

Terms and Conditions of Sale and Delivery Effective 11/2016

Section 1 General, Scope of Application

1. The Terms and Conditions of Sale and Delivery below shall form part of all the sales and delivery contracts concluded by us even if they are not expressly referred to in continuous business relationships.
2. The following Terms and Conditions shall be regarded as accepted unless other agreements have been made in writing. Any terms and conditions of the customer conflicting with these Terms and Conditions of sale, delivery and payment are rejected. Other Terms and Conditions, including those pre-printed on orders, shall only be valid if they are recognised by us in writing.
3. The customer agrees that we shall use the data received from same as a result of the business relationship for our own business purposes within the meaning of the Data Protection Act.

Section 2 Contract Conclusion

1. Any orders, contractual amendments and ancillary agreements shall be made in writing. Any oral or telephonic agreements shall only be binding if they have been confirmed in writing by us.
2. All our offers are subject to change. The information contained in offers, prospectuses, catalogues, price lists, drawings and similar documents regarding measurements, weights, performance or material are provided with due care but are, however, non-binding unless expressly designated as binding. This also applies to design specifications and recommendations. We reserve the right to make any changes based on technical developments. Drawings, samples and documents produced by us remain our property; they may not be made accessible to third parties without our consent. We refer to our rights under copyright law.
3. The contractually owed characteristics of the item of purchase is based exclusively on the written agreements and the product description. Any expectations mentioned by the purchaser shall not be taken into account; the same applies to advertising claims made by us or our assistants.
4. Models, tools and other equipment for the execution of an order always remain our property even if we charge a part of the costs therefor.

Section 3 Cancellation Right

For consumers

1. The customer, who is a consumer, may cancel his contract in text form (e.g. letter, fax, email) within 14 days without providing reasons or, if the item is provided to the customer prior to expiry of the period, by returning the item. The period shall commence after receipt of these instructions in text form, however, not prior to receipt of the goods by the recipient (in the event of repeat deliveries of the same types of goods, not prior to receipt of the first partial delivery) and also not prior to the performance of our information obligations pursuant to Article 246 section 2 in conjunction with section 1 (1) and (2) e.g. EGBGB [Introductory Act to the German Civil Code] as well as our obligations pursuant to section 312g (1) sentence 2 BGB [German Civil Code] in conjunction with Article 246 section 3 EGBGB. The timely dispatch of the cancellation notice or the item shall suffice for compliance with the cancellation period. The cancellation notice shall be addressed to: Jung Hebe- und Transporttechnik GmbH; Biegelwiesenstraße 5-7, D-71334 Waiblingen, Germany; Telephone: + 49 7151 / 30393-0; Fax: +49 7151 / 30393-19; info@jung-hebetechnik.de.
2. In the event of valid cancellation, the goods/payments received by both parties shall be returned and, if applicable, benefits derived (e.g. interest) surrendered. If the customer is unable to return or surrender the goods/payments and benefits (e.g. benefits of use), in whole or in part or only in a poor condition, the customer must pay compensation accordingly. The customer shall only be obliged to pay compensation for deterioration of the goods and benefits derived if the use or the deterioration is due to handling the goods over and above checking the characteristics and functioning. "Checking the characteristics and functioning" means testing and trying out the respective goods as is possible and customary in a shop. Goods that can be sent as a package are to be returned at our risk. In the customer shall bear the normal costs of return if the delivered goods correspond to the ordered goods and if the price of the item to be returned does not exceed an amount of 40.00 or if, in the event of a higher price, the customer has not yet paid the consideration or a contractually agreed partial payment at the time of cancellation. Otherwise, the return shall be free of charge for the customer. Goods that cannot be sent as packages shall be collected from the customer. Obligations to refund payments must be met within 30 days. For the customer, the time limit shall commence upon dispatch of the cancellation notice for the item and for us upon receipt of same.

Section 4 Prices

1. If no special agreement has been made, the prices stated on the price lists applicable on the day of receipt of the order, in euros excluding the applicable statutory value added tax shall apply.
2. Delivery shall be effected ex-works carriage forward. The costs of packaging, insurance, shipment, loading and assembly or installation on site are not included in the price. Additional services exceeding the purchase price as well as additionally agreed work shall be invoiced by separately.
3. Surcharges for raw materials, in particular steel, that depend on the market shall be charged separately at the respective daily prices.

