

General Terms & Conditions of Sale and Delivery of HSH Handling Systems AG

I. Scope

These General Terms & Conditions of Sale and Delivery apply to all business relationships between HSH Handling Systems AG and its customers which exist or come into being within the scope of HSH Handling Systems AG's fields of activity or business, unless deviating agreements are made between the parties (i.e. HSH Handling Systems AG and the respective Customer) within the scope of such business relationships or mandatory statutory provisions take precedence. In cases for which these General Terms & Conditions of Sale and Delivery do not contain a conclusive provision, Swiss substantive civil law shall apply in addition, but excluding the "United Nations Convention on Contracts for the International Sale of Goods" of April 11, 1980 (so-called "Vienna Sales Convention").

II. Meaning of the Abbreviations, Designations and Terms Used

1. These General Terms & Conditions of Sale and Delivery use the following abbreviations and terms with the corresponding meanings given in this Section II:

- GTSD: The "General Terms & Conditions of Sale and Delivery of HSH Handling Systems AG" contained in this text document;
- Supplier: HSH Handling Systems AG (VAT ID: CHE-103.608.523);
- Customer: Natural or legal person who is in a business relationship with the Supplier (cf. Section I. above) or who enters into or establishes such a business relationship;
- The Parties: Supplier and Customer in the context of a contractual relationship established between them;
- Plant: The Supplier's premises in CH-3360 Herzogenbuchsee;
- Delivery item: The contractual performance assured by the Supplier to the Customer, consisting either of the provision of goods or services or of the performance of tangible or intangible work;
- Business relationship: The activities of the Supplier within the scope of its fields of activity or business for the Customer from the time the Customer contacts the Supplier;
- OR: Swiss federal law supplementing the Swiss Civil Code (Part Five: Law on Obligations - Obligationenrecht);
- ZGB: Swiss Civil Code (Zivilgesetzbuch).

2. The meaning and interpretation of all legal terms used in these GTSD (e.g. contract, default, warranty, etc.) shall be governed exclusively in the first instance by Swiss civil law and in the second instance by Swiss federal law.

III. Establishment, Content and Amendment of the Contractual Relationship Between the Supplier and the Customer

1. A contractual relationship shall not come into existence until the Supplier has confirmed the order to the respective Customer in writing or otherwise in text form (email, fax or text messages via social media channels); however, the Customer declares its agreement with these GTSD at the time of placing the order with the Supplier. The Supplier's response to requests for quotations from customers, descriptions provided by the Supplier to customers, cost estimates and other communications of any kind do not constitute a contractual relationship between the Supplier and the respective Customer without the existence of an order confirmation from the Supplier. All information provided by the Supplier, irrespective of whether it is contained in brochures, leaflets and technical instructions for use or on the usual information channels (Supplier's website, Supplier's presence on social media channels, etc.) is for information purposes only.

2. The scope and content of the contractually agreed services shall be determined by the Supplier's corresponding order confirmation. However, the Supplier reserves the right to make changes to the contractually owed services for technical reasons only, provided this is reasonable for the Customer.

3. Amendments and supplements to contractual agreements by the Customer must be confirmed by the Supplier in writing or in text form.

4. The Customer acknowledges that the Supplier reserves ownership rights and copyrights as well as other industrial property rights to samples, cost estimates, drawings and similar information of a physical and non-physical nature - irrespective of the form in which they are available or made accessible (electronically or in paper form) - and that such information may only be made accessible to third parties by the Customer if the Supplier has given its consent in writing or in text form.

5. In the case of deliveries to foreign countries, compliance with all necessary customs and other formalities is the sole responsibility of the Customer.

IV. Prices and Terms of Payment / Default of Payment and Withdrawal from the Contract

1. Unless otherwise agreed between the Parties, all prices for the delivery item are net ex works, including loading at the factory itself, but excluding packaging and unloading at the place of destination. Value-added tax shall be added to the respective prices at the rate applicable at the time of conclusion of the contract. All work carried out by the Supplier for installation, assembly and/or commissioning at the Customer's premises or with the assistance of Third Parties is not included and shall be invoiced separately to the Customer by the Supplier at standard industry rates.

2. These prices shall be based on the procurement, raw material and energy prices, labor costs, social security contributions, freight rates and public charges which directly and/or indirectly influence the cost of goods and which are applicable to the Supplier at the time the offer is submitted. In the event of changes to these reference values, the Supplier reserves the right to make a corresponding correction if there are more than four months between the conclusion of the contract and the agreed production/delivery date.

3. Unless otherwise agreed between the Parties, the Customer shall pay for the services ordered without any deductions as follows:

- 30 % upon confirmation of the order by the Supplier,
- 60% after notification to the Customer that the main parts are ready for shipment
- and 10% within one month after delivery.

4. The Customer shall only have a right of offset insofar as such offsetting claims are recognized by the Supplier or have been legally established. The Customer shall only be entitled to withhold payment if this is based on the respective contractual relationship between the Parties.

5. If reasonable for the Customer, the Supplier shall be entitled to make partial deliveries. In such a case, the Customer shall be obliged to make pro rata partial payments in accordance with the payment procedure set out in Section IV./3. above.

6. The Customer is not entitled to transfer claims arising from the respective contractual relationship between the Parties to third parties.

7. If, after conclusion of the contract, the Supplier becomes aware of circumstances which are likely to cast serious doubt on the Customer's creditworthiness, the Supplier shall be entitled to make further performance dependent on the Customer providing sufficient security within a reasonable period of time. If the Customer fails to comply with this obligation within a reasonable period of time, the Supplier shall be entitled to withdraw from the contract.

8. If the Customer is more than 10 days in arrears with the agreed installment payments, the entire outstanding balance shall become due for immediate payment.

V. Delivery Dates / Delivery Delays

1. The delivery dates result from the corresponding agreements between the Parties within the scope of their respective contractual relationship. Until such time as all commercial and technical questions between the Parties have been resolved and the Customer has fulfilled all obligations incumbent upon him, such as procuring the necessary official certificates or permits or making a down payment, the Supplier shall not be in default of delivery; in such cases, any delivery dates agreed between the Parties shall be extended accordingly, unless the Supplier is responsible for the delay.

2. However, if no agreements have been made between the Parties, delivery dates shall commence on the date of the order confirmation, but shall be subject to the provision of the documents, sample parts, permits, approvals to be procured or handed over by the Customer and the receipt of an agreed down payment.
3. The delivery dates shall be deemed to have been met if the delivery item has left the Supplier's works by this time or the Customer has been notified that the goods are ready for dispatch. If, however, the delivery item requires acceptance by the Customer, the delivery date shall be deemed to have been met upon acceptance by the Customer or upon notification to the Customer that the delivery item is ready for acceptance.
4. If shipment or acceptance of the delivery item is delayed for reasons for which the Customer is responsible, the Customer shall be charged the costs incurred as a result of the delay, starting one month after notification of readiness for shipment or acceptance.
5. If non-compliance with delivery dates is due to force majeure, labor disputes, non-availability of the service or other events beyond the Supplier's control, the delivery dates shall be extended accordingly. A case of non-availability of the service in this sense shall be deemed to be in particular the failure of the Supplier's subcontractors to deliver to the Supplier in good time if the Supplier has concluded a congruent hedging transaction and is not responsible for the non-availability. The Supplier shall notify the Customer immediately of the beginning and end of such circumstances.
6. In the event of a delayed delivery, the Supplier shall only be liable for the foreseeable, typically occurring damage. Liability is further limited to a lump-sum compensation of 0.5 % of the delivery value for each full week of delay; the total compensation sum is limited to 5 % of the delivery value. Delivery value means the value of that part of the total delivery which cannot be used in good time or in accordance with the contract as a result of the delay. These limitations shall not apply if the delivery delay is due to an intentional or grossly negligent breach of contract by the Supplier's executive bodies or senior executives.

VI. Acceptance of the Delivery Item / Transfer of Benefit and Risk

1. Benefit and risk shall be transferred to the Customer as soon as the delivery item has left the factory. If partial shipments are made, benefit and risk shall be transferred as soon as the first partial shipment has left the factory. The transfer of benefit and risk shall take place irrespective of whether the Supplier has assumed additional services (e.g. shipping costs or delivery and installation). However, if acceptance of the delivery item is required, the date of acceptance shall be decisive for the transfer of benefit and risk.
2. If acceptance of the delivery item is required, it must take place without delay after delivery. The Customer may not refuse acceptance on the grounds of a non-essential defect.
2. If shipment or acceptance is delayed or does not take place due to circumstances for which the Supplier is not responsible, benefit and risk shall be transferred to the Customer from the day of notification of readiness for shipment or acceptance. The Supplier undertakes to insure the delivery item at the Customer's expense in accordance with the Customer's instructions.
3. If shipment is postponed at the request of the Customer or if the delivery item cannot be accepted for reasons for which the Supplier is not responsible, benefit and risk shall pass to the Customer upon notification of readiness for shipment. The costs incurred for storage, at least 0.5 % of the value of the goods per month, shall be borne by the Customer. The Customer shall be free to prove lesser damages.

VII. Reservation of Title

1. The Supplier shall retain title to the delivery item until the Customer has made all payments agreed between the Parties.
2. The Supplier shall be entitled to insure the delivery item against theft, breakage, fire, water and other damage at the Customer's expense, unless the Customer has demonstrably insured the delivery item itself.
3. The Customer shall not pledge the delivery item, nor transfer it as security, until it has made full payment thereof. The Customer shall promptly notify the Supplier of any seizure, attachment or other official disposition of the delivery item.
4. In the event of breach of contract by the Customer, in particular default in payment, the Supplier may recover the delivery item following due warning and the Customer shall be obliged to surrender the same. An assertion of the reservation of title and attachment of the delivery item by the Supplier shall entitle the latter to withdraw from the contract.
5. If the Customer is in arrears with payment, the Supplier may repossess the delivery item that is subject to a reservation of title but shall not be deemed to have thereby exercised its right to withdraw from the contract. In the event of realization of the delivery item subject to retention of title, the Supplier shall be entitled to deduct 10% of the realization proceeds for the costs incurred by it in connection with the realization, unless the Customer proves that the costs incurred by the Supplier as a result are substantially lower.
6. In the event that the Customer's balance sheet is filed, insolvency proceedings are opened, or a debt-restructuring moratorium is refused in favor of the Customer, the Supplier shall be entitled to withdraw from the contract and to repossess the delivery item immediately.
7. The Customer is entitled to resell the delivery item in the ordinary course of business. However, the Customer hereby assigns to the Supplier all claims it may come to hold against the buyer or third parties as a result of such resale, irrespective of whether the delivery item is resold without or after processing. The Customer may collect on these claims even after the assignment. The Supplier's right to collect on such claims itself shall remain unaffected; however, the Supplier undertakes not to collect on such claims for as long as the Customer meets its payment obligations. The Supplier may require the Customer to disclose to it all assigned claims along with the respective debtors, to provide all information needed for collection; to furnish the relevant documents, and to notify the debtor of the assignment. If the delivery item is resold together with other goods not owned by the Supplier, the Customer's claim against the buyer thereof shall be deemed assigned in the amount of the delivery price agreed between the Parties. Any processing or transformation of the delivery item shall at all times be deemed to be performed by the Customer for the Supplier. If the delivery item is processed with other items not belonging to the Supplier, the Supplier shall acquire co-ownership of the new item in the ratio of the value of the delivery item to the other processed items at the time of their processing. In all other respects, the same shall apply to the item created by processing as to the delivery item itself.
8. The Supplier shall release security interests to the extent that the realizable value thereof exceeds the secured debt by more than 10%. In this context, the choice of security interests to be released shall be at the Supplier's own discretion.

VIII. Warranty / Liability

1. It shall be a prerequisite to Supplier's liability that the Customer inspects the delivery item for defects promptly upon receipt. The Customer must notify the Supplier of any defects forthwith, at the latest within one week. In the case of concealed defects, this obligation arises at the time of discovery thereof. If the Customer fails to comply with the foregoing obligation to give notice of a defect under warranty then the delivery item shall be deemed approved, provided that the defect was of a type detectable by due and proper inspection.
2. No warranty is accepted for defects resulting from any the following causes: improper/inexpert use, faulty installation or commissioning by the Customer or third parties, natural wear and tear, improper or neglectful handling, unsuitable equipment, provided they are not attributable to a fault of the Supplier.
3. Any modifications or repairs carried out improperly and without the Supplier's approval on the delivery item by the Customer or third parties shall void liability for any consequences resulting therefrom.
4. In the event of a defect, the Supplier shall decide at its reasonable discretion, taking into account the interests of the Customer, whether to rectify the defect or supply a replacement.
5. The Supplier shall bear the labor and material costs of a justified rectification; other costs, in particular installation and removal costs as well as testing and inspection costs, shall not be borne by the Supplier.
6. If the Customer moves the delivery item to a location other than the place of acceptance, the Customer shall bear the resulting additional rectification costs.

Should the defect rectification or replacement delivery fail, the Customer is entitled to a reduction. Insofar as this is not a minor breach of contract, the Customer may opt, at its own discretion, to withdraw from the contract instead.

7. The Customer cannot claim liability for defects if it has installed the delivery item on unsuitable building ground or in an otherwise improper manner, or uses it improperly, or employs unsuitable equipment, or damages the delivery item or exposes it to chemical, electronic or electric influences, or performs no or improper maintenance thereon, so that this is the cause of any defects that occur.
8. In the event of a replacement delivery, the rejected delivery item must be sent to the Supplier carriage paid to its domicile.

IX. Warranty for Defects of Title

1. If the use of the delivery item results in an infringement of industrial property rights or copyrights under inland jurisdiction, the Supplier shall, at its own expense, procure for the Customer the right to generally continue the use thereof, or else shall modify the delivery item - in a manner that can be deemed reasonably acceptable to the Customer - so that the infringement of property rights no longer exists. If this is not feasible in an economically reasonable manner or within reasonable time, the Customer may withdraw from the contract. The Supplier is also entitled to withdraw from the contract under the same conditions. Moreover, the Supplier shall hold the Customer free and harmless of any uncontested or legally established claims asserted by the holders of the relevant industrial property rights.
2. The Supplier shall not bear liability if the defect of title results from an instruction given by the Customer or if the infringement was partly caused by the fact that the Customer modified the delivery item without authorization or used it in a manner not in accordance with the contract.
3. The Customer shall give reasonable support to the Supplier in defending against any claims brought forward and shall enable the Supplier to carry out such modification work. The Customer shall reserve to the supplier all defensive measures, including extrajudicial settlements. The Supplier shall not be liable if the damage is due to a breach of the aforementioned obligations by the Customer.

X. Statute of Limitations

All Customer claims in respect of defects **shall become time-barred after 12 months**. Where wilful intent or bad faith is involved and for claims under the Product Liability Act, the statutory time limits apply. They also apply to defects in a building structure or to delivery items that have been used for a building structure in accordance with their normal use and have caused its defectiveness.

XI. Use of Software

1. If software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the software supplied, including the associated documentation. It is made available for use on the deliverable for which it is intended.
2. The software provided in accordance with Section XI./1. may not be used on more than one system.
3. The Customer shall not copy, revise or translate the software, nor convert it from object code to source code, except to the extent permitted by law. The Customer undertakes not to remove or modify information provided by the manufacturer, particularly copyright notices, without the Supplier's explicit prior consent.
4. All other rights to the software and documentation, including any copies thereof, shall remain with the Supplier or software supplier, respectively. It shall not be allowed to grant sub-licenses.

XII. Applicable Law, Legal Venue

1. All business relations between the Supplier and the Customer shall be governed exclusively by substantive Swiss civil law, with the exception of the "United Nations Convention on Contracts for the International Sale of Goods" of April 11, 1980 (so-called "Vienna Sales Convention").
2. **The ordinary courts at the Supplier's place of business shall have jurisdiction to hear disputes arising from business relations between the Supplier and the Customer. However, the Supplier may also sue at the Customer's place of business.**