



General Terms and Conditions for Catalogue Sales

General Terms and Conditions

1. Scope of Application

1.1 These Terms and Conditions of the Heinz Soyer Bolzenschweißtechnik GmbH (hereinafter referred to as "Seller") apply to all contracts an entrepreneur (hereinafter referred to as "Client") concludes with the Seller related to the seller's goods and/or services. The inclusion of the Client's own conditions is herewith objected to, unless other terms have been stipulated.

1.2 These Terms and Conditions shall apply exclusively even if the Seller is executing a delivery to the client without specific reservations despite being aware of business terms and conditions stipulated by the Client that deviate from or contradict these purchasing terms and conditions.

2. Conclusion of Contract

2.1 The product descriptions displayed in the seller's prospectuses do not constitute binding offers on the part of the Seller, but merely serve the purpose of submitting a binding offer by the Client.

2.2 The Client can submit an offer in writing (letter), by fax or by e-mail.

2.3 The Seller can accept the Client's offer within 5 days

- by sending him a letter, fax or e-mail confirming the order, in this case the client's receipt of the Seller's confirmation shall be decisive,
- by delivering the goods ordered by the Client, in this case the Client's access to those goods is relevant,
- by requiring the Client to pay after submitting his order,
- if payment by debit is offered, by debiting the full prize to the Client's account, provided that direct debiting is offered and the Client has chosen this payment method, whereby the time of debiting the Client's account is decisive.

Should several of the aforementioned options apply, the contract will be concluded the moment one of those options occurs first. In the case the Seller does not accept the Client's offer within the aforementioned period, the offer is deemed to be rejected and the client is no longer bound to it.

2.4 Order processing and contacting usually take place via e-mail and automated order processing. It is the Client's responsibility to ensure that the e-mail address he provides for the order processing is accurate so that e-mails sent by the Seller can be received at his address. In particular, it is the Client's responsibility, if SPAM filters are used, to ensure that all e-mails can be delivered which are sent by the Seller or by third parties instructed by the Seller to process the order.

2.5 In case the parties have agreed to special conditions, those conditions do not apply to future client's contracts or client's contracts running simultaneously.

2.6 If the Client does not have the means to fulfill his obligations to the Seller, the Seller may terminate existing contracts with the Client by withdrawing from them without notice. The right to withdraw applies also in case of a client's application of insolvency without prejudice to section 321 BGB (German Civil Code) and section 112 InsO (German Insolvency Act). The Client should inform the Seller about his imminent inability to pay in a timely manner.

3. Price and Payment Conditions

3.1 Prices indicated by the Seller are net prices excluding VAT. Packaging and forwarding costs, loading charges, insurance (especially transport insurance), duties and charges are calculated separately.

3.2 The Client may use the payment method "payment in advance", unless otherwise agreed.

3.3 For deliveries to countries outside the European Union, additional costs may arise which are beyond the Seller's control. They shall be borne by the Client. Such costs are for example money transfer costs (transfer fees, exchange rate charges) or customs duties or import taxes.

3.4 If payment in advance is agreed, payment is due immediately after conclusion of the contract.

3.5 Payment is deemed to be made once the Seller's account has been credited with the equivalent of the payment. On default of payment the Seller is entitled to claim interest on arrears amounting to 10% above the respective basic interest rate. The other legal rights of the Seller remain unaffected in case of default of payment. If claims are overdue, payments received will be set-off first against any costs and interests and then against the oldest debts.

3.6 In cases of unforeseen cost increases (for example currency fluctuations, unexpected increases in prize by the supplier, etc.) the Seller is entitled to pass on those prize increases to the Client. This only applies if delivery is to take place as agreed four months after conclusion of the contract.

4. Shipment and Delivery Conditions

4.1 Goods are generally delivered in the form of shipment to the delivery address indicated by the Client. In the processing of the transaction, the delivery address indicated by the Client shall be applicable.

4.2 The Seller is entitled to partial delivery insofar as this is reasonable for the Client. Should partial deliveries be permitted, the Seller is entitled to issue partial invoices.

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4.3 The Seller reserves the right to withdraw from the contract in cases of wrong or improper self-supply provided that he bears no responsibility for the non-supply and that he has concluded with due care a corresponding hedging transaction with the supplier. The Seller will use all reasonable endeavors to procure the goods. In the case of non-availability or partial availability, the Client will be immediately informed and any counter performance will be immediately refunded.

4.4 The risk of accidental loss and accidental deterioration passes to the appropriate person in charge of the transport once the goods are handed over to him. This also applies if the Seller bears the cost of transport. Transport insurance will only be concluded at the cost and expense of the Client. If the Seller owes installation and assembling, the risk passes to the client with the completion of installation and assembling and with the handing over to the Client.

