

Terms and conditions of sale and delivery

1. General terms and conditions

The following terms and conditions shall be binding to the extent that nothing to the contrary has been agreed in writing. They shall take effect with the order confirmation. Deviating terms and conditions of Customer are ineffective if our terms and conditions are not contradicted immediately after dispatch of the order confirmation.

Our general terms and conditions of sale and delivery shall also apply to subsequent transactions, even if no repeated reference is made to them upon conclusion.

Side-agreements as well as amendments and supplements to the contract shall only be valid if they are confirmed by us in writing.

2. Bindingness of quotations

Our quotations shall always be subject to change without notice to the extent that a binding period has not expressly been mentioned.

Improvements or changes of the construction or finish of our products shall be reserved.

Our estimates, diagrams and other quotation documents shall remain our property. They may not be reproduced or forwarded without our approval.

3. Acceptance of orders

Orders shall only be deemed accepted if they have been confirmed by us in writing. This form can only be waived on the basis of a written agreement. Order handling shall be produced with EDP. Approval of the storage of the necessary data has been given with the origination of the contract.

4. Prices

The prices stated in our quotations, order confirmations and invoices shall be understood exclusive of the value added tax valid at the time in question.

Prices can be changed by us if Customer makes requests for alterations known.

5. Delivery and arrears in delivery

Delivery dates and periods shall be stated in writing. Delivery periods shall commence with conclusion of the contract. If amendments to the contract are subsequently agreed, said period or date shall be re-agreed.

In cases of force majeure or other unforeseeable obstacles, e.g. uprising, disturbance of operations, strike, lock-outs or delivery stoppage on the part of the manufacturer or arrears in delivery by downstream suppliers, arrears in delivery shall not occur.

Customer's claims to damages on account of delayed delivery, even after the expiry of any period of grace set for us, have been ruled out.

Part deliveries shall be admissible.

6. Dispatch - passage of risk

Dispatch shall be at Customer's own risk. In delivery, risk shall pass to Purchaser in provision of the goods with hand-over to a haulage contractor, freight forwarder or other person intended for performance. Delivery and service shall be deemed fulfilled with ready-for-operation positioning of the systems.

7. Payment terms

All deliveries shall be paid net cash immediately after receipt of the invoice. The agreements shall only apply if a payment agreement has been made. Part deliveries and additional devices supplied subsequently shall be charged separately, for which the same payment terms shall be valid.

In the event of arrears in payment, we shall be entitled, notwithstanding our other statutory rights, to demand default interest from the date of maturity of the payment to the amount of the bank interest charged to us plus value added tax, albeit no less than 5% above the discount rate of the German Federal Bank.

In the event of arrears in payment of Customer, we can, notwithstanding our other statutory rights, reject further deliveries from this or any other contract or make it dependent on advance payment or provision of collateral.

8. Retention of title

The commodities shall be supplied with a prolonged and extended retention of title and remain our property until complete payment of all our receivables from the business relationship.

Customer shall notify us without delay if third parties seize the conditional commodities or receivables assigned to us or have any other kind of recourse to them. In the event of a breach of the duty to notification, we shall be entitled to make all claims against Customer due for payment immediately. Insofar as delivery has not yet been made, we can, at our choice, deliver both immediately and also contemporaneously against payment.

Customer shall itself immediately take all measures necessary to amend and avert such interventions and claims. Apart from this, it shall also support us in defending our rights in every way.

If the conditional commodities are blended with other objects, we shall acquire co-ownership to the new object in the ratio of the value of the conditional commodities to the other objects at the time of processing.

To the extent that we do not expressly declare to the contrary, taking goods back shall however not mean withdrawal from the contract, it shall merely serve to secure our claims. Customer shall remain obligated to perform the contract. The costs of returning and exploitation of the object of purchase shall be borne by Customer. Customer shall have the obligation to keep the object of purchase in a proper condition during the term of the retention of title.

9. Notification of defects

Complaints on account of incomplete or incorrect delivery or on account of recognisable defects which can be proven to be due to a circumstance before the passage of risk, in particular defective construction, bad materials or defective finishing, shall be notified in writing without delay, albeit no later than 3 days after receipt of the commodities. Defects recognised later shall be notified without delay, albeit no later than 3 months after receipt of the commodities. In the event of a justified notification of defects, a right of retention of payment shall only be admissible in a suitable and reasonable relationship between defect and purchase price. If the trading transaction is one between merchants, Customer can only withhold payments in notification of defects about the justification of which there are no doubts. Claiming even justified defects shall also not interrupt or inhibit the course of the guarantee period.

10. Warranty

As a matter of principle, the warranty period shall commence with delivery of the commodities to Customer. For products installed by HSW GmbH, it holds: the warranty period shall commence upon notification of readiness for operation. If hand-over is delayed for more than one month for reasons for which HSW GmbH is not answerable, the warranty period shall commence 1 month after delivery of the products.

Customer shall examine the goods supplied immediately after delivery, in the event of systems after notification of readiness for operation. If a defect is seen, Customer shall notify it to HSW GmbH without delay and, as with all cases of warranty, keep the commodity at the place of erection for remedying of the defects or return it to HSW GmbH at HSW GmbH's choice.

All and any warranty shall be ruled out to the extent that Customer or a third party has made alterations of any kind or repairs or treats the commodities improperly or subjects them to damaging influences. This shall also apply if no reference has been made to possible dangers.

Warranty shall be at our choice for repair or replacement of the parts or devices giving rise to complaint. The dismantled and replaced part shall become our property. Only if reworking or replacement deliveries fail shall Customer have the right to cancellation of the contract or reduction of the price.

Further, Customer shall have no claims to damages for reimbursement of further-reaching damages, viz. those occurring on the object of delivery itself and possibly accruing to third parties. This shall not apply to the extent that there is mandatory liability in cases of malice aforethought, gross negligence or lack of assured properties.

11. Claims to damages

Claims to damages against HSW GmbH and its vicarious agents and assistants, regardless of the reason (e.g. from consultancy, positive breach of contract or tort), also and in particular for indirect or consequential damage, have been ruled out. This shall not apply to the extent that there is mandatory liability in cases of malice aforethought, gross negligence or lack of assured properties.

To the extent that claims to damages exist against HSW GmbH, its vicarious agents and assistants, they shall be barred by limitation one year after delivery of the products, in the event of systems from notification of readiness for operation.

12. Miscellaneous

Even to the extent not specifically emphasised in the above terms and conditions, Customer's claims to damages, also and in particular from positive breach of contract or culpa in contrahendo, have been ruled out within the framework of what is legally admissible.

Customer's rights from the present contract shall not be assignable.

Approval of provision with current product information and prices, in particular by telefax, shall be deemed granted. If this is not the case, Customer shall notify this to HSW GmbH in writing.

If one or more provision(s) of the present general terms and conditions of sale and delivery is/are or become(s) ineffective, the validity of the remaining provisions shall not be affected. The ineffective provision is here and now deemed replaced by a new effective one fulfilling the same legal and commercial purpose as far as possible. Supplements and side-agreements shall require written form.

13. Place of performance - place of jurisdiction

In the event of disputes, also to the extent that they are concerned with the effectivity of the contract or the present general terms and conditions of sale, the place of jurisdiction shall be Augsburg. The legal relationships between ourselves and Customer shall exclusively be governed by the law of the Federal Republic of Germany.

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