

1. General

1. All agreements with or offers of the Hoechsmann GmbH (hereafter also referred to “us”, “we”) are subject to our General Terms and Conditions (GTC) and, where appropriate, complemented by the General Auction Terms and individual agreements. Our GTC's are accepted through the placement of an order or acceptance of delivery. Any differing conditions of the contracting party, which we do not expressly recognise, are not binding for us, even if we do not expressly object to them.
2. We exclusively operate in commercial transactions (business to business). Anyone who enters into a contractual obligation with us, declares that he acts as businessman and not as consumer.
3. Unless expressly stated as “new”, all commodities are second-hand goods.

2. Offer and Conclusion of Contract

1. Our offers are non-binding. Orders placed, also for acceptance through agents and representatives, become binding upon a written confirmation of the order on our part. This also applies to a supplier's limited-period offer. Until the written confirmation of the supplier is received, all goods are subject to prior sale.
2. To become effective, amendments, modifications or supplementary agreements require written confirmation by the supplier.
3. Any information stated in offers concerning the delivery item, just as dimensions, weights, illustrations and drawings, and including other documents belonging to the offers, are only approximate indications, unless its applicability for the purpose contractually envisaged requires precise conformity. Such indications are no guaranteed characteristics but descriptions or labellings of the delivery or performance. Deviations according to custom and usage and deviations resulting from legal provisions or deviations constituting technical improvements, as well as the substitution of components by equivalent parts are permissible, as far as they do not impair usability for the contractually agreed purpose. Liability for financial losses caused by inaccurate details and information shall be limited to wilful intent and gross negligence.
4. If not otherwise agreed, used goods are sold as viewed. The seller has to give the prospective buyer the opportunity to inspect the goods before conclusion of contract. If the buyer does not carry out an inspection, it is assumed that he knows the condition of the used delivery good and that it is accepted by the buyer.

3. Prices and Payment

1. For new machines/goods, prices are valid ex works of the producer, for used machines/goods they are valid according to the actual state ex location at the time of conclusion of the contract and without dismantling and packaging, customs etc. The value added tax is charged additionally, its amount depending on legal regulations.
2. Unless otherwise agreed in writing, complete payment has to be made in advance within three days and without any deductions.
3. If not otherwise agreed, complete payment has to be made without any deduction to the seller's account before dismantling or before collection / delivery of the goods.
4. The customer is only entitled to withhold payments or to offset counterclaims if his counterclaims are undisputed or legally assessed.

4. Delivery

1. The delivery period results from the agreements of the contracting parties. The observance requires that all business matters and technical questions between the contracting parties are settled and on part of our contract partner all obligations have been fulfilled. If this is not the case, the delivery period is extended accordingly.
2. Observance of the delivery time is subject to the correct and punctual delivery to the seller. In case of delays in delivery the seller informs the buyer immediately.
3. The delivery deadline is observed, if the delivery item has left the warehouse of the seller or the factory or the customer has been informed of the readiness for dispatch. If an inspection is required, the inspection date is relevant, alternatively the notification of the readiness for dispatch.
4. If the non-observance of the delivery time or installation is a result of force majeure, labor disputes or other events which are beyond the control of Hoechsmann GmbH, the delivery period or the

complete installation shall be extended accordingly. The seller will inform the buyer immediately of the beginning and the end of such circumstances.

5. If the buyer fails to accept the ordered goods in due time, he has to pay a flat-rate compensation of 0,25 % of goods value for each beginning week of delay for storage, insurance etc., whereby the proof and claim of a higher damage is reserved.
6. In case of delay of payment or acceptance and after a reasonable deadline of 7 days has been set to the buyer, we are entitled to withdraw the purchase contract and to further disposal of the goods. The buyer has to compensate for any losses incurred.
7. If Hoechsmann GmbH as seller is late in supplying goods or services, or if a delivery or service becomes impossible for us – for whatever reason – our liability for losses shall be limited in accordance with number 8. of these General Terms and Conditions.

