

## **General Terms and Conditions of Business and Delivery (AGB)**

### **Section 1 General**

1. Our General Terms and Conditions of Business and Delivery (AGB) of the company HOF Prüfsysteme GmbH, shall apply for all contracts which we as the Seller conclude with companies, legal entities under public law and special funds under public law. They shall not apply in relation to consumers.
2. Deviations from these AGB shall require our express consent in writing. This shall apply in particular for the validity of the general terms and conditions of business of the Purchaser.

### **Section 2 Offers, Orders, Deliveries/Services, Delivery/Performance Deadlines, Partial Deliveries**

1. Our offers shall be subject to change, unless they display a validity statement. Orders shall only be binding for us when we confirm them in writing or execute them by dispatching the goods. We can accept orders from the Buyer within a period of 14 days unless a longer period has been agreed.
2. In the absence of any agreements to the contrary, our deliveries shall be deemed ex-works or ex-warehouse, which shall also be the place of performance in each case. We reserve the right to choose the shipping method, unless a particular shipping method has been agreed. We shall be entitled to invoice such services in this regard in accordance with our price regulation in Section 5.
3. Delivery and service periods shall apply subject to correct and timely delivery to us, unless said delivery and service periods were bindingly guaranteed beforehand.
4. Supplier/service periods shall begin with the date of the definitive and complete order confirmation. Written definition in our order confirmation shall be decisive for the delivery period. However, the delivery period shall not begin before the day on which all the decisive characteristics of the order are agreed in writing. If the Customer has to provide documents, permits, approvals or undertake other collaborative action, our observance of the delivery deadline shall take precedence over timely provision or performance by the Customer.
5. If these conditions are not fulfilled, the delivery/service time shall be suitably extended after consultation.
6. Our delivery period shall be deemed observed if the ordered goods leave our business within the deadline or if we have sent the dispatch notes to the Customer. If our scope of services includes the installation of devices and/or systems, the delivery period shall be deemed to have been observed if the installation occurs during the delivery deadline.
7. Events which we did not foresee while exercising the care required in commercial dealings when setting the delivery/performance deadline, such as force majeure, strikes, lockouts, interruptions, etc., irrespective of whether they occur on our

premises, during transport or installation on the Customer's premises, shall not affect our delay in delivery and lead to a suitable extension of the delivery/performance deadline. Contractual penalties shall always be agreed upon order placement. Such an agreement shall require our written confirmation.

8. We shall be entitled to part deliveries and partial services as far as this is reasonable for the Buyer and sufficient concern has been shown to their legitimate interests.
9. If the timely delivery of the goods is delayed at the Customer's request or for other reasons for which the Customer is responsible after notification of dispatch readiness, we shall be entitled, after setting a reasonable grace period, to demand storage fees in the amount of 0.5% of the net invoice amount per month by the Customer provided that it is not lower than the expected damage in the normal course of events. Otherwise, the storage fees to be levied shall be limited to the amount of the expected damage.
10. Changes, in particular with regard to the scope and the subject of the order, shall only be legally effective if we have confirmed them in writing. This shall not apply for verbal ancillary agreements.
11. Catalogue or brochure documentation and documentation such as images, drawings, instructions for use, etc. which we include with our offers and/or order confirmations shall only be binding if they are designated or recognised by us as such. The individual arrangements of the scope of services shall also take precedence in the Contract.
12. The Customer shall be responsible for obtaining official approvals, in particular for the installation and the operation of our systems and devices on the Customer's premises. Acceptance by the TÜV, trade association, etc. shall be effected by the Customer. Upon request, we shall provide the required information insofar as it affects the devices and systems delivered by us.
13. Protective measures and protective equipment shall be provided, insofar as they are required for the safety of the deliveries or services, or are required by law or expressly agreed. Deviations shall be permitted if an equivalent level of safety is guaranteed in another manner.

### **Section 3 Transfer of risk/Impossibility of delivery**

1. The risk of accidental loss and deterioration of the goods shall – also in the case of part deliveries – pass to the Buyer no later than when they are handed over to the Buyer, the transport company, the carrier or any other particular person or institution tasked with undertaking the dispatch. This shall also apply even if we have undertaken the dispatch – irrespective whether it is freight-free or against reimbursement of the freight costs; however, not in the case of a previously agreed debt to be discharged at the creditor's domicile.
2. At the request and expense of the Customer, and where possible, we shall insure the dispatch against breakage, transport and fire risks, as well as against theft.
3. If the delivery or service is delayed for reasons which are attributable to the Buyer, the risk shall transfer to the Buyer with notification of readiness to deliver or perform.

