

Hofmann Terms and Conditions of Delivery and Installation 2011

1 January 2011

I. Scope of Application and Conclusion of Contract

1. These are the Terms and Conditions of Delivery and Installation of Hofmann Mess- und Auswuchttechnik GmbH & Co. KG. These terms and conditions apply to all offers and contracts for supplies and services (e.g. installation, repair, maintenance and other services). In addition, the rates for our service charges as applicable upon conclusion of the contract shall apply.
2. These Terms and Conditions of Delivery and Installation shall apply exclusively. We do not accept any conflicting or deviating terms of the customer unless we have expressly agreed in writing to their application. These Terms and Conditions of Delivery and Installation shall apply even if we fulfil the order to the customer without reservation in the knowledge of the customer's terms and conditions which conflict with or deviate from our Terms and Conditions of Delivery and Installation.
3. These Terms and Conditions of Delivery and Installation shall also apply to future contracts for supplies and services with the same customer.
4. Any individual agreements with the customer made in the individual case (including ancillary agreements, supplements and amendments) shall have priority in any case over these Terms and Conditions of Delivery and Installation. A written contract or our written confirmation shall be decisive for the content of such agreements. In order to fulfil the requirement of a written form, transmission by fax is sufficient; otherwise transmission by telecommunication means, in particular email, is not sufficient.
5. Any legally relevant declarations and notices to be given to us by the customer after conclusion of the contract must be made in writing to become effective.
6. Unless specified otherwise, all our offers are non-binding.
7. Our fulfilment of the contract with regard to delivery parts that are subject to governmental export regulations shall be subject to the condition that the required licences are issued to us.
8. Information provided by us regarding the object of delivery or service (e.g. weights, dimensions, practical values, rating, tolerances and technical data) and any graphical illustrations thereof (e.g. drawings and figures) are approximate only, unless use for the purpose stipulated in the contract requires strict compliance with such data. These are not guaranteed properties, but descriptions or identifications of the delivery or service. Deviations that are customary in the trade and deviations stipulated by legal provisions or constituting technical improvements as well as the replacement

of components with equivalent parts are permissible, insofar as they do not affect the application for the purpose stipulated in the contract.

9. We reserve all ownership rights in all data and documents handed over (e.g. samples, cost estimates, drawings, documentation) - including in electronic form - and the copyrights to such data and documents, insofar as these are capable of being protected by copyrights. They may not be made available to third parties without our prior written consent.
10. The underlying contract as well as these Terms and Conditions of Delivery and Installation shall only apply in relation to entrepreneurs, legal persons under public law or special funds under public law as defined in section 310 (1) sentence 1 of the German Civil Code (BGB).

II. Prices and Payment

1. The prices are in EURO ex works and are exclusive of packaging, loading and statutory VAT and, for export deliveries, customs charges as well as fees and other public duties.
 - a. In the case of delivery within the European Union, the customer must provide us in good time prior to the contractually agreed delivery date with its VAT identification number as proof of its exemption from VAT. In the event that such notification is not given or not given in good time, we reserve the right to charge the appropriate VAT.
 - b. In the case of services outside the European Union, we are entitled to charge VAT in the statutory amount after delivery if the customer fails to send us proof of exportation within one month after shipment.
2. If the customer wants to have a cost estimate with binding price data prior to the delivery, the customer must request it explicitly. Unless agreed otherwise, cost estimates are only binding if made in writing.
3. Unless agreed otherwise, the customer shall make payment as follows: 30% down payment upon receipt of the confirmation of order, 60% after delivery or, as the case may be, notification of readiness for shipment/acceptance regarding the main parts, the balance being due for payment upon the passing of risk.
4. Installation, repair and other services shall be invoiced at the current rates for our service charges applicable from time to time, which can be requested from us. Premiums shall be charged for work outside normal business hours. Travel and waiting time shall be deemed to be work time.

5. Payments are to be made within 10 days from receipt of the invoice to one of our accounts without any discount, unless agreed otherwise in writing. The date of receipt is decisive for the date of payment. Checks are only regarded as payment when honoured.
6. The customer may only set-off or exercise a right of retention in respect of counterclaims whose legal basis and amount are not disputed or have been legally established or are ready for a court decision in pending proceedings.
7. The prices of an offer only apply to purchase orders for the full scope of the offered performance.

