

Terms and conditions of sales and delivery of the H&T Tool Design  
Status January 2023

**§ 1 Term of validity – subject matter of the contract – form**

- (1) These general terms and conditions of sales and delivery apply to all deliveries and services according to the contract signed by H&T and the customer.
- (2) Only our general terms and conditions of sales and delivery are valid; we do not recognize the customer's conditions if they conflict with, deviate from, or extend our terms and conditions of sales and delivery, unless we have explicitly accepted them in writing. Our general terms and conditions of sales and delivery apply even if we deliver goods to the customer without reservation in the knowledge of the customer's conditions that conflict with or deviate from our general terms and conditions of sales and delivery.
- (3) The purchase contract concluded in writing, including these general terms and conditions of sales and delivery, solely governs legal relations between us and the customer. This contract completely defines all agreements between the contractual parties referred to regarding the delivered item. Verbal commitments made prior to signing this contract are legally non-binding, and verbal agreements by the contractual parties are superseded by the contract in written form, unless it is expressly stated that they remain in full force and effect.
- (4) Supplements to and modifications of the arrangements concluded - including these general terms and conditions of sales and delivery - must be in writing in order to be effective. Apart from managing directors or authorized signatories, our employees are not authorized to make verbal agreements differing therefrom. Guarantees and undertakings must be explicitly identified as such by us and confirmed in writing.
- (5) Material declarations and notifications submitted to us by the customer after conclusion of the contract (such as deadlines, notices of defects, declarations of withdrawal or reduction) must be made in text or written form in order to be effective (such as mail, email, fax).

**§ 2 Quotation – conclusion of contract – quotation documents**

- (1) Our quotations are subject to change and non-binding unless they are explicitly marked as binding or contain a certain acceptance period. An order placed by a customer is a binding offer that we can accept within 14 days after receipt. Acceptance can be declared in writing or in text form (such as by order confirmation), or by delivery of the item.
- (2) We reserve ownership and copyrights to images, drawings, cost estimates, and miscellaneous documents. This also applies to written documents that are marked as "confidential".

Their disclosure to third parties by the customer requires our express written consent.

- (3) Training, consulting services, and other services are subject to service contract law and are invoiced separately.

**§ 3 Prices – payment conditions**

- (1) The agreed upon price applies. Legal value-added tax is not included in our prices; VAT is shown separately on the invoice at the applicable rate on the day of invoicing. Unless otherwise agreed, our prices are valid ex works INCOTERMS 2020, exclusive of packaging, freight, and insurance.
- (2) In the absence of any other agreement, our invoices must be paid without deduction net within 30 days after the invoice date.
- (3) Payment shall only be deemed to have been made when we are able to access the payment. In the case of a non-cash payment by us, the same applies only to the unconditional account credit, or the availability of the amount owed as fulfillment.
- (4) Even in an ongoing business relationship, we are entitled at any time to carry out delivery in whole or in part only with prepayment. We will declare this reservation at the latest upon order confirmation.
- (5) The customer is entitled to offset claims and rights of retention only insofar as their counterclaims are legally established, undisputed, or recognized by us.

**§ 4 Delivery**

- (1) We are not liable for impossibility of delivery, non-delivery, or delays in delivery, as far as these are caused by force majeure or miscellaneous incidents that could not be foreseen when the contract was signed (such as wars, armed conflicts, pandemics and epidemics, all kinds of operational malfunctions, difficulties in material or energy procurement, delays in transport, strikes, lawful lockouts, manpower, energy, or raw material shortages, difficulties in the provision of required official permits, official measures, or missing, incorrect, or untimely delivery by suppliers) for which we are not responsible. If incidents like these make it difficult or impossible for us to deliver goods or provide services, and if the constraint is not merely temporary, we have the right to withdraw from the contract. In the event of temporary obstacles, delivery times or service periods will be extended, or the delivery and service execution deadlines will be postponed for the duration of the constraint plus a reasonable starting period. If, due the delay, it is unreasonable for customers to accept the delivery or the service, they have the right to withdraw from the contract by immediately notifying us.

- (2) Delivery deadlines are considered met if the delivered item leaves our plant before the expiry of the delivery period, or readiness for shipment or acceptance has been reported.
- (3) Unless otherwise agreed (such as if acceptance should be executed in the customer's plant), supplies are executed ex works Am Meilenstein 8 – 19, 34431 Marsberg, Germany, according to INCOTERMS 2020.
- (4) If the shipment, acceptance, or receipt of the delivered goods is delayed for reasons the customer is responsible for, then the costs incurred due to the delay, beginning after the item is reported ready for acceptance or shipment, are charged to the customer. These include specifically financing and storage costs that exceed 1% of the invoice amount per month in case of storage in the supplier's plant, with a maximum of 5%; demonstrating that the actual costs incurred for us are less is the responsibility of the customer. For justifiable matters, we are entitled, but not obliged, to dispose otherwise of the goods after allowing a reasonable period and after its inspection, and to give the customer a reasonably extended deadline.
- (5) We are entitled to execute partial deliveries, if the partial delivery is usable for the customer within the scope of the contractually intended purpose, and the delivery of the remaining goods is ensured, and the customer does not incur any significant additional expense or additional costs (unless we commit to pay these costs).
- (6) To the extent permitted by law, transport and all miscellaneous packaging materials will not be taken back except for pallets and pallet cages. The customer is obliged to dispose of packaging materials at their own expense.

