

# Terms and Conditions

## Range + Heine GmbH

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### **Clause 1. General provisions, scope, venue, data protection**

- (1) These Terms and Conditions apply to all current and future business relationships with businesses. Businesses as defined in these Terms and Conditions are considered natural and legal persons or partnerships with legal capacity with whom a business relationship is entered into and who act in commercial or self-employed capacities.
- (2) Even with knowledge thereof, any terms and conditions that depart from, oppose or complement these Terms and Conditions, will not be considered part of the contract, unless the validity thereof has been consented to in writing.
- (3) German law will apply. The provisions of the United Nations Convention on Contracts do not apply to anything we sell.
- (4) If the party to the contract is a business person [*Kaufmann as defined under German law*], a legal body incorporated under public law, or an off-budget entity, if not otherwise specified in the order confirmation, our headquarters are the place of performance and venue. However, we are entitled to bring legal action against our party to the contract at his or her venue.
- (5) The party to the contract agrees that we are permitted in line with the German Data Protection Act [*Bundesdatenschutzgesetz*] to process the data obtained in conjunction with the business relationship, regardless of whether such data stems from the party to the contract or third parties.

### **Clause 2. Conclusion of contracts, placing orders**

- (1) Our quotes are non-binding. We reserve the right to make technical changes of a reasonable nature, as well as changes to forms, colours and/or weights – in particular in the case of new designs and customised designs. We are entitled to subcontract orders.
- (2) Once a product/system is ordered, the customer enters into a binding commitment to purchase/place the order for the items. We are entitled to accept the contract proposal in the order within two weeks after we have received it. Acceptance is carried out on the basis of a written order confirmation. When the contract is concluded or any changes made thereto, any supplementary verbal agreements require our written confirmation to be enforceable.
- (3) The contract is concluded subject to correct and punctual delivery by our suppliers. Such provision only applies when a delivery is not made for reasons for which we are not at fault, in particular when a congruent covering transaction is concluded with our supplier.
- (4) We retain proprietorship and copyrights to information, in particular to images, drawings, calculations and other documents which are passed to customers or suppliers. Third parties may not be given access to such items. Such stipulation applies in particular to written documents and information which are labelled as confidential. The customer/supplier requires our express written consent before such items are forwarded.

### **Clause 3. Lead time, shipment, transfer of risk, acceptance**

- (1) The lead time is specified in each agreement. Unless otherwise agreed, the delivery date specified is without engagement. Our compliance with the delivery date requires full clarification of all commercial and technical questions between the parties and customers to have met all obligations required of them, such as providing all the official mandatory certificates or permits, or making a down payment. Should this not be the case, the lead time will be extended accordingly. Such specification does not apply if we are responsible for the delay. If not otherwise specified in the order confirmation, delivery is agreed ex works.

