

General Terms and Conditions for Supply of HOB 3 Timber Processing Machines and Systems

I. General

1. All deliveries and services shall be based on the present terms as well as all and any separate contractual agreements. Deviating terms and conditions of purchasing of Customer shall not become contents of the contract, even by acceptance of the order. Unless agreed to the contrary, the contract shall originate upon written order confirmation from Supplier.
2. Supplier reserves the right to samples, estimates, diagrams and similar, information of a physical and non-physical nature - also in an electronic form - ownership and copyrights; they may not be made accessible to third parties. Supplier engages not to make information or documents designated by Customer as being confidential accessible to third parties without its approval.
3. The documents forming part of the order confirmation such as illustrations, diagrams, statements of dimension and weight shall be non-binding to the extent not expressly marked as being binding.
4. Side-agreements and amendments to the contract shall require written confirmation by Supplier.

II. Price and payment

1. Unless agreed otherwise, the prices shall apply ex works inclusive of loading in works, albeit exclusive of packaging and unloading. Turnover tax to the statutory amount at the time shall be added to the prices.
2. Unless agreed otherwise, payment shall be made without any deduction for Supplier's account as follows:
1/3 down-payment after receipt of order confirmation; 1/3 as soon as Customer is informed that the main parts are ready for dispatch, the remainder within one month of passage of risk.
3. The right to withhold payments or to offset with counterclaims shall only accrue to Customer to the extent that its counterclaims are undisputed or legally effective and come from the same contractual relationship.

III. Delivery period, delay in delivery

1. The delivery period shall result from the agreements of the contracting parties. Delivery dates shall not be fixed dates. Compliance with them by Supplier shall presuppose that all commercial and technical questions between the contracting parties have been clarified and Customer has fulfilled all obligations incumbent on it, such as production of the necessary official approvals or certificates or down-payments, and does not jeopardise the delivery period notified to it by subsequent amendments to the order, supplementations or other obstacles. Otherwise, the delivery period shall be extended suitably. This shall not apply to the extent that Supplier is answerable for the delay.
2. Compliance with the delivery period shall be subject to correct and punctual delivery to us. Supplier shall notify delays which can be foreseen as soon as possible.
3. The delivery period shall be complied with if the object of delivery has left Supplier's works or readiness for dispatch has been notified by its expiry. To the extent that acceptance is to take place on a date confirmed in writing, the acceptance date shall be decisive - except for justified rejection of acceptance -, as an alternative the report of readiness for dispatch.
4. If dispatch or acceptance of the object of delivery is delayed for reasons for which Customer is answerable, the costs incurred by the delay shall be charged to it starting 4 weeks after the report of readiness for dispatch or acceptance. In the event of storage in Supplier's works, no less than 0.5% of the price in question shall be charged for each commenced month. Supplier shall also be entitled to dispose of the object of delivery elsewhere following the setting and fruitless expiry of a suitable period of grace and to supply to Customer with a suitable extended period.
5. If failure to comply with the delivery period is to be put down to force majeure, industrial disputes, other incidents outside Supplier's sphere of influence, the delivery period shall be extended suitably. Supplier shall notify Customer of the start and the end of such circumstances as soon as possible.
6. Customer can withdraw from the contract without setting a period if the entire performance finally becomes impossible for Supplier before passage of risk. Over and above this, Customer can withdraw from the contract if performance of part of the delivery of an order becomes impossible and it has justified interest in rejecting the part delivery. If this is not the case, Customer shall pay the contractual price due for the part delivery. The same shall apply in the case of Supplier's inability. Apart from this, Section VII. 2 shall apply.

If impossibility or inability occurs during arrears in acceptance or if Customer is solely or to a great extent responsible for the circumstances, it shall remain obliged to consideration.

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- If Supplier falls into arrears and Customer suffers damage as a result, it shall be entitled to demand liquidated default damage. For each complete week of the delay, it shall amount to 0.5%, albeit no more than 5% all told of the value of the part of the overall delivery which cannot be used punctually or contractually as a result of the delay.

If Customer sets Supplier a suitable period for performance following maturity in harmony with the exceptional cases permitted by law and if the period is not complied with, Customer shall be entitled to withdraw within the framework of the statutory directives.

Further claims from arrears in delivery shall exclusively be based on Section VII. 2. of these terms.

