

Terms and Conditions of Delivery and Payment

1. Scope of service

1.1. A purchase order shall only be deemed to have been accepted once HALDRUP GMBH has confirmed the order in writing. Until then, quotations made by HALDRUP GMBH are non-binding. Amendments, modifications or supplementary agreements made telegraphically, by phone or verbally require a written confirmation by HALDRUP GMBH in order to become effective.

1.2. Documentation belonging to a quotation such as illustrations, drawings, weights and dimensions are only close approximations unless they are expressly referred to as binding. The same accounts for details regarding performance and consumption, the rights to construction modifications are reserved by HALDRUP GMBH. HALDRUP GMBH reserves all property rights and copyrights to cost estimates, drawings, and other documentation. These must not be disclosed to third parties.

2. Prices and Terms of Payment

2.1. Unless otherwise agreed, all prices are quoted exclusive of VAT. Prices which are quoted ex works are inclusive of loading at our premises but exclusive of packaging. Packaging must not be returned to HALDRUP GMBH.

2.2. Unless otherwise agreed, payments to HALDRUP GMBH shall be made cash without deductions and immediately upon receipt of the invoice.

2.3. In the event that payment due dates are exceeded, HALDRUP GMBH may charge annual interest rates which are 5% higher than the corresponding base interest rate of the German Federal Bank (Deutsche Bundesbank) without requirement for a notice of default. HALDRUP GMBH reserves the right to assertion of claims for higher damages.

2.4. Bills of exchange and checks are accepted on account of payment only; the costs for discounting and collection shall be borne by the customer.

2.5. Withholding payments or offsetting claims on the part of the customer which have been contested by HALDRUP GMBH is excluded.

2.6. HALDRUP GMBH reserves the right to price adjustments in case costs for materials and labor have changed.

2.7. For development or construction orders, 35% of the order sum is to be paid to HALDRUP GMBH immediately upon receipt of the order confirmation.

3. Reservation of ownership/Charging lien

Until full payment of all (balance) claims and contingent liabilities against the customer (particularly in regards to the drawing of bills of exchange in the interest of the customer) to which HALDRUP GMBH is entitled for legal reasons, either currently or in the future, the following securities shall hereby be granted:

3.1. The delivery item remains the property of HALDRUP GMBH until all above mentioned receivables and payables have been settled in full.

3.2. If the delivery item is combined with other movable goods and becomes an essential part of another homogenous good, and if this good is considered to be the main good, it is agreed that the customer (as long as the main goods belong to him) transfers pro rata co-ownership to HALDRUP GMBH (in proportion of the value of the delivery item to the value of the entire homogenous good). The customer shall preserve co-ownership for HALDRUP GMBH. The regulations in this "charging lien" paragraph shall be correspondingly applicable for co-ownership and for co-ownerships which HALDRUP GMBH acquires due to legal provisions. If the main good does not belong to the customer, he is already now assigning any claims against the owner of the main good to HALDRUP GMBH in order to secure the above mentioned receivables and payables – irrespective of the type of claim.

3.3. The customer must resell the delivery item in proper condition only. Resale is particularly not permissible when the claims arising from this resale are or will be assigned to third parties, or if their assignment is excluded. The right to resale shall become null and void if the customer ceases to make payments or if he is in default. The customer is not entitled to any other injunctions, particularly lien and transfer of goods. In case of distraints as well as attachments or other provisions by a third party, the customer is to inform HALDRUP GMBH immediately. The costs of intervention shall be borne by the customer. Claims of the customer which arise in regards to resale or rent respectively any other provision against the customer or against a third party is herewith assigned to HALDRUP GMBH. The assignment shall be valid to the amount of the purchase price agreed between the customer and HALDRUP GMBH irrespective of whether the customer sells the delivery item together with other items which do not belong to HALDRUP GMBH, whether with or without a combination of the items. The customer is entitled to collect such claims. This right shall become null and void if the customer ceases to make payments or if he is in default.

3.4. If the value of securities which exist for HALDRUP GMBH exceeds the claims by more than 20%, HALDRUP GMBH must release securities at their discretion upon the customer's request.

