

# Terms and Conditions of Sale, Delivery and Payment

## For use in relation to:

1. A person acting in exercise of his commercial or self-employed activity when concluding this agreement (entrepreneur);
2. A corporate body under public law or a special fund under public law.

## 1. General information

- a. The following terms and conditions shall apply exclusively to all legal relationships between us and our contractual partners (hereinafter referred to as "Customer"), even if reference is not made to them in an individual case, in particular to all deliveries and other services (hereinafter jointly referred to as "Services") provided by Hirschmann Laborgeräte GmbH & Co. KG.
- b. The following terms and conditions and the invoice shall be deemed to have been accepted at the latest upon acceptance of the Service. Any deviating, conflicting or supplementing general terms and conditions of business of Customers shall not become part of the agreement even if we are aware of them or do not object to them after we have received them or if we make delivery without comment, unless we have expressly agreed in writing to their application. Apart from that, we expressly object to the general terms and conditions of business of Customers.

## 2. Delivery/service

- a. We reserve the property rights, copyrights and other industrial property rights to the products, illustrations, drawings and other documents provided by us. They shall not be made accessible to third parties and if a contract is not awarded, they shall be returned to us without undue delay. Unforeseen obstacles to delivery such as force majeure events, strike, disruption of operations at our own plant or a plant of a supplier, difficulty with transport etc. shall entitle us to postpone delivery by a period equal to the duration of the impairment and by another reasonable period or to rescind the contract to the extent it has not yet been performed.
- b. In the case of articles on the current price lists, we reserve the right to increase any order to the contrary to full packing units. The Customer shall be obligated to accept the additional quantity. Any sale resulting from an invitation to tender shall be exempted from this provision.
- c. We reserve the right to supply up to ten percent more or less than the quantity ordered. The Customer shall be obligated to accept the increased or reduced quantity.

## 3. Delivery/service provision times

- a. Unless otherwise agreed in writing, delivery shall be made ex works (Incoterms 2010).
- b. Any delivery/service provision times stated shall not be binding and be approximate, unless we have stated that they are binding, and require prior clarification of all technical issues. Another prerequisite to compliance with our delivery and service provision obligations shall be the timely and proper discharge of the Customer's obligations. The defence of non-performance of the contract shall not be affected.
- c. If the Customer is in default of acceptance or culpably breaches any other duty to cooperate, we shall be entitled to claim reimbursement of the loss incurred by us in this regard, including any additional expenditure. Further claims or rights shall not be affected. Where the aforesaid preconditions exist, the risk of accidental destruction or accidental deterioration of the goods shall pass to the Customer at the time his default of acceptance or debtor's delay starts.

- d. We shall be liable in accordance with the statutory regulations where delayed delivery is attributable to a wilful or grossly negligent breach of contract on our part for which we are responsible or any breach of a material contractual obligation. In such case, our liability for damages shall be limited to the typical, foreseeable damage.

- e. Apart from this, we shall be liable for delayed delivery up to a maximum amount of 15 percent of the value of the delivery/service.

## 4. Shipping and packaging

At the request and expense of the Customer, the goods shall be despatched to a different destination. Unless otherwise arranged, the Supplier itself shall be entitled in this respect to specify the nature of the dispatch (in particular, the forwarder, despatch route, packaging).

With a sale by delivery to a place other than the place of performance, the risk of accidental perishing and accidental deterioration of the goods as well as the risk of delay shall be

transferred upon delivery of the goods to the haulage contractor, the carrier or any person or institution delegated to despatch the consignment.

The Supplier and the delivering forwarder shall be notified immediately of any damages in transit and damages to packaging.

With a sale by delivery to a place other than the place of performance, the Customer shall bear the costs of transport ex stock as well as the costs of any transport insurance that may explicitly be requested by the Customer. Packaging costs, any fees, taxes and other public levies shall be borne by the Customer.

