

General Terms and Conditions of Sale & Delivery of Hardinge GmbH

The deliveries, performances and quotations provided or made by the Vendor shall exclusively be subject to the terms and conditions below. Any differing terms and conditions shall not become valid unless specifically accepted by the Vendor in writing.

I. Quotation and Purchase Order

1. The purchase order will not become effective and considered accepted unless confirmed by the Vendor in writing. Until then, the quotation shall be considered non-binding. Any telegraphic, telephone or oral supplements and modifications or subsidiary agreements to these Terms and Conditions will not be binding for the Vendor unless confirmed by the latter in writing.
2. All information included in printed matter and quotations, like weight, dimensional and volume specifications, figures, properties, type designations are binding, if specifically confirmed in writing, gross weights and box dimensions are approximate values specified to the best of knowledge but without commitment.

II. Prices

1. The prices are ex works or ex warehouse. They are without packing, freight, postage or other expenses. The packing is charged at cost.
2. List prices are subject to change. The price effective at the day of delivery or performance will be charged.
3. The legal sales tax will be added to the purchase price.

III. Terms of Payment

1. The payments shall be made net without any deductions to the bank/place of payment of the Vendor, namely. 100% - Confirmed Irrevocable Letter of Credit from an accredited Bank Payable against shipping at sight.
2. Bills of exchange and checks will only be accepted on account of payment, the costs for discounting and collection shall be borne by the Buyer.
3. If the Buyer does not pay until the deadline defined above or agreed in the order confirmation, the Vendor shall be entitled even without reminder to charge interest in the amount of 3% above the discount rate of the German Federal Bank.
4. Setting off or enforcing payment claims against liens or retention rights shall not be permissible unless the counterclaim is undisputed or has been established as final and absolute.

IV. Delivery

1. All information about delivery dates and deadlines are non-committal unless otherwise expressly agreed. The date of delivery starts with the date of the order confirmation, however, not before the provision of the documents, approvals, releases to be submitted by the Buyer and not before the receipt of the agreed payment.

2. The delivery date is considered to be kept if the delivery item will have left the work or the readiness for shipment will have been announced until its expiration.

3. The period of delivery will be extended to an appropriate extent - even in case of bindingly agreed deadlines and dates and during default in delivery - if Acts of God prevent the timely delivery. Other events, like strike, lockout or other circumstances which essentially hamper the delivery or render it impossible, shall be treated as Acts of God, regardless of whether such circumstances occur at the Vendor or sub-supplier. Particularly the case of non-delivery or insufficient delivery of the Vendor by his sub-supplier/s shall be treated as Act of God.

4. Partial delivery and partial performance are admissible at any time. They entitle the Vendor to claim the proportional part of the purchase price.

V. Transfer of Perils

1. The risk will pass to the Buyer with the shipment of the delivery item ex works or warehouse at the latest, even if partial deliveries are made or carriage-paid delivery was agreed. The loading process at the place of delivery is part of and included in the shipment.

2. Should the shipment be delayed as a result of circumstances for which the Buyer is responsible, the risk shall pass to the Buyer on the day of readiness for shipment, in which case, however, the Vendor shall be obliged to take out the insurance desired by the Buyer at the latter's discretion and cost.

VI. Liability for Defects

For delivery defects, which also include the absence of warranted qualities, the Vendor shall be liable to the exclusion of any further claims, without prejudice to section VII.4, as follows:

1. All parts which prove to be defective within six months after their delivery due to circumstances lying before the transfer of perils - especially due to faulty design and construction, inappropriate materials or manufacturing defects - shall either be repaired or replaced at the Vendor's discretion.

The detection of such defects shall be reported to the Vendor in writing without delay. Replaced parts will become his property. If shipment, installation or commissioning are delayed through no fault of the Vendor, the liability shall become void 12 months after the transfer of perils at the latest.

For third-party products, the liability of the Vendor shall be limited to the assignment of the liability claim to which he is entitled against the supplier of the third-party product.

2. In all cases, the right of the Buyer to claim damage resulting from defects shall become time-barred after 6 months starting from the point of time of the timely notice of defect, or with expiration of the warranty period at the earliest.
3. For the removal of the defect/s, the Buyer must grant the Vendor the required time and opportunity at the latter's equitable discretion. His refusal to do so shall release the Vendor from the liability for defects. The Buyer shall have the right to remove the defect himself or have it removed by a third party and demand reimbursement of the incurred costs only in those urgent cases where the operational safety would otherwise be jeopardized and to avert unreasonably large damage.
4. Of the direct costs incurred through repair or replacement, the Vendor shall bear the costs for disassembly/assembly, further the costs for the deployment of his assemblers and auxiliary staff if this can be demanded in the individual case provided the complaint proves to be justified. For the rest, the Buyer shall bear the costs.
5. For the replacement part and repair work, the warranty period shall amount to three months but shall at least continue until the expiration of the original warranty period for the delivery item. The period for the liability for defects for the delivery item will be extended by the duration of the service interruption caused by the rectifying work.
6. Any improper manipulation or repair work made by the Buyer or a third party without prior approval by the Vendor shall void the liability for the resulting consequences.
7. No warranty shall be accepted for damage resulting from the following circumstances: improper or incorrect use, faulty assembly or commissioning through the Buyer or a third party, natural wear, wrong or negligent handling or treatment, inappropriate operating resources, inadequate construction work, unsuited building ground, chemical, electro mechanical or electrical influences unless caused by fault of the Vendor.
8. The Buyer shall only have the right to reduce the payment or optionally rescind the contract in those cases where several attempts to rectify the defect will have failed or been delayed by the Vendor.
9. Any claim for damages by the Buyer is excluded if damage is concerned which does not occur in connection with the subject of agreement but is caused to other assets (consequential harm caused by a defect) and provided that they are not due to intentional or grossly negligent violation of the agreement by the Vendor or one of his vicarious agents.

