



Alfons Haar

General Terms and Conditions of Delivery and Sale of Alfons Haar Maschinenbau GmbH & Co. KG

1. General / Scope of Application

- 1.1 All contracts are exclusively subject to our terms and conditions of delivery and sale; we reject any terms and conditions of the customer to the contrary or deviating from our terms and conditions unless we have expressly consented to their validity in writing.
Our terms and conditions shall apply even if we effect delivery to the customer without reservation with knowledge of terms and conditions of the customer to the contrary or deviating from our terms and conditions, including any contract award regulations of public/statutory corporations.
- 1.2 All agreements which are made between the customer and us for the purpose of executing the contract concluded with him shall be set down in writing in such contract. Amendments and supplementations to the contract shall be made in writing. Additional oral agreements do not exist.
- 1.3 Our terms and conditions shall also apply to all future transactions with the customer within the scope of his entrepreneurial activity.
- 1.4 Our terms and conditions shall be applicable vis-à-vis entrepreneurs as defined by Sec. 14 Subsec. 1 of the German Civil Code (BGB), vis-à-vis public entities and public special funds (§ 310 BGB).
- 1.5 The German version of these terms and conditions shall be applicable provided German is the language of the contract; where English is the language of the contract, the English version of these terms and conditions shall be apply.

2. Our offers, conclusion of contracts

- 2.1 Our offers shall not be binding, unless the confirmation of the order otherwise requires or we have expressly declared otherwise in writing. A contract shall be concluded only if we have confirmed an order in writing or execute the order.
- 2.2 We shall retain the title to and copyrights in all offer documents; these may not be made available to third parties without our express written consent.
- 2.3 We reserve the right to carry out technical and engineering changes. In case we need licences and authorizations for foreign transactions, we reserve the right to rescind the contract if these are not granted within three months of the application. If we have to rescind the contract, claims for damages against us are excluded. This waiver of liability shall not apply to cases in which we have acted intentionally or with gross negligence.
- 2.4 The customer is obliged to inform us as soon as negotiations have commenced whether the object of the agreement is ultimately acquired by him for a military purpose and whether an export licence will be necessary. He promises to provide to us any documents needed on our part, particularly End User Certificates. We have the right to charge the cost of the export licence to the customer or, as the case may be, to rescind the contract if costs are unreasonably high or if the license cannot be obtained. The customer's claims for damages against us are excluded, unless we have acted intentionally or with gross negligence.
- 2.5 We decide at our own discretion to deliver goods of EU-origin or with a certificate of origin and/or a customs preference authorization respectively. For that reason the customer is obliged to inform us at the time of his request which certificates of origin and/or customs preference authorizations will be required. We reserve the right to charge the additional expenses incurred by this. Further, we shall be entitled at the time of delivery to assume the original situation. Changes of origin will not be grounds for damages to be claimed by the customer. This exclusion of liability shall not apply if we have acted intentionally or with gross negligence.

3. Prices / terms of payment

- 3.1 Unless the confirmation of the order otherwise requires, our prices shall apply "ex works" (Incoterms 2010), exclusive of packaging, transportation/delivery, assembly/commissioning, customs duties, insurance, which items shall be invoiced separately.
- 3.2 All prices shall be in euros and exclusive of the value added tax to which they are subject. The value added tax is payable likewise.
- 3.3 We are entitled to charge the price applicable on the date of delivery if according to the agreement more than four weeks lie between the conclusion of the contract and the delivery date, or if the customer does not take delivery of the goods until after the expiry of this period for reasons for which he is responsible. Fixed prices must be agreed on expressly and in writing.
- 3.4 Unless the confirmation of the order requires otherwise, the purchase price shall fall due for payment net directly on receipt of the delivered goods. Where machines or complete plants are delivered and in project business, 30 % of the total contract value shall be payable upon receipt of our written confirmation of the order, 70 % shall be payable with the acceptance at our works or after the notice of the readiness for dispatch.
- 3.5 Incoming payments shall be set off against the oldest debt at the time. The customer shall be entitled to make a set-off only if his counterclaims have been recognized by declaratory judgment, or are uncontested. The customer shall be entitled to exercise rights of retention or rights to refuse performance on the aforesaid conditions.
- 3.6 If the customer defaults in payment, we shall charge default interest of 9 % above the base lending rate of the European Central Bank as from the default in payment (§ 247 BGB).
- 3.7 The minimum order value is 100 €.

4. Time of delivery

- 4.1 Unless otherwise agreed or unless the contractual relationship otherwise requires, none of the times of delivery specified by us shall be binding. The delivery period shall commence as stipulated by our order confirmation. If our order confirmation does not stipulate and express time of delivery, the customer shall notify us of that fact. If such notification by the customer if omitted, then a time of delivery is deemed to be agreed which is would be usual and appropriate for the respective delivery in Germany.

