



General Terms and Conditions of Sale, Delivery and Payment of the Company of Hermann Bock GmbH, Verl

The subsequent conditions set out under §§ 1 - 11 apply to all trading transactions with our Customers being entrepreneurs in the sense of § 14 of the German Civil Code (Bürgerliches Gesetzbuch- BGB), unless there has been a deviant written agreement with the respective Customer in the individual case.

§ 1 Preface – Scope of Application

1. Our deliveries, performances and offers are exclusively carried out on the basis of these General Terms and Conditions (GTC).
2. Therefore, these GTC also apply to all future business relations, even if they have not again been expressly agreed upon. These conditions are considered as being accepted the latest with the receipt of the goods or performances. Hereby we object to the Customer's confirmations referring to his General Terms and Conditions. This also applies in the case that the Customer requires a special form with regard to the objection.
3. Deviations from these GTC are only valid if we have confirmed them in writing.
4. In the case of potential modifications to or the invalidity of single conditions, the remaining conditions do not become invalid. Already existing gaps in the contract or gaps in the contract arising due to the invalidity of single or more conditions will be closed by means of the valid statutory regulations.

§ 2 Conclusion of Contract

1. Our offers are always without engagement. A delivery contract will only be concluded if we have expressly accepted the offer in writing or if we have carried out the delivery without a separate confirmation. Only our confirmation is decisive with regard to all contract conclusions and agreements. All oral or earlier written agreements that have not been included in our confirmation are not binding for us. Later agreements require our written confirmation in order to be valid.
2. Within the scope of what is just and reasonable we reserve ourselves the right to technical changes or changes with regard to the shape, the colour and/ or weight of the products listed in our offer as well as to adapt our products to an altered standardization.
3. By his ordering of the goods the Customer bindingly declares his wish to purchase the ordered goods (contractual offer).
4. In the case of electronic legal relations the confirmation of the receipt of the order does not constitute a binding declaration of the acceptance of the contractual offer, unless the acceptance has been expressly declared in the confirmation of the receipt.
5. The products and performances mentioned on the internet do not constitute any offer which is binding for us; they are rather an invitation for the Customer to submit an offer to us.
6. We reserve ourselves the proprietary rights as well as copy rights with regard to all documents, estimates, drawings, images, shapes and samples. The Customer is not allowed to their handing over to a third party without our prior express consent.



§ 3 Packaging, Delivery, Part Delivery

1. Transport and all other packaging according to the packaging regulations will not be taken back with the exception of pallets. The Customer is obliged to arrange for a disposal of the packaging at his own expense.
2. If an order consists of several part deliveries, each delivery is considered as an individual transaction. To a reasonable extent we are allowed part deliveries without a prior arrangement.
3. Unless agreed otherwise, the purchaser has to bear the costs of packaging and delivery.

§ 4 Terms of Payment

1. In the absence of other agreements our invoices are due for payment within 30 days after the date of the respective invoice. If the Customer does not pay, he will be in default after 14 days after the due date for payment without the necessity of any further declaration from our side.
A cash discount deduction is only allowed in the case of a special written agreement between us and the Customer.
2. Bills of exchange will only be accepted subject to the possibility of their discounting and in lieu of payment. The costs of discounting are for the Customer's account. In the case of a delayed payment default interest will be charged amounting to 8 per cent over the respectively valid base lending rate.
3. Despite the Customer's conflicting conditions, we are allowed to credit the Customer's payments at first against his earlier debts, potentially arising costs and interests as well as, at last, against the principal claim.
4. A payment is only considered as effected if we are able to dispose over the amount. In the case of a payment by means of securities, whose acceptance we reserve ourselves in the individual case, the payment is only considered as effected if the security is cashed. The related costs and expenses have to be borne by the Customer.
5. If, after the conclusion of the contract, we learn about facts, e.g. the Customer's defaulted payments with regard to earlier deliveries which – after the exercise of a dutiful commercial discretion – suggest that the claim for the purchase price is endangered by our Customer's lacking capacity, we are allowed to demand from the Customer, at his own choice, either a prepayment or respective securities by setting a time-limit of 14 days. In the case of the Customer's refusal we are allowed to rescind the contract whereupon the invoices for already effected part-deliveries become immediately payable.
6. In the case of defects the Customer does not have a right of retention, unless the delivery is obviously defective or the Customer obviously has a right to refuse the acceptance of the deliveries/ performances. In such a case the Customer is only allowed to exercise a right of retention in as far as the retained amount is in due proportion to the defects and the anticipated costs of the supplementary performance (especially the rectification of defects). The Customer is not allowed to assert claims and rights because of defects if he has failed to effect due payments and if the sum due (including possibly effected payments) stands in an appropriate proportion to the value of the - defective – delivery or performances.

