



Harz Oxid GmbH | Hüttenstrasse 6 | 38642 Goslar | Germany

GENERAL TERMS AND CONDITIONS FOR DELIVERY OF HARZ OXID GMBH

Status: 14 December 2020

1. GENERAL INFORMATION

- 1.1 These general terms and conditions for delivery shall apply to all agreements, offers, conclusions and supplementary agreements, concluded by Harz Oxid GmbH ("**HOG**") for services of HOG. These general terms and conditions for delivery shall form part of all agreements that HOG concludes with its contractual partners ("**Buyer**") over all services and goods offered by HOG. These general terms and conditions for delivery shall also apply to all future deliveries, services and offers to the Buyer, even if they are not separately agreed upon again.
- 1.2 Deviating, conflicting or supplementary terms and conditions of the Buyer or a third party shall not apply to the contractual relationship. This shall also apply if HOG had knowledge of such general terms and conditions or did not expressly object to them. Even if HOG refers to a letter which includes or refers to terms and conditions of the Buyer or a third party, such reference shall not imply any approval of the validity of these terms and conditions. In this case the general terms and conditions for delivery of HOG shall be agreed between the parties.

2. CONTRACT CONCLUSION

- 2.1 All offers from HOG are non-binding, unless they are expressly marked as binding or contain a specific period of acceptance.
- 2.2 Offers, orders or assignments of the Buyer shall be accepted by HOG within a period of fourteen (14) days after receipt. The contract shall be concluded either by written order confirmation of HOG or by the delivery of the goods to the Buyer.
- 2.3 Oral agreements do not exist. The amendment, supplementation, cancellation and termination of the contract, the general terms and conditions for delivery, as well as any other unilateral legal declaration of intent possible under the contract and these general terms and conditions for delivery shall be made in writing in order to be effective, unless a different intention of the parties has been clearly expressed. The same shall apply for amendments, supplements, cancellation and termination of this written form requirement.
- 2.4 Information provided by HOG on the goods or service (e.g. weights, measurements, utility values, resilience, tolerances and technical data), as well as graphical representations (e.g. technical drawings and depictions) shall not be considered as a guarantee of quality, but as descriptions or identifications of the goods or service. These specifications shall only be an agreed quality if the usability of the service or good requires an exact conformity for the contractually intended purpose, however, for the avoidance of doubt this shall not be a guaranteed quality. Customary deviations which are based on legal regulations or represent technical improvements, as well as the replacement of individual parts with equivalent parts are permitted, provided they do not impair the usability for the contractually intended purpose.

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3. PRICING AND PAYMENT CONDITIONS

- 3.1 The prices shall apply to the scope of services and deliveries stated in the order confirmation. Additional and special services shall be remunerated separately. The prices are quoted in EUR ex work excluding packaging, transport costs, transport insurance costs, the applicable statutory value-added tax and, in case of export deliveries, custom duties and public-law fees and charges.
- 3.2 Decisive for the calculation of the goods shall be the weight measured by HOG or a third party commissioned by HOG at the time of loading.
- 3.3 Unless the parties have expressly agreed otherwise, the invoices of HOG shall be due and payable within fourteen (14) days after the invoice has been issued and shall be paid without deduction. The amount shall be deemed received on the date the amount is credited on the bank account of HOG. If the Buyer does not provide a payment by the due date, the Buyer shall be in payment default, a further notice shall not be necessary. The outstanding amounts shall bear interest from the due date in the amount of nine (9) percentage points above the base rate p.a. HOG reserves the right to claim higher interest and further damages in the event of default.
- 3.4 The Buyer may only raise objections to HOG due to obvious errors in an invoice in writing within thirty (30) days after the receipt of the invoice. Any reasons for objections that could not have been identified by the Buyer without the Buyer's fault shall be raised in writing to HOG within thirty (30) days after discovery, at latest however within one year, beginning at the end of the year in which the invoice was received. The Buyer complies with the notice period if it posts the objection within the notice period. A failure to raise objections in due time shall be deemed as approval of the invoice.
- 3.5 The Buyer shall not be entitled to offset payment claims of HOG against its own claims or to withhold payments based on a right of retention, unless the counterclaims of the Buyer are undisputed, have been finally and conclusively established or have been acknowledged by HOG.
- 3.6 HOG shall be entitled to perform or provide outstanding deliveries or services against advance payment or provision of a security if, after contract conclusion, HOG becomes aware of circumstances which could reduce the creditworthiness of the Buyer significantly and which could endanger the outstanding payments of the Buyer to HOG arising from the respective contractual relationship (including – if relevant – from other individual orders for which the same framework agreement applies).