III. Delivery, Passing of Risk, Acceptance

1. We are entitled to provide partial deliveries and services, insofar as reasonable for the customer; they are deemed to be reasonable, in particular, if the partial delivery/service can be used by the customer for the purpose stipulated in the contract, provision of the residual delivery/service is ensured and the customer does not incur substantial extra expenditure or additional costs as a result (unless we agree to pay for these costs).
2. Unless otherwise agreed, our deliveries are made ex works Pfungstadt pursuant to the Incoterms 2010.
3. As regards work performance, the risk shall pass to the customer upon acceptance. If the customer takes over the transportation of the item from the place of manufacture to the site of its use, the customer bears the risk for the duration of transportation.
4. The provisions on the passing of risk shall also apply if partial services are provided or if other services are to be performed by us.
5. Should delivery or acceptance be delayed or not take place as a result of circumstances which are not attributable to us, risk shall pass to the customer as of the day of the notice of the readiness for shipment or acceptance. We agree to take out the insurance requested by the customer at the customer's expense.
6. Notwithstanding the customer's rights under section VIII. hereof, the customer may not refuse the acceptance of services in the event of insignificant defects.

IV. Retention of Title

1. Ownership of the items of delivery shall not pass to the customer until payment has been made in full.
2. If the validity of this retention or title is subject to certain conditions or special formal requirements in the country of destination, the customer shall notify us thereof immediately in writing and ensure that they are fulfilled.
3. The customer may not pledge, sell or assign as security the item of delivery prior to the passing of title. In the event of attachments and seizures or

other dispositions by third parties, the customer must inform the third party of our title and notify us without undue delay in writing (and orally in advance).

4. In the event of actions on the part of the customer in breach of contract, in particular default of payment, we shall be entitled to repossession following a notice of default. The customer is obliged to surrender possession. The enforcement of a retention of title or the repossession of the purchased item by us constitutes a rescission of contract.
5. An application for the institution of insolvency proceedings against the customer's assets gives us the right to rescind the contract and to demand immediate return of the item of delivery.
6. If the customer is domiciled in the Federal Republic of Germany, the following shall apply in addition to the foregoing:
 - a. Notwithstanding section IV.1., we retain ownership of the items of delivery until all of our claims against the customer under our current business relationship have been satisfied.
 - b. Notwithstanding section IV.2., the customer is entitled to resell or process the item of delivery for which we retain ownership within the scope of its normal business under the following conditions: The customer has to resell the items of delivery under retention of title if the items of delivery are not immediately paid in full by the third-party purchaser. There shall be no entitlement of a resale if the customer is in default of payment. The customer assigns all claims arising from the resale or under any other legal grounds to us upon conclusion of the contract. In the event that co-ownership is created, the assignment shall only encompass the portion of claims corresponding to our co-ownership.
7. The customer remains entitled to collect the claims assigned to us after their assignment for as long as it complies with its payment obligations to us in accordance with the terms of the contract. We may demand at any time that the customer discloses the assigned claims and the debtors thereof. In such cases, the customer must provide us with all information necessary for collecting such claims, deliver the necessary documents and inform the debtor of the assignment.
8. Any processing of the goods subject to retention of title by the customer shall always be on our behalf. If the goods subject to retention of title are blended, mixed, bonded or processed with other items to which we do not own title, we shall acquire (co-)ownership in the new item in the ratio of the invoiced value of the goods under retention of title to the other processed items at the time of processing. If our goods are blended, mixed, bonded or processed with other movables to a single item and if the other items are to be viewed as the main item, it is deemed to be agreed that

the customer transfers proportionate ownership to us, provided that the customer is the owner of the main item. The customer shall act as custodian of the property or joint property for us. In all other respects, the same provisions shall apply to the item created by blending, mixing, bonding or processing as in the case of goods subject to retention of title.

9. We undertake to release the security to which we are entitled to the extent that its invoiced value not only temporarily exceeds our as yet unsatisfied (residual) claims by more than 10%.
10. Provided that our items of delivery are affixed to land or integrated into a building, such affixing or integration shall only take place for temporary purposes.