## § 5 Retention of title

- (1) All delivered items remain our property until the fulfillment of all claims to which we are entitled deriving from ongoing business relations with the customer.
- (2) We are entitled to insure the delivered item at the customer's expense against loss due to theft, breakage, fire, water, and other damages, unless the customers themselves have demonstrably taken out insurance.
- (3) The customer may neither dispose of, pledge, nor collateralize the delivered item. The customer must immediately inform us of measures taken pertaining to the reserved goods, and hand over the documents required for an intervention; this also applies to other kinds of impairments. The customer must inform third parties in advance of existing rights pertaining to the goods.
- (4) In the event of resale of the reserved goods, the customer transfers to us the claims against their customers arising from the aforementioned transactions as security until the fulfillment of all of our claims; we will accept the assignment. In case of processing, modifica-

tion, or combination of the reserved goods with other items, we acquire direct ownership of the manufactured item. These are regarded as reserved goods.

- (5) In the event that the customer is in breach of the contract, in particular in the event of late payment, we are entitled to withdraw from the contract according to the legal regulations and demand the return of reserved goods due to the retention of title and the withdrawal.
- (6) An application to begin bankruptcy proceedings on the customer's assets entitles us to withdraw from the contract and demand the immediate return of reserved goods.
- (7) If the value of existing collateral exceeds the amount of our claims not just temporarily and by more than 10 %, then we are obliged at the request of the customer to release the excess securities at our discretion.

## § 6 Provisions by the customer

Upon the conclusion of the contract, the customer shall make available to us free of charge two copies of every part drawing with all final measurement and tolerance specifications, as well as an agreed upon set of all items in the original design. The sample material must be clean, dry, and free of burr, and must conform to the usual German drawing tolerances to guarantee safe function of the system.

## § 7 Acceptance and commissioning

If the delivered item is a machine or other equipment requiring assembly or installation services to be executed by us, then the following regulations apply in addition to those previously mentioned:

- (1) As soon as the delivered item is finished so that production and assembly are complete – except, if applicable, minor work that according to the engineer more than insignificantly affects neither the use of the whole machine nor its components for the contractually intended purpose – and the final test and acceptance runs can be executed, we will inform the customer that the machine is ready for acceptance.
- (2) Within a reasonable period upon receipt of this notice, the customer will accept the delivery in our presence. In this process, the proper manufacturing of all machine/ equipment parts is checked, and the final acceptance runs are executed, after the successful completion of which the equipment is considered accepted. If the customer waives their part in the acceptance process, they may not later refer to an acceptance not performed or allege faulty acceptance protocol.
- (3) At the customer's request, commissioning can be carried out by us in the customer's plant and invoiced separately.

## § 8 Liability for defects

- (1) Subject to the following provisions, our liability for defects of quality and title complies with the legal regulations.
- (2) Claims for defects by the customer assume that the customer has complied properly with their obligation to investigate and give notice of defects according to § 377 HGB (Commercial Code). If the delivered item is intended to be incorporated into other products, then the item must be examined before installation. If a defect becomes obvious during delivery, testing, or at any later time, then we must be immediately informed of it. In any case, obvious defects must be reported within 7 working days from delivery, and defects that cannot be detected during testing must be reported within the same period after detection. If the buyer neglects the proper analysis and/or notification of defects, then our liability for the defect which was not reported or was not reported properly or in a timely manner is excluded according to the legal provisions.
- (3) We have the right to provide the supplementary performance owed only if the customer pays the purchase price due. The customer, however, is entitled to withhold a share of the purchase price commensurate with the defect.
- (4) If the delivered item is defective, we can choose whether the supplementary performance takes the form of elimination of the defect through rework or delivery of a defect-free replacement. If the type of supplementary performance we select is unacceptable to the customer in an individual case, the customer has the right to decline it. Our right to refuse supplementary performance under the legal conditions remains unaffected.
- (5) The customer must allow us the opportunity and the time required to execute the supplementary performance owed, above all by handing over the defective delivered item for inspection purposes. In case of a replacement delivery, the customer must return us upon our request the defective delivered item according to the legal provisions; however, the customer has no right of return. The supplementary performance includes neither disassembly/ removal, removal, or uninstalling of the defective delivered item, nor assembly/ mounting, fitting, or installation of a defective item, if we were not originally obliged to execute these services; customer claims on reimbursement of corresponding costs ("Disassembly and assembly costs") remain unaffected.
- (6) If a defect is present, we will assume or reimburse the expenses required for inspection and supplementary performance, in particular transport, travel, labor, and material costs, as well as – if necessary – disassembly and assembly costs in accordance with the statutory provisions and these general terms and conditions of sales and delivery. Otherwise, we are entitled to demand from the customer reimbursement of costs arising from an unjustified

request for rectification of defects (in particular, inspection and transportation costs), unless the lack of defectiveness was undetectable to the customer.