3.5. For the duration of the reservation of ownership, the customer must at his own expense ensure the delivery item against mechanical breakdowns as described in the General Conditions of Machinery Insurance, mechanical installations and appliances unless the delivery items are spare parts. A proof of insurance must be provided to HALDRUP GMBH. If the customer does not fulfill his insurance obligation within 10 days following a written request, HALDRUP GMBH may purchase insurance on behalf of the customer. The costs for said insurance must be borne by the customer. The customer herewith assigns the rights to the insurance to HALDRUP GMBH.

3.6. In case of a breach of contract by the customer, particularly in case of delay in or suspension of payments, HALDRUP GMBH, apart from existing statutory rights, is entitled to recollect the delivery item at any time, or to prohibit further use thereof. Recollection or distraint of goods does not constitute a resignation from the contract unless laws pertaining to hire purchases are applicable. All payables which the customer owes to HALDRUP GMBH are furthermore due for payment even though bills of exchange may have a later maturity deadline. If the delivery item is taken back by HALDRUP GMBH, all costs including costs relating to a possible additional installation, assembly or delivery shall be borne by the customer. If the customer makes use of his right to withdraw from the contract, he must pay to HALDRUP GMBH a monthly remuneration of 5% of the original value of the delivery item for the use of the same. This shall be applicable for the time period from the transfer of risk until the item has been returned to HALDRUP GMBH. If, however, the decrease in value is higher than the above mentioned remuneration, the customer must pay this additional amount as well.

4. Times for Delivery, Assembly and Repairs/Delay

4.1. Unless otherwise agreed, the delivery time under this agreement shall begin on the date of dispatch of the order confirmation. The times for assembly and repairs shall begin as soon as the customer has been provided with the machinery. The above mentioned periods shall not commence before the customer has submitted required documents, permissions, approvals, and down payments/deposits.

4.2. As regards deliveries, the delivery time has been complied with if the delivery goods have left our factory by the time the deadline expires, or if HALDRUP GMBH has given notice that the delivery is ready for shipment. Times for assembly and delivery have been complied with if the works have been carried out within the specified period.

4.3. Delivery times shall be reasonably extended in the event of unforeseeable occurrences which are beyond the control of HALDRUP GMBH, irrespective of whether they have occurred at the HALDRUP GMBH factory or at one of their subcontractors, e.g. breakdowns, delivery items becoming rejects, delays in the delivery of essential raw materials and components, labor disputes etc., as long as such occurrences have a verifiable and considerable impact on the compliance with the above mentioned periods and deadlines. HALDRUP GMBH cannot be held responsible for the above mentioned circumstances if they occur during an already existing delay. HALDRUP GMBH will inform the customer as soon as possible of the beginning and end of such occurrences. In the event of aforementioned circumstances, HALDRUP GMBH is entitled to either fully or partially withdraw from the contract. The customer shall then not be entitled to make claim to HALDRUP GMBH for compensation for damages.

4.4. If the customer incurs damages due to a delay for which HALDRUP GMBH can be held responsible, the customer may, to the exclusion of further claims, claim HALDRUP GMBH for compensation for delay. This compensation shall be 0.5% for every full week of delay, however, no more than 5% of the value of that part of the total delivery which cannot be used in time or expeditiously due to this delay, or, in case of works, of the value of the total works to be carried out.

4.5. If shipment of the goods is delayed at the customer's request, the costs incurred for storage (in case of storage at the HALDRUP GMBH factory) will be invoiced to the customer starting one month after the notification of the readiness for shipment, a minimum monthly fee of 0.5% of the invoice amount. HALDRUP GMBH is entitled to otherwise dispose or make use of the delivery items after an appropriate deadline has been set and has expired fruitlessly, and to supply the customer with the goods subject to an appropriately extended delivery time. HALDRUP GMBH may instead withdraw from the contract or claim the customer for compensation due to non-fulfillment. In the latter case, HALDRUP GMBH is entitled to demand a compensation of 10% of the purchase price without a need for further proof.

