



GENERAL TERMS AND CONDITIONS

1. General

- 1.1 Our general delivery terms and conditions (Gen. Terms & Cond.) apply exclusively and only with respect to contractors. We do not recognize the validity of conditions of the contract partner which are in conflict with, or different from, our Gen. Terms & Cond., unless we have agreed in writing with the validity of the non-conforming or deviating conditions. Our Gen. Terms & Cond. apply also in the case where we have implemented a performance or a delivery unconditionally in knowledge of conditions of the contract partner different from our Gen. Terms & Cond. or in conflict with them.
- 1.2 All agreements which are made between us and the contract partner for the purpose of implementation of this contract are laid down in writing in this contract.

2. Terms of delivery

- 2.1 If the order qualifies as an offer pursuant to § 145 BGB, we can accept this within two weeks.
- 2.2 Technical data, e.g. measurements, weights and performance numbers, illustrations and drawings are binding only within the framework of the usual technical tolerances, unless they are explicitly designated as definitive.
- 2.3 Illustrations, drawings, calculations, models, matrices, tools, templates, samples, information or similar, regardless of whether embodied or stored electronically (subject), remain our property, insofar as they themselves are not the subject of the contract under discussion; rights of use are granted to the contract partner only insofar as these are necessary for completion of the contract. The subjects must not be made accessible to third parties without our explicit written approval, and are to be returned to us unsolicited after dealing with the order. Subjects are to be kept confidential with respect to third parties. The assertion of a right of retention to subjects is excluded.
- 2.4 All subjects of the type designated in 2.3 are to be maintained by the contract partner in a status ready for operation, to be kept carefully and appropriately insured against loss and damage. As far as subjects come into the possession of third parties, the contract partner has to impose the same obligations on the third parties as defined in these stipulations.
- 2.5 Offers may be made accessible to third parties only with our written approval. Offers do not include any fixed prices.
- 2.6 Unless the order confirmation provides otherwise, our prices are “ex works” prices, are based on the Incoterms® 2010 rules, namely EXW (EXWORKS), and do not include packaging; this shall be charged separately. Deliveries by instalments are permitted.



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- 2.7 The legal VAT-tax is not included in our prices and it is separately identified in the legal amount on the day of the address for the invoice.
- 2.8 The deduction of cash discount requires special written agreement.
- 2.9 Provided that nothing other results from the confirmation of order, the purchase price is due for payment, net and without deduction, within 30 days from date of invoice. The legal regulations apply concerning the consequences of missed payment.
- 2.10 The currently arranged prices are taken as a basis for our valid purchase prices, wage and content tariffs, customs and freight. In case of contracts with a delivery time of more than four months, we reserve the right to correspondingly increase or reduce prices according to the cost changes which have occurred, in particular due to tariff contracts or material cost changes. We will verify these to the contract partner on request.
- 2.11 Set-off rights of the contract partner are excluded, insofar as the counter-claims with which the offset should be made are not determined as legally binding, are not undisputed or are not recognized by us. In addition, the contract partner is entitled to the practice of a right of retention only if the counter-claim is based on the same contractual relationship.

3. Delivery time

- 3.1 The beginning of the delivery time indicated by us has as prerequisite the clarification of all technical questions and, provided that technical documents, material, auxiliary materials or tools are to be provided by the customer or advance payments are to be made, their receipt is also prerequisite.
- 3.2 Compliance with our delivery commitment further presupposes the punctual and proper completion of the obligations of the contract partner. Objection in case of non-fulfilled contract remains reserved.
- 3.3 If the contract partner is in delay with the acceptance or culpably violates other duties to cooperate, then we are entitled to demand restitution of any damages arising for us in this respect, including possible extra expenditures. Further claims or rights remain reserved.
- 3.4 Provided that the prerequisites of 3.3 are fulfilled, the passage of risk to the contract partners of an accidental failure or an accidental degradation of the purchased object occurs in the period when the partners have been in delay with acceptance or debt.
- 3.5 We are liable according to the legal stipulations, insofar as the underlying purchase contract is a fixed business, as specified by § 286 Sect. 2 No. 4 BGB or § 376 HGB. We are also liable according to the legal stipulations, provided that, as a result of a delay in delivery for which we are responsible, the contract

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partner is entitled to validate that his interest in further contract performance is discontinued.

