

Terms and Conditions of Sales and Delivery

HÄNDLE GmbH Maschinen und Anlagenbau (Status as of Jan. 2010)

1. Conclusion of the contract

- 1.1 HÄNDLE will perform all deliveries and services exclusively on the basis of the following Terms and Conditions of Sales and Delivery. Divergent terms and conditions of the ordering party shall only be valid if they have been expressly acknowledged in writing by HÄNDLE. These Terms and Conditions of Sales and Delivery shall also be apply for future deliveries and services or offers to the ordering party even if they are not agreed upon again.
- 1.2 Agreements with the ordering party made individually in a particular case (including subsidiary agreements, addenda and amendments) shall in any event prevail the Terms and Conditions of Sales and Delivery. Decisive for the contents of such agreements is a written contract or a written confirmation of HÄNDLE. Equivalent to the written form are statements made by fax or E-Mail.

2. Offer, documentation, scope of delivery

- 2.1 HÄNDLE retains all ownership rights and copyrights pertaining to cost estimates, drawings and other similar documentation. These documents as well as other information, insofar as they are not public domain, must not be utilized or made available to third parties without HÄNDLE's consent. HÄNDLE obliges itself to obtain the ordering party's consent prior to providing third parties with information or documentation that has been designated by the ordering party as being confidential.
- 2.2 Already during the offer phase, the ordering party shall indicate in writing any load condition that falls outside the realm of the ordinary, any intended use of a special nature as well as any increased risks that could arise in connection with the utilization of the object of the delivery by the ordering party.
- 2.3 The delivery quality HÄNDLE specifically has to perform is laid down in the contractual agreement. The information pertaining to foundations is based on a soil load-bearing capacity of 200 kN/m² (2 kp/ cm²) as well as on the construction soil being ready for digging and free of groundwater. Any deviations therefrom leading to difficulties shall be at the expense of the ordering party.

3. Prices, payment, offsetting

- 3.1 Prices shall apply for the scope of supply and services as stipulated in the order confirmations. Supererogations or extraordinary services are charged separately. All prices are quoted in Euro ex works plus packaging, VAT, and, in cases of export shipment, customs duty, as well as fees and other public charges.
- 3.2 Unless otherwise agreed upon, all payments must be made onto HÄNDLE's account without any deduction: 30% down payment within 2 weeks upon date of order confirmation. 70% by irrevocable and confirmed letter of credit, to be opened within 4 weeks upon date of order confirmation, payable on sight against presentation of the notification that the goods are ready for shipment.
- 3.3 Should the ordering party be in arrears of payment, HÄNDLE shall be entitled to charge interest at the rate of 8% above the base interest rate fixed in the German Civil Code (BGB). HÄNDLE reserves the right to lay claim to additional compensation for damages. Moreover, in the case of a payment delay, after the ordering party has been notified in writing, HÄNDLE shall be entitled to refrain from fulfilling its contractual obligations until the payments have been received.
- 3.4 The ordering party is only entitled to refrain from making payments of to offset against counterclaims if the latter have been determined in an undisputed, ready-for-decision or legally-binding manner. The ordering party shall not be entitled to refuse to perform due to advance performance as long as HÄNDLE makes counter-performance or provides security for it.
- 3.5 If it becomes apparent after conclusion of the contract that HÄNDLE's entitlement to receive payment is in jeopardy due to inadequate ability to perform on the part of the ordering party, then HÄNDLE shall be entitled, if HÄNDLE has entered an advance-performance obligation, to refuse to continue to make deliveries or to render services and to set a reasonable deadline by which the ordering party has to pay in advance or to provide security for it. After this deadline has expired without redress, HÄNDLE shall be entitled to withdraw from the contract and to claim damages.
- 3.6 Should the ordering party withdraw either partially or completely from a concluded contract for reasons for which HÄNDLE is not responsible, the former shall compensate HÄNDLE for all costs incurred, including costs associated with the stocking of parts as well as for any other damage that HÄNDLE might incur as a result.

