

General terms of sale, delivery, assembly and repair of Hütte Bohrtechnik GmbH

§1 General

(1) All our offers, assemblies, repairs, after-sales services and any other business transactions and services are effected solely on the basis of the Terms and Conditions set out below. Hütte Bohrtechnik GmbH is referred to below as the Contractor, and the party placing the order is referred to as the Customer, irrespective of whether this concerns a purchase contract, a contract for work and services, a contract for work and materials or a service contract.

(2) Any terms and conditions of the Customer to the contrary shall not be accepted and are hereby expressly objected to. They can only become the subject matter of the contract after we have confirmed them in writing. Silence shall not be considered acceptance or consent under any circumstances.

(3) The Terms and Conditions set out below also apply to all future business relations between the parties, even if these are not expressly agreed again.

§2 Conclusion of Contract and Contents

(1) The written order acknowledgement of the Contractor is relevant for the scope of delivery. There are no verbal collateral agreements at present. Agreements, contractual amendments and supplements at a later stage must be confirmed in writing; this applies particularly to the amendment of this clause.

(2) Offers are not binding and are subject to change without notice and apply only if they are accepted by return. They are subject to availability and to prior sale in each case. Cost estimates are not offers. Declarations of acceptance must be confirmed in writing or by fax by the Contractor in order to become legally effective.

(3) Drawings and details on weight, dimensions, consumption and performance are without obligation, unless expressly designated as binding in the order acknowledgement. The Contractor reserves the right to incorporate changes and improvements to the design, materials used and workmanship, provided that these do not adversely affect the usefulness of the item of delivery. The documents belonging to the offer, such as illustrations, drawings, particulars on weight and measurements, are only approximate. The Contractor reserves the rights of ownership and copyrights to these documents. They may not be made accessible to third parties.

§3 Prices and terms of payment

(1) As a basic principle, the prices valid on the date of delivery are relevant for the calculation. The prices underlying the offers and order acknowledgements are agreed ex works without packaging, without freight and dispatch costs, without customs duties and fees for clearance at border crossings, without the installation costs for spare parts, plus the statutory VAT applicable on the date of delivery.

(2) Should price amendments arise during the delivery period as a result of a rise in material prices, changes in the development of wages and salaries etc., the Contractor is entitled to add an appropriate surcharge to the prices underlying the offer. The prices valid on the date of notification

of the readiness for dispatch are charged in the case of contracts for successive deliveries, contracts involving other recurring obligations, agreed part deliveries and in case of deliveries on call.

(3) The terms of payment stated in our invoices, order acknowledgements and offers are applicable. The prices stated therein are payable net immediately, unless otherwise agreed in writing. All payments due to other sales, services, rent, assemblies, repair contracts, related costs and charges etc. are payable immediately without any deduction fee to the bank of the Contractor

(4) After the due date, the Contractor charges 8% default interest in accordance with Section 352 and 353 of the German Commercial Code (HGB). The right is expressly reserved to assert any default damage over and above this. The Customer reserves the right to furnish proof that the Contractor suffered no damage or much less damage as a result of the delay in payment

(5) The Customer is only entitled to offset counterclaims if the counterclaim is uncontested or has been declared legally valid by a court of law. The Customer may only retain amounts based on counterclaims arising under the same contract.

§4 Delivery dates

(1) A period of delivery or service is binding only if it was expressly confirmed as binding by the Contractor. Delivery and service times are observed as far as possible. This requires that at the time of the order confirmation all technical and/or organizational details of the order are agreed with binding effect.

(2) If circumstances arise for the Contractor or its sub-suppliers due to unforeseeable, unavoidable events, delays in the delivery of essential materials or due to force majeure or due to other reasons for which the Contractor is not responsible which prevent the execution of the order in due time or render it impossible, the binding delivery and service times agreed shall be extended by the duration of the hindrance. If it is impossible to execute the order on account of such circumstances, the delivery obligation of the Contractor no longer applies to the exclusion of all claims of the Customer. If the hindrance lasts for longer than three months, the Customer is entitled to withdraw from the contract as regards the part not yet fulfilled after setting a reasonable additional period in writing

(3) If the Customer fails to comply with its duties to assist, the delivery period shall be extended in accordance with the delay caused by the Customer. In the event of work performance, the period commences on the hand-over or the unhindered release of the object of the work performance.