Section 5 Payment

1. Payment shall be made after delivery of the goods and receipt of an invoice.
2. If payment is not received within 30 days from receipt of the invoice, we shall be entitled to charge merchants the prevailing interest charged by banks at the amount of 8% above the respective base interest rate of the European Central Bank without giving a warning. For consumers, an advance warning shall be given. We reserve the right to claim further damages in this regard.
3. We reserve the right to provide our deliveries and services only for cash in advance for orders placed by new customers.
4. Bills of exchange and cheques shall only be accepted on the basis of special agreements and only in promise of payment. Ordering parties shall bear all the costs associated with bills of exchange and cheques.
5. Our claims shall become due immediately should circumstances arise that reduce the customer's creditworthiness at a later stage. This shall apply in particular in the event of an out-of-court settlement or judicial insolvency proceedings from the date of application. In addition, we shall be entitled to execute any outstanding deliveries and services only for cash in advance or the provision of corresponding collateral. After an appropriate period of grace, we shall be entitled to withdraw from the contract or demand compensation for damages on account of non-performance.
6. All the costs incurred due to late payments, such as dunning costs, collection fees and suchlike shall be charged to the customer's account.
7. Payments may not be withheld or offset on the strength of counterclaims of the customer contested by us or not established by a court of law.
8. Discounts may only be deducted by separate written agreement. If there is a delay in payment for another delivery or service, discounts shall be void and payments shall be due immediately.

Section 6 Delivery

1. We shall deliver ex-warehouse under the proviso of having received our deliveries in time and correctly.
2. All delivery date specifications are non-binding guidelines and are subject to the customer meeting their contractual obligations. Delivery periods and dates are only possible by written agreement. The delivery periods and dates refer to the date of shipment or notification of readiness for a shipment and shall commence on the date of the order confirmation, however, not prior to full clarification of all details pertaining to the order, the provision of documents, permits or approvals to be provided by the customer as well as receipt of an agreed initial payment.
3. Delay in delivery shall not be deemed to exist as long as the customer delays payment.
4. We are entitled to make reasonable partial deliveries. In this respect, each partial delivery shall be invoiced.
5. The delivery period shall extend appropriately in the event of force majeure for measures in the context of labour disputes, in particular strikes and lockouts, transport and operational disruptions of any kind as well as the occurrence of unforeseen obstacles beyond our control. This shall also apply if the circumstances occur at our sub-suppliers. We shall also not be responsible for the aforementioned circumstances if they occur during an already occurring delay. We shall notify the customer as soon as possible of the commencement and end of such obstacles. If delivery or service becomes impossible due to the mentioned circumstances, we shall be released from the delivery obligation.
6. If the customer incurs a loss due to delayed delivery that is our fault or the fault of our sub-suppliers, the customer shall be entitled to demand compensation for the delay, to the exclusion of further claims, if this had been agreed in advance between the customer and ourselves. For each of full week of delay, this shall amount to 0.5% in total but a maximum of 5.0% of the value of that part of the total delivery that could not be used in good time or not in accordance with the contract due to the delay. Our unlimited liability from the violation of a guarantee as well as for wilful intent or gross negligence remains unaffected.
7. If the delivery is delayed at the request of the customer, we shall be entitled to demand compensation for any loss incurred including any additional expenses. The risk of accidental loss or accidental deterioration of the item of purchase shall, in this case, pass to the customer at the time of delayed acceptance. After setting an appropriate period of grace and expiry thereof, we shall be entitled to otherwise dispose of the delivery item and deliver to the customer after an extended period.

Section 7 Transfer of Risk and Shipment

1. The risk shall pass to the customer no later than the shipment or handover of the goods to the freight forwarder. This shall also apply if partial deliveries are made or if we have agreed to assume other responsibilities, e.g. shipment costs or delivery and installation.
2. If the shipment is delayed as a result of circumstances that the customer is responsible for, the risk shall pass to the customer from the date of the notification of readiness for shipment.
3. The shipment method and means shall be at our choice unless agreed to otherwise.
4. The shipment shall be insured by us according to the customer's specifications at the customer's request and at its costs.
5. In order to claim transport damages, the customer shall request a confirmation from the relevant transport company and send same to us. We shall not accept liability for transport damages incurred.
6. Notwithstanding the guarantee rights vested in the customer pursuant to Section 8, delivered items shall be accepted by same even if they have minor defects.
7. Partial deliveries are allowed.