## 5. Prices and terms of payment

Unless otherwise agreed in writing, the following shall apply:

- a. Prices are quoted in euros ex works (Incoterms 2010), excluding packaging, value-added tax, freight and insurance. The Customer shall bear the risk of currency fluctuation.
- b. Our invoices shall be payable within 30 days of the invoice date without any deduction.
- c. A two percent discount shall be granted if payment is made within 8 days of the invoice date.
- d. Invoice amounts of less than EUR 100 shall be payable immediately without deduction. Flatrate incidental order costs in the amount of EUR 50 shall be charged for orders with an order value of less than EUR 250.
- e. Payment shall be deemed to have been made only at the time the relevant amount is credited to us. Interest for default in the statutory amount shall be charged if the agreed term of payment is exceeded, unless we have incurred a higher interest loss. The right to assert additional damages (caused by delay) shall not be affected.
- f. The Customer shall have a right of set-off only where his counterclaims have been determined without further legal recourse, are undisputed or recognised by us. Moreover, the Customer shall be entitled to exercise a right of retention in so far as his counterclaim is based on the same contractual relationship.
- g. Should the Customer be in default or should any circumstance become known which casts doubt on his creditworthiness, we shall be entitled to demand immediate payment of the entire residual debt, demand advance payment, demand the provision of securities or rescind the contract. The Customer's creditworthiness is to be doubted in particular if the Customer suspends his payments to us, if insolvency proceedings are initiated or if such proceedings are dismissed for lack of assets. In the event of default of payment, the Customer shall pay interest for default at a rate of 8% on top of the base interest valid at the time. We reserve the right to prove and assert a higher damage caused by delay. Apart from that, the statutory regulations shall apply to the other consequences of default of payment.

## 6. Reservation of title

- a. The objects of delivery (goods under reservation of title), including deliveries to any destination abroad, shall remain our property until full settlement of all claims due to us from the business relationship with the Customer. Should the value of all security interests to which we are entitled exceed by more than 20% the amount of all receivables secured, we shall at the Customer's request release an application part of the security interests. We shall be free to choose which security interests to release. Where goods under reservation of title are located abroad, the Customer undertakes to cooperate in all measures and declarations required to provide to us collateral which shall be equal to the reservation of title.
- b. Any pledging or assignment as security of goods under reservation of title by the Customer shall not be admissible and only resellers shall be permitted to resell goods under reservation of title in the ordinary course of their business and only subject to the condition that the reseller receives payment from his customer or makes the reservation that ownership shall be transferred to his customer only upon full discharge of the customer's payment obligations.
- c. Where the Customer resells goods under reservation of title, he shall already now assign to us by way of security all his future claims against his customers from such resale with all ancillary rights, including any current account balance claims, without the need for any additional separate declaration. Where the goods under reservation of title are sold together with other objects without agreeing an individual price for the goods under reservation of title, the Customer shall assign to us that portion of the total price asked which corresponds to the price of the goods under reservation of title invoiced by us.
- d. The Customer shall be entitled to process the goods under

reservation of title or mix or combine them with other objects. Such processing shall be made on our behalf. The Customer shall keep the new goods created in this way on our behalf using the due diligence of a prudent merchant. The new goods shall be regarded as goods under reservation of title. We and the Customer agree already now that in the case of any mixing or combination with other goods not belonging to us we shall at any rate have co-ownership of the new goods to the extent of that portion which results from the proportion of the value of the mixed or combined goods under reservation of title to the value of the rest of the goods at the time of mixing or combining. The new goods shall in so far be regarded as goods under reservation of title. The provision regarding subrogation in accordance with Letter c) above shall likewise apply to the new goods. However, the assignment shall apply only up to the amount that corresponds to the value of the processed, mixed or combined goods under reservation of title invoiced by us.

- e. Where the Customer combines the goods under reservation of title with land or moveable objects, he shall, without the need for any additional separate declaration, also assign to us by way of security his claims to which he is entitled as remuneration for the combination, with all ancillary rights, in the proportion of the value of the combined goods under reservation of title to the rest of the combined goods at the time of combination.
- f. Until further notice, the Customer shall be entitled to collect assigned receivables in connection with any resale. Where an important reason exists, in particular in the event of default of payment, suspension of payments, initiation of insolvency proceedings, protest of a bill or any justified indication of overindebtedness or impending inability to pay of the Customer, we shall be entitled to cancel the Customer's right of collection. Moreover, following the issue of a warning with a reasonable time limit, we shall be entitled to disclose the assignment by way of security, utilise the claims assigned and demand that the Customer disclose to his customers the assignment by way of security.
- g. In the event of any garnishment, seizure or other disposal or intervention by a third party, the Customer shall inform us forthwith. If we credibly show a justified interest, the Customer shall forthwith provide to us the information we need to assert our rights and hand over to us the necessary documents. The Customer shall notify the third party and any enforcing bodies of our property. The Customer shall forthwith inform us in writing of any change of ownership of the goods and of any change of his own place of business. In the event of any seizure of the goods under reservation of title by a third party, the Customer shall bear all costs necessary for lifting the seizure, in particular by means of objection proceedings, and for the recovery of the goods.
- h. In the event of any breach of the Customer's obligations, in particular in the event of default of payment, we shall be entitled to rescind the contract and take back the goods under reservation of title and to this end enter the Customer's premises and turn the goods to account to set the proceeds off against our existing liabilities against the Customer after we have set a reasonable time limit for the Customer within which to perform and the time limit has expired without performance. The statutory regulations regarding the unnecessary of setting a time limit shall not be affected. The Customer shall be obligated to surrender the goods.

## 7. Warranty

- a. Where a defect of quality exists and its root cause existed already at the time when the risk passed, we shall be entitled to make supplementary performance at our option by rectifying the defect or by supplying new, fault-free goods.
- b. Any claim for supplementary performance shall become statute-barred after 12 months after the start of the statutory period of limitation. This shall apply by analogy to rescission and abatement. This time limit shall not apply where the law, in accordance with Sections 438 (1) No. 2 (buildings and goods for buildings), 479 (1) (right of recourse) and 634 a (1) No. 2 (construction defects) BGB [German Civil Code], provides for longer periods and in any case of wilful intent, fraudulent concealment of the defect or non-compliance with any guarantee of quality. The statutory regulations regarding suspension of the statute of limitations, suspension and restart of the periods shall not be affected.
- c. A prerequisite to any right arising from a product defect on the part of the Customer shall be that the Customer shall have properly discharged his examination and notice obligations under Section 377 HGB [German Commercial Code]. The defect shall be precisely identified.
- d. The Customer shall bear the burden of proof in respect of all conditions of entitlement, in particular the defect itself, the time of detection of the defect and for the timeliness of the notice of defect.

- e. In the case of a notice of defect, the Customer shall be entitled to retain payment to an extent which is in reasonable proportion to the defect of quality which has occurred. The Customer shall not have a right of retention in the case of any claim which is neither undisputed nor determined without further legal recourse. Where unjustified notice of defect is given, we shall be entitled to demand that the Customer reimburse us for the expenditure incurred.
- f. We shall be given opportunity to make supplementary performance within a reasonable period of time.
- g. The supplementary performance owed by us shall be deemed to have failed after the third unsuccessful attempt. If supplementary performance fails, the Customer shall be entitled to rescind the contract or reduce the remuneration.
- h. The Customer shall not have a warranty claim in the case of an insignificant deviation from the agreed quality, just insignificant impairment of usability or natural wear or any damage occurring after the risk has passed due to faulty or negligent handling, excessive strain, unsuitable building ground or special external influences which are not foreseen by the contract, and also not in the event of software errors which cannot be reproduced. If the Customer or any third party makes changes or carries out repair work improperly, the Customer shall likewise not have a warranty claim in respect of such change or work and its consequences.
- i. Claims by the Customer in connection with the expenditure necessary for supplementary performance, in particular cost of transport, travel, labour and materials, shall be ruled out to the extent that the expenditure is increased because the item delivered has subsequently been brought to a place other than the Customer's site, unless such transfer is in accordance with the item's use as intended. Any goods complained about shall be sent to us postage free stating the customer number, invoice number, order number etc. If the goods are actually defective, we shall refund the postage for the most economic kind of shipment.
- j. The Customer shall have a right of recourse against us in accordance with Section 478 BGB (recourse of entrepreneur) only if the Customer has not made any agreement with the buyer which goes beyond the statutory claims for defects. Furthermore, Letter i) above shall apply by analogy to the extent of the Customer's right of recourse against us in accordance with Section 478 (2) BGB.
- k. aa) We shall be liable in accordance with the statutory provisions where the Customer claims damages based on wilful intent or gross negligence by us or any of our representatives or vicarious agents. Unless we are charged with a deliberate breach of contract, the liability for damages shall be limited to the typical, foreseeable damage.
- bb) We shall be liable in accordance with the statutory provisions where we culpably breach a material contractual obligation. In such a case, however, liability for damages shall be limited to the typical, foreseeable

damage. A material contractual obligation shall be any obligation discharge of which the Customer has relied on and was entitled to rely on.