For the rest and even if he asserts defects or counterclaims the Customer is only entitled to a set-off, right of lien or reduction of purchase-price if the counterclaims have been established as final and absolute or are undisputed.



§ 5 Delivery and Delayed Delivery

1. Dates or periods of delivery have to be agreed at least in a written form. Periods of delivery start to run from the date at which the delivery agreement is concluded. The delivery time only starts to run when all technical questions have been clarified and the Customer has correctly and duly fulfilled all his incumbent obligations, especially when he has procured the documents, permissions and clearance which he had to provide.
2. In the case of only approximately applying delivery periods, the Customer is allowed to set us an appropriate respite of three weeks after the expiry of the delivery period. We can only be held to be in default after the expiry of the respite.
3. If a fixed date of delivery has not been adhered to, the Customer is only allowed to claim for damages or to rescind the contract, if he has set an appropriate respite which elapsed without success. If, in such a case, the Customer claims for damages, we are absolutely liable for the reimbursement of a potential damage caused by a covering purchase. Further damages are only reimbursable to the amount of the order value. This restriction does not apply to fixed orders ("Fixgeschäft") which have to be explicitly labelled as such.
4. The aforementioned restriction does also not apply in cases where our representatives or vicarious agents have acted intentionally or grossly negligently. In the case of gross negligence our liability is however restricted to the foreseeable damage which is typical for this type of contract, provided none of the exceptional cases enumerated in No. 5 of this section applies. For the rest, in the case of delayed performance our liability for damages in addition to performance is limited to 5 per cent and for damages instead of performance to 50 per cent of the value of the delivery/ performance. Any further claims of the Customer are excluded – even after the expiry of a potential period for performance set for us. The aforementioned limitations do not apply in cases of liability because of a violation of life, body or health. The abovementioned regulations do not involve a reversal of the burden of proof to the Customer's disadvantage.
5. In the case of force majeure, business disruptions, delays in transport, measures in the context of labour disputes, especially strike and lockout as well as non- supply, incorrect or delayed deliveries of our suppliers, irrespective of the reason (reservation as to oneself obtaining delivery – "Selbstbelieferungsvorbehalt"), which we cannot be held responsible for, we are allowed to defer the delivery for the duration of the impediment and for an appropriate slow-down time thereafter. In the case that the impediment is likely to be permanent, we have got the right to completely or partially refuse the delivery of the goods. In such a case, the Customer is neither entitled to any claims for damages against us nor is he obliged to provide consideration.

§ 6 Prices

1. The prices are quoted in EURO. For the calculation of the prices the number of pieces counted in our company is decisive.
2. We calculate the prices which are in effect at the time of accepting the offer, provided that, in the case of a change in price, there are less than six weeks between the date of the change in price and the ascertained delivery week and less than four months between the conclusion of the contract and delivery. If this period is exceeded and if the market quotation for raw materials increases for more than 5 per cent after the conclusion of the contract, we reserve ourselves the right to submit a new offer to our Customer by prescinding from the original contract.



In such a case the Customer is obliged to respond to this offer without delay, the latest within three working days; otherwise his silence will be regarded as an acceptance of the new offer.

3. Any admitted discounts and freight compensations or any benefits of another kind fall away in the case of judicial or extrajudicial settlement proceedings, insolvency, delay of payment for more than two months and any judicial collection proceedings.

