

Terms and Conditions of Sale and Delivery for holac Maschinenbau GmbH

1. Validity of the terms and conditions

- (1) Our terms and conditions of sale shall only apply to companies (§ 14 of the [German] Civil Code [BGB]). They shall also apply to all future transactions with a party placing an order (Buyer).
- (2) Only our terms and conditions of sale shall apply. We shall not recognise terms and conditions of sale of a Buyer which are contrary to, or differ from, our terms and conditions of sale, not even if we carry out a contract without stating reservations.
- (3) All agreements made between us and the Buyer for the purpose of carrying out a contract are to be committed to writing in the contract or in an amending contract.
- (4) Provided that there is nothing to the contrary in the terms and conditions of a contract, the terms and definitions of INCOTERMS 2000 shall apply.

2. Conclusion of a contract

- (1) Our offers are subject to change without notice. Technical descriptions and other information in offer, leaflets and other information shall likewise be binding initially.
- (2) We shall retain title and copyright to diagrams, drawings, calculations and other documents. Third parties must not be allowed access to them.
- (3) If the order is to be classified as an offer in accordance with § 145 BGB, we shall consequently be able to accept it within 12 working days.
- (4) Information within the meaning of Section 2 (1) above as well as in public statements made by us, the manufacturer and his assistants (§ 434 | 3 BGB) shall only become an integral part of the specifications if express reference is made to it in a contract.

3. Prices and terms and conditions of payment

- (1) Unless stated otherwise, our prices shall be "ex Works" including standard packing. Additional information such as for taking out insurance policies for example, shall be for the account of the Buyer.
- (2) Statutory value added tax is not included in our prices. It shall be shown separately in our invoices at the rate in force on the date of invoice.
- (3) Purchase price payments are to be paid within 15 days from receipt of the goods and invoice in cash or by credit transfer. It shall be regarded as having been paid from the date on which we are able to dispose freely of the payment.
- (4) Other methods of payment shall require special written agreement. Costs incurred by both parties as a result shall be for the account of the Buyer.
- (5) The deduction of a prompt payment discount shall require separate written agreement.
- (6) The Buyer shall only be entitled to offset or to a right of retention on account of uncontested accounts and claims or those which have been declared final and absolute in a court of law.

4. Delivery and obligation to co-operate

- (1) We shall reserve the right to carry out amendments to design, shape and colour attributable to improved technology or to legal requirements, provided that the modifications are not significant or are not otherwise unreasonable for the Buyer.
- (2) Part-deliveries may be made and invoiced as such if they are reasonable for the Buyer.
- (3) Delivery periods shall be notified subject to the reservation of co-operation on the part of the Buyer in accordance with the contract as a matter of principle. Compliance by us with our delivery obligation assumes that the Buyer has fulfilled his obligations on time and properly.
- (4) If we do not receive deliveries ourselves, although we have placed equivalent reserve orders with reliable suppliers, we shall be exempted from our obligation to deliver and may withdraw from the contract.
- (5) If, after the contract has been signed, it should transpire that the Buyer is not offering an adequate warranty for his solvency, and our claim to payment is jeopardized, we shall be entitled to withhold delivery until the Buyer effects payment or has furnished a security for it. If payment is not rendered or the security is not furnished within 12 working days following a request to that effect, we shall consequently be entitled to withdraw from the contract.
- (6) If the Buyer should find himself in arrears with call-off, acceptance or collection, or if he is to blame for a delay in dispatch or distribution, we shall, irrespective of claims over and beyond this, consequently be entitled to demand a lump sum for costs amounting to the normal storage costs in that area, irrespective of whether we put the goods into store in our own warehouse or with a third party. The Buyer shall reserve the right to prove that we have not suffered a loss or that we have suffered a smaller loss.

5. Delay in delivery

- (1) If we, or our suppliers, have failed to comply with an agreed delivery period as a result of circumstances beyond our control, it shall consequently be extended as appropriate. We shall notify the Buyer of such circumstances immediately. If the circumstances preventing us from delivering still exist one month after the agreed delivery period has expired, either party may withdraw from the contract. The Buyer shall not be able to assert claims over and above this on account of us failing to deliver on time for reasons for which we are not to blame.
- (2) In the event of default in delivery, the Buyer shall be entitled to demand a lump sum as compensation for default amounting to 3% of the delivery value, and up to a maximum of 10% of the delivery value, for each complete week of default. Furthermore, the Buyer may set us a reasonable subsequent period for delivery in writing. This must be at least 15 working days. Once it has expired without success, he shall be entitled to withdraw from the contract or to demand compensation for damages instead of delivery. The liability to pay compensation for damages shall be limited to 50% of the damage incurred.
- (3) Section (2) above shall not apply provided that the default is based on intent, gross negligence or on a vital breach of duty. It shall not apply either, in so far as a commercial transaction at a fixed date was agreed.

6. Place of fulfilment and passing of risk

The place of fulfilment is our principal place of business. Provided that there is nothing stated to the contrary in the order confirmation, delivery shall be agreed as being "ex Works".