4. DELIVERY, PLACE OF PERFORMANCE, TRANSFER OF RISK AND DEFAULT

- 4.1 The place of performance for both parties shall be the registered office of HOG, unless expressly agreed otherwise by the parties.
- 4.2 Unless otherwise agreed by the parties, it shall be agreed that HOG shall dispatch the goods to the Buyer's address with proof thereof (*Schickschuld*). The shipping and the packaging conditions are at the reasonable discretion of HOG.
- 4.3 HOG shall only owe the proper and in-time delivery of the goods to the transport company. HOG shall not be responsible for any delays caused by the transport company. A delivery



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time (period of time between handover to the transport company by HOG and the performance of the delivery to the Buyer) specified by HOG shall not be binding.

- 4.4 The risk shall be transferred to the Buyer when the goods are handed over to the transport company, carrier or any third party appointed to carry out the shipment. If the dispatch or handover is delayed due to a circumstance caused by the Buyer, the risk shall pass to the Buyer on the day on which the goods are ready for dispatch and HOG has notified the Buyer thereof. If a formal acceptance (*Abnahme*) has been agreed between the parties, the formal acceptance (*Abnahme*) shall be the decisive moment for the transfer of risk. Furthermore, the statutory provisions of the law on contracts for work and services shall apply accordingly to an agreed formal acceptance (*Abnahme*). Any default by the Buyer shall be treated equivalent as a delivery or formal acceptance (*Abnahme*).
- 4.5 If the Buyer is in default with its acceptance or with the performance of other cooperative actions, the risk of accidental loss or accidental deterioration of the goods shall pass to the Buyer at the time of default. HOG shall be entitled to demand compensation for any resulting damages plus any additional expenses.
- 4.6 If HOG is in default, it shall only be liable for any damage suffered by the Buyer as a result thereof in accordance with the provisions of clause 8.

5. RETENTION OF TITLE

- 5.1 All goods shall remain the property of HOG ("**Reserved Goods**") until the complete fulfilment of all obligations of the Buyer arising from the business relationship. The Buyer shall be obliged to store and mark Reserved Goods separately. The Buyer shall not pledge or use the Reserved Goods as security.
- 5.2 If the Buyer combines or intermixes the Reserved Goods with other goods owned by the Buyer in order to create new goods in such way that one of the other goods must be regarded as the main component, then HOG shall receive proportionate (co-)ownership of the newly created goods in the ratio of the value of the Reserved Goods (co-)owned by HOG to the value of the connected or intermixed goods at the time of the connection or intermixing; and the Buyer hereby transfers (co-)ownership and (co-)possession to the connected or intermixed goods to HOG. HOG hereby accepts this transfer. The Buyer shall keep the goods that are created in this way in sole or joint ownership in trust for HOG and free of charge.
- 5.3 If the Buyer or a third party acting on behalf of the Buyer processes or transforms Reserved Goods owned by HOG, the processing shall be performed on behalf of HOG. If the Buyer acquires exclusive ownership of the new goods created by such processing or transformation, it shall be deemed to have been agreed by the parties that the Buyer hereby transfers its ownership to HOG in the ratio of the value of the Reserved Goods in (co-)ownership of HOG to the value of the processed or transformed goods and HOG hereby accepts this transfer. The Buyer shall keep the goods that are created this way in sole or joint ownership in trust for HOG and free of charge. If the Reserved Goods owned by HOG have not yet been inseparably connected or intermixed with other objects or processed or transformed in any other way since delivery, their value at the time of connection, intermixing, processing or transformation is the same as the invoiced amount (including VAT) for the Reserved Goods.