- 4.2 Delays in delivery caused by force majeure, unforeseeable circumstances for which we are not responsible, such as interruptions of operations, strikes, lockouts, shortages of means of transportation, difficulties in purchasing raw materials, delays in delivery by sub-suppliers, official directives, delays in granting authorizations, impossibility of performance from the technical point of view, shall not result in our default. The agreed time of delivery shall be prolonged by the period of the obstruction. If the obstruction lasts longer than six months, the customer as well as we shall be entitled at the end of an adequate additional period of time to rescind that part of the contract that has not yet been performed. In this case, damage claims shall be excluded. This clause 4.2 shall also apply if one of our suppliers is affected by the aforesaid circumstances.
- 4.3 If the customer grants us a reasonable extension of time in case of our default and this period (usually one month) expires twice without results, he shall be entitled to rescind the contract. Claims for damages will be subject to clause 8.
- 4.4 In the event of subsequent contract adjustments affecting the date of delivery, the time of delivery shall be prolonged appropriately. Part deliveries and deliveries prior to the date of delivery shall be permitted unless the same conflict with a recognizable interest of the customer. They shall be deemed to be independent deliveries and invoiced separately. A penalty for default in delivery shall be incurred only if we are at fault and material damage can be proved to our detriment.
- 4.5 Acceptances shall take place at our works at the customer's expense. If the customer defaults in acceptance or infringes other duties to cooperate, we shall be entitled to demand compensation for the damage suffered by us, including any additional expenses. In this case, the risk of accidental loss or of accidental deterioration of the purchased item shall also pass to the customer at that time at which he defaults in acceptance.

5. Dispatch / passing of risk

- 5.1 Our deliveries shall be effected "ex works/incoterms 2010" for the account and at the risk of the customer. Transport insurance shall be effected at the customer's written request and for his account. We have the right to demand a prepayment on the insurance premium by the customer, as the case may be. In the absence of specific instructions by the customer, we shall determine the shipping route and carrier. The transport packaging shall be product-related and take into account the statutory regulations as may be made from time to time. The customer shall bear the packing charges, which shall be determined at our reasonable discretion. The packaging shall be taken back at the customer's request and expense.
- 5.2 If shipments are damaged or incomplete, the customer shall arrange for a fact finding immediately upon receipt. The results shall given to us directly.

6. Reservation of title

- 6.1 We shall reserve title to the delivered items (retained items) until receipt of all payments based on the business relations with the customer at the time when the respective contract is formed. Further, we reserve title to retained goods until any the customer has paid any future receivables. In the event that the customer defaults in payment, he shall the delivered items over to us without undue delay, without us having to declare rescission of the contract. The same shall apply if the customer's financial situation deteriorates substantially. Our request for repossession and repossession itself shall not be construed as rescission from the contract. After repossession of the delivered items we shall be authorized to realize the same. The realization proceeds shall be set off against the customer's liabilities – less appropriate realization costs. In principle, the realization costs are assumed to be 25 % of the realization proceeds. The customer may furnish proof to show that the realization costs were actually lower than that. We may also realize the repossessed reserved goods by selling them by private contract. The rules relating to realization as laid down in the German Insolvency Act (InsO) remain unaffected.
- 6.2 The customer undertakes to handle the delivery items with care; in particular, he is obliged to insure them adequately at the reinstatement value against damage caused by fire, water, and theft at his expense.
- 6.3 In case of attachments or other intervention by third parties, the customer shall inform us in writing without undue delay. The customer shall be liable to us for the judicial and extra-judicial costs of any necessary action pursuant to § 771 of the German Code of Civil Procedure (ZPO) (third-party action against execution).
- 6.4 The customer is entitled to resell the retained items in the ordinary course of business. In exchange, he herewith assigns to us all claims against his customers or third parties to the amount of the invoice total (including value added tax) which, to his benefit, accrue from the resale, irrespective of whether the delivered item was resold without any processing or after processing. We accept this assignment of the customer to us.
The customer shall remain authorized to collect these claims even after the assignment. However, we shall be authorized to collect the claim ourselves, if the customer no longer performs his obligations to pay from the collected proceeds, defaults in payment, or a petition is filed for the institution of insolvency proceedings, or there has been a suspension of payments. In these cases, we may demand that the customer discloses to us the assigned claims and their debtors, furnishes all the information required to collect the claims, delivers the appurtenant documents and notifies the debtor (third party) of the assignment. However, it shall not be possible for us to collect the claim if this conflicts with the Insolvency Act.
- 6.5 In processing or transforming the retained item, the customer shall invariably be acting for us and on our behalf. If the retained item is processed with other items not belonging to us, we shall acquire joint title to the new thing in the same proportion as the value of the delivered item bears to the other processed items

