



Technik die Freude macht.

**Hohenloher Spezial-Maschinenbau GmbH**  
Im Greut 10  
D-74635 Neu-Kupfer

Tel. +49 (0) 7944 9191-0  
Fax +49 (0) 7944 9191-77  
info@hsm-forest.com  
www.hsm-forest.com

**HSM Niederlassung Wolfegg**  
Grimmenstein 7  
D-88364 Wolfegg  
Tel. +49 (0) 7527 9608-0  
Fax +49 (0) 7527 9608-222

# General Terms of Business

(Version 27.06.2023)

## § 1 Scope

1. These General Contractual Terms and Conditions (hereinafter referred to as „Terms and Conditions“) are the sole basis for any and all contracts concluded by us (Hohenloher Spezial-Maschinenbau GmbH) with our contractual partners (hereinafter also referred to as „Customers“) governing the deliveries (regardless of whether we manufacture the goods ourselves or purchase them from suppliers (Section 433 of the German Civil Code (BGB), Section 650 BGB)) or services for which we provide quotations. The Terms and Conditions shall apply only to entrepreneurs as defined by Section 310 Para. 1 of the German Civil Code (BGB).
2. Unless otherwise agreed, the Terms and Conditions in the version valid at the time of the customer's order or in any case in the version last shared with the customer in text form shall also apply as a framework agreement for similar future contracts without our having to refer to them again in each individual case.
3. Conditions of the customer or of third parties are not acknowledged, even if we do not contradict their validity in an individual case. Even if we refer to a document that contains Terms and Conditions of the customer or of a third party or refer to such or carry out the delivery without reservation while being aware of such Terms and Conditions, this shall not be construed as our consent to the validity of such Terms and Conditions of Business.
4. All agreements between us and the customer are conclusively governed by the written contractual documents and these Terms and Conditions. Verbal subsidiary agreements shall not be binding. For the content of individual agreements made with the customer in specific cases (including subsidiary agreements, additions and revisions), unless there is proof to the contrary, a written contract or our written confirmation shall be authoritative.
5. Relevant declarations and notifications of customer with regard to the contract (e.g. setting deadlines, notice of defects, withdrawal, reduction) shall be submitted in writing with reservation to statutory form requirements. Written form within the meaning of these Terms and Conditions includes written and text form (e.g. letter, e-mail, fax).

## § 2 Quotations and Conclusion of the Contract, Quotation Documents

1. Our quotes are non-binding and subject to change unless otherwise designated.
2. We are entitled to accept orders or contracts of the customer that apply as a binding contractual quotation within fourteen days after receipt unless the quotation does not expressly specify otherwise. The acceptance can be accepted either in writing (e.g. by an order confirmation) or conclusively (e.g. by accepting the goods, beginning the execution of the commissioned services, etc.).
3. Information we provide about the object of the agreement (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) and illustrations of the same (e.g. drawings, figures) shall be only approximately authoritative insofar as they do not require exact compliance to be usable for the contractually agreed purpose. These are descriptions or indications of the delivery or service, not guaranteed characteristics. Deviations that are customary in the trade and deviations which arise due to legal regulations or which represent technical improvements, as well as the replacement of components by equivalent parts, shall be permitted, provided that they do not impede the applicability to the contractually agreed purpose.
4. We shall retain ownership of and copyrights for drawings, figures, calculations, brochures, catalogues, models, tools and other documents and aids, as well as those rights to documents designated as „confidential.“ Any transfer, provision of access, release as well as use or reproduction by the customer or a third party requires our explicit prior consent. Such documents shall be used exclusively for the contractual performance and shall be returned to us upon request after completion of the contract. The documents must be kept secret from third parties, even after termination of the contract. The obligation to maintain secrecy shall only expire if and to the extent that the knowledge contained in the documents provided has become generally known.

## § 3 Prices and Payment

1. Prices shall apply to the scope of services or delivery listed in the order confirmations. Additional or special services shall be charged separately. Prices are in euros, ex works and are in addition to packaging and shipping if necessary, value-added tax in the respective applicable amount, customs duty for export deliveries as well as fees and other official charges.



