

General Terms of Sale, Delivery and Payment

§ 1 Validity of the terms

1. Our offers, deliveries and services are provided exclusively on the basis of these Terms. They apply also for all future business relations, even if they are not expressly agreed anew.
2. Deviations from these Terms are only effective if we have confirmed them in writing.

§ 2 Offer and contract conclusion

1. Our offers are subject to change and non-binding. In order to be legally effective, declarations of acceptance require our written confirmation either in digital or in text form. The same applies to supplements, amendments or auxiliary agreements. The ordering party must immediately check the order confirmation/declaration of acceptance in terms of quantity and technical features and give notice of any incorrectness. If no immediate notice of incorrectness is provided, the goods will be produced according to the order confirmation. We will only make retrospective changes after our express confirmation in writing. Samples represent only approximate demonstration pieces for quality, dimensions and colour.
2. Our sales staff are not authorised to make verbal auxiliary agreements or give assurances which exceed the content of the written contract.
3. We reserve the right to make design changes, however these may not be to the disadvantage of the purchaser. The purchaser must implement the dimensions according to our instructions. In case of faults, the respective party causing the fault is liable. Drawings or other documents always remain our property. Reproductions, copies, inspection by and transfer to third parties, in particular to competitors, are not permitted and will be prosecuted according to the law against unfair competition. Furthermore, breaches of this term result in liability to compensate for damages incurred. All images and dimensional drawings are non-binding. The local building and safety regulations must always be followed.

§ 3 Prices

Prices are ex works or ex warehouse and without packaging, unless otherwise agreed. The prices stated in the order confirmation plus statutory VAT apply.

§ 4 Payments

- Our invoices are payable without deductions within the period stated on the invoice. In the event of failure to pay within this period, interest at 5% above the base rate shall be charged.
2. Until payment of invoiced amounts due, we are not obliged to any further performance. Should the customer fail to pay within the payment period or should the customer's assets become endangered, this shall immediately render payment of all our invoices from business relations with the customer due. This applies even if an extension has been granted or if bills of exchange have been accepted.
 3. Credit approvals and payment periods can be revoked at any time. Payments must be made to the banks and/or accounts stated on our forms.
 4. Payments may only be made to our employees if they present a valid document of authority to collect.
 5. Any deviating payment periods must always be agreed upon contract conclusion. Bills of exchange can be accepted in payment if this has been agreed upon contract conclusion.
 6. Bills of exchange or cheques given in payment are only accepted on account of performance.
 7. Claims cannot be offset against counterclaims of the ordering party – unless this is undisputed or legally established. The same applies to any retention right that may be exercised.

§ 5 Orders

- If after contract conclusion it should transpire that the financial circumstances of the purchaser render the purchaser not creditworthy, we shall be entitled at our discretion to claim advance payments or securities for claims due or not yet due for all existing contracts and to refuse fulfilment until advance payment or securities have been received. If this claim is not met within the required period, we shall at our discretion withdraw from the contract or demand damages for non-performance.
2. Orders can only be cancelled with our agreement. In such a case, we are entitled to compensation for loss of earnings – without the need to provide evidence – to the amount of 20% of the agreed purchase price in each case.
 3. In individual cases we are prepared to take back sold and transferred goods, however only if these are stock goods. All so-called special goods in the form of made-to-order items are excluded from this. If we take back already sold and transferred goods, we shall refund the purchaser the purchase price less 10% re-warehousing costs.

§ 6 Transfer of risk

The risk is transferred to the purchaser as soon as the shipment is transferred to the forwarding company or has left our warehouse for the purpose of shipping. If shipping becomes impossible without any fault on our part, the risk is transferred to the purchaser upon notification of readiness for shipping. This also applies if we have agreed to pay the shipping or cartage costs.

§ 7 Packaging

If the goods are shipped on pallets, these shall be invoiced at the price usual in the trade. Euro pallets and box pallets are the property of the delivering company or the forwarder.

§ 8 Liability for defects and statute of limitations

- The legal regulations apply, with the following conditions:
- The purchaser is obliged to notify us of defects in writing immediately, at the latest within one week of receipt of the delivered object. The purchaser is obliged to notify us in writing immediately after discovery of defects which could not have been discovered within this period even with careful inspection.
2. The warranty period for commercial use is 1 year, otherwise the statutory regulation applies.
 3. For defects of delivered goods, including the absence of characteristics which were expressly warranted, we are liable under exclusion of further claims as follows: a) At our discretion, we shall repair or re-deliver free of charge all items which have defects which render them unusable or significantly impair their usability and it is proven that the defects are a result of a circumstance which occurred before the transfer of risk, in particular due to defects in design, poor materials or defects in workmanship. However, the purchaser shall give us the opportunity to inspect the alleged defects on site, or to have agents engaged by us to inspect them. Replaced items become our property. In the case of third-party products, the ordering party can either demand the assignment of our liability claims against our supplier or oblige us to enforce these liability claims against our supplier on its behalf. b) If the purchaser provides us with materials, the warranty exclusively applies to the function of the finished product. c) After advance agreement, the ordering party shall grant us the necessary time and opportunity to effect all repairs and replacements that appear necessary, otherwise we shall be released from liability for the defect. d) Insofar as the complaint is proven to be justified, we shall only bear the portion of the direct costs for repair or replacement delivery which consist of the costs for the replacement part including shipping as well as the dismantling and assembly costs e) We are entitled to refuse to remedy defects as long as the ordering party is not prepared to fulfil its contractual obligations successively in alignment with the remedy of the defect.

