

General Terms & Conditions
Höcker Polytechnik GmbH – as at June 2006

I. Contract conclusion and applicability of these terms and conditions

These terms and conditions form part of all business relationships between ourselves and other companies, corporate entities or separate estates regulated by public law as per § 310 Cl. 1 BGB (German Civil Code). They also apply to all future business relationships, even if not expressly re-agreed. Any variations on these terms and conditions are only effective if we agree to them in writing. Verbal agreements are not binding.

Contrary or diverging purchasing terms and conditions are expressly not recognised.

Our sales terms and conditions also apply, even if we make unconditional delivery to the purchaser, and have knowledge of his contrary or diverging purchasing terms and conditions or if the purchaser gives a reciprocal confirmation, and refers to his purchasing or business terms and conditions.

Insofar as we use the term “purchaser” hereinafter, this refers to the buyer or to any person at whose instigation and for whose account we undertake any action or provide services.

II. Quotations, prices and delivery provisos

1. Essentially we remain bound by our quotations, including price quotations, for a period of 14 days after issue, unless otherwise detailed in our quotations and/or price estimates.

2. Our quotation prices are net prices with no additional cash discount. Statutory VAT should be added. Transport and packing costs, transport insurance and agreed supplementary services are charged separately.

3. If there is a period of more than 2 months between contract conclusion and the agreed production or delivery deadline, we are entitled to pass on to the purchaser any increases in costs, on which our price calculation was originally based, namely increases in raw materials prices, energy prices, wages and salaries, freight and taxes. These will be verified upon request by the purchaser.

III. Catalogues

Illustrations and dimensions reproduced in catalogues, brochures and advertisements are not binding.

IV. Scope of goods and services

1. Our written order confirmation is the sole definitive description of the scope of our goods and services.

2. We are not obliged to take back components and/or delivered goods. Where we take back components, we are entitled to charge a flat rate processing and reconditioning fee of 10%. The purchaser shall reimburse any transport costs incurred.

3. The purchaser is obliged to obtain at his own expense from the authorities responsible the necessary permits for the installation of systems delivered by us and to ensure the validity of these permits at his own expense.

4. In the event that we make delivery abroad, the purchaser is responsible for any and all import formalities and for paying all import duties, such as customs duties and taxes, as well as for any other import-related charges. Import or exchange control restrictions do not affect the validity of our contract with the purchaser. Should the purchaser be prevented from or reject taking delivery of the goods, he is obliged to compensate us for all resulting losses.

V. Specification

1. The purchaser should provide us with an exact specification of his enquiry prior to the issue of our quotation. The purchaser should supply details of features, in particular dimensions, weights, performance characteristics, as well as all other characteristics of the item concerned.

It is a matter for the purchaser to detail the characteristics of the item in such a way that the item is suitable for its intended use.

2. We are in no way obliged to check the feasibility or the practicability of the details provided by the purchaser, irrespective of aspect.

3. Should the contractual item be used for purposes other than detailed by the purchaser in his specification or other document and we have not confirmed its suitability for this use, we have no liability, irrespective of whether the application of the item is suitable for the purchaser's purpose or not.

4. Should the purchaser require a particular version of the contractual item, he is obliged to ensure that the rights of third parties are not infringed by the format of the version, which he requires. We are not obliged to check this. Should the rights of third parties be infringed by the manufacture of the product or by the processing of the item as per the purchaser's specifications, as provided for in the contract, the purchaser is thus obliged to indemnify us from any resulting third party claims, irrespective of legal grounds.

VI. Delivery and manufacturing lead times

1. The purchaser can only invoke agreed delivery and production lead times, where we provide installation services at a location other than at our domicile, if these lead times have been agreed and confirmed by us in writing.

2. The delivery period begins upon receipt of our order confirmation, notwithstanding prior provision by the purchaser of all the necessary documentation, information, permits and approvals, the crediting of any agreed advance payment to our account at no charge to us and the prior clarification of all official and technical queries.

It is the responsibility of the purchaser to obtain all necessary permits.

VII. Transfer of risk, acceptance and collection dates

1. The risk is passed to the purchaser or the transport company commissioned by him at the moment when the item to be delivered or manufactured by us is handed over on our premises.

