

HATEC Germany GmbH

General Terms & Conditions (Sale)

1 General information – Scope

- (1) All deliveries and services shall be completed exclusively in accordance with the following General Terms and Conditions. We shall not recognise conditions set by the customer that contradict or deviate from our Terms and Conditions, unless we have consented to their validity explicitly in writing.
- (2) Our General Terms and Conditions apply even if we perform the service for the customer unconditionally and with knowledge that the conditions of the customer conflict with or differ from our General Terms and Conditions. Our Terms and Conditions shall qualify as accepted upon receipt of the goods or services at the latest.
- (3) Our General Terms and Conditions also apply to all future dealings with the customer.

2 Quotation – Conclusion of contract

- (1) Unless otherwise agreed, our quotations are subject to change and non-binding. Orders shall qualify as accepted if they are confirmed by us in text form.
- (2) Unless otherwise agreed, any illustrations, drawings, or dimensional information made available by us shall qualify as non-binding. We reserve ownership rights and copyrights to all the documents indicated above delivered to the customer. Such materials may only be made accessible to third parties with our express written approval.

3 Prices – Payments conditions

- (1) Unless otherwise agreed, our prices are indicated ex works, exclusive of packaging - this will be invoiced separately.
- (2) All taxes, including sales taxes, customs, and other state contributions in the context of the sale shall be borne additionally by the customer.
- (3) Provided nothing else results from the order confirmation, the purchase price shall be due for payment without deductions within 30 days from the invoice date.
- (4) Cheques and – if payment by bill of exchange is agreed upon – bills of exchange shall only be accepted as a conditional payment.
- (5) The customer shall only be entitled to offset and retention rights if their counterclaims have been legally established, are uncontested, or have been recognised by us.

4 Delivery period

- (1) Information about delivery periods shall be non-binding, unless a delivery deadline is explicitly agreed as a fixed date.
- (2) The start of the delivery period specified by us assumes that all technical questions have been clarified. Furthermore, our compliance with our delivery commitment assumes that the customer has met their obligations promptly and correctly. If the customer is in default of payment, we shall also be entitled to withhold the delivery or other deliveries.

(3) Partial deliveries and services by us shall be permitted, provided this is reasonable for the customer. If the delivery is delayed due to events for which we are not responsible, the delivery period shall be extended accordingly.

(4) If the customer delays acceptance or violates their obligations to cooperate, then we shall be entitled to demand compensation for any damages resulting to us, including any possible additional costs. We reserve the right to assert further claims or rights.

(5) If the customer delays acceptance, the danger of accidental damage or accidental impairment of the object of delivery shall transfer to the customer at the point in time that the customer delays acceptance.

(6) We shall be liable according to statutory conditions, provided the underlying sales contract represents a fixed business transaction within the context of Section 286 Paragraph 2 no. 4 BGB or of Section 376 HGB. We shall be liable according to statutory conditions, provided the customer is entitled to enforce this as a result of a delivery delay caused by us, whereby their interest in continued fulfilment of the contract ceases.

(7) We shall be liable in accordance with the statutory provisions insofar as the delay in delivery is due to an intentional or grossly negligent violation of the contract for which we are responsible - intentional or grossly negligent acts on the part of our agents or legal representatives shall be attributable to us.

(8) In case of minor negligence, we shall only be held liable insofar as the delay in delivery is owing to a violation of a fundamental contractual obligation, including minor negligence on the part of our agents or legal representatives. Our liability for damages shall be limited to foreseeable, typically occurring damage. Provided we are liable for delivery delay in case of minor negligence, then the delay damages shall be limited to a maximum of 5% of the delivery value.

(9) We shall not be held liable for delay damages beyond this amount. This shall not affect any other rights of the customer in respect of delays.

5 Transfer of risk – Packaging costs

(1) The risk of damage or loss of the goods shall transfer to the customer after delivery of the goods to the courier or freight driver, regardless of who bears the freight costs, but nevertheless upon departure from the works or warehouse or at the point in time at which we inform the customer that the goods are ready for pick-up.

(2) Provided the customer requests this, we shall cover the delivery with transport insurance - the costs resulting from this shall be borne by the customer.