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- 5.4 The Buyer shall be entitled to sell the Reserved Goods in the ordinary course of business, whereas all claims that the Buyer may have against its customer or third party from the resale are hereby – in advance – assigned to HOG in the amount of the final invoice. HOG hereby accepts this assignment. The Buyer undertakes not to sell the Reserved Goods to customers who have excluded or limited the assignment of payment claims against them. After the assignment, the Buyer retains the right to collect the claims. This shall not affect HOG's right to collect the claims by itself. However, HOG shall not collect the claims by itself as long as the Buyer (i) meets its payment obligations towards HOG, (ii) is not in default of payment, and/or (iii) has not filed for insolvency proceedings or has not suspended its payments. Should one of these cases occur, HOG may request the Buyer to disclose the assigned claims and their respective debtors, to provide all data necessary for the collection, to hand over all related documents and to inform the debtors of the assignment. If such a case occurs, the right of the Buyer to collect the claims shall expire. Where a current account has been established between the Buyer and its customer pursuant to section 355 of the German Commercial Code (*Handelsgesetzbuch* – "**HGB**"), the claim previously assigned to HOG by the Buyer shall relate both to the recognised balance and to the balance surplus from the balance statement in the event of the insolvency of the customer.
- 5.5 If the value of the security given to HOG exceeds the claims to be secured by more than 10%, HOG shall release the excess security at its discretion.
- 5.6 In the event of seizure or other impairments of the owner's interests, the Buyer shall notify HOG without delay.
6. **FORCE MAJEURE**
- 6.1 "**Force Majeure**" is defined as extraordinary and unforeseeable events coming from outside which cannot be prevented even by the utmost care of the person affected. These are in particular fires, pandemics, earthquakes, war, unrest, mobilisation, natural disasters, strikes, lock-outs or fundamental disruptions in the supply of energy and raw materials for which the parties are not responsible.
- 6.2 If a Force Majeure event occurs, the affected party shall notify the other party without delay, but at the latest within fifteen (15) calendar days after becoming aware of the event. In doing so, the affected party shall specify the event that has occurred and indicate which obligations under the contract it cannot fulfil or can only fulfil with delay as a result.
- 6.3 No party may derive any claims from Force Majeure within the meaning of the contractual definition, unless these are expressly agreed between the parties or expressly mentioned in these general terms and conditions for delivery. The contractual service dates are extended in accordance with the duration of the impossibility of performance due to Force Majeure. During this period the Buyer shall have no rights or claims against HOG due to default. This shall also apply if such obstacles occur at a sub-contractor. If HOG is in default at the time of the occurrence of the event, this alone shall not be deemed to constitute a duty of responsibility.
- 6.4 If the provision of services is continuously impossible for more than ninety (90) calendar days due to Force Majeure, either party may terminate the contract by written notice to the other party.



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7. WARRANTY (RESPONSIBILITY FOR DEFECTS)

- 7.1 The warranty period shall be one year as of delivery or, if a formal acceptance (*Abnahme*) is required, it shall be one year as of the formal acceptance (*Abnahme*).
- 7.2 The Buyer shall carefully inspect the goods immediately after receiving and shall notify any defects in writing. Hidden defects shall be notified by the Buyer immediately after their discovery. The Buyer's obligation to give a notice of defects shall also apply in the event of a wrong delivery. If the Buyer fails to give written notice of defects, the goods shall be deemed accepted by the Buyer. This shall not apply insofar as HOG has fraudulently concealed the defect.
- 7.3 HOG shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour, material costs as well as any dismantling or installation costs in accordance with the statutory provision if a defect exists. Otherwise, HOG may demand reimbursement from the Buyer for the costs arising from the unjustified demand for rectification of defects (in particular inspection and transport costs) unless the absence of defects was not recognisable to the Buyer.
- 7.4 The warranty shall be void if the Buyer has modified the goods or if a third party has modified the goods on behalf of the Buyer without the consent of HOG and if such modification makes it impossible or unreasonably difficult for HOG to rectify the defect. In any event, the Buyer shall bear the additional costs for the rectification of defects that incurred as a result.
- 7.5 If the delivered goods are defective, HOG shall initially be obliged and entitled to rectify the defect or make a replacement delivery. HOG shall make this decision within a reasonable period of time. In the event of failure, i.e. the impossibility, unreasonableness, refusal or unreasonable delay in rectification or replacement delivery, the Buyer may withdraw from the contract or reduce the purchase price appropriately. However, the Buyer shall not withdraw from the contract if the breach of contract by HOG or the defect is only a minor case.
- 7.6 Any claims of the Buyer for damages or reimbursement of fruitless expenditure, even in the case of defects, shall exist only in accordance with clause 8 and shall otherwise be excluded.