5. Passing of Risk and Acceptance of Ordered Goods

1. In cases of pickup by the customer (debt to be collected) the risk passes to the buyer as soon as he has been informed about availability and location of the pickup. If the goods are sent at the buyer's request, risk shall pass to the buyer at the latest when the goods are handed over to the forwarder, the carrier or the companies otherwise designated to dispatch the goods (whereby the beginning of the loading procedure shall count). This also applies for partial deliveries or if we undertake other services (e. g. installation). If dispatch or handover is delayed due to circumstances whose cause lies with the buyer, the risk shall pass to the contractor on the day on which we declare readiness for shipment and notify the client.
2. As far as an acceptance is required, this shall be authoritative for the passage of risk. Such acceptance shall be made without delay on the acceptance date or alternatively after the notification by the seller about readiness for acceptance.
3. Upon the buyer's request, the shipment shall be insured at his costs against theft, breakage, transportation damage, fire and water damage. However, there is no obligation by the seller to take out such insurance policies.
4. Part deliveries are permitted, insofar as these are acceptable for the buyer.

6. Reservation of Title

1. Ownership of all goods delivered by the supplier only passes to the buyer after reception of the complete purchase price, due to the seller.

7. Warranty

1. Except for new items, objects of purchase are sold under exclusion of any warranty. There shall be no guarantee claims in particular in the event of incorrect installation or setting up by the buyer, improper use or handling. Furthermore the seller does not guarantee the availability of the documentation, conformity declarations, manuals etc. nor that the second-hand machines meet present and future requirements of safety technology at the place of operation. If Hoechsmann GmbH is responsible for the defect, the buyer may demand compensation in accordance with the circumstances stipulated in article 8.
2. Technical descriptions, layouts, brochures or other documents normally record original equipment or equipment options of the machine at the moment of the first delivery and do not represent any assurance of characteristics, because the current equipment may significantly differ therefrom. Such deviation does not constitute a defect of the sales law.
3. If the buyer or a third party carries out an improper repair, the seller shall have no liability for the resulting consequences. The same shall apply for any modifications made to the delivery item without the seller's prior written confirmation.

8. Liability

1. For damages not concerning the delivered good itself the seller accepts liability – for whatever legal reason – in the following cases:
 - a) in case of intent
 - b) in case of gross negligence of the owner or senior executives
 - c) in case of culpable injury to life, body, health
 - d) in case of defects which were fraudulently withheld or whose absence was guaranteed.

e) in case of defects of the delivery item, to the extent that there is liability for personal injury or property damage to privately used items under the Product Liability Act.

In case of culpable violation of essential contractual obligations, the seller is held liable even in case of gross negligence of employees and in case of slight negligence; in the latter case it is limited to the damage that is typical of the contract and which can reasonably be foreseen.

2. Further claims are excluded.

9. Time Limitation

1. Should the buyer, despite the regulation under 7.1 of these GTC's, have claims due to material defects, it will become statutebarred twelve months after the handing over of the object of purchase. Other claims respecting the regular limitation period of the BGB (German Civil Code) shall also become statutebarred in deviation of the legal regulations after 12 months, whereby for the beginning of the statutory limitation regulation §199 BGB is decisive. Excepted from this practice are claims of compensation in accordance with section 8. "liability a) – e)" and claims that are not covered by §195 BGB; the statutory periods of limitation apply for these cases.
2. In the event that, contrary to these GTC's, a consumer acts on the buyer side, then the legal provisions apply; in the event of time limitation reduced to the legal minimum.

10. Final Regulations

1. Solely the laws of the Federal Republic of Germany shall apply for these Terms and Conditions and all legal relationships between the Hoechsmann GmbH and their customers, under exclusion of the UN Purchase Law (CSIG).
2. The place of jurisdiction is Dresden, insofar as there are no other exclusive responsibilities prescribed. Hoechsmann GmbH is, however, entitled to file a lawsuit at the headquarters of the buyer.
3. In so far as the contract or these General Terms and Conditions contain any escape clauses, then the regulations that would have been agreed upon with respect to the economic goals of the contract and the scope of these General Terms and Conditions, if the escape clauses had been recognized in advance, shall apply and be legally binding.

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