

Sales, Delivery and Payment Terms and Conditions

§1 Scope of these terms and conditions

- 1) These are the sole terms and conditions covering all the goods and services offered for sale by the Seller. These terms and conditions shall also apply to any subsequent business transactions even where these terms and conditions may not be expressly agreed.
- 2) By signing an acceptance or by making an order, the Buyer indicates that he/she has read and accepted these terms and conditions.
- 3) Any deviation from these terms and conditions following their substitution with the Buyer's own terms and conditions shall only become valid when agreed by the Seller in writing.

§2 Offers and Agreements

- 1) All offers and price quotations made by the Seller are subject to alteration and are non-binding. Details of dimensions and weights given in drawings approximate to standard industry and company values. Special offers made by the Seller are binding for 30 calendar days.
- 2) Orders become effective only when confirmed in writing by the Seller. Orders not rejected by the Seller within four weeks of receipt shall automatically be considered as confirmed.
- 3) In the event that there is an alteration in the terms of an order confirmation, the Buyer shall inform the Seller within one week that he/she agrees to this alteration. Silence by a private person gives the Seller the right to withdraw. Where the buyer is a company sales person, silence is taken as acceptance of any alterations to order conditions.
- 4) The designations and specifications agreed at signature of the agreement conform to the technical state-of-the-art obtaining at the time of signing. The Seller reserves the right to make constructional modifications to the goods supplied as part of this agreement where such modifications do not basically alter the nature of the goods supplied and do not substantially limit the purposes contractually agreed.
- 5) Supplementary agreements, changes and additions are only valid when confirmed in writing by the Seller. Assurances given concerning the characteristics of the goods supplied are only valid when confirmed in writing by the Seller.

§3 Prices, price changes

- 1) Unless otherwise agreed, prices are quoted net, ex-works without packing.
- 2) Unless otherwise agreed, the Seller's offer price shall remain binding for thirty calendar days from the date of the offer. The rate of Value Added Tax (VAT) obtaining at the time of order confirmation shall be applied.
- 3) For private persons the Seller's offer price shall remain binding for four months from the signing of the agreement. If longer delivery periods are agreed, the prices valid at the time of delivery or commissioning shall apply; the VAT obtaining at that time shall be applied.

§4 Delivery and Delivery Period

- 1) Unless otherwise agreed, the delivery times and periods quoted by the Seller are not binding.
- 2) In the event that the Seller defaults on a delivery, the buyer may withdraw from the agreement or make claims for damages for non-fulfilment subject to the following conditions:
 - a) The extension period legally set by the Buyer is six weeks starting from the date on which the Buyer receives the request for an extension from the Seller. Only when this extension period has expired without a successful outcome may the Buyer withdraw from the agreement.
 - b) The Buyer may only make claims for damages for non-fulfilment where the Seller or the Seller's agent is culpable of wilful or gross negligence.
 - c) If the Buyer fails to exercise the abovementioned rights, he/she can make no other claims for damages for non-fulfilment of the delivery terms. Extended liability under the provisions Article 287 of the German Civil Code (BGB) is not applicable.
- 3) Article 4, clause no. 2 only applies to private persons. For company sales persons the following conditions apply:
 - a) Where goods or services are not provided within a period of three months after the expiry of an agreed non-binding period of notice, the Buyer has the right after a suitable period of notice to withdraw from the unfulfilled

part of the contract.

- b) Where the Seller fails to meet an agreed, binding period of notice or term, or delays in meeting such terms, the Buyer has the right to make claims for the damages caused by such delays for an amount equal to the official rate of interest on the value of the delayed goods and services. Further claims are not permitted.
- c) The Seller has the right at any time to make partial deliveries of goods or services. The Seller is not liable for delays in the supply of goods and services caused by *force majeure* or events which prevent the Seller from making timely delivery. *Force majeure* and events outside the Seller's control include industrial strikes, lock-outs, operating faults, personnel shortages, shortage of transport vehicles, difficulties in obtaining materials and official intervention also where these occur at the Seller's suppliers or subcontractors. This condition also applies to any binding periods of notice agreed.
- 4) Where the goods or services are not taken up by the Buyer within the agreed term, the Seller has the right to request suitable storage fees. Where the Seller transports the goods to the agreed site using his/her own vehicles and drivers and is prevented from delivering or installing the goods using his/her own personnel due to circumstances which are not the responsibility of the Seller, the Buyer shall pay any salaries and travelling expenses and all the necessary expenses entailed.

