

General Terms and Conditions of Business of the Höcker Polytechnik GmbH

I. Conclusion of contract and incorporation of the present terms and conditions

The present terms and conditions of business are an integral part of the business relationships between our company and other enterprises, legal persons under public law or a special fund under public law in terms of § 310 par. 1 BGB (note of transl.: German Civil Code). Deviations from these terms and conditions shall only be effective upon our written approval. Oral agreements shall not become effective in this respect.

We hereby explicitly object to any conflicting or deviating terms and conditions of purchase of the other party.

In case of doubt, our sales conditions shall also apply if we carry out the delivery to the customer without any reservation and even if the customer has confirmed the order with reference to his terms and conditions of purchase or business.

As far as the term "customer" is referred to in the following, this term shall imply the purchaser or such person on whose behalf, at whose instigation and at whose expense we act or provide services.

II. Quotations, prices and reservation of delivery

1.

As a basic principle, our quotations shall be binding for two weeks after mailing, unless otherwise specified in our offers and/or estimates of costs.

2.

Our quoted prices are net prices without discount. The statutory value-added tax must be added. Destination and packing charges, transport insurance costs and agreed accessory services are invoiced in addition.

3.

If the period between conclusion of contract and agreed date of manufacture or delivery exceeds 2 months, we shall be entitled to pass on to the customer any increases of the costs which are the basis of our price calculation, namely increases of commodity prices, energy costs, wages and salaries, freight charges and taxes. We shall immediately inform the customer thereof and present proof upon request.

III. Catalogues

Data specified in catalogues, brochures and advertisements shall not be binding, unless explicitly included in the contract as its contents and basis.

IV. Scope of deliveries and services

1.
The scope of our deliveries and services shall exclusively be governed by our written order confirmation. The customer must immediately object to possible deviations from the order.
2.
There is no claim for taking back components and/or delivered goods beyond the statutory warranty regulations. If we take back components, we shall be entitled to invoice a fixed processing charge of 10% and the refurbishment costs. The transport charges shall be reimbursed by the customer.
3.
The customer shall at his expense procure all approvals required for the installation of the plants delivered by us from the competent authorities and maintain said required approvals at his expense.
4.
In case of deliveries abroad, the customer must complete any import formalities himself and shall bear all import duties such as customs duties and taxes and any other costs accruing in connection with the import. Any import or currency restrictions of the foreign country shall not affect the validity of our contract concluded with the customer. If it becomes impossible for the customer to receive the goods or if he refuses receipt, he shall compensate us for the entire damage resulting therefrom.

V. Specification

1.
Before submission of a bid, the customer shall exactly specify his inquiry.
The customer shall specify properties, in particular dimensions, weights, performance data and any other quality characteristics of the item.
It is exclusively up to the customer to specify the product qualities such that the item will be suitable for the intended use.
2.
We shall under no circumstances be obliged to check the data specified by the customer for feasibility and practicability, no matter in which respect.
3.
If the subject matter of the contract is used for purposes not apparent from the quality specifications or other written information of the customer and if we have not confirmed the suitability for said purpose, we shall not assume any liability, no matter whether or not the subject matter can be used for the customer's purpose.
4.
If the customer demands a certain design of the subject matter of the contract, the customer shall be obliged to ensure that this type of design demanded by him does not infringe any third-party rights. We shall not be obliged to carry out a check. If any rights of third parties are infringed by the manufacture of the product or the processing or treatment of the goods provided by the contract according to the customer's specifications, the customer shall hold us harmless from any claims of third parties resulting therefrom, no matter on which legal grounds said claims are based.

VI. Delivery times and manufacturing deadlines

1.

The customer shall only be entitled to invoke agreed delivery times and manufacturing deadlines, insofar as we have also assumed assembly work at a location other than our registered business address, if said times and deadlines have been agreed and confirmed by us in writing.

2.

The delivery time shall commence upon receipt of our order confirmation, but not before the customer has handed over to us any documents, information, approvals and clearances to be procured by him, a possibly agreed deposit has been delivered to our account free of charge and all official and technical inquiries have been clarified.

It shall be up to the customer to procure the approvals.

VII. Passing of risk, date of acceptance and collection

1.

The risk shall pass to the customer or the carrier appointed by him upon handover of the item to be delivered or manufactured by us on our premises.

If we have assumed the dispatch as an exception, the risk shall nevertheless pass to the consignee upon handover to the carrier on our premises.

Irrespective of the handover, the risk shall pass as soon as the collection deadline according to the following clause 2 has expired.

2.

