



# HAHN

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## Terms of Sale and Delivery HAHN-Elektrobau GmbH (as of: 16.02.2022)

### **Art. I: General provisions**

1. Unless any special conditions have been agreed and confirmed by us in writing, the following terms of sale and delivery shall be valid exclusively. General terms of business of a party ordering shall only be valid if they have been expressly approved by us in writing. Thus, this consent requirement shall likewise and in any case apply if we, aware of the general terms of business of a given buyer, execute the delivery to this buyer without reservation.
2. For the scope of delivery, the mutual, identical written declarations shall be decisive. These Terms of Sale and Delivery shall apply only if the buyer is an entrepreneur (§14 BGB), a corporate body under public law or a public separate estate / special fund under public law.
3. Any reference to the application and/or legitimacy of any legal regulations shall be deemed to be made for reasons of clarification and/or the avoidance of doubt only. This means that even without any such clarification made, the legal regulations shall apply unless the present Terms deviate and/or derogate from them in any manner or to any effect.
4. The term "entitlement to compensation" in these terms of sale and delivery also include entitlements to compensation for wasted expenditure.

### **Art. II: Conclusion of contract, prices, terms of payment, offsetting, seller's right of retention**

1. Unless otherwise agreed, all orders, agreements, additions to or alterations of agreements as well as side agreements (by phone, email or facsimile) shall become binding only if they have been confirmed in writing, unless an order has already been tacitly executed.
2. Our quotations and price lists as may be made and valid from time to time shall be the basis of and decisive for any contract to be concluded. All our offered prices shall remain conditional and without engagement; they are to be understood as ex works Güsten, Germany, excluding packaging, plus value-added tax at the current statutory amount plus the Cu-daily-notice of EUR 153.39/100kg.
3. All payments are due strictly net and free at paying agent of our company within 30 days after invoice date. For amounts above 50.00 EUR a discount of 2% is granted if the payment is made within 15 days after invoice date and all prior invoices due have been settled. If the party ordering defaults on any payment, statutory provisions shall apply. The invoice will be created electronically and will be send electronically via a protected file without signature.
4. If a cheque is received for payment, the costs of discounting and cashing of the cheque are borne by the party ordering.
5. Deliveries to new business customers are made against advance payment or cash-on-delivery unless relevant references or documentation of a sound credit rating are available to us. The same shall apply in case of a deterioration of the financial situation of the party ordering.
6. The party ordering can only offset against claims that are undisputed or determined without further legal recourse. The party ordering shall only be entitled to exercise a right of retention if a counterclaim is based on the same contractual relationship.

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Amtsgericht Stendal HRB 15015  
Geschäftsführer: Klaus Dieter Hahn, Marta Hahn



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### **Art. III: Reservation of ownership**

1. The goods of a delivery (goods subject to reservation of ownership) shall remain our property until all claims we are entitled to against the party ordering as a result of the business relationship have been fulfilled. In case of several claims or accounts current such reservation of ownership shall serve as a security for current account balance claims even if individual deliveries of goods have already been paid. If and to the extent we are obliged to release a security interest, we shall have the right to choose the security interest(s) to be released at our own discretion.
2. For the time the reservation of ownership is in effect, pledging and assignment as security are prohibited to the party ordering. The party ordering shall be obliged to notify us immediately and in writing if an application to open insolvency proceedings on their assets has been filed or if and/or to the extent any third party starts to access (e.g. by way of seizure) goods that are our property.
3. The party ordering shall be entitled to any resale of goods in the regular course of their business only and only on condition that the party ordering receives payment from their customer or asserts the reservation that ownership with respect to the goods will only be transferred to their customer once all payment obligations under such resale have been fulfilled completely. This permission shall be subject to withdrawal.
4. In case the party ordering resells goods that are subject to reservation of ownership, he already now assigns to us as security all future claims against his customer resulting from resale including all ancillary rights - including possible current account balance claims. No further explanations are necessary hereto. If the goods subject to reservation of ownership are resold together with other things without an item price having been agreed on, the party ordering shall assign to us such a part of the claim for the total price as is equivalent to the price invoiced by us for the goods subject to reservation of ownership.
5. a) The party ordering is permitted to process the goods subject to reservation of ownership or to mix or connect with other goods. Such processing shall be done for us as manufacturer, without, however, imposing any obligation on us. The party ordering shall safe keep the new thing arising from such processing for us with the due diligence of a prudent businessman. Such a new thing shall be considered as part of goods subject to reservation of ownership.  
b) The party ordering already now declares to be in agreement with us about the following conditions: If the goods subject to reservation of ownership are connected or mixed with other goods that are not our property, we shall acquire co-ownership of the new thing in the amount of the proportion of the value of the connected or mixed goods subject to reservation of ownership to the value of the remaining goods at the point of time of connecting or mixing of the goods. To this extent, such a new thing is considered as goods subject to reservation of ownership.  
c) The regulations concerning the assignment of claims according to Art. III no. 3 shall also apply to such a new thing. The assignment shall only be valid up to the amount that is equivalent to the amount invoiced for the processed, connected or mixed goods subject to reservation of ownership.  
d) If the party ordering connects the goods subject to reservation of ownership with plots of land or movable property, he shall also assign to us his claim which he is entitled to as remuneration for the connecting work including all ancillary rights as security. In doing so, the assignment shall be effected in the amount of the proportion of the value of the connected goods subject to reservation of ownership to the value of the remaining connected goods at the point of time of connecting. No further explanations are necessary hereto.



