

# General terms and conditions

for deliveries and services of HanseWerk AG

As of: 10/2014

## 1) General provisions

1. These general terms and conditions of delivery apply to all offers, deliveries and services (hereinafter referred to as deliveries) of HanseWerk AG (hereinafter referred to as contractor) to its customers.
2. The mutual written declarations shall be decisive in relation to the scope of the deliveries. However, general terms and conditions of the customer shall only apply to the extent that the contractor has agreed to these in writing.
3. The contractor retains its ownership and copyright-related rights of use in relation to cost quotations, drawings and other documents without restriction. The data and documents which are provided within the framework of the offer may not be made accessible to third parties, unless the contractor agrees to the corresponding process in writing. Should no contract be concluded, these must be returned to the contractor immediately.
4. The customer shall have the non-exclusive right of use in relation to standard software with the agreed performance characteristics in unamended form on the agreed devices. The customer may make a backup copy without an express agreement. The passing on, sale or other use of the software which goes beyond making a backup copy is only permitted with the written agreement of the contractor.
5. Partial deliveries are permitted, should these be reasonable for the customer.

## 2) Payment terms

1. All payments must be made 10 days after delivery or acceptance. Payment deadlines shall be deemed to have been complied with if the contractor has the sum available to it within the deadline.
2. Should the customer enter payment default or should circumstances which bring the creditworthiness of the customer into question arise after conclusion of the contract, the contractor shall be entitled to make the remaining debt of the customer due immediately, to request advance payment or the provision of security or, following the expiry of a reasonable period of grace and regardless of other rights, to rescind the contract. In particular, doubts concerning the creditworthiness of the customer shall be present if the customer enters arrears with two consecutive payments. mit zwei aufeinanderfolgenden Zahlungen in Rückstand gerät.
3. The contractor reserves the right to carry out reasonable price alterations to, changes to wage, material and marketing costs for services which take place more than 3 months following

conclusion of the contract. This does not apply to fixed price agreements.

## 3) Reservation of ownership with processing clause

1. The objects of the deliveries (goods subject to reservation of ownership) shall remain the property of the contractor until fulfilment of all claims under the business relationship to which it is entitled against the customer. Should the value of all security rights to which the contractor is entitled exceed to amount of all secured claims by more than 20 %, the contractor shall, following a request by the customer, release a corresponding part of the secured rights.
2. Any alteration or processing to the items subject to reservation of ownership shall be carried out by the customer for the contractor, without any obligations arising on the part of the latter. In case of processing, connecting, mixing or blending the items subject to reservation of ownership with other goods which do not belong to the customer, the contractor shall be entitled to the co-ownership share in the new item which arises in such a case to the value of the items subject to reservation of ownership with the other processed goods at the time of processing, connection, mixing or blending. Should the customer acquire sole ownership in a new item, the contracting partners are in agreement that the customer shall grant the contractor co-ownership in the new item to the relationship of the value of the processed, connected, mixed or blended items subject to reservation of ownership and shall store these free-of-charge for the contractor.
3. During the existence of the reservation of ownership, the customer shall not be permitted to pledge or hand over the items subject to reservation of ownership as security and shall only be entitled to sell on the goods to resellers in the course of ordinary business dealings and only on condition that the reseller receives payment from its customer or states the reservation that the ownership will not pass to its customer until its customer has fulfilled its payment obligations.
4. In case of attachments, seizures or other third party measures or attacks, the customer must inform the contractor immediately. The contractor shall be free to determine which security rights will be released.
5. In case of a culpable breach of significant contractual obligations, in particular in case of payment default, the contractor shall be entitled to retake possession of the goods following the issuing of a warning; the customer shall be obliged to surrender the goods. The retaking possession of the goods, the claiming of the reservation of the goods or the attachment of the items subject to reservation of ownership by the contractor shall not represent a rescission of the contract, unless the contractor expressly declares such.