## Technik die Freude macht.

2. If not otherwise specified in the order confirmation, the purchase price shall become due without deduction within 7 days from the issuing of the invoice and the transfer of risk. We are nonetheless authorized to perform a delivery or service, in whole or in part, only against advance payment at any time, even in the course of ongoing business relationships. The corresponding reservation shall be stated at the latest with the order confirmation. The deduction of a cash discount shall be permitted with a separate written agreement only. The date of payment shall be decided by payment receipt. Payment by cheque shall be excluded, provided that this has not been otherwise agreed upon separately in individual cases. Legal regulations shall apply to the consequences of payment default.
3. Any offset with counter-claims by the customer or the retention of payments due to such claims shall only be permitted if these counter-claims are undisputed or have been legally established; in addition, when exercising the right of retention, the counter-claim must be based on this same contractual relationship.
4. If our payment claim is identified to be at risk due to the customer's inability to pay after the conclusion of the contract (e.g. through a motion to file insolvency proceedings), we shall then be entitled to the denial of service and to rescission from the contract in accordance with the legal regulations, after setting a deadline, if appropriate. For contracts concerning the production of custom items (single-unit production), we have the right to declare this rescission immediately; legal regulations about the dispensability of setting a deadline shall remain unaffected.
5. At the customer's request, if possible, we shall provide information about the expected costs for performing the services / deliveries. Cost estimates are made without commitment on our part, pending any express statements to the contrary. We may invoice the costs of creating a cost estimate at the customer's request (labour expenditure, obtaining quotes, travel costs, etc.) to the customer separately according to the expense accrued; in addition, when exercising the right of retention, the counter-claim must be based on this same contractual relationship. If the delivery / service cannot actually be performed at the estimated costs, or if it becomes necessary to perform additional deliveries or services in the course of regular performance in order to fulfil the contractual purpose, we shall first obtain the consent of the customer for further performance if the expected additional costs exceed the value of the cost estimate by more than 15%. In this case, the customer shall be entitled to termination, wherein we shall be entitled to invoice the customer for the deliveries and services rendered before termination. Any further liability of the customer based on fault remains unaffected.

### **§ 4 Delivery, Delivery and Service Performance Period, Scope of Services**

1. The periods and deadlines for deliveries or services are agreed upon individually and/or specified by us as part of order acceptance. In any case, the start of the time period requires the clarification of all technical questions as well as the compliance with contractual obligations of the customer (e.g. advance payment; if agreed, the provision of means of production such as components, etc.). If corresponding obligations to cooperate on the part of the customer only arise during the production process, the agreed delivery time shall be extended by the period of any delay for which the customer is responsible plus a reasonable start-up or resumption period; we shall notify the customer without delay of the new delivery period taking this into account. If sales shipment has been agreed upon, the time of handover to the shipper, freight forwarder or other third party tasked with transport shall be taken into consideration regarding timeliness.
2. In the event of delays, provided that these have been caused by force majeure or other events not foreseeable at the time of contract conclusion (e.g. any manner of operational malfunction, difficulties in material or energy procurement, transport delays, strikes, pandemic, legal lockouts, shortage of labour, energy or raw materials, difficulties procuring necessary official approvals, governmental actions, or missing, incorrect or late delivery by suppliers, etc.), for which we are not responsible, we will notify the customer immediately and at the same time advise an expected new delivery period. If such events significantly complicate or make it impossible for us to perform the delivery or service and the obstruction is not just temporary in nature (non-availability of performance), we shall be entitled to rescission of the contract; any payments already made by the customer shall be refunded by us immediately. The rights of the buyer according to Section 6 of these Terms and Conditions as well as our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and / or subsequent performance), shall remain unaffected.
3. In the case of a retroactive contract extension by the customer, any performance period shall also be extended appropriately. In this case we shall also inform the customer of an expected new delivery period.
4. We are authorised to perform partial deliveries and partial services if
  - a) the partial delivery or partial service is usable for the customer as part of the intended contractual purpose,
  - b) the delivery of the remaining ordered goods or the remaining service is guaranteed, and
  - c) significant additional effort or costs do not result for the customer because of this (unless we have agreed to assume these costs).
5. Whether a default of delivery or service has occurred is determined by law. However, in all cases, a reminder by the customer shall be required. We are entitled to conclude subcontracts and to perform test drives as well as drives for transportation purposes.