4.6. Unless otherwise agreed, route and means of transportation shall be determined by HALDRUP GMBH under exclusion of liability for loss and/or damages. Insurance against damages in transit will be provided by HALDRUP GMBH only if HALDRUP GMBH has been expressly commissioned to do so. The costs for said insurance shall be borne by the customer.

4.7. HALDRUP GMBH shall be entitled to make partial deliveries.

4.8. Compliance with periods/deadlines requires the fulfillment of the contractual obligations on the part of the customer.

5. Transfer of perils

5.1. The risk in regards to deliveries shall pass from HALDRUP GMBH to the customer as soon as the fully operational shipment has left the HALDRUP GMBH factory. This shall also be applicable as regards partial shipments or when prepaid deliveries, transport or assembly have been assumed by HALDRUP GMBH. If delivery is delayed due to reasons for which HALDRUP GMBH cannot be held responsible, said risk shall pass from HALDRUP GMBH to the supplier on the date on which HALDRUP GMBH has notified the customer of the readiness for shipment.

5.2. With regards to work performance, the risk of decline, deterioration or perishing of the item at which the works are carried out shall be borne by the customer unless HALDRUP GMBH is responsible for the occurrence of such events. If these circumstances arise before the works have been accepted, HALDRUP GMBH is entitled to compensation for the works which have already been carried out.

6. Liability

HALDRUP GMBH assumes liability for defaults in deliveries or works including missing characteristics which have been explicitly agreed upon, excluding further claims and only to the following extent:

6.1. All those parts of deliveries which have verifiably become unusable or the use of which has become considerably limited within 1200 operating hours, however, no more than 6 months (in case of multiple-shift operation within 3 months) since their start-up due to circumstances originating from a time prior to the start-up – particularly due to faulty design or defective construction – must be either repaired or resupplied free of charge at the choice of HALDRUP GMBH.

HALDRUP GMBH assumes liability for defective material only insofar as HALDRUP GMBH should have recognized said defect by applying professional diligence. If the defect is caused by a defective product supplied by a third party, HALDRUP GMBH shall be entitled to assign to the customer their warranty claims against the supplier. HALDRUP GMBH shall remedy defective works by way of rectification/repair. The customer's right to rectification/repair ceases 3 months after completion of the works. Deliveries and works are to be checked for obvious and hidden defects immediately. HALDRUP GMBH must be informed in writing of the existence of such defects within 2 weeks following the receipt of goods or completion of works, otherwise, the delivery or the work shall be deemed to have been accepted.

6.2. Wear parts shall be excluded from liability. Wear parts are, in particular: Connecting elements of the hydraulic system, brakes, tires, ropes. HALDRUP GMBH does not assume liability for provisional and emergency repairs. If the customer does not carry out repairs as deemed necessary by HALDRUP GMBH within the time period suggested by HALDRUP GMBH, or has them carried out by a third party, HALDRUP GMBH does not assume liability for defects which result from the fact that repairs have not been carried out in time.

6.3. If shipment, installation or start-up of construction machines and spare parts or components is delayed due to reasons for which HALDRUP GMBH is not at fault, liability shall expire 6 months after transfer of risk.

6.4. According to consultations with HALDRUP GMBH, HALDRUP GMBH or its representative must be given sufficient time and opportunity to carry out repairs and replacement deliveries deemed necessary at the reasonable discretion of HALDRUP GMBH; otherwise HALDRUP GMBH shall be exempt from liability for defects. Remedy of defects by the customer or a third party not commissioned by HALDRUP GMBH is permissible only after prior approval by HALDRUP GMBH. Warranty shall expire if delivered goods are altered by a third party or by installation of parts which have not been provided by HALDRUP GMBH and where prior approval has not been granted by HALDRUP GMBH, or in case of non-compliance with operating instructions or if mandatory inspections and maintenance are not carried out in due form.

6.5. Of the costs incurred in regards to repair works or replacement deliveries – insofar as they turn out to have been justified – costs in relation to repair works or spare parts, incl. shipping costs as well as reasonable costs for removal and installation, shall be borne by HALDRUP GMBH, to the exclusion of further-going claims by the customer; furthermore, the costs for a possible provision of labor, if this can be reasonably requested according to the situation of the individual case. All further costs shall be borne by the customer.