(4) If the Contractor is in delay, the Customer is entitled to withdraw from the contract by means of a written declaration of withdrawal after setting a reasonable additional period in writing pursuant to Section 326 of the German Civil Code (BGB). An additional period of at least two weeks is considered reasonable for an agreed delivery time of up to six weeks, and an additional period of at least four weeks for an agreed delivery time of more than six weeks, beginning on the expiry of the agreed delivery or service period or the delivery period extended after clarifying all details pursuant to No.

4.1 of these Terms and Conditions. After the expiry of the period in vain, the Customer is entitled to withdraw from the contract by means of a written declaration of withdrawal. Claims for damages based on default are barred, unless the occurrence of default is based at least on the gross negligence of the Contractor.

Claims of the Customer due to delayed or late delivery are barred, unless the Contractor is responsible for wilful intent or gross negligence. Any claim is limited in terms of amount to 3% for every full week of delay, but to a maximum of 15% of the delivery value.

(5) The Contractor is entitled to make part deliveries. Part deliveries are admissible and can be reasonably expected of the Customer

(6) If the dispatch is delayed at the Customer's request, this shall not cause any postponement of the payment. In such a case, the date on which the readiness for dispatch is notified is considered the date of delivery. If the goods are manufactured to the special dimensions requested by the Customer and therefore cannot be used otherwise, the damage caused to the Contractor is the full invoice amount.

§5 Place of performance and transfer of risk

(1) The place of performance for all performance by the Contractor is its principal place of business. Deliveries are effected solely at the risk of the Customer.

(2) The risk of the destruction or deterioration of the item to be delivered passes to the Customer as soon as the goods are handed over to the person executing the transport or have left the warehouse of the Contractor for dispatch, even if part deliveries are effected and the Contractor has assumed other payments, e.g. the costs of dispatch or carriage and erection in an exceptional case. Upon request and at the expense of the Customer, the goods are insured by the Contractor against transport damage and loss. If dispatch becomes impossible without any fault on the part of the Contractor, the risk passes to the Customer upon notification of the readiness for delivery.

§6 Reservation of title

(1) The Contractor reserves title to the delivered goods until payment in full of the purchase item or the subject matter of the contract and any other invoice amounts still outstanding from other transactions at the same time, including interest and other additional charges. In the event of conduct contrary to contract by the Customer, in particular a delay in payment, the Contractor is entitled, after having given notice, to take back the subject matter of the contract and the Customer is obliged to surrender the subject matter of the contract.

(2) During the period in which title is reserved, the Customer is obliged to protect the reserved property from access by third parties at its expense and to immediately insure it against fire, theft and machinery breakdown in favour of the Contractor and furnish proof thereof on request. Otherwise the Contractor is entitled to take out appropriate insurance itself at the expense of the Customer.

(3) The Customer hereby assigns any claims to compensation and recourse claims against third parties and insurances to the Contractor. The Contractor accepts this assignment. Any attachments, seizures or other disposals by third parties must be immediately notified to the Contractor. Any application of the Customer to open insolvency proceedings entitles the Contractor to withdraw from the contract and demand the immediate return of the subject matter of the contract.

(4) The Customer is entitled to dispose of the goods subject to reservation of title during the ordinary course of business, however only as long as it is not in arrears with payments. It is not entitled to pledge the reserved goods or assign them as security. The Customer is obliged to notify pledgees of

the existing reserved property. Moreover, irrespective thereof, the Customer undertakes to assign goods purchased by it subject to reservation of title only in a manner that ensures that the Contractor remains the owner of the reserved goods. Notwithstanding this, the Contractor reserves an extended reservation of title at all events if the claim arising from the reservation of title, once the latter lapses, replaces the reservation of title. This claim is hereby assigned to the Contractor at the maximum delivery values. In the event that the reserved property is resold to third parties, the Customer hereby assigns as security all the claims and rights acquired from the resale to the Contractor until payment in full of the purchase price or rather the subject matter of the contract plus interest and expenses.

The Contractor accepts the assignment. It undertakes to notify the Contractor of the resale in writing.

(5) If the goods or products of the Contractor are processed by the Customer, the Contractor acquires ownership of the new items to the exclusion of Section 950 of the German Civil Code (BGB). In the event that the goods or products are combined or mixed with other materials and/or substances, the statutory provisions under Sections 947 and 948 of the German Civil Code apply. The Customer is entitled to collect receivables from the resale in its own name until revoked in writing by the Contractor. The revocation can be effected if the Customer fails to duly meet its payment obligations.