The customer shall be obliged to collect the goods or have them collected by a carrier appointed by him from our premises within one week after receipt of the notice of completion (ready-for-collection notice) sent to him by fax, e-mail or registered letter, with 12 workdays after dispatch of the notice of completion (ready-for-collection notice) at the latest. After expiration of this period, we shall be entitled without further notice to have the subject matter of contract transported by a carrier appointed by us on behalf and on the account of the customer to his premises at his own expense and risk.

3.

The customer shall take delivery of the completed item on our premises.

The customer must notify us in writing of any defects 5 workdays after the handover according to the preceding clause 1 at the latest. If such notification is not submitted within the stated period, the item shall be deemed to be as stipulated in the contract and to have been accepted, unless the defect is of a nature which was not discernible on adequate visual and technical inspection.

We shall be entitled, just like the customer, to demand formal acceptance. We shall invite the customer by e-mail, fax or registered letter. There shall be a minimum period of one week between the invitation and the date of the formal acceptance, not including the day of invitation to the set date of acceptance. If the customer fails to appear on the date of formal acceptance set by us, the service performed by us shall be considered as stipulated in the contract, as far as we have pointed out to his consequence in the case of non-appearance, and we shall be entitled to have the item transported to the customer by a carrier appointed by us for this purpose at the customer's expense; the work manufactured by us shall be deemed to be as stipulated in the contract in all respects.

4.

If we have assumed the manufacture of an item or a plant in the premises of the customer, we shall be entitled to demand the acceptance after completion of the work and written notice thereof; besides, the preceding provisions of clause 3 shall apply.

5.

Irrespective of the preceding provisions, the risk shall in any case pass to the customer upon commissioning of the item manufactured by us on the customer's behalf by the customer. The date of commissioning shall be the final date of acceptance. The item shall be deemed to have been completely accepted upon commissioning.

6.

All time periods, in particular warranty periods, shall commence on the day following the acceptance.

VIII. Transport insurance, transport damage

1.

We shall be entitled but not obliged to take out at the customer's expense a transport insurance for items to be delivered by us to him or for items to be delivered by us to him to his construction project, insofar as the customer does not explicitly declare that he does not wish any insurance. The value of the goods shall be the basis of the amount insured.

The customer shall address any claims for damages with regard to items damaged or lost during transport directly to the deliverer (railway or carrier), as far as such damages are not to be asserted by us in the case of assembly work carried out on the customer's behalf on his premises.

Transport damages are to be taken down immediately after receipt of the consignment and in the presence of two neutral witnesses and to be notified in writing to the deliverer.

Transport damages or the loss of delivery items shall not exempt the customer from his payment obligations towards our company.

2.

Original consignment notes as well as the evidence of liability and a power of settlement granted on our behalf shall be handed over to us for any negotiations with the transport insurance company possibly required on our part.

IX. Installation, commissioning and assembly

1.

In case of an accepted order for carrying out assembly work, we shall invoice the assembly work as a basic principle according to the time spent at our own hourly rates. Overtime and work on Sundays and public holidays shall be separately remunerated based upon the collectively agreed provisions applicable at the place of our headquarters. Apart from the transport costs, travelling times shall be remunerated to their full extent.

The customer shall bear the costs for accommodation, travel and entertainment allowances and any other costs incurred in connection with the assembly work.

As a basic principle, our assembly work shall not include bricklaying, joinery, roofing, compressed air work and electrical installation work as well as the provision of scaffolding, lifting and crane truck.

Before starting assembly work, the customer shall place at our disposal scaffolding, lifting and crane trucks for assembly work in good operating condition and in sufficient quantity and shall maintain these during the complete assembly work on our behalf at his expense.

2.

We shall be entitled to appoint contractual fitters and subcontractors for carrying out the assembly work. If the assembly work becomes impossible or if it is delayed for reasons that are not our responsibility, the assembly and travelling times and other costs shall be invoiced at the amount accrued and at the daily rate.

All agreements regarding assembly times must be confirmed by us in writing.

In the event of agreed assembly times, our customer shall previously have procured all official approvals required for the assembly work as well as entry visa and working permissions for our fitters for working abroad. Our fitters, whether our own staff or contractual fitters or subcontractors appointed by us, must be able to provide their services and to carry out all work necessary for the assembly for at least 10 hours on workdays without any disruptions (and as far as multi-shift performances are possible and allowed in multi-shift operation).

3.

The customer shall bear any costs possibly accruing due to permissions required for multi-shift work and weekly work as well as for work on Sundays and public holidays as provided by employment law.

4.

If the order placed with us includes the assembly of the machine/plant manufactured/delivered by our company, commissioning shall be carried out after assembly.

