

Haartz GmbH Mannheim
General Terms and Conditions
for Goods and Services
- as of 2009 -

1. Validity

- a) Solely the following General Terms and Conditions apply for all our - also future - goods and services (including reorders). Conflicting purchase terms and conditions require our written acknowledgement, which is not implied by our accepting orders.
- b) Our General Terms and Conditions apply with respect to entrepreneurs, legal persons or special funds under public law within the meaning of Section 310 Subs. 1 Civil Code.
- c) In the case of conflicts between the provisions in the main contract and these General Terms and Conditions, the provisions in the main contract shall have priority.

2. Offer/conclusion of contracts

- a) Our offers are non-binding. Details about dimensions, weights, performance, mechanical resistance and other product characteristics contained in offers and attached documents do not constitute guarantees or assured properties. They shall become such for the supply item and an integral part of the contract if they are stated in the confirmation of order or confirmed in other written agreements.
- b) The contract shall be deemed concluded only with our confirmation of order, in any case upon execution of the performance.
- c) All contracts and their changes, additions, supplementary agreements and contractual arrangements shall require the written form unless the written form requirement is excluded tacitly or expressly in the specific case.

3. Price/payment/flat-rate compensation or expenses/set-off

- a) Our prices are quoted net of statutory value-added tax as applicable on the day of invoicing.
- b) Our prices are quoted in euros "ex works" net of any other costs for packaging and shipping unless the confirmation of order stipulates otherwise.
If a performance not envisaged in the contract is requested, we shall be entitled to additional remuneration.
- c) In so far as there are no other agreements to the contrary, the price shall be due and payable without any deductions within 10 days of the invoice date.
- d) We reserve the right to change our prices accordingly if there are cost reductions or increases, in particular under collective wage agreements or changes to material prices, after the contract is concluded.
- e) Non-compliance with agreed terms of payment for which the customer is answerable, not only immaterial payment arrears and any jeopardizing of our claim to counterperformance through poor performance by the customer only apparent after concluding of the contract shall entitle us to suspend outstanding deliveries and to carry them out only against payment in advance or provision of collateral. If our claim to counterperformance is jeopardized and the customer fails to comply with our demand to opt for performance against simultaneous payment or provision of collateral within a reasonable period, we can rescind the contract after expiration of the deadline, without prejudice to further statutory rights, where the statutory preconditions have been satisfied. Where the customer is answerable for jeopardizing our claim to counterperformance, we shall also be entitled to declare all our other claims against the customer immediately payable, in so far as we have already rendered our performance.
- f) If the contract is ended (rescission/termination/cancellation) before handover of the subject matter due to reasons for which the customer is answerable, the customer shall pay us a flat rate amount of 8% of the agreed contractual remuneration for the expenses and losses associated with the premature ending of the contract. This shall be without prejudice to further claims, in particular for damages, with the flat rate amounts being offset against the further claims for damages/compensation.
- g) The set-off with counterclaims by the customer is excluded in so far as the counterclaims are not declared final and binding, undisputed or acknowledged by us. To this extent a right of retention is also excluded.

4. Delivery/default with delivery/force majeure/shipping

- a) The delivery deadline shall not commence before definitive clarification of all technical details, receipt of the other official licences to be obtained by the customer and also compliance with the agreed terms of payment and other obligations. If the customer does not meet these obligations in time, the period shall be prolonged appropriately, in so far as we are not answerable for the delay. The delivery deadline is deemed met if the customer has received the notification of readiness for dispatch before it expires, unless dispatch is delayed owing to reasons for which we are answerable.
- b) War, riot, lawful industrial action, actions by the state, shortages of energy or raw materials, interruptions to transportation and unavoidable operations and also all other cases of force majeure

(also experienced by our suppliers) shall release us from the delivery obligation for the duration of the interruption and to the extent of its effects.

