

## GENERAL TERMS AND CONDITIONS

### I. Conclusion of Contract, Scope of Delivery

1. Any contract of sale shall become effective on the date the Orderer receives our written confirmation of order or on delivery of the goods whichever occurs first. Any offer which may have been previously submitted by Henschel Antriebstechnik GmbH of Kassel shall be without prejudice and not binding upon our Company. The Orderer shall be entitled to withdraw his order (offer to enter into a contract) by a declaration in writing if the order has not been confirmed by us in writing within one month of receipt.
2. Any contract of sale shall be subject to our General Terms and Conditions unless special conditions have been agreed upon. In case our confirmation of order differs from the order, the contract shall become effective on the terms of the confirmation of order unless the Orderer raises objections immediately.  
It is herewith stated explicitly that the Orderer's purchase conditions shall not be applicable even if exclusive application of the latter is requested in the order; they shall not apply whether or not we repeat our objection at the time the contract comes into effect. Our General Terms and Conditions shall be deemed as being accepted by the Orderer at the time he takes delivery of the goods, at the latest.
3. Any information, in particular illustrations and drawings enclosed with our offer or order confirmation shall remain our property. Any performance data, consumption figures, weights, measurements etc. shall be considered only as a guidance unless we have explicitly stated that they are binding upon us. We reserve the right to modify the design of any item of supply till the time of its completion.
4. Our General Terms and Conditions shall also apply to our future supplies of spare parts and accessories regardless whether reference to our General Terms and Conditions has been made or not.
5. In the case of contracts which include the delegation of personnel for the erection or installation of machinery, the Orderer shall make all necessary arrangements so that work can be started immediately upon their arrival. The Orderer shall be responsible for the cost of any delay due to waiting times, additional journeys etc. in addition, the erection of machinery shall be governed by our special Erection Conditions ruling from time to time, even if erection is included free of charge in our scope of delivery.

### II. Delivery, Acceptance Test

1. Terms of delivery shall commence on the date of our confirmation of order, but not before final clarification of all details of the order, opening of the letter of credit and presentation of official certificates from local or foreign government authorities as may be required. Times and dates of delivery shall refer to the time of dispatch ex our works. If for reasons beyond our control delivery cannot be made in due time, time and date of delivery shall be deemed to have been observed upon the notification of readiness for dispatch.  
The time of delivery shall - without prejudice to the rights accruing to us if the Orderer is in default - be extended by the time the Orderer is in default of meeting his obligations to us under the present or any other contract. This shall apply mutatis mutandis to dates of delivery.
2. If we are in default, the Orderer shall, at the end of a reasonable respite granted to us, be entitled to withdraw from the contract unless notice of readiness to deliver has been given before expiration of such respite. In the event of partial default, the Orderer shall be entitled to withdraw from the entire contract if the resulting partial performance is of no interest to him.
3. In the event of Acts of God we shall be entitled to extend the delivery time by the duration of the impediment plus a reasonable start-up time. If one of the parties hereto can no longer reasonably be expected to perform the contract, that party shall be entitled to withdraw from the contract to that extent. Acts of God shall be deemed to include all circumstances causing a major impediment or making the delivery impossible such as measures of currency and trade policy or other acts of state, strikes, lockouts, interruptions of operations (as in the case of fire, breakdown of machinery or rolls, lack of raw material or energy) and obstruction of traffic routes, whether such conditions occur at our plant, at the supplying plant or at any subcontractor's plant.
4. If, in the course of the execution of the order, it becomes evident that we are unable to execute the order for any reason (e.g. modification of model or unusually great difficulties), we shall be entitled to rescind the contract, and be liable to reimburse only first instalments already paid with the exclusion of any further liability.
5. We shall be entitled but not obliged to insure the goods against transport risks at the Orderer's expense unless he has requested us in writing to do so.
6. If the goods delivered are commissioned for purposes other than for testing, this commissioning procedure shall be regarded as an acceptance test. This also applies when a formal acceptance test has been agreed.