In coordination with our assembly management, the customer shall provide expert staff authorized by us at his expense for commissioning.

By way of commissioning, to which we invite orally or in writing by our assembly management, the customer shall confirm the commissioning.

Upon signing of the commissioning report, all periods, in particular warranty periods, shall commence.

Irrespective thereof, commissioning shall be deemed to have been carried out if the customer puts the plant/machine into operation for the first time without having been invited by our assembly management.

X. Delay

If the delivery or manufacture of the item is delayed by circumstances which are not within our scope of risks, in particular due to industrial action at our company or at our upstream supplier or due to force majeure, and if we are or our upstream supplier is therefore not able to deliver in good time, the delivery/manufacture times shall be prolonged by the duration of the trouble.

Claims for damages shall be excluded in this case, unless we have acted with gross negligence or intent.

XI. Invoices and due dates

1.

Invoices must be paid within 30 days after the date of invoice net at the latest. In case of a payment delivered to our account within 8 days after the date of invoice and free of charge, we shall grant a discount of 2%. The discount shall only be granted if all preceding invoices have been fully paid.

Despite contrary provisions of the customer, we shall be entitled to offset payments against the customer's older debts, namely first against interests, then against expenses and then against the oldest debt.

2.

All receivables against the customer shall be immediately due if the terms of payment are not observed or circumstances become known to us which according to our dutiful commercial discretion give cause to justified doubts about the creditworthiness of the customer. In such case, we shall be entitled, irrespective of further legal rights, to carry out outstanding deliveries only against securities or to withdraw from the contract after a reasonable period of grace or to claim for damages for breach of contract. We shall be entitled to offset our receivables against the customer's receivables, irrespective of the legal grounds, even if the due dates of the receivables are not identical.

3.

We shall accept cheques and bills only on account of performance. If we accept cheques or bills, the debt shall only be cancelled upon final encashment. Protest fees and collection expenses shall be charged to the customer. The retention of title for goods subject to retention of title shall only expire upon final payment against the cheque or full encashment of the bill according to the specified provisions regarding retention of title included in these Terms and Conditions of Business.

4. If the term of payment is extended or if the payment is made later than agreed, we shall be entitled to invoice interests at the legal rate from the due date of our receivables. We shall pass on higher interests payable on arrears. We shall reserve the right to claim for further damage due to delay.

5.

We shall have the right to subject deliveries to companies unknown to us to prior payment of the agreed price. The deterioration of the customer's solvency or the non-compliance with agreed terms of payment shall entitle us to declare the entire remaining debt immediately due.

6.

If the customer does not meet or does not sufficiently meet his payment and/or insurance obligations or his obligations resulting from our retention of title or reserved ownership, violates his obligations resulting from the retention of ownership or reserved ownership or if he stops his payments or if insolvency proceedings are instituted against his assets or another measure according to the Insolvency Code is taken, our entire remaining receivables shall be due at once. This shall also apply if bills or cheques with a later maturity date exist or if another agreement on the deferment of payment has been made between the customer and our company. If the customer fails to pay the entire remaining receivables immediately, 5 days after their maturity due to such event, the customer's right of use of the goods subject to retention of title shall expire.

7.

If any of the aforementioned cases occurs, in particular if the customer does not pay in full on the due date, we shall be entitled to collect at his expense all items owned by our company according to part VIII. clause 5 of the present terms and conditions from the customer or, to the extent permitted for him, from that location where the customer has brought or deposited said items and to take them physically back. The customer irrevocably permits us by now to enter his premises, his site and the rooms, where our property is located, during regular business hours, in order to collect it.

This right shall explicitly also be granted to the contracting companies/contractors charged with the collection and their helpers.

The exertion of the preceding rights shall not imply any waiver of further rights and claims which we are entitled to, in particular claims for damage.

XII. Retention of title

1.

We shall retain the title to the items delivered by us until receipt of all payments originating from the business relationship with the customer. The retention of title shall be extended to the struck and accepted balance if we have included individual or all receivables in current invoices. Payment terms of the customer for individual specified deliveries shall not affect the retention of title.

2.

The enforcement of our rights under retention of title shall not be deemed to be a withdrawal from the contract. Our claim for compensation for further damage shall remain unaffected.

3.

If the customer combines our goods with other goods, which are not our property, to make one homogeneous item, we shall acquire co-ownership of the new item to the extent of the value of the delivered goods (delivery price incl. value-added tax) compared to the other items at the time of combining. If the goods are combined such that the customer's item is to be considered as the main item, it shall be deemed to have been agreed that the customer shall transfer co-ownership to us pro rata. The customer shall take custody of the sole or co-ownership originated thereby on our behalf free of charge.