VII. Right of Withdrawal of the Buyer

1. The Buyer is entitled to withdraw from the contract if the entire performance becomes definitely impossible prior to the transfer of perils. The same shall apply in case of incapacity. When ordering congenial items, the Buyer may withdraw from the contract if the execution of a part of the delivery becomes impossible in quantitative terms and if he has a legitimate interest in refusing partial delivery. If this is not the case, he is entitled to reduce the consideration proportionately.

2. In case of default in the sense of section IV., and if the Buyer grants an appropriate period of grace explicitly declaring that he will refuse the acceptance after the expiration of that period, and if the Vendor fails to observe the period of grace, the Buyer shall be entitled to withdraw from the contract.

3. If the impossibility of performance occurs during the default of acceptance or by fault of the Buyer, the latter shall remain obliged to consideration.

4. The Buyer shall also have the right of withdrawal, if the Vendor fails to meet the appropriate period of grace for repair/rectification or replacement concerning defect for which he is liable pursuant to the terms of delivery by his own fault. This right of withdrawal to which the Buyer is entitled will also be effective should the repair or replacement through the Vendor prove to be impossible or the Vendor proves to be incapable to repair or replace the defective item.

VIII. Right of Withdrawal of the Vendor

In case of unforeseeable events pursuant to section IV of these terms of delivery which considerably change the economic importance or contents of the performance or seriously affect the operation of the Vendor, and in case the performance proves to be impossible with hindsight, the contract shall be adapted appropriately. If this is not reasonable for economical reasons, the Vendor shall have the right to fully or partially withdraw from the contract. If the Vendor intends to make use of his right of withdrawal, he shall communicate this to the Buyer without delay after having realized the implication of the event.

IX. Title Retention

1. The Vendor reserves the right of property for delivered goods until the full settlement of the purchase price as well as of all other bills receivable resulting from the business relationship with the Buyer. This title retention shall also apply to any debit balance in his current account. If the value of the goods covered by the title retention exceeds outstanding debts of the Vendor by more than 20%, the latter shall transfer the property in the purchased goods to the Buyer in so far as the value of the goods under retention of title exceed the claims of the Vendor by more than 20%.

2. The Buyer is obliged to separately store and identify the goods belonging to the Vendor.

3. As of now, the Buyer assigns the claims arising out of the resale, including the insurance proceeds, to the Vendor in full and in advance. If the height of the assigned claims covered by the extended title retention in favor of the Vendor exceeds all due claims under extended title retention of the Vendor against the Buyer by more than 20%, the Vendor shall reassign the assigned claims exceeding the Vendor's claims by more than 20% by request of the Buyer.

4. The Buyer is obliged to insure the delivered goods and the products manufactured therefrom against accidental degradation and accidental perishing, incl. risk of fire and theft, and to provide proof of the insurance upon request of the Vendor.

5. In case of behavior of the Buyer contrary to the contract, especially in case of delay of payment, the Vendor shall be entitled to take back the goods in his (co-)ownership at the Buyer's cost. The taking back or garnishment of these goods through the Vendor shall not constitute the withdrawal from the contract unless the 'German Installment Purchase Law' (Abzahlungsgesetz) applies.

X. Limitation of Liability

Claims for damages resulting from the impossibility to render the performance, from positive violation of contractual duty, from fault upon concluding the contract and tortious act, both against the Vendor and his vicarious agents or assistants, shall be excluded unless they result from intentional or grossly negligent action.

XI. Assembly

For the provision of the assembly staff, the terms of assembly of the Vendor as amended at that time shall apply.

XII. Severability Clause

Should any clause of these terms be or become ineffective in part or entirely, this shall not affect the validity of any other regulation herein. The invalid clause shall be replaced by a provision which is nearest in the economical meaning to the one intended by the parties.

XIII. Applicable Law

These terms are subject to German material law. The "uniform purchase laws" shall not apply.

XIV. Legal Venue

For any complaints and legal proceedings brought against the Vendor by the Buyer, Krefeld shall be the only court of jurisdiction provided the Buyer is a general merchant, a corporate body under public law or a legal entity under public law. The Vendor shall be entitled to bring legal proceedings against the Buyer either in Krefeld or at the latter's general legal venue.