§ 7 Delivery, Passing of Risk, Costs of Freight

1. The risk of an accidental loss or impairment of the goods passes to the Customer – even if a carriage-free consignment has been agreed upon - with their handing over to the Customer or his appointee or with their handing over to the carrier or forwarder, the latest with the goods leaving the factory or the depository, even in the case of a transport with our vehicles or the ones of the supplier.
2. In the absence of special agreements, the transport is carried out to the sole discretion of the seller.
3. If freight compensations have been agreed upon, the costs of freight have to be paid by the Customer in advance and without any deduction, even in the case of an agreed carriage-free delivery. In these cases the Customer is not allowed to refuse neither the payment of the freight nor the acceptance of the delivery.
4. If the Customer refuses to accept the goods or if the delivery is delayed for other reasons that the Customer can be held responsible for, the risk passes with the beginning of the Customer's default of acceptance. We are entitled to calculate storage of 0,5 per cent of the invoice total, unless the Customer accounts for a lower damage. In addition to this, we are allowed to grant the Customer a respite of 14 days and to rescind the contract if the respite expired without any result or to claim damages instead of performance.

§ 8 Warranty

1. The acceptance of the solely takes place in our manufacturing plant. If the Purchaser dispenses with an acceptance in our factory, the goods are regarded as being accepted as soon as they leave the company.
2. Warranty claims are excluded in the case of only a minor deviance from the agreed quality or of only a minor impairment of the usability. In addition to this, the Customer can only rely on warranty claims if he has duly attended to his inspection and objection obligations according to § 377 of the German Commercial Code (Handelsgesetzbuch – HGB).
3. As far as the goods possess a defect that we can be held responsible for, we are obliged to a supplementary performance – to the exclusion of the Customer's rights to rescind the contract and to reduce the purchase price (reduction) – unless we are allowed to refuse such a supplementary performance on the basis of the respective statutory regulations. The Customer has to grant us an appropriate respite for the supplementary performance. Within the scope of the supplementary performance we are, in no case, obliged to a re-supply or a re-manufacture. In the case of a rectification of a defect we will bear the necessary expenditures, in as far as those are not increased by the fact that the object of the contract is situated at another place as the place of performance, unless its transfer took place in the course of its normal use. The application of § 478 I of the German Civil Code (entrepreneur's right of recourse) remains unaffected.



4. If the supplementary performance has failed, the Customer has got the choice to either claim a reduction of the purchase price (reduction) or to declare the rescission of the contract. The rectification of the defect is regarded as having failed with its second futile attempt unless further attempts to rectify the defect can be considered as being appropriate and reasonable for the Customer taking into consideration the subject matter of the contract.
5. The Customer has to notify us of any apparent defects without delay, the latest within fourteen working days after the receipt of the delivery item and has to describe the defect in detail. Defects which cannot be detected within this time period, despite a diligent examination, have to be communicated to us in writing immediately after their detection and have to be described in detail. Otherwise the assertion of the warranty claim is excluded. The timely posting is sufficient in order to comply with the time limit. The Customer has to bear the full burden of proving all requirements for the claim, especially the defect itself, the time of detecting the defect and the timeliness of the notice of defect.
6. If the Customer opts for a rescission of the contract because of a defect of title or a defect of quality after a failed supplementary performance, he will not have an additional right to claim for damages because of the defect.
7. If the Customer opts for a claim for damages after a failed supplementary performance, the goods will remain with the Customer, if this is reasonable for him. The claim for damages is limited to the difference between the purchase price and the actual value of the defective item. This does not apply if we have maliciously caused the breach of contract.
8. The limitation period with regard to claims and rights because of a defective delivery or defective performances rendered by us is one year – irrespective of their legal basis. However, this does not apply in the cases of § 479 I of the German Civil Code (entrepreneur's right of recourse) or § 634 a I S. 2 of the German Civil Code (work whose result consists of the rendering of planning and controlling services therefore). The claims and rights mentioned in the preceding Sentence 2 fall under a limitation period of three years.
9. The limitation periods according to No. 8 also apply to all claims for damages raised against us in the context of the respective defect – irrespective of their legal basis. In as far as claims for damages which are not in the context of the respective defect exist against us, the limitation period of No 8, Sentence 1 applies
10. The limitation periods mentioned in No. 8 and No. 9 apply according to the following conditions:
 - a) The limitation periods do generally not apply in the case of wilful intent or a malicious concealment of the defect or in as far as we have assumed a guarantee for the quality of the delivery item;
 - b) The limitation periods do not apply with regard to claims for damages in cases of a violation of life, body or health or freedom, with regard to claims according to the German Product Liability Act (Produkthaftungsgesetz), in the case of a grossly negligent breach of duty or in the case of a material breach of contract.
11. With regard to all claims the limitation period starts to run with the handing over of the goods, in the case of work performances with their acceptance (Abnahme).
12. Unless explicitly regulated otherwise, the statutory regulations with regard to the start of the limitation period, the suspension of statute of limitation and the restart of time periods remains unaffected.