### III. Time of Passing of Risk

1. Any risk of destruction (total loss), either accidental or caused by a third party, or deterioration of (or damage to), the goods shall pass to the Orderer at the time they leave our works; this shall also apply if the goods are transferred to the Orderer by ourselves. If said transfer is delayed for reasons for which the Orderer is responsible, the risk shall pass to the Orderer at the time we are ready to deliver.
2. Any claim to which we are entitled against a third party in connection with destruction or deterioration of the goods shall be assigned to the Orderer if requested

#### IV. Prices and Terms of Payment

- The price to be paid shall be the price agreed upon. If, after conclusion of the contract, the prices of raw materials, wages and/or other cost factors should increase, we shall be entitled to adjust the original price accordingly. In case of mass-produced goods, the list-price as operative on the day of delivery shall be applicable. Any modification which the Orderer wants to be made to the goods after the contract has been signed and which is actually carried out shall be charged for additionally. Unless otherwise agreed upon, our prices shall be understood for delivery ex our works.

In the case of deliveries and services from Germany to countries outside of the EU, the customer must provide us with the export certificate required for tax reasons. If the customer or a third party does not present the certificate, then the customer must immediately pay the turnover tax on the invoice total to be imposed on deliveries within Germany. In the case of deliveries and services from one member country to another member country of the EU, the customer must give us his turnover tax identification number under which he is taxed in the EU before turnover is effected. Otherwise the customer will have to pay the turnover tax total legally owed by us on top of the agreed price of our deliveries and services. When invoicing deliveries and services from Germany to other EU member states, the turnover tax regulations of the respective member state receiving the goods become applicable if either the customer is registered for turnover tax in a different EU country or if we are registered for turnover tax in the recipient country.

We are entitled to invoice separately and in addition to VAT the costs for packing, transport, erection, insurance and other incidental expenses. The Orderer shall also bear all fees, duties, rates and taxes which may become payable in his place of business by reason of already existing or future laws. If it provides that the price be paid in a foreign currency, such clause shall only determine the means of payment to be used. The exact amount to be paid shall be the equivalent countervalue of the amount in Euro payable at the official rate of exchange on the day the contract is made.
- Unless otherwise specified, all payments shall fall due at the time of delivery or one week from the date given to the Orderer as the day of readiness to deliver, whichever occurs first. Any payment due shall be made in cash without any deduction.
- Money orders, cheques and bills of exchange shall be accepted only if specially agreed, and then only as means of payment and not in settlement. A payment shall be deemed as made if the amount is at our free disposal in the Federal Republic of Germany unless we had the bill discounted or requested the customer to do so.

Collection and discount charges, as well as charges in connection with renewal and further negotiation etc. shall be borne by the Orderer. In case the Orderer's or acceptor's financial status changes for the worse during the term of a bill, or unfavourable information on the Orderer or acceptor is received only after the bill has been taken by us, we shall be entitled to request the Orderer to make immediate payment in cash or to furnish an appropriate guarantee.

It shall also be lawful for us to use any bill of exchange or guarantee obtained as a security for claims to which we are entitled if the goods are taken back by us under the German hire-purchase law.
- The Orderer shall have the right to retain payments and/or objects and to set off such payments and/or objects against any counter-claim only to the extent to which his counter-claim is undisputed or has been established as legally binding. Under the powers granted us by the member companies of our group of companies (§ 18 AktG: German Company Law)\* we shall have the right to set off any claim which we may have against the Orderer against any claim the Orderer - on whatever legal ground - may have against us or against any other company of our group of companies. This provision shall also apply to claims which one party has agreed to satisfy in cash and the other party has agreed to settle by bill of exchange or any other means of payment. Should the case occur, such agreements shall be limited to the balance. If the due dates of the claims to be set off vary, our claims shall become due not later than upon the due date of our liabilities, and settlement shall be made as of the value date.
- The Orderer shall not be entitled to assign his claims.