§5 Transfer of risk

- 1) Risk is transferred to the Buyer as soon as the goods dispatched are handed over to the persons responsible for transport or as soon as the goods dispatched leave the Seller's storage facilities. Where dispatch of the goods is delayed at the request of the Buyer or where dispatch is not possible due to no fault of the Seller, risk is transferred to the Buyer at the moment when the Buyer receives the Ready for Despatch notification. This condition also applies where the Buyer delays in accepting the goods.
- 2) For goods delivered on the Seller's vehicles, risk is transferred to the Buyer as soon as the loaded vehicle is parked at the destination site. The driver is not obliged to assist with unloading unless agreed otherwise in special agreements. In cases where the driver is obliged to assist with unloading because the Buyer or End User has not provided unloading personnel or has provided insufficient unloading personnel, the Seller's liability is limited to the wilful or gross negligence of unloading assistance. Where the goods are assembled by the Seller, risk is transferred to the Buyer after acceptance of the installed equipment.

§6 Warranty

- 1) The Seller guarantees the product to be free from manufacturing and material defects. Commercial components not manufactured by the Seller (e.g. air heaters, motors, filters, bearings) are covered by the industry standard warranty conditions stipulated by subcontractors.
- 2) Visible faults and defects must be notified to the Seller in writing within one week of delivery. Faults and defects which despite careful testing do not become evident during this period should be notified to the Seller in writing as soon as they are discovered. The Buyer must check any goods not delivered directly by the Seller immediately on receipt for missing components and damage caused during transport. The Buyer must inform the Seller in writing of any loss or damage by completing the transport company's statement of product condition.
- 3) On receipt of a Buyer's communication stating that the product does not meet warranty requirements, the Seller can, at his/her discretion, request that the Buyer returns the faulty component or equipment, freight paid, for repair to the Seller; the component or equipment will be returned to the Buyer. As an alternative, the Seller can request the Buyer to keep the faulty part or equipment ready for repair until such time as the Seller's technicians can carry out repairs on site.
- 4) All warranty conditions become void where the abovementioned periods of fault notification are not observed. Failure to carry out instructions given in operating and maintenance manuals, modifications to the equipment, and use of spare parts and consumables which do not conform to original specifications all constitute circumstances which will void this warranty. Failure to stop and repair equipment immediately a fault occurs will also void this warranty.
- 5) Claims other than those for the repair or substitution of parts are excluded from this warranty. In the event of faulty repairs or failure to supply substitute

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parts within a suitable time period, Buyers who are private persons may, at their discretion, choose to request a reduction in the contract price or cancel the contract. Any further claims by private persons are excluded from this warranty except in those cases where the Seller or his/her contractors or installers are responsible for wilful or gross negligence.

§7 Withdrawal

- 1) The Seller has the right to withdraw from this contract in the circumstances described in Article 4, clause 3 of these terms and conditions. The Seller has the right to withdraw from this contract when he/she receives information regarding the insolvency of the Buyer or the opening of insolvency or receivership proceedings regarding the Buyer's assets.
- 2) Where the Buyer gives notice that he/she intends to withdraw from this contract without entitlement and before the manufacture of the goods has commenced, the Seller has the right to request damages for loss of production and earnings to the value of 15% of the contract value as long as the Buyer does not inform the Seller that he/she, the Buyer, does not agree with the claim for damages or the amount of damages. Where the goods have already been manufactured, the Seller has the right to make claims for non-fulfilment.