Any processing or transformation of the item by the customer shall always be carried out on our behalf, without us having to take responsibility for such work towards third parties.

Apart from that, the same shall apply as to the purchased item subject to retention of title.

4.

If the delivery item is resold together with other goods which are not our property, the customer's claim against his purchaser shall be deemed to have been assigned to us to the amount of the delivery price agreed between our company and the customer. Any processing or transformation of the delivery item by the customer shall always be considered as carried out on our behalf, without us having to take responsibility for such work towards third parties.

5.

The customer agrees with us on the fact that the items delivered by us, as far as they are installed in his items or installed in items which he is going to resell, shall not be an essential part (§ 93 BGB) of said items or objects, but shall be simple parts, and that we, by virtue of the agreed retention of title, shall be authorized in exertion of said rights to dismantle and to sell the parts and items delivered by us as specified in the following clause 9.

6.

The customer shall sell the goods subject to retention of title only in the ordinary course of business. He undertakes to agree with his purchasers a prolonged or extended retention of title. The customer's claim against his purchasers shall be immediately assigned to us to the amount of our claim. The assignment shall be carried out upon resale, irrespective of whether the delivery item is resold without or after processing, without the need for further agreements.

7.

The customer shall be entitled, without our right to collect the amount receivable being affected thereby, to collect the amount receivable on our behalf. In such case, he shall collect it as our trustee and shall be obliged to pass the collected amount immediately on to us. He shall keep the collected amount separately from his other assets on our behalf.

As long as the customer complies with his obligations, we shall not enforce the assigned claims. The customer's right to collect shall expire, as soon as the customer does not comply with, does not properly comply with or does not completely comply with his obligations towards us, without any obligation on our part to send a reminder. The customer shall hand over to us on our request the information and documents required for the enforcement of our claim. Irrespective of our right to disclose the assignment, the customer shall be obliged to inform his debtors about the assignment on our request.

The customer shall not have the right to further assign the claims to the extent that they have been assigned to us. The customer shall ensure that the claims to which we are entitled due to the prolonged and extended retention of title shall always take precedence over a possible blanket assignment.

8.

The customer shall immediately inform us about any seizures or other access or intervention of third parties to the goods subject to retention of title or the assigned claims, in order to enable us to assert our rights according to § 771 ZPO (note of transl.: German Code of Civil Procedure). The customer shall be responsible for late notifications. He shall be liable for the accessing third party being in the position to reimburse our legal and extrajudicial costs in case of legal action according to § 771 ZPO, otherwise he shall bear the costs to the amount resulting from the default himself.

9.

The customer's right to own the goods subject to retention of title shall expire if he fails to comply with, to fully comply with or to properly comply with his major contractual obligations towards us. In such case, we shall be entitled, without setting a period of grace or without notice of withdrawal, to enter the customer's premises and to take possession of the goods subject to retention of title, including, if applicable, the right to remove these goods from other items, to take them away and to sell them in the best possible way by private contract or at our discretion by public auction, irrespective of the customer's payment and other obligations towards our company. After deduction of the costs, the proceeds of sale shall be offset against the customer's liabilities. A possible surplus shall be paid to him.

10.

All preceding securities are conditional insofar as upon full payment of the claim for which we are entitled to the security, the ownership of the delivered goods shall pass to the customer and the customer shall be entitled to the assigned claims without further notification.

If the value of the securities to which we are entitled exceeds the total claims against the customer by more than 20%, we shall without the need of further agreements release the claims to which we are entitled to the extent that they exceed 20% of our claim against the customer. In such case, the oldest security interests shall always be released first.

11.

The right of retention of title shall also be valid towards carriers to whom the goods have been handed over on the customer's request or at our instigation.

12.

In case of international transactions, we shall retain the title of the delivered goods until final payment of the purchase price in accordance with the respective legal regulations of the country of destination. The retention of title shall be deemed to have been explicitly agreed between our company and the customer. As far as the country of destination permits other equivalent security interests, these shall be considered as explicitly agreed.

XIII. Warranty / Non-performance

1.

Any warranty claims of the customer shall require proper fulfilment of the customer's inspection duties as provided by § 377 ff. HGB (note of transl.: German Commercial Code) in visual and technical respect by the customer and proper compliance with his duties of notification of defects within the stated period according to these terms and conditions by the customer.

2.

If as an exception a defective item has been delivered and if said defect existed already at the time of passing of risk and if a purchase contract is concerned, we shall have the sole right of choice as provided in §§ 437, 439 BGB to the extent permitted by law.