#### V. Orderer's Default

- If the transfer of the goods is postponed at the Orderer's request, any expenses incurred in connection with this postponement may be charged to him. This provision shall also apply, irrespective of any further claims which we may raise, in case of non-delivery due to delay in payment.
- In case the Orderer fails to take delivery within one month from the date of delivery as originally agreed upon, or from the date given to the Orderer as the day of readiness to deliver, we shall be entitled, without giving any previous notice, to claim and to retain as a penalty for each day of delay an amount equal to 0.5 % of the amount of the order, but limited to an aggregate amount of 10% of the latter. Our claim to a penalty shall not affect the liability of the Orderer to take delivery and to pay for the goods. In case of payment being delayed, we shall be entitled to claim interest at the average rate of interest charged by German private banks for short-term overdrafts, but not less than 3% p. a. above the base interest rate of the European Central Bank, in addition to the penalty.
- If the Orderer is in default, we shall have the right to rescind the contract within a reasonable time not exceeding 2 weeks after he has been requested to take delivery and/or to pay for the goods, or to dispose otherwise of the goods and to supply the Orderer at a reasonable later date at the price operative then.

## VI. Reservation of Ownership

1. The goods shall remain our property until the Orderer has met all his liabilities, also deferred and conditional ones, especially those resulting from the contract or other contracts in connection with purchase, supply and repair, and satisfied all accrued claims and liabilities resulting from current account operations (balance claim); this shall also apply if the Orderer makes payment for a number of clearly defined items or if we have accepted a bill, cheque, money order etc.  
If the above-stated provisions regarding the reservation of ownership, hereby expressly made a condition of our contracts, are not permissible under the law of the country to which the goods are intended to be supplied, or are acceptable only if certain conditions are complied with, the Orderer shall advise us of this fact at the time the contract is made at the latest. The Orderer shall assist us in making the necessary arrangements (documentation, registrations, etc.) which may be required to establish our right of ownership or a similar local right offering equivalent security; the charges incurred shall be the Orderer's responsibility.
2. The Orderer shall keep the goods in excellent condition during the whole period for which we are here under entitled to claim the right of ownership and shall have necessary repairs done at his own expense without delay. We shall be entitled to inspect the goods for which we have reserved the right of ownership at any reasonable time.
3. The Orderer shall adequately insure at his own expense the goods for which we have reserved the right of ownership, against risks of any kind. We shall be entitled to advance insurance premiums and add them to the purchase price. The Orderer shall assign to us all claims to which he may be entitled under the insurance policies taken out by him, and without delay hand over to us all documents required for raising these claims.
4. The Orderer agrees to assign to us all parts which have been replaced or added to the goods by him or his representative - unless this replacement or addition has made them part and parcel of the goods - as a further security to cover our claims under the reserved right of ownership; the passing of title becomes effective at the time the part is replaced or added to the goods. Instead of transferring them the Orderer shall keep these parts, free of charge, and with all diligence usual in ordinary business.
5. The Orderer shall not be entitled to sell, pledge, deposit as security or dispose in any other similar manner of the goods without our express consent in writing. In case of seizure or other measures taken by third parties, the Orderer shall advise us without delay and immediately take appropriate steps, if necessary. If the Orderer sells the goods for which we have reserved the right of ownership, he shall assign to us forthwith the whole claim for the purchase price as well as all subsidiary claims to cover our claim regardless whether the goods have been machined, processed, assembled or connected with other ones.
6. If the value of the claim or real security so assigned exceeds the value of our claim by more than 20%, we shall, upon the Orderer's request, renounce such claim or security in excess.
7. If the Orderer is in default in paying or in complying with any other obligation in connection with our reservation of ownership, the whole balance of his debt shall fall due forthwith including drafts which may not become payable until a later date. If payment is delayed, we shall be entitled to request the delivery of the goods for which we have reserved the right of ownership, and to sell them in the open market to the highest bidder at the Orderer's expense; in case the proceeds do not cover our claims, the Orderer's liability shall continue.
8. The fact that goods for which we have reserved the right of ownership, have been taken back or seized shall not be deemed to be a rescission of the contract unless there are binding legal provisions to the contrary.