- at the time of the processing. In all other cases, the new thing having resulted from the processing shall be governed by the same provision as retained items.
- 6.6 The reservation of title shall remain effective even if individual claims of ours or all of our claims are included in a current account and a balance is struck or the balance is confirmed.
- 6.7 We undertake to release the securities due to us at the customer's request also to the extent that the value of our securities exceeds the claims to be secured by more than 10 %. Selecting the securities to be released shall be incumbent on us.
- 7. Claims based on defects**
- 7.1 A precondition of the warranty rights (claims based on defects) of the customer who is a merchant is that he inspects the goods upon receipt without undue delay and gives written notice of any visible defects without undue delay after the inspection or of hidden defects without undue delay after their discovery, specifying the defect. This shall also apply to wrong deliveries or items in insufficient quantities being delivered. Notification is subject to a preclusion-period of seven days. Other customers shall also examine items at their own expense and then notify us of apparent defects including wrong deliveries or insufficient quantities in writing and without undue delay. For non-merchants notification is subject to a preclusion-period of seven days.
- 7.2 No claims based on defects shall exist insofar as there is only an insignificant deviation in quality or only an insignificant impairment of usability.
- 7.3 All our specifications, such as measurements, documents, prospectuses, shall not be binding and shall only be performance specifications and not guarantees, unless otherwise expressly agreed. Possible advertising messages/product specifications caused by third parties or by us do not constitute contractual product specifications, unless we have agreed so with the customer. Insofar as materials to be used are specified in the contract, we specify only the material but not if that material is fit for a contractual purpose or use. We are obliged to share our concerns only where the material is obviously unfit for the agreed purpose.
- 7.4 Possible defects in quality shall not entitle the customer to reject the rest of the agreed delivery, unless the customer is able to prove that acceptance of the part-delivery would be unreasonable in view of the circumstances.
- 7.5 If one of our products has a defect, the customer's rights shall be limited to either us fixing the defect or to substitute delivery. We shall make the decision between those options. We shall be entitled to be given an adequate number of opportunities to remedy the defect or redeliver, at least three times. If remedy of the defect/repair or redelivery fails, the customer may – irrespective of possible claims for damages under No. 8. – rescind the contract or reduce the purchase price, as he chooses. That right shall be limited to the delivery affected, unless such limitation would be unreasonable in light of the nature of the respective item. If the amounts to be delivered as specified are not met and our attempts to remedy fail, the customer's rights shall be limited to a reduction of the purchase price. This limitation shall not apply, however, if specifications were subject to an express warranty or if acceptance of the item delivered would be unreasonable in light of the circumstances.
- 7.6 In the event of notices of defects the customer may withhold payments only on a scale in proportion to the defects having occurred. These payments may also only be withheld on the conditions of item 3.5, sentence 3 of these terms and conditions.
- 7.7 Notified defects shall be remedied at our works in principle. Exceptions thereto shall be at our discretion. Damaged items shall be sent to our works in an unchanged condition. The customer shall bear the shipping charges for any substitute deliveries abroad and the travel expenses of any assemblers who may be delegated. This shall not apply if sending the item abroad had been agreed with us.
- 7.8 Claims based on defects, particularly claims based on defects as to quality, shall become barred 12 months after the passing of risk (limitation period). This provision shall also apply to any guarantees given and binding on us, unless these guarantees provide otherwise. The limitation period of one year shall not apply if the statutory provisions Sections 438 Subs. 1 No. 2 (Buildings and Items for Buildings), 479 Subs. 1 (right of recourse) and 634a Subs. 1 No. 2 (Construction Defects) of the German Civil Code provide for longer limitation periods, or in case of intentional or grossly negligent breaches of obligations on our part, in the event of fraudulent concealment of a defect as well as in cases of injury to life, limb or health. Statutory provisions concerning suspension, suspension of expiry and recommencement of the limitation period shall remain unaffected by these provisions. If we examine customers' complaints or repair/redeliver, these measures shall only suspend the statutory limitation period. However, such measures shall not constitute an acknowledgement of a defect or the recommencement of the statutory limitation period connected with it. Claims on grounds of material defects shall be subject to a three-month limitation period with regard to the repair or redelivery, that period beginning with the conclusion of such repair or delivery, however the limitation period shall not lapse before the original limitation period has lapsed.
- 7.9 Recourse claims of (ultimate) customers in case of purchases of consumer goods (§ 478 BGB) shall be excluded with regard to the agreements between the customer and his customers going beyond the customers' statutory claims based on defects.