#### 4) Delivery deadline, delivery delay, force majeure

1. The compliance with agreed deadlines for deliveries is subject to the timely receipt of all documents to be delivered by the customer, the necessary permits and approvals, in particular plans, and compliance with the agreed payment terms and other obligations by the customer. Should the above requirements not be fulfilled on time, the deadlines shall be reasonably extended; this does not apply if the contractor is responsible for the delay. Delivery dates are only valid if expressly confirmed by the contractor. Should the delivery contract be concluded in writing, the confirmation of the delivery date shall also require written form.

Should the customer enter acceptance default or should it culpably breach other co-operation obligations, the risk of complete destruction or possible deterioration of the object of purchase or work shall be transferred to the customer at the time it enters acceptance default.

2. Should non-compliance with the deadlines be due to force majeure, for example mobilisation, war, disturbances or similar events such as strikes or blockades, the deadlines shall be reasonably extended. The contracting partner affected by an event of force majeure must immediately inform the other contracting partner of the restriction of its contractual obligations and shall endeavour to correct the hindrances which prevent the fulfilment of the contractual obligations as quickly as possible.
3. Damages claims of the customer shall be excluded in all cases of late delivery, also following the expiry of a period of grace set to the contractor, in reservation of the provision under article XII. This shall not give rise to any change to the burden of proof to the detriment of the customer. The right of the customer to rescind the contract following the fruitless expiry of a reasonable period of grace set to the contractor shall remain unaffected.

#### 5) Transfer of risk

1. The risk shall be transferred to the customer as follows:
  - a) In case of deliveries without set up or assembly, once these have shipped or collected. Following a request by and at the expense of the customer, deliveries will be insured against the usual transportation risks by the contractor.
  - b) In case of deliveries with set up or assembly, on the date of acceptance in both cases (putting into operation).
2. Should the shipping, delivery, set up or assembly be delayed for reasons for which the customer is responsible or should customer enter acceptance default for other reasons, the risk shall be transferred to the customer. The right of the contractor to request acceptance in case of deliveries with set up and assembly shall remain unaffected.

#### 6) Set up and assembly

The following provisions shall apply to set up and assembly, unless otherwise agreed in writing:

1. The customer must carry out the following at its own expense and in good time:

- a) All land, construction and other external ancillary work, including the necessary specialist and assistance personnel, materials and work tools
  - b) The tools and materials which are necessary for assembly and putting into operation, such as scaffolding, lifting devices and other equipment, fuels and lubricants
  - c) Energy and water at the construction site, including the connections, heating and lighting
  - d) Sufficiently large, suitable, dry and lockable rooms at the assembly location for the machine parts, apparatus, work tools, etc and reasonable work and relaxation rooms for the assembly personnel, including reasonable sanitary facilities taking the circumstances into account. In addition, must take the measures to protect the equipment of the supplier and assembly personnel at the construction site that it would take to protect its own equipment.
  - e) Protective clothing and protective equipment which are required at the construction site due to special circumstances.
  - f) Prior to the start of the assembly work, the customer must provide the necessary information concerning the location of hidden electricity, gas and water pipes or similar equipment, as well as the necessary static information, without the need for a request to be issued.
2. Prior to the start of the set up or assembly, all information and objects which are necessary in order for the work to be started must be at the set up or assembly location and all preparatory work must be at such a state prior to the start of the set up or assembly that the set up or assembly can be commenced in accordance with the agreement and can be carried out without any interruptions. Entry and exit locations to the set up or assembly location must be smoothed and cleared.
  3. Should the set up, assembly or putting into operation be delayed for reasons for which the contractor is not responsible, the customer must bear the costs of waiting time and additional necessary travel of the supplier or assembly personnel to a reasonable extent.

4. The customer must provide immediate weekly notification to the contractor concerning the duration of the working time of the assembly personnel, as well as the completion of the set up, assembly or putting into operation.
5. Should the contractor request acceptance of the delivery following completion, the customer must do so within two weeks. Should the customer allow the two week deadline to expire or should the delivery be put into operation, if applicable after the completion of an agreed test phase, this shall be equivalent to acceptance.