8. LIABILITY

- 8.1 HOG shall only be liable to the Buyer for whatsoever reason to the extent that it caused the damage with intent or gross negligence as well as for damages arising from non-compliance with official or statutory regulations or requirements.
- 8.2 HOG shall not be liable for (a) indirect damages, (b) consequential damages, (c) loss of profit, (d) damages to reputation and (e) non-realised savings and subsidies.
- 8.3 The liability of HOG shall be limited to the foreseeable damage typical for the contract.
- 8.4 The liability of HOG shall be limited to the value of the respective order. If the value of the order is above 1,000,000 EUR (in word: one million), the liability of HOG shall be limited to 1,000,000 EUR (in word: one million).



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- 8.5 In the following cases, the limitations of liability or indemnity against liability pursuant to clauses 8.1 to 8.4 shall not apply so that HOG shall be fully liability: (a) in the event of intent and gross negligence, (b) in the event of damages arising from injury to life, body or health, (c) in the event of damages arising from the breach of main contractual obligations (so-called cardinal obligations - *Kardinalspflichten*), (d) in the event of breaches of the German Product Liability Act (*Produkthaftungsgesetz* – "**ProdHaftG**"), (e) in the event of a breach of obligations under data protection law, (f) in the event of fraudulent intent or the assumption of a guarantee, (g) in the event of mandatory statutory liability, or (h) insofar as a further liability has been expressly agreed upon in the contract.
- 8.6 The above exclusions and limitations of liability shall apply to the same extent in favour of HOG's organs, legal representatives, employees and other vicarious agents.
- 8.7 The period of limitation for contractual and non-contractual claims for damages by the Buyer based on a defect shall be one year as of delivery or, if the parties have agreed to a formal acceptance (*Abnahme*), it shall be one year as of the formal acceptance (*Abnahme*), unless the regular statutory period of limitation (sections 195, 199 of German Civil Law Code (*Bürgerliches Gesetzbuch* – "**BGB**")) would lead to a shorter period in individual cases. Claims for damages by the Buyer or claims under the ProdHaftG to this clause 8 shall be subject to the limitation period in accordance with the statutory provisions exclusively.

9. DATA PROTECTION

- 9.1 Within the framework of execution of the contract, HOG shall process personal data of the Buyer and its auxiliary persons or employees. This processing is necessary for the execution of the contract with the Buyer (Art. 6 para. 1, cl. 1 lit. b General Data Protection Regulation ("**GDPR**"). This data is also transferred to third parties, which may also be located abroad, for the purpose of processing (Art. 6 para. 1, cl. 1 lit. b GDPR) and based on the legitimate interest in maintaining the business relationship (Art. 6, para 1, cl. 1 lit. f GDPR). Insofar as a third party receives such personal data through HOG and/or processes it on its behalf, HOG shall ensure data processing in accordance with the applicable data protection laws and, if necessary, concludes corresponding contracts for this data processing in accordance with GDPR. Transfers to states outside the EU/EEA are carried out in accordance with the general principles of data transfer (Art. 44 ff. GDPR).
- 9.2 The Buyer shall be responsible for informing its auxiliary persons and employees about the processing of their data within the aforementioned framework.
- 9.3 Further details are set out in the data protection declaration available on the HOG website.

10. SEVERABILITY CLAUSE

- 10.1 Should any provision of this contract be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions of this contract shall not be affected thereby. The same shall apply if this contract should contain a gap.
- 10.2 In place of the invalid or impracticable or unenforceable provision or to fill the gap, a provision shall be deemed agreed which - as far as legally possible - achieves the purpose which the parties have pursued with the invalid or impracticable or unenforceable provision or - in the event of a gap - with the contract as a whole.



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11. APPLICABLE LAW

The law of the Federal Republic of Germany shall apply exclusively. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded, even insofar as it has become national law.

12. PLACE OF JURISDICTION

The courts in Braunschweig, Germany shall have exclusive jurisdiction for all disputes arising from or in connection with the contract.
