

General Terms and Conditions of Sale and Delivery for HUEHOCO GmbH

Status at: September 2019

I. Scope of Application, Quotations

1. These General Terms and Conditions of Sale and Delivery apply to all contracts – including future contracts – agreed with companies, persons and organisations operating under public law, as well as public-law special funds, for all deliveries and other services, including contracts for work and labour and the delivery of non-fungible goods. The Purchaser's General Terms and Conditions of Purchase will not be recognised by us, even if we do not expressly reject them after having received an order from the Purchaser.
2. Our quotations are non-binding. Our written order confirmation will determine the scope of the subject matter of the contract. A written confirmation from us shall be required for any verbal arrangements, declarations, guarantees, ancillary agreements and amendments.
3. Our information regarding the subject of the delivery (e.g. weights, dimensions, operational values, endurance, tolerances and technical data) as well as our presentation of same (e.g. drawings and illustrations) are only approximately relevant, insofar as usability for the contractually agreed purpose does not require precise conformity. They do not constitute guaranteed characteristics of the state of the delivery or service, but rather descriptions or identifying characteristics. Deviations according to custom and usage and deviations based on legal requirements or constituting technical improvements, as well as substitutions of equivalent parts are permissible insofar as they do not impair the usability for the contractually agreed purpose.
4. We retain the ownership or copyright of all offers and cost estimates, as well as all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and resources made available to the Purchaser. The Purchaser may not make these items or their contents available to third parties, inform third parties of them, use them internally or allow third parties to use them or duplicate them without our explicit approval.

II. Prices

1. Unless otherwise agreed, our prices are quoted ex works and, in the case of domestic deliveries, plus Value Added Tax.
2. Should any significant changes occur to certain cost factors, in particular costs for wages, semi-finished materials, energy or freight, between the time of agreeing the contract and delivering the goods, the agreed contract price may be adjusted to a reasonable extent depending on the influence of the critical cost factors.
3. Unless otherwise agreed or indicated in the invoice, our invoices shall be due for payment immediately following delivery and without any deductions, and they are to be paid in such a way, that the amount due is available to us at the due date. Bills of exchange and cheques will only be accepted if so agreed, and only on account of performance and on the condition that it is possible to discount them. Any transaction charges for payment shall be borne by the Purchaser.
4. In the case of late payment, we shall invoice interest in the amount of nine percentage points above the base lending rate, unless higher interest rates were agreed. However, we reserve the right to claim further damages for delayed payment.
5. The Purchaser shall only have the right of retention and the power to offset payment, if his counterclaims are undisputed or legally established.

III. Delivery and Transfer of Risk

1. Prospective schedules and dates provided by us for deliveries and services always apply only approximately, unless a fixed schedule or fixed date has been explicitly confirmed or agreed. Insofar as shipping has been agreed, the delivery schedules and delivery times apply to the time of handing over to the forwarding agent, freight carrier, or other third parties commissioned with the shipping.
2. Irrespective of our rights based on delay by the Purchaser, we can request the Purchaser to grant us an extension of delivery and performance or a postponement of delivery and service periods for the duration of time in which the Purchaser does not fulfil his contractual obligations towards us.
3. We are not liable for the impossibility of delivery or for delivery delays, insofar as these are caused by Acts of God or other events that were not foreseeable at the time of conclusion of the contract (e.g. operational defects of all kind, difficulties in procuring materials or energy, transport delays, strikes, legal lockouts, lack of labour, energy or raw materials, difficulty procuring required official approvals, official measures as well as the lack of, incorrect or delayed delivery by suppliers) for which we are not responsible. Insofar as such events considerably impede delivery or render it impossible and the obstruction is not only temporary, we are entitled to withdraw from the contract. For temporary obstructions, the delivery schedules are extended or delivery dates are postponed for the duration of the obstruction plus an appropriate start-up period. Insofar as the acceptance of the delivery is not reasonable for the Purchaser due to the delay, he can withdraw from the contract via an immediate written declaration.
4. Any goods, which are notified as being ready for delivery, must be accepted immediately by the Purchaser. Otherwise we shall have the right, at our own discretion, to deliver them or to store them at the expense and risk of the Purchaser.

