

## The Haberkorn Group's Terms of Payment and Delivery

The following terms of payment and delivery are to apply exclusively to deliveries we undertake and to other services provided to companies (hereinafter also referred to as „customer“) as well as to payments made to us. Should it be shown that provisions have been omitted Austrian law is to apply. Purchase conditions issued by customers which differ from ours only become valid when we expressly recognize them in writing, the customer accepts our terms of payment and delivery to the exclusion of his own terms of purchase.

### 1. OFFERS

- Our offers are made without obligation. Documents which form part of an offer such as images, drawings and details of weight, dimensions, performance and consumption are only approximations and are subject to change in line with the conditions of the construction.
- We retain property rights and the copyright to all cost estimates, drawings and all other documents; They may not be duplicated, made available to third parties or used for their purposes. These documents can be reclaimed by us at any time and must be returned to us immediately if the order is placed elsewhere.

### 2. ACCEPTING ORDERS

- Orders are deemed accepted when we confirm such in writing or the delivery item has been dispatched by us. Promises or collateral agreements made by our staff as well as all other oral, telephone or telecommunication-based supplements and amendments only become valid when such have been confirmed by us in writing.
- Consignments on approval and sample offers sent as part of an offer are deemed to be accepted if they are not returned with eight days.

### 3. TERMS OF PRICE AND PAYMENT – OFFSETTING

- Prices are ex-works (i.e. our delivery premises), including loading in the works (premises), however excluding VAT and packaging. Packaging will not be taken back.
- Increases in materials and/or wages incurred in the time between order and delivery are to be borne by the customer.
- Payments are to be made in cash with deductions, franked and within 30 of the date of the invoice. We reserve the right to determine which customer's demands or partial demands can be offset. We have the right to transmit the invoice by electronic means.
- International bank transfers: costs of such are to be borne by the transferer (customer).
- Orders under a net value of € 150 (excluding VAT) can be delivered by being picked up against cash payment, or by COD with a small invoicing charge, unfranked from the place of storage – whatever we decide.
- If periods of payment are exceeded, we shall charge interest of 8% above the basic interest rate, plus costs of collection, at least, however, 10% of the total amount due. This does not exclude further consequences of delayed payment. In the event of default, even in the case of default in payment through no fault of the purchaser, the purchaser undertakes to reimburse us for the reminder and collection expenses incurred by us, insofar as they are necessary for appropriate legal prosecution and are reasonable in relation to the claim.
- Retaining payment or offsetting invoices against a customer's disputed counter-claims is not permitted.
- We are authorised to offset claims entitled to us or the Haberkorn Group against the buyer against claims which the buyer is entitled to against us or the Haberkorn Group. Members of the Haberkorn Group include Haberkorn GmbH, Ernst Glogar GmbH.
- For works' performance (assembly, repairs, maintenance and similar work) we shall invoice applicable hourly rates and material prices upon completion of the works' services. For work undertaken as overtime, on night-shifts, or on Sundays and public holidays, we shall also invoice surcharges applied to us. Travel expenses and daily and overnight allowances shall be invoiced separately.

### 4. PERFORMANCE OF CONTRACT, DISPATCH AND DELAYS

- The delivery period begins when the confirmation of the order has been issued; assembly or repair times begin when the device has been handed over; under no circumstances is a period to begin before documents which the customer is to provide have been supplied, or the appropriate approval or release has been given, or before an initial payment has been made by the customer. The delivery period is held to have been fulfilled when the object has left the works before the delivery period has expired, or when we have informed the customer before the period has expired that the object is ready to be returned.
- There periods are to be extended correspondingly for unforeseen hindrances of whatever nature which are beyond our sphere of influence such as stoppages, industrial action, delays in the supply of important raw materials or components and the like, in as much as these hindrances contribute significantly to deadlines being exceeded. Such hindrances also annul the consequences of any delays apportioned to us during their duration. The beginning and end of such hindrances are to be notified without delay. We are entitled to rescind from a contract – either fully or in part – should such hindrances arise. In such cases claims for damages on behalf of the customer are excluded. These aforementioned circumstances also entitle the customer to extend the delivery period if they occur at suppliers.
- Should agreed deadlines, or deadlines extended in line with the previous paragraph, be exceeded by more than eight weeks, the customer is entitled to rescind from the contract giving a respite of at least 14 days submitted by registered mail. In such a case, claims for damages on behalf of the customer are excluded.
- If, as a result of delays apportioned to us, the customer suffers loss or damage, he is due compensation amounting

to 0.5% for each full week – up to a maximum of 5% – of the value of each part of the delivery which cannot be used on time or not appropriately as a consequence of the delay; for special services 5% of the consideration. This liability for damages only applies to us in cases of gross negligence. Other claims for damages are excluded. Also excluded are any claims for damages arising due to delays apportioned to our suppliers.