- f) We accept no liability for damages due to the following causes: unsuitable or improper use, incorrect assembly by the purchaser or incorrect or negligent handling.
 - g) e accept no liability for the consequences of any incorrect alterations or repair work carried out by the purchaser or a third party without our approval.
- The warranty for the electric motors supplied within the scope of supply only applies if a motor protection switch is installed and the motor has been connected and adjusted by a qualified electrician.

§ 9 Period of delivery and performance

1. Delivery periods or deadlines, which can be agreed bindingly or non-bindingly, require the written form.
2. We are not liable in the event of delays to bindingly agreed delivery and performance if they are due to force majeure and events which significantly obstruct performance or make performance impossible for us – including in particular strikes, lockouts, official directives, traffic problems such as traffic jams, road blocks etc. – even if such events are suffered by our suppliers or subcontractors. Such events entitle us to postpone the delivery or performance by the duration of the obstruction plus a reasonable period, or to partly or fully withdraw from the contract with regard to the part not performed.
3. If the obstruction persists for longer than 3 months, the purchaser is entitled after setting a reasonable period of grace to withdraw from the contract with regard to the part not performed. If the period is extended or if we are released from our obligation according to § 9 No. 1, the purchaser can not derive any compensation claims from this circumstance. We can only invoke the aforementioned circumstances if we have notified the purchaser of them without delay.
4. We are entitled to provide partial deliveries and partial performance at any time.
5. In each case, adherence to delivery deadlines or dates is contingent on the final clarification of all technical details and, if applicable, the provision in good time of the specifications to be provided by the customer and/or the documents, approvals, releases etc. to be provided and the creation of the necessary and other conditions as well as, if applicable, the receipt of the contractually agreed payments.
6. Delivery free house refers to delivery without unloading. Delivery is contingent on a navigable access road. If unloading by the supplier has been agreed, unloading shall take place from the vehicle.

§ 10 Retention of title

1. Until the fulfilment of all claims against the purchaser and its company (including all balance requests from current accounts and bills receivable) to which we are or will in future be entitled on whatever legal grounds, the purchaser shall provide the following securities. Upon the purchaser's request, we shall release the securities insofar as their value permanently exceeds the claims to be secured by more than 20%.
2. The goods remain our property. Any processing or conversion always takes place on our account as the manufacturer, however without any obligation on our part. Should our (co)ownership be dissolved by combination, it is already agreed now that the purchaser's (co)ownership of the combined object shall pass to us in proportion to our corresponding share of the value (invoice value). The purchaser shall keep the property (co)owned by us free of charge. Goods to which we hold (co)ownership rights are in the following referred to as reserved goods.
3. The purchaser is entitled to process and sell the reserved goods in the regular course of business as long as it is not in default of payment. Pledging or transfer of ownership by way of security are not permitted. The purchaser already assigns to us claims arising from resale or on any other legal basis (insurance, unlawful act) with regard to the reserved goods (including any balance claims from current account) by way of security. We confer on the purchaser the revocable authority to collect, on its behalf, the claims assigned to us for our account. This collection authority can only be revoked if the purchaser does not correctly meet its payment obligations.
4. In the event of access by third parties to the reserved goods, the purchaser shall refer to our ownership of the goods and notify us without delay. The purchaser shall bear the costs and damages.
5. Should the purchaser act in contravention of the contract – in particular in the form of default of payment – we are entitled to take back the reserved goods and, if applicable, to demand that the purchaser surrender claims against third parties. The repossession of the reserved goods or their seizure by us, insofar as the German Instalment Act (Abzahlungsgesetz) does not apply, does not constitute withdrawal from the contract.

§ 11 Limitations of liability

- If statutory provisions determine that we are liable for damages in accordance with these Terms, we bear liability with the following limitations:
- a) Liability in the event of physical injury, fatality or impairment of health
 - Liability in the event of physical injury, fatality or impairment of health applies only in the case of violation of essential contractual obligations and is limited to the typical foreseeable damage at the time of contract conclusion.
 - b) Liability for other damages
- We are not liable for damages caused by minor negligence due to a defect of the purchased goods.

§ 12 Assignment

The ordering party is not permitted to assign claims against us resulting from the business relationship.

§ 13 Applicable law, place of jurisdiction, partial invalidity

1. The law of the Federal Republic of Germany applies for these General Terms and all legal relations between us and our contracting partners.
2. Provided that the purchaser is a registered businessman as defined by the Commercial Code, a legal entity under public law or a special public fund, the sole place of jurisdiction for all direct or indirect disputes arising from the contractual relationship is the District Court of Bad Saulgau.
3. Should any term in these General Terms or any term in any other agreement be or become ineffective, this shall not affect the effectiveness of any other terms or agreements.

HORN GmbH & Co. KG – Bad Saulgau