## VII. Defects, Delivery of Non-conforming Goods

To the exclusion of all further claims and subject to the provisions of Section IX. Liability, we shall accept the following liability for defects and guaranteed properties (guarantees) with respect to new supplies and/or performances:

### Redhibitory Defects

1. Within a reasonable period and during normal working hours we shall at our discretion rectify, replace or repeat free of charge all those parts of supplies and performances which within a period of 12 months following delivery or acceptance testing prove to be in-serviceable or significantly impaired in their serviceability as a result of circumstances existing prior to the passing of risk, in particular as a result of defective design, faulty materials or poor workmanship, provided that the customer is a contractor in the sense of § 14 BGB. We shall be informed in writing without delay whenever such defects are detected in order to avoid the exclusion of liability for that particular defect. Replaced parts shall become our property. Liability shall not be accepted for damage resulting from unsuitable or incorrect use, faulty assembly and/or commissioning by the Orderer or third parties not appointed by us. Reference is made to item 5 of this Section.
2. In order to prevent the exclusion of claims, the Orderer shall give us the time and opportunity needed to effect all repairs and replacement supplies which we deem to be necessary as well as to carry out the technical inspections of supplies before they are commissioned. We shall not be obliged to correct defects as long as the Orderer fails to fulfill his obligations to an insignificant extent. Only in urgent cases where the operational safety is at risk and/or to prevent disproportionately grave damage – cases which must be brought to our attention without delay – the Orderer shall have the right to rectify the defect himself or have it rectified by third parties and claim reimbursement of expenses.
3. In as far as the complaint proves to be justified, we shall bear the expenses caused by the repair and/or replacement supply to the extent that costs for the spare parts including delivery as well as any reasonable disassembly and assembly costs are taken over by us, including any expenses for a delegation of fitters and assistants if this can reasonably be claimed.

4. Within the framework of legal stipulations the Orderer shall be entitled to withdraw from the contract if – taking into account legal exceptions – we let the reasonable period of time granted to us to effect repairs or replacement supplies needed to rectify redhibitory defects expire ineffectively. In case of minor defects, the Orderer shall only be entitled to reduce the contract price. All other rights to reduce the contract price shall be excluded.
5. Liability shall be excluded for the following:  
Wear, unsuitable or improper use, faulty assembly and/or commissioning by the Orderer or third parties, natural wear and tear, faulty or negligent handling, improper servicing, unsuitable operating resources, faulty construction work, unsuitable building plot, chemical, electrotechnical or electrical influences – in as far as these are not solely attributable to us.
6. Liability shall not be accepted for any consequential damages if the Orderer or any third party improperly remedies the defects.

The same shall apply for any modifications of the supplies carried out without our prior consent.

#### **Defect of Title**

7. It is herewith declared that at the time the contract is concluded we know of no third-party industrial property rights existing in the producer country which would interfere with the supplies or services made/rendered to the Orderer.

Should the use of supplies infringe upon inland industrial property rights or copyrights, we shall at our expense provide the Orderer the principal right to make further use of supplies or modify supplies in a manner reasonably acceptable to the Orderer to such extent that the infringement is rescinded.

Should this prove to be impossible under economically reasonable conditions or within a reasonable period of time, the Orderer shall have the right to withdraw from the contract. Under the above circumstances we, too, shall be entitled to withdraw from the contract.

Beyond that we shall indemnify the Orderer against undisputed or legally effective claims of the appropriate industrial property right holders.

8. In case of infringements of industrial property rights and copyrights and subject to the provisions of Section 2, the obligations included in Section VII. shall be regarded as being conclusive on our part.