- Dispatch is at the risk and cost of the customer. We reserve the right to choose the nature and channel for dispatch for which we cannot be held liable. Transport insurance shall only be taken out on behalf of the customer and at the customer's expense.
- We are also entitled to make part-deliveries. Furthermore, we have the right to use subcontractors for all deliveries and service components, provided that we notify the customer of this.
- Delivery deadlines can only be observed given the prior fulfilment of contractual duties by the customer.
- If dispatch is to be delayed due to a reason apportioned to the customer, he shall be held liable to pay storage costs if the goods are stored on our premises (office), costs amounting to 0.5% of the invoice amount per month. Moreover, we are entitled to set a respite of 14 days at the most. Should the customer then not be in a position to accept the goods we can either dispose of the goods in another capacity and deliver the customer with goods within a reasonable extended period of time, or to rescind from the contract and demand damages due to non-performance of the contract. In the latter case, we are entitled seek damages of 10% of the consideration without supplying special proof; should special proof be provided we can also claim more advanced damages.
- Should goods ordered require a separate production process, the amount ordered can be over or under supplied by up to 10%.
- For works' performance (Section 3, paragraph 9), the customer is to provide us with the support staff and appliances and auxiliary materials required (e.g. winches, rails, electrical power, etc.) in time and free of charge, even if assembly is included in the price or if a lump sum has been agreed for this. Should a sub-construction be necessary, this is to be provided before our engineers arrive. Furthermore, the customer is to undertake all necessary safety measures to ensure people and objects are protected at the workplace. We are not liable for any support staff, appliances and materials handed over to us.
- The performance of the contract on our part shall be subject to the proviso that there are no obstacles to performance due to national or international (re-)export regulations, in particular no embargoes and/or other sanctions.

### 5. TRANSFER OF RISK

- Risks are transferred to the customer as soon as the delivery item leaves the works (location of the premises); the same applies to part-deliveries or should we have provided additional services – such as dispatch costs, or the transport or installation.
- Should dispatch be delayed for reasons not apportioned to us, risks are transferred to the customer when he is informed that the goods are ready for dispatch.

### 6. RESERVATION OF TITLE

- We reserve the right to the title of the delivery item until all claims entitled to us or the Haberkorn Group (Section 3, para. 8) for whatever reason have been paid in full.
- The customer is only entitled to resell the delivery item, even if this has been processed, as part of his normal business activities; this authority is however excluded when business related claims have been assigned to third parties or if such claims are affected by a restraint of assignment, or if the customer becomes insolvent, or if the customer is in arrears in fulfilling his contractual duties. He is not permitted to dispose of the delivery item in any other capacity. In the case of attachments, confiscations or other disposals by third parties, the customer is to inform us of such without delay. Intervention costs related to securing possession of property are to be borne by the customer.
- The customer assigns his claims and other rights from the resale, from renting or leasing and from leasing businesses to us at this time, even if the delivery item has previously been connected to, or processed with, other items. If the delivery item has been sold or transferred for use together with other items without being or after being connected or processed, the assignment only applies to the value of the purchase price owed us. Other claims for damages are not excluded.
- The customer is only entitled to collect claims and to assert other rights as long as he meets his payment obligations to us and/or is not insolvent.
- Should the customer be in breach of contract, in particular with regard to arrears in payment or insolvency, we are entitled to take back the delivery item at any time while still abiding by the contract or to prohibit its use. Further, we are entitled to sell the delivery item we have taken back by private contract; proceeds shall then be offset against our outstanding claims following a deduction of 10% of the proceeds to cover a handling fee.
- Should we rescind from the contract, the customer is to pay 5% of the original value of the delivery item per month from the transfer of risk until the item is returned. If the reduction in value exceeds this payment for use, the customer is to pay the larger sum.