IV. Passage of risk, acceptance

- Risk shall pass to Customer when the object of delivery has left the work, even if part deliveries are made or Supplier has also taken on other services, e.g. dispatch costs or delivery and erection. To the extent that acceptance is necessary, it shall be decisive for the passage of risk. It must take place without delay as per the delivery date, as an alternative following Supplier's report of readiness for dispatch. Customer may not reject acceptance in the event of an inconsiderable defect.
- If no express acceptance examinations or acceptance procedures are agreed in the order confirmation, Customer shall accept the order of delivery by start of operation. Start of operation shall be understood by the contracting parties as meaning that Customer can be proven to have started the regular production of marketable goods customary in the trade to the extent that it does not challenge acceptance in the form of start of operation with Supplier in writing within 4 weeks after such time and states the reasons contradicting said request for acceptance.
- If dispatch of the system or individual parts or an agreed acceptance is delayed or not carried out as a result of circumstances not to be put down to Supplier, risk shall pass to Customer from the day of the receipt of the report of readiness for dispatch or acceptance. Supplier engages to conclude the insurances demanded by Customer at the latter's request.
- Part deliveries shall be admissible to the extent to be reasonably expected of Customer.

V. Retention of title

- Supplier reserves ownership to the object of delivery until receipt of all payments from the delivery contract. Over and above this, Supplier reserves ownership to all goods supplied until complete performance of all claims accruing to it from the business relationship, regardless of the reason.
- Customer shall be obliged to insure the object of delivery against theft, breakage, fire, water and other damage at the new value at its own expense. Customer hereby assigns its claims to reimbursement accruing to it against insurance companies or other parties obliged to reimbursement from the aforementioned damages to Supplier to the amount of the outstanding residue.

Supplier shall be entitled to insure the object of delivery against theft, breakage, fire, water and other damage at Customer's expense to the extent that Customer cannot prove conclusion of the insurance itself.

- Customer may not sell, pledge or transfer the object of delivery by way of security. In the event of attachments or confiscation or other disposals by third parties, it shall notify Supplier without delay.
- In the event of Customer's breach of contract, in particular in arrears in payment, Supplier shall be entitled to take the object of delivery back after a reminder, Customer being obliged to hand it over.
- As a result of retention of title, Supplier can only demand return of the object of delivery if it has withdrawn from the contract.
- An application for opening of insolvency proceedings on the part of Customer shall entitle Supplier to withdraw from the contract and to demand immediate return of the object of delivery.

VI. Claims from defects

Supplier shall warrant as follows for defects in title and quality of the delivery, ruling out further claims – subject to Section VII:

Defects in quality

- All parts proving to be defective within 12 months, in the event of multi-shift operation within 6 months, of start of operation or installation as a result of a circumstance before the passage of risk shall be reworked or replaced at Supplier's choice free of defects and free of charge. Establishment of such defects shall be notified to Supplier in writing without delay. Replaced parts shall become Supplier's property.
- Following communication, Customer shall give Supplier the necessary time and opportunity to make all the after-work and replacement deliveries appearing necessary to Supplier; otherwise, Supplier shall be exempted from liability for the consequences thereof. Only in urgent cases of jeopardy of operational safety or in order to avert disproportionately great damage,

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in which case Supplier is to be notified without delay, shall Customer have the right to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary expenditure from Supplier.

3. Of the direct costs incurred as a result of the after-work or replacement delivery, Supplier shall bear the costs of the replacement items including dispatch - to the extent that the complaint proves to be justified. It shall additionally bear the costs of dismantling and installation as well as the costs of any necessary provision of the fitter needed, including travelling expenses, to the extent that this does not mean a disproportionate strain on Supplier. If no knowledge other than customary mechanic's or electrician's knowledge is necessary for installation or replacement, Supplier shall fulfil its obligation if it provides a properly repaired part or a new part.
4. Within the framework of the statutory directives, Customer shall have a right to withdraw from the contract if Supplier allows a suitable period of grace set for it for after-work or replacement delivery in a defect in quality to expire fruitlessly, taking the statutory exceptional cases into due account. If only an inconsiderable defect exists, merely a right to reduction of the contractual price shall accrue to Customer. Apart from this, a right to reduction of the contractual price shall remain ruled out.

Further claims shall be based on Section VII. 2. of these terms.

5. No warranty is assumed in the following cases in particular: unsuitable or improper use, defective assembly or start of operation by Customer or third parties, natural wear and tear, defective or negligent treatment, improper maintenance, unsuitable operating equipment, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences, to the extent that Supplier is not answerable therefor.
6. If Customer or a third party repairs improperly, Supplier shall have no liability for the consequences resulting therefrom. The same shall apply to amendments of the object of delivery carried out without prior approval of Supplier.
7. Warrants and all further possible claims shall only extend to the machines and system parts supplied and shall not entail existing parts of systems or those provided by Supplier or otherwise already in existence, even if the new parts are connected with them or otherwise form a functional unit. If defects or functional disorders cannot unambiguously be assigned to certain parts, Customer shall bear the onus of proof for the fact that they are only and exclusively to be put down to defects in the newly supplied parts of the system.
8. For essential outside products of sub-suppliers known by name, integration of which as enclosed functional units has been agreed by Customer, Supplier's liability shall be limited to assignment of the claims to liability accruing to it against the supplier of the outside product. Customer accepts the assignment upon conclusion of the contract. Supplier's liability can only be considered in the event of judicial enforcement of the assigned claims against the supplier of the outside product remaining fruitless after the complete course of ordinary courts of law.

