

**Terms of sale, delivery & payment of
Hoac Schweißtechnik GmbH,
Pferdsweide 39 c, 47441 Moers, Germany**



1. General

- 1.1 These terms and conditions shall govern all - including future - legal relationships of a contractual and non-contractual nature between us and the customer, even if no specific reference is made to them in individual cases. Counter-conditions of the customer do not annul the validity of these terms and conditions of sale and delivery, even if we do not expressly object to them. Deviating agreements shall only apply if we expressly confirm them in writing.
- 1.2 Our offers are subject to change, conclusion of the contract and other agreements, in particular verbal subsidiary agreements and assurances as well as technical advice shall only become binding upon our written confirmation.

2. Scope of delivery and deviations

- 2.1 Dimensions and weights stated by us as well as drawings and illustrations are only approximately authoritative subject to changes for technical reasons unless they are expressly designated as binding.
- 2.2 We reserve the right to make minor changes, in particular to our designs. Minor or technically unavoidable deviations with regard to quality, model, dimensions and design cannot be objected to, even if the usability and economic efficiency is slightly impaired.

3. Delivery and transfer of risk

- 3.1 The risk shall pass to the customer at the latest upon loading. The delivery shall be deemed to have been fulfilled as soon as the customer has been notified that the goods are ready for dispatch. If delivery is not made for reasons for which the customer is responsible, the risk shall pass when the goods are ready for dispatch. In such cases, the goods ready for dispatch shall be stored for the account and at the risk of the customer. This shall not affect the due date of the invoice. All shipments travel for the account of the customer, unless the prices are agreed free receiving station.
- 3.2 The recipient must notify us of transport damage of any kind immediately, but at the latest within 2 days of receipt of the goods. Transport insurance shall only be taken out at the express request of the customer. In the event of transport damage covered by transport insurance, we shall have the option of either accepting the insurance sum and delivering a replacement or demanding payment of the purchase price from the customer against assignment of the insurance sum.
- 3.3 In the absence of any agreement to the contrary, the choice of shipping method shall be left to us. We shall not be liable for personal injury or damage to property caused by our vehicles or drivers in connection with the delivery, unless the damage was caused intentionally or by gross negligence.

4. Delivery periods

- 4.1 Delivery and performance deadlines, which may be agreed as binding or non-binding, shall be stated in writing and shall only commence as soon as the customer has provided the technical documents to be procured on his part, has fulfilled all necessary formalities and has made any agreed down payments. The deadlines shall be deemed to have been met if the goods are ready for dispatch by the time they expire.
- 4.2 If an expressly agreed delivery date is exceeded, the buyer has the right to set us a reasonable grace period and, in the event that we do not deliver by the expiry of this grace period, to withdraw from the contract by written declaration. Contractual penalties, claims for damages due to non-fulfilment or delay are excluded, unless there is intent or gross negligence. 6 weeks after a non-binding delivery date has been exceeded, the customer may request us in writing to deliver within a reasonable period of grace.
- 4.3 Delivery and performance periods shall be extended by the duration of an impediment due to force majeure, official measures, strike, lockout, risk of war, operational or traffic disruptions, shortage of personnel, shortage of raw materials and operating materials as well as in the event of unforeseen circumstances for which we are not responsible and which make delivery significantly more difficult or impossible for us or our suppliers. If the hindrance lasts longer than 3 months, we are entitled to withdraw from the contract in whole or in part due to the part of the contract not yet fulfilled. In this case, the customer is entitled to withdraw from the contract with regard to the part not yet fulfilled after setting a reasonable period of grace. Claims for damages arising from impossibility of performance, positive breach of contract, culpa in contrahendo or tort are excluded both against us and against our subcontractors, except in the case of intentional or grossly negligent trading.
- 4.4 In the event of the existence of a claim for damages for delay against us, the compensation for delay shall amount to ½ % for each completed week of delay, but in total not more than up to 5 % of the invoice value of the delivery and service affected by the delay.

5. Prices / Terms of payment

- 5.1 Invoices shall be issued when the goods are ready for dispatch. Payment within 7 days with 2% discount or within 15 days net at the latest, in each case from the date of invoice. Wage and assembly work shall be paid net immediately after execution of the work, without deduction. Other terms of payment shall only apply after written agreement.
- 5.2 If payment is made later than 30 days from the date of invoice, we shall be entitled to charge interest to merchants at the rate charged by commercial banks for open overdrafts at the time of delivery, at least from 4% above the Bundesbank discount rate. In the event of default, the same interest rate shall apply, whereby we reserve the right to assert further damages.
- 5.3 Bills of exchange shall only be accepted by special agreement and only at our purchase rates. Payment by bill of exchange is not deemed to be cash payment and does not entitle the customer to deduct a discount. The bill charges and taxes charged by us are to be reimbursed immediately after posting.