If exceptionally we have been commissioned to effect shipping, the risk also is transferred to the recipient at the moment when the goods are handed over to the transport company on our premises. The risk is transferred as soon as the collection period detailed in Clause 2 below has expired, irrespective of the handover.

2. The purchaser is obliged to collect the goods himself or commission a transport company to collect the goods from our premises within one week of receipt of the completion advice (advice of availability for collection), however at the latest within 12 working days after dispatch of the completion advice (advice of availability for collection) from our offices. Once this period has elapsed, we are entitled, without further reminder, to have the contractual item(s) shipped to the purchaser for the account of and at the risk of the latter by a transport company commissioned by us for the account of the purchaser.

3. The purchaser accepts the finished goods at our premises.

Any defects must be specified in writing by the purchaser at the latest 5 working days following handover as per Clause 1 above. Should such a report not be made within this period, the item is considered to have been accepted in all respects as per the contract, unless any defect could not be identified upon reasonable visual or technical inspection.

Just like the purchaser we are entitled to require formal acceptance. Here we will invite the purchaser by e-mail, telefax or by letter to attend. There shall be a period of at least one week between the date of the invitation and the formal acceptance, whereby the day on which the invitation to the stipulated acceptance appointment is not included. Should the purchaser not attend an appointment arranged by us for the purposes of formal acceptance, the service provided by us counts as fulfilment of the contract in all respects, insofar as we have pointed out the consequences of any non-appearance, and we are entitled to have the item shipped thereafter to the purchaser at the latter's costs by a transport company commissioned by us, and the item manufactured by us is considered to be compliant with the contract in all respects.

4. If we have taken on responsibility for the production of an item or system on the purchaser's premises, we are entitled to require acceptance upon completion and written notification thereof, in which case the above-mentioned stipulations of Clause 3 also apply.

5. Irrespective of the above-mentioned stipulations, the risk passes in any event to the purchaser at the point when the purchaser puts the item manufactured by us for him into operation. Commissioning is the last part of the acceptance procedure. With the start of operations, the item or goods are deemed to have been accepted in all respects.

6. All periods, in particular warranty periods, commence on the day of the week following acceptance.

VIII. Transport insurance, transport damage

1. We are entitled but not obliged to arrange transport insurance for the account of the purchaser to cover any items that we have to deliver to him or to his construction project, insofar as the purchaser does not expressly declare that he does not require cover. The insured amount is based on the value of the goods.

Compensation claims for items damaged or lost in transit must be lodged by the purchaser directly with the delivering party (railway or transport company), insofar as we do not have to make such claims, where we have undertaken installation work on behalf of the purchaser at his premises.

Transport damage must be registered immediately after receipt of the consignment and be evidenced by two neutral witnesses and reported in writing to the delivering party.

Transport damage or loss of the ordered goods does not release the purchaser from his payment obligations towards us.

2. If we are required to negotiate terms for the necessary transport insurance, then we require the original bills of lading, as well as proof of indemnity insurance and a power of attorney.

IX. Set-up, commissioning and installation

Where we receive and accept an order to perform installation work, basically we will invoice the work inputs according to our hourly rates. Overtime and work on Sundays and public holidays will be charged separately and at the standard rates valid at our headquarters. Journey times and home-to-workplace times are charged in full in addition to transport costs.

Overnight accommodation costs, expenses, daily allowances and all other costs related to installation are for the account of the purchaser.

Our installation work includes neither masonry, carpentry, roofing or electrical and compressed air work nor the provision of scaffolding, platforms or cranes.

For installation purposes the purchaser is responsible for providing scaffolding, platforms and cranes, which are in a safely operable condition prior to installation and for ensuring that these are maintained during the entire period of installation at his own cost.

We are entitled to use contract fitters and subcontractors to carry out installation work. Should installation work be prevented or delayed for reason for which we are not responsible, installation and home-to-workplace and other costs will be charged at the daily rate as incurred.

Moreover all agreements with regard to installation times require our written confirmation. Agreed installation times presuppose that our customer has obtained all the official permits required to

complete installation , and if necessary in accordance with immigration and labour law regulations for our fitters in the event that work is undertaken abroad; that our fitters, irrespective of whether our staff or subcontractors or contract fitters commissioned by us, are allowed to work on weekdays for at least 10 hours in one go at the site without being disturbed, and where multi-shift work is possible and permitted, and can perform their tasks and all necessary preparation work for the installation, and that all necessary preparation work for the installation has been properly carried out and that we have confirmed this in writing.

The customer is required to obtain any necessary permits to enable fitters to work multiple shifts and weekdays as well as weekends and public holidays at his own expense.

X. Delays

Should delivery or production of the item be delayed for reasons beyond our control, in particular through industrial action at our factory or at the factories of suppliers or through acts of God, and we or our supplier is not in a position to meet the delivery deadline, the delivery/production periods are extended for the duration of the disruption.

Claims for compensation in such cases cannot be accepted, unless we have acted in a grossly negligent or wilful manner.

XI. Invoices and payment dates

1. Invoices are payable at the latest 30 days after date of invoice, without deductions. If paid within 8 days after the invoice date into our account without any charges for us, we offer a 2% cash discount. A cash discount is only given if all previous invoices have been paid in full.

Even if the purchaser has different stipulations, we are entitled in the first instance to offset payments against old receivables, indeed first on interest and then on costs and then on the oldest receivable.

2. All receivables from the purchaser are payable immediately, if our payment terms are not adhered to or if circumstances come to our attention, which according to our best commercial judgement, reduce the creditworthiness of the purchaser. In such a case, without prejudice to any additional legal rights, we are also entitled to make delivery of outstanding orders only against collateral or to withdraw from the contract after a reasonable period or to claim compensation for non-performance. We are entitled to offset our receivables against the receivables of the purchaser, for whatever legal reason, even if the receivables have different due dates.

3. We only accept cheques and bills of exchange for the purposes of performance. In the event that we accept a cheque or a bill of exchange, the debt is only settled upon final redemption. Protest and collection charges are for the account of the purchaser. Retention of title for goods sold subject thereto expires only when the cheque has finally been honoured or the bill of exchange has been fully redeemed, in accordance with the more detailed stipulations on retention of title in these terms & conditions.

4. Should payments be deferred or made later than agreed, we are entitled to charge the statutory rate of interest on our receivables from the due date. Higher default interest amounts will be passed on. We reserve the right to claim for other damages caused by delay.

5. We are entitled to make deliveries to companies that we are unfamiliar with dependent on prepayment of the agreed price. Any deterioration in the purchaser's financial solvency or non-compliance with agreed payment terms entitles us to render all the remaining debt due immediately.

6. Should the purchaser not or not adequately fulfil his payment and/or insurance obligations or obligations appertaining to our retention of title or collateral title, or he breaches his obligations arising out of conditional title or out of collateral co-title, or he stops payment, or insolvency proceedings are initiated against his assets or another measure is taken in accordance with the insolvency statute, our residual receivable becomes due immediately.

That also applies to bills of exchange or cheques with later maturities, or if another deferment agreement has been made between the purchaser and ourselves. If the purchaser does not pay the remaining amount without delay, at the latest 5 days after the due date set following such an event, then the purchaser's right to use the goods purchased under retention of title expire.

7. In the event of any of the above occurring, in particular if the purchaser does not pay in full on the due date, we are entitled to collect and physically take back all items to which we still have title, as per Part VIII Cl. 5 of these terms & conditions from the purchaser's premises at his expense or from the place where the purchaser has brought the items. The purchaser herewith irrevocably authorises us in such a case to access during normal business hours his place of business, his property and the premises where our property is located, for the purposes of collection. This right also applies expressly to those companies and their auxiliary staff commissioned by us to collect the goods.

Exercise of the above-mentioned right does not imply that we will waive any other rights and claims to which we are entitled, in particular those related to compensation.

XII. Retention of title

1. We reserve title to the items delivered by us until payment arising out of the business relationship with the purchaser has been made in full. The retention of title extends to the drawn and accepted account balance, if we have included individual or all receivables in current invoices. The purchaser's payment terms for individually designated deliveries do not affect this retention of title.

2. The assertion of retention of title claims does not count as a withdrawal from the contract. Our entitlement to compensation for other damages remains unaffected.

3. Should our products be combined by the purchaser with products, which we do not manufacture, to form a unitary system, we will acquire joint title to the new system in proportion to the value of the delivered items (sales price including VAT) in relation to the other items at the time of the combination. If the combination is effected in such a manner that the item sold to the purchaser can be regarded as the main item, then it is agreed that the purchaser transfers joint title pro rata to us. The purchaser should hold the resultant sole or joint title in safe custody for us at no charge.

