

Terms of sale and delivery

(Version 11/2022)

I. Scope

1. Only these following general terms and conditions apply in business transactions with merchants. The Customer's general terms and conditions of business do not form an integral part of the contract, even if we have not expressly objected to them or perform the contract without having objected to the Customer's general terms and conditions of business.
2. Agreements deviating from these terms and conditions are only effective if we have expressly confirmed them in writing.
3. These terms and conditions of sale and delivery form an integral part of all contracts concluded between the contracting parties. They also apply to all future contracts between the contracting parties, even if their validity has not been expressly agreed again. A

II. Conclusion of and amendments to the contract

1. We reserve the right to amend our quotations. The Customer's orders are only be deemed to have been placed if we have confirmed them at least in text form.
2. Amendments or additions to the contractual agreements made require our written confirmation in order to be effective. The same applies to ancillary agreements made.

III. Description of services

1. The quality of the delivered goods and services is conclusively described by their expressly agreed characteristics (e.g. specifications, markings, approvals and other information). Any information provided does not constitute a guarantee or warranty for a specific purpose or specific suitability. The risk relating to suitability and use is borne by the Customer.
2. We reserve the right to make technically necessary deviations from physical and chemical values, including colours, formulas, processes, the use of raw materials and order volumes or structure, and shape and material changes, insofar as these are reasonable for the Customer.
3. Information on delivered goods and services (e.g. in catalogues, product information, electronic media or on labels) are simply indicative values or markings.
4. Information on the quality and possible uses of our products do not include any guarantees, in particular those in accordance with §§ 443, 444 and 639 of the German Civil Code (BGB), unless these are expressly designated as such in writing.

IV. Delivery, transfer of risk and delays

1. Shipping is at the expense and risk of the Customer ex works Wangen im Allgäu. The Customer bears the risk even when carriage-paid delivery has been agreed. The Customer is to provide for the insurance of the goods during transport at its own expense. For carriage-paid deliveries, the freight payment is to be regarded as an expense incurred on behalf of the Customer.
2. If the Customer is in default with the acceptance of our service or if the delivery is delayed at its request, the risk of accidental loss of the will pass to the Customer.

V. Packaging

Packaging is charged at cost price. Returning empty crates carriage-paid and in proper condition will be credited at two-thirds of the charged value, unless otherwise agreed at least in text form.

VI. Delivery period and partial deliveries

1. Information on delivery dates in our quotations is only approximate and non-binding, unless the delivery date has been expressly agreed in writing. A confirmed delivery date is subject to the correct, complete and timely supply of any goods to ourselves. The delivery period is deemed to have been met if, by the time it expires, the delivery item has left our works or we have notified the Customer that it is ready for dispatch. The delivery period will be extended at least while the Customer has duly failed to fulfil his obligations, such as to provide technical data and documents, approvals and an agreed down payment or the handover of an agreed payment guarantee.
2. We may make partial and early deliveries.
3. Force majeure events and other circumstances for which we are not responsible and which delay or – even temporarily – make it impossible to execute the order on time exempt us from the accepted delivery and service obligation for the duration of their occurrence. This applies in particular in the event of energy and raw material shortages, industrial disputes, official decrees, traffic or operational disruptions or if suppliers, sub-contractors or other contractors do not supply us, do not supply us on time or do not supply us properly due to events of force majeure or for the other aforementioned reasons.
4. Claims for damages by the Customer due to a delay in performance and claims for damages instead of performance in cases of delayed performance, even after a period of performance set by us, are excluded. This does not apply in cases of intent, gross negligence or injury to life, limb or health. Within the scope of the statutory provisions, the Customer may only withdraw from the contract if we are responsible for the delay in delivery. This does not entail a change in the burden of proof to the prejudice of the Customer.
5. The filing of an application by the Customer for the opening of insolvency proceedings, the submission of a declaration by the Customer in lieu of an oath in accordance with § 807 of the German Code of Civil Procedure

(ZPO), the occurrence and objective confirmation of payment difficulties or the discovery of a significant deterioration in the financial circumstances of the Customer entitle us to immediately cease deliveries and to refuse the performance of current contracts, unless the Customer provides payment in kind or provides adequate security upon our request.

VIII. Claims due to defects and obligation to provide notification of defects

We are liable for defects in the goods delivered by us in accordance with the following provisions:

1. In the event of a defect, the Customer may demand rectification of the defect (at our discretion either by repair or by replacement).
2. In the event of a replacement delivery, the Customer must return the defective item upon request.
3. A claim to rescission of the contract or reduction of the additional price is accepted only if the defect cannot be remedied within a reasonable period of time, the subsequent performance is associated with disproportionate costs, is unreasonable or fails for other reasons. In the event of only minor defects, the Customer cannot withdraw from the contract.
4. Obvious defects must be reported to us within 10 calendar days of handover, non-obvious defects within 10 days of discovery of the defect in at least text form. In all other respects, the provisions of § 377 of the German Commercial Code (HGB) apply.
5. In the event of complaints, the Customer must give us the opportunity to inspect the goods complained about without delay; in particular, the goods complained about are to be made available to us upon request and at our expense. If the complaint is unjustified, we reserve the right to charge the Customer for transport costs and the costs of inspection.
6. We accept no liability whatsoever for defects and/or damage that are also provided by the Customer, wear and tear, faulty assembly/faulty commissioning by the Customer or third parties, faulty or negligent handling, unsuitable or improper use, excessive use, non-observance of our operating instructions and/or operating instructions, unsuitable operating materials, changes and/or repairs not approved by us, repairs by the Customer or third parties, an excessive storage period and other circumstances within the Customer's sphere of influence, instructions from the Customer, etc. The Customer must release us from all third-party claims based on the aforementioned circumstances. Upon our request, it must provide evidence of the existence of appropriate insurance cover for the resulting liability risks.
7. The Customer is not entitled to the aforementioned claims for products that we deliver that are not new as agreed.
8. Claims due to the expenses required for the purpose of fulfilment, in particular transport, labour and material costs, are excluded insofar as the expenses increase as a result of the item of the delivery being subsequently moved to a location other than the registered office of the Customer, unless the transfer corresponds to the intended use/purpose of use.
9. Claims for damages by the Customer due to a material defect are excluded. This does not apply in the event of fraudulent concealment of the defect, non-compliance with an agreed quality guarantee, injury to life, limb, health and/or an intentional or grossly negligent breach of duty. A change in the burden of proof to the prejudice of the Customer due to a material defect is not implied by the above provisions. Any further claims or claims of the Customer other than those governed below due to a material defect are excluded.

IX. Other claims for damages and liability

1. Claims for damages and claims for reimbursement of expenses by the Customer, regardless of the legal basis, in particular due to breach of obligations arising from the contract and permitted actions, are excluded.
2. The aforementioned regulations under Z. IX. Z. 1. do not apply insofar as our liability is mandatory, e.g. under the Product Liability Act, in cases of intent, gross negligence, or due to injury to life, limb or health. If we negligently breach a material contractual obligation, the obligation to pay compensation will be limited to the foreseeable damage typical for the contract, unless we are liable for intent or gross negligence or for injury to limb, life or health.
3. We will be liable for infringements of industrial property rights in accordance with the above provisions if and to the extent that such industrial property rights are infringed when our goods are used in accordance with the contract, which are valid in the Federal Republic of Germany and published at the time of our delivery. This does not apply insofar as we have manufactured the delivery items according to the drawings, models or other descriptions or information provided by the Customer and do not know or need not know that the property rights of third parties have thereby been infringed. In this case, our Customer will be liable for any infringements of property rights that already have occurred or are occurring. The Customer must inform us immediately of any possible and alleged infringements of property rights of which the Customer becomes aware and to indemnify us against claims of third parties and all costs and expenses incurred.
4. Any claims for reduction and exercise of a right of withdrawal will be excluded insofar as the claim for subsequent performance is time-barred.
5. The aforementioned provisions do not result in any change to the legally prescribed sharing of the burden of proof.
6. Insofar as our liability is excluded, this also applies to the personal liability of our executive bodies, workers, employees, representatives and vicarious agents.

X. Statute of limitations

1. Any warranty claims, claims for damages and claims for reimbursement of expenses of the Customer become time-barred after one year from the statutory commencement of the limitation period unless these concern claims for defects for goods which have been used in accordance with their customary use for a building and have caused its defectiveness – in which case the limitation period is five years or there is a deviating regulation according to mandatory statutory provisions.

2. Any claims for reduction and exercise of a right of withdrawal will be excluded insofar as the claim for subsequent performance is time-barred.
3. The aforementioned limitation periods will not apply if we have acted with gross negligence or wilful intent or if we are liable in the event of injury to life, limb or health or for damage to privately used property and also not in the cases of §§ 478 and 479 of the German Civil Code (BGB).

XI. Intended use and delivery to third parties

1. The goods and items delivered by us are manufactured in accordance with the provisions applicable in the Federal Republic of Germany. They are not intended for use in and/or resale to the USA, US territories or Canada, unless otherwise expressly agreed.
2. In the event of further processing/resale of our goods or delivery items to third parties, the Customer must include our device description/operating instructions. U
3. In the event of resale of our goods or delivery items by the Customer to the USA, US territories or Canada, the Customer, as the distributor of our goods or delivery items to these markets, is responsible to us for ensuring that the products comply with the relevant standards and regulations there.