4. Cases of force majeure and other circumstances for which we or a company working for us are not responsible shall release us from our delivery obligation for the duration and insofar as they impact on our ability to deliver. In the aforementioned cases, we shall also be entitled to withdraw from the Contract without being required to pay compensation for any damages due to non-fulfilment and subsequent damages if performance becomes impossible or unreasonable, or there is no foreseeable end to the obstacle to performance.

#### **Section 4 Retention of title**

1. We shall retain ownership of the goods sold until full payment of all our present and future claims arising from the Purchasing Agreement and an existing business relationship (secured claims).
2. Goods which are subject to retention of title may not be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer must immediately inform us in writing if and to what extent third parties access goods belonging to us.
3. If the Buyer acts in a manner which is contrary to the Contract, in particular if it does not pay the due purchase price, we shall be entitled, in accordance with the statutory regulations, to withdraw from the Contract and to demand the return of the goods on the basis of retention of title. If the Buyer does not pay the purchase price due, we may only assert these rights if we set a reasonable deadline for payment beforehand to no avail or if the setting of such a deadline is not required by law.
4. The Buyer shall be authorised to resell and/or process the goods subject to retention of title in normal business. In this case, the following provisions shall apply additionally:
  - a.) Retention of title shall extend to products which are produced by processing, mixing or combining our goods at their full value, whereby we are deemed to be the manufacturer. If the right of retention remains during the processing, mixing or combination with goods of third parties, we shall gain co-ownership relative to the gross invoice value of the processed, mixed or combined goods. The same shall apply for the resulting product as for goods delivered under retention of title.
  - b.) The Buyer shall already assign in full claims vis-a-vis third parties resulting from the resale of the goods or the products in the amount of our co-ownership percentage in accordance with the paragraph a) above to us as security. We herewith accept the assignment. The obligations of the Buyer mentioned in Para. b) shall also apply in view of the assigned claims.
  - c.) If the Customer combines the delivery item or the new goods with properties, it shall thus also assign, without any further particular explanation, its claim to which it is entitled as remuneration for the connection by the amount corresponding to the price of the delivery item invoiced by the Contractor.
  - d.) We and the Buyer/Customer shall remain entitled to collect such receivables. We undertake not to collect such claims as long as the Buyer fulfils its payment obligations towards us, does not fall behind with payments, does not file an application to open insolvency proceedings and there is no other deficiency in its

capacity to perform. However, if this is the case, we may request that the Buyer informs us of the assigned claims and their debtors, provides all information necessary for collection and the related documentation, and informs the debtors (third parties) of the assignment.

- e.) Insofar as the realisable value of all security rights available to the Contractor exceed the value of all secured claims by more than 10%, the Contractor shall, at Customer's request, release a corresponding portion of the security. The requirements of the aforementioned sentence shall be deemed to have been fulfilled if the estimated value of the securities available to the Contractor reach or exceed 150% of the value of the secured claims. The Contractor shall have the right to choose between different security rights.
- f.) During the term of the retention of title, the Contractor may insure the goods against risks such as fire, water and breakages at the cost of the Customer provided that the Customer can be shown not to have concluded insurance at its cost.

## **Section 5 Prices and Payment Conditions**

1. Unless otherwise agreed, our prices are ex-works or ex-warehouse in EURO, excluding packaging and loading and excluding any applicable statutory VAT. This will be invoiced separately in the respective applicable amount.
2. The packaging shall remain the property of the Buyer. We shall calculate the respective statutory VAT, the transport costs ex-works or ex-warehouse and the costs of separate transport insurance wished by the Buyer in certain circumstances additionally. The Buyer shall also bear any customs duties, fees, taxes and other public charges.
3. The Buyer itself must also bear any costs of assembly or installation as well as the travel costs there and back, and accommodation of assembly personnel, unless otherwise listed in the offer.
4. The prices valid on the day of delivery shall always apply for the calculation. If these are higher than at conclusion of contract, the Buyer shall be entitled, within 14 days of being notified of the price increase to withdraw from the Contract with regard to quantity as yet unaccepted.
5. In the absence of other individual agreements in the Contract, payments shall be made without deduction and free of charge to our payment office; unless otherwise agreed and confirmed by us in writing, our invoices shall be due for payment as follows:

***14 days after date of invoice, nett.***

If the agreed payment targets are exceeded and subject to the assertion of other rights, default interest in the amount of the interest rate of our house bank for account credits shall be charged from the time of the acceptance of our first reminder; however, at least 9% over the respective applicable basic interest rate. We shall further be entitled to prepayment in the case of any orders already placed or to be

placed. The Customer shall not be entitled to withhold payments due to any counterclaims against us or to charge up against said counterclaims if they are not disputed or are determined to be legally binding.

