

Standard Terms and Conditions of Sale for

HAAS Holzzerkleinerungs- und Fördertechnik GmbH

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§ 1 Scope

- (1) These Standard Terms and Conditions of Sale (STCs) apply to all of our business dealings with our customers. However, they only apply if the customer is an entrepreneur (*Unternehmer*) as defined in section 14 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB), a legal entity under public law (*juristische Person des öffentlichen Rechts*) or a special fund under public law (*öffentlich-rechtliches Sondervermögen*).
- (2) Our STCs apply to the exclusion of all other terms, even if we, despite being aware of the customer's terms and conditions, accept orders or provide goods without reservation. We shall not recognise conflicting, varying or additional terms and conditions of the customer unless we expressly agree to them in writing.
- (3) Our STCs, as amended from time to time, shall automatically apply to all future goods and services provided or offers to the same customer, without any requirement to refer to them afresh. We will notify the customer promptly of any amendments to our STCs.

§ 2 Offer / Formation of contract

- (1) Our offers are non-binding and subject to change unless they provide otherwise.
- (2) Except to the extent its fitness for the contractual purpose requires exact conformity, the actual product may vary slightly from the product descriptions and images, particularly in terms of colour, size and weight. Such descriptions and images do not represent guaranteed qualities. Customary variations and variations due to legal provisions or technical enhancements are permissible to the extent they do not impair the product's fitness for the contractual purpose.
- (3) We reserve all title to, and copyright and intellectual property rights in any illustrations, images, plans, calculations (including cost estimates), product descriptions and other documents and items. Such documents and items may be used solely for purposes of performing the contract. Unless we expressly give our prior written consent, the customer may not exploit, copy or modify said documents and items, or make them available to third parties as such or disclose their material substance to third parties. The customer may use them solely for the purposes permitted under the contract and, at our request, must return them to us in their entirety and destroy (or delete) any copies (including digital copies), unless they are still required by the customer in the ordinary course of business and for compliance with statutory records retention duties.
- (4) The customer's order constitutes a legally binding offer to enter into a contract. Unless the order provides otherwise, we have 5 working days (Monday to Friday) within which to accept the order (from the date of receiving the order).
- (5) No contract will be formed unless or until we have confirmed the order in writing. The terms of such confirmation shall be controlling for the terms of the contract. Barring an order confirmation, a contract (to which these STCs shall apply) will be formed upon delivery of the merchandise. In such case the customer waives receipt of the declaration of acceptance.
- (6) Legal declarations and notices served on us by the customer after formation of the contract (e.g., stipulation of a grace period, default notice, notice of defects) must be executed in writing in order to be valid.
- (7) Transmission by facsimile or by e-mail is also sufficient in order to meet the writing requirement.
- (8) With the exception of our managing directors, commercial attorneys-in-fact (*Prokuristen*) and other employees specifically named

as the customer's contact person (acting in their respective representative capacities), our employees are not authorised to enter into contracts, agree to individual written or oral arrangements or make other commitments.

- (9) No guarantees exist except those guarantees expressly agreed by contract.

§ 3 Delivery

- (1) Unless agreed otherwise, "EXW Incoterms (2010) Dreisbach" shall apply to all of our deliveries.
- (2) We will insure goods against theft, breakage, transport damage, fire, water damage or other insurable risks only if expressly agreed with the customer, and any insurance shall be solely at the customer's expense.
- (3) If the customer's taking over is delayed or the customer fails to cooperate in the requisite manner, or if our goods or services are delayed for other reasons for which the customer is responsible, we are entitled to bill the customer for the loss incurred as a result, including any additional expenses we incur (e.g. particularly storage costs).
- (4) Where it has been expressly agreed that the customer's acceptance is required, said acceptance shall be governed *mutatis mutandis* by the provisions of German law relating to contracts for work and services. The goods shall be deemed accepted, at the latest, when:
 - a) the delivery and, where we have also agreed to assemble or provide a similar service (e.g. mounting, installation, putting into commission, set-up/settings), the assembly or similar service is complete;
 - b) we have advised the customer hereof promptly after completion and requested the customer's acceptance;
 - c) (aa) 15 working days have elapsed since delivery or (if applicable) the completion of assembly or a similar service; or (bb) the customer has started using the goods (specifically has commenced operation) and 10 working days have elapsed since delivery or (if applicable) the completion of assembly or a similar service; and
 - d) the customer failed to accept the goods within the above period for a reason other than a defect of which we were notified, and which substantially impairs use of the goods or renders use of the goods impossible.