4.5 Should delivery to the Client be impossible for reasons lying within the Client's responsibility, the Client will be charged with all the costs related to the unsuccessful dispatch and has to pay a lump-sum compensation for being in default. This is true for example if the product cannot pass the entrance door, the doorstep or the staircase or if the Client cannot be reached under his delivery address indicated by him, despite announcement of delivery made to the client within a reasonable time period. The lump-sum compensation for being in default amounts to 1% for each full week, however in total no more than 8 % of the total delivery or of that portion of delivery which was refused. The parties remain free to provide evidence of lower or higher damages.

4.6 In the case of default of delivery for reasons lying within the Client's responsibility, the risk passes to him already with the Seller's announcement that he is prepared to deliver. Possible storage costs have to be borne by the Client after the transfer of risk.

4.7 Should the Client collect the goods himself, the Seller will inform the Client via e-mail that the ordered items are ready for collection. After receiving this e-mail, the Client may collect the items at the Seller's premises according to the agreement with the Seller. In this case delivery costs will not be charged.

5. Force majeure

In circumstances of force majeure having an impact on the contract fulfillment, the Seller is entitled to delay the delivery as long as the reasons for the impediment of delay continue to exist. He may withdraw from the contract fully or partially in the case of a long-term impediment, without giving rise to claims asserted against him by the Client. Cases of force majeure are deemed to be events unforeseen for the Seller or events - even if they were foreseeable - which are beyond the control of the Seller and the impact thereof on the contract fulfillment could not be averted despite reasonable efforts used by the Seller. Possible legal claims of the Client are not affected.

6. Delay of performance

6.1 In the case of delay of performance the Client has a right to withdraw within the framework of legal provisions provided that the Seller bears the responsibility of delay.

6.2 In case the Seller is in default and at the Seller's request, the Client is obliged to give notice within a reasonable period whether he withdraws from the contract or insists on the contractual performance.

6.3 If, at the request of the Client, dispatching or delivery is delayed more than one month after preparedness to deliver has been announced, the Client may be charged with the storage costs for every month commenced to the amount of 0, 5% of the price of the delivered goods, but not more than 5% of the price in total.

6.4 The right to provide evidence for damages which are higher or lower is not affected.

6.5 The aforementioned limitations of liability do not apply in the case of intent, fraud or gross negligence as well as in cases of damages caused by personal injury, impairment to health or loss of life.

7. Reservation of Proprietary Rights

7.1 The Seller reserves title to the delivered goods until complete payment of the purchase price has been effected. Furthermore, the Seller reserves title to the delivered goods until all his claims arising from his business relationship with the Client are met.

7.2 In the case of processing delivered goods, the Seller is deemed to be the producer and acquires ownership of the newly created goods. If processing is done with other materials, the Seller acquires ownership in proportion of the invoice amount of his delivered goods to the value of the other used materials. In the case of combination or mixing of goods belonging to the Seller with objects belonging to the Client, the article belonging to the Client is considered to be the main object. In this case, the Seller acquires the co-ownership of this new object in proportion of the purchase price of his goods or - in the absence of such a purchase price - of the current market value. In those cases the Client is considered to be the custodian.

7.3 Goods under reservation of title may neither be pledged nor transferred by way of security. The Client, in his capacity as a reseller, is only allowed to resell in the normal course of business on condition that the Client's claims against his customers arising from the resale will be assigned effectively and the ownership of the goods will be transferred under the condition of payment. By concluding a contract, the Client assigns his claims against his customers arising from those sales to the Seller by way of security. The Seller accepts that assignment simultaneously.

7.4 The Client has to give notice to the Seller immediately if he has access to goods belonging or co-belonging to the Seller or to claims assigned. He has to pay to the Seller any amounts assigned to the Seller he has collected, insofar as the Seller's claims are due.

7.5 In so far as the value of the Seller's security rights exceeds the amount of the secured claims by more than 10%, the Seller will release a corresponding part of his security rights at the Client's request.

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8. Warranty Claims

In cases of defects the legal provision will apply. Deviating hereof the following paragraphs will apply for items which were used for a building in a manner contrary to common practice thereby causing a defect.

8.1 An insignificant defect does not cause warranty claims and does not entitle the Client to refuse delivery of the goods. Should part of the goods be defective in a significant manner, the Client is not entitled to refuse delivery. This does not apply if partial delivery is of no interest to the Client. Furthermore, payments effected by the client may only be retained to an extent which is appropriately proportionate to the occurred defect. If the item is made available at no cost, the Seller's liability for defects is excluded except for cases involving intent and gross negligence.