V. Period of Performance

1. Compliance with the agreed time of delivery and performance (hereinafter referred to as "period of performance") requires that all commercial and technical issues between the customer and us have been settled and that the customer has performed all of its obligations. If this is not the case, the period of performance shall be extended accordingly. The foregoing shall not apply if the delay is our responsibility.
2. Compliance with the period of performance shall be subject to the condition that deliveries to us are correct and on time. We will notify the customer of any foreseeable delays.
3. The period of performance is regarded as complied with if notice of the readiness for shipment has been given by its expiry. If acceptance must be made, the acceptance date or, alternatively, our notice of the readiness for acceptance shall govern timeliness.
4. If non-compliance with the period of performance is attributable to acts of God, labour disputes, delays in procuring government licences or other events beyond our scope of influence, the period of performance shall be reasonably extended. This shall also apply if we were in default with rendering our performance.
We will notify the customer of any foreseeable delays.
5. If the shipment or acceptance of the item of delivery or performance is delayed due to reasons attributable to the customer, the costs and losses incurred by the delay can be charged to the customer.
6. We reserve the right to dispose of the item of

delivery if the customer has allowed a reasonable period for delivery or acceptance set by us to expire without result and to supply to the customer in a reasonably extended period.

VI. Delays in Delivery, Impossibility

1. In the event of partial impossibility, the customer may only rescind the contract if it can be proven that partial performance is of no interest for the customer. If this is not the case, the customer must pay the contractual price attributable to the partial delivery. Otherwise, section IX. shall apply. If impossibility occurs while the customer is in default of acceptance or because of the customer's fault, it shall remain obliged to pay consideration.
2. If the responsibility for impossibility is not to be borne by either party, we have a claim to the portion of the remuneration attributable to the work performed by us.
3. If we are in default and if the customer incurs losses as a result, it shall be entitled to demand flat-rate default compensation. Such default compensation shall amount to 0.5 percent for each full week of the delay, albeit no more than a total of 5 percent of the value of that portion of the total delivery which cannot be used in time or as defined in the contract due to the delay.
4. Within the scope of statutory regulations, the customer is entitled to rescind the contract if, taking into account the statutory exceptions, a reasonable period of grace for the rendering of our performance set for us by it during our default has been allowed to expire without result. At our written request, the customer shall notify us within a reasonable period whether it is utilising its right of rescission.
5. Any further claims because of a default in delivery shall be governed exclusively by section IX.

VII. Acceptance

1. Our services for work are deemed to have been accepted 2 weeks after our notice of readiness for acceptance, unless the customer issues a written notice of major defects within this period.
2. The customer is only entitled to refuse acceptance if the defect cancels out or significantly reduces the normally and/or contractually stipulated use of the work and/or its value. If the work contains defects not entitling the customer to refuse acceptance, acceptance shall be made under the reservation that the defects are remedied.

3. Refusals of acceptance or objections to acceptance must be made in writing without undue delay and accompanied by a designation and description of the reported defect.
4. The use of the item of delivery and performance by the customer for commercial purposes is deemed to be acceptance.

VIII. Claims for Defects

1. The customer has the following claims in the event of defects of quality or title:
 - a. In order to make any claims due to defects, the customer must have duly fulfilled its duties of inspection and notification owed under section 377 of the German Commercial Code (HGB).
 - b. At our discretion we shall deliver a defect-free item or remedy the defect, provided that the item of delivery is proven to have already been defective upon the passing of risk pursuant to section III. The customer shall provide written notice of the defects, accompanied by a designation and description of the reported defect without undue delay. We retain title to replaced parts provided within the scope of the replacement procedure.
 - c. No claims for defects accrue due to causes which are not attributable to us such as: normal wear or tear, excessive use, improper interference or repair work on the part of the customer or third parties, incomplete or false information given by the customer, inappropriate or improper use, faulty operation, installation or start-up, faulty or careless handling, improper maintenance, use of unsuitable operating materials/substitute materials, defective construction work, unsuitable subsoil, hazardous ambience conditions unknown to us, chemical, electro-chemical or electrical influences, changes to the item of delivery made without our consent.
 - d. The customer must provide us with the required time and opportunity for subsequent performance. If we are not provided with this opportunity, we shall not be liable for any consequences resulting from such a failure. The customer shall only have the right to remedy the defect itself or through a third party and demand compensation from us for its necessary expenses in emergencies where plant safety is endangered or in order to avoid unreasonably greater damage, whereby we must be informed immediately.
 - e. In the event of remedial work, we shall bear all of the expenses required for remedying the defect, in particular, transport, travel, labour

and material costs, provided that these costs are not increased because the item of delivery was moved to a site other than the place of performance.

