

# **GENERAL TERMS AND CONDITIONS**

## **of Höhen-Technik Vertrieb GmbH in Ulm**

### **Status March 2020**

#### **§1. Definition**

General Terms and Conditions of Sale & Delivery for work platforms, construction machinery, vehicles, construction equipment, spare parts and industrial machinery for use in national and international business transactions with companies, all legal entities under public law or a special fund under public law, with the exception of the general terms and conditions of business listed here, are private individuals in Germany.

#### **§2. Offers & conclusion of contracts**

2.1. The following General Terms and Conditions of Sale and Delivery (hereinafter also referred to as "Terms and Conditions of Contract") shall apply exclusively to all offers and orders, whether submitted orally or in writing. HT Vertrieb GmbH shall not accept any terms and conditions of the Customer deviating from or contradicting these Terms and Conditions of Contract unless expressly agreed upon. Even if HT Vertrieb GmbH is aware of terms and conditions of the Customer deviating from or conflicting with these Terms and Conditions of Contract and carries out the delivery without reservation, this shall not constitute consent - in this case, the Terms and Conditions of HT Vertrieb GmbH shall also apply.

2.2. The offers or price enquiries are always subject to change without notice and are not connected with an obligation to deliver. Orders placed shall only become binding upon written confirmation by HT Vertrieb GmbH.

2.3. Supplements, amendments or collateral agreements shall require written confirmation (by email, fax, letter, WhatsApp or SMS) by HT Vertrieb GmbH.

2.4. HT Vertrieb GmbH reserves the right of ownership and copyright of cost estimates, order confirmations, drawings and other documents. They shall not be made available to third parties without the consent of HT Vertrieb GmbH.

2.5. For cross-border contracts (within the EU & third countries), the contractual terms and conditions set forth herein shall also apply, which shall be made available to the foreign customer in English ([www.htvertrieb.de](http://www.htvertrieb.de) IMPRINT Version GB)

#### **§3. Scope & obligation to deliver**

3.1. The written order confirmation / order by HT Vertrieb GmbH shall be authoritative for the order and scope of delivery.

3.2. Dimensions, weights, illustrations and drawings as well as other documents belonging to the offers are based on information, drawings and illustrations of the respective machine manufacturers (which may be used with their permission) and are therefore only approximately authoritative. Information regarding operating hours, mileage, damage or accidental damage is always without guarantee and is based on the information of the respective previous owner of the used delivery item. Optical repair work or repainting cannot be excluded. Binding information must be expressed in writing.

3.3. Within the scope of the delivery and scope obligation, HT Vertrieb GmbH undertakes, unless otherwise stated in writing, to prepare all necessary export documents for the goods to be shipped in cross-border traffic (within the EU and third countries), provided that these documents can be prepared and are necessary (commercial invoice, CMR, customs mark, export accompanying document, exit note, CE & EUR1-case possible). The costs associated with this, unless otherwise agreed, are to be borne by the customer.

## **§4. Price & payment**

4.1. All prices quoted (verbally as well as in writing) are in € (Euro), ex location of the machine/vehicle and plus the respective legally valid German value added tax. In cross-border transactions, HT Vertrieb GmbH reserves the right, unless otherwise agreed, to retain the respective valid German VAT as a deposit until the Customer submits the appropriate proof of importation of the goods into his home country at the expense of the Customer (EU= CMR proof, certificate of arrival, THIRD COUNTRIES= exit note, CMR, registration in the home country, proof of customs clearance in the receiving country).

4.2. Unless otherwise agreed, the purchase price shall be paid within 20 days after date of invoice net cash without any deductions by bank transfer to the respective business account of HT Vertrieb GmbH. Special agreements shall require written form or shall be set out in the order confirmation. Payments from abroad shall be made exclusively in € (Euro). All transaction costs shall be borne by the respective invoice recipient.

4.3. In case of non-compliance with the terms of payment or if HT Vertrieb GmbH becomes aware after conclusion of the contract that the claim for payment is endangered by the Customer's inability to pay, HT Vertrieb GmbH shall be entitled to perform outstanding deliveries & services only against advance payment or provision of security.