(6) Any processing or transformation of the goods delivered is always effected on behalf of the Contractor as a producer, however without any obligation for it. If the (co-)ownership of the Contractor is extinguished as a result of combination, it is hereby agreed that the value of Customer's (co-)ownership to the bought-in item (invoice value) passes to the Contractor in due proportion.

(7) The Customer shall also assign to the Contractor those claims for securing the claims due to us from the Customer that arise vis-à-vis a third party as result of the object of sale's combination with a plot of land.

(8) The Contractor herewith undertakes to release at the Customer's request the securities to which the Contractor is entitled if the realisable value of the Contractor's securities exceeds the value of the claims to be secured by more than 10 per cent. It shall be up to the Contractor to decide as to which securities are to be released in such instance.

§7 Breach of Duty

(1) The Purchaser's legal rights will apply in accordance with the following provisions

(a) The Contractor performs under the warranty either by effecting subsequent improvement or delivering a replacement at its discretion. Moreover, the Contractor will bear the direct costs of the repair or, in the case of the delivery of a replacement, of the replacement part, as well as the shipping costs. This does only apply for repair works carried out in Germany. Furthermore, such an obligation is not given when no reasonable relationship is given between these costs and the delivery price of the defective goods supplied. Any other costs shall be at the Purchaser's expense. We shall not be liable for damage or natural wear based on the service life, improper installation or use.

If the Contractor fails to comply with the foregoing obligations within a reasonable period after receiving a written request from the Customer, or should subsequent improvement or the delivery of

a replacement fail three times to lead to the contractually presumed success, the Customer is entitled to demand a reduction or to withdraw from the contract.

(b) The purchaser must grant to us a reasonable period of time and reasonable opportunity to permit Supplementary Specific Performance, which Supplementary Specific Performance will be performed by us in our reasonable discretion. Only in urgent cases where there is a risk to operational safety and to avert disproportionate further damage, whereby the Contractor must be informed immediately, or if the Contractor - taking account of the statutory exceptions - has allowed a reasonable deadline set for remedy of the defect to fruitlessly expire, shall the Customer be entitled in the framework of the statutory provisions to remedy the defect itself or have the defect remedied by third parties and demand reimbursement of the necessary costs from the Contractor. As for this the Contractor needs to be informed immediately.

(2) The other legal rights of the Customer count in accordance with the following regulations. The Contractor sticks exclusively in the following cases:

(a) intentional breach of duties

(b) grossly negligent breach of duty of the Contractor's legal representatives and agents

(c) guilty breach of life, body and health

(d) fraudulent withholding of information about defects or guaranties for the properties of delivered goods

(e) willful or negligent breach of significant contractual duties -- however, in cases of (i) simple negligence or (ii) gross negligence by individuals other than executives (leitende Angestellte), limited to the damages reasonably foreseeable for the relevant type of contract

(f) we shall only be held liable in accordance with the German Product Liability Act

(3) If not otherwise determined in §4(3) and §7(1) and (2), liability is excluded

(4) Obvious defects shall be notified in writing within four days after hand-over or after provision of any other service, however at least prior to any resale or prior to installation of the goods. Hidden defects or the absence of warranted characteristics shall be immediately notified to the Contractor in writing. If the Purchaser does not send a complaint within four working days after receipt, the delivered goods are assumed to be in good condition and completely, except of a defect, which was not identifiable during the investigation. Items objected need to be kept for further investigation. We shall only reimburse the costs for the return shipment of same when this is made at our request.

(5) The Pustomer shall bear the burden of proof that the requirements for the claims asserted by him on the basis of breach of duty are fulfilled unless this concerns circumstances relating to the Contractor which are outside the scope of the customer.

Material defects are deemed not to exist if these are only negligible deviations from the stipulated quality or only impair serviceability of the product to a negligible extent, or are the result of natural wear and tear or damage occurring after the passing of risk due to improper or careless handling, inadequate maintenance, excessive strain or due to exceptional outside influences for which no allowance is made in the contract. Moreover, this does also apply for erasing or dismounting serial numbers, type description or similar signs.

(6) The warranty period amounts to 6 months from the date on which the risk passes for purchase contracts, otherwise 6 months after acceptance of the subject matter of the contract.

If operating or maintenance instructions of the Contractor are not followed, modifications are made, parts are changed or consumables are used which do not comply with the original specifications, any warranty shall lapse, unless the Customer refutes an appropriately substantiated allegation of the Contractor that it was one of these circumstances that caused the defect.

