

# THE GENERAL TERMS AND CONDITIONS OF HAHN+KOLB WERKZEUGE GMBH

General conditions of sale, delivery and payment of HAHN+KOLB Werkzeuge GmbH

## General Terms and Conditions

### **I. Scope**

1. The terms of sale, delivery and payment set out below apply, subject to section I. no. 2., to all deliveries and other services of HAHN+KOLB Werkzeuge GmbH (hereafter: "Supplier"). They also apply to all future contracts with the purchaser and to all deliveries and other services to be provided to the same. The conditions of sale apply accordingly to work performances and services. Instead of acceptance as in the case of delivered goods, work performances are approved and services are received.

2. The terms of sale, delivery and payment set out below only apply if the purchaser is a trader (Section 14 of the German Civil Code [BGB]), a legal person under public law or a legal entity under public law. They do not apply to orders made via one of the online sales platforms of HAHN+KOLB Werkzeuge GmbH.

3. These terms of sale, delivery and payment apply exclusively. Contrary, additional or different terms of business of the purchaser do not form an integral part of this contract, unless the Supplier has confirmed in writing that they shall apply.

### **II. Conclusion of contract**

1. Orders, changes to the contract, additions and subsidiary agreements shall be made in writing. Orders given over the telephone or through other means shall be regarded as having been accepted when the goods have been shipped or handed over and an invoice has been issued.

2. All product information, prices and quotations are given without obligation. The information about dimensions, weights, outputs or materials given in quotations, catalogues, brochures, price lists, drawings or similar is given with due care, but is non-binding unless explicitly indicated as binding. The same applies to all design specifications and proposals. The Supplier reserves the right to make changes on the basis of technical progress. Drawings, samples and documents provided by the Supplier remain the property of the same. They shall not be made accessible to third parties without the Supplier's consent. The Supplier would like to remind its contractual partner that it holds the copyright to such property.

3. The contractually promised properties of the purchase item are based solely on the product description and the written agreements. Unilateral ideas expressed by the

purchaser shall not be taken into consideration, as with advertising statements and other public statements made by the Supplier or one of its vicarious agents.

4. Models, tools and other devices for completing an order shall remain the property of the Supplier, even if the Supplier passes on some of the cost for such equipment.

5. If the Supplier becomes aware on conclusion of the contract that the claim of the Supplier to service in return is jeopardised by poor performance on the part of the purchaser, the Supplier shall be entitled to refuse performance in accordance with Section 321 of the German Civil Code. The Supplier shall also be entitled to withdraw from the contract, subject to giving notice where applicable.

### **III. Prices**

1. Unless another specific agreement has been made, the prices in EUR per unit or the respective unit of quantity plus statutory VAT as specified in the catalogues and price lists on the date of receipt of the order shall apply.

2. Services going beyond the purchase price and work agreed additionally shall be invoiced separately.

3.1 Delivery within Germany is free domicile or free to the place/point of receipt; in the case of carriage via freight forwarding or by rail, packaging shall be included in each case. This does not include small and extremely small orders, extremely bulky or heavy goods, repairs or courier services requested by the purchaser. Extremely bulky or heavy goods with original or special packaging are indicated in the catalogue by +. Delivery is ex works here, postage and packaging excluded.

3.2 For deliveries outside Germany, delivery shall be ex works, postage and packaging excluded.

4. For small orders with a net goods value of less than EUR 150, a flat-rate cost of EUR 7.90 plus statutory VAT shall be charged. For extremely small orders with a net goods value of less than EUR 30, a flat-rate cost of EUR 10.90 plus statutory VAT shall be charged.

5. For orders below the packing units specified in the catalogues, a surcharge of 10% of the net order value plus statutory VAT shall be charged.

### **IV. Payment**

1. Unless otherwise agreed, the terms of payment are with a 2% discount within 14 days of the invoice date or net within 30 days of the invoice date.

2. If direct debit is used, a 3% discount shall be applied. For machines, special tools, repairs and similar, payment shall be by agreement.

3. Counter-claims on the part of the purchaser shall only entitle the same to offset or withhold payment if they are legally endorsed or indisputable.
4. Bills of exchange eligible for discount shall only be accepted as payment subject to prior agreement; charges for discounts and bills of exchange shall generally be borne by the purchaser.
5. Discounts shall be invalid and payments shall be due immediately in the event of default on payment for another delivery or service. The same shall also apply if extrajudicial settlement proceedings or court insolvency proceedings are initiated after the time of application.
6. If after the contract is concluded the Supplier becomes aware of circumstances which diminish the creditworthiness of the purchaser, all claims of the Supplier shall become payable immediately, regardless of the term of accepted bills of exchange. The Supplier shall also be entitled to only complete any outstanding deliveries and services in return for advance payment or appropriate sureties. After an appropriate period of grace, the Supplier may withdraw from the contract or demand compensation for non-fulfilment.

## **V. Delivery**

1. Delivery shall be subject to correct and punctual supply to the Supplier and availability of stock. This shall not affect the responsibilities of the Supplier in accordance with section X.
2. All delivery times stated are non-binding guidelines and assume fulfilment of contractual obligations on the part of the purchaser. Specific delivery periods and dates can only be given if agreed in writing. These delivery periods and dates are then based on the time of shipping or notification of readiness to ship and start from the date of order confirmation, although not before all the specific details of the order have been fully clarified, the documents, approvals or releases to be provided by the purchaser have been rendered and advance payment, where agreed, has been received.
3. Default in delivery shall not arise while the purchaser is in default on one of its obligations.
4. The Supplier shall be entitled, particularly for larger orders, to make partial deliveries in reasonable volumes. If special tools are ordered, the Supplier may demand that the order quantity is exceeded or reduced by approx. 10% or at least two units. The delivery shall be invoiced accordingly.
5. If non-compliance with the delivery periods is attributable to events of force majeure or other interruptions for which the Supplier is not liable, such as war, terrorist attacks, restrictions on imports and exports, disruptions to transport and operations, or to any such incidents affecting subcontractors, the delivery periods shall be extended by the duration of the impediment. This shall similarly apply to

measures relating to industrial disputes affecting the Supplier or its subcontractors. The contracting parties shall be entitled to withdraw from the contract if one of the impediments described in this paragraph (5) lasts for more than four months and it is no longer in the interests of one of the contracting parties to fulfil the contract due to said impediment.

6. If losses are incurred by the purchaser as a result of delayed delivery for which the Supplier or its subcontractor is liable, the purchaser shall be entitled to demand compensation for delayed completion, although this shall preclude all other claims. This compensation shall equate to 0.5% for each full week of delay, but shall total no more than 5% of the value of that part of the full delivery that cannot be used promptly or in accordance with the terms of this contract due to the delay. The Supplier, however, reserves the right to prove that no loss was incurred by the purchaser, or that the loss sustained was considerably less than the flat-rate stated above. This shall not affect the unlimited liability of the Supplier for culpable damage to life, limb or health as a result of the violation of a warranty, and for wilful intent and gross negligence within the terms of Section X.

7. If the delivery is delayed at the request of the purchaser, the Supplier shall be entitled to demand compensation for losses incurred, including any additional expenditure. The risk of random demise or random deterioration of the purchase item passes to the purchaser at the time of the delay of acceptance in this case. After setting a deadline and once this deadline has passed to no avail, the Supplier shall be entitled to dispose otherwise of the delivery item and supply the purchaser subject to a delayed deadline.

8. If the purchaser receives load carriers (e.g. euro pallets, pallet cages etc.) with the delivery, it is obliged to return these to the Supplier or to a forwarding company authorised to take receipt after an appropriate period for emptying.

## **VI. Transfer of risk and receipt**

1. The goods are delivered at the purchaser's risk and transferred to the same no later than at the point at which the goods are shipped, even if partial deliveries are made or the Supplier has taken on other services such as shipping costs or commissioning. To cover the transport risk, the Supplier shall take out a transport insurance policy that shall be invoiced to the purchaser separately at 0.35% of the order value.

2. Unless otherwise agreed, the shipping route and mode of shipment shall be left to the discretion of the Supplier.

3. Delivered items, even if they have minor defects, must be received by the purchaser, regardless of the rights set out in section VIII.

## **VII. Reservation of title**

1. The delivered goods remain the property of the Supplier until such time as all claims from the business relationship have been fully satisfied.

2. The purchaser shall store the goods appropriately and insure them adequately in relation to the value as new against theft, machine damage, fire damage, water damage and other damage. The purchaser herewith assigns all claims to compensation from this insurance to the Supplier. The Supplier herewith accepts the assignment of these claims. In the case of default on payment, the purchaser shall be obliged on the request of the Supplier to surrender the delivered goods if the Supplier has already withdrawn from the contract in accordance with statutory regulations. This same applies if individual or all claims of the Supplier have been recorded on a running account and the balance has been drawn and recognised. In the case of attachment, foreclosure or other interventions of third parties, the purchaser shall inform the Supplier immediately, handing over the necessary documents to uphold the Supplier's proprietary rights.

3. Receipt of the equivalent value by the Supplier shall be regarded as payment. In the case of payment by cheque or bill of exchange, the reservation of title remains until these obligations have been cleared by the purchaser.

4. Any processing or conversion by the purchaser of the goods subject to reservation of title shall always be performed on behalf of the Supplier, without any obligations for the latter arising from this, and shall remain the property of the Supplier. This also applies if the goods subject to reservation of title are processed such that a new item is created.

5. The goods subject to reservation of title are, unless they are joined to other items belonging to the purchaser or a third party, generally stand-alone, removable and therefore eligible for exclusive rights. If the goods subject to reservation of title are joined to other items not belonging to the purchaser, or if eligibility for exclusive rights is lost as a result of this, the Supplier shall acquire co-ownership of the new item in the proportion of the value of the goods subject to reservation of title in relation to other joined items at the time of joining. If the parts are joined such that the item belonging to the purchaser can be regarded as the main item, it shall be considered that the parties agree that the purchaser will transfer co-ownership to the Supplier on a pro rata basis. The purchaser safeguards the sole ownership or co-ownership thus created on behalf of the Supplier. In all other respects, the same terms apply to the Supplier's co-ownership as to the item delivered subject to reservation of title.

6. The purchaser has the revocable right to resell goods subject to reservation of title in the due course of business. The purchaser shall not be permitted to dispose of the goods in any other way; in particular they shall not be pawned or assigned as surety. If the goods subject to reservation of title are not immediately paid for by the third-party buyer (customer), the purchaser shall be obliged to resell said goods only with an extended and expanded reservation of title. The authorisation to resell goods lapses in the event of default of payment on the part of the purchaser.

7. The purchaser herewith assigns to the Supplier all claims against the customer arising from the resale, regardless of whether the goods subject to reservation of title are resold without or after processing. The Supplier accepts the assignment of these claims. The purchaser is prohibited from reaching agreements with its customer that in any way preclude or compromise the rights of the Supplier. In particular, the purchaser shall not enter into any agreement that voids or compromises the advance assignment of claims to the Supplier. The purchaser remains entitled to call in claims assigned to the Supplier even after the assignment. This shall not affect the authority of the Supplier to call in claims itself. However, the Supplier undertakes not to call in receivables while the purchaser is still duly honouring its payment obligations. The Supplier can demand that the purchaser discloses any assigned claims and the debtors for these claims, provides all information required to call in the claims, hands over the accompanying documents, and notifies the debtors of the assignment. If the goods subject to reservation of title are resold with other items that do not belong to the Supplier, the claim of the purchaser against the customer is regarded as assigned in the amount of the delivery price agreed between the Supplier and the purchaser.

8. The Supplier shall be obliged to release the sureties to which it is entitled in accordance with the above terms at the request of the purchaser; the Supplier may refuse to do so if releasing sureties would take their value down to more than 10% below the value of the claims against which surety is to be provided.

9. The Supplier shall be entitled to insure the goods subject to reservation of title against theft, machine damage, fire damage, water damage and other damage at the cost of the purchaser, unless the purchaser can provide evidence that it has taken out an appropriate insurance policy itself.

### **VIII. Warranty rights of purchaser**

In the case of material defects or defects of title in the delivery, the purchaser has the following warranty rights to the exclusion of any other claims subject to Section X: Material Defects

1. In the case of parts that prove to be defective as a result of a circumstance pre-dating the transfer of risk, the Supplier shall at its discretion either rectify the defect or deliver a part free from defects. The Supplier shall be notified in writing immediately after such defects are identified. The duty to examine the delivery and give notice of any defects also includes any operating and assembly manuals. Replaced parts become the property of the Supplier.

2. The purchaser shall by agreement with the Supplier give the Supplier the necessary time and opportunity to perform any such remedy of defects as is deemed necessary by the Supplier and deliver goods free from defects. Otherwise, the Supplier shall be released from liability for any resulting consequences.

3. If a defect does indeed exist, the Supplier shall bear all necessary expenses incurred in the course of remedying defects and delivering goods free from defects, in

particular transport costs, toll charges or labour and material costs. If a request from the purchaser to remedy a defect proves to be unjustified, the Supplier can seek reimbursement of any costs incurred from the purchaser.

4. The purchaser shall have the right within statutory legislation to withdraw from the contract if, once it has been given an appropriate period to make good a material defect, the Supplier—subject to legitimate exceptions stipulated by law—allows this period to lapse with no satisfactory results. If there is only a minor defect, the purchaser shall only have the right to reduce the contract price. The right to reduce the contract price is otherwise excluded.

5. No warranty rights exist in the following cases in particular, unless the Supplier is at fault: Inappropriate or improper use; faulty assembly or commissioning by the purchaser or a third party; natural wear and tear; faulty or careless handling; poor maintenance; unsuitable equipment; poor construction; unsuitable foundation; exposure to chemical, electrochemical or electrical impacts.

6. If a defect is improperly rectified by the purchaser or a third party, the Supplier shall not be liable for any resulting consequences. The same applies to changes made to the delivery item without the prior consent of the Supplier.

#### Warranty of title

7. If use of the delivery item leads to violation of industrial property rights or copyrights in Germany, the Supplier shall, at its own expense, in principle procure the right to further use for the purchaser or modify the delivery item for the purchaser such that there is no longer any violation of property rights. If this is not possible under commercially reasonable conditions or within an appropriate period, the purchaser shall be entitled to withdraw from the contract. The Supplier shall also have the right to withdraw from the contract in the aforementioned circumstances. Furthermore, the Supplier shall also release the purchaser from undisputed or legally enforced claims in relation to the respective holder of the property rights.

8. The obligations of the Supplier as set out in section VIII. no. 7. are final, subject to Section IX. no. 2 in the case of violations of property rights or copyrights.

They only exist if

- The purchaser informs the Supplier immediately of any violations of property rights or copyrights that are upheld,
- The purchaser provides the Supplier with the appropriate assistance in defending the upheld claims or enables the Supplier to complete the modification work described in section VIII. no. 7;
- The Supplier is reserved the right to take all measures to defend such claims, including settlement out of court
- The warranty of title is not based on an order by the purchaser and
- The violation of rights was not caused by an independent modification of the delivery item by the purchaser or any other modification in contravention of the terms of this contract.

#### **IX. Return and disposal of electrical and electronic equipment**

1. The Supplier sells and delivers electrical and electronic equipment as defined in the German Electrical and Electronic Equipment Act (ElektroG) exclusively to commercial users, regardless of the features and versatility of the equipment.

2. For ATORN and ORION equipment that is exclusively used outside of private households or is not usually used in private households ("b2b equipment"), the purchaser undertakes to dispose of the equipment correctly at its own expense in accordance with statutory regulations at the end of use. The purchaser releases the Supplier from the obligations set out in Section 19 para. 1 of the German Electrical and Electronic Equipment Act (an obligation to accept returned products by the manufacturer) and associated claims of third parties. The purchaser shall meet the disclosure obligations arising from Section 30 of the German Electrical and Electronic Equipment Act. The purchaser shall contractually bind commercial third parties to which it passes on supplied equipment to dispose of the equipment correctly at its own expense in accordance with statutory regulations at the end of use, to meet the disclosure obligations according to Section 30 of the German Electrical and Electronic Equipment Act, and if the equipment is passed on again to impose corresponding continued obligations. If the purchaser fails to impose these continued obligations, it is obliged to take back the supplied goods at the end of use and to dispose of them correctly in accordance with statutory regulations at its own expense, and to meet the disclosure obligations according to Section 30 of the German Electrical and Electronic Equipment Act. The Supplier's claim to the assumption of the aforementioned obligations by the purchaser does not become time-barred until two years after the end of use of the equipment. This two-year period of the suspension of the statute of limitation does not start until the manufacturer has received written notification of the end of use from the customer at the earliest.