4. Reservation of ownership, insurance, insolvency

- 4.1 Until any and all present and future claims resulting from the agreement or from an ongoing business connection (Secured Claims) are completely settled HÄNDLE retains ownership of the sold goods.
- 4.2 The goods which are subject to retention of title may, prior to complete settlement of the Secured Claims, neither be pledged to third parties nor transferred for security purposes. The ordering party shall inform HÄNDLE immediately if and to the extent that third parties access the goods of HÄNDLE.
- 4.3 In cases of an infringement of an agreement by the ordering party, in particular in, but not limited to, the event that the due purchase prices are not paid for, HÄNDLE shall be entitled to withdraw from the agreement in accordance with the applicable laws and to claim restitution of the goods based on the retention of title and the withdrawal. If the ordering party does not pay the due purchase price HÄNDLE may use its right only if HÄNDLE has set without success a reasonable deadline for the ordering party for payment or if setting such a deadline is dispensable under the rules provided by law.
- 4.4 The ordering party may further distribute and/ or further process the goods which are subject to retention of title within the ordinary course of business. In this event the following complementary stipulations shall apply:
 - 4.4.1 The retention of title covers the products generated through processing, blending or assembly of the goods of HÄNDLE in its total value whereby HÄNDLE is deemed to be the producer. If in cases of processing, blending or assembly the retention of title remains effective, HÄNDLE acquires co-ownership in relation to the invoice values of the processed, blended or assembled goods. For the development of the product applies the same as for the goods delivered subject to retention of title.
 - 4.4.2 The ordering party hereby already assigns the claims against third parties resulting from further distribution of the goods or the products completely or in relation of the possible part of co-ownership of HÄNDLE in accordance with the preceding paragraph to HÄNDLE for security purposes. HÄNDLE accepts this assignment. The obligations of the ordering party as stipulated in section 4.2 also apply with the respect to the assigned claims.
 - 4.4.3 The ordering party remains, next to HÄNDLE, entitled to collect the claims. HÄNDLE undertakes not to collect the claims as long as the ordering party fulfils its payment duties to HÄNDLE, does not get into default of payment, no application to open insolvency proceedings is filed, and there is no other default of its ability. If this, however, is the case, HÄNDLE may claim that the ordering party discloses the assigned claims and its debtors to HÄNDLE, gives full particulars necessary for collection, hands out all related documents and informs the debtors (third parties) of the assignment.
 - 4.4.4 Should the liquid value of the securities exceed the claims of HÄNDLE by more than 10% HÄNDLE shall on demand of the ordering party release securities on HÄNDLE's discretion.
- 4.5 The ordering party may not sell, pledge or transfer for security purposes the object of delivery as long as it is property of HÄNDLE. The ordering party has to immediately inform HÄNDLE of pledges as well as of confiscations or any other disposals by third parties.
- 4.6 In the event of delay of payment by the ordering party HÄNDLE is entitled to withdrawal and retraction of the object of delivery after unsuccessful expiry of a reasonable deadline, unless such a deadline is dispensable. After withdrawal the ordering party is obliged for immediate restitution.
- 4.7 In the event that insolvency proceedings on the properties of the ordering party are opened HÄNDLE may withdraw from the agreement and claim restitution of the object of delivery if the ordering party is not able to provide sufficient securities.

5. Delivery time, delays in delivery

- 5.1 The delivery time is set forth in the contractual stipulations. Compliance with said delivery time presupposes that the ordering party has fulfilled all of the obligations incumbent upon it such as, for example, the conclusive clarification of preliminary technical questions, the presentation of the required official certifications and permits or the effectuation of the agreed-upon advance payment. The delivery time will be commensurately extended should this not be the case.
- 5.2 Adherence to the delivery times is subject to the proviso that HÄNDLE itself has received its supplies correctly and punctually if HÄNDLE has concluded a congruent contract for the supplies concerned.
- 5.3 Its delivery date is considered as having been complied with if, prior to its expiry, the object of delivery has left HÄNDLE's factory in Mühlacker/ Germany or HÄNDLE has given notification about its readiness to proceed with shipment. If an acceptance inspection of the object

has been agreed upon, the compliance with the delivery date is based on the agreed-upon date for this or on the notification of readiness to undergo the acceptance inspection.