- (7) If the delivered item is not available at the point of delivery or the contractually agreed installation site, then the customer assumes any additional costs to us that may arise during the rectification of defects, unless the movement complies with its intended use.
- (8) Our liability for defects does not extend to normal wear, tear, or deterioration, as well as defects arising after transfer of risk as a result of defective or negligent handling, and defective operation, excessive load, unsuitable equipment, or due to specific external influences that are not contractually presupposed.
- (9) With the exception of the claim for rectification of defects or delivery of a defect-free replacement, customer claims for defects do not exist in cases of insignificant deviation from the agreed upon condition or entailing only insignificant impairment of usability.
- (10) Warranty claims against us are limited to the immediate contractual partner and are not transferable.

## § 9 Limitation of liability

- (1) Unless otherwise stated in these terms of sales and delivery, including the following regulations, we are liable in case of violation of contractual and non-contractual obligations according to the legal regulations. We are liable for damages – for whatever legal reason – only
  - a) in case of intent,
  - b) in case of gross negligence of the owner/ executive bodies or senior management,
  - c) in case of culpable injury to life, body, health,
  - d) in case of defects that are fraudulently concealed or whose absence was guaranteed,
  - e) in case of defects in the delivered item, insofar as liability is assumed according to the Product Liability Act for personal injury or property damage on privately used objects. In case of culpable violation of essential contractual obligations (obligations without which the contract cannot be properly executed, and compliance with which the contractual partner regularly trusts and may trust), we are also liable in case of cross negligence of non-executives, and in case of slight negligence; in the latter case, liability is limited to the contract-typical, reasonably foreseeable defect. Further claims are excluded.
- (2) Insofar as liability on our part is excluded or limited, this applies equally to personal liability for damages of our employees, workers, staff, representatives, and various agents.

## § 10 Software use

- (1) Insofar as the scope of delivery includes software, the customer has a non-exclusive right to use the delivered software including its documentation. It is only for use on the delivered item intended for this purpose. Software use outside the IT system supplied with the delivered item is prohibited.
- (2) The customer may use, duplicate, revise, or translate the software, or convert it from object code into source code only to the extent permitted by law (§§ 69 a ff UhrG (*oder aber: UrG??*) (Copyright Act). The customer commits not to remove or change the manufacturer's information - in particular, copyright notices - without our previous express consent.
- (3) All other rights to the software and the documentation, including the copies, remain with us or the software supplier. Sublicensing is not allowed.

## § 11 Limitation

All customer claims – for whatever legal reasons – lapse in 12 months. This limitation begins with the delivery of the goods; insofar as acceptance is agreed upon, limitation begins with acceptance. The statutory limitation periods apply to intentional behavior or grossly negligent conduct, for claims according to the Product Liability Act, as well as for damages arising from injury to life, body, or health. The statutory limitation periods are also valid for defects in a building, or for delivery items that were used according to their usual mode of use for a building and caused its deficiency. Further special legal regulations on limitation (in particular § 438 Section 1 No. 1, § 438 Section 3, § 444, § 445b BGB (Civil Code)) remain unaffected.

## § 12 Confidentiality

- (1) The customer commits to keep the concluded agreements strictly confidential. The customer commits to treat all not obvious commercial and technical details, as well as the commercial and technical details not obvious to the customer that become known through the business relationship, as trade secrets.
- (2) Drawings, models, templates, patterns, or similar objects may only be used for the purpose of contract fulfillment and may not be made available or otherwise accessible to third parties. Duplication of such objects is only allowed in the context of the operational requirements and the copyright provisions.
- (3) The customer may only advertise the existing business relationship with our prior consent.

## § 13 Jurisdiction – applicable law – place of performance

- (1) If the customer is a merchant or a legal entity under public law, then the exclusive place of jurisdiction – also international – is jurisdiction Arnsberg. The same jurisdiction is valid, if the customer does not have a general place of ju-

isdiction in the Federal Republic of Germany. Mandatory legal requirements in terms of jurisdictions remain unaffected by this regulation.

- (2) Unless otherwise stated in the order confirmation, our registered office is the place of performance.
- (3) All legal relationships between the customer and us shall be governed exclusively by the law of the Federal Republic of Germany applicable to domestic parties. UN sales law does not apply