4.4. The Customer shall only be entitled to set-off and/or retention of payments if its counterclaims have been finally and conclusively determined by a court of law or are undisputed or ready for decision in a pending legal proceeding.

## **§5. Delivery time**

5.1. The delivery period shall be deemed to have been observed if the delivery item has left the stand / location of HT Vertrieb GmbH or the manufacturing plant by the end of the delivery period or if the Customer has been notified of the readiness for dispatch.

5.2. In case of delays in delivery due to force majeure, industrial disputes beyond the control of HT Vertrieb GmbH or in case of obstacles for which the manufacturing plant is responsible, the delivery period shall be extended appropriately. This shall also apply if the obstacles have arisen during an already existing delay.

5.3. Any loss of use, costs or loss of profit which the Customer has incurred due to a delay in delivery time cannot be formulated into a claim against HT Vertrieb GmbH.

5.4. In case of delays in delivery time or acceptance due to circumstances for which the Customer is responsible, HT Vertrieb GmbH shall be entitled to charge the Customer for any expenses incurred (demurrage, redirection costs of the goods, storage fees for the goods, overnight stays, etc.).

HT Vertrieb GmbH shall be entitled to dispose of the delivery item otherwise after granting a fruitlessly expiring grace period.

5.5. Compliance with the delivery period shall be subject to the Customer's fulfilment of his obligations under the purchase contract.

5.6. If HT Vertrieb GmbH itself is not responsible for the delay in delivery although it has placed congruent orders with its supplier or manufacturer, the delivery period shall be extended appropriately. In this case HT Vertrieb GmbH shall immediately inform the Buyer about the non-availability of the delivery.

## **§6 Transfer of risk & acceptance of the delivery item**

6.1. Delivered items are to be accepted by the customer, provided they do not have any major defects, without prejudice to the rights under §8.

6.2. If the dispatch is delayed due to circumstances beyond the control of HT Vertrieb GmbH, the risk shall pass to the Customer on the day of readiness for dispatch, even if the delivered goods are stored on the premises of HT Vertrieb GmbH or on the premises of one of its partner companies. Upon request of the Customer, which shall be defined in writing, HT Vertrieb GmbH shall be obliged to insure the delivery item against damages. The costs for such insurance shall be borne by the Customer.

6.3. Partial deliveries shall be permissible.

6.4. The risk shall pass to the Customer when the delivery item is handed over to the Customer, his authorized representative, collector, forwarder, carrier or in case of transport by HT Vertrieb GmbH, however, at the latest when the delivery item leaves the location of the Customer.

## **§7. Reservation of title**

7.1. HT Vertrieb GmbH reserves the right of ownership of all delivery items until full payment of all claims resulting from the business relationship with the Customer. In case of current account, the entire reserved property shall serve as security for the balance claim.

7.2. The Customer may neither pledge the delivery item nor assign it as security. In case of seizure, confiscation or other disposal by third parties, the Customer shall inform HT Vertrieb GmbH immediately.

7.3. If the Customer acts in breach of contract, in particular in case of default of payment, HT Vertrieb GmbH shall be entitled to take back the goods after a reminder and the Customer shall be obliged to return them.

The assertion of the reservation of title as well as the seizure of the delivery item by HT Vertrieb GmbH shall not be considered as withdrawal from the contract but as security for the existing contract.

7.4. HT Vertrieb GmbH shall be entitled to insure the delivery item against fire, water & other damages at the expense of the Customer, unless the Customer has demonstrably taken out such insurance himself.

7.5. All costs arising from the return of the delivery item into the physical possession of HT Vertrieb GmbH shall be borne by the Customer, as well as possible storage costs.

## **§8. Liability for defects & delivery**

8.1. In the trade with used delivery items (working platforms, construction machinery of any kind, spare parts & vehicles) any liability for defects of function & parts is herewith excluded on the part of HT Vertrieb GmbH. Any other agreements must be made in writing.

8.2. In case of trading with new delivery items (working platforms, construction machinery of any kind, spare parts and vehicles), the liability for defects of function and parts on the part of HT Vertrieb GmbH shall be limited to 12 months. Possible claims will be forwarded by HT Vertrieb GmbH directly to the manufacturer of the new delivery item (working platforms, construction machinery of any kind, spare parts & vehicles). In case of vehicles which are subject to registration, the warranty / or liability for material defects shall apply from the date of first registration, which is noted in the vehicle documents. The guarantee regulations of the respective manufacturer apply here in principle. These will be sent separately to the client on request.