- 5.4 Should the shipment or the acceptance inspection of the object of delivery be delayed for reasons for which the ordering party bears responsibility, or if the latter delays acceptance, all risks pertaining to the object of delivery are passing the ordering party. Any costs incurred by HÄNDLE after notification of the readiness to ship or to undergo the acceptance inspection shall be borne by the ordering party starting one month after notification.
- 5.5 HÄNDLE is not liable for impossibility or delay of delivery if this is subject to force majeure or caused by other events which were, at the time of conclusion of the agreement, unpredictable and for which HÄNDLE is not liable (e.g. any kind of interruption of operations, obstruction of supply with raw materials or energy, delay in transportation, strikes, legitimate lock-outs, shortage of labour, energy or raw materials, obstruction of procurement of necessary permissions by authority, official acts or outstanding, incorrect or not-in-time delivery by suppliers). If such events exacerbate or preclude supply or service by HÄNDLE and the obstruction is not only temporarily HÄNDLE is entitled to withdraw from the agreement. In cases of temporary obstructions the deadlines for supply or service shall be prolonged by the period of obstruction plus a reasonable starting period. If it is due to the delay in no way reasonable for the ordering party to accept the supply or service it is entitled to immediately withdraw from the agreement by written notice to HÄNDLE.

6. Passing of risk, acceptance inspection

- 6.1 The risk passes to the ordering party at the time when the object of delivery or parts thereof have left HÄNDLE's factory in Mühlacker/ Germany, irrespective of whether HÄNDLE has assumed the shipment costs or other performances, such as delivery and set-up.
- 6.2 If an acceptance inspection has been agreed upon, the risk is passed to the ordering party upon acceptance. Acceptance must not be refused due to inconsequential defects. Acceptance is considered to have taken place if the ordering party does not accept the object of delivery within an appropriate period of time specified by HÄNDLE, even though the ordering party was obliged to do so.
- 6.3 At the expense of the ordering party, HÄNDLE shall be entitled to insure the delivery against theft, damage caused by breakage, fire or water as well as against other damage insofar as the ordering party has not itself concluded a commensurate insurance-contract and informed HÄNDLE to this effect.

7. Rights in case of defects

- 7.1 The quality features owed to the ordering party are based on the agreements reached with the latter, on the quality features indicated by HÄNDLE and on the general purpose of use of the object of delivery. If HÄNDLE is supposed to supply the delivery object according to individual drawings, specifications or samples provided by the ordering party, the latter shall be responsible for the suitability of the deliveries for the purpose of use envisaged by the ordering party.
- 7.2 In the event of justified customer's complaints, HÄNDLE shall provide remedy either by means of a replacement delivery or rework. A prerequisite for this is that the ordering party has inspected the delivery immediately upon receipt and has promptly informed HÄNDLE in writing about obvious defects ascertained in this process, indicating the reasons for the complaint. Should, however, hidden defects be ascertained at a later point in time, these must also be promptly indicated in writing, together with the reasons for the complaint.
- 7.3 Should HÄNDLE fail to provide remedy within a reasonable period of time or if the remedy is not successful, then the ordering party shall be entitled to demand a reduction of the price or, should the breach of contract be fundamental, to withdraw from the contract altogether. If only parts of the delivery are defective, the further rights of the ordering party shall apply to the defective part of the delivery, unless it has no interest in the contractual partial delivery.
- 7.4 After notification, the ordering party shall afford HÄNDLE the requisite time and opportunity to carry out all of the measures necessary within the scope of its remedy efforts; failure to do so shall free HÄNDLE from liability for the defects. Only in urgent cases involving a risk to the ordering party's operating safety or in order to prevent disproportionately high damage – whereby HÄNDLE must be immediately informed to this effect – is the ordering party entitled to eliminate the defect itself or to have this done by a competent third party.
- 7.5 No claims due to defects can be put forward by the ordering party in the following cases: inappropriate use or misuse of the object of delivery, improper installation or commissioning by the ordering party or by third parties, natural wear and tear of parts that come into contact with the

