



TERMS & CONDITIONS OF DELIVERY AND SERVICE

General terms and conditions of delivery and service of
HANDKE INDUSTRIAL SOLUTIONS GmbH

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GENERAL

The following terms and conditions shall apply to all of our deliveries and services. Any other terms and conditions shall only be binding if they have been recognised by us in writing. For installation and maintenance work, separate supplementary service conditions shall apply.

I. QUOTATION

1. Our quotations are subject to change. Estimates are non-binding and subject to a charge unless otherwise explicitly agreed. Dimensions, packaging sizes, weights, figures, simulation results and drawings shall only be binding if this has been explicitly confirmed in writing.
2. We reserve all proprietary rights and copyrights to estimates, drawings and other documents. These may not be passed on to third parties or otherwise disclosed.

II. PRICES

1. Unless otherwise agreed, invoicing shall be based on the prices valid at the time of delivery.
2. Unless otherwise stated in the quotation, prices for deliveries and services shall be ex works, excluding packaging, transport, insurance, installation and commissioning plus the applicable VAT at the time of the delivery.

III. DELIVERY

1. Delivery dates shall only be binding if agreed to in writing. In case of doubt, the delivery dates stated in the order confirmation shall apply. Delivery periods shall begin upon conclusion of the contract, however they shall only commence once the customer has duly fulfilled his duties to cooperate, including, but not limited to, the provision of the required documents, supplies and deliveries, permits, releases, and, if applicable, the performance of any agreed down payments or the opening of a letter of credit. The agreed delivery dates shall be deemed to be met upon notification of readiness for delivery, even if the items or services could not be delivered or performed in due time for reasons we are not responsible for.
2. Should delivery deadlines not be adhered to due to force majeure or other disturbances that we are not responsible for, e.g. war, terrorist attacks, import/export limitations, strikes, including those that affect subcontractors, the agreed delivery period shall be extended accordingly. This shall also apply if these disturbances occur at a time during which we are in arrears.
3. In case of culpable failure to adhere to a binding delivery deadline for reasons other than those indicated in item III.2, the orderer may withdraw from the contract after expiry of an appropriate period specified in writing.
4. Subsequent rights of the orderer resulting from arrears, in particular, but not limited to, compensation for subsequent damages, are excluded as per the scope specified in item VII.
5. If delivery is delayed at the request of the orderer, we shall be entitled to invoice for the actual costs resulting from storage or 1% of the invoice amount beginning one month after notification of readiness for each commenced month (subject to proof of significantly lower costs). After unsuccessful expiry of a set deadline, we also reserve the right to withdraw from the contract. The costs resulting to us from this action shall be invoiced to the orderer.
6. Partial deliveries and corresponding billing shall be permitted.

IV. TRANSFER OF RISKS, SHIPMENT

1. Delivery shall take place 'ex works', unless otherwise explicitly agreed.
2. Should the goods be shipped to another location at the request of the orderer, we shall then specify the mode of delivery as we see fit, unless stated otherwise by the orderer. Transport insurance shall only be provided at the cost of the orderer and as per his instructions.
3. Unless covered under the liability for material defects, replacement parts deliveries and return of repaired goods shall be carried out based on appropriate delivery and packaging costs plus remuneration for the services provided by us. Returns to us and deliveries for repair work (outside of the scope of liability for defective materials) must be delivered free of charge to us.
4. Should delivery be delayed due to circumstances for which we are not responsible, the risk shall be transferred to the orderer beginning with the day of notification of readiness for delivery.