6 Rights due to defects

(1) Immediately upon delivery, the customer must examine the delivered goods to ensure that they comply with the contractual agreement, particularly in respect of its properties, intactness, and other defects. Detected deviations or defects must be reported immediately in writing, but nevertheless one week at the latest after delivery of the goods. Hidden defects must be reported by the customer in writing without delay, however no later than one week after their discovery.

(2) The customer's claim for defects requires that they have properly fulfilled their obligations to inspect and report defects in accordance with Section 377 of the German Commercial Code (HGB). Otherwise, the goods shall be deemed to have been delivered in accordance with the contract.

(3) The customer must not install or otherwise use goods which are subject to a complaint or recognisably defective. If they violate this obligation, then we shall not be held liable for damages based upon installation or other use. Moreover, in this case, the customer must bear the additional expenses incurred in connection with rectifying defects caused by this installation or other use, or refund us for the same.

(4) If a specific condition of the goods is agreed, then any deviation from this shall only constitute an unimportant defect if the suitability of the goods for the use envisaged by the contract is not, or not substantially, impaired. In this case, claims for damages as well as withdrawal from the purchase contract due to the defect are excluded.

(5) If the delivered goods are defective and they do not qualify as contractual per point 6 (2), then the rights of the customer shall apply as per the general statutory conditions, unless otherwise specified in these conditions.

(6) If the delivered item is subject to a defect, we shall have the right to choose between subsequent performance either in the form of rectifying the defect or by supplying a new item free of defects. In the event of subsequent performance, we will bear the necessary costs only up to the amount of the purchase price.

(7) If subsequent performance fails, then the customer shall be entitled to choose to withdraw or to demand a reduction.

(8) We shall be liable in accordance with the statutory provisions insofar as the customer has claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our agents or legal representatives.

(9) We shall be liable in accordance with the statutory conditions, provided the customer asserts damage compensation claims that are based on minor negligence, including minor negligence on the part of our agents or legal representatives in case an important contractual obligation is violated. In this case, the damage compensation liability shall be limited to foreseeable, typically occurring damages.

(10) Liability due to culpable breach resulting in loss of life, physical injury, or damage to health shall remain unaffected. This shall also apply to mandatory liability in accordance with the German Product Liability Law (ProdHaftG).

(11) Insofar as the previous paragraphs do not specify otherwise, liability shall be excluded.

(12) The limit period for claims based on defects shall be twelve months from transfer of risk. This shall not apply if the delivery item is normally used in construction, and the defect has caused or forms the basis of claims for compensation of damages due to loss of life, physical injury, or damage to health and/or claims for damages due to damage caused by us or our agents or legal representatives with intent or by gross negligence - to this extent, the legally stipulated statute of limitations shall apply.

7 Joint liability

(1) Any and all liability for damages in addition to the liability envisaged under point 6 shall be excluded – without considering the legal nature of the claim. This applies also to damage claims for negligence when entering into the contract, due to other violations of contractual obligations, or claims involving damage to property in accordance with Section 823 of the German Civil Code (BGB).

(2) The restriction in the above paragraph shall also apply if the customer asserts a claim for damage compensation for wasted expenditure instead of for the performance.

(3) Insofar as liability for compensation for damages on our part is excluded or restricted, this shall also apply as regards personal liability for compensation of damages on the part of our staff, agents, and legal representatives.

8 Reservation of title

(1) We shall reserve title to the purchased item until all payments resulting from the delivery contract have been received.

(2) We shall also reserve title to the goods until all payment obligations and other claims to which we are entitled from the business relationship with the customer are satisfied.

(3) If the customer acts in violation of the contract, particularly in the case of delayed payment, we shall be entitled to take back the purchased item. After recovery of the purchased item, we shall be entitled to sell it, with the proceeds to be deducted from the obligations of the customer, minus reasonable administrative costs.

(4) The customer shall be obligated to treat the purchased item with care and in particular, the customer shall be obligated to insure at their own cost against fire, water, and theft sufficiently for the replacement value. Should maintenance and inspection work be necessary, then the customer must perform such work in good time and at their own expense.