. Moreover the same applies to purchase items delivered conditionally.

4. Should the delivery item be sold on together with other goods, which do not belong to us, the purchaser is obliged to assign the receivable he is due from his customer in the amount of the sales prices agreed between us and the purchaser. Each amendment of or alteration to the item by the purchaser always counts as having been undertaken on our behalf, without us having to account for anything to third parties.

5. The purchaser agrees with us that the items delivered by us, even insofar as they are integrated into his system or are integrated into systems that he on-sells, are not regular integral components (§ 93 BGB) of such systems or items, but are regular elementary components, and that, in accordance with the agreed retention of title, in exercising our right in this regard we are entitled to dismantle and utilise the components and items, which we delivered, in accordance with the more detailed stipulations of Cl. 9 below.

6. The purchaser is only entitled to sell the goods subject to retention of title in a proper transaction. This presupposes that he has agreed extended or enhanced retention of title with his customers. The receivable due to the purchaser from his customer should be simultaneously assigned to us in the amount of our receivable. The assignment is performed upon onward sale, irrespective of whether the delivery item is to be sold onward with or without alteration, without there being any need for further agreements.

7. The purchaser is entitled to collect the receivable on our behalf, without our capacity to collect the receivable being affected. Should he choose to do so, he will collect for us on a fiduciary basis and is obliged to forward the amount collected to us without delay. He should keep the amount collected in separate custody to his other assets.

So long as the purchaser meets his obligations, we will not take any action under the assignment. The collection right of the purchaser expires as soon as the purchaser does not meet his obligations to us, or does not do so properly or in full, without us needing to send reminders. Upon demand the purchaser is required to provide us with the necessary information and documentation to enable us to assert our claim. Without prejudice to our right to disclose the assignment, the purchaser is obliged to inform his debtors about the assignment upon demand by us.

The purchaser is not entitled on his part to further assign the receivables, where these have been assigned to us. The purchaser should ensure that receivables from extended or enhanced retention of title, to which we are entitled, always override any blanket assignment.

8. The purchaser should inform us without delay of any garnishments or other access or intervention by third parties to or on the goods sold subject to retention of title or on the assigned receivables, in order to enable us to assert our rights as per § 771 ZPO (German Code of Civil Procedure). The costs of any delayed notification are for the account of the purchaser. The purchaser is liable for ensuring that the intervening third party is in a position to reimburse our legal and extrajudicial costs in the event of legal action being taken in accordance with § 771 ZPO, otherwise he is liable himself for the amount of the shortfall.

9. The right of the purchaser to own the goods sold subject to retention of title lapses if he does not meet his obligations towards us or does not do so in full or properly. Even without setting a period of grace or declaring our withdrawal from the contract, we are still entitled to enter the purchaser's factory premises and take the goods sold subject to retention of title back into our possession, which includes the right if necessary to dismantle from other items, to remove and dispose of them as best as we can through private sale or, if we choose, by means of an auction, irrespective of the payment and other obligations of the purchaser towards us. The disposal proceeds are then offset against his liabilities after deduction of costs. Any surplus would be paid to him.

10. All the above-mentioned sureties are contingent in such a way that upon payment in full of the receivable, on which we are entitled to the surety, title to the delivered products is transferred without delay to the purchaser and the assigned receivables revert back to the purchaser.

Should the value of the sureties to which we are entitled, exceed the total receivables due from the purchaser by more than 20%, we will release the receivables to which we are entitled, without entering into any further agreements, where these exceed our receivables due from the purchaser by more than 20%. In this case the oldest liens will in the first instance be automatically released at any one time.

11. The right to retention of title also applies to transport companies who have taken delivery of the goods at the request of the purchaser or who have been commissioned by us.

12. In the case of foreign transactions we will reserve the right of title to the delivered goods until final payment of the purchase price in accordance with the legal regulations of the relevant country of destination. The retention of title is considered as expressly agreed between us and the purchaser. Where the country of destination permits equivalent rights of surety in place of retention of title, these are considered as expressly agreed.

XIII. Warranties / remedy

1. All defect claims made by the purchaser assume that the latter has met his obligations in accordance with § 377 ff. HGB (German Commercial Code) to carry out proper visual and technical inspections and has met his obligations of reproof in a proper and timely manner in accordance with these stipulations.

