

## Terms of delivery and sale of HandlingTech Automations-Systeme GmbH

To use in connection with:

1. A person who carries out his commercial or self-employed professional activity at the time of finalisation of this contract (entrepreneur);
2. Juristic persons of public law or special public-law assets.

### I. General:

1. Area of validity: Our terms of sale and delivery set out below are valid exclusively for all deliveries and other services and for possible contractual agreements separately entered into in individual cases.

Deviating terms of the buyer/customer do not become a part of the contract, even if we have not explicitly contradicted these. A transfer of rights arising from this order or from the sales contract requires the written agreement of the seller.

2. We reserve rights of ownership and copyrights on all samples, cost estimates, drawings and similar information of bodily or non-bodily type – also in electronic form; they must not be made accessible to third parties. We undertake on our part to make information and documentation described by the buyer/customer as confidential, accessible to third parties only with the agreement of the buyer/customer.

### II. Offers performance extent, contract finalisation and place of performance.

1. Our contract offers are not binding. A contract is only effective with our written order confirmation, as far as in a single case nothing else is explicitly agreed in writing. Our order confirmation is exclusively decisive for the extent of the contractually owed performance. Agreements entered into with our agents or our staff, as well as oral and phone agreements, require our written confirmation in every case.

2. Multi-deliveries up to 10 % or minimum deliveries up to 10% of the agreed total quantity in each case are admissible. Part deliveries are admissible as long as they are feasible for the buyer/customer. Part deliveries are invoiced separately and must be paid separately.

3. We reserve the right to modification of the construction, the material selection, the specification and the type of construction as far as these modifications do not contradict either the order confirmation or the specification of the buyer/customer. The buyer/customer will agree to modification suggestions exceeding this as long as these are feasible for him.

4. Place of performance for all obligations arising indirectly or directly from this contract relationship, including obligation to pay, is our place of business.

### III. Prices and terms of payment

1. The prices are valid, due to the lack of special agreement, ex works exclusive of packaging, insurance and other despatch costs. VAT at the legal rate will be added in each case.

Packaging is calculated at cost and will only be taken back if we are obliged to do so due to compelling legal regulations.

2. If a period of more than four months elapses between contract finalisation and despatch without a delay of delivery on our part, we can reasonably increase the price/the remuneration under consideration of material costs, wages and

salaries costs and other secondary costs accrued. If this causes the purchase price/the remuneration to rise by more than 25%, the buyer/customer has the right to rescind the contract.

3. If we take into consideration the buyers/customer request for modification after finalisation of the contract, or if modifications, deviations and tolerances occur at the workpieces, which were not known at the time of submitting the quotation, the additional costs arising from this will be invoiced to the buyer/customer.

4. As far as no other payment agreement has been made, the payments must be made to the account of the supplier without any deductions as follows:

- 30 % deposit after receipt of the order confirmation
- 60% after the report ready for despatch
- 10% within a month after transfer of risk.

5. The right to keep payments back or to offset them against counter demands is only granted to the customer as far as his counter demands are undisputed or legally determined.

### IV. Delivery time, delivery delay

1. The delivery time results from our final order confirmation. The delivery time is stated according to our best estimation. If the buyer/customer delays his required or agreed cooperative activities, or if he does not carry them out, the delivery term is extended accordingly. The same applies within the framework of work disputes, in particular strike and lock out, and if unforeseen hindrances occur, which are outside our area of influence, i.e. delivery delays of a subcontractor, traffic and operation interruptions, material or energy shortage etc.

2. The delivery time is complied with if the object to be delivered has left our works at the time of expiry of the delivery time or if ready for despatch has been reported at that time. As far as an acceptance is to be carried out, the date of the acceptance is decisive, or the report of ready for acceptance, except with justified acceptance refusal.

3. If despatch or acceptance of the object to be delivered is delayed for reasons, which are caused by the buyer/customer, the costs incurred due to the delay will be invoiced to the buyer/customer, starting one month after the report ready for despatch or ready for acceptance.