- 5.4 The customer shall not be entitled to offset or withhold payments, due to notices of defects, unless the claims are recognized by us in writing or have become res judicata.

- 5.5 In the event of obvious calculation errors in our offers and invoices or erroneously incorrectly applied prices, we reserve the right to demand or remunerate the difference amounts.

6. Price escalation clause

- 6.1 Should we see ourselves forced to a general increase in our sales prices due to changed circumstances - e.g. development of raw material prices - we shall be entitled to demand a corresponding increase in the price also for transactions already made or to withdraw from the contract. The customer, for his part, shall have the right, if he is forced into a corresponding increase in the price, to demand a corresponding increase in the price also for transactions already effected or to withdraw from the contract. The customer, for his part, has the right to withdraw from the contract if he does not wish to consent to a corresponding increase in the purchase prices. He shall not be entitled to any further claims, in particular for damages.
- 6.2 The clause does not apply to deliveries to merchants within 6 weeks after conclusion of the contract, unless our purchase prices increase by more than 20% during this period. This clause does not apply to deliveries to non-merchants within 4 months after conclusion of the contract.

7. Retention of title

- 7.1 The delivered goods remain our property until full payment of the purchase price and all other present or future claims to which we are or will be entitled against the customer from the business relationship. The inclusion of the purchase price claim in a current account and the recognition of a balance shall not affect the retention of title. The retention of title shall expire upon settlement of all claims against customers.
- 7.2 Any processing of the goods subject to retention of title pursuant to 7.1 shall be carried out on our behalf without the customer or a third party acquiring any rights against us as a result. We shall acquire direct ownership of the new item created by the processing. In the event of combination or mixing of the goods delivered by us - if applicable, processed and/or treated - we shall become co-owners in accordance with § 947 para. 1, § 948 BGB (German Civil Code). Insofar as the customer acquires ownership of the processed or treated product, he transfers this ownership to us already now; the customer keeps the product for us.
- 7.3 In the ordinary course of business, the customer is entitled to sell or process the goods subject to retention of title pursuant to 7.1 or 7.2. This authorization shall cease to apply in the cases of sections 8.2 and 8.3 of these terms and conditions. However, under no circumstances shall the customer be authorized to resell or otherwise exploit the goods by agreeing a non-assignment clause with his clients, to pledge or assign the goods by way of security or to mix or combine them if he thereby obtains sole ownership (§§947,948 BGB).
- 7.4 If the goods subject to retention of title in accordance with 7.1 are resold or processed in accordance with 7.2, or if the processed item is sold or otherwise utilized in accordance with 7.2, the entire claims which the customer acquires as a result, including all ancillary and security rights, shall be assigned to us upon conclusion of the contract between the customer and us. The assignment includes the entire claims which the customer acquires, not only a proportionate material value. If the claim is to be paid in instalments, the first instalments due after disclosure of the assignment shall be deemed to have been assigned until 120 % of the claims of our group have been reached, provided that these instalments can be clearly determined; if the assigned part of the claims cannot be determined with sufficient certainty in this way, the entire claims shall be deemed to have been assigned.
- 7.5 Insofar as the value of several items transferred as security in accordance with the above provisions (assigned claim, item subject to retention of title or transferred item) covers the amount of our group's claims by more than 120 %, we shall be obliged to transfer the securities back to the customer at our discretion.
- 7.6 The customer is authorized to include outstanding claims insofar as the collection is within the scope of proper business management, but not in the case of facts described in § 8.2 and 8.3. The customer is not entitled to further assignments, even if these are made by way of security.
- 7.7 At our request, the customer is obliged to notify us of the assignments of his debtors. In the case of facts described in clauses 8.2 and 8.3 of these terms and conditions, we shall also be entitled to notify the customer of the assignment of the customer's debtor. We may at any time require the customer to provide us with all the necessary information about the assignments including the transmission of invoice copies. The customer shall provide us with all information and documents required for a legal dispute.
- 7.8 The customer is obliged to inform us immediately in the event of access by third parties to the items serving as security for us. The customer shall bear the costs of asserting the security rights against debtors, co-entitled parties and third parties.
- 7.9 Contingent liabilities from guarantees, bills of exchange and cheques shall also be deemed to be claims. Rights from the retention of title and all special forms thereof stipulated in these terms and conditions shall apply until full release from contingent liabilities which we have entered into in the interest of the customer.

8. Termination of contract, default and insolvency

- 8.1 A binding order placed can only be canceled with our written consent and on condition that we are fully indemnified for all losses (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by us because of the cancellation.
- 8.2 If the customer is in default, we may demand the return of the goods delivered by us as security without withdrawing from the contract. This also applies if the customer exceeds the payment deadline. A withdrawal declared in the event of default on the part of the customer must be made in writing. In the event of withdrawal, we shall be entitled to 50% of the order amount as compensation for the costs of delivery and return, unless the customer proves that we have incurred no or less damage. We reserve the right to prove higher damages.
- 8.3 If, after the conclusion of the contract, there is a significant deterioration in the financial circumstances of the customer which could jeopardize our claim to payment, the customer defaults on the fulfillment of other obligations towards us, a bill of exchange or cheque is not honored when due, the customer generally stops payments or composition or bankruptcy proceedings are instituted against his assets, we shall be entitled to make the continuation of an ongoing long-term delivery or the intended delivery dependent on an advance payment or the provision of security or to withdraw from the contract insofar as it has not yet been fulfilled by us.
- 8.4 In the cases mentioned under 8.3, all other claims of us against the customer shall become due immediately and any deferment agreements shall become invalid.

9. Grant and liability

- 9.1 We are liable for all defects in our deliveries and services as follows: Notices of defects shall only be recognized if they are submitted to us in writing without delay before the goods are used or sold. 14 calendar days after arrival of the goods at the place of destination, the delivery shall be deemed to have been accepted in perfect condition. After expiry of this period, only hidden defects which cannot be found after immediate inspection after receipt may be asserted by means of an individual written complaint within the limitation period for statutory warranty claims. In the case of business with merchants, these must make the complaint in writing in accordance with §§377,378 HGB.
- 9.2 Insofar as warranty claims exist against us in accordance with these terms and conditions, we shall only be obliged to rectify the defect or to deliver defect-free goods concurrently with the return of the rejected goods or to grant a reduction of the purchase price (abatement). Further claims such as claims for cancellation of the contract (redhibitory action), damages for loss of profit, for positive breach of contract, for culpa in contrahendo, for consequential damages or for other reasons are excluded, unless this claim is based on intent or gross negligence on the part of our executive employees. If replacement delivery or rectification of defects finally fails, the customer may demand a reduction of the remuneration or rescission of the contract. However, the right to rescind the contract does not exist if a construction work is the subject of the warranty. Furthermore, no warranty is given for damage caused by improper use, faulty assembly by the customer or third parties or for damage caused to the delivery item by repairs carried out by the customer or third parties without our consent.
- 9.3 In the absence of warranted characteristics, claims for damages shall be excluded unless the warranty has the specific purpose of protecting the customer against consequential damages.
- 9.4 Claims arising from liability for material defects shall become time-barred 12 months after the transfer of risk, unless otherwise specified in the contract.

10. Industrial property rights/copyrights

- 10.1 The construction documents such as drafts, drawings, models, etc. produced or made available by us remain our property. Reconstruction according to our design and other documents is not permitted.
- 10.2 If services are performed based on information provided by the customer, the customer shall warrant to us that the manufacture and delivery of the items do not infringe the property rights of third parties. Our copyrights shall always remain unaffected.
- 10.3 If we are prohibited from manufacturing items by a third party based on an industrial property right belonging to that third party, we shall be entitled, without being obliged to examine the legal situation, to cease manufacture and delivery and to demand reimbursement of the costs incurred, to the exclusion of all claims for damages on the part of the customer.

11. Place of performance, place of jurisdiction, law

- 11.1 The place of performance and exclusive place of jurisdiction for all claims between us and merchants shall be Duisburg, unless mandatory statutory provisions provide otherwise. However, we shall also have the right to bring an action against a customer at the customer's statutory place of jurisdiction.
- 11.2 German law shall apply exclusively. The Uniform Law on the International Sale of Goods shall not apply.

12. Rental

- 12.1 In the case of a rental transaction with Hoac Schweißtechnik GmbH as the lessor, our General Terms and Conditions - Rental also apply. Our General Terms and Conditions as described in items 1 - 7 remain unaffected.

13. Installation

- 13.1 In the event of a contractually agreed installation, our general installation conditions and billing bases shall apply in addition to our general terms and conditions.

14. Final Clause

- 14.1 Should individually parts of the above terms and conditions be invalid or excluded by a special agreement, this shall not affect the validity of the remaining provisions.