Defects in title

9. If use of the object of delivery leads to a breach of commercial protective rights or copyrights within Germany, Supplier shall procure right to further use for Customer at its own expense as a matter of principle or modify the object of delivery in a way to be reasonably expected of Customer so that the breach of protective rights no longer exists. If this is not possible at economically suitable terms or within a suitable period, Customer shall be entitled to withdraw from the contract. Under the aforementioned preconditions, a right to withdraw from the contract shall also accrue to Supplier. Over and above this, Supplier shall hold Customer harmless against undisputed or legally effective claims of the owners of the protective rights in question.
10. Supplier's obligations stated in Section VI. 7. shall be final for the event of a breach of protective or copyrights subject to Section VII. 2..

They shall only exist if

- Customer informs Supplier without delay of breaches of protective or copyrights being claimed
- Customer supports Supplier to a suitable extent in the defence of the claims made or makes it possible for Supplier to carry out the modification measures pursuant to Section VI. 7.
- all defence measures including extra-judicial regulations are reserved for Supplier
- the defect in title is not based on instructions from Customer
- the breach of rights was not caused by the fact that Customer has amended the object of delivery high-handedly or has used it in a non-contractual way.

VII. Liability

1. If the object of delivery cannot be used contractually by Customer through Supplier's fault as a result of omitted or defective implementation of suggestions and consultancies made before or after conclusion of the contract or as a result of a breach of other subsidiary contractual obligations - in particular instructions for operation and maintenance of the object of delivery - the regulations of Sections VI. and VII. 2. shall apply accordingly, ruling out Customer's further rights.

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2. Supplier shall only be liable for damage not originating on the object of delivery itself - whatever the reason -
 - a. in malice aforethought
 - b. in gross negligence of the owner/the executive organs or managerial employees
 - c. in culpable injury of life, limb and/or health
 - d. in the event of defects deceitfully not disclosed or the absence of which it has guaranteed
 - e. in defects to the object of delivery to the extent that there is no liability according to the Product Liability Act for personal or property damage to objects used privately.

In culpable breaching of cardinal contractual duties, Supplier shall also be liable in gross negligence of non-managerial employees and for slight negligence, in the latter case limited to the reasonably foreseeable damage typical for the contract.

Further claims have been ruled out.

VIII. Limitation

All Customer's claims - whatever the reason - shall be barred by limitation in 12 months. For claims to damages according to Section VII. 2. a. to e., the statutory periods shall apply. They shall also apply to defects of a construction or for objects of delivery used for a construction in accordance with their customary way of use and which have caused the latter's defectiveness.

IX. Use of software

To the extent that software is contained in the scope of delivery, Customer shall be granted a non-exclusive right to use the supplied software including its documentations. It shall be provided for use on the object of delivery intended therefore. Use of the software on more than one systems shall be forbidden.

Customer may only copy, revise, translate the software or convert it from the object code into the source code to the extent admissible by law (§§ 69 a et seq. German Copyright Act). Customer engages not to remove information on the manufacturer – in particular copyright statements - or to amend it without prior express approval by Supplier.

All other rights to the software and the documentations, including the copies, shall remain with Supplier or the software supplier. Granting of sub-licences shall not be admissible.

X. Applicable law, place of jurisdiction

1. All legal relationships between Supplier and Customer shall be governed by the law of the Federal Republic of Germany decisive for the legal relationships of domestic parties amongst one another. Application of UN purchase law (CISG) has expressly been ruled out.
2. The place of jurisdiction shall be the court competent for Supplier's registered office. However, Supplier shall be entitled to sue at Customer's registered office.
3. If one of the above provisions is or becomes ineffective, this shall not affect the validity of the remaining terms. Customer and Supplier engage to find a valid provision as equivalent as possible in its contents to the original intention.

These general terms and conditions of delivery have been drawn up taking the general terms and conditions of delivery recommended by the Association of German Machine and System Construction into due account.

These "HOB 3 General Terms and Conditions of Delivery" can also be downloaded under www.ewd.de.

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