### **§ 5 Place of Fulfilment, Shipping, Packaging, Transfer of Risk, Acceptance, Delayed Receipt**

1. Unless otherwise agreed, deliveries shall be made ex works, i.e. „EXW (Incoterms 2020)“: For the sale of new machines, this refers to Wolfegg. The place of fulfilment of all obligations arising from the contractual relationship is our registered office, if not otherwise defined.
2. Goods are shipped to another location at the request and expense of the customer (sales shipment). The shipment method, selection of a transport company, packaging, etc. is at our professional discretion. This shall also apply if the customer requests the pickup or delivery of the contractual object or services to be rendered. We shall only insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the customer and at the customer's expense.
3. Risk passes to the customer at the latest with the handover of the delivery object to the customer or, in the case of sales shipment, with the handover to the shipper, freight forwarder or other third party intended to perform shipment; the decisive point in this respect shall be the start of the loading process. This shall also apply if partial deliveries are made or if we have taken on more services (e.g. shipping or installation). In the case of a delay of shipment or handover for which the customer is responsible, risk shall be passed to the customer at the time when goods are ready for shipment and this has been indicated to the customer.



## Technik die Freude macht.

4. If acceptance is to take place, this is authoritative for the transfer of risk; acceptance shall be deemed to have taken place if
  - a) the service or delivery and installation, provided that we are also responsible for installation, has been completed,
  - b) we have notified the customer of this assumed acceptance and have requested the customer's acceptance,
  - c) ten business days have passed since the delivery, installation or service, or the customer has started using the purchased item (e.g. brought the delivered item into operation) and five business days have passed since delivery, installation or service in this case, and
  - d) the customer has refrained from acceptance within this period for a reason other than a defect indicated to us which makes the use of the item impossible or significantly impairs use.
5. If the customer is in default of receipt or acceptance, or if the delivery is delayed for reasons for which the customer is responsible, we shall be entitled to demand compensation for arising damages including additional expenses (in particular storage costs). In this case, we are entitled to claim a lump-sum compensation amounting to 0.25% of the invoice amount of the delivery items to be stored per week or part thereof. Both parties reserve the right to assert and prove further or lesser damages as well as further legal claims.