13. The agreed quality of the goods is generally only determined by our product description as well as the one of the producer of the built-in electronic parts, especially the driving motors. Public comments, advertisements or promotions do not constitute a contractual description as to the quality of the goods.
14. Only our direct contractual partner is entitled to raise warranty claims against us. Those warranty claims are not assignable. The Customer's rights of recourse against us according to § 478 of the German Civil Code (entrepreneur's right of recourse) only exists in as far as the Customer has not reached an agreement with his purchasers going beyond the statutory claims for defect.
15. If the planning of the Customer contains specifications which we regard as critical or impractical from a manufacturing or engineering point of view, we will notify the Customer thereof by submitting a counterproposal. In such a case the Customer is obliged to examine the modification proposal with regard to its usability for the intended application at his own responsibility. We do not assume any warranties or liabilities with regard to the usability of the modification proposal for the Customer's intended application.
16. We do not give our Customer any guarantees in the legal sense. Manufacturers' guarantees remain unaffected by this.

§ 9 Limitations of Liability

1. Pursuant to the statutory regulations, we are absolutely liable for violations of life, body and health that are due to a negligent or intentional breach of duty by us, by our legal agents or by our vicarious agents as well as for damages which are covered by the liability according to the Product Liability Act. We are liable according to the statutory regulations for damages that are not covered by Sentence 1 and that are due to an intentional or grossly negligent breach of contract or malice by us, by our legal agents or by our vicarious agents. However, in the latter case the liability for damages is limited to the foreseeable and typical damage unless our statutory agents or our vicarious agents have acted intentionally. For the rest our liability for damages and for a reimbursement of futile expenditures because of impossibility is limited to 10 per cent of the value of the delivery/ performance. To the extent that we have granted a guarantee as to the quality or the durability of the goods or part of the goods, we will also be liable within the scope of this guarantee. However, we will only be liable for damages that albeit based on the absence of the guaranteed quality or durability did not occur directly at the goods, if the guarantee as to quality or durability evidently covers the risk of such damage.
2. We are also liable for damages which were caused by simple negligence in as far as such negligence concerns the breach of such contractual obligations whose adherence to is of essential importance for the purpose of the contract (cardinal obligations). However, we will only be liable in as far as these damages are typically associated with the contract and in as far as they are foreseeable.
3. Any further liability is excluded irrespective of the legal nature of the asserted claim; this also applies especially to tortious claims as well as to claims based on damages to the Customer's legally protected goods that were caused by the delivery item, e.g. damages to other objects; unaffected hereby is our liability according to § 5 No. 3 of this contract. In as far as our liability is excluded or limited this also applies to the personal liability of our personnel, employees, staff, legal agents and vicarious agents.
4. The abovementioned regulations do not imply a reversal of the burden of proof to the Customer's disadvantage.



