

GENERAL TERMS AND CONDITIONS

1. PREAMBLE

- 1.1. These General Terms and Conditions shall apply insofar as different terms and conditions have not been expressly acknowledged in writing by the contracting parties.
- 1.2. The present General Terms and Conditions for the delivery of goods shall apply to services where appropriate.
- 1.3. With regard to installation work the Terms and Conditions of the Austrian Trade Association of machinery and constructional steelwork (FMS) will also apply.

2. EXECUTION OF CONTRACT

- 2.1. The contract shall be executed upon the seller sending a written acknowledgement of receipt of an order. The customer is required to inspect the acknowledgement of order immediately. If the acknowledgement of order differs from the order and the customer fails to notify the seller of this in writing within a period 3 days, the order shall be considered accepted by the customer.
- 2.2. Deviations from and additions to the contract require confirmation in writing by the seller in order to be valid. The customer's terms of purchase are only binding on the seller if the latter provides a separate acknowledgement in writing. Spoken assent by the seller is only binding if this is subsequently confirmed in writing.
- 2.3. The seller's offers (inclusive of goods ordered through the Web Shop) and terms of delivery shall be considered to be subject to confirmation and non binding until receipt of the confirmation of order by the customer. The goods are subject to prior sale.
- 2.4. Should import and export licences, agreements about currencies and similar agreements be required in order to execute the contract the party who is responsible for the purchase must make every reasonable effort to obtain the required licences or permits in time.
- 2.5. The seller is entitled to withdraw from contracts that have already been concluded if the customer fails to meet their payment obligations (advance payments are to be effected within a term of 5 days from receipt of the confirmation of order) or if the payment should be refused by credit card, bank or other payment transferring institutions at the point of transaction for lack of funds. Similarly the seller is entitled to withdraw from contracts that have already been concluded if credit insurance cannot be obtained to cover the customer.
- 2.6. In the event of an unjustified withdrawal from the contract by the customer or if the seller withdraws on account of Point 6.7 or 8.1.d (the customer defaults on payment or acceptance) the seller is entitled to 10% (ten per cent) of the purchase price as a cancellation fee regardless of any claims for reparation in excess of that.

3. DETAILS, PLANS AND DOCUMENTS

- 3.1. Details about measurements, weight, capacity, delivery, prices, etc. in the catalogues, homepage, web-shop, newsletters, prospectuses, illustrations, price lists, etc. are only applicable when expressly specified in the confirmation of order. Particular details about performance are dependent on the service and material and are based on empirical values. However no warranty of any kind is to be inferred from them. Details about weight recommendations for the tool carrier (i.e. weight for excavator) that is used for the products that are offered by the seller do not entail any legal consequences for the seller. In this context only details given by the producers of the tool carriers exclusively apply. With regard to this the customer is required to obtain all the necessary information and recommendations of the producers of the tool carriers (i.e. the excavator manufacturer) and to observe them accordingly. In particular the seller is not liable for damage that could arise from using a device that has been installed on the tool carrier in a faulty way or a way that contravenes the regulations (i.e. exceeding the weight restriction) nor does the seller ensure that the sold product is capable of being used with a particular tool carrier.
- 3.2. The outlines, plans and other technical documents, as well as catalogues, models, prospectuses, illustrations, displays, videos, fitting and installation instructions, operating instructions and images etc. constitute the property of the seller at all times, and also when offered via internet media (i.e. Homepage). Their use, distribution, reproduction, publication and demonstration shall only be permitted after the property owner's explicit consent is obtained.
- 3.3. The seller reserves the right to change the construction and materials so long as this does not substantially affect or impair the customary usage of the delivered goods or the usage prescribed in the contract.

4. PACKING

In the absence of an agreement to the contrary the prices do not include packing costs. Customary packing is effected to ensure that the wares are not damaged under normal freight conditions while in transit to the agreed place of delivery; the costs of packing are incurred by the customer and packing shall only be returned if agreed so.

5. PASSAGE OF BENEFIT AND RISK

- 5.1. The period of passage of benefit and risk falls within the following cases: a) following the 'ex factory' sale of the goods the risk will pass from the seller to the customer, when the goods are made available to the customer. The seller must inform the customer of the time of delivery when the goods will be available to the customer. This communication must be effected promptly to allow the customer to take the usual necessary measures to secure this; b) for the purchase "truck, barge, goods wagon" (agreed place of departure), "frontier" or "place of delivery" or in the case of "free delivery until" the risk shall pass from the seller to the customer at the moment when the means of transport that is carrying the goods is taken over by the first haulage contractor; c) in the event of a "fob" (free on board) or "cif" (costs, insurance, freight) or "c&f" (costs and freight) sale the risk shall pass from the seller to the customer when the goods are actually at the ship's rail in the agreed shipping port.
- 5.2. Insofar as a different agreement has not been made, the goods shall be sold ex factory.
- 5.3. The seller is only required to provide insurance cover insofar as and when this has been agreed in writing.
- 5.4. Furthermore the INCOTERMS shall apply as specified on the day when the contract was agreed.