- (2) Packaging is provided as customary in the industry and in commercial operations. Crates, loading equipment/materials or similar are charged at cost. As long as it reaches us in an undamaged state within two months after shipment, packaging returned to us carriage free will be accepted at two thirds of the price invoiced. Unless it is our responsibility, no liability is accepted for the cheapest method of shipping or transportation time. Unless explicitly agreed, we will not enclose any special protective devices with the shipment.
- (3) At the cost of the party ordering our products, shipments are insured against loss and breakages. Written consent is required from any insurance above and beyond such cover.
- (4) The delivery deadline is considered complied with when the object of the contract has left the factory or place/warehouse before expiry of such deadline. If official acceptance is to be provided, the date of acceptance is the decisive factor, except where justified reasons exist for refusing acceptance.
- (5) Except in the case of trial shipments, risk passes to the customer as soon as the products have left the factory warehouse/location. This is also case when partial deliveries are made, or we have provided other services, such as meeting the shipping costs or delivery. If official acceptance is required, the date thereof is the decisive factor for the transfer of risk. It must be carried out immediately on the date of acceptance, alternatively after the supplier has provided notification of willingness to consent to acceptance. The customer may not refuse acceptance if a minor defect exists.
- (6) If shipping or acceptance of the object of the contract is delayed for reasons for which the customer is responsible, or should the customer culpably breach other duties of cooperation, we are entitled to demand compensation for any loss we incur, including any extra costs. In such case, the risk of an accidental loss, or accidental deterioration of the item passes to the customer at the time at which the customer delays providing acceptance.
- (7) If we are prevented in fulfilling the contract on time due to problems with procurement, fabrication or deliveries that we or our suppliers/sub-contractors experience (e.g. electricity cuts, traffic problems, strikes, lock-outs, force majeure etc.) the lead time will increase appropriately.
- (8) We accept liability for delays in delivery in line with the statutory regulations under German law, as long as the underlying purchasing contract constitutes a transaction for delivery by a certain date, as specified in article 286, paragraph 2, no. 4, BGB [*German Civil Code*] or article 376 HGB [*German Commercial Code*]. We also accept liability according to statutory regulations, if as a consequence of a delay in delivery that we are responsible for, customers are entitled to claim that their interest in the continuance of the contract no longer exists. Furthermore, we also accept liability according to statutory regulations, if the delay in delivery is based on any wilful or grossly negligent breach of contract on our part; any culpability on the part of our representatives or agents is attributed to us. Should the delay in delivery be based on a grossly negligent breach of contract that we are responsible for, our liability for losses is limited to the predictable loss that typically occurs. We also accept liability according to statutory regulations, insofar as the delay in delivery that we are responsible for is based on the culpable breach of a major contractual duty; in this case liability for losses is limited to typical, predictable, damage.
- (9) Furthermore, if a delivery is delayed, we accept liability for each completed week in arrears in the form of blanket compensation for the delay amounting to 0.5% of the value of the delivery value, but no more than 5% of the delivery value.
- (10) Further statutory entitlements on the part of the customer are without prejudice.
- (11) We are entitled to make partial deliveries of a reasonable extent.

#### **Clause 4. Entry certificate**

As regards shipments to another EU member state other than Germany, customers must submit entry certificates compliant with article 17 a of the German VAT Implementation Ordinance [*Umsatzsteuer-Durchführungsverordnung – UstDV*] in which they confirm that the item or items shipped have reached the rest of European Union territory. Unless specified otherwise by us, customers must use a template provided by us to submit the entry certificate. The entry certificate must be signed, or sent electronically.

#### **Clause 5. Samples**

Each system/machine is tested thoroughly. The original material required for adjustment and testing purposes, must, at our request, be given/sent to us free of charge. We accept no liability for returning/sending back any such material, or any damage to or deterioration in the value of such material.

#### **Clause 6. Using software**

If software is part of the delivery package, customers will be granted a non-exclusive right to use the software and the associated documentation supplied. Such software will be provided for the purpose of the contract stated. The use of the software on more than one system is prohibited. Customers may only duplicate, revise, translate or change the software from the object code to the source code within the statutory boundaries permitted (articles 49 a cf. UrhG – German Copyright Act). Customers undertake not, or only with our prior explicit consent, to remove any information entered by the manufacturer – in particular copyright information. We or the software supplier retain all other rights to the software and documentation, including copies. Issuing sublicenses is not permitted.

#### **Clause 7. Retention of title**

- (1) Until customers have paid in full all receivables – regardless of the type or for what legal reason – which have arisen or will arise as a result of the business relationship, we reserve title to the products and services supplied. Should customers' conduct be in breach of contract, in particular due to defaults on payment, we are entitled to exercise our legal rights and withdraw the products. Removing the products does not constitute withdrawal from the contract on our part, unless we declare so explicitly in writing. After removing the products, such products can be made use of and the proceeds offset against the receivables owing by customers. Seizure of the products by us constitutes our withdrawal from the contract.
- (2) Any processing or transformation of the object of the contract by customers is always executed on our behalf. Should the products subject to retention of title be processed with other objects not belonging to us, we will acquire co-ownership of the new items proportionately to the value of the products supplied by us and the other objects processed at the time. Customers must keep the new item in their safekeeping free of charge. Customers already surrender ownership or co-ownership rights to us with regard to the object processed. The same applies should products be intermingled so that customers assign co-ownership to us proportionately as long as the products have been intermingled in such a way that the customer is deemed to own the majority thereof.
- (3) Customers may process and sell the products subject to title in the course of ordinary business operations along as they are not in default of payment. Extraordinary actions as seizures, chattel mortgages and any other assignment are prohibited.

