

General Terms and Conditions for Job Contracts of Henschel Antriebstechnik GmbH

Article 1 General Provisions

The following General Terms and Conditions shall apply to all deliveries and services relating to job contracts (hereinafter referred to as deliveries) of Henschel Antriebstechnik GmbH (hereinafter referred to as HAT). In the case of ongoing business relations, i.e. follow-up orders, these Terms and Conditions shall also apply to all contracts concluded in the future. General terms and conditions of the customer shall not apply unless HAT has expressly approved them in writing even if their validity has not been expressly contradicted.

Article 2 Quotations

1. The quotations of HAT are not binding and without obligation. Orders shall not be binding on HAT until and provided that HAT confirms them in writing or satisfies them by delivering the processed goods.
2. Oral collateral agreements shall not become effective until confirmed in writing.
3. HAT shall reserve all rights of use under property and copyright law to cost estimates, drawings, quotations and other documents (hereinafter referred to as documents). These documents may only be made accessible to third parties with prior written approval and shall be returned to HAT immediately on request if an order is not placed.

Article 3 Prices, Terms of Payment

1. The prices shall be ex works excluding packing, delivery, shipment and insurance and subject to VAT.
2. If major changes occur in the order-related costs after conclusion of the contract, the contracting parties shall reach an agreement on a reasonable modification of the prices allowing for the factors involved.
3. If HAT assumes additional work (e.g. installation, assembly etc.), HAT shall have a right to reasonable remuneration and reimbursement of reasonable costs.
4. HAT shall charge for tools separately which do not comply with the HAT standards and for the production and preparation of special jigs.
5. In the event of default in payment HAT shall be entitled - subject to further damages - to charge interest at a rate of 12% but at least 8% above the basic interest rate of the European Central Bank. If HAT charges higher interest on arrears than the statutory interest rate, the customer shall remain free to prove lower damages.
6. In the event of default in payment and justified doubts about the solvency and credit worthiness of the customer, HAT shall be entitled - notwithstanding any other rights - to demand securities or advance payments and to make all claims arising from the business relationship due immediately. If the customer is not prepared to pay in advance or furnish reasonable security, HAT shall be entitled to rescind the contract provided that HAT itself has not yet performed the contract.
7. Only undisputed claims or claims which have been judged res judicata shall entitle the customer to offset or retention.

Article 4 Lien

HAT shall have a lien on the customer's workpieces for all present and future claims as soon as these workpieces are handed over for processing. The legal consequences arising from the German Civil Code [BGB], Sections 1204 et seq. and the Insolvency Ordinance shall be applied accordingly.

Article 5 Delivery, Default on Delivery

1. Parts sent in by the customer must be made of material with normal properties which can be readily processed and which must be dimensionally stable if it has already been processed.
2. If these preconditions are not fulfilled, HAT shall draw the customer's attention to the necessary additional work and the resultant increase in price. If the customer does not agree to the change in price, it shall have the right to rescind the contract. Rescission shall be made immediately after the notification from HAT about the changed preconditions. If the customer rescinds the contract, it shall pay for the work already performed.
3. HAT shall be entitled to make partial deliveries provided that the customer can be reasonably expected to accept such deliveries.
4. Unless otherwise agreed in writing, HAT's delivery dates shall not be binding.
5. If a binding delivery date has been agreed, the customer shall, in the event of a delay in delivery, set a reasonable period of grace of four weeks as a rule.
6. The observance of delivery dates presupposes the receipt of all items, documents, necessary permits, releases and plans to be furnished by the customer as well as the observance of the agreed terms of payment and other obligations. If these preconditions are not satisfied on time, the delivery periods shall be suitably prolonged. However, this shall not apply if HAT is responsible for the delay.
7. In the event of default on delivery the customer may demand - provided it can prove that it has incurred damage as a result thereof - compensation of 1% for every full week of the default but in total max. 5% of the price agreed for the processing of the part not delivered.
8. Claims for damages by the customer owing to a delay of the delivery and claims for damages instead of performance which go beyond the limits mentioned in section 7, shall be excluded in all cases of delayed delivery, even after expiry of the period imposed on HAT. This shall not apply insofar as liability is assumed in accordance with mandatory statutory regulations in cases of wilful intent, gross negligence or injury to life, limb or health. The customer may only rescind the contract in accordance with the statutory provisions if HAT is to blame for the delay in delivery. This provision does not involve any change in the burden of proof to the disadvantage of the customer.
9. The customer shall be obliged, at HAT's request, to declare within a reasonable period whether it will rescind the contract due to a delay in delivery or insist on delivery.
10. Risk shall pass to the customer at the latest on the shipment of the goods processed, also if partial deliveries are made. If shipment does not take place or an acceptance inspection is held prior to shipment, risk shall pass to the customer at the time of the acceptance inspection.

Article 6 Material Defects, Incorrect Work

1. If the parts sent in prove to be unusable as a result of material defects, the processing costs incurred by HAT shall be reimbursed by the customer.
2. Any incorrect work caused by HAT during the job processing shall not be charged. No reject risk is included in the calculation of the prices by HAT. Should HAT, for whatever reason, not manage to perform the commissioned work on all parts, HAT cannot be used for the costs of the workpieces which were claimed to have become rejects unless HAT can be accused of wilful intent or gross negligence.
3. To perform the job work, HAT shall only assume the risk of the work to be performed. The customer shall bear the risk of loss of and damage to the items handed over to HAT for processing unless HAT has caused such loss or damage by wilful intent or gross negligence. In this case the customer shall have the right to claim for free replacement of the damaged items by HAT or financial compensation at HAT's discretion.