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6. Until further notice the party ordering is authorized to collect assigned claims resulting from the resale on their behalf and in their own name. If there is an important reason, especially default in payment, cessation of payment, institution of bankruptcy proceedings, bill protest or substantiated signs of over-indebtedness or imminent insolvency of the party ordering, we shall be entitled to revoke this authorization of the party ordering. In addition, we can, after prior and reasonable notice thereof, disclose the security assignment, exploit assigned claims and demand disclosure of security assignments to the customer by the party ordering. In case of a revocation of the authorization to collect claims, the party ordering has to give us all information necessary for the assertion of their rights and to submit to us all necessary documents.
7. In case of attachment, seizure or injunctions or other interferences by third parties, the party ordering has to indicate our ownership and to inform us immediately so that we can assert our ownership rights. If a justified interest is asserted against them, the party ordering has to give us all information necessary for the assertion of their rights against the customer and to submit to us all necessary documents.

#### **Art. IV: Delivery, delays**

1. Our deliveries are made ex works Güsten (Federal Republic of Germany), which shall also be deemed the place of fulfilment with respect to any delivery and/or cure hereunder.
2. The choice of type of delivery lies within our discretion unless otherwise agreed.
3. We are only entitled to partial delivery and partial performance if this lies in the interest of the customer according to the purpose of the contract and if the customer does not incur any substantial additional effort or expenditure.
4. Any packaging materials provided by us shall be charged at cost price.
5. On request and at cost of the party ordering, deliveries can be insured against the usual transport risks. In case of express deliveries, any transport costs advanced, as well as any warehousing charges, costs and similar costs advanced shall be invoiced for, with the invoice date being the date of the respective dispatch.
6. Compliance with delivery time limits depends on the timely receipt of all documents, approvals and releases, drawings/plans to be received from the party ordering. In addition, basic condition for the compliance with delivery time limits shall be that the party ordering meets the terms of payment agreed on and other obligations towards us. If these conditions are not fulfilled, time limits will be postponed accordingly. This is invalid, however, if we are responsible for the delay.
7. If non-compliance with time limits is caused by
  - a) force majeure, e.g. mobilisation, war, terrorist acts, insurgency, strike, lockouts or similar events,
  - b) computer virus attacks or other attacks by third parties against our information technology system and they occur even though security measures of due diligence have been taken,
  - c) impediments owing to German, US-American or other national, EU or international regulation of foreign trade legislation,
  - d) delayed or improper delivery on our part or
  - e) other circumstances beyond our responsibility,

time limits will be reasonably postponed.

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8. The party ordering can withdraw from the contract due to delays in delivery within the framework of statutory provisions if we have been responsible for such delays. A reversal of the burden of proof to the disadvantage of the party ordering is not connected hereto.
9. The party ordering is obliged upon our request to declare within a reasonable period of time whether he intends to withdraw from the contract due to the delay or if he insists on delivery.
10. If we cause a delay in delivery for reasons within our responsibility, liability for damage being an immediate consequence of the delayed delivery shall be limited to the amount of the predictable, contract-typical damage. The limitations according to Section XIII, clauses 2 to 4 herein below shall apply accordingly.

#### **Art. V: Transfer of risk**

1. The risk shall also be transferred to the party ordering with deliveries that are carriage-free at the time the goods are dispatched or collected, at the latest, however, on handing over of the goods.
2. If the dispatch, the delivery, the beginning or the execution of the installation/erection or assembly, the integration into their operation or test operation is delayed for reasons within the ordering party's responsibility or if the party ordering is in default of acceptance for any other reasons, the risk shall be deemed transferred to the party ordering. In such a case, any costs incurred by us in connection with warehousing and holding as well as any other loss or damage caused to us shall be borne by the party ordering.

