

General Terms and Conditions of Delivery and Payment

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I. General

1. The general terms and conditions of delivery and payment apply to all - including future - deliveries and services by HK Hydraulik GmbH (hereinafter referred to as HK). Conditions of the buyer to which HK has not expressly agreed shall not become part of the contract under any circumstances. Agreements - in particular insofar as they supplement or amend these terms and conditions - shall only become binding upon written confirmation by HK. The acceptance and execution of orders does not include HK's acknowledgement of the customer's terms and conditions.
2. The buyer may not transfer their contractual rights to third parties without HK's express consent.

II. Offer and Scope of Delivery Obligation

1. Offers are non-binding. The contract is only concluded with written confirmation from HK.
2. HK's written order confirmation shall be decisive for the scope of the deliveries and services. Regarding the terms of payment in the event of a change in creditworthiness, explicit reference is made to Clause IV. 3. and No. IV. 4.
3. Documents pertaining to the offer and order confirmations, such as illustrations, drawings and weight, dimension and performance documentation, are only approximations unless they are expressly designated as binding. If drawings or numbers are used to designate the order or the goods ordered, no rights may be derived therefrom.
4. The regulations of the Association of German Electrical Engineers apply to electrotechnical material. The buyer expressly declares that they are aware of these regulations, insofar as the regulations concern the respective contract.

III. Acceptance

1. Goods for which acceptance by the buyer has been agreed at the buyer's request must be accepted at HK's premises immediately after notification of readiness for acceptance. If acceptance does not take place in good time through no fault of HK, the goods shall be deemed to have been accepted after the expiry of 5 working days after notification of readiness for acceptance.
2. Acceptance may not be refused on account of insignificant defects. The buyer's rights concerning HK's liability under these terms and conditions shall remain unaffected in this respect.

IV. Prices and Terms and Conditions of Payment

1. Unless otherwise agreed, delivery shall be made at the prices applicable on the day of delivery. The prices are ex warehouse or delivery works of HK, excluding packing and loading. Packing and dispatch shall be carried out at HK's best discretion without any further obligations on the part of HK. Packaging will be charged at cost price and will not be taken back. HK shall only take out insurance against transport damage at the express request of the buyer and at the buyer's expense. The buyer shall be obliged to check that the contents are in order upon receipt of the goods. Recourse claims must be addressed directly to the transport company in the event of transport damage.
2. Unless otherwise agreed, payments shall be made free to HK's bank account, within 30 days of the invoice date and without any deductions.
3. HK reserves the right in individual cases to make deliveries only against advance payment or the provision of a security.
4. If, after written confirmation of the order, HK receives notification from its trade credit insurer of a deterioration in the creditworthiness of the buyer, HK shall be entitled, after informing the buyer of the notification and after the expiry of one week, to carry out the service or deliver the parts only against advance payment or the provision of a security. This also applies during the term of accepted bills of exchange.
5. In the event that the aforementioned payment dates are exceeded the statutory interest - i.e. 8 per cent above the base interest rate of the European Central Bank as part of a commercial transaction, or otherwise 5 per cent above the base interest rate of the European Central Bank - shall be charged for the period of default, subject to the assertion of further rights, without any further notice of default being required.
6. The retention of payments or offsetting against HK's claims is not permitted unless the counterclaim is undisputed or has been legally established.
7. Bills of exchange and cheques are only accepted on account of payment on the basis of an express agreement, but not in lieu of performance. Collection and bill charges shall be borne by the buyer. The passing on of cheques or prolongation shall not be deemed as fulfilment.

V. Delivery Dates, Delays

1. The agreed delivery dates shall only apply on condition that all details of the order are clarified in good time and that all obligations of the buyer are fulfilled in good time, e.g. provision of the necessary official approvals, opening of a letter of credit or provision of a required advance payment.
2. If HK is prevented from fulfilling its obligation by the occurrence of unforeseen events affecting it, its suppliers or subcontractors, which it cannot avert even with reasonable care in the circumstances of the case, the delivery period shall be extended by the duration of the disruption and by a reasonable follow-up period. Such circumstances include, in particular, war, intervention by higher authorities, civil unrest, forces of nature, fire and other operational disruptions for which we are not responsible. Strikes and lockouts are also deemed to be disruptions for which HK is not responsible within the meaning of this provision.
3. If the fulfilment of HK's obligations becomes impossible or unreasonable as a result of these disruptions, HK may withdraw from the contract. The buyer shall have the same right if acceptance is no longer reasonable because of the delay.
4. If HK is in default, the buyer may withdraw from the contract after the expiry of a reasonable period of grace set by HK in writing.
3. Partial deliveries are permissible if they are acceptable for the buyer.

VI. Retention of Title

1. All deliveries are made exclusively under retention of title. Ownership shall not pass to the buyer until they have settled all of their commercial obligations with HK. This shall also apply if payments are made for specially designated claims or the purchase price for certain deliveries or invoices designated by the buyer has been paid.
2. The retention of title shall also extend to the products created by processing, mixing or combining the delivered goods, in which case HK shall be deemed to be the manufacturer. In the event of processing, mixing or combining with goods of third parties, their ownership shall remain. Co-ownership shall be acquired in proportion to the invoice values of the processed goods.
3. For the duration of the retention of title, the delivered goods must be insured against machine breakage, theft, fire and water damage with the proviso that HK is entitled to the rights arising from the insurance. The insurance benefits shall be used to the full extent for the reinstatement of the delivered goods. In the event of a total loss, the insurance benefits are to be used to repay the purchase price or wages for the work.
4. For the duration of the retention of title, the buyer shall keep the delivered goods in sound and faultless technical condition, have any necessary repairs carried out immediately and inform HK of the respective location of the delivered goods. They are to allow HK to enter the site at any time and provide access to the delivered goods at any time.
5. As long as the retention of title exists, a sale, pledge, transfer by way of security, lease or other actual transfer of the delivered goods is not permitted without HK's written consent.
6. Any claims arising from a permissible or impermissible resale of the delivered goods using the delivered goods shall be assigned to HK by the buyer now - in total or in the amount of any co-ownership share of the products - as security. They are authorised to collect it for HK's account until revocation or cessation of their payment to HK. If the value of the securities exceeds HK's claims by more than 20%, HK shall release securities of its own choice on request.
7. If the buyer does not fulfil their payment and insurance obligations and the specific obligations resulting from the retention of title, or if they stop their payments, or if insolvency proceedings are opened against their assets, the entire remaining debt shall become due immediately, even if bills of exchange with a later maturity date are still running.
8. If the entire remaining debt is not paid immediately, all rights of use of the buyer over the delivered goods shall lapse and HK shall be entitled to demand immediate surrender to the exclusion of any right of retention. HK shall be entitled, without prejudice to the buyer's payment obligations, to utilise the repossessed delivered goods - together with any accessories - in the best possible way by private sale. HK is not bound by the regulations on the sale of pledged goods. The proceeds after deduction of the costs shall be credited to the buyer's total debt, and any excess proceeds shall be paid to them.
9. The buyer is obliged to inform HK without delay of the endangerment of the property through seizure, retention or other interventions by third parties and to advise the third party or any executors of HK's ownership. The buyer shall be liable for any intervention costs and any damages resulting from the omission of this obligation.
10. The above provisions shall also apply to instalment transactions with such buyers who are entered in the Commercial Register. HK shall, however, be entitled in this respect to withdraw from the contract if a payment instalment is not made or a bill of exchange or cheque is not honoured. The assertion of the retention of title in the event of default in payment and the seizure of the delivered goods by HK shall not be deemed to be a withdrawal from the contract. If the buyer does not fulfil their obligations and HK asserts its retention of title, it can under no circumstances be pleaded that the delivered goods are necessary to maintain turnover of trade.

VII. Transfer of Risk and Dispatch

1. The risk shall pass to the buyer when HK has handed over the goods to the carrier, and at the latest when it leaves the warehouse or the supply works. This also applies if partial deliveries are made or the supplier has still assumed shipping costs. If dispatch is delayed through no fault of HK, the risk shall pass to the buyer with the notification that the goods are ready for dispatch.
2. Insofar as acceptance is to take place, this shall be decisive for the transfer of risk. In this respect, reference is made to section "III. Acceptance" regarding these terms and conditions.

VIII. Assembly

Specialist assembly personnel shall be provided in accordance with HK's special terms and conditions at a special charge. The buyer is to make all arrangements necessary for the immediate engagement of the personnel provided by HK. In the event of delays, all resulting costs for waiting time, travel if necessary, etc., shall be borne by the buyer.

IX. Warranty

HK warrants against all material defects and defects of title in the delivery to the exclusion of further claims - subject to Section X of these terms and conditions - as follows:

Material defects:

1. Parts or items which prove to be defective as a result of circumstances occurring before the transfer of risk shall be repaired or replaced by HK at its discretion. HK must be notified immediately in writing of the discovery of such defects. Any replaced parts shall become the property of HK.
2. The buyer shall give HK the necessary time and opportunity to carry out all the repairs and replacement deliveries that HK deems necessary after consultation with HK, otherwise HK shall be released from liability for the resulting consequences. Only in urgent cases of demonstrable danger to operational safety, in which case HK must be informed immediately, shall the buyer have the right to rectify the defect themselves or have it rectified by a third party and to demand reimbursement of the necessary expenses from HK, insofar as HK is not in a position to rectify the defect itself at short notice.
3. Of the costs incurred as a result of rectification or replacement delivery, HK shall bear - insofar as the complaint proves to be justified - the costs of the replacement part, including shipping.
4. HK shall only bear the cost of dismantling and installation if HK has previously agreed to this in writing, or if the original installation of the delivered goods was carried out by HK or its employees, or by a company commissioned by HK.
5. Within the framework of the statutory provisions, the buyer shall be entitled to withdraw from the contract if HK - taking into account the statutory exceptions - allows a deadline it has set for rectification or replacement delivery due to a material defect to expire without successful completion. If the defect is not significant, the buyer is only entitled to request a reduction in the price. The right to reduce the price shall otherwise remain excluded.
6. No warranty is given for delivery parts which are subject to premature wear and tear as a result of their material properties or the way in which they are used. This also applies to damage caused by unsuitable or improper use, faulty assembly or commissioning by the buyer or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building site, chemical, electrochemical or electrical influences or other natural influences - insofar as HK is not responsible for these.
7. If the buyer or a third party alters the delivered goods without HK's prior consent, or if the buyer or a third party carries out repairs improperly or without reason to do so as per Section IX, No. 2, Sentence 2 of the provisions, HK shall no longer be liable.

