the contract due to a breach of contract by the customer – in particular, default in payment – we shall be entitled to demand immediate return of the delivery item.
5. Processing or alteration of the delivery item by the customer is always performed on our behalf, without any obligations being imposed on us as a result. If the customer combines, mixes, adds or processes the delivery item with/to other objects, it is agreed that we shall acquire joint title to the object thereby created in accordance with the ratio of the invoice value of the delivery item to the value of the new object.
6. In the event of the goods subject to reservation of title being resold, the customer hereby assigns to us in advance and by way of security the receivables that become due to it from the purchaser; if we have joint title to the goods, they are hereby assigned proportionally in accordance with our share of joint title.

The customer remains authorised to collect the receivable in the ordinary course of business. This does not affect our authority to collect the receivable ourselves. However, we shall refrain from collecting the receivable provided that the customer meets its payment obligations from the proceeds received, does not default in payment, and that no application is filed for the opening of insolvency proceedings and no suspension of payments is imposed. In the case of any of the above, we shall be entitled to demand that the customer disclose to us the assigned receivables and associated debtors, inform us of/submit to us all the information and documents necessary to collect the receivable and inform the debtors of the assignment. In the aforementioned cases, we shall likewise be entitled to reveal the assignment to the customer's debtors.

7. If the value of the granted securities exceeds that of our receivables by more than 20%, we shall release excess securities of our choice at the customer's request.



VI.

Delivery time and delayed delivery

1. Information concerning the delivery time is non-binding, unless a fixed period or a fixed date has been expressly promised or agreed.

Compliance with the delivery time is conditional upon all commercial and technical details having been clarified between the contracting parties and on the customer having met all its obligations in a timely manner, such as providing the necessary documents and meeting the agreed payment obligations. If this is not the case, the delivery time shall be extended appropriately, unless we are responsible for the delay.

If we are required to ship the delivery item, the delivery time shall be deemed to have been met if the delivery item leaves our plant before the end of the delivery time or – in cases where delivery cannot be made for reasons that are attributable to the customer – the customer has been notified of readiness for shipping.

2. Our obligation to deliver is conditional upon deliveries being received correctly and on time from our own suppliers.

The delivery time shall be extended appropriately in the event of force majeure, labour disputes and any other events that were unforeseeable at the time of contract conclusion (such as business disruptions of any type, difficulties in procuring materials or energy, difficulties in procuring necessary approvals, actions taken by authorities), unless said events are attributable to us. We shall notify the customer without delay of the beginning and end of such circumstances.

3. If delivery is impossible or delayed, we shall not be liable insofar as this has been caused by force majeure, labour disputes or any other events that were unforeseeable at the time of contract conclusion (such as business disruptions of any type, difficulties in procuring materials or energy, difficulties in procuring necessary approvals, actions taken by authorities), unless said events are attributable to us.



If said events hamper us significantly in providing the delivery or service/make it impossible for us to provide the delivery or service and the hindrance is anything more than temporary, we shall be entitled to withdraw from the contract.

4. Partial deliveries customary in the industry shall be permitted, provided that this does not unreasonably impair any conflicting interests of the customer.

VII.

Transfer of risk

1. Deliveries are ex works (EXW).
2. If we are shipping the delivery item, the risk of accidental loss or accidental damage shall be transferred to the customer on handover to the carrier, freight forwarder or other person appointed to carry out the shipping.

This shall also apply in the case of partial deliveries or if we have assumed responsibility for further services (such as shipping costs, installation).

3. If shipping or handover of the delivery item is delayed due to circumstances that are attributable to the customer, the risk shall be transferred to the customer as soon as the customer is notified of readiness for shipping.
4. The shipment will only be insured by us against transport damage or other insurable risks at the customer's express request and expense.

VIII.

Warranty

1. In the event of material defects in the delivered items, we shall – in the first instance – be obligated and entitled to either rectify the defect (remedy) or provide replacement goods at our own discretion. Should rectification of the defect or the provision of a replacement fail, the customer reserves the right either to reduce the purchase price or withdraw from the contract in accordance with the legal conditions at its own discretion.