XII. Security

1. We reserve title to all goods delivered by us until all claims, including conditional claims, which we have against the Customer from our business relationship have been satisfied; in this respect, all deliveries are deemed to be one continuous delivery transaction. For a revolving account, the property for which title is reserved will be the security for our claim for payment of account balance. The above provisions also apply to future claims.
2. The Customer may resell, process or mix the sold item in the ordinary course of business; in doing so, however, the Customer hereby assigns to us all claims arising from the resale, processing, mixing or other legal grounds in connection with the sold item (in particular from insurance contracts or tortious acts) in the amount of the final invoice amount agreed with us (including VAT). The use for the fulfilment of contracts for work and services or contracts for work and materials by the Customer is equivalent to the sale.
3. The retention of title also extends to the full value of the products resulting from the processing, mixing or combining of our goods, whereby these processes are carried out for us so that we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their ownership rights remain, we acquire co-ownership in proportion to the objective values of these goods. If our ownership expires due to combination or mixing, the Customer transfers to us the ownership or expectant rights to which it is entitled in the new stock or item to the extent of the invoice value of the goods delivered by us and will keep them in safe custody for us free of charge.
4. The Customer may collect the claims from the resale despite the assignment as long as we have not revoked this authorisation. We ourselves will not collect the claims as long as the Customer duly meets its payment obligations towards us. The Customer is obliged, upon our first written request, to inform us of the debtors of the assigned claims and to notify the debtors of the assignment.
5. We may revoke the Customer's authority to resell within the scope of item 2. and to collect the claims assigned to us with immediate effect if the Customer is in default of payment to us, is in payment difficulties due to a significant deterioration of the Customer's financial circumstances or fails to properly fulfil the Customer's contractual obligations towards us. If insolvency proceedings are applied for against the Customer's assets, any payment is discontinued, a declaration in lieu of an oath is made in accordance with § 807 of the German Code of Civil Procedure (ZPO) or a change in the ownership of the Customer's company occurs in connection with payment difficulties, the authority to resell and to collect the claims assigned to us will automatically expire.
6. The Customer will keep the items subject to our (co-)ownership in safe custody for us free of charge with the care of a prudent businessman and insure them against fire, burglary and other usual risks.
7. The Customer is prohibited from pledging or assigning as security the goods delivered under retention of title. The Customer must notify us immediately of any seizure or any other impairment of our property rights by third parties and confirm the property right in writing both to the third parties and to us. Any costs remaining to us despite a successful outcome in any ensuing legal dispute will be borne by the Customer.
8. In the event of conduct in breach of contract on the part of the Customer, in particular in the event of default in payment, we may take back the goods; in this case, the Customer agrees in advance to the goods being taken back. Taking back the goods only constitutes a withdrawal from the contract if this is expressly declared by us. The costs incurred by us as a result of taking back the goods (in particular transport costs) will be borne by the Customer. The Customer may only demand delivery of the taken-back goods without an express declaration of withdrawal after full payment of the additional price and all costs.
9. The securities to which we are entitled will not be recorded insofar as the value of our securities exceeds by 20% the nominal value of the claims to be secured.

XIII. Terms of payment, and offset and retention rights

1. Invoice amounts are due within 10 days with a 2% discount or after 30 days net, if and insofar as nothing else has been agreed.
2. If, as a result of time conditions, other terms of payment become necessary than those stated in our offers and order confirmations, these will come into force without any obligation to give advance notice.
3. The retention of amounts owed to us due to any additional claims and the offsetting with counterclaims are excluded, unless these claims are undisputed by us or have been legally established.
4. Furthermore, in the event of default in payment by the Customer, we may, at our discretion, make outstanding additional price instalments or other existing claims against the Customer due and payable and make further

deliveries under this contract or under other contracts dependent on prior provision of security or payment concurrently with delivery.

5. If we accept bills of exchange, discount and bank charges are to be paid by the buyer.

6. We accept no responsibility for prompt presentation or the lodging of protests. Payments by bill of exchange are not considered cash payments.

XIV. Assignment and place of performance

1. The Customer has the right to assign its claims arising from the contractual relationship only with our prior consent.

2. The place of performance for all claims arising from the business relations, in particular from our deliveries, is Wangen im Allgäu/Germany.

XV. Jurisdiction and applicable law

1. The place of jurisdiction for all claims arising from the business relations, in particular from our deliveries, is Wangen im Allgäu/Germany. This place of jurisdiction also applies to disputes on the origin and validity of the contractual relationship. However, we may at our discretion initiate legal proceedings against the Customer before the courts having jurisdiction over the Customer's registered office.

2. With respect to Customers domiciled abroad, we are also entitled to have differences of opinion or disputes arising out of or in connection with the business relationship decided by one or three arbitrators appointed in accordance with the Arbitration Rules of the Zurich Chamber of Commerce, to the exclusion of the ordinary course of law. The arbitration tribunal is located in Zurich, Switzerland. The arbitration will be held in German. The arbitration award is final and binding on the parties involved.

3. The law of the Federal Republic of Germany applies exclusively, to the exclusion of its private international law, insofar as it refers to the validity of another legal system. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) and other bilateral and multilateral agreements for the purpose of standardisation of international sales is excluded.

XVI. Partial invalidity

In the event of legal invalidity or amendment of individual points of its Terms and Conditions, the remainder of the contract remains valid. The contracting parties will immediately replace ineffective provisions with a new provision that comes as close as possible to the economic purpose of the ineffective provision.

XVII. Storage of personal data

The Customer agrees that we may store company and personal data for the purpose of processing business transactions.

(The current Terms of Sale and Delivery can be viewed and printed out on our homepage at any time).

**Hymer-Leichtmetallbau GmbH & Co. KG, Käferhofen 10,
D-88239 Wangen im Allgäu, Germany.**