- (4) Should seizures or other interventions by third parties occur, customers must inform us immediately in writing. Should action be pursued as specified in article 771 ZPO [*German Code of Civil Procedure*] customers must reimburse us for the costs in and out of court, insofar as such costs are not reimbursed by third parties.
- (5) By way of security, customers will assign at this juncture already to us any receivables, as regards the products subject to title, incurring due to the sale of such products or due to another legal reason (insurance/prohibited act). Customers are hereby given authorisation, until such authorisation is revoked, to collect any payments assigned to us on our behalf. Our entitlement to collect the payment ourselves is without prejudice. Direct debit authorisations are only revoked if customers are in default of payment, insolvency has been filed for, or payments have been halted. On request customers must inform their parties to the contract of such assignments in writing and must give us all information, present and hand over documents, as well as bills of exchange. Customers must also grant us access to the products subject to title still in their possession and send us an exact list of the products and must withdraw and surrender the products.
- (6) Customers must also assign the receivables to us, used to secure payments owed to us by them, which have arisen vis à vis third parties due to the association of the products delivered with plots of land.
- (7) Should the value of the securities retained exceed the debt to be secured by more than 10%, we will at the request of customers approve securities according to our discretion. Customers bear the burden of proof that the securities retained exceed 10%; the choice of the securities to be released is at our discretion.
- (8) During the period of retention of title, customers must keep the object of the delivery in proper condition and have all required or scheduled maintenance and repair work carried out immediately. Customers must insure the items purchased adequately at their own cost against fire, water and theft at replacement cost value.

#### **Clause 8. Payments, damages**

- (1) The price quoted is binding. Prices exclude VAT and apply ex works without packaging. If between conclusion and fulfilment of the contract taxes, customs duties, freight, fees and expenses are increased, newly introduced, or reduced or abolished, we are entitled to increase or decrease the purchasing price accordingly. The prices apply from the day the contract is concluded for one month, unless a fixed price has been agreed. If a lead time of more than four months or a continuous obligation of more than four months are agreed, we are entitled to pass on to customers any increases in costs incurred in the meantime for procurement/shipping, including any price rises incurred due to changes in law (i.e. increase in VAT), accordingly.
- (2) We are entitled to demand an appropriate down payment or advance payment, insofar as after issuing the order significant deterioration in the financial circumstances of the party placing the order occurs, or such deterioration does not become known to us until after the order has been issued. Should we only become aware after issuance of the order that the party placing the order is insolvent, we are entitled to withdraw from the contract if payment to us appears at risk.
- (3) The terms and conditions of payment are specified in the quote. Should any other agreement be lacking, customers must meet payments within 14 days after the date of the invoice. Unless specified elsewhere, the price agreed is to be paid in the following instalments: 30% after receipt of the order confirmation, 60% when the system/machinery is delivered to the customer, 10% after commissioning and acceptance by customers. Such conditions apply accordingly to any reasonable individual partial deliveries, in other words 60% of the value of the partial deliv-

ery when the system/machinery is delivered, 10% of the value of the partial delivery after commissioning and acceptance of the system/machinery. Any deductions made for discounts require special written agreement.

- (4) Customers have a right to offset payments only if their counterclaims have been established by due legal process, or have been recognised by us, or are not in dispute. Customers may only exercise a right of retention, if their counterclaim applies to the same contractual relationship.
- (5) Should customers be in default of payment, we are entitled to stop any further deliveries to the customers, even if relevant supply contracts have already been concluded.
- (6) If acceptance, payments or the provision of an agreed security are still outstanding by the party placing the order, we are, after granting an appropriate second deadline, entitled to demand damages due to non-fulfilment and/or withdraw from the contract. Without prejudice to any loss which is actually higher, we are entitled to claim for 20% of the sales price without any further proof. The partner to the contract is however explicitly permitted to prove that a loss has not been incurred at all, or is much lower than the flat-rate charged.