- c) The customer can rescind the contract because of delay to delivery under statutory provisions only in so far as we are answerable therefor. The above provisions do not constitute any change in the burden of proof to the customer's detriment.
- d) If we are in default with delivery, we shall be liable as per statutory provisions if a transaction in which time is of the essence is involved. If we are answerable for the default with delivery, this shall also apply if the customer has justifiably no further interest in the fulfilling of the contract.
- e) In the case of default with delivery, we shall be liable under the statutory provisions, in so far as we have culpably breached cardinal contractual obligations or there is gross negligence or intention on our part or on the part of our representatives or agents. Our liability for damages shall be limited to typical, foreseeable losses in so far as intention is not involved.
- f) In so far as we are liable for the default with delivery, this liability is limited to liquidated default compensation not exceeding 5% of the shipment value.
- g) This is without prejudice to the customer's other statutory claims and rights.
- h) If place of fulfilment is our registered offices and the supply item is shipped to the customer at his or her request, risk shall pass to the customer as soon as the supply item has been handed over to the transportation company in our warehouse; this shall also apply even if we bear the shipping costs. If we use our own means of transportation, risk shall pass to the customer as soon as the supply item has been unloaded from the means of transport at the customer's location.

5. Liability for defects / damages

- a) The customer's warranty rights are subject to the condition that the customer has properly met his or her inspection and notification duties owed under Section 377 Commercial Code.
- b) Persons engaged by us for fault inspection and rectification are not authorised to acknowledge faults with effect against us. If we undertake fault repair measures, this shall not be deemed as acknowledgement of a legal duty to do so, unless we expressly state the same.
- c) In the case of justified complaints we can opt to repair or replace the relevant individual parts or render the services again - at the customer's choice in the case of supplier recourse pursuant to Sections 478, 479 Civil Code. We have to bear the expenses necessary for fault repair, in particular shipping, travelling, labour and material costs, in so far as these have not been increased as a result of the supply item having been moved to a place other than the place of fulfilment. If the subsequent performance fails within a reasonable period, whereby we shall be entitled in general to two attempts at subsequent performance, the customer can rescind the contract or reduce the remuneration.
- d) We can refuse subsequent performance whilst the customer has not fulfilled his or her due payment obligations towards us to the extent corresponding to the fault-free part of the rendered performance.
If the complaints are unjustified, we shall be entitled to demand from the customer reimbursement of the incurred expenses.
- e) Under statutory provisions, we are liable for damages for intentional or grossly negligent breaches of duty, also for intentional or grossly negligent breaches of duty by our statutory representatives or agents, and also in the case of impossibility of performance for which we are answerable and for considerable breaches of duty.
- f) Under statutory provisions, we are liable in so far as we culpably breach cardinal contractual obligations.
- g) In cases 5 e) and f) above, also if the customer has a claim to reimbursement of loss instead of performance, our liability is limited to reimbursement of the typical, foreseeable loss, in so far as there is no intention on our part.
- h) In the case of fatalities, personal injury or impairment of health by us, our statutory representatives or our agents, we shall be liable under the statutory provisions. The same shall apply in so far as we have warranted the characteristics of our goods or the presence of a performance outcome or have accepted a procurement risk and in the case of liability under the German Product Liability Act.
- i) Our liability is excluded unless otherwise stated above. Claims of the customer against us, our representatives and our agents in addition to or other than those in this Clause 5 are excluded.
- j) Claims and rights for material defects shall reach its statute of limitation in 12 months, commencing with the delivery of the supply item to the customer, unless the law stipulates longer periods under Sections 478, 479 Civil Code (supplier recourse). The 12-month statute of limitation shall not apply to us, our representatives or agents in cases of fatalities, injuries and

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impairment of health, wilful non-disclosure of a fault, intentional breach of duty for which we are answerable and in so far as we are liable under the German Product Liability Act.

- k) In the case of orders for goods or parts thereof whose design and composition features have been stipulated by the customer, the customer shall bear responsibility for this design and composition not infringing third-party industrial property rights. The customer shall hold us free and harmless in the event of recourse.
- l) The above provisions do not constitute any change in the burden of proof.

6. Total liability

- a) Further liability for damages other than stipulated in these participation conditions shall be excluded regardless of the legal grounds for the claim raised. This shall apply in particular for claims for damages under fault during conclusion of contract, other breaches of duty or claims under tort pursuant to Section 823 Civil Code.
- b) The restriction under paragraph a) above shall also apply in so far as the customer seeks reimbursement of the ineffectual expenses incurred in lieu of performance instead of a claim for reimbursement of the loss.
- c) The statute of limitation for all claims not governed by the statute of limitation for material fault shall be 18 months, in so far as a case under Clause 5 j) above is not involved. It commences from when there is knowledge of the loss and the identity of the causer.
- d) In so far as our liability is excluded or limited, this shall also apply to the personal liability of our salaried staff, other employees, representatives and agents.
- e) Clause 5 l) shall apply accordingly.