§ 4 Prices / Terms and conditions of payment

- (1) Unless agreed otherwise, our net prices (plus statutory value added tax (VAT)) applicable at the time of entering into the respective contract shall apply in all cases; prices are specified "EXW Incoterms (2010) Dreisbach". Any insurance, transport and packaging costs as well as any assembly costs and any other taxes and duties shall be charged in addition, unless agreed otherwise.
- (2) Unless agreed otherwise (particularly e.g. regarding the payment method described under subsection (3)), our invoices must be paid in full in euros (€) within 8 calendar days of delivery and invoicing (and, where expressly agreed, acceptance). The date on which payment is received determines whether payment was on time.

However, we are at all times authorised, without stating reasons, to make the provision of our goods and services conditional upon concurrent payment.
- (3) Where payment in instalments has been agreed, subsection (2) shall not apply. Unless otherwise agreed, the following method of payment shall apply instead: The customer shall pay in full in euros (€) within 8 calendar days from the invoice date
 - a) 30% of the total price after formation of the contract;
 - b) 70% of the total price after receipt of our dispatch/collection notice.

The customer may not pick-up the goods, have them picked up or demand shipment until such invoice has been paid, but is permitted to make concurrent payment.

- (4) The customer shall be automatically deemed in default upon expiry of the applicable period for payment without the need for a default notice to be issued. During any period of default, the purchase price shall bear interest at the applicable statutory rate for default interest. We are also entitled to the lump sum default payment under section 288 (5) sentence 1 of the BGB. We reserve the right to claim additional damages for default. Where our customers are merchants (*Kaufleute*), our claim to commercial default interest (section 353 of the German Commercial Code (*Handelsgesetzbuch* – HGB) remains unaffected.
- (5) The customer may only exercise liens or rights of set-off if its counterclaims are uncontested, ripe for adjudication, or have been declared final and binding by a court of law. § 8 (11) remains unaffected.
- (6) Should we become aware of any facts or circumstances occurring after the contract has been entered into that could materially impair the customer's creditworthiness and jeopardise payment of our outstanding claims under the respective contractual relationship, we may elect to provide still outstanding goods and services only subject to payment in advance or the provision of security. We may set a reasonable period within which the customer must, at its election, render payment or provide security for payment. We may rescind the contract if the above period expires without result. The statutory provisions on dispensing with the grace period remain unaffected.

§ 5 Delivery times

- (1) Prospective lead times/delivery dates given by us for the provision of goods and services (delivery times) shall always be regarded as approximate only, unless a fixed delivery time was expressly promised or agreed. Delivery times shall be deemed met if, by the time they expire, the customer has received our dispatch/collection notice or, where agreed, we have delivered the goods to the party responsible for transportation.
- (2) If we can foresee that we will be unable to comply with a certain delivery time, we will notify the customer promptly and advise it of the anticipated new delivery time.
- (3) Compliance with agreed delivery times shall include the timely receipt of any and all documents and information to be provided by the customer, the satisfaction of any duties of cooperation and the performance of any and all other obligations (e.g., meeting the technical, construction-related, staff and organisational requirements for the agreed assembly of products at the customer's premises where applicable). If these requirements are not met in due time, the delivery times shall be reasonably extended; the foregoing shall not apply if we are responsible for the delays.
- (4) We shall not be liable if the provision of our goods or services is delayed or rendered impossible due to *force majeure* or other events outside our control which were not foreseeable at the time the contract was entered into (e.g. disruptions to operations of any kind, fire, natural disasters, weather events, floods, war, riots, acts of terrorism, transport delays, strikes, lawful lock-outs, a shortage of workers, energy or raw materials, delays in the issue of requisite regulatory approvals, regulatory action/sovereign acts).

This shall also apply in the case of delays as a result of our suppliers failing to supply us correctly or on time, provided we are not responsible for the delay and we ourselves had placed the order with our supplier in due time such that timely delivery could have been expected.

If such events occur, the delivery times shall be automatically extended by the duration of the event, plus a reasonable time for re-summing work. We also have the right to rescind the contract if such events make it substantially more difficult or impossible for us to render performance and they are not merely temporary in nature.

- (5) We may make partial performances if: (a) partial performance is of utility to the customer and not inconsistent with the contractual purpose; (b) the performance of the remaining parts is assured; and (c) the customer does not incur any substantial additional expense as a result of the partial performance.

- (6) If we default on providing goods or services or they become impossible to provide for whatever reason, any liability to damages on our part shall be limited in accordance with § 10 of these STCs.