- f. In the event that the customer culpably contributes to the cause of the defects, including, but not limited to, its failure to comply with the duty to avoid or reduce damage, we shall have a right to a damage compensation claim after the subsequent performance, which corresponds to the customer's contribution to the cause of the defect.
- g. The customer shall have a right to rescind the contract if - taking into account the statutory exceptions - a period of grace set for us for subsequent performance with respect to a defect is allowed to expire without result. If the defect is only insignificant, the customer may only demand reduction of the contract price. The right to a reduction of the contract price otherwise remains excluded.
- h. If the use of the item of delivery within the periods set forth in section XII. results in the infringement of intellectual property rights or copyrights, we shall generally procure the right to continued use for the customer or alter the item of delivery in such a manner that an infringement of the intellectual property right or copyright no longer exists.
- i. If this is not possible at economically reasonable terms or within a reasonable period, the parties shall be entitled to rescind the contract. We shall indemnify the customer within these periods against undisputed or final and absolute claims of the owners of the intellectual property rights.
- j. Subject to section IX., our obligations described in Section VIII.1.h. are final and conclusive for the case of infringements of intellectual property rights or copyrights.
- k. The claim to subsequent performance for infringements of intellectual property rights or copyrights shall only exist if
 - the customer notifies us immediately in writing, including designation and description, of the alleged infringements of industrial property rights or copyrights,
 - the customer reasonably supports us in the defence against asserted claims or enables us to carry out the modifications pursuant to section VIII.1.h.,

- we have the right to perform all defensive measures, including out-of-court arrangements,
 - the infringement of intellectual property rights or copyrights is not based on instructions or specifications provided by the customer,
 - the infringement of intellectual property rights or copyrights was not caused by the fact that the customer arbitrarily modified the item of delivery or used it in a manner not conforming to the terms of the contract.
2. All other claims for defects (including, but not limited to, compensation for damages not occurring to the item of delivery itself) are governed exclusively by section IX.
 3. Used items of delivery are sold under exclusion of defect liability. This exclusion does not apply to compensation claims under defect liability, which are based on a grossly negligent or intentional violation of duties on our part and in the event of injury to life, limb and health.

IX. Liability

1. We are only liable, even in the event of damage due to breach of duties during contract negotiations and irrespective of the legal grounds (including, but not limited to, compensation for damage not caused to the item of delivery itself), in the case of:
 - intent,
 - gross negligence on the part of the corporate bodies or executive officers,
 - culpable injury to life, limb and health,
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 - defects we have concealed fraudulently,
 - breach of a guarantee of quality,
 - personal injury or damage to property, provided that liability exists under the Product Liability Act for privately used items.
2. In the case of a culpable violation of material contractual duties, we are also liable for the gross negligence of non-executive employees and the slight negligence on the part of corporate bodies or executive officers. In the event of slight negligence, liability is limited to the foreseeable damage typical to the given type of contract.
3. It is a material contractual duty of the customer to backup data at reasonable intervals, but at least once a day, in order to ensure that such data can be restored with reasonable effort. Our liability for the destruction of data is limited to the costs which would be required for data reconstruction if the data had been properly saved by the customer.
4. For all compensation payments, in particular the amount of damages, the economic situation of the parties, type, scope and duration of the business relationship as well as the value of the goods shall be taken into account reasonably.
5. Any further liability under any legal grounds whatsoever, including, but not limited to,

compensation for damage not caused to the item of delivery itself, shall be excluded.

6. We shall not be liable for the consequences of defects for which no claims for defects are provided for under section VIII.1.c.