(5) In the case of seizure of the goods or other interventions by third parties, the customer must inform us in writing without delay so that we may institute a claim in accordance with Section 771 of the German Civil Procedure Code (ZPO). Insofar as the third party is not in a position to refund to us the judicial or extra-judicial expenses resulting from a claim in accordance with Section 771 of the ZPO, the customer shall be liable for the loss incurred by us.

(6) The customer shall be entitled to resell the purchased goods in the ordinary course of business. However, they hereby assign to us all claims in the sum of the final invoice amount (including VAT) of our claim, which shall accrue to the customer from onward sale against its purchasers or third parties, irrespective of whether the item purchased has been sold on with or without further processing.

(7) The customer shall continue to be entitled to enforce this claim after it has been assigned. This shall not affect our right to enforce the claim ourselves. However, we shall undertake not to collect the claim as long as the client fulfils his payment obligations arising from the proceeds collected, is not in default of payment and, in particular, an application has not been submitted to open insolvency proceedings and cessation of payments has not taken effect. However, should this be the case, we are able to demand that the customer makes the assigned claim and the debtors known to us, provides all details necessary for collection, hands over the appropriate documents, and informs the debtors (third parties) of the assignment.

(8) Any processing or modification by the customer must always be carried out on our behalf. If the purchased item is processed with objects that do not belong to us, then we shall acquire joint ownership of the new object in proportion to the value of the purchased item (final invoice amount including VAT) with regard to the other processed items at the time of processing. The same shall apply to the item produced through processing as the purchased item delivered under reservation of title.

(9) If the purchased item is inseparably mixed with other objects not belonging to us, we shall acquire joint ownership of the new resulting item in proportion to the value of the purchased item (final invoice amount including VAT) in relation to the other mixed objects at the time mixing occurs. If the mixing takes place in such a manner that the item of the customer may be regarded as the main item, then it is deemed to be agreed that the customer shall transfer joint ownership to us on a pro rata basis. The customer shall hold the resulting sole or joint ownership on our behalf.

(10) To secure our claims against them, the customer will also assign to us such claims which arise against third parties due to the combination of the purchased item with real estate.

(11) We shall undertake to release the securities due to us at the request of the customer insofar as the value of the securities exceeds the secured claims by more than 10% - the securities released shall be at our discretion.

9 Design changes

We shall reserve the right to carry out design changes at any time, provided that the delivered object still fulfils the contractually stipulated functions.

10 Software usage

(1) If software is included in the scope of delivery, then the customer shall be granted a non-exclusive and non-transferable right to use the software delivered including its documentation. It shall be transferred for use on the delivery item intended for this purpose. The software may not be used on more than one system without our prior written approval.

(2) Use of the software by the customer is restricted to the extent permitted by law (Sections 69 a ff. of the German Copyright Act (UrhG)) i.e. duplication, revision, translation, or conversion of the object code to the source code. The customer undertakes not to remove manufacturer's specifications - in particular copyright notices - or to alter the same without our prior written approval. All other rights to the software and the documentation, including copies thereof, shall remain with us or with the software supplier. The granting of sub-licences shall not be permitted without our prior written approval.

(3) Unauthorised alterations to the software made by the customer shall void the warranty. The same shall apply to installation of third-party software or updates without our prior written approval.

11 Confidentiality

Unless otherwise expressly agreed in writing, information provided to us in connection with the order shall not be treated as confidential.

12 Acceptance

Unless otherwise agreed, acceptance by the customer of a service or delivery shall qualify as completed, if the customer has not reported any defects two weeks following receipt of the delivery object at the latest.

13 Applicable law, place of jurisdiction, place of performance

(1) The laws of the Federal Republic of Germany shall be applicable. Application of the UN Convention on Contracts for the International Sale of Goods shall be excluded.

(2) Provided that the customer is a merchant, the place of jurisdiction shall be our place of business, however, we shall nevertheless also be entitled to sue the customer at their own place of business.

(3) Unless otherwise stated in the order confirmation, the place of performance shall be our place of business.

Stand 11/2019