

## **General Conditions of Delivery and Payment of Hebold Systems GmbH, Cuxhaven (Status august 2018)**

The General Conditions of Delivery and Payment are a constituent part of all legal relationships with our customers. They correspond largely to the conditions currently recommended by the VDMA, which have been approved by the German Federal Monopolies Commission.

### **I. General remarks**

1. All deliveries and services shall be based on these conditions plus any separate contractual agreements. Divergent purchasing conditions of the Purchaser shall not become a part of the contract even upon acceptance of the order.  
In the absence of a separate agreement, a contract shall come into being with the Supplier's written order confirmation.
2. The Supplier shall retain title and copyright to samples, cost estimates, drawings, and similar information in physical and non-physical (including electronic) form; they must not be made accessible to third parties. The Supplier undertakes to make accessible to third parties information and documents designated as confidential by the Purchaser only with the latter's permission.

### **II. Price and payment**

1. Unless otherwise agreed, the prices shall apply ex works, including loading in the works, but not including packing and unloading. Turnover tax at the current statutory rate will be added to the prices.
2. Unless otherwise agreed, payment must be made without any deduction to the Supplier's account, as follows:  
30 % down payment after receipt of the order confirmation,  
60 % down payment as soon as the Purchaser has been notified that the main components are ready for dispatch, the remainder within one month after passage of risk.
3. The Purchaser shall be entitled to withhold payments or offset them against counter-claims only insofar as his counter-claims are undisputed or have been confirmed by an unappealable declaratory judgement.

### **III. Delivery time, delay in delivery**

1. The delivery time shall be specified in the agreements between the contracting parties. Compliance with the deadline by the Supplier shall be conditional upon all commercial and technical questions between the contracting parties having been clarified and upon the Purchaser having fulfilled all his obligatory duties, such as providing the requisite certificates from government agencies or approvals or the down payment. If this is not the case, the delivery time shall be extended by a reasonable period. This shall not apply insofar as the Supplier is to blame for the delay concerned.
2. Compliance with the delivery deadline shall be subject to the proviso of correct and punctual deliveries to the Supplier himself. The Supplier shall notify the Purchaser as soon as possible of any imminent delays.

3. The delivery deadline shall be construed as met when the delivery item has left the Supplier's facility before it has expired or the Purchaser has been notified of its readiness for dispatch. If an acceptance test has to be conducted, then (except in cases of justified refusal to accept) the date of the acceptance test shall be determinant, alternatively notification of readiness for acceptance-testing.
4. If the dispatch or the acceptance of the delivery item is delayed for reasons within the Purchaser's responsibility, then he shall be invoiced with the costs entailed by the delay, including interest on arrears (8 % above the base interest rate), beginning one month after notification of readiness for dispatch or acceptance-testing.
5. If non-compliance with the delivery deadline is attributable to *force majeure*, to labour disputes or other events which are beyond the Supplier's capacity to influence, the delivery time shall be extended by a reasonable period. The Supplier shall inform the Purchaser as soon as possible of the beginning and end of such circumstances.
6. The Purchaser may withdraw from the contract without giving notice if the entire work becomes definitively impossible for the Supplier prior to passage of risk. The Purchaser may in addition withdraw from the contract if in the case of a particular order it becomes impossible to carry out part of the delivery and he has a justified interest in declining the part-delivery. If this is not the case, the Purchaser must pay the contractual price accounted for by the part-delivery concerned. The same shall apply in the event of the Supplier's incapacity. Otherwise Section VII. 2. shall apply.  
If the impossibility or incapacity occurs during delay of acceptance, or if the Purchaser is solely or very predominantly responsible for these circumstances, he shall remain obligated to provide a *quid pro quo*.
7. If the Supplier defaults, and if the Purchaser suffers loss or damage thereby, he shall be entitled to demand a lump-sum compensation for such default. This shall amount to 0.5 % for each full week of delay, but in total not more than 5 % of the value of that part of the overall delivery which as a result of the delay cannot be utilised in good time or not in accordance with the contract.  
If the Purchaser (taking into account the legal exceptions) sets the Supplier a reasonable deadline after the due date to perform the work, and if this deadline is not met, the Purchaser shall be entitled to withdraw from the contract within the framework of the statutory provisions applying.  
Further claims arising from default on delivery shall be governed solely by Section VII. 2. of these conditions.