§ 10 Retention of Title

1. The delivered goods remain our property until the fulfilment of all our existing or future claims against the Customer, including all claims for the balance arising in the context of an open account (goods subject to a retention of title). In the case of the of the Customer acting contrary to contract, we are allowed to retract the goods delivered under a retention of title after having set an appropriate respite. If we retract the goods, this will constitute a rescission of the contract. If we seize the goods delivered under a retention of title this will also constitute a rescission of the contract. After such a retraction we are allowed to dispose of the goods delivered under a retention of title. After the deduction of an appropriate sum for the costs of the sale, the proceed of the sale will be offset against the sums which the Customer owes us.
2. The Customer is only allowed to a resale within the ordinary course of business and only under the condition that the payment of the consideration for the delivery item is effected to us. The Customer also has to agree with his consumer that the latter will only acquire property with his payment. Pledging of the goods or transfers by way of security are not allowed. In the case of the sale of the goods delivered under a retention of title, the Customer hereby assigns to us by way of security his claim against the consumer arising from the sale, including all ancillary rights, without the necessity of any further special declarations. This assignment includes potential claims for the balance. However, the assignment is only effective to the amount of the sum which corresponds to our invoiced price of the delivery item. That part of the claim that has been assigned to us has priority with regard to its satisfaction. We hereby accept the assignment. We authorize the Customer precariously to collect the claims assigned to us for his own account and in his own name. This collection authorization can be revoked at any time, if the Customer does not duly meet his payment obligations. The Customer is also not allowed to assign this claim for the purpose of a collection of claims by means of factoring, unless, at the same time, the factor's obligation is established to effect the consideration to the amount of the claim so long directly to us as we still have existing claims against the Customer.
3. The Customer has to treat the goods delivered under a retention of title with care and has to insure them at his own expense and adequately against damages by fire, water and theft at the replacement value. The Customer has to carry out the necessary maintenance and inspection works at his own expense and in due time.
4. In the case of a payment of the purchase price by way of cheque or bill of exchange our retention of title will not already cease to exist at the time that the Customer's cheque or bill of exchange is honoured but only at the time that the last refinancing paper is cashed.
5. In the case of third parties taking hold of the goods delivered under a retention of title, especially seizures, the Customer shall point to our property and shall notify us immediately, so that we can enforce our proprietary rights. In as far as the third party is not in a position to refund to us the judicial or extrajudicial costs arising in this context, the Customer will be liable therefore. In the case of seizures, confiscations or other dispositions or third party interventions, the Customer has to notify us without delay.
6. In the case of the Customer acting contrary to contract, especially delay of payment or breach of the obligations mentioned in No. 1 and 2 of this Section, we are allowed to rescind the contract and to claim possession of the goods irrespective of further statutory rights because of the Customer's breach of duty.
7. If the Customer processes or converts goods delivered by us or if he joins or mixes them with other goods not belonging to us, this processing or converting is effected for us as the producer and free of any charge. According to this we will acquire property or common ownership at the ratio of the value of our products to the total value of the item created by the converting. The Customer will store the newly created item for us free of any charge. If the Customer joins or mixes our goods with the goods of other suppliers we



will become pro-rata joint owners of the new item. In as far as we become owners or joint owners of the new item created by the processing or converting or by the intermixture, the regulations applying to goods delivered under a retention of title will apply accordingly to this new item and to our co-ownership share.

8. For the time being, all of the abovementioned assignments shall not be communicated to the third-party consumer. Until cancelled the Customer is allowed to enforce the claims assigned in the context of the agreed retention of title. The Customer will immediately forward to us payments effected with regard to the assigned claims in the amount of the secured claim. In case of good cause, especially delay of payment, cessation of payment, opening of insolvency proceedings, protest of a bill or well-founded indication of either the Customer's over-indebtedness or his threatening inability to pay, we are allowed to revoke the Customer's collection authorisation. After a prior notice and subject to the observance of an appropriate respite (10 working days) we are allowed to disclose the assignment by way of security, to dispose of the assigned claims as well as to demand from the Customer the disclosure of the assignment by way of security towards his contracting partner.
9. The retention of title also persists if single or all of our claims are taken up into a running account and the balance has been struck and accepted. The Customer is obliged to immediately notify us of any seizure of the goods or the assigned claim by a third party or of any other claims asserted by third parties with regard to the goods or the assigned claim. In the case of a seizure we have to be provided with a copy of the bailiff's return and, at the same time, the bailiff has to be informed that the goods as well as the claims are subject to our prolonged and extended reservation of title.
10. If the realisable value of all securities that we are entitled to exceeds the amount of all secured claims for more than 10 per cent, we will release a corresponding part of our security interests at our Customer's request. It is assumed that the conditions mentioned in the previous sentence are met if the estimated value of the goods and claims assigned by way of security reaches or exceeds 150 percent of the value of the secured claims.

§ 11 Final Provisions

1. The relation between us and the Customer is exclusively governed by the applicable German law. The application of the UN- Convention on Contracts for the International Sale of Goods (Vienna Convention) is excluded.
2. Place of fulfilment for all performances is Verl. Exclusive place of jurisdiction for all disputes arising from this contract is our place of business. This jurisdiction clause only applies if our Customer is a merchant, a body corporate organised under public law or a public special fund.