Article 7 Quality Defects

1. HAT shall, at its own discretion and free of charge, rework or replace the deliveries or provide a new service which exhibit a defect within the period of limitation provided that the cause already existed at the time of the passing of risk. Claims based on defects shall not be possible for only minor deviations from the agreed condition or for a minor impairment to the suitability for use. No new period of limitation beings if the deliveries or services are provided again.
2. Claims arising from quality defects shall become statute-barred within 24 months. This shall not apply if the law (Section 634a, para. 1, No. 2 of the German Civil Code [BGB]) prescribes longer periods and in cases of injury to life, limb or health, in the event of wilful or grossly negligent breaches of obligation or in the event of the fraudulent concealment of a defect.
3. Every quality defect shall be reported to HAT in writing immediately. If the complaint is unjustified, HAT shall be entitled to the reimbursement of the expenses incurred as a result of the unjustified complaint.
4. HAT shall initially be given the opportunity to subsequently satisfy the contract within a reasonable period.
5. If subsequent performance finally fails, the customer may rescind the contract or reduce the price.
6. Claims of the customer owing to increased expenses for the purpose of subsequent performance of the contract shall be excluded provided that such expenses increased because the item was subsequently taken to a location other than the branch office of the customer unless such relocation complies with the intended use.
7. All claims relating to quality defects shall become null and void if the customer itself make changes to or interferes with the processed items, or commissions third parties to do so, without the written consent of HAT.
8. Article 10 shall remain unaffected; farther-reaching or other claims of the customer against HAT arising from a quality defect shall be excluded.

Article 8 Infringement of Third-party Property Rights

If HAT has to delivery according to drawings, models or specimens of the customer, the customer shall guarantee HAT that the items produced according to its specifications do not infringe industrial property rights of third parties. If a third party forbids HAT to deliver, invoking a relevant property right, HAT shall be entitled, without being obliged to examine the legal position, to discontinue the deliveries and demand compensation for the costs incurred. If HAT incurs damage in such a case arising from the infringement of an industrial property right or the assertion of an industrial property right, the customer shall pay damages therefor.

Article 9 Defects of Title

1. Unless otherwise agreed, delivery shall only be made by HAT in the country of the delivery location, free from industrial property rights. If a third party files justified claims against the customer owing to the infringement of industrial property rights due to deliveries made by HAT and used in accordance with the contract, HAT shall be liable within the period stipulated in Article 7 No. 2 as follows:
HAT shall, at its discretion and at its own expense, either bring about an appropriate right of use for the customer, change the delivery so that the property right is not infringed or replace the delivery. If this is not possible under reasonable conditions, the customer shall be entitled to the statutory rights of rescission or reduction in price. Article 10 shall apply mutatis mutandis.
The above-mentioned obligation shall only exist if the customer informs HAT in writing without delay about the claims being asserted, does not recognise an infringement either directly or indirectly and reserves all rights to take preventive action and initiate settlement negotiations.
2. Claims of the customer shall be excluded if it is responsible for the infringement of the property right. The same shall apply if the property right infringement is caused by particular specifications of the customer, by an application not foreseen by HAT or by the fact that the delivery is used by the customer in a changed form or together with products not supplied by HAT.
3. Furthermore, Article 7 shall apply mutatis mutandis. Farther-reaching or other claims of the customer against HAT arising from a defect in title shall be excluded.

Article 10 Damages

1. Claims for damages and reimbursement of expenses of the customer (hereinafter referred to as claims for damages), regardless of whatever legal grounds, in particular owing to a breach of duties arising from the contractual obligations, a tortious act and owing to indirect damages shall be excluded.
2. This shall not apply, provided liability is mandatory, e.g. according to the Product Liability Act, in the case of wilful intent, gross negligence, owing to injury to life, limb or health of if material contractual obligations are breached. The claim for damages if material contractual obligations are breached shall, however, be limited to typical foreseeable damage provided that no wilful intent or gross negligence exists or liability is assumed for injury to life, limb or health. This provision does not involve any change in the burden of proof to the detriment of the customer.
3. Provided that the customer is due claims for damages according to this article, such claims shall become statute-barred on expiry of the period of limitation applicable to claims for quality defects in accordance with Article 7, No. 2. The statutory regulations on limitation shall apply to claims for damages according to the Product Liability Act.

Article 11 Acts of God

Cases of force majeure, in particular strikes, lock-outs, disruptions to operations or transport, also at HAT's suppliers, shall suspend the contractual obligations of the parties affected for the duration of the disruption and to the extent of their effect. If delays resulting therefrom exceed the period of six weeks, both contracting parties shall be entitled to rescind the contract as regards the scope of delivery affected. Any farther-reaching claims shall not be admissible.

Article 12 Place of Performance and Venue

The headquarters of HAT shall be the place of performance and the venue for any disputes relating to all services and payments.

Article 13 Applicable Law

The contract shall be governed by the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 shall be excluded.

Article 14 Severability

Should one or more provisions be or become ineffective in whole or in part, this shall not affect the effectiveness of the remaining provisions nor the effectiveness of the contract concluded with the customer.

The parties undertake to agree to replace the ineffective provision with one which comes closest to the economic purpose intended in a legally admissible manner. This shall only apply if the provision affected is not replaced by enacted law in accordance with Section 306, para. 2 of the German Civil Code [BGB].