Defects of title:

8. If the use of the delivered goods leads to the infringement of industrial property rights or copyrights in Germany, HK shall procure the right to further use for the buyer at its own expense or modify the delivered goods in a way that is reasonable for the buyer, so that the infringement of property rights is avoided.

If this is not possible under economically reasonable conditions or within a reasonable period of time, the buyer shall be entitled to withdraw from the contract. Under the aforementioned conditions, HK is also entitled to withdraw from the contract.

In addition, HK is to indemnify the buyer from any claims made by HK that are undisputed or legally established by the owner of the property rights in question.

In the event of a legal dispute between the owner of the property right and the buyer, HK must be informed of this in order to provide the opportunity to participate in the legal dispute.

9. This does not apply to items that were manufactured by HK according to drawings or sketches provided by the buyer. In this case, HK is not liable for the infringement of any industrial property rights. In this case, the buyer shall indemnify HK against all claims of the respective owner of the property right.

10. Subject to Section X, HK's obligations set out in Section IX, No. 8 are conclusive in the event of infringement of industrial property rights and copyrights. They only exist if

- HK is informed immediately by the buyer of any asserted infringements of industrial property rights or copyrights
- the buyer supports HK to a reasonable extent in defending the claims asserted or enables HK to carry out the modification measures
- HK reserves the right to all defence measures, including out-of-court settlements
- the defect of title is not based on an instruction from the buyer, and
- the infringement of rights has not been caused by the fact that the buyer has modified the delivered goods without authorisation or has used them in a manner not in accordance with the contract.

X. Liability

1. If the delivered goods cannot be used in accordance with the contract through fault of HK as a result of omission or faulty execution or recommendations and advice given before or after the conclusion of the contract, or through the breach of other contractual ancillary obligations - in particular instructions for the operation and maintenance of the delivered goods by the buyer - then provisions of Sections IX and X.2 shall apply accordingly to the exclusion of further claims by the buyer.

2. HK shall only be liable - for whatever legal reasons - for damage which has not occurred to the delivered goods themselves in the event of intent, gross negligence on the part of HK's executive bodies or senior employees, culpable injury to life, limb and health, defects which have been fraudulently concealed or the absence of which has been guaranteed, and defects in the delivered goods insofar as liability exists under the German Product Liability Act for personal injury or material damage to privately used items.

3. In the event of culpable breach of material contractual obligations, HK shall also be liable in the event of gross negligence on the part of non-executive employees and in the event of slight negligence in the latter case - limited to the reasonably foreseeable damage typical of the contract. Further claims shall be excluded.

XI. Statute of Limitations

1. All claims of the buyer - irrespective of the legal reason stated - expire after 12 months. In the case of machines or delivered goods that are deployed in machines that are used in shift operation, this period is shortened to 6 months.
2. The statutory time limits shall apply to intentional or fraudulent conduct, to claims under the German Product Liability Act or to delivered goods that were used for a building in accordance with their customary use and caused the building to be defective.

XII. Return of Deliveries

HK is not obliged to take back deliveries. If HK agrees to returns on exceptional cases, the buyer has to return the parts carriage paid to HK's address after prior written agreement. The costs incurred by HK through delivery and return for provision, packaging, delivery, incoming letters, preservation, reassembly, administrative work etc. shall be borne by the buyer. These shall be charged at 20% of the invoice value, whereby the buyer shall be free to prove that HK has only suffered a reduced loss. Custom-made parts will not be taken back by HK.

XIII. Applicable Law, Place of Jurisdiction, Place of Performance, Partial Invalidity

1. All legal relationships between HK and the buyer shall be governed exclusively by the law of the Federal Republic of Germany applicable to the legal relationship between domestic persons, with the express exclusion of the UN Convention on Contracts for the International Sale of Goods.
2. If the buyer is a merchant, a legal entity under public law, the holder of a special fund under public law within the meaning of Section 38 of the German Code of Civil Procedure or has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction shall be HK's registered address. HK shall, however, also be entitled, at its own discretion, to bring an action at the general place of jurisdiction of the buyer.
3. The exclusive place of performance for all obligations of both contracting parties, including obligations arising from bills of exchange and cheques, as well as all other present and future obligations arising from business transactions, in particular from the delivery of spare parts and repairs as well as the provision of assembly personnel, shall be HK's registered address.
4. Should one or more of the above provisions be or become invalid, this shall not affect the validity of the remaining provisions.