7. Quality defects

- (1) First of all, the statutory duty of inspection and notification of defects in § 377 of the (German) Commercial Code [HGB] shall apply to the Buyer with regard to quality defects.
- (2) The enforcement of warranty and damage compensation claims presupposes compliance with the recommendations for starting-up, use, servicing and inspection in accordance with the respective operating instructions for the machine or structural component.
- (3) The Buyer shall not be able to derive any additional rights from quality defects not impairing the value and the fitness of the goods for use as identified by us or which only do so to a minor extent.
- (4) If the goods reveal a quality defect when risk is passed over, we shall consequently be entitled and obliged, to render subsequent fulfilment. Subsequent fulfilment shall be rendered at our choice either by repair or the supply of a replacement. The costs of subsequent fulfilment, in particular transport costs, travelling expenses, labour and materials shall be for our account. If these costs account for more than 50% of the value of the delivered goods, we shall consequently be entitled to refuse to render subsequent fulfilment.
- (5) In so far as subsequent fulfilment goes wrong, is not rendered within a reasonable period set by the Buyer, or is withheld, the Buyer shall at his choice be entitled to withdraw from the contract and to demand a reduction in the purchase price reflecting the loss of value caused by the defect or – within the limits of the following sections – to demand compensation for damages instead of performance.
- (6) If a quality defect results in damage, we shall consequently be liable in accordance with the law, if this concerns personal injury, damage covered by the Product Liability Act, or is attributable to intent or gross negligence.
- (7) In so far as the damage is attributable to a culpable breach of a vital contractual obligation or a cardinal duty, we shall, moreover, only be liable for damages typical for such a contract.
- (8) Further contractual and tortious claims by the Buyer are precluded. Therefore, we shall not be liable for damages which have not been incurred to the delivered goods themselves and for lost profit or other pecuniary loss of the Buyer.
- (9) The above provisions shall not apply for used goods. We shall only be liable for quality defects if we expressly take over a warranty or are guilty of intent or gross negligence.
- (10) § 478 BGB shall not be affected by Sections (2) – (8) above.

8. Other liability for compensation for damages

- (1) The provisions in No 7 Sections (5) – (7) shall also apply for compensation claims for damages based on other breaches of duty.
- (2) In the event of a breach of a pre-contractual duty or a hindrance to performance already existing when the contract was signed (§311 II, §311a BGB) our duty to render compensation shall be limited to the negative interest.
- (3) The provisions in No 7 Sections (5) – (7) shall apply accordingly for our liability in tort.
- (4) Provided that our liability is precluded or limited, this shall also apply for the personal liability of our salaried staff, employees, representatives and assistants.

9. Statute of limitation

- (1) The right of the Buyer to subsequent fulfilment shall be limited to two years from the delivery of the goods, and for used things six months from the delivery of the goods, subject to § 437 No 2, §479 BGB. Consequently, the right to withdraw from the contract and to reduce the purchase price shall be ruled out in accordance with the law.
- (2) The period of limitation for compensation claims for damages amounts to one year subject to § 438 No 2, 479 BGB.
- (3) The statutory period of limitation shall apply for claims based on the Product Liability Act and in cases of intent and gross negligence.

10. Reservation of title

- (1) The title to the delivered goods shall be reserved by us until all our claims against the Buyer from the business relationship, including claims created in the future from contracts concluded at the same time or subsequently have been settled. This shall also apply if claims have been transferred, the balance has been struck and accepted.
- (2) The Buyer is entitled to sell the goods in the normal course of business or to process them. Any processing work he may carry out shall be for us without us being placed under an obligation as a result. When processing, combining or mixing the goods subject to the reservation of title with other goods, we shall, as a matter of principle, acquire co-ownership to the new thing, and to be more precise, when processing, in proportion to the value (= Gross invoiced amount including ancillary costs and taxes) of the goods subject to the reservation of title to the value of the new thing, and when combining or mixing, in proportion to the value of the goods subject to the reservation of title to the value of the other goods.
- (3) The Buyer hereby assigns to us all claims, which accrue to him from a resale against his buyer or against a third party. He shall also continue to be authorised to collect these claims after the assignment. Our authority to collect the claims ourselves shall not be affected by this. However, we shall not make use of this right for as long as the Buyer fulfils his payment and other obligations properly. Upon request, the Buyer shall have to notify us of the assigned claims and the debtors, and provide us with all the information necessary, and handover the documents required and inform the debtors of the assignment.
- (4) In the event that the Buyer is in breach of the contract, in particular in the event of default in payment, we shall be entitled to withdraw from the contract and to take back the goods. For the purpose of taking back the goods the Buyer shall hereby allow us irrevocably to enter his business premises and stores unhindered and to take the goods away with us.
- (5) Provided that, and for as long as, the reservation of title exists, the Buyer must not assign goods or things manufactured from them as a security, nor pledge them without our consent. The conclusion of financing contracts (leasing for example) which include the assignment of our rights of reservation shall require our prior consent in writing, in so far as the contract does not place the financing organisation under an obligation to pay the proportion of the purchase price to which we are entitled directly to us.
- (6) The Buyer must notify us immediately in writing of pledges and other third-party seizures. He is forbidden from making agreements with his buyer which could impair our rights.
- (7) Upon request by the Buyer we shall undertake to release at our choice the securities to which we are entitled, to the extent that the realisable value of the securities exceeds the claims to be secured by more than 20% or their nominal value exceeds the claims to be secured by more than 50%.

11. General

- (1) The Buyer's rights under the contract can not be assigned.
- (2) The invalidity of individual provisions shall not affect the validity of the remaining provisions.
- (3) If the Buyer is a businessman, the place of jurisdiction for all disputes with him shall consequently be the courts having jurisdiction where we have our principal place of business in Heidenheim a. d. Brenz, Germany. This place of jurisdiction is not exclusive.
- (4) These terms and conditions of sale and delivery shall be governed by German law alone. The UN law on sales (CISG) shall be excluded.