

## **1 Scope of application**

- 1.1 The following terms and conditions form the legal basis for all quotations, sales and deliveries. The Terms and Conditions of the purchaser or other agreements to the contrary shall be deemed to have been accepted only insofar as expressly acknowledged and confirmed in writing by the supplier as a supplement to these Terms and Conditions.
- 1.2 In case of a regular business relationship, the latest applicable version of the General Terms and Conditions of the supplier shall be deemed to be an integral part of the contract even where there is no longer an express reference to them.

## **2 Offer**

- 2.1 Our offers are non-binding. The content and scope of offers shall be determined solely in accordance with the type description. Documents relating to the offer such as diagrams, drawings, weights, measurements etc. are only indicative, unless they are expressly indicated as binding.
- 2.2 The supplier retains the rights of ownership, copyright and other industrial property rights as well as its know-how in all the offer documentation and drawings. The same may only be made available to third parties with the supplier's consent and may only be used by the person to whom the offer is made in compliance with the terms of contract.

## **3 Order confirmation**

- 3.1 Orders, agreements, guarantees etc. (including those of our representatives or other employees) need our written confirmation in order to be legally effective.
- 3.2 The supplier is not liable for faults resulting from documents/drawings from the purchaser or resulting from inaccurate or oral indications.
- 3.3 Where we are acting only as suppliers of components, and the lead contractor assembles these parts within a complete installation, our liability shall be limited to the delivered parts and will not extend to the functionality of the installation as a whole.

## **4 Delivery period**

- 4.1 The delivery period starts with the dispatch of the order confirmation, but not until all the details concerning the execution of the order have been clarified, and all the documents, permissions and clearances required to be provided by the purchaser are duly received, and until payments if any agreed upon are duly received, and after all other preconditions individually agreed between the parties by contract for the smooth handling of the order are duly satisfied.
- 4.2 The delivery period shall be deemed to have been complied with if the goods for delivery have already left the supplier's plant or if the purchaser has been informed that the goods are ready for dispatch prior to expiry of such delivery period. If delivery is delayed due to the occurrence of unforeseeable and/or unusual circumstances at the supplier's end, which he was unable to avert despite reasonable care, the delivery period shall be deemed to have been extended to a corresponding extent, subject to the condition that the delivery or action has not become impossible.
- 4.3 Whether the disruption occurs in the plant of the supplier or in its upstream supplier's plant is immaterial. Disruptions are, for example, sanctions and intervention by governmental authorities, delays in the delivery of bought-out parts, or other interruptions in the operations.
- 4.4 The supplier may only claim the circumstances indicated here if he has notified the purchaser of the same immediately.
- 4.5 These provisions shall apply mutatis mutandis in case of strike and/or lockout.
- 4.6 If the delay in the delivery occurs due to circumstances ascribable to the supplier, and if the purchaser can show that he has suffered damage as a consequence, the purchaser may demand compensation (to the exclusion of further claims) for every full week of delay, of an amount of 0.5 %, in the aggregate, however, not exceeding 5 % of the value of that part of the total delivery which, due to the delay, could not be used on time or not in conformity with the contract.
- 4.7 The liability provision under Section 4.6 may also be applied to damage claims of the purchaser if any in cases where he has accorded the supplier a reasonable time limit to complete performance or remedial action indicating explicitly that after this time limit he will refuse the acceptance of the performances and if the supplier then fails to comply appropriately within this time limit. The liability provision under Section 4.6 shall also apply in cases where the entire delivery or performance becomes definitively impossible for the supplier prior to the passing of risk and/or in case of the inability of the supplier and/or in cases where the delivery of similar parts in the required quantities becomes impossible and the purchaser has a justified interest in refusing partial delivery. In these cases possible rights of termination of contract shall remain unaffected.
- 4.8 If shipment is delayed for reasons that can be ascribed to the purchaser, the purchaser will be charged for the expenses incurred toward storage, beginning 10 days after notification that the goods are ready for shipment; in case of storage at the supplier's plant, the minimum charges for the same shall be 0.5 % of the invoice value per month. If a reasonable deadline set by the supplier passes without compliance by the purchaser, the supplier is entitled to dispose of the goods elsewhere. In such case, the supplier may supply the purchaser with goods as ordered by the latter, or with goods of the same generic group, within an appropriately extended delivery period.

