

HEINZMANN GmbH & Co KG

Terms and Conditions of Delivery and Payment for Entrepreneurs

1. Validity of the Terms

1.1. The following terms and conditions of delivery and payment apply only to entrepreneurs as defined by § 14 BGB (German Civil Code). According to this definition entrepreneurs are natural persons or legal entities or incorporated partnerships acting on the basis of their commercial or self-employed professional activity when concluding any legally binding transactions.

1.2. All our offers, services and deliveries shall exclusively be subject to these business terms and conditions. They shall therefore be valid also for any future business relations even if they are not explicitly agreed upon once again.

At the latest on acceptance of our product or our performances these terms and conditions shall be deemed accepted.

1.3. Diverging, contradictory or supplementary general business conditions of the customer - even if reference is explicitly made to such - shall not become a constituent part of this contract, unless their validity has explicitly been agreed upon.

1.4. Deviations from these business conditions shall be effective only if confirmed by us in writing.

2. Extent of Deliveries or Services

2.1. With regard to the extent of the deliveries or services our written confirmation of order shall be binding.

2.2. We shall be entitled to accept the contract offer as implied by the customer order within three weeks after its receipt. Acceptance can be acknowledged either in writing or by supplying the product to the customer.

3. Prices and Costs

3.1. Our prices are valid ex works, plus packaging and other costs. Value-added tax will be added to the prices according to the percentage currently prescribed by law.

3.2. If the customer orders project-related documents (drawings, brochures, translations etc.) such documents shall be invoiced either as a lump sum or on the basis of proven cost.

3.3. All project-related costs caused by the development and the modifications of standard equipment will be charged to the customer.

3.4. All costs in connection with the handling of a project (advisory service, service, installation etc.) shall be borne by the customer.

3.5. We do not accept costs arising from the fact that the customer himself or a third party acting on his behalf is making modifications, additions or repairs to our products unless we have agreed in writing to take over such costs.

4. Delivery Periods

4.1. Delivery periods shall be binding only if they have been agreed upon in writing or have been confirmed in writing respectively.

4.2. Acts of God, labour disputes, strikes, lock-outs, unpredictable breakdowns and other events that may emerge after the conclusion of the agreement and that we cannot be held responsible for, will appropriately extend the binding delivery periods.

5. Shipment and Passage of Risk

5.1. Shipments will be effected for the customer's account and at the customer's risk.

5.2. The risk of accidental loss and the risk of accidental degradation of our product passes to the customer with the handing over of the product or - in case of forwarding purchases - with the delivery to the forwarding agent, the carrier or any other person/institution in charge of the shipment. This shall also apply if, according to the contract, we have taken over other services such as shipping costs or transportation.

5.3. At customer's request the shipment may be insured by the supplier to the account of the customer against theft, wreckage, damages in transit, fire damages and water damages as well as other insurable risks.

5.4. If delivery is delayed due to circumstances, which are the responsibility of the customer, the risk shall pass over to the customer by the day he has been informed that the shipment is ready for dispatch.

6. Notification of Non-conformance

6.1. Provided the purchase order is a commercial transaction on the part of the customer, he has to inspect our product immediately after receipt - as far as this is feasible with regard to the regular course of business - and to notify us in writing about recognisable defects without further delay, at the latest within a time limit of one week after receipt.

6.2. If the purchase order is not a commercial transaction the customer has to notify us immediately about any patent defects, however at the latest within a preclusion period of four weeks after receipt.

7. Defects and Liability

7.1. If our product shows a defect, we provide posterior fulfilment of the contract at our discretion either by repairing the defect or by providing a product free of defects.

7.2. If such posterior fulfilment of the contract fails, the customer can at his discretion claim for reduction of the purchase price (reduction) or cancellation of the contract (withdrawal). The customer shall, however, have no right of withdrawal if the defects are of negligible nature.

7.3. The liability limitations as set forth under item 8 shall be valid if the customer claims for damages.

7.4. The possibility of claiming for damages is not given, if there is a causal connection between such claims and the fact that:

- our operating instructions or installation instructions have not been followed.
- inappropriate modifications have been made to our product or the product has been inappropriately used.
- if our product is not suitable for the specific application due to unusually high mechanical or thermal stress or if it is over-stressed in any other way.
- if our product is not suitable for the installation on the engine due to unusual installation conditions.

e) if there is natural wear.