Section 8 Reservation of Title

1. The delivered goods remain our property until full settlement of all the claims arising from the business relationship. The customer shall store the goods properly and insure them. In the event of payment delay, the customer is obligated to surrender the delivered goods on our request without us having to declare withdrawal from the contract in advance. This shall also apply if individual or all claims are included in a current invoice and the balance has been settled and recognised. The customer shall notify us without delay in the event of seizure, execution or other third-party interventions and provide the documents required to safeguard our rights of ownership.
2. Payment shall be deemed to have been effected on receipt of the consideration by us. For payment by cheque or bill of exchange, the reservation of title shall continue to endure until payment of these liabilities by the customer.
3. Any adaptation or processing of the conditional goods by the customer shall always be undertaken on our behalf without obligations arising therefrom for us. The conditional goods remain our property. This also applies if the conditional goods have been processed into a new item.
4. If combined with other items of the customer or a third party, the conditional goods shall generally be regarded as an independently removable installation and therefore protected by special rights. If the conditional goods are combined with other items not belonging to the customer or if the special rights protection is lost, we shall acquire co-ownership in the new item in relation to the value of the conditional goods to the other items combined at the time of combination. If the combination is carried out in such a manner that the customer's item is regarded as the main item, it is agreed that the customer transfers co-ownership to us on a pro rata basis. The customer shall safeguard the sole or co-ownership right accruing in this manner for us. For our co-ownership rights, the same applies as for the conditional item delivered.
5. The customer is entitled to sell the conditional goods in the ordinary course of business. The customer is not permitted to dispose of the goods in any other manner such as by lien or transfer by way of security. The customer is obligated to only resell the conditional goods under the extended or expanded reservation of title if the conditional goods are not immediately paid for by the third-party purchaser. The right to resell shall extinguish in the event of payment default by the customer.

6. The customer assigns to us at this point all receivables from the third-party purchaser that may arise for same from the resale. This also applies to the sale of conditional goods with and without processing. The customer is prohibited from coming to an agreement with its purchasers that exclude or negatively affect our rights. Our entitlement to collect the receivables ourselves remains unaffected thereby. We may demand that the customer notifies us of the assigned receivables and the respective debtors. This shall include all the information required for collection, provision of all the related documents as well as notification of the assignment to the debtors. As long as the customer meets their payment obligations to us, we undertake to not collect the assigned receivables. In the event that the conditional goods are sold with other items that belong to us, the customer's receivables from their purchaser shall be assigned to us at the amount of the delivery price agreed between ourselves and the customer.

7. We shall be entitled to ensure the conditional goods at the customer's cost if the customer has not taken out a relevant insurance policy themselves and proven same to us. The insurance shall, in particular, include theft, fire, water, machinery and other damages.

8. We undertake to release the collateral owing to us insofar as this has not yet been settled and their value exceeds the value of the goods which they are intended to secure by more than 20%.

Section 9 Customer's claims for defects

In the event of defects in quality or title in the delivery, the customer shall have the following rights in respect of claims for defects to the exclusion of further claims subject to Section 9:

Defects in quality:

1. The customer shall check our deliveries and services without delay on receipt as to whether defects exist. The examination and notification obligation also applies to operating manuals and installation instructions. If defects are determined, these shall be asserted in writing no later than 10 days after receipt. Should a defect exist that is not identifiable during the immediate examination, the defect must be notified without delay upon discovery.

The aforementioned notification period shall not apply to hidden defects in contracts with consumers. In this regard, the notification obligation shall be determined according to the applicable prescription period.

2. For parts that prove to be defective as a result of circumstances prior to the passing of risk, we shall have the choice of remedying the defect or delivering a defect-free item to merchants. For contracts with consumers, the customer is entitled to choose the type of subsequent performance according to the legal regulations. Furthermore, we shall decide at our discretion whether the defective part or device shall be sent to us for repair and subsequent return or if the customer is to keep the defective part or device to hand and a technician shall be sent by us to the customer to undertake the repair. Returns by the customer shall only be permitted with our written confirmation. If the customer requests guarantee work to be undertaken at a location determined by same, we shall be able to comply with this request with parts under the guarantee not being invoiced while working hours and travel costs shall be payable at our standard rates.

3. For undertaking the remedy of defects and delivery of defect-free items, as we deem necessary, the customer shall give us the required time and opportunity to do so after consulting with us. Otherwise, we shall be released from liability for the consequences arising therefrom. The customer only has the right to remedy a defect themselves or have the defect remedied by third parties and request reimbursement of the required expenses from us in urgent cases where operational safety is put at risk or to avert disproportional further damages. The customer shall notify us immediately of such aforementioned urgent cases.

With respect to the costs arising from the remedy of defects or the delivery of defect-free items, we shall bear the costs of the replacement including shipment and the appropriate costs of removal and installation provided that the complaint proves to be justified. Any expenses, in particular for transport, travel, labour and materials costs are excluded in respect of the customer's claims arising from the remedy of defects or delivery of defect-free items if the expenses increase due to the delivery item being subsequently brought to a different location than the customer's place of business unless the relocation is in line with its intended use.

4. No rights in respect of claims for defects shall exist in the following cases mentioned by way of example provided we are not responsible for same: Inappropriate or improper use, faulty installation or commissioning by the customer or third party, improper maintenance, faulty or negligent handling, natural wear and tear, inappropriate consumables, chemical, electrochemical or electrical influences.