8.3. The company commissioned by HT Vertrieb GmbH shall always be responsible for repairs, maintenance work, safety inspections or renting of the respective delivery items. The respective General Terms and Conditions of Business of companies commissioned by HT Vertrieb GmbH shall apply. HT Vertrieb GmbH acts here only as an intermediary of a service.

8.4. Notwithstanding sentence 2, the statutory claims under the Product Liability Act shall also apply in case of intentional or fraudulent conduct. Replaced parts shall become property of HT Vertrieb GmbH or the manufacturer of the delivery item. Upon request of HT Vertrieb GmbH, they shall be handed over to HT Vertrieb GmbH free of charge.

8.5. HT Vertrieb GmbH shall not be liable for damages due to natural wear and tear, external forces or force majeure as well as for wear parts.

8.6. No warranty shall be assumed for damages caused by the following reasons:

- Unsuitable or improper use
- Faulty assembly or commissioning by the client
- In the event of incorrect or negligent handling of the delivery item, in particular with regard to these operating instructions
- For excessive strain
- When using unsuitable equipment & replacement materials
- For use outside the guidelines of DGUV regulation 100-500
- If the prescribed maintenance & safety intervals are not observed

8.7. The Customer shall grant HT Vertrieb GmbH the necessary time and opportunity to carry out all repairs and replacement deliveries which HT Vertrieb GmbH deems necessary at its reasonable discretion; otherwise HT Vertrieb GmbH shall be released from its liability for defects. Only in urgent cases of endangerment of the operational safety, of which HT Vertrieb GmbH has to be informed immediately, or if HT Vertrieb GmbH is in delay with the remedy of the defect, the Customer shall be entitled to remedy the defect itself or have it remedied by third parties and to claim reasonable reimbursement of its costs from HT Vertrieb GmbH.

8.8. Of the direct costs arising from the repair or replacement delivery, HT Vertrieb GmbH shall bear the costs of the replacement part including shipping as well as the reasonable costs for disassembly and assembly, provided that the complaint is considered justified. Otherwise the Customer shall bear the costs.

8.9. Any modifications or repair work carried out improperly by the Customer or third parties without prior approval of HT Vertrieb GmbH shall invalidate the liability for the consequences resulting therefrom.

8.10. Used delivery items shall be sold under exclusion of liability for material defects. (sentence 1). This exclusion shall not apply to claims for damages based on liability for material defects which are caused by grossly negligent or intentional violation of obligations of HT Vertrieb GmbH as well as in case of injury of life, body and health.

8.11. Further claims of the Customer against HT Vertrieb GmbH, in particular a claim for compensation for damages not incurred on the delivery item itself, shall only exist:

- in case of gross negligence or intent by HT Vertrieb GmbH
- in the event of injury to life, body or health
- in the case of culpable violation of essential contractual obligations, insofar as the achievement of the purpose of the contract is endangered, with regard to the foreseeable damage typical for the contract
- in cases in which liability for personal injury or property damage to privately used objects is assumed under the Product Liability Act in the event of defects in the delivered goods
- for defects which have been fraudulently concealed
- for defects, the absence of which HT Vertrieb GmbH has assured in writing
- Otherwise liability is excluded.

8.12. Unless otherwise agreed, HT Vertrieb GmbH shall deliver its goods free of third party industrial property rights and copyrights in Germany. In the event of a corresponding infringement of property rights, HT Vertrieb GmbH shall either obtain a corresponding right of use from the third party or modify the delivery item to such an extent that an infringement of property rights no longer exists. If this is not possible for HT Vertrieb GmbH under reasonable and acceptable conditions, both the Customer and HT Vertrieb GmbH shall be entitled to withdraw from the contract.

8.13. In case of defects of title, the provisions of this § 8 shall apply accordingly, whereby claims of the Customer shall only exist if the Customer immediately informs HT Vertrieb GmbH in writing about possible claims asserted by third parties, if the Customer neither directly nor indirectly acknowledges an alleged act of infringement, if HT Vertrieb GmbH has unrestricted possibilities of defence, if the infringement is not based on the fact that the Customer modified the delivery item or used it in a non-contractual way or if the defect of title is due to an instruction of the Customer.