## Section 6 Warranty

1. The primary basis of our liability for defects shall be the agreement reached on the condition of the goods. An agreement on the condition of the goods shall be deemed the product descriptions designated as such which were made available to the Buyer before it placed its order or were included in the Contract in the same manner as these AGB.
2. No warranty promise shall be connected with an agreement on the condition of the goods. We shall assume special warranties only on the basis of a separate agreement which regulates the content and scope of the warranty irrespective of these AGB and the Buyer's statutory rights.
3. If the condition has not been agreed, the goods shall be deemed free of material defects if they are appropriate for the application provided the Contract. The goods shall also be deemed free from material defects supplementary to the statutory regulation if they have the characteristics which the Buyer can expect from the product description provided by us; here it shall be deemed sufficient if the product description was handed over to the Buyer after conclusion of contract (in particular, together with the goods). However, we shall not assume any liability for public statements of other manufacturers or any other third parties (e.g. advertising statements).
4. The Buyer's claims to damages or compensation for futile expenses shall only apply in accordance with Section 7; otherwise, they shall be excluded.
5. For defects in our devices and systems within the meaning of Section 434 BGB, including a lack of expressly guaranteed characteristics, we shall be liable, to the exclusion of other claims (in particular to the exclusion of a claim for compensation not caused to the delivery item), as follows:

### **Unless otherwise agreed in writing, the warranty period shall be:**

- a.) 12 months from delivery or service performance.
- b.) This shall also apply in the case of a work whose success depends on the manufacturing, maintenance or amendment of an item or in the rendering of planning or monitoring work. Unless it relates to inseparable partial services, the warranty period shall begin upon conclusion of the work.
- c.) 12 months from written acceptance for production and special installations. However, the period shall begin irrespective of written acceptance at the latest six months after delivery.
- d.) The above-mentioned provisions shall not apply insofar as the law also prescribes mandatory longer warranty periods in business dealings. The statutory limitation periods for the right of recourse in accordance with Section 478 BGB shall remain unaffected.

- e.) All parts which prove to be unusable or that can only be used with significant limitations during the agreed warranty period due to circumstances which arose before the transfer of risk, in particular due to faulty construction, poor materials or defective design, shall be repaired, replaced or resupplied at our discretion. If devices and system parts which we have sourced from suppliers are affected, we shall be entitled to render warranty services in a manner that allows us to assign our warranty claims against the suppliers to the Customer.
- f.) Any claims for defects asserted by the Buyer shall be conditional upon the Buyer meeting its statutory obligations to inspect and give notice of defects (Sections 377 and 381 HGB). Any defect discovered during the inspection or later must therefore be reported to us without delay. The report shall be deemed immediate if it occurs within 3 working days of the defect(s) becoming known or 2 weeks from receipt of the goods. The Buyer shall report obvious defects (including false delivery and shortfall in delivery) within two weeks of delivery irrespective of its pre-existing obligations to inspect and give notice of defects. The timely dispatch of the relevant report shall be sufficient to safeguard the deadline. Every report shall be made in writing. If the Buyer fails to provide the notifications of defect specified above, our liability for the unreported defect shall be excluded. The notification report must always be made in writing; the verified date of dispatch shall be decisive for the observation of the deadline.
- g.) We shall bear the working and material costs involved in the repair, replacement and redelivery within the scope of the warranty. Transport costs as well as travel costs for our assembly personnel (in particular driving costs, expenses and charges, overnight accommodation and costs of food) in connection with the repair, replacement or the redelivery shall be borne by the Customer, unless these costs are disproportionately high vis-a-vis the value of the devices and/or systems delivered by us.
- h.) All parts which are subject to premature wear in accordance with their use or as a result of their material quality (consumable parts) shall be exempt from the warranty.
- i.) Our guarantee obligation shall lapse if the Customer or its buyers undertake(s) changes, repairs or attempts at repairs itself or has/have it done by persons who were not commissioned with or authorised by us to carry out such work.
- j.) Any exchanged parts shall become our property.
- k.) We shall be liable to the same extent for parts repaired, replaced or redelivered within the scope of the warranty as for the original delivery item and only until the expiry of the warranty period applicable for the original delivery item.
- l.) We shall afforded adequate time to fulfil our guarantee obligation through repair, replacement or redelivery in accordance with the aforementioned provisions. The Customer undertakes to contribute to a necessary and reasonable extent, in particular not to prevent us from performing any repair or replacement work.
- m.) In case of a failure to render subsequent performance, despite the Customer setting us a reasonable grace period, the Customer may demand a reduction in payment or withdraw from the Contract provided that the defect is considerable and the Customer has fulfilled the statutory requirements; any claims for conversion shall be excluded.