5. In the context of the legal regulations, the customer has a right to withdraw from the contract if we allow an appropriate grace period set for subsequent performance to lapse without success on account of a defect in quality. In the event of a minor defect, the customer shall only be entitled to a reduction in the contractual price. For merchants, the right to a reduction in the contractual price remains excluded otherwise.

6. If operating or maintenance instructions issued by us are not followed, if parts are exchanged or if consumables are used that do not comply with the original specifications, any and all guarantees shall lapse unless the customer refutes a reasonably substantiated claim that the defect was caused by one of these circumstances.

7. If a defect is improperly remedied by the customer or a third party, we shall have no liability for the consequences arising therefrom. The same applies to any changes to the delivery item undertaken without our prior consent.

8. Used items are sold to merchants without any guarantee, i.e., we reject any guarantee for inherent or hidden defects. For consumers, a prescription period of one year applies.

Defects in title:

10. If the use of the delivery item results in violation of industrial property rights or copyrights in Germany, we shall obtain the right of further use for the customer at our costs or modify the delivery item in a reasonable manner for the customer such that the protective rights violation no longer exists. If this is not possible under economically appropriate conditions or within an appropriate period, the customer shall be entitled to withdraw from the contract. We shall also have a right to withdraw from the contract under the aforementioned requirements. In addition, we shall release the customer from uncontested claims or claims established by a court of law of the relevant holder of the protective right.

11. Our obligations mentioned in Section 810 are final in the event of violations of protective rights or copyright subject to Section 10. They shall only be deemed to exist if

- the customer notifies us without delay of any protective or copyright violations asserted,
- the customer supports us to an appropriate extent in the defence of claims asserted and/or enables the execution of modification measures pursuant to Section 8 paragraph 10,
- all out-of-court and in-court version defence measures remain reserved for us,
- the defect in title is not based on a customer's instruction, and
- the violation of the right is not caused by the customer by having independently changed the delivery item or used it in a non-contractual manner.

Section 10 Liability for Compensation for Damages

1. Irrespective of the legal grounds, we shall be liable for compensation for damages only
- in the event of wilful intent, gross negligence on our part or our executive bodies or managing employees,
 - in the event of culpable injury to life, limb, health,
 - in the event of defects fraudulently concealed by us or if we have given a guarantee,
 - in the event of defects in the item of the delivery insofar as a liability exists in accordance with the product liability laws of for personal injury or material damage in privately used items.

2. In the event of culpable violation of major contractual obligations that arise due to the nature of the contract and that are of particular significance for attaining the contractual purpose, we shall also be liable for gross negligence of non-managing employees or in the case of slight negligence; in the latter case, the liability shall be limited to reasonably foreseeable damages typical to the type of contract. This also includes indirect damages and consequential damages arising due to defects in the delivered goods. Further claims against us are excluded.

Section 11 Prescription

1. All claims of customers who are merchants shall prescribe 12 months after delivery of the item of the delivery, irrespective of the grounds. Our unlimited liability for damages arising from the violation of a guarantee or injury to life, limb or health, for intentional, fraudulent and grossly negligent conduct as well as for claims in accordance with the product liability laws remains unaffected. Prescription of the claims described in section 437 number 1 and 2 BGB [German Civil Code] shall be 2 years for contracts with consumers. Otherwise, all the customer's claims shall also prescribe 12 months after delivery of the delivery item, irrespective of the legal grounds.

2. In the event of liability due to intent, the relief from prescription contained in these Terms and Conditions of Sale and Delivery shall not apply.

3. Our statements relating to a defect claim asserted by a customer shall not be regarded as an entry into negotiations regarding the claim or the circumstances giving rise to the claim if the defect claim is fully rejected.

Section 12 Design Changes

We reserve the right to make changes to designs at any time. However, we are not obligated to also undertake such changes to products already delivered.

Section 13 Packaging

The packaging materials used by us, irrespective of the kind, shall only be taken back by us as freight paid returns and fully separated for recycling.

Section 14 Applicable Law, Place of Performance, Place of Jurisdiction

1. The law of the Federal Republic of Germany applies exclusively to these Terms and Conditions and the entire legal relationship between us and the customer. The applicability of the standard UN Convention on Contracts for the International Sale of Goods is expressly excluded.

2. In cases of doubt, only the German version of our Terms and Conditions of Sale and Delivery shall be decisive.

3. The place of performance for delivery and payments is Waiblingen.

4. For all disputes arising from the contractual relationship, the place of jurisdiction shall also be the place of the main registered offices of the customer, at our choice.

5. Should any provisions of these General Terms and Conditions of Sale, Delivery and Payment be invalid, this shall not affect the validity of all the other agreements. The parties undertake to replace the invalid provision with one that is as close as legally possible to the commercial purpose of the invalid provision.