§ 6 Import and export control

- (1) Should any of the goods or services to be provided by us be subject to import and/or export control laws, in particular of the Federal Republic of Germany (e.g., the German Foreign Trade and Payments Act (*Außenwirtschaftsgesetz* - AWG), the German Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung* - AWW)) or the European Union, the customer shall be required to provide us with any and all information and documents required for compliance with those laws without undue delay. This also applies to any end use certificate. If we are required to obtain an export permit, the issuance of such export permit shall be a condition precedent for the validity of the contract. The customer shall in any event be responsible for obtaining any import permits.
- (2) The delivered goods may be subject to (re-)export restrictions. The customer shall comply with those provisions in the event of resale or other exports. We assume no liability for any breaches by the customer of legal requirements to which the customer is subject in this respect. If we incur any loss or damage as a result of any breach of those legal requirements by the customer, the customer shall be liable to pay us damages.

§ 7 Retention of title

- (1) The retention of title agreed herein serves to secure our claims against the customer under the respective contractual relationship including any current account balance claims we may have at the time the respective contract is entered into (secured claims).
- (2) We shall retain title in the goods we deliver to the customer until such time as all secured claims have been paid in full. If the customer intends to bring the reserved goods to a destination outside of Germany, the customer must ensure at its expense that any and all local statutory requirements for establishing and maintaining our reservation of title have been met and shall notify us of this without undue delay.
- (3) The customer shall adequately insure the reserved goods at replacement value, at the customer's own expense, against damage caused by fire, water and theft.
- (4) The reserved goods may not be pledged to third parties nor assigned as collateral unless or until the secured claims have been paid in full. The customer shall notify us without undue delay of any attempts by third parties to gain access to our property.
- (5) The customer may use, process/alter, combine, mix and/or sell the reserved goods in the ordinary course of business.
- (6) If the customer processes or alters (section 950 of the BGB) the reserved goods, the following shall apply: any such processing shall in every case be performed on our behalf as manufacturer in our name and for our account and – if the processing or alteration is performed using materials from multiple owners or if the value of the new item created is higher than that of the reserved goods – we shall acquire co-title (fractional ownership) in such new items in the proportion of the value of the reserved goods (gross invoice value) to the value of the new items created. If for any reason we should not acquire title or co-title, the customer hereby transfers to us for security purposes its future title or co-title (in the above-described proportion) in the new item; we hereby accept the transfer.

If the reserved goods are combined within the meaning of section 947 of the BGB or mixed or blended within the meaning of section 948 of the BGB with other items not belonging to us, we shall thereupon acquire co-ownership in the new item in the proportion of the value of the reserved goods (gross invoice value) to the other combined, mixed or blended items at the time the items are combined, mixed or blended; if the reserved goods are deemed to be the principal item, we shall acquire sole title therein (section 947 (2) of the BGB). If one of the other items is deemed to be the principal item and to the extent the principal item belongs to the customer, the customer hereby transfers *pro rata* co-ownership in

the unified item in the above-described proportion. We hereby accept such transfer.

The customer shall hold the items in which we acquire sole title or co-title under the aforementioned provisions in safe custody on our behalf at no charge.

- (7) Claims of the customer arising from the resale of the reserved goods (including other claims such as insurance claims or claims arising in tort due to loss or destruction) shall hereby be assigned to us as security. We hereby accept such assignment. Subject to any revocation in accordance with sentence 4, the customer is authorised to recover the assigned claim. If the customer fails to meet its payment obligations to us (particularly in the event of default in payment), if an application for the institution of insolvency proceedings against the customer's assets is filed or if an event of the customer's inability to perform (section 321 (1) sentence 1 of the BGB) arises, we may revoke the customer's authorisation to recover the claim. In such case, the customer shall at our request provide us with all the information required for recovery and permit an appointed agent to inspect the inventory of assigned claims on the basis of the customer's accounts and shall notify debtors of the assignment.
- (8) At the customer's request, we agree to release the collateral held by us to the extent that it exceeds the value of the (still outstanding) secured claims by more than 10%. The decision as to which collateral is released rests with us.
- (9) If we rescind the contract by law due to breach of contract on the part of the customer (particularly due to the customer defaulting on payment) (enforcement event), we may request the customer to return the reserved goods. Our request for return of the goods shall also constitute our declaration of rescission. The customer shall bear the costs incurred for returning the goods. Our attachment of the reserved goods shall likewise constitute a declaration of rescission.