- 7.10 No warranty is given for damages resulting from; unsuitable or improper use, improper assembly and improper commissioning or handling by the customer or by third parties, any other disregard of installation and operating instructions or of generally accepted technical rules and normal operational wear and tear. Further, claims for damages shall be governed by No. 8 (Liability/Damages). Any other exceeding or different claims by the customer against us than those governed under this No. 7 and on grounds of defects shall be excluded.
- 8. Liability / Damages**
- 8.1 The following exclusions or limitations of liability shall also apply to tort claims in so far as tort claims are concurrent with contractual claims.
- 8.2 Our liability for damages of any kind is excluded; however this exclusion shall not apply to:
- damages which we caused intentionally or with gross negligence,
 - in the event of slight negligence to damages based on injury to life, limb or health as well as – subject to provisions No. 8.3 and 8.4 – damages based on breach of material contractual obligations by us. Material obligations are any obligations the compliance with which makes the orderly performance of the contract possible.
- 8.3 In all cases of slightly negligent breaches of material contractual obligations our liability is limited to damages typical of the contract and foreseeable in our view at the time the contract is concluded or the obligation breached; this shall not apply to damages to life, limb or health. To the same extent our liability is excluded with regard to damages that fall into the customer's sphere.
- 8.4 Claims for damages by the customer on grounds of slight negligence on our part under the aforesaid No. 8.2 and 8.3 shall be excluded in any event, if they are not filed within a limitation period of three months after the claims have been rejected by us with the respective notification hereto or by our insurance. Any potential claims for damages the customer has under the aforesaid No. 8.2 and 8.3 based on slight negligence on our part shall be excluded by a limitation period of 12 months beginning with the passing of risk.
- 8.5 For each damaging event caused by gross negligence on part of our vicarious agents, legal representatives or executive staff our liability shall be limited to the amount of €50,000.00.
- 8.6 The aforesaid exclusions and limitations of liability shall also apply to our liability for statutory (corporate) representatives ("organs") employees and vicarious agents as well as our representatives', employees' and vicarious agents' liability.
- 8.7 The aforesaid exclusions and limitations of liability shall not apply to claims under the German Product Liability Act in so far as liability is compulsory there under. Further, the limitations shall not apply if and insofar as we have given a guarantee pertaining to condition or durability.
- 9. Flat rate determination of damages**
- If the customer breaches contractual obligations he has with regard to us, in particular if he rescinds the contract without reason, the customer shall be obliged to pay a contractual penalty which will be determined at our reasonable discretion and which may be subject to judicial review also with regard to its amount. The contractual penalty shall be at least 25 % of the value of the respective order. Set-off on part of the customer against a forfeited penalty is only permissible with regard to claims that have become legally binding or are uncontested.
- 10. Assignment of Claims**
- The customer may not assign claims against us to third parties without our prior written consent.
- 11. Jurisdiction / place of performance**
- 11.1 If the customer is a merchant, a legal entity under public law, or a special fund under public law, the courts of Hamburg shall have jurisdiction. However, we are entitled to file an action against the customer with the court of his place of residence as well. Arbitration is hereby excluded.
- 11.2 Unless the confirmation of the order otherwise requires, Hamburg shall be the place of performance in case of contracts with merchants.
- 12. Confidentiality**
- The customer undertakes to keep information concerning our technical and commercial knowledge, of which he may learn through the business relationship secret and to use for the purposes intended by this contract only. This obligation is effective as long as the business relationship lasts. Beyond that the obligation shall be effective for two years, after the relationship has come to an end. It shall not apply to knowledge known to the public, of which the customer learned without breaching this confidentiality agreement. If the customer breaches this confidentiality agreement and is at fault, he will be obliged to pay a contractual penalty, which shall be determined by us at our reasonable discretion, the adequacy of which, also with respect to the amount, shall be open to judicial review. Set-off on part of the customer against a forfeited penalty is only permissible with regard to claims that have become legally binding or are uncontested.
- 13. Applicable law / severability**
- 13.1 All deliveries and services shall be governed by German law exclusively.
- 13.2 Should individual provisions of these general terms and conditions be invalid or become invalid, the validity of the other provisions shall not be affected thereby. These terms and conditions' invalid provisions shall be replaced by provisions of the German Civil Code.
- 13.3 Should one or more provision of the contract concluded between us and the customer be invalid or become invalid for reasons not based statutory rules concerning general terms and conditions, the validity of the remaining provisions of the contract shall not be affected. Invalid provisions shall be replaced retroactively by a provision that comes closest to the intended legal and economic objective. The same shall apply if there a gaps in the respective contract.

as per January 2015