## Section 7 Other Liability/Compensation

1. We shall be liable – irrespective of the legal grounds – for compensation only in the event of intent and major negligence.
2. In the case of ordinary negligence, we shall also be liable for damages arising from injury to life, limb or health. Otherwise, only if essential contractual obligations (cardinal obligations) are violated. The liability shall be limited to average damages which are foreseeable and typical for this type of contract.
3. Liability for direct and unforeseeable damages, production and downtime, loss of profit, missed savings and financial losses due to the claims of third parties shall also be excluded in cases of ordinary negligence – except in the case of injury to life, limb or health.
4. The above-mentioned liability limitations shall not apply if we maliciously conceal a defect or have assumed a warranty for the condition of the goods. The same shall apply for claims of the Buyer in accordance with the Product Liability Law.
5. The Buyer shall only be able to withdraw or terminate as a result of a breach of duty which is not due to a defect if we are responsible for the violation of duty. Free right to termination on the part of the Buyer (in particular, in accordance with Sections 651 and 649 BGB) shall be excluded. Withdrawal or termination must be explained in writing.

## Section 8 Limitation period

1. Unless already regulated in Section 6, the following provisions shall apply for the limitation period of mutual claims.
2. Claims to defect of title shall not become time-barred if the third party can still assert its rights against the Buyer in the absence of a limitation period. Excepted from these shall be claims for defects from consumers as well as claims for damages due to injury to life, limb or health and/or claims for defects due to major negligence or damages gross negligently effected damages caused by the seller. The statutory limitation periods shall apply in this respect.
3. The statutory limitation period shall apply for buildings and newly produced objects which have been used for buildings in accordance with their customary use and which have caused it to be defective (Section 438 Para. 1 No. 2 BGB).
4. The periods of limitation regulated in these Terms and Conditions shall also apply in the case of supplier regress; however the statutory limitation period shall remain unaffected here for reimbursement of expenses (Sections 478 Para. 2, 479 Para. 1, Para. 3 BGB) as well as for the suspension of the statutory limitation period (Section 479 Para. 2, Para. 3 BGB).
5. The statutory regulations in the case of fraudulent intent shall also remain unaffected (Section 438 Para. 3 BGB).

6. Insofar as we owe contractual damages to the Buyer in accordance with Section 7 due to a defect, the unshortened statutory limitation period of purchase law shall apply in this case (Section 438 BGB). These periods of limitation shall also apply for competing extra-contractual claims for damages unless the application of the regular statutory limitation period (Sections 195, 199 BGB) leads to a shorter limitation period in the individual case. The limitation periods of the Product Liability Law shall remain unaffected.

### **Section 9 Other, Severability Clause**

1. Drawings, sketches, patterns and other documentation provided by us as well as any tools made available and other aids shall remain our property and, unless otherwise agreed in an individual case, shall be returned to us without request after we have rendered performance. The Customer shall not be entitled in particular to pass on such documentation and devices to third parties. The same shall apply if such documentation was issued by us within the scope of the contractual negotiations and a contract still needs to be concluded.
2. If one or more of the provisions of these General Terms and Conditions of Business and Sale become ineffective or contestable, the applicability of the other provisions shall remain unaffected. If one or more provisions of these General Terms and Conditions of Business and Delivery are ineffective, the contractual parties shall agree upon a substitute regulation which comes as close as possible to the ineffective regulation(s) and could have probably been agreed if the contractual parties had been aware of the ineffectiveness of the provision(s) at the time the Contract was concluded. This shall apply accordingly also for contractual loopholes.

### **Section 10 Confidentiality, Choice of Law and Place of Jurisdiction**

1. The law of the Federal Republic of Germany shall apply for these AGB and all legal relationships between the Buyer and ourselves with the exclusion of all inter and supranational regulations, in particular the UN Purchasing Law.
2. If there is no agreement to the contrary, the place of fulfilment for our services shall be 35102 Lohra.
3. If the Customer is a merchant and does not belong to the tradesmen designated in Section 4 of the Commercial Law Book, the place of jurisdiction shall be Marburg/Lahn or, if we so choose, the Customer's registered office or another place of jurisdiction. The same shall apply for legal entities under public law or special funds under public law as customers or if the Customer does not have a general place of jurisdiction in the country.

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