3. For ATORN and ORION equipment that, theoretically at least, could also be used in private households on the basis of its features ("dual use" equipment), the purchaser undertakes to return this equipment to the Supplier at the end of use. The purchaser shall not pass this equipment on to private households, in particular employees. The Supplier shall take this equipment back and recycle or dispose of it in accordance with statutory regulations. If the equipment is passed on to commercial users, the purchaser shall ensure that a corresponding agreement is reached with the user to the effect that the equipment will be returned to the Supplier at the end of its useful life.

## **X. Liability**

Whatever the legal grounds, the Supplier shall only be liable for losses

- In cases of wilful intent
- In cases of gross negligence on the part of the owner/executive body or managerial staff
- In the event of culpable damage to life, limb or health
- In cases of defects fraudulently concealed by the Supplier or guaranteed by the Supplier to be absent
- In cases of defects in the delivery item where liability is mandatory under product



liability law for injury to persons or damage to privately used products

In the case of culpable violation of material contractual obligations, i.e. obligations that must be fulfilled in order to facilitate due execution of the contract in the first instance and where the contracting partner regularly relies on these obligations being met and may reasonably expect the obligations to be met, the Supplier shall also be liable in the event of gross negligence on the part of non-managerial staff or in the event of minor negligence; in the latter case, liability shall be limited to losses typical of the contract that could reasonably be predicted; this also applies to indirect losses and consequential losses relating to defects in the supplied goods. Further claims are excluded.

#### **XI. Statute of limitations**

All claims on the part of the purchaser—regardless of the legal grounds—shall be time-barred after 12 months if the defective delivery item has not been used for construction work in accordance with its normal use and this has caused it to become defective. This does not affect the unlimited liability of the Supplier for losses arising from violation of a warranty or from injury to life, limb or health, for wilful or fraudulent and grossly negligent behaviour, or for claims arising from the Product Liability Act. An opinion of the Supplier on a claim for defects enforced by the purchaser shall not be regarded as an entry into negotiations on the claim or the circumstances forming the basis of the claim if the claim for defects is fully rejected.

#### **XII. Use of software**

If software is included in the scope of delivery, the purchaser shall be granted a non-exclusive and non-transferable right to use the supplied software, including its documentation. It is supplied for use on the designated delivery item. Use of the software on more than one system is prohibited. The purchaser may only reproduce, revise or translate the software, or convert from object code to source code, within the legally permitted scope (cf. Sections 69 a ff of the German Copyright Act [UrhG]). The purchaser undertakes not to delete manufacturer information, in particular copyright notices, or to amend such information without the express prior consent of the Supplier. All other rights to the software and the documentation, including copies, remain with the Supplier or the software supplier. The allocation of sub licenses is not permitted.

#### **XIII. Confidentiality/data**

1. Unless otherwise agreed, the information provided by the purchaser shall not be regarded as confidential.
2. The purchaser's data may be stored and used for internal purposes as permitted under law.

#### **XIV. Applicable law, place of fulfilment, place of jurisdiction**

1. Contractual relationships are subject exclusively to the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

2. The place of fulfilment for all rights and obligations arising from the contractual relationship is the headquarters of the Supplier.

3. The headquarters of the Supplier is the place of jurisdiction for all disputes arising from the contractual relationship. The Supplier shall also be entitled, at its discretion, to file an action at the headquarters of the purchaser or at any other permissible place of jurisdiction.

4. Should a clause of these general terms of sale, delivery and payment or a provision of any other agreement become ineffective, this shall not prejudice the effectiveness of any other provision or agreement. These terms of sale, delivery and payment replace the terms hitherto used.

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