They shall only exist if:

- The Orderer immediately informs us of claimed infringements of industrial property rights and copyrights.
- The Orderer assists us to a reasonable extent in repelling the claims and/or in allowing us to carry out the modifications referred to in Section VII.
- The right is reserved by us to take all necessary repelling measures including out-of-court settlements.
- The defect of title is not based on an instruction by the Orderer.
- The infringement of rights is not caused by the Orderer arbitrarily changing the supplies or using the supplies in violation of the contract.

#### **VIII. Hire Purchase Business, withdrawal**

1. If the Orderer is a natural person and on the proviso that the order is not intended to cover commercial activities, the installment sale of movable property shall be governed by §§ 499ff. BGB. Under the latter, the Orderer in particular shall be entitled to withdraw in writing his declaration of intent to conclude the contract within one week of the advice about such right of withdrawal communicated herewith. The withdrawal shall be notified to Henschel Antriebstechnik GmbH, Kassel, Henschelplatz 1; to respect the set term, it will be sufficient to mail the withdrawal in time.
2. In order to ensure correct application of the Hire Purchase Law, the Orderer undertakes to point out that he is not so registered; in particular, this shall apply to repeat orders.
3. In case of hire purchase business, the price agreed upon shall be final; clause IV, para 1, sentence 2, shall not apply.
4. If monthly or quarterly instalments have been agreed upon without specific indication of the respective due dates, such instalments shall fall due on the first day of a calendar month or quarter; the first instalment shall be payable on the first day of the calendar month following delivery.
5. Bills of exchange as well as any securities obtained shall also serve as a security for claims which we may have under the (German) Hire Purchase Law if the goods are taken back by us.

## **IX. Liability**

Our liability shall be limited to the provisions set forth in the foregoing paragraphs. No further claims shall be admitted - particularly every claim for damage which has not occurred on the delivered goods. This exclusion of liability shall not be valid in case of gross negligence by executive employees or bodies as well as culpable injury inflicted upon life, body or health, malicious silence with respect to defects the absence of which has been warranted, and breach of fundamental contractual commitments.

In the event of a culpable infringement of fundamental contractual obligations we shall also accept liability for gross negligence of non-executive employees and for ordinary negligence, whereby in the latter case liability shall be limited to typical contractual damages which are reasonably foreseeable.

Exemption from liability shall not take place in cases in which we are liable according to the law of product liability for injury to persons or damage to privately used objects due to the delivered goods being faulty. It is also not applicable if features which have been explicitly guaranteed are missing, if the purpose of the guarantee was to protect the customer against damage which has not occurred on the article itself.

All further claims shall be excluded.

## **X. Miscellaneous**

1. Any modifications or amendments to these Terms and Conditions must be made in writing; there are no collateral agreements hereto.
2. Any legal relations between the Orderer and us shall be governed exclusively by German Law applicable to legal relations between domestic parties; under the exemption of the UN agreement covering contracts concerning the international procurement of goods. Unless otherwise specified above, the INCOTERMS 2000 shall apply.
3. Place of performance shall be the place of the supplying factory. Kassel shall be the legal venue for any present and future claims arising in connection with the business transaction, including summary proceedings on bills of exchange and trials by documents. We reserve, however, the right to sue the Orderer before any court having jurisdiction over him. Legal Disputes with an Orderer who is a Tradesman shall come within the jurisdiction of the court in whose district the Orderer has his domicile. We shall, however, have the right to sue the Orderer at Kassel if he has changed his domicile or usual place of residence for another one abroad or if his domicile or place of residence is not known at the time suit is brought.
4. Should one or several provisions hereof become ineffective, the validity of the remaining provisions and the effectiveness of the contract concluded with the Orderer shall not be affected.

Moreover, commercial activities are governed by the following course of action:

The provision concerned should be replaced by a provision closest to what is economically intended within statutory limitations. This only applies if the provision concerned is not replaced by the legislation of § 306 para. 2 BGB.