§8 Reservation of ownership

- 1) The Seller retains ownership of the goods until such time as any of the Seller's claims on the Buyer arising out of their business transactions, and including current claims, and claims arising out of concurrent contracts or contracts agreed at a later date, are settled. This condition also applies where one or more of the Seller's claims is the subject of continuous invoicing and the balance has been calculated and is known.
- 2) Any processing of the conditional goods undertaken on by the Buyer on behalf of the Seller in no way creates further obligations for the Seller. Any processing, joining or mixing of the conditional goods with other goods not owned by the Seller gives the Seller a share in the ownership of the new object, this share being the value of the conditional goods as a proportion of the remaining goods at the time of processing, joining or mixing. In the event that the Buyer acquires the sole ownership of the new object, the parties to this contract are agreed that the Buyer shall grant the Seller joint ownership in the new object to the value of the Seller's conditional goods subject to processing, joining or mixing and protect such ownership for the Seller without payment.
- 3) The Buyer has the right to handle and dispose of the conditional goods in business transactions in an orderly manner, as long as he/she is not in default. The conditional goods shall not be used as collateral for loans or sureties. The Buyer has the right to dispose of the conditional goods in orderly business dealings only when he/she has met all the Seller's claims arising out of the disposal of the same to purchasers or third parties. In the event that the Buyer disposes of the conditional goods with or without processing or joined to equipment wholly owned by the Buyer, the Buyer shall assign the full value of the claims arising from the disposal to the Seller. In the event that the Buyer disposes of the conditional goods, after processing or joining to other equipment, together with goods not owned by the Seller, the Buyer must immediately assign the full value of the claims arising from the disposal of the conditional goods before meeting any other claims. The Seller has the right to request payment for the conditional goods concerned from third parties. At the same time, the Buyer maintains the right to request payment for these claims from third parties. This condition in no way diminishes the Seller's right to personally request payment for these claims; the Seller undertakes not to exercise the right to personally request payment from third parties as long as the Buyer fulfils payments and other duties in an orderly manner. The Seller has the right to request from the Buyer details of the assigned claims and the debtor and the details necessary to request payment, to hand over the related documentation and to inform the debtor of said assignment.
- 4) Where the value of outstanding sureties exceeds claims by more than 20%, the Seller is obliged to release such sureties where requested to do so by the Buyer.
- 5) In the event of any infringement by third parties of the Seller's ownership of the conditional goods, the Buyer shall immediately notify the Seller; costs and damages for such infringement are the responsibility of the Buyer.
- 6) Where the payment of the purchase price by the Buyer causes an alteration in the Seller's liability, this alteration cancels reservation of ownership and also cancels the corresponding claims to the delivery of goods but not before

resolution of the exchange by the Buyer as drawee.

§9 Payment

- 1) The Seller's invoices are payable at 30 days net of the date of invoicing. Payment shall be made to the Supplier's payments office unless otherwise agreed.
- 2) The Seller reserves the right to refuse bank cheques and bills of exchange. Acceptance is conditional upon confirmation of funding. Banking and transfer charges shall be charged to the Buyer and shall be paid immediately. A payment shall only be considered valid when the sum payable is effectively available to the Seller. Payment by cheque shall only be considered complete when the cheque has been cashed.
- 3) Where the Buyer is in default, the Seller has the right to charge interest of at least 2% over the current interest rate set by the Landeszentralbank (German Regional Central Bank). The Seller reserves the right to enforce further claims for damages.
- 4) Where the Customer defaults on a payment, and in particular fails to honour or stops a cheque or bill, or where information concerning the lack of creditworthiness of the Buyer comes to the attention of the Seller, the Seller has the right to request immediate settlement of the entire remaining debt even where the Seller has already accepted a cheque or bill of exchange. In this case the Seller also has the right to request advance payments or sureties on other outstanding contracts, and also has the right to withdraw, after a suitable period of notice, from such contracts and also has the right to claim for damages for non-fulfilment.
- 5) The Buyer has no right of retention. For a private person, the right of retention is that provided by the contract. The Buyer only has the right to offsetting where this is legally undisputed and awarded.

§10 Copyright and Ownership

- 1) The Seller is the copyright holder and owner of printed matter, drawings and other documentation; this documentation shall not be divulged to third parties, and in particular to competitors, without the owner's express permission. The Seller has the right to request the return of documentation.

§11 Governing law and Severability

- 1) The governing law for these terms and conditions and the legal dealings between the Buyer and the Seller shall be the law of the Federal Republic of Germany. International unified commercial law is not applicable.
- 2) Where the Buyer is a professional company sales person, any disputes arising out of contracts and related legal dealings between the parties shall be dealt with by the court with jurisdiction in the place where Huber & Ranner has its registered offices.
- 3) The invalidity of one or more of the abovementioned terms and conditions shall in no way invalidate the other terms and conditions. Terms and conditions found to be invalid shall be substituted with valid terms and conditions which shall have, wherever possible, the same commercial purpose.