### **Clause 9. Liability for defects**

- (1) Claims by customers for defects assume that they have complied properly with their due duties of inspection and obligations to make complaints in line with Article 377 of the HGB [*German Commercial Register*].
- (2) Should there be defects in the objects purchased, customers are entitled in terms of supplementary performance to choose elimination of the defect, or delivery of a new product with no defect. Should the defect be eliminated, or a new product be delivered instead, we are obliged to meet all the costs required for supplementary performance, in particular transportation, infrastructure, labour and material costs, insofar as such costs do not increase because the product purchased is brought to another place other than the place of performance.
- (3) We are liable in line with legal regulations, if customers claim for damages which occur based on wilful intent or gross negligence. In so far as we are not to blame for wilful breach of contract, damages are restricted to the predictable loss that typically occurs.
- (4) We also accept liability according to statutory regulations, as long as the delay in delivery that we are responsible for is based on the culpable breach of a major contractual duty; in this case damages are also limited to predictable, typical losses. A major contractual duty occurs if the breach concerns a duty the fulfilment of which customers have placed their trust in and were entitled to rely on.
- (5) Furthermore, should customers, due to a negligent breach of duty, be entitled to reimbursement of the loss instead of the product, our liability is limited to compensation for the predictable loss that typically occurs.
- (6) Liability due to culpable loss of life, injury to the body or health remains without prejudice; such provision also applies to mandatory liability pursuant to the German Act on Product Liability.
- (7) Unless governed by any other provisions above, liability is ruled out.
- (8) The statute of limitations for claims for defects is 12 months as of the passing of risk. Such restriction does not apply if the item purchased is used for a building and has caused the defect. The statute of limitations will be without prejudice in the case of recourse due to late delivery of goods pursuant to articles 478, 479 BGB [*German Civil Code*].

### **Clause 10. Joint liability**

- (1) Any further liability for damages other than that specified in clause 6 is ruled out. Such provision applies in particular to claims for damages arising from breaches of duty when concluding the contract, due to other breaches of duty, or due to tortious claims for compensation for damage to property as specified in article 823 BGB. Such provision also applies if, in lieu of a claim for reimbursement of the loss, instead of the product the customer demands reimbursement for needless expenses.
- (2) Insofar as liability for damages on our part has been ruled out or limited, this also applies to personal liability for damages on the part of our employees, representatives or agents.

### **Clause 11. Assembly**

- (1) If we have agreed to assemble the object of the contract, the customer must provide or create appropriate conditions and in particular:
  - a) Assembly rooms which have adequate light, ventilation and air conditioning (temperature range 18 - 25°C).
  - b) Sufficient water, electricity and compressed air, as well as enough supply points.
- (2) Should, when the object of the contract is delivered, customers not provide any appropriate assembly conditions, we are entitled to refuse to carry out the assembly until appropriate conditions have been created and without any impact on the entitlement to payment.
- (3) If customers do not succeed, within a second deadline set by us, to create appropriate conditions for assembly, we are entitled to withdraw from the contract and demand compensation for the loss we have incurred.
- (4) Should assembly not be included in the price agreed and the assembly costs are not otherwise governed by the contract, customers will meet the following assembly costs:
  - a) The time taken by our employees as follows:
    - The time worked, charged by the hour, including overtime, payment for Sunday working and working on public holidays, as well as at night;
    - The times taken for travelling to and from the site, including times for preparing the inbound and outbound journey;
    - Times for travelling for the inbound and outbound journey from the place where the accommodation is situated to the assembly site, should there be no appropriate accommodation available within travelling time of 30 minutes to the assembly site;
    - Waiting times and downtime which are caused by the customer.