#### **IV. Passage of risk, acceptance, transport**

1. The risk shall pass to the Purchaser when the delivery item has left the facility, even in cases when part-deliveries are made or the Supplier has also contracted to perform other work, e.g. bearing the dispatch costs, or delivery and erection. If an acceptance test has to be conducted, this shall be determinant for the passage of risk. It must be carried out immediately on the acceptance date, alternatively after the Supplier's notification of readiness for acceptance-testing. The Purchaser may not refuse acceptance if a non-essential defect is found. The Supplier's work shall be construed as accepted with expiry of 12 working days after a written notification that the work has been completed. If the Purchaser has begun to use the work or part of the work, the acceptance test shall be construed as having been carried out when 6 working days have elapsed after the beginning of such use.
2. If dispatch or acceptance is delayed or does not occur as a consequence of circumstances outside the Supplier's control, the risk shall pass to the Purchaser from the day on which notification is made of readiness for dispatch or acceptance-testing. The Supplier undertakes, at the Purchaser's expense, to take out the insurance cover which the latter demands.
3. Part-deliveries shall be permissible, insofar as these are acceptable for the Purchaser.

4. In the event of damage in transit, the Purchaser must inform the Supplier thereof immediately, and arrange for the agencies responsible to ascertain the facts involved.
5. If without culpability on the part of the Supplier transport on the intended route or to the intended place in the intended time is impossible, he shall be entitled to deliver on a different route or to a different place or at his own discretion; the additional costs thus incurred shall be borne by the Purchaser. The Purchaser shall be given an opportunity to comment beforehand.

#### **V. Retention of title**

1. The Supplier shall retain title in the delivery item until all payments specified in the delivery contract have been received.
2. The Supplier shall be entitled to insure the delivery item at the Purchaser's expense against theft, breakage, fire, water and other damage, unless the Purchaser can provide proof that he has taken out such insurance cover himself.
3. The Purchaser may neither sell nor pledge the delivery item, nor assign it as security. In the event of attachments, confiscations or other dispositions by third parties, he must notify the Supplier thereof immediately.
4. In the event of a violation of contract on the part of the Purchaser, particularly default of payment, the Supplier shall be entitled to take back the delivery item after prior warning, and the Purchaser shall be obligated to surrender it.
5. Due to the retention of title, the Supplier can demand surrender of the delivery item only if he has withdrawn from the contract.
6. An application to open insolvency proceedings shall entitle the Supplier to withdraw from the contract and to demand the immediate return of the delivery item.
7. If the conditional goods are processed, linked to and mixed with other goods by the Purchaser, the Supplier shall have joint title to the new item in the ratio of the conditional goods' invoice value to the invoice value of the other goods used. If the Supplier's title expires due to linkage or mixing, the Purchaser already transfers to him title to the new stock or item to the extent of the invoice value of the conditional goods, and shall keep them safe for him free of charge. The joint ownership rights thus created shall be construed as conditional goods within the meaning of Section V.1.
8. The Purchaser may sell the conditional goods only in the normal course of business at his standard business conditions and as long as he is not in default, provided that he agrees retention of title with his customer and that the claims arising from the resale pass to the Supplier as laid down in Sections V. 9. to V. 11. He shall not be entitled to make any other dispositions regarding the conditional goods.
9. The Purchaser's claims arising from the resale of the conditional goods are already assigned to the Supplier, who accepts the assignment. They shall serve as security to the same extent as the conditional goods.
10. If the conditional goods are sold by the Purchaser together with other goods not sold by the Supplier, the assignment of the claim arising from the resale shall apply only to the amount of the invoice value of the conditional goods sold in each case. If the resold goods are ones to which the Supplier has joint title in accordance with Section V. 7., the assignment of the claim shall apply to the amount of these co-ownership proportions.