#### 7) Liability for defects

1. Warranty rights of the customer are dependent on the customer having properly complied with its inspection and complaint obligation in accordance with § 377 of the German Commercial Code (HGB). The customer may not refuse acceptance of deliveries due to minor defects.

2. Regardless of the duration of operation, defect claims shall be time barred 12 months after the delivery of the goods to the customer. The provisions above shall not apply should the law provide for longer limitation periods in a mandatory manner in accordance with § 438 of the German Civil Code (BGB) - buildings and items for buildings, § 479 Paragraph 1 of the German Civil Code (BGB) - recourse claim and § 634a of the German Civil Code (BGB) - construction defects. The agreement of the contractor must be obtained prior to resending the goods.
3. Should the delivered goods display a defect despite all of the care which has been applied which was already present at the time of transfer of risk, the contractor shall choose between improving the item or providing a replacement delivery, provided that the defect complaint has been raised on time. The contractor must always be granted the option to provide supplementary performance within a reasonable deadline.
4. Should the supplementary performance fail, then regardless of any damages claims, the customer can rescind the contract or reduce the remuneration.
5. Defect claims shall not exist in case of minor deviations from the agreed quality, in case of minor impairments of usability, in case of natural wear and tear and in case of damage which arises after the transfer of risk due to incorrect or negligent treatment, overloading, unsuitable operating materials, defective construction work, unsuitable land or due to special external influences which are not provided for under the contract. Should the customer or third parties carry out incorrect repair work or alterations, no defect claims shall exist for these and their resulting consequences either.
6. Claims of the customer for the expenses necessary for supplementary performance, in particular transport, access, work and material costs shall be excluded, should the expenses increase due to the goods delivered by the contractor being subsequently delivered to a location other than the place of business of the customer, unless the relocation corresponds to the use of the item in accordance with the contract.
7. Recourse claims of the customer against the contractor shall only exist if the customer has not entered into any agreements with its consumer which go beyond the mandatory statutory defect claims. Furthermore, paragraph 6 shall apply accordingly to the scope of the recourse claim of the customer against the contractor.
8. In case of defect complaints, the customer may only withhold payments to the extent which corresponds to the material defects in a reasonable manner. Should the defect claim be shown to be unjustified, the contractor may demand reimbursement from the customer of the costs incurred as a result.
9. Otherwise, number XII (liability) shall apply to damages claims. Further claims of the customer against the contractor and its vicarious agents due to material defects or claims against the contractor and its vicarious agents due to material defects which go beyond those regulated in this section shall be excluded.

## 8) Due date/acceptance

In reservation of a contractual agreement to the contrary, the compensation for work shall be due for payment immediately at the time of acceptance of the work (putting into operation).

## 9) Set off/provision of security

1. The customer may only set off with claims which are undisputed or which have been recognised by a court.
2. The right of the contractor to demand the provision of security shall be in accordance with § 648a of the German Civil Code (BGB).

## 10) Commercial property rights and copyright

1. Should a third party bring justified claims against the customer due to the breach of a commercial property right or copyright (hereinafter referred to as: property rights) in connection with products delivered by the contractor, the contractor shall incur liability in relation to the customer as follows:

According to its choice and at its expense, the contractor will either

- a) acquire a right of use for the object of delivery
  - b) alter the object in such a way that the property right is not infringed
  - c) replace the object of delivery by a with a different item which does not infringe any property rights or
  - d) take back possession of the object of delivery in return for a refund of the purchase price.
2. The obligations of the contractor referred to above shall only apply if the customer immediately informs the contractor in writing of the claims which are being brought by the third party, does not acknowledge an infringement and allows the contractor to take all defensive measures and manage all settlement negotiations. Should the customer suspend the use of the product due to loss mitigation or other important reasons, it shall be obliged to inform the third party that the suspension of use does not represent an acknowledgement of a breach of property rights.
  3. Claims of the customer shall be excluded if it is responsible for the breach of property rights.
  4. Claims of the customer shall also be excluded if the breach of property rights is caused by special instructions of the customer, by use which is not intended by the contractor, which is not contractually agreed or which is caused due to the product being altered by the customer or being used with products which were not delivered by the contractor.
  5. Further claims against the contractor shall be excluded, article XII shall however remain unaffected, as well as the right of the customer to rescind the contract.

### 11) Impossibility, contractual adjustment

1. Should it become impossible for the contractor to provide the delivery which it owes, without it having been aware of the performance hindrance at the time of conclusion of the contract or without it being responsible for its lack of knowledge, the customer shall be entitled to choose between demanding damages in lieu of performance or reimbursement of its expenses. In reservation of the provision under number XII, the damages claim of the customer shall be limited to 10% of the value of the respective part of the delivery which cannot be put into purposeful operation due to the impossibility. The contractor shall be permitted to provide proof that no loss or value reduction was incurred or that this is significantly lower than the fixed sum. This shall not give rise to a change in the burden of proof to the detriment of the customer. The right of the customer to rescind the contract shall remain unaffected.
2. Should unforeseeable events as defined in number IV 2 significantly alter the economic meaning or content of the delivery or have a significant effect on the business operations of the contractor, the contract shall be reasonably adjusted in good faith. Should this not be economically reasonable, the contractor shall have the right to rescind the contract. Should the contractor wish to claim its right of rescission, it must notify the customer immediately of such once it becomes aware of the extent of the hindrance, even if an extension of the delivery time was originally agreed with the customer.

### 12) Liability

1. The contractor shall incur liability in accordance with the statutory provisions, should the customer bring damages claims which are connected to intent or gross negligence, including intent or gross negligence on the part of the vicarious agents deployed by the contractor or to claims under the German Product Liability Act (Produkthaftungsgesetz). Unless an intentional breach of contract is present, the liability for damages shall be limited to losses which are foreseeable and occur typically.
2. Liability due to culpable injury to life, body or health, due to a fraudulent concealment of a defect or due to an infringement of essential contractual obligations shall remain unaffected. Essential contractual obligations are obligations whose fulfilment are essential for the proper performance of the contract and on whose compliance the contracting partner may regularly rely. However, damages in case of the breach of essential contractual obligations are limited to losses which are typical of the contract and foreseeable, should the losses have been caused in simple negligence.

3. Unless otherwise stated above, any other liability shall be excluded, regardless of the legal nature of the claim which is being brought. This applies in particular to damages claims due to fault at the time of conclusion of the contract, financial losses such as production breakdown and loss of profit, as well as other breaches of obligation or strict liability claims to the reimbursement of material losses in accordance with § 823 of the German Civil Code (BGB).
4. In cases of simple and gross negligence, the liability for material losses shall be limited to 250,000.00 € per loss event and a total of 500,000.00 €
5. The provisions above shall not give rise to any change to the burden of proof to the detriment of the customer.

### 13) Place of jurisdiction

1. Should the customer be a businessman, the sole place of jurisdiction from all disputes indirectly or directly connected to the business relationship shall be the main place of business of the contractor or its branch location, depending on its choice.
2. German law shall apply to the contractual relationships, to the exclusion of the United Nations Convention governing the International Sale of Goods (CISG).

### 14) Data protection

The contractor gathers, processes and uses the personal data of the customer which is necessary in order to fulfil this contract in accordance with the applicable provisions under data protection laws. The contractor takes technical-organisational measures in accordance with the current state of technology in order to protect personal data.

### 15) Written form requirement

Amendments and additions to the service contract and these terms and conditions of delivery shall require written form. This shall also apply the written form requirement itself. No oral ancillary agreements are in place.