Any defective parts replaced shall become our property.



2. For the purpose of rectifying the defect or providing the replacement, the customer must give us appropriate time and opportunity to complete the work. The customer shall only be entitled to rectify the defect itself or have it remedied by third parties and demand reimbursement of the necessary costs in urgent cases (particularly where there is a threat to operational safety or a risk of disproportionate damage). In an urgent case such as this, the customer must inform us without delay and agree the necessary actions with us.

3. The customer may only claim damages subject to the conditions set out in Clause IX. below.

4. The limitation period for claims against defects is one year from delivery of the item.

This period does not apply if the defect has been fraudulently concealed by us. Nor does this period apply to claims for damages that are made by the customer in accordance with Clause IX below. In these cases, the relevant statutory limitation periods apply.

5. The customer must carefully examine the delivered items without delay following delivery. Complaints due to incomplete or incorrect delivery or notices of any other apparent defects must be reported to us in writing without delay; otherwise, the delivery item shall be deemed to have been accepted and no warranty claims may be asserted.

Notices of defects that are identifiable from a careful examination must be reported to us in writing no later than two weeks after delivery; otherwise, the delivery item shall be deemed to have been accepted and no warranty claims may be asserted.

Other defects must be reported to us in writing without delay as soon as they are discovered; otherwise, the delivery item shall be deemed to have been accepted and no warranty claims may be asserted.

The above provisions of Clause VIII. 5. do not apply if the defect has been fraudulently concealed by us.

6. We assume no liability in the following cases in particular:

- unsuitable or improper use or reworking;
- natural wear;
- incorrect or careless handling (particularly excessive stress/loading);



- improper repairs by the customer or third parties;
 - improper changes to the delivery item that are made without our consent.
7. In the case of defects in third-party products, we shall be entitled to assign to the customer our warranty claims against the manufacturer or upstream supplier of said third-party products, and to inform the customer to assert the assigned warranty claims against the manufacturer or upstream supplier in the first instance. The customer shall only be able to assert warranty claims against us subject to the legal conditions and in accordance with these sales and delivery conditions if legal action against the manufacturer or upstream supplier has failed or (due to insolvency, for example) has no prospect of succeeding.

For the duration of the legal dispute between the customer and the manufacturer or upstream supplier, the limitation period shall be suspended for the relevant warranty claims that the customer has against us.

IX.

Liability for damages

1. Our liability for damages, irrespective of the legal basis, particularly damages due to impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and tort, is restricted/limited as set out below.
2. We shall be liable only in the event of
 - wilful intent or gross negligence on the part of our organisational bodies, legal representatives or vicarious agents;
 - culpable injury to life, limb or health inflicted by our organisational bodies, legal representatives or vicarious agents;
 - a culpable breach of essential contractual obligations; essential contractual obligations are obligations whose fulfilment lies at the heart of the contract and is what enables the proper performance of the contract in the first place/whose breach would jeopardise the proper performance of the contract and on whose fulfilment the customer is routinely entitled to rely
 - the fraudulent concealment of a defect;
 - the assumption of a procurement risk as defined by Section 276 German Civil Code;



- the assumption of a guarantee, and only then to the extent of the guarantee assumed in each case;
 - claims that arise from the Product Liability Law or from other states of affairs that involve compulsory statutory liability.
3. Where we are liable due to a breach of essential contractual obligations caused through ordinary negligence only, the amount of our liability shall be limited to the level of loss or damage foreseeable at the time of contract conclusion and typical of the contract.
 4. The above restrictions and limitations of liability apply to exactly the same extent in favour of our organisational bodies, legal representatives and vicarious agents.

X.

Miscellaneous provisions

1. The customer is not entitled to assign its claims arising from the contractual relationship to third parties. This does not apply to monetary claims. In the case of monetary claims, we shall nevertheless be entitled to make payment to the previous creditor to discharge our obligation.
2. The place of fulfilment for all obligations arising from the contractual relationship is D-72072 Tübingen.
3. The place of jurisdiction for all disputes arising from and in connection with the contractual relationship is D-72072 Tübingen.
4. The contractual relationship is subject to the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).