## **5 Shipment, passing of risk and acceptance of delivery**

- 5.1 Risk shall pass to the purchaser – even in case of partial deliveries – no later than at the time of shipment or collection of parts of the delivery, even if the supplier has assumed responsibility for additional services such as carriage costs, carriage, or erection.
- 5.2 If shipment is delayed due to circumstances for which the supplier is not responsible, the risk shall pass to the purchaser on the date of notification of readiness for shipment; the supplier is however obliged to arrange for the insurance requested by the purchaser at the purchaser's expense.
- 5.3 Without prejudice to its claims to warranty, the purchaser has to accept delivery of goods, even if they contain minor defects.
- 5.4 Partial deliveries are permissible.
- 5.5 Unless otherwise agreed, packaging shall be arranged by the supplier and not requested by the purchaser. The packing shall therefore be transport packaging. The place of performance for the return empty transport packaging is the supplier's registered office. The purchaser shall bear the costs of returning the transport packaging plus the costs incurred by the supplier for taking the same back. Furthermore, the purchaser is obliged to keep the transport packaging clean and separate from other components and to return it during the supplier's regular business hours.

## **6 Warranty**

- 6.1 Our warranty is subject to the punctual compliance with the agreed payment conditions and other obligations of the customer, above all the performance of compulsory inspections and maintenance actions through our staff against the order of the purchaser.
- 6.2 A defect in the goods delivered or services rendered may only be regarded as a major shortcoming in quality or usability if it can be viewed as such within the context of the contractually agreed purpose.
- 6.3 At his discretion, the supplier may repair or replace, free of cost, all such parts as may be found to be defective or the usability of which is found to be seriously affected within 6 months (in case of multiple-shift operation, within 3 months) from date of commissioning, as a result of circumstances existing prior to the passing of risk – in particular due to defective engineering, poor construction material or faulty workmanship. If such defects are found, the supplier must be immediately notified thereof in writing. All replaced parts become the property of the suppliers.  
A minor deviation in this sense will not amount to non-fulfilment of contract.
- 6.4 For important bought-outs, the liability of the supplier shall be limited to the relinquishment in favour of the purchaser, of liability claims to which he is entitled against the supplier of the bought-in parts.
- 6.5 No warranty is given for parts subject to premature tear and wear due to their composition or manner of use.
- 6.6 No warranty is given for damage that arises due to the following reasons:  
Inappropriate or unprofessional use, defective assembly and/or defective connection or commissioning either by the purchaser or by third parties, or due to natural wear and tear, improper or negligent handling, inappropriate operating media or replacement materials, faulty construction work, unsuitable foundations, chemical, electro-chemical or electrical influences, insofar as the supplier is not responsible for the same.
- 6.7 After agreement with the supplier, the purchaser is bound to provide the supplier with sufficient time and opportunity to carry out all the repairs or replacement delivery that may be necessary in the opinion of the supplier. Otherwise the supplier will be released and discharged from warranty. If the repair of the defect is urgently required since it poses a danger to operating safety, or in order to avert disproportionately high amount of damage, the supplier should notify this to the purchaser immediately indicating the relevant circumstances, whereupon the supplier shall grant the purchaser permission within a reasonable period of time depending on the circumstances, but in no case later than 7 working days, to remedy the defect itself or may have it remedied through third parties, and to demand compensation of the necessary costs from the supplier. If the supplier is in default in remedying the defect, the purchaser shall have the same right even if no separate permission has been granted. In case of unjustified denial of permission, the supplier undertakes to compensate any damage that results from the same.

## **7 Liability/guarantee**

- 7.1 Should the complaint prove to be justified, the supplier shall pay the following direct costs arising from the repair or replacement delivery: the costs of the replacement part including shipping and reasonable costs of dismantling and installation plus the costs of making available assembly operators and auxiliary personnel as required. All other costs shall be borne by the purchaser. In particular, the purchaser has to bear all costs that arise due to the fact that the goods delivered have been shifted to a different location.
- 7.2 If the purchaser or a third party carries out any modification or repair work unprofessionally without the prior written consent of the supplier, the warranty shall not extend to the consequences of the same.
- 7.3 The repairs and replacement warranty period shall be six months after conclusion of the repair work or delivery of the replacement. The warranty period shall, however, end at the earliest upon expiry of the period of limitation of the contract for the goods originally delivered.