The Contractor assumes no liability or responsibility for the suitability of the service or products under the contract, unless it gave an express warranty in this connection. Deviations in the quality of the subject matter of the contract delivered by the Contractor and of descriptions, technical particulars, dimensions, weights, drawings and illustrations are permitted if these comply with the current delivery standard and state of the art.

A warranty is excluded for the delivery of used items, insofar as legally admissible, unless the subject matter of the contract is lacking a warranted characteristic.

Consumables and parts subject to wear are excluded from the warranty, unless intentional or grossly negligent conduct is involved.

A warranty is not accepted particularly in the following cases:

Unsuitable or improper use, incorrect assembly or commissioning by the Customer or third parties, natural wear, incorrect or negligent treatment, improper maintenance, unsuitable means of operation, poor construction work, unsuitable building ground, chemical, electrochemical or electrical influences, unless the Contractor is responsible for these.

If the Customer or a third party effects subsequent improvement improperly, the Contractor is not liable for any consequences arising therefrom. The same applies to modifications carried out on the subject matter of the contract without the prior approval of the Contractor.

Unless otherwise agreed, the delivery of the items being returned is effected at the cost and risk of the Customer.

§8 Confidentiality and Trademarks as well as Software

(1) Both the Customer and Contractor shall maintain secrecy as to information received from other respective parties. This shall also continue to apply after termination of the supply agreement. This obligation shall not apply in respect of information which the receiving party was already legitimately aware of at the time of receipt or which such party became legitimately aware of at a later stage, in each case without the obligation to keep such information confidential, or which - without either party breaching the agreement - is or becomes a matter of common knowledge.

(2) Any and all drawings, proposals, descriptions and technical documents regarding the products and the manufacture hereof which before or after the agreement is made are passed on to the buyer shall remain the Contractor's property; and the buyer shall have no right to copy such material, to submit it to competitive companies or in any other way inform third parties of such material.

(3) To the extent the scope of delivery includes software, we hereby grant to the purchaser a nonexclusive, non-transferable license that is limited to a definite time period pursuant to the provisions of the particular delivery, to use the software and its accompanying documentation in

connection with the relevant delivered item. A use of the software in connection with more than one delivery item is prohibited. The Buyer may only reproduce, edit and translate the software to the legal admissible extent. The Buyer undertakes not to remove identifications of the manufacturer - in particular copyright notices - or to change them without the prior written permission of the Contractor. All other rights to the software and the documentation including copies thereof shall remain with us or with the software supplier.

§9 Purchase on Trial and Product Alterations

(1) If the Buyer agrees a purchase on trial with the Contractor, the contract of sale is subject to the resolutive condition of the acceptance of the Purchaser, in the order confirmation does not state anything different.

(2) Adoption of the Purchases needs to be effected within one month after delivery.

(3) The Contractor reserves the right to implement changes (due to technical progress) in the design and shape of the subject matter of the contract based on technical progress without prior announcement, as long as the goods are not materially changed and the contracting party can reasonably be expected to accept them. The Contractor is not obliged to change goods already delivered. The Purchaser cannot claim delivery of goods in the original technical design and shape in case the Contractor meanwhile stopped the production.

§11 Place of jurisdiction/Applicable law

(1) In case of all disputes arising under the contract, legal action must be brought before the court competent for the Contractor's principal place of business or the branch executing the delivery if the Customer is a registered merchant or legal entity under public law or a public-law special fund. The Contractor is also entitled to bring action at the principal place of business of the Customer.

(2) The laws of the Federal Republic of Germany are exclusively applicable. In addition to the foregoing provisions, German laws are also exclusively applicable to contracts with foreign customers whose corporate domicile or residence is abroad. The laws on the uniform international sale of moveable goods (UN law) are not applicable.

(3) The failure to assert, in whole or in part, any rights from this delivery contract or to assert such right belatedly shall not be construed as a waiver of this or any other right.

(4) Should individual provisions of these conditions be or become entirely or partly invalid or void, the effectiveness of the remaining provisions shall remain unaffected thereby.

(5) Personal data that has been provided is handled and processed, in relation to the order, in compliance with statutory provisions.

§12 Currency

All payments must be effected in EURO, unless otherwise agreed in writing.

Edition: 06/09 – Data subject to alteration - In the event of differences between the language versions of these General Conditions, the German version shall prevail.