11. If the conditional goods are used by the Purchaser to perform a manufacturing contract, then Sections V. 9. and V. 10. shall apply correspondingly for the claim arising from this contract.
12. The Purchaser shall be entitled to collect claims from resale in accordance with Sections V. 8. and V. 11. until revocation by the Supplier, which shall be permissible at any time. The Supplier shall exercise his right of revocation only in the cases specified in Section II. 3.
13. The Purchaser shall in no case be empowered to assign the claim. On request by the Supplier, he shall be obligated to inform his customers immediately of the assignment to the Supplier, and to provide the Supplier with the information and documents required for purposes of collection.
14. If the value of the securities granted to the Supplier exceeds the secured claims by a total of more than 25 %, then he shall be obligated on request by the Purchaser to release securities of his choice to the amount involved.
15. If the retention of title or the assignment is not operative under the laws applying in the area where the goods are located, then the security corresponding to the retention of title or assignment in this area shall be construed as agreed. If the involvement of the Purchaser is necessary for this purpose, he must take all measures at his own expense that are required for substantiating and maintaining such rights.

#### **VI. Warranty claims**

For redhibitory defects in and deficiencies in title to the work, the Supplier shall, to the exclusion of all other claims, subject to Section VII, guarantee as follows:

#### **Redhibitory defects**

1. All those parts must be reworked or replaced by faultless ones free of charge, at the Supplier's discretion, which due to a circumstance occurring before the passage of risk prove to be defective. The Supplier must be notified immediately in writing if any such defects are discovered. Replaced parts shall become the property of the Supplier.
2. After consulting with the Supplier, the Purchaser must provide the requisite time and opportunity for the reworking and replacement deliveries deemed necessary by the Supplier; otherwise the Supplier shall be released from liability for the resultant consequences. Only in urgent cases (of which the Supplier must be informed immediately) involving a risk to the safety of operations or in order to avert unacceptable high loss or damage, shall the Purchaser be entitled to remedy the defect himself or have it remedied by third parties, and to demand that the Supplier reimburse him for the expenditure required.
3. Of the direct costs entailed by the reworking or replacement delivery, the Supplier shall bear, insofar as the complaint proves to be justified, the costs of the replacement piece including dispatch. He shall also bear the costs of removal and installation, plus the costs for any necessary provision of the requisite fitters and assistants including travel costs, insofar as this does not entail an unreasonable burden for the Supplier.
4. The Purchaser has, within the framework of statute law, a right to withdraw from the contract if the Supplier – taking all due account of statutory exceptions – permits to expire fruitlessly a reasonable deadline, set for him to perform the reworking job or supply a replacement due to a redhibitory defect. If the defect concerned is merely an insignificant one, the Purchaser shall have only a right to reduction of the contractual price. The right to reduction of the contractual price shall otherwise remain ruled out.  
Further claims shall be governed by Section VII. 2. of these conditions.

5. No warranty will be given for the following cases in particular:  
unsuitable or improper use, faulty installation and/or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent handling, inadequate maintenance, unsuitable equipment, defective construction work, unsuitable subsoil, chemical, electrochemical or electrical influences – unless they fall within the Supplier's sphere of responsibility.
6. If the Purchaser or a third party does not carry out the rework job with proper care, the Supplier shall bear no liability for the consequences arising therefrom. The same shall apply for changes to the delivery item made without the Supplier's prior permission.