## **8 CE-Mark**

- 8.1 Our machines are designed and manufactured in accordance with the applicable basic health and safety requirements of the relevant EU Directives. The EC declaration of conformity is made out and the CE marking is placed on the machine after all the requirements have been complied with.
- 8.2 If any change is made to a machine delivered by HAAS GmbH without our written approval, the EC Declaration of Conformity becomes void.

## **9 Other Damage Compensation Liabilities**

- 9.1 The purchaser is not entitled to claims for damages or expenses on account of a breach of duties from the obligation, and illegal actions, save as otherwise provided herein below.
- 9.2 Claims for damages exist in case of compulsory liability (in particular under the provisions of the German Products Liability Act), in case of fatal and physical injury and damage to health, in case of liability on account of intent or gross negligence; liability due to violation of cardinal duties even for minor negligence; liability on account of fraudulent non-disclosure of defects, and liability on account of a guarantee. In such cases, the supplier is liable for its statutory representatives and executive employees and, in case of a breach of material duties, also for other agents employed in the performance of an obligation. Apart from cases of liability on account of wilful intent/gross negligence or due to fatal or physical injury or damage to health, liability for the breach of cardinal duties is limited to foreseeable damage typical of the type of contract.
- 9.3 The supplier has taken out appropriate insurance for third party and product liability to cover personal injury and property damage. Claims for the compensation of property damage based on product liability are therefore restricted to the amounts owed by the insurance company. Insofar as permissible, the supplier shall assign such insurance claims to the purchaser.
- 9.4 These provisions shall not affect the distribution of the burden of proof in legal action.
- 9.5 Claims for damages by the purchaser shall become time-barred after 12 months. The legal period of limitation shall apply to liability pursuant to the Product Liability Act and to wilful intent and fraudulent misrepresentation.
- 9.6 All other further claims of the purchaser are hereby excluded, in particular, claims to cancellation of contract, termination or reduction in the price or compensation of damages of any nature whatsoever, in particular such damages that have not been caused to the goods to be delivered themselves.

## **10 Prices and Payment**

- 10.1 Unless otherwise agreed, prices are ex-works plus the statutory amount of VAT respectively applicable.
- 10.2 Additional costs such as packaging, transport, insurance, customs and assembly costs shall be charged separately.
- 10.3 Services the value of which is not specifically specified in the offer but which are necessary for the execution of the agreement or are carried out on the request of the purchaser, shall be charged extra.
- 10.4 Unless otherwise agreed, payments shall be effected in cash within 8 days of the date of the invoice without any deductions, free at the place of payment of the supplier as follows:  
1/3 Down payment against receipt of the order confirmation  
1/3 against notification to the purchaser that the main parts are ready for dispatch  
the remaining amount within one month thereafter
- 10.5 If payment is not effected punctually, the purchaser shall pay the supplier interest at a rate 8% over the respective basic interest rate. Interest for default shall be charged at a higher rate if the supplier can show further legal basis for higher interest.
- 10.6 The purchaser's right to set-off and/or retain payment is excluded except in case of counterclaims acknowledged by the supplier or established by final and binding judgement of a court of law. Furthermore, this shall not apply to claims on account of defective delivery. If part-delivery is permissible, the latter exception only relates to the relevant part of the contractual performance. In case of minor defects, this exclusion shall however, apply to the amount of remuneration that exceeds the reduced value arising on account of the defect.
- 10.7 The supplier may suspend delivery and provision of services if, after entering into the contract, it transpires that the purchaser will be unable to fulfil a considerable portion of its obligations due to a grave shortcoming in its creditworthiness. If the supplier suspends performance, it is bound to notify this to the purchaser immediately and continue performance if the purchaser provides adequate security for the performance of its obligations within an adequate period.
- 10.8 The supplier also has the right to suspend performance of delivery of international transactions if foreign exchange fluctuations give rise to currency losses of more than 10 % for the supplier. This currency loss must have occurred between entering the time of into the contract and the first delivery.