§ 8

Warranty for defects (*Gewährleistung in terms of BGB*)

- (1) Unless these STCs (including § 9 and § 10) provide otherwise or specify additional terms, the relevant statutory provisions shall govern the customer's rights in the case of defects in quality or legal defects (*Sach- oder Rechtsmängel*).
- (2) Where the delivery of used products has been agreed, any damages claims of the customer shall arise solely in accordance with the stipulations of § 10. Otherwise, we offer no warranty for defects in quality in the case of used products.
- (3) No warranty is assumed for wear and tear consistent with the contractual purpose, any unsuitable or improper storage, use, treatment or operation or in the event of non-compliance with general and special technical information contained in the documents provided to the customer or to which reference is made.
- (4) Furthermore, we are under no warranty obligation if the customer modifies the goods or has them modified without our consent such that it is impossible or unreasonably difficult to effect repair as a result. In any case, the customer shall bear the additional costs for repair arising as a result of the modification.
- (5) Unless expressly agreed otherwise: (a) our products and services are solely required to conform to the statutory standards applicable in Germany; and (b) the customer is solely responsible for integrating the products in its existing technical, structural and organisational framework (customer's responsibility for system integration).
- (6) The customer is required to inspect the delivered goods for defects without undue delay after they are delivered to it. The customer must give us prompt written notice of obvious defects, at the latest within 10 working days of delivery and prompt written notice of hidden defects, at the latest within 7 working days from the date of their discovery. Otherwise delivery shall be deemed accepted.
- (7) The return goods shall be sent back to us at our request without undue delay, initially at the customer's expense. If the reported defect is legitimate, we will reimburse the customer for the costs of the cheapest shipping method; the foregoing shall not apply if the shipping costs are increased because the goods are located somewhere other than the place of intended use.

- (8) The customer must always give us the time and opportunity required in order to examine reported defects and other complaints and to effect cure (*Nacherfüllung*); this particularly includes furnishing us with the goods in question for the aforementioned purposes or, if they have been permanently installed or similarly affixed at a certain location, providing access to the goods. Subsection (7) (return at our request) remains unaffected.
- (9) If the goods are defective, we have a right to cure performance, which, at our election may take the form of remedying the defect (repair) or delivering conforming goods (replacement). Cure shall not include either dismantling and removing the defective goods or re-installing them if we had no contractual obligation to do so originally.
- (10) If the customer's request to remedy a defect proves to be unjustified, we may require the customer to reimburse our costs.
- (11) We are entitled to make our cure dependent on the customer's payment of the purchase price owed or, if applicable, the current instalment owed, however the customer is entitled to retain a reasonable amount of the payment owed, such amount being proportionate to the severity of the defect.
- (12) If it is not possible to effect cure or if our attempt to cure is unsuccessful, or if the reasonable period to be set by the customer for effecting cure has expired without result or can be dispensed with according to statute, the customer may, at its election, rescind the purchase contract or claim a reduction of the purchase price. However, there is no right of rescission in the case of minor defects.
- (13) If we deliver third-party products (in particular components) which prove to be defective and which for licensing or factual reasons we are not able to remedy, we will, at our election, assert our warranty claims against such third parties for the account of the customer, or assign our claims to the customer. Such defects shall give rise to warranty claims against us (subject to the other requirements and the stipulations of these STCs) only where judicial enforcement of aforementioned claims against third parties failed or has no prospect of success (e.g. due to insolvency) or is otherwise unreasonable for the customer (e.g. due to time constraints). The limitations period for the relevant warranty claims of the customer against us shall be tolled for the period during which we assert (even just out-of-court) claims against third parties.
- (14) The customer may rescind or terminate the contract on the basis of a breach of duty committed by us that does not involve a defect, only if we are responsible for the breach of duty; the relevant statutory provisions otherwise apply. The customer has no right to terminate the contract at will, particularly not in reliance on sections 651 and 649 of the BGB.
- (15) Claims for damages other than those governed by § 10 of these STCs are excluded.

§ 9

Warranty of non-infringement

- (1) Subject to the terms of § 9, we warrant that the goods are not encumbered by third-party intellectual property rights or copyright in the countries of the European Union or other countries in which we manufacture the goods or have them manufactured. The parties will notify each other promptly in writing if a claim has been asserted for any such rights.
- (2) Claims for infringement of third-party intellectual property rights or copyright are excluded if the infringement was due to instructions by the customer, any unauthorised modification, or use of the goods by the customer in a manner inconsistent with the contract.
- (3) In the event the goods infringe the intellectual property rights or copyright of any third party, we will, at our election and expense, modify or replace the goods such that they no longer infringe third-party rights but still perform their agreed contractual function, or obtain a licence enabling the customer to use the goods. If we are unable to do either of these things within a reasonable time, the customer may rescind the contract or claim a reasonable reduction of the purchase price.
- (4) If we deliver products of other manufacturers or suppliers and such products infringe third-party rights, we will, at our election, assert claims against the relevant manufacturer or supplier for breach of warranty for the account of the customer, or assign our warranty claims to the customer; § 8(13) shall apply *mutatis mutandis*.