#### **Art. VI: Intellectual property exploitation rights**

We reserve all and unconditional property and intellectual property exploitation rights to cost calculations, drawings and other documents (hereinafter called Documents). Documents must not be disclosed to any third parties without our prior written consent. If the order is not placed with us, all Documents shall be returned to us immediately on our request or, if so requested by us, shall be destroyed with such destruction effected having to be confirmed to us in writing. Sentences 1 to 3 shall accordingly apply to documents received from the party ordering. These documents can however be disclosed to those third parties whom we have commissioned for process inquiries and deliveries.

#### **Art. VII: Acceptance**

The party ordering must not refuse acceptance of deliveries for insignificant defects.

#### **Art. VIII: Material defects, warranty**

1. In case of material defects, the party ordering is entitled to statutory rights depending on this article.
2. The party ordering shall only be entitled to compensation arising from warranty claims if they have fulfilled their statutory inspection and complaint obligations as defined in Art. 377 HGB [code of commercial law of Germany].
3. All parts or performances showing a material defect are, at our discretion, either to be repaired or to be delivered or performed again if the material defect existed already at the time of risk transfer.
4. Entitlement to cure and/or supplementary performance shall lapse one year after the commencement of the statutory period of limitation. The right to exercise withdrawal as well as any price reduction rights shall expire one year after commencement of the statutory period of limitation. The time limits stated in sentences 1 and 2 shall not apply if and to the extent that longer periods are regulated by law, nor shall the said time limits apply in case of deliberate action, malice or intent of the party ordering, in case of fraudulent concealment of the defect and/or in case of non-compliance with a guarantee of quality. The

statutory regulations on suspension of expiry, suspension and new beginning of the limit time periods shall remain unaffected.

5. In case of complaints, the party ordering is entitled to retain payments to the extent that is in reasonable proportion to the defects that have occurred. The party ordering is permitted to retain payments only if there is no doubt about the justification of the complaint. A right of retention of the party ordering is not given if their entitlement to claim for defects has expired. If the complaint was made unjustly, we shall be entitled to compensation by the party ordering for any expenditure incurred.
6. We are to be granted sufficient opportunity for supplementary performance within a reasonable time limit.
7. If the supplementary performance should fail, the party ordering is entitled to withdraw from the contract or reduce payments without prejudice to entitlements to compensation according to Art. VIII no. 11.
8. Warranty entitlements do not exist in case of
  - a) insignificant deviation of the quality agreed on
  - b) an insignificant adverse effect on the usability,
  - c) normal wear,
  - d) defects deemed to be in the sphere of responsibility of the party ordering or that occur after the transfer of risk,
  - e) improper and/or inaccurate modifications and/or maintenance work carried out by the party ordering.
9. Entitlement of the party ordering to compensation for expenditure incurred and required in connection with any cure and/or supplementary performance (in particular transport costs, travel costs, labour costs and costs for material) shall be precluded if and to the extent such expenditure is incurred because the delivery item, at a later time, has been transferred to a location that is different from the seat or branch of the party ordering. This preclusion shall not apply, however, if such transport of a delivery item is in compliance with the contractual use of the said item. The cure and/or supplementary performance shall not include the disassembly/de-installation of the defective item, nor its re-assembly or re-installation if, originally, we did not have the right to install it.
10. The ordering party's right to recourse against us in accordance with Art. 478 BGB [civil code of Germany] is only valid to the extent that the party ordering has not concluded any agreements with their customer that exceed statutory claims for defects. In addition, for the scope of the right to recourse of the party ordering against us according to Art. 478 para. 2 BGB [civil code of Germany] Art. VIII no. 9 shall apply accordingly.
11. Claims for damages by the party ordering because of material defects shall be excluded. This does not apply in case of fraudulent concealment of the defect, non-fulfilment of a quality guarantee, injury to life, body or health and in case of intentional or grossly negligent breach of obligation by us, our statutory agent or our vicarious agent. A reversal of the burden of proof to the disadvantage of the party ordering is not connected hereto.

12. Any entitlements to the party ordering that go beyond or are different from those regulated in this article because of a material defect are excluded.

### **Art. IX: Right of withdrawal**

For the withdrawal from this contract, the statutory regulations shall apply if not otherwise agreed in these terms of sale and delivery.