8.14. All claims for a liability for material defects shall exclusively apply within the territory of the Federal Republic of Germany, if the Customer (with the registered office in Germany) should take the delivery item abroad for use, the Customer shall be obliged to take the delivery item at his own expense & risk within the territory of the Federal Republic of Germany and to make it available to HT Vertrieb GmbH in case of a contractually agreed warranty. Any other agreements must be made in writing with regard to liability for material defects abroad.

Liability for material defects for delivery items where the Customer has its registered office abroad and the delivery item has been brought there shall only be limited to a warranty for spare parts - if a warranty has been contractually agreed upon. In this case HT Vertrieb GmbH shall only be obliged to provide the spare part ready for dispatch.

## **§9. Rights of the Customer to withdraw from the contract or to reduce the purchase price and other liability of HT Vertrieb GmbH**

9.1. The Customer may withdraw from the contract if the complete performance of the transfer of risk becomes finally impossible for HT Vertrieb GmbH. The same shall apply in case of incapacity of HT Vertrieb GmbH. The Customer shall also be entitled to withdraw from the contract if, when ordering similar items, the execution of part of the delivery becomes impossible in terms of quantity and the Customer has a justified interest in refusing partial delivery. If this is not the case, the Customer may reduce the consideration accordingly.

9.2. In case of default of performance within the meaning of § 5 of the Terms and Conditions of Sale & Delivery and if the Customer grants HT Vertrieb GmbH in default a reasonable grace period and the grace period is not complied with, the Customer shall be entitled to withdraw from the contract.

9.3. If impossibility of performance occurs during default of acceptance or through the Customer's fault, the Customer shall remain obliged to counter-performance.

9.4. Furthermore, the Customer shall be entitled to withdraw from the contract if HT Vertrieb GmbH, through its own fault, allows a reasonable grace period granted to HT Vertrieb GmbH for the remedy or improvement of a defect for which it is responsible within the meaning of the Terms and Conditions of Delivery to expire fruitlessly. The Customer shall also have the right to withdraw from the contract in other cases of failure of HT Vertrieb GmbH to repair or replace the goods.

9.5. Further claims for compensation for damage of any kind, including damage that has not occurred to the delivery item, shall only exist:

- in case of gross negligence or intent
- in the event of injury to life, body or health
- in the event of culpable violation of essential contractual obligations, insofar as the achievement of the purpose of the contract is endangered, with regard to the contract-typical, foreseeable damage in those cases in which liability is assumed under the Product Liability Act for defects in the delivery item, for personal injury or damage to privately used objects

- in the case of defects that have been fraudulently concealed, the absence of which has been guaranteed by the contractor.
- Any further claims, in particular for termination, reduction or damages, are excluded.

### **§10. Liability for secondary obligations**

If, due to HT Vertrieb GmbH's fault, the delivered goods cannot be used by the Customer in accordance with the contract due to omitted or faulty execution of suggestions and advice given before or after conclusion of the contract as well as other new contractual obligations - especially instructions for operation and maintenance of the delivered goods - the provisions of § 8 and § 9 shall apply accordingly, excluding further claims of the Customer.

### **§11. Place of jurisdiction**

Place of performance and exclusive place of jurisdiction - also for legal actions in summary proceedings for documents and bills of exchange - is, if the Customer is a businessman, a legal entity under public law or a special fund under public law, for both parties and for all present and future claims arising from the business relationship, the registered office of HT Vertrieb GmbH or - at its option - the registered office of the branch office which concluded the contract. If the Customer has his place of residence abroad or his registered office abroad, the place of jurisdiction shall exclusively be the headquarters of HT Vertrieb GmbH in Ulm, Federal Republic of Germany. The provisions of the UN Sales Convention shall not apply.

### **§12. Notice according to § 36 Consumer Dispute Participation Act (VSBG)**

HT Vertrieb GmbH will not participate in any dispute participation proceedings before a consumer arbitration board in the sense of the VSBG and is not obliged to do so (for German market and for the area of Germany)