At the request of HALDRUP GMBH, the customer is to provide support staff free of charge. This support staff shall not be deemed vicarious agents of HALDRUP GMBH. HALDRUP GMBH does not assume liability for support staff provided by the customer. Safety measures required to ensure the safety of staff and objects at the workplace must be taken by the customer. If the defective delivery item is not located in the country in which the customer is based, costs incurred in relation to repair or replacement deliveries shall be borne by HALDRUP GMBH, however, only to the extent in which they would have been incurred if the defective delivery item were located in Germany. All further costs shall be borne by the customer.

6.6. Warranty periods are as follows: six months for new replacement items, three months for exchange parts from the date of delivery. Repair works or replacement deliveries shall not affect expiration of the warranty period.

6.7. HALDRUP GMBH does not assume liability for repairs which have been carried out without legal obligations (as acts of generosity) unless this has been agreed upon in writing.

6.8. HALDRUP GMBH can refuse to repair deficiencies as long as the customer does not fulfill his obligations.

6.9. Without special written agreement, HALDRUP GMBH does not assume responsibility if delivery items do not conform to rules and regulations applicable in foreign countries.

6.10. The customer may, in case of deliveries, at the discretion of HALDRUP GMBH either withdraw from the contract or reduce the purchase price and, in case of works, reduce the compensation, if HALDRUP GMBH culpably and despite multiple subsequent improvements fails to remedy deficiencies for which HALDRUP GMBH can be held responsible in accordance with this paragraph "Liability", and if HALDRUP GMBH has culpably allowed a last period of grace to expire fruitlessly. The same shall apply in case of impracticality or inability of repairs respectively substitute deliveries on the part of HALDRUP GMBH.

If the prerequisites mentioned in paragraph 1 exist and upon the customer's request (submitted in writing and by registered mail), HALDRUP GMBH must declare themselves as regards their choice of above mentioned options for deliveries within 2 weeks, otherwise, the right to choose shall be passed on to the customer.

6.11. Further claims on the part of the customer, whether lawful or contractual, shall herewith be excluded. Furthermore excluded are claims for damages due to unauthorized actions, unless HALDRUP GMBH is guilty of willful intent or gross negligence.

6.12. The provisions of this paragraph "Liability" shall not be applicable if the delivery item is a used good. HALDRUP GMBH does not assume liability for used goods, unless HALDRUP GMBH is guilty of willful intent or gross negligence.

7. Further Conditions for Replacement Parts

7.1. HALDRUP GMBH is entitled to provide the customer with replacement parts instead of new spare parts if these are part of the exchange program offered by HALDRUP GMBH.

7.2. The provisions under paragraph 6 "Liability" are also applicable to delivered replacement parts, however, subject to the provision that the uselessness or significant impediment of the usefulness according to paragraph 7.1 has arisen within 3 months following machine start-up.

8. General Conditions

8.1. Place of performance shall be the registered office of HALDRUP GMBH. The place of jurisdiction for all disputes including actions on bills shall be Schwäbisch Hall. HALDRUP GMBH is also entitled to file lawsuits at the court which has jurisdiction in the district where the office of the customer is registered.

8.2. The customer must not assign his contractual obligations to third parties without explicit permission from HALDRUP GMBH.

8.3. This contract shall remain binding even if one or more of its provisions are legally invalid. The gap originating from the elimination of these invalid provisions shall be filled according to the economic purpose of this contract.

8.4. The mutual legal relationships shall be governed exclusively by the law of the Federal Republic of Germany, to the exclusion of international sales laws.

8.5. All deliveries and services are carried out in accordance with these Terms and Conditions of Delivery and Payment under the exclusion of other General Conditions unless individual differing agreements have been confirmed in writing by HALDRUP GMBH.

9. Information according to consumer dispute resolution law (Verbraucherstreitbeilegungsgesetz VSBG)

HALDRUP GmbH is neither prepared nor obliged to participate in an alternative dispute resolution before a consumer dispute resolution office (Verbraucherschlichtungsstelle).

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