- cc) Liability for culpable injury to life, body or health shall not be affected. This shall likewise apply to the mandatory liability under the product liability act.
- dd) Liability shall be ruled out, unless where otherwise provided above.

The following shall apply in addition:

- l. The goods shall be examined without delay upon arrival at the place of destination even if samples are sent.
- m. A delivery shall be deemed to have been accepted if we do not receive written notice of an apparent defect within three working days of arrival at the place of destination.
- n. Any hidden defect shall be given notice of in the same way within three working days of detection.
- o. Warranty shall be ruled out if the buyer has processed or resold the goods after he has, or ought to have, detected the defect, unless he proves that such processing or resale was necessary to prevent greater damage.
- p. We do not provide a warranty for any damage occurring to the delivery item as a result of any of the following: Unsuitable or improper use, incorrect commissioning by the buyer or any third party, natural wear and tear, faulty or negligent handling, unsuitable operating supplies, replaced materials, chemical, electrochemical, electrical and comparable influences, unless where attributable to a fault on our part.
- q. Since important information can be derived from the type of breakage, the broken part returned to us must first be examined before any loss may be recognised. Any such return shall require our prior express consent.
- r. Any change to the standards and/or the calibration instructions (e.g. in case of tolerances) shall entitle us to also change the values.
- s. If the goods come into contact with dangerous and/or environmentally hazardous substances (poison, acid, alkaline solution, radioactivity etc.), the buyer shall prior to returning them clean or decontaminate the goods in such a way that any hazard to the health of our employees will be ruled out.

### 8. Overall liability

- a. Any liability for damages beyond the provisions set forth in Section 7 hereof shall be ruled out irrespective of the legal nature of the claim asserted. This shall apply in particular to claims for damages based on culpa in contrahendo, other breach of duty or tort claims for damage to property in accordance with Section 823 BGB.
- b. The limitation as per Letter a) above shall likewise apply where the Customer, instead of claiming damages, demands reimbursement for useless expenditure instead of performance.

- c. Where our liability for damages is ruled out or limited, this shall likewise apply in respect of the personal liability for damages of our employees, workers, representatives and vicarious agents.

### 9. Return of goods which are not defective

In the event of any agreed return of goods which are not defective, the Customer shall be charged an examination and handling fee of 15% of the invoice amount, however, not less than EUR 20.

### 10. Industrial property rights, moulds, tools, confidentiality

- a. Where we hand over technical documents, illustrations, moulds, tools, samples or tender documents, we reserve ownership of and all industrial property rights and copyrights to them even where the buyer has paid part or all of the costs of them. The buyer shall be prohibited from producing the goods himself or through a third party using the technical documents, illustrations, moulds, tools, samples and/or tender documents.
- b. Where the goods are produced based on documents provided by the buyer, the buyer shall be liable for any infringement of the industrial property rights or other rights of third parties caused by the production and/or delivery of such goods.

### 11. Use of software

- a. Where the extent of delivery includes firmware/software, the Customer shall be granted a non-exclusive right to use the supplied firmware/software and the associated documents. The software must be used exclusively on the delivery item for which it is intended.
- b. The Customer shall reproduce, revise or translate the firmware/software supplied, or convert its object code to source code, only to the extent permissible by law (Sections 69 a et seq. UrhG [German Copyright Law]). The Customer shall not be entitled to remove or alter our information or other manufacturer's data, including references to existing trade mark rights, provided on the goods delivered, unless with our express consent.
- c. Apart from that, we or the software producer reserve all rights to the firmware/software and the documents, including any copies thereof. The Customer shall not be entitled to grant sublicenses.

### 12. Place of fulfilment and jurisdiction

- a. The place of fulfilment shall be Eberstadt, Germany.
- b. The place of jurisdiction for any disputes arising from the contractual relationship with the Customer shall be Heilbronn/N, Germany.
- c. All legal relationships between the Customer and us shall be governed by German law, excluding application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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