### 7. WARRANTY

- We do not accept liability for deviations accepted as standard in the business, or for deviations tolerated by Austrian or German standards institutions, with regard to dimensions, weight and quality. No warranty claims can be derived from information in catalogues, brochures, promotional literature and written or oral statements that have not been included in the contract

- Defects to delivery items are to be reported without delay, supplying numbers and dates of the invoice and delivery note. Notices of defect are to include a list of those delivery items deemed to be defective, an item-by-item description of the defects and an account of the attendant circumstances in which the defects arose. Each single defect is to be described in detail. Costs arising to us through unfounded notices of defect or such notices based on adverse conditions are to be replaced.
- We are only liable for such defects of items delivered which arise within six months of the transfer of risk (Section 5) as a consequence of some cause having taken place before the transfer. For all other services (e.g. assembly, repair, maintenance, delivery of replacement parts, etc.) the warranty period amounts to three months.
- If we accept liability under warranty, we have the right of choice either to replace the defective item or the defective part with items free of defect, or to repair the defective item or part, or to grant the customer a corresponding reduction in price by supplying a credit note. In replacing defective items or parts, the warranty period is not to be extended. Replaced parts become our property. We shall not reimburse the costs of remedying defects undertaken by the customer or a third party.
- If we so request, the delivery item and/or its component is to be sent to us without delay carriage paid, duty-free, otherwise any warranty obligation shall become invalid.
- Liability under warranty presupposes that the customer has fulfilled his contractual obligations.
- Liability under warranty is excluded however when mounting instructions we published which are to be acted upon by the customer have not been observed, when repair work or other work has been carried out on the delivery item without our approval, or when it has been used contrary to our instructions or for purposes for which it was not intended.
- Liability under warranty is also excluded when repairs have been carried out, when old goods and goods from other companies have been amended or converted and when used goods have been delivered.

### 8. DAMAGES AND PRODUCT LIABILITY

- All other claims from the customer or from third parties, especially claims for damages of whatever nature are excluded unless the damage or loss has been caused by us intentionally or through gross negligence or it concerns personal injuries. In addition, such claims can only be asserted before a court within six months of damage or loss occurring, and within a maximum of two years from the transfer of risk (Section 5).
- We are only liable for those components of goods which we have acquired from suppliers as part of warranty claims we are entitled to against the suppliers.
- If the delivery item was prepared by us on the basis of construction details, drawings or models from the customer, our liability does not extend to the correctness of the construction, but is solely restricted to successfully carrying out the customer's particulars.
- If, in production and delivery, we make use of drawings, samples, models and other documents handed over to us by the customer from third parties, the customer shall hold us harmless and intervene as indemnitor.
- Our liability to pay damages for damage to property pursuant to the Austrian Product Liability Act (PHG) is excluded, including all rights of recourse. When using devices and other goods delivered by us, the customer commits to meticulously observing all existing regulations, technical provisions and operational and user instructions – particularly the Electrotechnology Act 2002 and only to consult authorised experts when using them.
- The seller is to impose this exclusion of liability and the obligations given under Section 8, para. 5, to his customers and to call upon these to impose this exclusion of liability and these obligations on their customers.
- Further, the customer commits to informing us without delay of liability cases and to hand over the necessary documents to us.

### 9. RETURNING GOODS

- Delivery items returned for credit or exchange will only be taken back on a voluntary basis if they reach us in perfect condition and the number and date of the invoice or delivery note are notified within four weeks of delivery (Section 4).
- In all cases, we shall charge the customer a handling fee of 10% of the value of the invoice when delivery items are returned.

### 10. GENERAL PROVISIONS

- Place of performance is our delivery premises; exclusive jurisdiction is in Vienna or Bregenz, depending on our choice. For legal disputes arising from the contract, substantive Austrian law and the commercial customs related to the place of performance are to apply.
- The customer can only assign his rights arising from the contract given our written approval. (3) If individual provisions of the contract or these terms and conditions should be invalid, the validity of the remaining provisions shall not be affected. The ineffective provision shall be replaced by a valid provision which comes as close as possible to the intended purpose.

The German version of these Terms of Payment and Delivery be the only authoritative version as to legal validity and construction between us and customer.

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(All previous general or company-specific terms and conditions of sale and delivery hereby lose their validity).