### **Art. X: Industrial property rights and copyrights**

1. If not otherwise agreed, we are obliged to perform the delivery free of industrial property rights and copyrights (hereinafter called Property Rights) only in the country of the point of delivery. Should any third party make justified claims against the party ordering because of an infringement of Property Rights by deliveries performed by us in accordance with the contract, then we shall be liable towards the party ordering within the time limits regulated by Art. VIII no. 4 as follows:

- a) For the corresponding deliveries, we will, as to our choice and at our cost,
- aa) obtain a right of use,
  - bb) change the delivery in such a way that the property right is not infringed, or
  - cc) replace the delivery.

If the above-mentioned measures should not be possible under reasonable conditions, the party ordering is entitled to the statutory rights of withdrawal or rights to reduce the price.

- b) Our obligation to render compensation for damage is regulated by Art. XIII.
- c) The above-mentioned obligations (a+b) shall only exist if the party ordering
- aa) informs us immediately and in writing about any claims made by third parties,
  - bb) does not acknowledge an infringement
  - cc) and all rights to defensive measures and settlement negotiations remain reserved to us.

If the party ordering discontinues the use of the delivery for reasons of mitigation of damage or other important reasons, they shall be obliged to point out to the third party that no acknowledgement of a property right infringement is connected with such discontinuation of use.

2. Claims by the party ordering are excluded if they are responsible for the property right infringement.
3. Claims by the party ordering are also excluded if the infringement of property rights is caused by the special specifications of the party ordering, by a type of use that is unpredictable for us or by the fact that the delivery has been changed by the party ordering or used together with products not delivered.
4. In case of infringement of property rights, the entitlements to the party ordering regulated by Art. X no. 1a) shall apply; for all remaining cases the provisions of Art. VIII no. 5, 6 and 10 shall apply accordingly.
5. For all other defects of title, the provisions of Art. VIII shall apply accordingly.
6. Claims because of defects of title by the party ordering against us and our vicarious agents that go beyond or are different from those regulated by this article are excluded.

### **Art. XI: Reservation of fulfilment of the contract**

1. The contract shall be fulfilled under the reservation that there are no impediments owing to German, US-American or other applicable national, EU or international regulation of foreign trade legislation or any embargoes or other sanctions.
2. Fulfilment of the contract shall also be subject to our own ability to supply and deliver.
3. The party ordering is obliged to submit all information and documents that are necessary for export, shipment or import.

### **Art. XII: Impossibility; contract adaptation**

If the performance is impossible, the party ordering is entitled to compensation unless the impossibility is due to circumstances beyond our responsibility. The entitlement to compensation to the party ordering is limited, however, to 10% of the respective part of delivery that can not be used for its purpose owing to the impossibility. This restriction is invalid, if liability concerns acts of intent, acts of gross negligence or cases of damage to life, body or health. A reversal of the burden of proof to the disadvantage of the party ordering is not connected hereto. The right of the party ordering to withdrawal from the contract is not affected.

### **Art. XIII: Other entitlements to compensation**

If not otherwise agreed in these Terms of Sale and Delivery, entitlement to compensation to the party ordering for any legal reason whatsoever, in particular for non-performance of contractual obligations and from tortious acts, are excluded.

This does not apply if the type of liability is as follows:

- a) liability under product liability law
- b) liability in cases of acts of intent or gross negligence committed by us, our representatives or vicarious agents,
- c) in case of fraud,
- d) in case of non-compliance with a guarantee
- e) because of a culpably caused damage to life, body or health,
- f) because of culpably caused violation of significant contractual obligations

The entitlement to compensation because of a violation of a significant contractual obligation is limited to the contract-typical, predictable damage unless another one of the above-mentioned cases a-e has occurred.

A reversal of the burden of proof to the disadvantage of the party ordering is not connected with the provisions of this article.



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#### **Art. XIV: Place of fulfilment, court of jurisdiction, applicable law**

1. Place of fulfilment with respect to all delivery obligations on our part and place of fulfilment with respect to all other contractual obligations incumbent upon both and/or either of the parties shall be Güsten, Federal Republic Germany.
2. Exclusive court of jurisdiction shall be, if the party ordering is a merchant, the magistrate's court of Bernburg, Germany; if the value in litigation is higher than € 5,000, it shall be the district court of Magdeburg, Germany.
3. This contract and its interpretation shall be subject to German law, with exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and without giving effect to the principles of conflict of laws.

#### **Art. XV: Validity of the contract**

This contract shall remain valid also in case some of its individual clauses are legally ineffective. This shall not apply if sustaining the contract would place undue hardship on one of the parties.

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