- (5) Claims for damages other than those governed by § 10 of these STCs are excluded.

§ 10

Liability for damages

- (1) To the extent these STCs, including the following provisions, do not provide otherwise, our liability for breaches of contractual and non-contractual duties shall be governed by statute.
- (2) We shall be liable without limitation and irrespective of the legal basis if we or any of our legal or vicarious agents commit a wilful or grossly negligent breach of duty resulting in loss or damage.
- (3) If we or any of our legal or vicarious agents commit a negligent breach of duty, we shall be liable only
- (without limitation) for loss or damage resulting from injury to life, limb or health;
 - for loss or damage resulting from the breach of material contractual duties. Material contractual duties are duties which must necessarily be fulfilled to enable the proper performance of the contract, and on whose compliance the customer would usually rely and be entitled to rely. However, in such cases our liability shall be limited in quantum to loss or damage that was reasonably foreseeable at the time the contract was entered into.
- (4) The limitations of liability arising from subsection (3) shall not apply to the extent that we fraudulently conceal any defects, assume a guarantee for the quality of the goods or a procurement risk. The foregoing shall not affect any strict liability in particular under German product liability law.
- (5) To the extent the above provisions exclude or limit our liability, such exclusion or limitation shall also apply to the personal liability of our governing bodies, legal agents, employees and vicarious agents.
- (6) Compensatory damages claims relating to contractual penalties (*Vertragsstrafen*) and liquidated damages to which the customer is subject in connection with goods delivered by us to third parties may (subject to all other requirements) only be asserted provided this has been expressly agreed in writing with us or the customer had advised us of this risk in writing upon entering into the contract with us.

§ 11

Limitation period

- (1) In deviation from section 438 (1) no. 3 of the BGB, claims based on defects in quality and legal defects (including non-contractual claims) shall become time-barred one (1) year from the date of delivery; however, the foregoing shall not apply in the cases described in § 10 (2), (3) a) and b) and (4) of these STCs. Those cases shall be governed by the relevant statutory limitations period. Where acceptance has been agreed, the limitations period shall not commence until the goods are accepted.
- (2) The limitations periods in the case of claims against suppliers pursuant to sections 478, 479 of the BGB and section 438 (1) no. 2 of the BGB shall remain unaffected.

§ 12

Special right of rescission where payment is discontinued, etc.

We have a special right to rescind the contract where (a) the customer discontinues payments to its creditors; (b) the customer or another creditor files an application to institute insolvency proceedings; (c) insolvency proceedings (even interim proceedings) are instituted against the assets of the customer; or (d) the application for insolvency proceedings is rejected due to lack of assets.

§ 13

Notification requirement in the case of product safety action

The customer shall notify us promptly in writing if product safety action is taken at the customer's premises or against the customer in connection with our products (e.g. regulatory action associated with market supervision, such as an order for withdrawal or recall) or the customer itself intends to take such action.

§ 14

Place of performance / Governing law / Jurisdiction / Language / Miscellaneous

- (1) Unless expressly agreed otherwise, the place of performance for deliveries is the warehouse from which we make our deliveries. If we have also agreed to assemble or provide similar services (e.g. mounting, installation, putting into commission, set-up/settings), the place of performance shall be the place stipulated in the contract as the place where this is required to occur.
- (2) Our business dealings with the customer are governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods (CISG) shall not apply.
- (3) Exclusive (and international) place of jurisdiction for any and all disputes arising out of or in connection with the delivery relationship shall be Westerburg. We may also sue the customer at the customer's place of jurisdiction. Mandatory statutory provisions governing places of exclusive jurisdiction shall remain unaffected.
- (4) Should any provision of these STCs be or become void or invalid, whether in whole or in part, this shall not affect the validity of the remaining provisions. Where terms have not been incorporated into the contract or are invalid, the terms of the contract shall be primarily determined by the relevant statutory provisions (section 306 (2) of the BGB). Only in other cases, and to the extent that construction of contract culminating in implied terms (*ergänzende Vertragsauslegung*) does not take precedence or is impossible, the parties shall agree on a valid term that most closely reflects the commercial intent of the void or invalid term.
- (5) These STCs have been drafted in German and English. The English-language version serves information purposes only and does not constitute an integral component of the STCs. In the event of inconsistencies between the German and English-language versions, the German-language version shall be controlling.