6. DELIVERY PERIOD

- 6.1. Insofar as a different agreement has not been made the delivery period shall commence at the latest of the following times: a) date of the confirmation of the order; b) date of completion by the customer of all the technical, commercial and financial conditions; c) date when the seller has received an advance payment prior to delivery of the goods or a pre-payment and / or letter of credit.
- 6.2. The seller is entitled to effect partial or advance deliveries and to invoice them separately.
- 6.3. In the event of a delay due to the seller that falls within the meaning of Art. 11 paragraph then an appropriate extension to the delivery time shall be permitted.
- 6.4. If the seller is to blame for a delay in delivery the customer can either insist on performance or, allowing a reasonable extension of time for delivery, announce his withdrawal from the contract. With regard to custom-made products, the extension of time is to take into account the fact that the seller is unable to sell elsewhere the parts that have already been made.
- 6.5. If the seller is unable to keep to the designated extension of time as per Art. 6.4. the customer is entitled following a written communication to cancel all the contracted goods that were not delivered and could not be used appropriately. In this event the seller is required to refund the payments that were made for the goods that were not delivered or could not be used and, insofar as the failure to deliver is due to gross negligence by the seller, to repay the necessary expenses that were incurred up to cancellation of the contract and its implementation. However, the seller is not liable for any losses of profits incurred by the customer. Goods that have already been delivered and are not usable shall be returned by the customer to the seller.
- 6.6. Any claims by the customer against the seller on account of the seller's delay other than those listed in Art. 6. shall be precluded.
- 6.7. If the customer does not accept the goods that have been prepared in accordance with the contract at the contractually determined place of delivery or at the agreed time and this delay is not due to negligence or an action on the part of the seller, then the seller can either insist on performance or, allowing an extension of time for accepting the goods, announce their withdrawal from the contract. If the seller cancels the contract because the customer refuses to accept the goods, Point 2.6 shall be applied by analogy. When the goods have been segregated the seller can undertake to store the goods at the expense and risk of the customer. Furthermore, the seller is entitled to demand compensation for all the necessary expenses that were incurred in applying the contract and were not included in the received payments.

7. PRICE

Insofar as different prices have not been expressly acknowledged, the prices are ex factory of the seller without packing or freight. If shipment with delivery is agreed the prices shall not include loading and handling. Unforeseen delivery costs that were not caused by the seller (i.e. temporary storage, multiple journeys) are to be paid by the customer.

8. PAYMENT

- 8.1. Payments are to be effected in accordance with the agreed terms. The customer is not entitled to retain or offset payments in return for warranty claims or various counterclaims that are not recognised by the seller. If the customer has defaulted on an agreed payment or other service the seller can either a) insist on completion of the contract and put off his own obligations until the delayed payments or other services have been effected; b) call for immediate payment of the total outstanding purchase price; c) set an appropriate extension of the delivery period; d) cancel the contract after an extension of the delivery period. Insofar as the customer does not have grounds for support in accordance with Art. 11, the seller is entitled in the event of a default to demand payment of a default interest rate of 6% above the applicable 3 month EURIBOR. The right to demand a higher default interest rate for damages incurred is reserved. All the fruitless expenses incurred by the seller in completing the contract are to be repaid. The seller retains ownership of the purchased goods until the whole payment has been effected (inclusive of applicable interest payments and freight costs).
- 8.2. All credit card holders are subject to validation checks and authorization by the card issuer. We are allowed to exchange with third parties the personal information about the credit card holder that is required for these checks. If the card issuer refuses to approve the payment, we are only required to effect a delivery when the customer has paid by another means.
- 8.3. Payments for purchases made through the Web Shop are transmitted in an encrypted form using the latest technology. However the seller is not liable for the improper use by third parties of data relating to payments.