### § 6 Warranty, Liability

1. The purchaser's warranty rights in the event of material defects and defects of title as well as our liability due to breach of contractual and non-contractual obligations shall be determined in accordance with the statutory provisions, unless otherwise stipulated below. In the case of used goods, the warranty (subject to Para.9) is excluded unless otherwise agreed. The special regulations for final delivery of newly manufactured goods to a consumer (supplier recourse, Sections 478, 445a, 445b or Sections 445c, 327 Para. 5, 327u BGB) remain unaffected. However, claims from supplier recourse are excluded if the defective goods have been further processed by the customer or another entrepreneur, e.g. by installation in another product. The exclusion of liability according to Section 442 BGB in case of knowledge or negligent ignorance of a defect by the customer remains unaffected.
2. Defect rights of the customer require that the customer has complied with its due obligations of inspection and notification of defects in accordance with Sections 377, 381 of the German Commercial Code. Goods which are intended for installation or other further processing must in any case be inspected immediately before processing. Otherwise, there shall in particular be no claims for compensation for removal and installation costs.
3. The basis of our liability for defects is above all the agreement reached on the quality and the presumed use of the goods (including accessories and instructions). All product descriptions and manufacturer's specifications which are the subject of the individual contract shall be deemed to be an agreement on quality in this sense. Details of weights, dimensions, consumption, ranges, operating costs and similar technical details are not binding and are to be regarded as approximate only, unless the details are agreed in our quotation or order confirmation. Insofar as no quality has been agreed, it is to be determined according to the statutory regulation whether a defect exists or not (Section 434 Para. 3 BGB). In the case of goods with digital elements or other digital content, we only owe provision and, if applicable, updating of the digital content insofar as this results expressly from a quality agreement.
4. If the purchased item or rendered service is defective, we are entitled to choose whether we provide rectification in the form of a correction of the defect (subsequent improvement) or the delivery of a new, defect-free item (subsequent delivery). If the type of supplementary performance chosen by us is unreasonable for the customer in the individual case, the customer may reject it. Our right to refuse rectification in accordance with the legal requirements remains unaffected. In particular, we are entitled to make the due rectification dependent on the completion of customer payment. The customer is nonetheless entitled to withhold a portion of payment appropriate to the defect.
5. The customer shall give us the time and opportunity required for subsequent performance, in particular to hand over the rejected goods for inspection. In the event of subsequent delivery, the customer shall return the defective goods at our request in accordance with the statutory provisions; however, the customer shall not be entitled to return the goods. Rectification includes neither the removal of the defective item nor reinstallation, provided that this service was not originally our contractual responsibility; the customer's right to corresponding reimbursement of any removal and installation costs remains unaffected (subject to Para. 2).
6. In the case of a defect correction or replacement, we are obligated to bear all expenses required for the purpose of rectification, particularly transport, travel, labour and material costs, provided that these do not increase due to the fact that the goods are located in a different location than the place of fulfilment, insofar as a defect is actually present. Otherwise, we can demand that the customer compensate us for the costs arising from an unwarranted rectification request (particularly testing and transport costs), unless the absence of a defect could not be identified by the customer.
7. If the supplementary performance fails or, in the case of a dispensable or expired reasonable rectification period, the right of the customer to rescission of the contract or to reduction of the purchase price in accordance with the statutory provisions remains unaffected.
8. We shall accept liability in accordance with the statutory provisions, provided that the customer asserts its claims to reimbursement for damages based on intentional misconduct or gross negligence, including the intentional misconduct or gross negligence of our representatives or agents. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in own affairs, insignificant breach of duty), for
  - a) damage due to injury to life, limb and health;
  - b) for damages arising from not insignificant breaches of material contractual obligations (i.e. obligations the fulfilment of which is a prerequisite for the proper performance of the contract and the observance of which the customer regularly relies on and may rely on), whereby our liability is limited to compensation for the foreseeable, typically occurring damage.
9. The above limitations of liability shall not apply if we have fraudulently concealed a defect or have given a guarantee for the quality of the goods and for claims of the buyer under the German Product Liability Act.
10. Due to a breach of duty which does not consist of a defect, the buyer is entitled to rescission or termination of the contract if we are responsible for the breach of duty. A free right of termination on the part of the buyer (in particular according to Sections 650, 648 BGB) is excluded. Otherwise, the legal prerequisites and regulations apply.



## Technik die Freude macht.

11. The above provisions shall also apply if the customer claims compensation for futile expenses instead of damages.
12. Insofar as our liability for compensation is excluded or limited, this shall also apply with regard to the personal liability for compensation of our contractors, employees, representatives and agents.

### § 7 Statute of Limitation

1. Notwithstanding Section 438 (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from the transfer of risk; insofar as acceptance has been agreed, the limitation period shall commence upon acceptance.
2. Other binding legal special provisions on limitation remain unaffected (particularly Section 438 Par. 1 No. 1, No. 2, Par. 3, Sections 444, 445b BGB). In this respect, the statutory limitation period shall apply.
3. The present limitation periods from sale of goods law shall also apply to contractual and non-contractual claims for damages from Purchaser based on a defect of the goods, unless the application of the regular legal limitation (Sections 195, 199 BGB) would lead to a shorter limitation in this individual case.
4. The above limitation periods do not apply to customer claims to reimbursement for damages due to injury to life, limb and health or due to intentional or negligent breaches of duties on our part or on the part of our agents, which expire in accordance with the respective legal regulations.