### V. Passing of risk, acceptance

1. The passing of risk to the buyer/customer occurs when the object to be delivered has left the works, also when part deliveries are carried out or if we have taken on further services such as despatch costs or delivery to site and erection. If an acceptance has to be carried out, it will be decisive for the passing of risk. It must be carried out immediately on the date of acceptance, or after the report ready for acceptance has been issued by the supplier. The customer must not refuse acceptance if a non-essential fault exists.

2. If despatch or acceptance is delayed or if it is not carried out due to circumstances, which are not due to us, the risk is passed to the buyer/ customer from the day of the report ready for despatch or acceptance.

3. In his own interests, the buyer/customer must report transport damages immediately to the freight forwarder or the rail company. If transport damages are found outside Germany, an accident commissioner must be authorised immediately to determine the damage. We can only consider

objections or complaints if they are reported to us at the latest 8 days after receipt of the goods. As far as our fabrications have proven material or assembly faults, these will be repaired in our works free of charge. The despatch costs incurred will be borne by the buyer/customer.

4. Part deliveries are admissible as far as they are feasible for the buyer/customer.

## VI. Reservation of ownership

1. We reserve the ownership of the object to be delivered until all payments from the delivery contract have been received – also for possibly additionally owed secondary performances. The reservation of ownership is also valid until all demands, including future and conditional demands, from the business connection between buyer/customer and us are fulfilled.

2. We have the right to insure the object to be delivered at the cost of the buyer/customer against theft, breakage, fire damage, water damage and other damages, in so far as the customer himself has not verifiably finalised the insurance cover.

3. The buyer is not allowed to sell or pawn the object to be delivered, or to make over the object to be delivered as security. He must inform us immediately of seizure and confiscation or other decrees through third parties.

4. If the buyer/customer resells the delivered goods as designated, he already transfers his claims against his customer arising from the sale, with all secondary rights, to us as security. We accept the transferring. The buyer/customer is authorised, and at our request obliged, to disclose the transferring of claims to our account and to demand payment through his customers directly to us. Our right to demand the claim ourselves is hereby unaffected.

5. The customer will always carry out possible processing or finishing of the reserved goods for us. If our reserved goods are combined by the customer with other moveable objects to form an integrated object, and if this other object is to be deemed the main object, the customer will therefore transfer partial ownership to us, as far as the main object is his property. He must keep the joint ownership safe for us without incurring expenses for us.

6. In the case of filing an application for insolvency proceedings with respect to the assets of the customer, he must separate our reserved goods or the claims transferred to us and he must immediately draw up an exact list of these, stating the reason for the claims and their extent as well as the addresses of the debtor of the claims and submit this list to us.

7. If the value of the existing securities exceeds the secured claims lastingly by more than 10%, we will release securities of our selection on request of the buyer/customer.

## VII. Claims arising from a defect

1. If the purchase is a commercial transaction for both parts, the buyer/customer must examine the goods immediately after receipt, as far as this is feasible according to proper business procedure, and if a fault is found he must report it to us immediately. If the buyer does not report this, the goods are deemed approved except where the fault could not be recognised during the inspection. For the remainder, §§ 377 ff. HGB apply.

2. With property and legal faults we grant a warranty as follows, subject to claims according to VIII:

a. All those parts, which have been found faulty due to circumstances occurring prior to the passing of risk must be replaced or repaired, at the option of the supplier, free of charge. The determination of such faults must be reported to the supplier immediately in writing. Replaced parts become the property of the supplier.

b. The buyer/customer must give us the required time and opportunity for subsequent fulfilment; otherwise we are released from liability for damages arising from this.

The buyer/customer is only authorised to eliminate the fault himself, or have it eliminated by third parties, in urgent cases of danger to the operating safety or to prevent exceptionally great damages. In this case we carry the costs arising for the buyer/customer, as far as we have been informed by the buyer/customer immediately.