7.5. The claim of notification of non-conformance prescribes one year from delivery of the product. The statutory periods of limitation will, however, remain valid in case of injuries of life or body or health, in case of deliberate or grossly negligent breach of duty from our part as well as in case of fraudulent concealment of a defect. The statutory periods are valid also for the contribution claims in accordance with § 479 para. 1 BGB (German Civil Code).

8. Limitation of Liability

The following limitations of liability shall apply:

8.1. Notwithstanding any legal argument, Heinzmann shall not be liable for any damages that did not occur on the supplied product itself.

8.2. This limitation, however, does not apply in case of intent or gross negligence, in case of culpable injury to life, body or health, in case of defects, which have been fraudulently concealed, in case of acceptance of a guarantee or of a procurement risk, in case of violation of essential contract duties, or in case of defects of the delivery item as far as there is a liability according to the law concerning product liability for damages to persons or to property with privately used objects.

8.3. In case of culpable violation of essential contract duties the claim for damages in case of slight negligence is limited to a contract-typical, reasonably foreseeable damage.

8.4. In case of violation of collateral contractual duties, such as e.g. information and advisory duties, the above regulations concerning limitation of liability will correspondingly apply.

9. Payments

9.1. Our invoices are payable strictly net 30 days from the announcement of readiness of dispatch without deduction - unless otherwise agreed upon in writing. The acceptance of bills of exchange is subject to our prior consent.

9.2. Should the financial standing of the customer worsen after signing the contract (e.g. if he files for insolvency, issues an uncovered check, act of bill protest etc.), we shall have the right to match payments with physical deliveries in case we are obliged to make advance deliveries. In addition we shall be entitled to claim for appropriate security from the customer within a period of two weeks. If in this case the customer is not willing to fulfil the contract by matching payments with physical deliveries or if he does not furnish such security within a period of two weeks, we shall be entitled to cancel the contract after an adequate period of grace.

10. Retention of Title

10.1. We retain title to the products delivered until all payments due under the contract for delivery have been received.

10.2. In addition, we retain title to the products delivered until all our claims arising from the business with the customer have been settled. In case of open invoices our title to the products will also be considered as security of the accounts receivable.

10.3. Modification and processing of products supplied by us shall always be effected on our behalf, without any obligations arising for us from this. In this respect, it is agreed explicitly that we are considered to be the manufacturer of the new product.

If the product to which we have retained the title is mixed, compounded or combined with other objects, the customer hereby shall assign to us his proprietary rights or joint proprietary rights to the new object and shall keep it for us with the diligence of a prudent businessman.

10.4. The customer may sell the products to which we have retained title only in the normal course of business provided he is not in default with due payments.

10.5. However, the customer hereby assigns to us by way of security the full amount of all claims inclusive of all ancillary rights which accrue to him against his buyers from the sale or for any other legal ground (contract for work and services or contract for work and materials etc.)

The customer shall remain entitled to the collection of debts provided he is not in default with due payments.

At our request the customer shall be obliged to inform his buyer of such assignment to us and to provide us with the information and documents required for the collection of debts.

The customer shall notify us immediately of a warrant of distress or any other impairment of our rights by third parties.

10.6. We undertake to release the securities we are entitled to insofar as their value exceeds by more than 20% the claims which are to be secured and which are not yet settled.

11. Offsetting and Retention of Payments

11.1. The customer may offset payments only against claims, which are undisputed or established by law.

11.2. The customer may exercise his right to refuse service or his right of retention only on the basis of a counterclaim which is undisputed or which has been established by law.

12. Place of Performance and Jurisdiction

12.1. Place of performance shall be Schoenau.

12.2. Schoenau shall be the exclusive place of jurisdiction for all current and all future claims resulting from the business relation with entrepreneurs including all claims resulting from bills of exchange and cheques.

12.3. Independently of whether the customer is entrepreneur the same provision concerning the place of jurisdiction shall be valid in accordance with 12.2 if the customer does not have any general domestic place of jurisdiction, if he moves his residence/headquarters or usual whereabouts from the inland after conclusion of the contract or if his residence/headquarters or usual whereabouts are not known at the time of the institution of legal proceedings.

13. Applicable Law

13.1. These terms and conditions are subject to the laws of the Federal Republic of Germany.

13.2. Application of the United Nations Convention on Contracts for the International Sale of Goods - CISG - is excluded.