### § 8 Retention of Title / Extended Lien

1. The following agreed retention of title serves as security for all of our claims, both current and future, against the customer which arise from the supply relationship that exists between the parties to the contract.
2. The goods we supply to the customer shall remain our property up until the complete payment of all secured claims. These goods, as well as any goods in accordance with the following provisions which replace these and which are subject to the retention of title, are hereinafter referred to as „conditional goods“.
3. The customer shall keep the conditional goods on our behalf free of charge. The customer is obligated to treat the goods with due care and to insure them sufficiently against fire, water, vandalism and theft at its own expense. The customer shall perform any necessary maintenance and inspection work in a timely manner and at its own expense.
4. The customer shall be authorized to process and sell the conditional goods up until the event of enforcement (Paragraph 10) in the normal course of business. Pledging and assignment as security are not permitted.
5. If the conditional goods are processed by the customer, this processing takes place in our name and for our account as manufacturer. We shall immediately acquire ownership or, if processing takes place using material from multiple owners or the value of the processed item is higher than the value of the conditional goods, co-ownership (fractional ownership) of the newly created item in the proportion of the value of the conditional goods to the value of the newly created item. In the event that any such acquisition of ownership by us is not to occur, the customer hereby transfers its future ownership or co-ownership, in the proportion named above, of the newly acquired item to us for security.
6. If the conditional goods are inseparably mixed with other objects that do not belong to us or combined into a single item, we shall then acquire co-ownership of the new item in the proportion in accordance with Para. 5 Paragraph 1. If items are combined or mixed in such a way that the customer's item can be viewed as the principal object, it shall be agreed that the customer transfers proportional co-ownership to us. The customer thus keeps the sole or co-property that arises on our behalf.
7. In the event of the resale of the conditional goods, the customer hereby relinquishes any claims against the buyer resulting from this to us by way of security. In the case of our co-ownership of the conditional goods, assignment shall take place proportionally in accordance with the share of co-ownership. The same shall apply to other claims that replace the conditional goods or which otherwise arise with regard to the conditional goods, such as insurance claims or claims due to unlawful acts in case of loss or destruction. The customer remains revocably authorized to collect the transferred claim; our authorisation to collect the claim ourselves remains unaffected by this. We are nonetheless obligated to refrain from this, provided that the customer complies with its payment obligations from the collected proceeds, does not enter into default of payments and in particular does not submit a motion to file arrangement or insolvency proceedings, and payments have not ceased. If this is the case, we can demand that the customer inform us of the assigned claims and their obligors, provide all necessary information for collection, hand over the associated documents and notify the obligors (third parties) of the assignment.
8. If third parties gain access to the conditional goods, particularly through seizure, the customer shall immediately indicate the goods as our property and inform us of this to enable the enforcement of our property rights, particularly legal action in acc. with Section 771 ZPO. If the third party is not able to compensate us for judicial or out-of-court costs arising from this, the customer shall be liable for these costs.
9. We shall release the conditional goods, as well as the items or claims which replace them, if their value exceeds the amount of the secured claims by more than 25%. The selection of objects to be released shall be at our discretion.
10. If we rescind the contract (event of enforcement) in the event that the customer is in breach of contract, particularly default of payment, we shall be entitled to demand the return of the conditional goods as well as to revoke the direct debit authorization according to Para. 7.
11. Based on our claims arising from the contract, we shall be entitled to a contractual lien on the contractual object or any objects in possession due to the contract (Section 647 BGB). The contractual right of lien can also be asserted based on claims from earlier rendered deliveries and services, provided that these are factually connected to the contractual object. The right of lien shall apply to other claims arising from the business relationship, provided that the claims are undisputed or an enforceable title exists and the object belongs to the customer.



**§ 9 Final Provisions**

1. If the customer is a merchant, a legal entity of public law or a special estate under public law, or if the customer has no general place of jurisdiction in the Federal Republic of Germany, the court of jurisdiction shall be, at our discretion, our registered office (currently Neukupfer) or the registered office of the customer. For any actions against us, however, our registered office shall be the exclusive court of jurisdiction in these cases. Mandatory legal provisions about the exclusive court of jurisdiction remain unaffected by this provision.
2. The relationships between the contract parties are exclusively subject to the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
3. Should the contract or these Terms and Conditions contain regulatory gaps, those legally effective provisions shall apply as agreed to fill these gaps which the parties to the contract would have decided in accordance with the economic goals of the contract and the intent of these Terms and Conditions if the parties had been aware of the regulatory gaps. The effectiveness of the remaining conditions shall not be affected by this.
4. These Terms and Conditions have been written in German. In the event of any discrepancies or differences of interpretation following the translation of these Terms and Conditions, the German version shall be authoritative.