#### **Deficiencies in title**

7. If the use of the delivery item leads to violations of industrial property rights or copyrights in Germany, the Supplier shall at his own expense in all cases either procure for the Purchaser the right to continue using it, or shall modify the delivery item in a manner acceptable to the Purchaser in such a way that the violation of the industrial property right concerned no longer applies.  
If this is not possible at financially reasonable conditions or within a reasonable period, the Purchaser shall be entitled to withdraw from the contract. Under the above-mentioned preconditions, the Supplier shall also be entitled to withdraw from the contract.  
In addition, the Supplier shall indemnify the Purchaser against claims of the industrial property right owners involved which are undisputed or have been confirmed by an unappealable declaratory judgement.
8. The Supplier's obligations as defined in Section VI. 7., subject to Section VII. 2. for the event of industrial property rights or copyrights being violated, shall be final.

They shall exist only if

- the Purchaser informs the Supplier immediately of any violations asserted in regard to industrial property rights or copyrights,
- the Purchaser assists the Supplier to a reasonable extent in fighting the claims asserted, or enables the Supplier to carry out the modification work as laid down in Section VI. 7.,
- the Supplier retains the right to take all measures for his defence, including out-of-court settlements,
- the deficiency in title is not due to an instruction from the Purchaser, and
- the legal offence has not been caused by the Purchaser's having arbitrarily modified the delivery item or having used it in a manner not covered by the contract.

#### **VII. Liability**

1. If the delivery item cannot be used by the Purchaser for the contractually agreed purpose, due to culpability on the part of the Supplier as a result of ignoring or faultily implementing proposals and advice put forward before or after signing of the contract, or to the violation of other additional contractual obligations, particularly instructions for operating and maintaining the delivery item, then the arrangements specified under Sections VI and VII. 2. shall apply correspondingly, with all further claims by the Purchaser being ruled out.

2. For loss or damage not suffered by the delivery item itself, the Supplier shall be liable (whatever the legal grounds involved) only
  - a. in the event of wrongful intent
  - b. in the event of gross negligence on the part of the owner/the boards or senior executives,
  - c. in the event of culpable injury to life, limb and human health,
  - d. in the event of defects which he has maliciously failed to disclose or whose absence he has guaranteed,
  - e. in the event of defects in the delivery item, insofar as liability exists under the German Product Liability Act for injury to persons or damage to privately used property.

In the event of culpable violation of significant contractual obligations, the Supplier shall also be liable in the event of gross negligence of non-senior executives and in the event of slight negligence; in the latter case, liability shall be limited to reasonably foreseeable loss or damage typical of the contract.  
No further claims will be accepted.

### **VIII. Statute of limitations**

All claims of the Purchaser, whatever the legal grounds involved, shall become statute-barred in 12 months. Claims for damages under Section VII. 2.a.–e. shall be governed by the statutory deadlines. These shall also apply for defects in a structure or for delivery items which have been used for a structure in accordance with their customary manner of utilisation, and have caused the structure concerned to be defective. The time limitation shall begin with passage of risk/acceptance in conformity with Section IV. 1.

### **IX. Software utilisation**

If the scope of delivery includes software, the Purchaser shall be granted a non-exclusive right to utilise the software delivered, including its documentation. It is handed over for use on the delivery item intended for the purpose. Utilisation of the software on more than one system is prohibited.

The Purchaser may duplicate, revise, translate the software, or convert it from the object code into the source code, only to the legally permissible extent (§§ 69 a ff. UrhG – German Copyright Act). The Purchaser undertakes not to remove manufacturer's particulars (especially copyright details) or to alter them without the Supplier's prior explicit permission.

All other rights to the software and the documentation packages, including the copies, shall remain with the Supplier or with the software vendor. The granting of sublicences shall not be permissible.

### **X. Applicable law, Place of jurisdiction, Incoterms, Translation**

1. All legal relationships between the Supplier and the Purchaser shall be governed solely by the law of the Federal Republic of Germany which governs legal relationships between German parties.
2. The place of jurisdiction shall be the court responsible for the Supplier's registered office. The Supplier shall, however, be entitled to file a lawsuit at the Purchaser's place of business.
3. The interpretation of trade terms shall in the event of doubt be governed by the Incoterms as amended.