V. LIABILITY FOR DEFECTS

1. Liability claims are subject to a limitation period of 12 months. The aforementioned condition shall not apply if the law prescribes a longer period as per §§ 438 paragraph 1 no. 2 (construction works and materials for construction works) and § 634a (construction defects) of the German Civil Code (BGB).
2. The statute of limitations shall begin upon commissioning of the goods, at the point in time when the goods begin to be utilised, upon integration, and at the latest 6 months after delivery of the items (transfer of risks) or after notification of readiness for delivery at our factory.
3. Should a defect occur within the limitation period whose cause was already present at the time of the transfer of risk, we shall be entitled to correct the defect as we see fit or deliver a defect-free item. The object of the complaint must be sent to us for repair or to the closest customer service centre recognised by us for the respective product area. The lowest costs for delivery from and to the domestic address agreed by the orderer for the original product delivery shall be borne by us, provided the complaint proves to be valid. Correction of defects shall take place via exchange or repair of the defective product on our premises. Repair of defects on-site shall only be executed within the scope of special agreements according to our applicable service conditions.
4. The warranty period shall expire if the product is altered by a third party or due to integration of third-party components, unless the defects are not traceable to these alterations; the period shall also expire if provisions concerning delivery, packaging, installation, handling, use or maintenance have not been followed or in case of incorrect assembly or commissioning by the orderer or third parties.
5. Natural wear and tear and damage due to incorrect handling are excluded from the warranty. We are especially not liable for alterations to the condition or operations of our products due to incorrect storage, unsuitable operating materials, or climatic or other effects. This warranty does not extend to defects that involve design errors or the selection of unsuitable materials if the orderer has prescribed the design or material in spite of us duly pointing this out. We do not accept any liability for parts provided by the orderer.
6. The orderer must provide us or a third party obliged to provide warranty services the necessary time and opportunity to provide said warranty service work. The orderer is only entitled to independently perform this work with our approval except in cases of § 637 BGB. Costs required for supplementary performance shall be borne by us to the extent necessary to return the item to a defect-free condition relative to the value of the item, the importance of the defect and/or an alternative type of supplementary performance; costs beyond this shall be borne by the orderer.
7. The limitation period shall be stopped for the duration of the time required for the supplementary services. It shall not be reset.
8. If supplementary services fail, then the orderer may withdraw from the contract or reduce the remuneration.
9. Further rights based on defects – especially contractual or non-contractual claims for damage compensation that are not present on the goods themselves – are excluded to the extent specified in item VII.
10. If a complaint of defects proves to be unsubstantiated, then we shall be entitled to invoice the orderer for all costs incurred by us as a result.
11. Defects of title that are not due to injury of trade marks shall be subject to the conditions of item V.

VI. TRADE MARKS

1. In cases of claims resulting from infringement of trade marks or copyrights, we shall only be liable if the trade mark or copyright is not or was not the property of the orderer or a directly or indirectly held company which is held via a majority of share capital or voting rights, if the orderer informs us immediately regarding risks of infringement as they become known or asserted cases of infringement and if management of legal disputes (even out of court) is transferred to us upon our request (as much as possible), and, in the case of trade marks, at least one trade mark from a group of trade marks has been published by the European Patent Office or in one of the states of the Federal Republic of Germany, France, Great Britain, Austria or the USA.
2. We shall be entitled to choose to purchase a license for the product which (allegedly) infringes the trade mark or copyright on behalf of the orderer or to modify it such that the trade mark or copyright is no longer infringed or to replace the product with an equivalent item that no longer infringes the trade mark or copyright.



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3. Liability according to item VI. 1. and 2 regulates liability for freedom from trade marks and copyright completely and shall end five years after delivery of the respective product. This shall not apply if the products were produced according to the orderer's specifications or the claimed infringement of trade marks or copyright follows from use in combination with another object that does not originate from us or if the product is used in such a manner that was unforeseen by us.

VII. LIABILITY

Unless otherwise set out by these delivery conditions, we shall be liable for compensation of damages and reimbursement of costs incurred as per § 284 BGB (referred to as 'damage compensation' in the following) due to injury of contractual or non-contractual obligations only in cases of intent or gross negligence of our legal representatives or auxiliary agents, in cases of loss of life, bodily harm or injury to health, due to acceptance of a guarantee or procurement risk, in cases of infringement of fundamental contractual obligations, due to mandatory liability according to the Product Liability Act or due to other mandatory liability. Damage compensation for infringement of fundamental contractual obligations is nevertheless limited to typical contractual and foreseeable damages, provided there is no presence of intent or gross negligence on the part of our legal representatives or auxiliary agents and no loss of life, bodily harm or injury to health or acceptance of a guarantee or procurement risk is claimed. An amendment of this burden of proof to the disadvantage of the orderer shall not be bound to the provisions indicated above.