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- 11.1 The following clauses regarding reservation of property rights are part of the contract:
- Simple reservation of property rights
  - Extended reservation of property rights  
(reservation of current account and balance clause)
  - Extended reservation of property rights  
(processing clause and clause for assignment in advance)
  - Release clause
- 11.2 The supplier retains title and the extended reservation of title to the goods delivered pending performance of all of the supplier's claims against the purchaser on the basis of the delivery contract. If the parties have agreed on cheque/bill of exchange procedure and if the supplier is liable towards third parties, in particular to a bank, due to liability under a bill of exchange, the obligations of the purchaser will not be deemed to have been fulfilled until such liability of the supplier under the bill of exchange has finally ceased to exist.
- 11.3 Pending final performance of all of the supplier's claims against the purchaser on the basis of the delivery contract, the purchaser is not authorized to pledge the goods delivered, to assign the goods delivered as security, to sell the goods delivered or to assign rights to third parties.
- 11.4 If the purchaser sells the goods delivered in violation of the agreement or with the consent of the supplier, the purchaser hereby assigns all claims arising from the same to the supplier. The supplier accepts the above assignment. The supplier is authorized to collect a claim against the third party. The supplier may also invoke its extended reservation of title to the goods delivered. In such case, the purchaser is obliged to notify the supplier about the claim assigned, provide the supplier with details of the debtor and all information required for the collection, along with all the related documentation, or to notify the debtor about the assignment.
- 11.5 Any reorganisation or indivisible connection of the goods delivered by the purchaser will always effected for the supplier. If the goods delivered are connected with other goods not belonging to the purchaser, the supplier acquires joint ownership of the new product in the same proportion as the relationship between the value of the goods delivered and the value of such other goods. If the transformation or connection is effected in such a way that the new product of the purchaser it to be deemed to be the principal product, it shall be deemed to have been agreed that the purchaser will proportionately assign joint ownership of this product to the supplier.
- 11.6 If the goods delivered are connected with real property, the purchaser also assigns to the supplier the claim to secure the supplier's claims against the purchaser arising in favour of the purchaser against a third party as a result of the connection of the goods delivered with the real property.
- 11.7 If the purchaser commits actions in breach of contract, particularly in conjunction with delayed payment, pledging or assigning the goods delivered as security or other assignment to third parties, the supplier has the right to recover the goods delivered; the purchaser is obliged to surrender possession. The recovery by the supplier of the goods delivered shall not constitute rescission of the contract.
- 11.8 The purchaser has to inform the supplier in writing immediately of any attachment or other intervention by third parties in order to enable the supplier to initiate legal action in accordance with Section 771 of the German Code of Civil Procedure (ZPO). If the third party is unable to reimburse the supplier for all judicial and extra-judicial costs in connection with an action pursuant to Section 771 of the German Code of Civil Procedure (ZPO), the purchaser is liable to the supplier for the relevant shortfall.
- 11.9 During the period of retention of title, the supplier is entitled to insure the goods at the purchaser's expense against theft, breakage, fire, water and other damage, unless the purchaser can prove that it took out insurance cover itself. At the supplier's request, the purchaser shall provide such proof by submitting the insurance policy.
- 11.10 If the goods delivered are intended for a purchaser abroad, the purchaser abroad is obliged to secure the supplier's rights of title to the goods delivered in accordance with the statutory provisions of the country to which the goods are intended for delivery and to undertake all such collaborative action which may be necessary to secure the retention of title. In all other respects, a foreign purchaser also has to comply with German Law.

**12 Place of Performance, applicable law, jurisdiction, written form and partial invalidity**

- 12.1 The place of performance for payment and delivery is at the registered office of the supplier.
- 12.2 These General Terms and Conditions and the entire legal relationships between the supplier and the purchaser shall be exclusively subject to and construed in accordance with the laws of the Federal Republic of Germany excluding the application of the UN Convention on the International Sale of Goods (CSIG).
- 12.3 In the event of any dispute arising from the contractual relationships between the parties, the courts of Westerburg shall have jurisdiction. The supplier does, however, also have the right to bring an action against the purchaser at the courts that have jurisdiction over the place where the purchaser is established.
- 12.4 The following provisions shall apply to the contractual relationships in the sequence of priority set forth below:
- Individual contracts entered into between the parties
  - These General Terms and Conditions
  - Statutory provisions in particular of the German Commercial Code (HGB) and of the German Civil Code (BGB)
- 12.5 Any sub-agreements, reservations, alterations and amendments require written confirmation by the supplier to be effective.
- 12.6 Should any provisions in these General Terms and Conditions or any provision within the framework of other agreements are or become invalid, this shall not affect the validity of all other provisions or contractual agreements.