2. If, exceptionally, defect-free goods have not been delivered and if the defect was already apparent at the moment when risk was transferred, we can only elect to take action as per §§ 437, 439 BGB, if a purchase contract exists.

If remedy is only possible by incurring unreasonable costs, the purchaser can request a reasonable reduction in the purchase price or can withdraw from the contract. Rights arising from §§ 440, 437

Clause 3 BGB are excluded, unless there has been a wilful or grossly negligent breach of a principal contractual obligation on our part.

If we have undertaken production of plant, legal regulations take precedence over the law relating to contracts for services. Excluding all other warranty rights, we are entitled to choose between remedy and offering a price reduction as per § 638 BGB. Rights from § 634 Cl. 2 and 4 BGB are excluded. If in the individual case the remedy chosen by us is not effective and if a reduction is unacceptable according to the economic interests of the purchaser, the purchaser is thus entitled to withdraw from the contract.

If a defect is only caused by slight negligence on our part, we are entitled, irrespective of the costs to be incurred to provide remedy, to plead disparity as per § 635 Cl. 3 BGB, without being obligated.

3. Additional claims of the purchaser, claims for damage to legal assets other than the object of performance presuppose gross negligence, wilful conduct or assumption of a warranty on our part, where nothing else emerges from the following stipulation in Part XIV.

4. Our liability is essentially limited to the purchase price.

5. The warranty period covers one year from acceptance. The warranty period begins on the day after acceptance.

XIV. Liability for other legal assets, supplementary contractual obligations and breach of contract-specific obligations

1. Claims for compensation arising from the breach of supplementary contractual obligations or from infringement of the interests and violation of the legal assets of the purchaser, which the latter did not expressly inform us about during the time when the contract was initiated until signature and the notification of which we did not expressly confirm in writing, will not be accepted.

2. Claims for damage to other legal assets not included in the object of performance will not be accepted, where we are not guilty of gross negligence or of wilful conduct or in individual cases if liability for such claims has not been expressly assumed in writing.

3. If in individual cases we are guilty of breaching rights and obligations arising out of the nature of the contract, which put achieving the purpose of the contract at risk and should a claim against us arise, our liability in any event is limited to average damages as foreseen in such typical contracts. We are not obliged to acquaint ourselves with or ascertain the intended use and range of uses for the items manufactured and /or supplied by us.

Relevant knowledge could then only be used as evidence against us if we had been informed in good time prior to accepting the order and if we had expressly confirmed this notification in writing.

4. Liability in regard to culpable injury to life, body or health remains unaffected by the above-mentioned exemptions and limitations.

5. Where this is not legally excluded, our liability is limited to the amount of the purchase price.

XV. C.O.M. and purchaser requirements

Should the purchaser require that we use certain materials or agents, we accept no responsibility for these required materials or agents. No liability is accepted for these and for defects, which are attributable to the use of these materials or agents.

XVI. Setting of deadlines

Prior to asserting claims for compensation on the grounds of delay, we should in any event be given written notification of a reasonable time to provide remedy, unless we are guilty of gross negligence or wilful conduct.

XVII. Netting

Offsetting our receivables is only permitted in the case of undisputed, legally established receivables.

XIII. Place of performance, place of jurisdiction, contract language, severability clause, applicable law

1. The place of performance for our deliveries is our headquarters.

The place of jurisdiction for all disputes, irrespective of whether active or passive proceedings are involved is the domicile of our company.

We are however entitled to take legal action in the domicile of the customer.

The place of jurisdiction is also agreed for legal proceedings in relation to cheques and bills of exchange.

The contractual language is German. Even where other languages are used or where we correspond and conclude contracts in other languages, in the event of differing interpretations or disputes, the German versions of the documents or contracts always take precedence.

2. Should any stipulation in these contractual terms and conditions be or become ineffective, this does not affect the validity of the remaining stipulations. A stipulation, which comes closest to the spirit and purpose of the invalidated stipulation and is itself valid shall replace the invalidated stipulation. Any loopholes should be closed by means of amendments to the contract.

3. Essentially any contract is subject exclusively to German law. International or EU-Community law is not applicable, without our express agreement.

4. Changes or variations to these terms as well as all amendments are required to be in writing. That also applies explicitly to the waiver of the clause requiring written form.