In these cases the time taken is invoiced based on our current fitting-hour rates.
  - b) The transport costs of the assembly material and the tools required, as well as our employees' personal luggage;
  - c) The per diem rate for each day our employees are absent;
  - d) The costs for appropriate accommodation upon production of receipts;
  - e) The expenditure for providing special assembly tools, as well as any rental costs for heavy-duty vehicles.

### **Clause 12. Purchasing conditions**

- (1) The supplier must accept our order within a deadline of 2 weeks. The provisions of the United Nations Convention on Contracts apply.

- (2) We retain ownership rights or copyrights to pictures, drawings, calculations and other documents; access must not be provided thereto to third parties without our explicit written consent. Such items must be used exclusively for production purposes as specified in our order; once the order has been completed they must be returned to us automatically. Such items must not be disclosed to third parties.
- (3) The price specified in the order is binding. If no other written agreement has been reached, the price includes delivery carriage free with packaging. Any return of the packaging requires a special agreement. Statutory VAT applicable at the time is included in the price, insofar as not otherwise explicitly agreed or
- (4) If not otherwise agreed, we will pay the purchasing price within 14 days from delivery and receipt of the invoice with a 3% discount for early payment, or within 30 days net after receipt of invoice.
- (5) The lead time stated in the order is binding.
- (6) Unless otherwise agreed, the delivery must be made carriage free.
- (7) We are obliged to check the product within an appropriate period for any departures in quality or quantity; complaint is in good time if received by the supplier within a period of five working days, calculated from the moment the product is received, or in the case of concealed defects from the moment such defects are discovered.
- (8) We are entitled to the statutory claims for defects in full; we are entitled in every case to demand at our discretion that the supplier eradicates the defects, or supplies us with a new product. We expressly reserve the right to claim for damages, in particular damages instead of performance.
- (9) We are entitled, at the cost of the supplier, to eliminate the defects ourselves, if the supplier is in default.
- (10) The statute of limitations is 36 months, calculated from passing of risk, insofar as the mandatory regulations of articles 478, 479 BGB do not apply.
- (11) If suppliers are responsible for damage to the product, they must exempt us at the first request from any claims for damages by third parties if the cause of the damage lies in the suppliers' sphere of control and organisation and suppliers are liable as regards their relationship with third parties.
- (12) Within the scope of liability for losses pursuant to paragraph 11, suppliers are also obliged, to reimburse any expenses pursuant to articles 683, 670 BGB, as well as according to articles 830, 840, 426 BGB which are incurred due to or in conjunction with a product recall carried out by us. Other statutory entitlements remain without prejudice.
- (13) Suppliers must maintain product liability insurance with blanket cover of ten million euros for each case of personal injury and damage to property; any further claims we are entitled to make for damages are without prejudice.
- (14) Suppliers guarantee that in conjunction with their delivery no rights or copyrights of third parties are infringed within Germany. If we are pursued by a third party for infringement of copyright, suppliers must exempt us from such claims the first time they have been required to do so in writing. Such duty on the part of suppliers applies to all expenses required as a result of or in conjunction with the claim by the third party.
- (15) If we provide parts to suppliers, we retain ownership thereto. Suppliers process or remodel the parts on our behalf. Should the products subject to retention of title be processed with other ob-



jects not belonging to us, we will acquire co-ownership of the new item proportionately to the value of our product (purchasing price plus VAT) to the other objects processed at such time. The same applies should products be intermingled so that customers assign co-ownership to us proportionately as long as the products have been intermingled in such a way that the customer is deemed to own the majority thereof. Suppliers will keep the property or sole property in their safekeeping free of charge.

- (16) We retain ownership to tools provided; suppliers must use the tools exclusively for manufacturing the products ordered by us. Suppliers must adequately insure at their own cost the tools belonging to us against fire, water and theft at replacement cost value. At the same time, suppliers assign all entitlements to damages ensuing from this insurance to us; we accept such assignment herewith.
- (17) Should the charges we are entitled to in paragraphs 15 and 16 exceed the purchasing price of all our products subjected to retention of title and not yet paid for by more than 10%, we are at the request of suppliers obliged to release such charges and at our discretion decide which product or products such charges apply to.