5. Once the goods have been handed over to a forwarding agent or haulage contractor and/or at the beginning of the storage period in accordance with Section 4, but no later however than the time at which the goods leave the factory or warehouse, the risk shall be transferred to the Purchaser, even if we are responsible for the delivery. We shall purchase insurance only at the express instructions of the Purchaser and at his cost.
6. Unless there is a special agreement, we shall select the means of transport, the transport route and the forwarding agent/haulage contractor.
7. We are entitled to partial delivery, if the partial delivery is reasonable for the Purchaser within the scope of the contractual purpose, delivery of the remaining goods is secured and this does not cause considerable additional efforts or additional costs (unless we declare our willingness to assume these costs).
8. The Purchaser is obliged to accept delivered goods, even if they show insignificant defects.
9. In the case of late deliveries, the Purchaser may grant us a reasonable extension of time and, if this has elapsed without success, withdraw from such parts of the contract, which have not yet been fulfilled. In these cases, claims for damages shall be subject to Section VII under these General Terms and Conditions.

IV. Retention of Title

1. All delivered goods shall remain our property (reserved goods) until all requirements have been fulfilled, including particularly any current account balance claims, to which we are entitled under this business relationship (reserved balance). This shall also apply to future and conditional claims, such as for example from acceptor's bills, as well as to those cases, where payments are made for specially designated claims. This reserved balance shall finally cease to exist, once claims due at the time of payment and included in this reserved balance have been settled.
2. Reserved goods are processed on our behalf as the manufacturer on the basis of Section 950 of the BGB, without obligation to ourselves. Any processed goods shall be considered as reserved goods on the basis of Section 1 above. In the case of processing, modification and mixing with other goods not belonging to us, we shall have co-ownership in the new object amounting to the same share as the ratio of the invoice value of our processed, modified or mixed reserved goods to the other processed, modified or mixed goods.
3. The Purchaser may only sell the reserved goods within the framework of his ordinary course of business and subject to his normal General Terms and Conditions, and only if he is not in arrears and if his claims from reselling in accordance with Section 4 and 5 are transferred to us.
4. In the case of reselling the reserved goods or new processed goods, the Purchaser shall from the beginning and by way of security assign to us his claim towards his customer from the reselling, including any ancillary rights and current account balance claims, without the need for any additional declarations at a later time. If the Purchaser sells the reserved goods together with goods, which were not sold by us, the claim is assigned to us in the ratio of the invoice value of the reserved goods to the invoice value of the other sold goods. When selling goods, in which we have a co-ownership share, a share corresponding to our co-ownership share shall be assigned to us. We expressly accept such advance assignment from the beginning. Regarding all existing claims, we shall have an unrestricted right to segregation or substituted segregation.
5. The Purchaser is entitled to recover any claims assigned to us. However, this right to recover does not entitle the Purchaser to dispose of the claims in any other way, such as for example by assigning or pledging them. If the Purchaser does not fulfil his obligations towards us on time, we have the authority to revoke this right to recover and to demand from the Purchaser, that he informs his customer about the revocation.
6. Should the value of the existing securities exceed the total amount of secured claims by more than 20%, we are obliged at the Purchaser's request to release securities to this extent at our own discretion.
7. Should the Purchaser be in arrears or should he not honour a bill of exchange when due, we shall have the right to take back the reserved goods and, for this purpose, to enter the Purchaser's premises if need be. The same shall apply if it becomes apparent, after contract conclusion, that our claim for payment resulting from this agreement or from any other agreements with the Purchaser is put to risk due to his lack of solvency. Taking back the goods shall not be considered a withdrawal from the agreement. Provisions under the German Insolvency Act shall not be affected.
8. The Purchaser shall inform us immediately about any seizure or other infringements imposed by third parties. The Purchaser shall bear all costs incurred for preventing access to the goods or for the return transport of the goods, unless these costs are compensated by third parties.

V. Quality, Measures and Weights

1. Only our product descriptions, specifications and labels may be taken as the basis of the quality of the goods. Public statements, targeting or advertisements may not be considered as quality indications.
2. Written, verbal or test-based application advice is provided to the best of our knowledge; this is however only to be considered as non-binding information, also

with respect to any third-party industrial property rights, and it does not exempt the Purchaser from his obligation to test whether the products delivered by us are suitable for the intended procedures and purpose. The products are applied, used and processed in a way which is beyond our control, and this is why the Purchaser shall be solely responsible for this.

3. Excess or short deliveries with each measurement and/or item and individual call-off shall be permitted to the amount of 30% for deliveries of up to 5 tons, 20% for deliveries between 5 tons and 15 tons and 10% for deliveries of more than 15 tons. Apart from that, deviations in quantity, measurement, weight, quality and other specifications shall be permitted in accordance with DIN/EN standards in the case where this is customary in the industry sector.
4. In particular cases we are unable to comply exactly with the desired roll weights and/or sizes as specified in the contract. For this reason, we may deliver 10% of each item in a smaller roll weight and/or size than that confirmed by us.
5. Packaging materials and intermediate layers are included in the weighing. The theoretical pallet weight is subtracted, unless it was agreed otherwise.
6. The weights are determined by using our scales and shall be taken as the basis of the invoice. Proof of weight is submitted through a weight ticket. Any complaints about the delivery weight can only be made in writing within one week after the goods have been delivered to the destination.

VI. Liability for Material Defects

1. The warranty period shall be one year from delivery or, if acceptance is required, from the time of the acceptance. This period does not apply to compensation claims of the Purchaser based on damage to life, body or health or to intentional or grossly negligent breaches of duty by us or our vicarious agents that fall under the respective statutes of limitations.
2. Visible material defects in the goods must be notified in writing immediately and in no case later than 10 days after the delivery; and this also includes those cases, where the incorrect material or short quantity is delivered. Any defects, which were impossible to detect within this deadline, even after the most thorough inspection, must be notified in writing immediately on discovery, and at the latest prior to the end of the agreed or statutory period of limitation; in this case, processing of the goods must be stopped immediately.
3. In the case of justified and timely notification of defects, we may, at our own discretion, remedy such defects or deliver replacement goods free from defects (subsequent performance). If such a subsequent performance fails or is rejected, the Purchaser shall have the right, after a reasonable period of time without success, to withdraw from the contract or reduce the price. If the defect is not significant, or if the goods have already been resold, processed or modified, the Purchaser shall only have a right to a price reduction.
4. We must be granted an opportunity to inspect and establish the notified defect. Rejected goods or samples thereof must be immediately returned to us; should the complaint be justified, we shall bear any transport costs. Should the Purchaser fail to comply with this obligation or alter the rejected goods without approval from us, he shall no longer have a claim for material defects.
5. Any expenses relating to subsequent performance shall only be borne by us to the extent, to which these are reasonable in individual cases, in particular considering the price of the goods. We shall not bear any expenses incurred, while the sold goods are being transported to a place other than the agreed place of fulfilment, unless this is in compliance with their contractual use.
6. After the Purchaser has performed an agreed acceptance of the goods, any notification of defects, which could have been detected at the time of this agreed acceptance, shall be excluded. Should the Purchaser have negligently failed to detect a defect, he may only claim his right to rectification of the defect, if we intentionally concealed the defect or undertook a guarantee for the quality of the goods.
7. Any additional claims by the Purchaser shall be subject to Section VII of these General Terms and Conditions. Any rights of recourse for the Purchaser in accordance with Sections 478 and 479 of the BGB shall not be affected by this.

VII. General Restriction of Liability and Limitation

1. Our liability for damages, regardless of the legal basis, especially if based on impossibility, default, faulty or wrong delivery, breach of contract, breach of obligations during contractual negotiations and impermissible actions, insofar as each is based on a fault is limited according to the specifications of this Section VII.
2. We are not liable in case of simple negligence of our bodies, legal representatives, employees or other vicarious agents, insofar as it does not constitute a breach of essential contractual obligations. Essential contractual obligations are the obligation of timely delivery of the subject of the contract, its lack of legal defects as well as material defects that impede its functionality or fitness for use more than just negligibly, as well as consulting, protection and custodial care obligations that are intended to allow the Purchaser the contractual use of the subject of delivery or that serve the protection of the life and body of the Purchaser's staff or the protection of his property from serious damage.
3. Insofar as we are generally liable for damages according to Section 2 above, this liability is limited to damages that we anticipated as potential results of a breach of contractual obligations at the time of conclusion of the contract, or that we should have anticipated based on the application of due diligence. In addition, collateral damage and consequential damage resulting from defects of the contractual subject are only subject to replacement insofar as such damage is typically expected with the correct use of the subject of delivery.

4. In case of liability for simple negligence, our replacement duty for material damage and additional property loss resulting from it is limited to a maximum amount equaling the limit of liability of the third party liability insurance for each claim, even if it consists of a breach of essential contractual obligations.
5. The above liability exclusions and limitation apply to the same extent to our bodies, legal representatives, employees and other vicarious agents.
6. Insofar as we provide technical information or act as consultants and this information or consulting is not included in the contractually agreed scope delivery owed by us, then this is offered free of charge and with the exclusion of any type of liability.
7. The limitations of this Para VII. do not apply to our liability due to intentional behaviour, to guaranteed characteristics of state, due to damage to life, body or health or based on the Product Liability Act.

VIII. Execution of Commission Orders

1. Contrary to Section VII of these General Terms and Conditions, we are only liable, as regards the proper execution of the work undertaken by us when performing commission orders, up to the amount of the commission costs confirmed by us or actually incurred. This shall also apply in the case, where verifiable defects in our commission work have resulted in a reduction in the value of the Purchaser's material provided for the execution of such work. We are unable to guarantee flawless processing in the case of commission work, since this depends on the surface quality of the materials supplied. The above sentence shall also apply to the delivery of goods other than those contractually agreed upon.
2. Apart from this, the execution of commission orders shall be subject to Section VI as appropriate.

IX. Violation of Industrial Property Rights and Tool Costs

1. According to the specifications of this Section IX, we guarantee that the subject of delivery is not subject to commercial property rights or third party copyrights. Each Contractual Partner shall immediately inform the other Contractual Partner in writing of any claims based on the violation of such rights.
2. In the case that the subject of delivery violates an industrial property right or copyright of a third party, we shall change or replace the subject of delivery at our discretion and at our expense in such a way that no third party rights are violated any longer, yet the subject of delivery continues to fulfil the contractually agreed functions, or we procure the right to usage for the Purchaser by concluding a licensing agreement. If we are not able to do so within an appropriate period of time, the Purchaser is entitled to withdraw from the contract or to reasonably lower the purchase price. Any potential liability claims of the Purchaser are subject to the limitations of Section VII of these General Terms and Conditions of Sale and Delivery.
3. In case of rights violations by products delivered to us by other manufacturers we will at our discretion assert claims against the manufacturers and pre-suppliers for the account of the Purchaser or relinquish them to the Purchaser. In such cases we are only liable according to this Section IX if the legal enforcement of the above-stated claims against the manufacturer and pre-supplier was unsuccessful or has no chance of success, for example due to insolvency.
4. If deliveries are based on any drawings, samples or other information provided by the Purchaser, and if these violate any third-party patent, utility model or trademark rights, the Purchaser shall be liable to us for any damage and loss of earnings resulting from this.
5. If the Purchaser bears any tool costs in full or in part, a restriction in the use of the tools and in the production of the goods shall only apply, if the Purchaser has any industrial property rights regarding the manufactured goods. In the case above however, the sole right of the Purchaser to use the tool must be expressly confirmed by us. The tool shall however in every case remain in our possession and be our direct property.

X. Place of Performance, Place of Jurisdiction and Applicable Law

1. The place of performance and jurisdiction for all claims arising from the business relationship, in particular regarding our deliveries and services, shall be Wuppertal. This shall also be the place of jurisdiction for any disputes as to the preparation and effectiveness of the contractual relationship. At our discretion, we shall also have the right to bring an action before the courts, which are responsible for the Purchaser's registered office.
2. As a supplement to these General Terms and Conditions, all legal relationships between us and the Purchaser shall be subject to the law of the Federal Republic of Germany; the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 shall be excluded.