7. Exclusion of assignment

The assignment of claims to performance, claims to payment, warranty claims or other secondary claims and also of claims for damages against us to third parties is permissible only with our consent.

8. Reservation of title / insurance obligation

- a) We reserve ownership of the supply item (reserved goods) or their individual components and to the documents included with the supply item whilst we are still entitled to claims, regardless of their nature, from the current and future business relationship with the customer. Where there is a current account relationship, this reservation of title also serves to secure our pertinent acknowledged claim to the balance.
- b) In the case of default with payment or a lasting reduction in the creditworthiness of the customer we shall also be entitled to temporarily take the reserved goods and the documents back from the customer at his or her expense without exercising our right of rescission or setting a grace period.
- c) The customer can resell the reserved goods in the normal course of business. Normal course of business must include reselling the reserved goods with reservation of title. The authorisation lapses as soon as the customer is in default with payment, application for the opening of bankruptcy proceedings has been filed, there is cessation of payments or a subsequent reduction in his or her creditworthiness.
The customer assigns to us as of now all claims under the resale of the reserved goods together with ancillary and security rights to the amount of the invoice value of the reserved goods. If the reserved goods are installed in third-party real estate, the customer assigns to us as of now the resulting claim to remuneration to the amount of the invoice value of the reserved goods. We hereby accept the aforementioned assignments.
Until the authorisation granted above lapses, the customer is also entitled to collect the assigned claims. When the said authorisation lapses, we shall be entitled to inform the customers of the assignment and to collect the claims ourselves. If the collection authorisation lapses, the customer shall also furnish us with all information and surrender all documents we require to pursue the assigned claim.
- d) Pledges on and attachments of the reserved goods or the assigned claims are not permitted. The customer shall immediately notify us in writing about any attachments or other such actions by third parties.
- e) The customer shall hold the reserved goods and the documents for us free of charge and undertakes to treat the same with due care. He or she shall insure them against the usual risks such as fire, theft, transportation damage and pipe water damage to their replacement value. The customer assigns to us as of now claims against insurers and third persons arising from an insured event to the amount of the invoice value of the affected reserved goods. We accept this assignment. The customer shall carry out necessary maintenance and inspection work at his or her expense in good time.
- f) If the value of the collateral to which we are entitled exceeds our claims altogether by more than 10%, we undertake to release

securities of our choice to the appropriate amount at the request of the customer or of a third party affected by the excess security.

9. Industrial property rights, drawings, documents, tools

- a) We reserve all rights of ownership and copyright to all drawings, drafts and documents we have produced. They are to be treated as confidential, enjoy protection as intellectual property under statutory regulations and may not be disclosed to third parties, in particular competing companies, or used by the customer himself/herself outside or beyond contractual agreements.
- b) Drawings, drafts and documents forming part of our offer must be returned if no contract is concluded.
- c) Tools, samples and other devices remain our property, even if the customer has accepted all or some of the costs thereof. We undertake, however, not to use such items without the customer's consent for other customers in so far as he or she has borne the entire costs.

10. Other

- a) In so far as the customer is a merchant within the meaning of the German Commercial Code, legal persons or special funds under public law, those courts of law with local jurisdiction for our registered offices, Mannheim, shall be the legal forum for all disputes arising directly or indirectly from the contractual relationship. We are, however, entitled to sue the customer before the court with jurisdiction over his or her place of residence.
- b) The law of the Federal Republic of Germany shall apply with the exclusion of UN international trade law.
- c) Unless arising otherwise from the confirmation of order, our registered offices shall be the place of fulfilment.
- d) We use electronic data processing systems for processing business relationships and for internal handling of business transactions. Pursuant to the provisions of the German Federal Data Protection Act, we hereby give notice to the customer that we process the necessary personal data and use the same solely within the company.

Company registered offices: Mannheim

Register court: Mannheim Local Court HRB 0253

NOTE: The English version of the "Terms and Conditions of Sale of Haartz GmbH" is intended to be a translation from the German version. In case of dispute between the German and the English version, only the German version is legally binding.