If remedial work can only be realized at disproportionate cost, the customer shall have the right to demand a reasonable reduction of the purchase price or to withdraw from the contract. The rights specified in §§ 440, 437 sentence 3 BGB shall be excluded, unless we have violated a major contractual obligation by intent or gross negligence.

If we have taken on the manufacture of a work, the legal provisions applicable to works and services shall apply. To the exclusion of all further warranty rights, we shall be entitled at our discretion to effect remedy or to offer a reduction of the remuneration according to § 638 BGB. The rights as provided by § 634 clauses 2 and 4 BGB shall be excluded. If in an individual case the remedy chosen by us has failed and if a reduction is unacceptable for the customer according to his fair interests, the latter shall be entitled to withdraw from the contract.

If a defect is caused by us due to slight negligence, we shall, irrespective of the costs to be incurred for remedy, be entitled to refer to the disproportion in terms of § 635 par. 3 BGB, without being obliged thereto.

3.

Any claims of the customer beyond this, even such claims for damage regarding other objects of legal protection than the subject matter of the contract, shall imply gross negligence, intent or the provision of a guarantee by us, unless otherwise agreed upon in the following provision of part XIV.

4.

If we are obliged to warrant, we shall carry out the warranty work on our premises or optionally at the place of use of the delivered plant/machine.

The customer shall be obliged to grant us access to the plant/machine delivered by us at any time for this purpose or to transport the machine/plant on our request to our premises to carry out warranty work.

5.

Our liability shall be limited to the purchase price, unless otherwise stipulated by mandatory law.

6.

The warranty period shall be 1 year after acceptance.

The warranty period shall commence on the day following the acceptance, upon commissioning of the plant/machine manufactured/delivered by us at the latest.

XIV. Liability for other objects of legal protection, secondary contractual obligations and violation of relationship-specific obligations

1.

Claims for damages resulting from the negligent violation of secondary contractual obligations or from the negligent violation of such interests and objects of legal protection of the customer, of which the latter has not explicitly notified us in writing upon initiation of contract until signing of contract and which notification we have not explicitly confirmed in writing, shall be excluded.

2.

Claims resulting from damage of other objects of legal protection beyond the subject matter of contract, shall be excluded, as far as we are not to blame for gross negligence or intent or as far as in individual cases a liability for such claims, connected also to the risk of achieving the purpose of contract, has been assumed.

3.

If in individual cases we are to blame for the violation of any rights and obligations resulting from the nature of contract, the liability shall be limited to a typical foreseeable average damage to the extent permitted by law. We shall not be obliged to inform and assure ourselves about the intended use and extent of use of the item manufactured and/or delivered by us. Such knowledge can only be held against us if said knowledge has been communicated to us in good time before acceptance of order and if we have explicitly confirmed such information in writing.

4.

The liability due to culpable injury to life, body or health shall remain unaffected by the preceding exclusions and limitations.

5.

Our liability shall be limited to the amount of the purchase price, unless this is excluded by law.

XV. Provision of material and customer specifications

If the customer demands that we provide certain materials or means, we shall not be responsible for said demanded materials or means. Any liability for these and for defects resulting from the use of said materials or means shall be excluded.

XVI. Appointment of deadline

Before assertion of claims for damage due to delay, a reasonable period of grace shall be set in any case, unless we are blamed for gross negligence or intent.

XVII. Setting off

Setting off against our claim shall only be permitted by means of uncontested claims or claims recognized by declaratory judgment.

XVIII. Place of performance, place of jurisdiction, contractual language, severability clause and applicable law

1.

Place of performance for our delivery shall be our headquarters.

Place of jurisdiction for any disputes, irrespective of whether active or passive litigation is concerned, shall be the place of business of our company.

We shall, however, have the right to take legal action also at the customer's place of business.

The place of jurisdiction shall also be deemed to have been agreed for legal actions resulting from cheques and bills.

The contractual language shall be German. Even in case of other languages and even if we communicate or conclude contracts in another language, the German version of the documents or contracts shall exclusively be relevant to any interpretations or disputes.

2.

If a provision of these contractual terms and conditions is or becomes invalid, the validity of the other provisions shall remain unaffected. The invalid provision shall be replaced with a valid regulation as closest as possible to the sense and purpose of the invalid provision. A possibly existing gap is to be closed by way of supplementary contractual interpretation.

3.

The contract shall be exclusively governed by German law. International or EU Community Law shall not apply unless explicitly agreed.

4.

Modifications of or deviations from these terms and conditions as well as any supplements must be in writing. This shall explicitly also apply to the waiver of the written form.