raw material (for example clay) utilization of parts other than the original spare parts or wearing parts indicated by HÄNDLE, improper or careless treatment, inappropriate maintenance, use of unsuitable operating means, execution of flawed construction work unsuitable building ground, chemical, electro-chemical or electric influences, insofar as HÄNDLE has not assumed responsibility for these. Deriving rights because of defects is also ruled out in cases where the ordering party or a third party has improperly reworked or made modifications to the object of delivery without obtaining prior consent from HÄNDLE, unless the ordering party can prove that these have not impacted the use-ability of the object of delivery.

8. Liability, statute of limitation

- 8.1 Unless otherwise stipulated in these Terms and Conditions of Sales and Delivery HÄNDLE is, in the event of an infringement of contractual obligations or obligations provided by law, liable in accordance with the applicable laws.
- 8.2 For damages – based on what ever legal grounds – HÄNDLE is liable in cases of wilful act or gross negligence. In cases of ordinary negligence HÄNDLE is only liable:
a) for damages resulting from injury of life, body or health.
b) for damages resulting from infringement of material contractual obligations (obligation, performance of which is necessary in order to duly perform the agreement and upon whose observation the contractual partner regularly confides in or may confide in); in this event, however, HÄNDLE's liability is limited to compensation of the predictable, typically occurring damages.
- 8.3 The limitations of liability set forth in section 8.2 do not apply if a defect is concealed fraudulently or if a guaranty was given with respect to the nature of the product. The same applies for claims of the ordering party under the German Product Liability Act.
- 8.4 In case of a breach of duty which is not a defect the ordering party may only withdraw if HÄNDLE is liable for the breach of duty. An unrestricted right of termination (in particular according to articles 651, 649 German Civil Code) is excluded. The conditions and consequences provided by law shall apply.
- 8.5 As far as HÄNDLE renders technical information or advice and such information or advice is not part of the contractual scope of services owed by HÄNDLE this occurs free of charge and under exclusion of any liability.
- 8.6 The period of warranty is one year starting with the delivery or, as far as a formal acceptance is the required, with the acceptance. The statute of limitation set forth in clause 1 does principally not apply in cases of wilful act, fraudulent concealment of a defect or for damage claims in cases of injury of life, body or health, or liberty, for claims under the German Product Liability Act, a gross negligent breach of duty or a breach of a material obligation.

9. Software-related rights of use

- 9.1 Insofar as the scope of delivery includes software, the ordering party is given a non-exclusive license to use the software delivered, including the appertaining documentation, for the contractual purposes. Said software is provided to the ordering party to be used only with the object of delivery; its use with other hardware is prohibited.
- 9.2 All other rights concerning the software and the appertaining documentation shall remain with HÄNDLE or with the originator of said software. The ordering party is prohibited from granting sublicenses.

10. Place of performance, jurisdiction, applicable law

- 10.1 Unless otherwise stipulated, the place of performance for all deliveries and services is HÄNDLE's factory in Mühlacker, Germany.
- 10.2 Place of jurisdiction for both parties shall be Karlsruhe, Germany if the ordering party is a businessman within the meaning of the German Commercial Code (HGB). However, at its discretion, HÄNDLE is also entitled to file suit against the ordering party at its general venue. Compelling rules on exclusive places of jurisdiction provided by law remain unaffected.
- 10.3 The contract with the present Terms and Conditions of Sales and Delivery shall be governed by the laws of the Federal Republic of Germany. Under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).