Further claims are determined exclusively according to paragraph VIII. 2 of these terms.

c. More extensive claims of the buyer/customer, as far as these do not result from a warranty acceptance, are excluded. This does not apply to malice, gross negligence or to violation of basic contractual obligations accepted by us.

c. In particular, no liability is accepted in the following cases: Unsuitable or improper usage, faulty assembly or commissioning by the buyer/customer or by third parties, natural wear, faulty or negligent treatment, improper maintenance, unsuitable operating equipment, faulty construction work, unsuitable building foundation, chemical, electro-chemical or electric influences – as far as we are not responsible for these.

d. If the buyer/customer or if third parties rectify a defect improperly, we do not accept any liability for results following this. The same applies to modifications of the delivered object without our prior agreement.

e. If the usage of the delivered object leads to violation of industrial property rights or copyrights within Germany, we will, at our cost, procure the right for the buyer/customer to continued usage or we will modify the delivery object for the customer in such a feasible way that the violation of the property right no longer exists.

If this is not possible to economically reasonable conditions or within a reasonable period, the buyer/customer has the right to rescind the contract. Under the named prerequisites we also have the right to rescind the contract.

Furthermore, we will release the buyer/customer from undisputed or legally determined claims of the relevant owners of the property rights.

f. The obligations of the supplier named in section VII. 2e are final in the case of property rights or copyrights violation, subject to section VIII. 2.

They exist only if

- the buyer/customer informs us immediately of violations of property rights or copyrights claimed,
- the buyer/customer supports us to a reasonable extent in the defence of the asserted claims or if he enables the supplier to carry out the modification measures according to section VII. 2e,
- all defence measures including out of court regulations remain reserved to us,
- the legal fault is not due to an instruction of the buyer/customer and
- the violation of the rights is not due to the buyer/customer having modified the delivery object



unauthorised or if the buyer/customer has used the delivery object in a way not according to contract.

#### **VIII. Liability of the supplier, exclusion of liability**

1. If the delivered object cannot be used by the customer according to contract, through the fault of the supplier resulting from not carrying out or faulty carrying out suggestions and advice given prior to or after finalisation of contract, or through violation of other contractual secondary obligations – especially instructions for operation and maintenance of the delivery object – the regulations of sections VII and VIII.2 apply, exclusive of further claims of the customer.

2. The supplier is only liable for damages, which have not occurred at the delivery object itself – due to whatever legal reasons – if damages have occurred

- a) due to malice,
- b) due to gross negligence of the owner/the executive body or executive,
- c) as culpable injury to life and limb, health,
- d) due to faults, which the customer has fraudulently concealed,
- e) within the framework of a warranty assurance,
- f) due to faults of a delivery object, insofar as liability exists according to product liability law for injuries to persons or damage to property on privately used objects.

With culpable violation of basic contractual obligations, the supplier is also liable in the case of gross negligence of non-executives and of minor negligence, in the last instance limited to the contract-typical, reasonably foreseeable damage. Further claims are excluded.

#### **IX. Statutory limitation**

All claims of the customer – for whatever reason – become statute-barred in 12 months. For claims for damages according to section VIII. 2 a – d and f, the legal terms apply. They also apply to faults on a construction or to delivery objects, which have been used in their usual type of application for a construction and which have caused the faults of the constructions.

#### **X. Utilisation of software**

As far as software is contained in the delivery extent, the customer is granted the non-exclusive right to utilise the software, inclusive of its documentation. The software is handed over for use on the object determined for this. An utilisation of the software on more than one system is not allowed.

The customer must only duplicate, modify, translate or change from the object code to the source code to the legally admissible extent (§§ 69 a ff. UrhG). The customer undertakes to not remove manufacturers specification – in particular notes on copyright – or to modify the manufacturer's specification without prior agreement of the supplier.

All other rights to the software and the documentation, including copies, remain with the supplier or the software supplier. The issuing of sub-licences is not admissible.

#### **XI. Applicable law, jurisdiction**

For all legal relationships between the supplier and the customer, the law of the Federal Republic of Germany decisive for the legal relationship between domestic parties applies exclusively.

Jurisdiction is the court competent for the Place of business of the supplier. However, the supplier has the right to bring a suit at the customer's place of business.

#### **HandlingTech**

Automations-Systeme GmbH  
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