9. CLIENT ACCOUNT AND DATA

- 9.1. When using the Client Account Service or the Web Shop the customer is responsible for keeping the account and password safe and for restricting access to their computer. The customer agrees to be responsible for all activities which are undertaken via the account or the password. The customer must take all the necessary steps to ensure that the password is kept secret and in a secure place and must inform Hartl Engineering & Marketing GmbH immediately if there is cause for concern, either because a third party has gained knowledge of the password or has made unauthorized use of the password or is likely to.
- 9.2. The customer is responsible for ensuring that the seller has been provided with correct and complete data. The customer is required to tell the seller about any changes to this information that they have provided. The customer can view and update much of the information that they have supplied the seller with including their account details in the My account field on the website.
- 9.3. The customer should not use the Client Account Service or the Web Shop Service: a) in a way that is liable to disrupt, damage or otherwise harm the Client Account Service or Web Shop or b) for dishonest purposes or in connection with criminal or illegal activity or c) in order to cause annoyance, inconvenience or anxiety.
- 9.4. We reserve the right to withhold from you services on the website, to close membership accounts or to remove or change content if you infringe relevant laws, the terms of use or other applicable contractual conditions or regulations.
- 9.5. Information provided by the customer to the seller is to enable orders to be processed through the Web Shop and to set up an individual Client account and to facilitate constant improvements. The

seller uses this information to process orders, deliver goods and provide services and information and to process payments (for purchases on account and for the required checks). The seller also uses the information to communicate with the customer about orders, products, services and marketing offers and to keep data updated and to allow the seller to maintain and service the Client account and to develop content and recommend products and services to the customer that might interest the customer. The seller also uses the data and information to improve their own offers and own platform, and to prevent or detect any misuse, particularly fraud. The seller also uses the data to allow third parties to effect technical, logistic or other services on the seller's behalf. The seller is also entitled to pass this information to an appointed dealer and/or contracted sales personnel in order to achieve the above-mentioned aims.

9.6. The seller is obliged to protect the customer's data from unauthorised use. However, the seller is not liable for improper misuse or use of data by third parties.

10. UTILITIES

The customer shall provide free of charge all utilities necessary for the handing over, commissioning, or remedial work that may arise or be required.

11. WARRANTY AND LIABILITY

The warranty applies only to new factory goods on condition that payment terms are met, that Hartl Original spare and wear parts are exclusively used and that the maintenance procedures have been done in accordance with the servicing and maintenance directions by trained individuals or authorised dealers. The warranty period is 12 months from commissioning the goods. Insofar as the commissioning cannot be shown to have been effected by a valid commissioning protocol the date of invoice will apply as the commissioning date. An extension to the warranty period does not apply after a defect has been repaired. The customer is required to immediately check delivered goods upon receipt. Immediately after receipt the goods must be checked for obvious defects according to § 377 UGB (Austrian Commercial code). Defects which are apparent only later despite expert checking shall be reported in writing immediately after their emergence along with details about the order, invoice number and provision of a precise description of the manner, extent and content of the defect in the said goods. If the customer does not issue a report promptly and in the correct form, the goods shall be deemed approved. The promptness of the report depends on when it reaches the supplier. No warranty and no compensation payments shall be made if the defect in the delivered goods is not reported immediately after receipt and/or if a defect is not reported immediately and promptly after its has appeared, or if any kind of change to the delivered goods has been effected by individuals who are not authorised by the supplier or the goods have been subjected to inexpert handling. The warranty also expires if parts of the unit are replaced with spare or wear parts that are not Original Hartl spare or wear parts and if these parts are not expressly recommended or approved by the seller. The warranty applies only insofar as the faulty parts that have become unusable on account of a faulty function or faulty materials within the warranty period shall be replaced or repaired within a reasonable timeframe free of cost by the seller. Dismantling and assembly costs shall be paid by the customer. In case that parts are returned, the customer shall bear costs and risks. Costs arising when the customer himself tries to remove or repair defects must be approved in writing by the seller. The warranty obligation applies only to defects that arise in the course of normal use. It does not apply to defects that arise from inexpert handling by the customer or one of his agents. No warranty applies to damage arising from wear, or substantive damage and consequential defects. Those parts that the customer has obtained from subcontractors are covered only in the context of the warranty to which the customer is entitled in respect of the subcontractor.

The seller is liable for damage within the context of the law insofar as intent or gross negligence on the seller's part can be proved. Liability for slight negligence, and compensation for consequential damages and financial loss, not realized savings, loss of interest and damages arising from third party claims against the customer are excluded. Furthermore, no liability shall be accepted for personal injury or damage to property that are not objects of the contract.

The following circumstances are deemed grounds for exemption: work disputes, fire, requisition, embargo, currency restrictions, insurrection, shortage of transport, and fuel shortages.

12. PLACE OF JURISDICTION AND APPLICABLE LAW

The place of jurisdiction for all disputes arising directly and indirectly from the contract is the competent Austrian court at the seller's principal place of business. In addition to the general terms and conditions of the seller the only applicable law is the law of Austria. The United Nations' Sale Conventions shall not apply and be explicitly excluded. The place of performance for deliveries and payments shall be the seller's principal place of business, even if the delivery occurs elsewhere as agreed.

These General Terms and Conditions are available in different languages; shall there arise any disputes regarding the interpretation of the English and German version, the German version shall prevail.

Hartl Engineering & Marketing GmbH
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