X. Insurance Claims

Insofar as we have direct claims as a joint policyholder against the customer's insurer with respect to the item of delivery, the customer hereby consents to asserting these claims.

XI. Software

1. The general terms and conditions of software providers for their software products included in our deliveries shall have priority over these provisions. Should such terms and conditions not be available, we will send them to the customer upon request.
2. Our terms and conditions shall apply in supplement to the general terms and conditions of the software provider; sections XI.3. to XI.5. shall apply mutatis mutandis. In the event that the general terms and conditions of the software provider are invalid, our terms and conditions shall apply.
3. The customer shall receive a perpetual, non-transferable and non-exclusive right of use to our software products and associated documentation. No sub-licenses may be granted.
4. We are generally not obliged to provide the source code on which the software product is based.
5. The customer may only process our software products to the extent permissible under law. The customer may neither remove nor change the manufacturer's product information, including, but not limited to, notices of copyright, without our prior written consent.

XII. Limitation Periods

1. The customer's claims due to defects to buildings or for work whose success consists in the provision of planning or monitoring services for buildings shall be barred 5 years after the passing of the risk.
2. All claims of the customer, regardless of the legal basis, shall be barred after 12 months. This does not apply in the case of no. 1 above and claims in the cases defined in section IX. 1. and 2. where statutory periods shall apply

XIII. Installation, Repair and Other Services

1. For installation, repair and other services, the following provisions shall apply additionally:
2. As regards work at the customer's business premises or the place of destination, the customer shall inform our personnel at its own expense of existing safety regulations and hazards and shall

undertake all actions necessary for the protection of persons and property at the worksite

3. The customer shall support, at its own expense and to the required extent, our personnel in carrying out the work and render the necessary support services, such as the preparation of the construction site, the provision of tools and lifting equipment, and the provision of water and electricity, etc.
4. The customer's support must ensure that our work can be commenced immediately upon the arrival of our personnel and can be carried out without delay up to acceptance.
5. Should the customer fail to fulfil its duties, we are entitled, but not obliged, to perform any measures, for which the customer is responsible, on its behalf and at its cost.
6. If we are not able to render a performance on grounds for which we are not responsible, the customer shall compensate us for already provided performance and incurred time and expense.
7. Replaced parts shall become our property.
8. Should the performance perish or deteriorate prior to acceptance through no fault on our part, the customer shall pay us the price minus any savings in expenses.
9. Repair deadlines are only binding if confirmed by us in writing. In the case of installation, repair and other services, the customer shall be entitled within the scope of statutory provisions to make a reduction if, taking into account the exceptions provided for under statute, a period of grace set for us for subsequent performance with respect to a defect is allowed to expire without result. The right to a reduction also exists in other cases where remedial work has failed. The customer shall only be entitled to rescind the contract if, despite the reduction, the repair is proven to be of no interest to the customer.

XIV. General Provisions

1. All taxes, fees and levies in connection with the delivery or performance outside the Federal Republic of Germany shall be borne by the Contractor or are to be reimbursed to us, as the

case may be.

2. Personal data are stored by us in compliance with statutory regulations.
3. We will not reimburse any costs for the return transportation of packaging.
4. The customer shall procure at its own expense all of the licences and/or export/import papers for using the products.
5. The place of performance for all obligations of the customer in relation to us is the location of our registered office.
6. Should individual provisions of these terms and conditions or of the contract be or become invalid in whole or in part, this shall not affect the remaining provisions.

XV. Applicable Law, Place of Jurisdiction

1. If the customer's registered office is located within the Federal Republic of Germany, the exclusive place of jurisdiction, including for actions involving cheques and promissory notes, shall be the location of our registered office if the customer is a merchant, legal person under public law or special assets of the government for both parties and for all present and future claims under the business relationship. However, we are entitled to sue, at our discretion, at the place of business of the customer.
2. If the customer's registered office is located outside the Federal Republic of Germany, the following applies: All disputes arising out of or in connection with the present agreement shall be settled finally in compliance with the Arbitration Code of the International Chamber of Commerce by one or several arbitrators nominated in compliance with that Code. The place of the arbitration process shall be our registered office. The language of the arbitration process shall be German.
3. The laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply.