

## General Terms and Conditions of Delivery and Service

### HAWART Sondermaschinenbau GmbH

These Terms and Conditions form an integral part of all our offers and contracts for deliveries and services of HAWART Sondermaschinenbau GmbH, including those in current or future business relationships. Deviating agreements, in particular contradicting trading conditions and special agreements require our express written consent in order to become part of the contract.

#### 1 General

- 1.1 Unless agreed otherwise, the contract shall be concluded by written confirmation of HAWART.
- 1.2 HAWART only has to provide the deliveries and/or services explicitly specified in its offers.
- 1.3 HAWART reserves the ownership right and copyright in samples, cost quotes, drawings and similar information in tangible or intangible form - including in electronic form; they may not be made accessible to third parties without the prior consent of HAWART. Unless expressly agreed otherwise in writing, the sale of engineering services does not comprise the transfer or the concession of copyright exploitation rights or know-how. Reproduction or duplication of the delivered items - including by third parties - is not allowed without written consent of HAWART.

#### 2 Prices and payment

- 2.1 Unless otherwise agreed, all prices apply net, ex-works Ganderkesee, excluding packaging plus VAT at the statutory rate.
- 2.2 In the event the Buyer, due to official regulations regarding withholding and transfer of taxes, should be indebted to the respective tax authorities, HAWART must be informed when placing the order and must receive an adequate tax certificate immediately after invoicing.
- 2.3 Unless otherwise agreed, payments shall be made as follows: 1/3 payment upon receipt of written order confirmation, 1/3 payment upon receipt of notification of readiness for dispatch, and the remainder after the passing of risk.
- 2.4 The right to retain payments or to set-off with counterclaims shall be available to the Ordering Party only to the extent that its counterclaims are undisputed or have been legally established.

#### 3 Delivery time / performance period, delay

- 3.1 The delivery time or performance period result from the agreements made by the contracting parties. Adherence by HAWART to such delivery times is conditional on all commercial and technical questions between the contracting partners being clarified and the Buyer having fulfilled all obligations incumbent upon him, such as e.g. submission of the required official certificates or licences or the payment of a down-payment. If this is not the case, the delivery time will be extended accordingly. This does not apply in case HAWART is responsible for the delay.
- 3.2 Adherence to the delivery time or delivery period is subject to correct and timely delivery to the Supplier. Any foreseeable delays shall be communicated by HAWART as soon as possible.
- 3.3 The delivery deadline is fulfilled, if before the expiry of this deadline the item for delivery has left the factory or readiness for dispatch has been notified.
- 3.4 Partial deliveries are permissible, as far as being reasonable for the customer.
- 3.5 In the event that non-observance of the delivery time or delivery period is due to force majeure, industrial disputes or any other events that are outside of the sphere of influence of HAWART, the delivery time shall be extended accordingly. HAWART shall inform the Buyer as soon as possible of the beginning and end of any such events. Force majeure in accordance with Sentence 1 is deemed to exist upon submission of an official travel warning.
- 3.6 The Buyer can withdraw from the contract without notice if HAWART is definitively prevented from performing his obligations in full before passing of risk. Moreover, the Buyer may withdraw from the contract if the execution of part of the delivery becomes impossible, in the event of an order, and the Buyer has a justified interest in refusing the partial delivery. If this is not the case, the Buyer shall pay the contractual price for the partial delivery. The same shall apply in the event of inability of HAWART to perform. If the incapacity or impossibility on part of the Supplier is due to the delay in acceptance or if the

Buyer is solely or largely responsible for the same, he shall be liable to provide return service.

#### 4 Passing of risk and acceptance

- 4.1 The risk is passed to the customer when the object of delivery has left the factory at Ganderkesee, even if partial deliveries take place or HAWART has taken over other performance, e.g. dispatch costs or delivery and installation.
- 4.2 If dispatch is delayed due to circumstances for which HAWART is not responsible, then the risk is transferred to the buyer from the day on which the goods are ready for dispatch. HAWART is obliged, at the request and the expense of the Buyer, to effect insurance as requested by the Buyer.
- 4.3 It is left to HAWART to choose the means of transport and transport route. The same applies to the choice of a forwarder or carrier.
- 4.4 The Buyer must accept the deliveries and/or services immediately at the place of performance. If dispatch or acceptance of the delivery item is delayed for reasons for which the Buyer is responsible, then the costs incurred by the delay and a storage fee will be charged to the Buyer - commencing one month after notification of readiness for dispatch. The acceptance is considered to be equivalent to an unconditional commissioning.

#### 5 Reservation of title

- 5.1 Delivered goods shall remain the property of HAWART until fulfilment of all payments against the Buyer.
- 5.2 HAWART is entitled to insure the delivered item at the Buyer's expense against theft, breakage, fire and water damage, and other damage, provided the Buyer has not demonstrably taken out the relevant insurance himself and has assigned the claims, to which he may be entitled under the insurance policies taken out by him, to HAWART.
- 5.3 The Buyer may neither pledge the delivery item nor assign it by way of security without consent of HAWART. The Buyer shall notify HAWART immediately in the event of seizures, confiscation or other dispositions by third parties.
- 5.4 If the Buyer breaches the terms of the contract, in particular through default of payment, HAWART is entitled to recover the delivery item and the client is obliged to release it, after written notice. If an application is made for insolvency proceedings to be opened HAWART is entitled to withdraw from the contract and demand the immediate return of the delivery item. § 449 section 2 of the German Civil Code („BGB“) shall not apply.
- 5.5 The Buyer is entitled to resell the delivery item in the ordinary course of business. However, the Buyer herewith assigns to HAWART all claims in the amount of the invoice sum total of the reserved goods, accruing to him from the resale to his customers or third parties. The Buyer shall be entitled to enforce the aforementioned claims even after they have been assigned, as long as the Buyer properly fulfils its payment obligations with us and is not in default. The authority of HAWART to collect the claims itself is not affected by this, however, HAWART commits itself not to collect the claims as long as the Buyer properly fulfils its payment obligations and is not in default of payment. Besides, within a reasonable period HAWART can demand the Buyer to disclose the assigned claims and the respective debtors, to provide all the necessary data for collecting these, to hand over all corresponding documents and to notify the debtors of the assignment. HAWART commits itself to release the securities to which it is entitled, to the extent that their value exceeds the accounts receivable to be secured, as far as they have not yet been settled, by more than 20%.
- 5.6 Processing or treatment of the reserved items takes place for HAWART as a manufacturer in terms of §950 of the German Civil Code [BGB], without liabilities for HAWART resulting from this. In the event of processing by the Buyer in conjunction with goods which are not property of HAWART, HAWART is entitled to co-ownership of the new item in proportion to the value of the reserved goods compared with the other processed goods at the time of processing. The aggregated assets resulting from processing or treatment are goods subject to reservation in terms of the previous sections.

## 6 Claims for defects

In the event of material defects and defects of title regarding the delivery, HAWART shall render, to the exclusion of further claims – subject to section 7 – warranty as follows:

### Material defect:

- 6.1 All parts that have been found to be defective as a result of a circumstance occurring prior to the passage of risk must be repaired or newly delivered at the discretion of HAWART. Discovery of such defects is to be notified to HAWART in writing immediately. § 377 of the German Commercial Code [HGB] applies.
- 6.2 HAWART is only obliged to repair the defective goods or to provide substitute delivery after payment of a reasonable part of the arising costs, with due consideration of the defect.
- 6.3 The Buyer, in coordination with HAWART, shall grant the required time and opportunity to HAWART to perform all repair and replacement deliveries deemed to be necessary; otherwise HAWART shall be released from liability for the consequences arising there from. Only in urgent cases in which operational safety is compromised resp. to prevent disproportionately greater damages, in which case HAWART must be notified immediately, shall the buyer be entitled to remedy the defect itself or through a third party and to demand reimbursement from HAWART for the resulting costs. With regard to the costs arising from a repair or replacement, HAWART shall pay for the cost of the replacement item including shipment, provided the complaint was justified. In addition, HAWART shall bear the costs of dismantling and installation as well as the costs of any necessary provision of mechanics and assistants, including travelling expenses, unless this would cause a disproportionate burden on HAWART. Replaced parts become the property of HAWART.
- 6.4 In the framework of the statutory provisions, the Buyer has a right to withdraw from the contract if HAWART, taking into account the statutory exceptional cases, deliberately allows a reasonable period set for the subsequent improvement or replacement delivery due to a quality defect to elapse. Should the defect be insignificant, the Buyer is entitled only to reduce the contract price. Otherwise the right to a reduction of the contract price is excluded.
- 6.5 We shall not grant any warranty in the following particular cases:
  - unsuitable or improper use, incorrect installation resp. commissioning by the Buyer or third parties,
  - normal wear,
  - incorrect or negligent treatment,
  - improper maintenance,
  - unsuitable resources, faulty construction work, unsuitable subsoil,
  - chemical, electrochemical or electrical influences, unless the responsibility of HAWART.
- 6.6 If the defect is remedied improperly by the Buyer or a third party, HAWART bears no liability for the resultant consequences. The same applies for modifications to the delivered item carried out without prior consent of HAWART.