VIII. RESERVATION OF TITLE

1. We reserve rights to title of the delivered goods until complete settlement of all claims due to us and resulting from the business transaction, regardless of legal reasons.
2. The customer - also retains non-exclusive rights to use standard software modified for the customer and featuring the agreed properties in an unaltered form on the agreed devices. The customer may create a backup copy for service purposes unless agreed otherwise or indicated otherwise on the data storage device or in the software documentation.
3. The customer shall retain exclusive usage rights for software modules created especially for the customer and featuring the agreed properties in an unaltered form and on the agreed devices. HIS shall nevertheless be entitled to joint use and any other use of the ideas and concepts that the created modules are based on free of charge.
4. Use of the software (standard software and software modules) on devices other than those agreed shall require written approval from HIS, this unless the customer uses the software temporarily on a replacement device in the agreed scope due to defects of the agreed device.
5. Unless agreed otherwise, transfer of the software shall take place exclusively in a machine executable form (object code).
6. The orderer is entitled to connect or process our products with other products within the scope of correct and proper business operations. As of now, the orderer shall transfer to us entitlement to joint-ownership of objects resulting from this process or connection as a security as per our claims indicated in section VIII.1. The orderer must store the objects subject to this joint-ownership free of charge as a secondary obligation. The amount of joint-ownership shall be specified according to the ratio of the value present between our product and the objects produced at that time.
7. The orderer is entitled to sell these products for a cash payment or under retention of title via conventional business transactions. As of now, the orderer transfers all claims and subsidiary rights resulting from this sale to us. If products belonging to us are sold together with other goods, then claim to the sale price amounting to the price of our products shall be transferred to us. Transferred claims shall provide a security vis-a-vis all claims according to section VIII.1. The orderer is entitled to collect these transferred claims.

Rights resulting from this section may be withdrawn if the orderer fails to fulfil his contractual obligations to us correctly, especially in case of payment in arrears. These rights shall also expire without explicit withdrawal if the orderer ceases to pay for a period longer than may be considered only temporary. Upon request by us, the orderer must announce in writing immediately to whom goods for which we retain title or joint-ownership have been sold and which claims he is entitled to as a result of the sale, and to issue certificates that have been authenticated publicly at his own cost for transfer of these claims.

8. The orderer shall not be entitled to any other rights of disposal of the objects to which we retain title or joint-ownership or to the claims transferred to us. Pledges or other legal limitations of objects or claims to which we completely or partially retain title must be indicated to us immediately by the orderer. The orderer shall bear all costs that are necessary to remove third-party access to our retained goods or collateral goods (security) and which are required to reacquire the object if these are unable to be collected from third parties.

9. In case of payment in arrears or other culpable infringement of contractual obligations by the orderer, we shall be entitled to demand release of items to which we retain title or joint-ownership. Should we utilise this right, a withdrawal from the contract shall only be constituted (without prejudice to other mandatory legal provisions) if we declare this explicitly in writing. If the value of securities available to us exceeds our claims by more than 10 %, we shall release securities in this respect as we see fit upon request by the orderer.

IX. PAYMENTS

1. Unless otherwise agreed stipulated in writing, payment must be effected within 30 days of the invoice date, and for repair work or other service work within 10 days, in cash and strictly net without deductions. However, we may make the delivery dependent on incremental payment (e.g. cash on delivery or bank debiting) or advanced payment.
 2. We shall be entitled to offset payments against the earliest claim due.
 3. Payment via bills of exchange shall not be permitted.
 4. If the orderer is in arrears, we shall be entitled to demand all due and undisputed claims resulting from the transaction immediately in cash. This right shall not be excluded by deferment or the acceptance of cheques. Furthermore, we shall also be entitled to execute outstanding deliveries only in return for advanced payment or the placement of securities.
- If the orderer's financial situation worsens significantly after the contract has been signed, we shall also be entitled to withdraw from the contract if the orderer is not prepared to make payments incrementally or provide a security.
5. The orderer may only offset claims that are undisputed or have been determined legally valid.

X. PLACE OF JURISDICTION; APPLICABLE LAW

1. The place of jurisdiction shall be the industrial premises carrying out the order if the orderer is a merchant or legal person under public law or special fund under public law. We shall also be entitled to sue at the local court responsible for the orderer's domicile or branch.
2. For all legal relationship between us and the orderer, German substantive law shall apply with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).