8.2 Warranty claims do not arise in cases of natural wear and tear, in cases of damages after the passing of risk which are caused by incorrect or negligent treatment, or caused by special external influences not covered by the contract, or caused by non-reproducible disturbances. If the Client or a third party undertakes modifications or maintenance works which are improper, no warranty claims can be made for the resulting damages, unless the Client can prove that the notified defect was not caused by those modifications or maintenance works.

8.3 Warranty claims are excluded in cases of used goods

8.4 The limitation period for any claim arising from defects is one year calculated from the passing of risk. Subsequent performance (new delivery or remedying of a defect) shall effect exclusively the period of limitation for claims arising from defects which led to the subsequent performance.

8.5 The aforementioned limitations of liability and reduction of limitation pursuant to Section 8.1, 8.3 and 8.4 do not refer to cases related to the right of recourse (Section 478 German Civil Code) as well as to claims for damages and compensation of expenses the Client can make according to the relevant legal provisions related to defects. Section 9 will apply for the latter claims.

8.6 If the client is a business person, he has to comply with the commercial obligation to inspect and to give notice of defects pursuant to Section 377 German Commercial Code. If the Client fails to comply with those obligations, the goods shall be deemed as approved, unless the defect was not recognizable during inspection.

8.7 In the case of subsequent performance the Seller has the right to choose between rectification and replacement delivery.

8.8 In the case of replacement delivery, the Client is obliged to send back first the goods delivered within 30 days. The return parcel must contain the reason for return, the name of the Client and the number assigned to the purchase of the defective goods in order to enable the Seller to identify the returned goods. So long as and as far as the identification of the returned goods is not possible on grounds for which the client is answerable, the Seller is not bound to carry out acceptance of the returned goods and to refund the purchase price. The costs for resending the goods will be borne by the Client.

8.9 If the Seller delivers a defect-free item in order to comply with his duty of subsequent performance, he may claim compensation for use pursuant to Section 346, para 1 German Civil Code. Further legal claims remain unaffected.

9. Liability

Liability for being in default is exhaustively provided for by Section 6. Furthermore, the Seller shall be liable for any claims arising from damages and compensation based on contract, quasi-contract and on legal provisions or on tort as follows.

9.1 The Seller is liable for every legal reason without limitation

- In cases of intent or gross negligence,
- In cases of negligent or willful physical injury or negligent or willful injury of life, body or health of a person,
- on the grounds of a warranty promise, unless otherwise agreed,
- on the grounds of compulsory statutory liability as defined for example in the product liability law.

9.2 If the Seller has violated essential contractual obligation through negligence, his liability is limited to foreseeable damage typical of the contract, unless unlimited liability applies pursuant to Section 1, para 1. Essential contractual obligations are those obligations which are material to the contract, which have to be granted to the Client under the contract in terms of subject, matter and purpose, whose fulfillment makes the due performance of the contract possible and on the performance of which the Client normally relies and is intended to rely.

9.3 Otherwise, the Seller's liability is excluded.

9.4 The aforementioned liability provisions will also apply in the case of the seller's liability for his assistants and legal representative.

10. Statute of Limitation

The Client's claims against the Seller - except those mentioned in Section 8 - expire by limitation no later than one year after the time of knowledge and at the latest five years after delivery of the performance, unless unlimited liability applies pursuant to Section 9, para 1.

11. Call orders

11.1 Delivery of call orders has to be accepted and call orders have to be paid in full no later than 12 months after the order date.

11.2 If a more favorable sliding-scale price is agreed because of the overall call quantity, the Seller is entitled to adjust the price correspondingly to the quantity scale, if the Client does not take the total quantity for reasons for which he is responsible.

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11.3 After expiry of the deadline relevant for call orders, the Seller is entitled, after setting a grace period in writing, to rescind the contract because of the quantities not accepted and to claim compensation in accordance with the statutory requirements for such rescission.

12. Set-off, assignment

12.1 The right of retention and the right to retain performance are excluded, unless the Seller does not deny the underlying counterclaims or those claims have been recognized by declaratory judgment.

12.2 The assignment of claims by the Client arising from the contract with the Client, in particular the assignment of Client's warranty claims, are excluded.

13. Applicable law, place of jurisdiction and contractual language

13.1 The contract shall be governed by the laws of the Federal Republic of Germany excluding the laws regarding the international purchase of movable goods.

13.2 If the Client is a business person, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from this contract is Munich. The same applies if the Client has no general place of jurisdiction in Germany or if his domicile or normal place of residence is not known at the time of the institution of legal proceedings. The capacity to appeal to another court of jurisdiction remains thereby unaffected.

13.3 Contractual languages are German and English.