### Defect of title:

- 6.7 If the use of the delivered item leads to the violation of German industrial property rights or German copyrights, HAWART shall at its expense provide the right of further use for the Buyer, or modify the delivered item in a manner reasonable for the Buyer such that the violation of the property right no longer exists. If this is not possible at commercially reasonable conditions or in a reasonable period, the Buyer is entitled to withdraw from the contract. At the aforementioned conditions HAWART is also entitled to withdraw from the contract. Furthermore HAWART will indemnify the Buyer from and against any claims of the right holders concerned, that are undisputed or defined by final enforceable judgment. These aforementioned obligations of HAWART, subject to Section 7.2 in the event of industrial property rights or copyrights being violated, shall be final. They shall only apply if:
  - the Buyer immediately informs HAWART about asserted claims for property right violations or copyright violations,
  - the Buyer supports HAWART in appropriate way at the defense of asserted claims or allows HAWART to execute modification measures according to Section 6.7.
  - all measures for fending off including out of court settlements remain reserved for HAWART,
  - the defect of title is not based on an instruction made by the Buyer and
  - the infringement of rights was not caused by the fact that the Buyer modified or utilised the delivery item in a manner that is contrary to the accordance of contract.

## 7 Liability

- 7.1 If the delivery item cannot be used as stipulated in the contract for reasons attributable to HAWART as a result of negligent or incorrect execution of proposals and consulting that took place before or after the contract conclusion, or due to a violation of other secondary obligations - in particular relating to the operating and maintenance manuals of the delivery item - the regulations in Sections 6 and 7.2 shall apply accordingly to the exclusion of further claims on the part of the Buyer.
- 7.2 Regardless of the legal grounds, HAWART shall only be liable for any damage:
  - in the event of intent and gross negligence, also by legal representatives or agents,
  - in the event of culpable injury to life, body and health,
  - in the event of defects as well as other circumstances HAWART has deliberately concealed,
  - in the event of deficiencies of the delivered item, insofar as liability is provided in accordance with the product liability law for injury to persons and damages to materials,
  - in the event of a breach of obligations, the breach of which would put the purpose of this contract at risk, and which the contractual partners can therefore justifiably expect to be fulfilled (cardinal duties), HAWART shall also be liable in case of negligence, nevertheless limited to reasonably foreseeable damage that is typical of the contract.

## 8 Limitation

- 8.1 All claims on the part of the Buyer - regardless of the legal grounds - shall lapse after 12 months from the passing of risk. For claims according to section 7.2 the statutory periods shall apply. The same applies to defects in a construction or to delivery items, which were used for a construction in accordance with their normal use and have caused its defectiveness.
- 8.2 Within the framework of a maintenance agreement concluded with HAWART the warranty period shall be extended to 24 months from the passing of risk.

## 9 Applicable law, jurisdiction, partial invalidity

- 9.1 German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 9.2 The place of jurisdiction shall be the court competent for the headquarters of HAWART if the Buyer is a merchant, a legal entity under public law or a public special asset. HAWART is entitled to sue the Buyer at its head office.
- 9.3 Should any individual provisions of a contract, of which these Terms and Conditions form part of, be or become invalid, the validity of the remaining provisions of the contract shall not be affected thereby.

Ganderkesee, as of: 09/2017