- 3.6 We are further liable according to the legal stipulations, provided that the delay in delivery is based on a deliberate or grossly negligent contract violation, which is our responsibility; any fault of our agents or assistants is to be assigned to us. Provided that the delay in delivery is based on a grossly negligent contract violation which is our responsibility, our damage restitution liability is limited to the typically-occurring, foreseeable damage.
- 3.7 We are also liable according to the legal stipulations, insofar as the delay in delivery, for which we are responsible, is based on culpable violation of a significant contractual obligation; however, in this case the damage restitution liability is limited to the typically-occurring, foreseeable damage.
- 3.8 In addition, we are liable in case of delay in the delivery in the amount of a maximum of 5% of the delivery value.
- 3.9 Further legal claims and rights of the contract partner remain reserved, insofar as these have not been excluded or limited here.

4. Joint liability

- 4.1 Any further liability for claims for damages other than that provided for in 3. is excluded - without regard to the legal nature of the claims made. This applies in particular for damage restitution claims arising from faults at contract conclusion, because of other violations of obligation or because of criminal claims to restitution of material damages pursuant to § 823 BGB.
- 4.2 The limit according to 4.1 applies also, insofar as the contract partner demands replacement of futile expenditures instead of a claim to replacement of damage and instead of performance replacement.
- 4.3 As far as the damage restitution liability is excluded or is limited with respect to ourselves, this applies to our staff, employees, co-workers, agents and assistants, also with regard to the personal damage restitution liability.

5. Legal passage of risk and default in performance

- 5.1 Unless the order confirmation provides otherwise, the delivery is agreed as "ex works" on the basis of the Incoterms® 2010 rules, namely EXW (EXWORKS). The risk of damage or of loss/destruction as well as the cost burden passes to the buyer upon the packaging and placing of the goods at the buyer's disposal and their acceptance at the premises. Where, at the request of the buyer, the seller ships the goods to a place other than the place of performance, the risk of the accidental loss/destruction and of the accidental deterioration of the goods as well as the risk of delay already passes to the buyer upon the handover of the goods to the freight forwarder, carrier or the person or body specified to carry out the shipment.



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- 5.2 Separate agreements apply for taking back packaging.
- 5.3 Provided that the contract partner desires it, we will cover the delivery with transport insurance; the contract partner bears the costs incurred in this respect.
- 5.4 If the manufacture or delivery of the ordered goods is temporarily complicated or is temporarily impossible, such as in case of force majeure or official measures, operational failures and strikes affecting us, which are not the responsibility of ourselves or our suppliers, we are exempt from the delivery commitment for the duration of the hindrance and its after-effects. The orderer is informed, as soon as possible, about the beginning and the end of such operational failures.

6. Failure through contract partner

- 6.1 If the contract partner is in delay with payment or circumstances become known to us which cast doubt on the solvency of the orderer (e.g. check returned or bill protest, transfer of the business to a third party, dissolution of the business or death of the contract partner or owner), our claims, deviating from the above conditions of payment, become due immediately on order completion. In this case, we are not obliged to the delivery of the ordered goods until complete payment of any outstanding amounts, and we are entitled to make new deliveries only against payment of cash in advance, or the provision of sufficient securities. If the orderer does not offer any of these, we are entitled, following an adequate additional period of time, to demand claims for damages based on failure or to resign from the contract, insofar as it is not yet fulfilled. If the customer rejects this type of business transaction, all still open claims become due for payment immediately.
- 6.2 We accept bills of exchange only following prior agreement, subject to billing of all inclusion and discount expenses, and only on the basis of payment. As long as we are still subject to the presenter or endorser liability from a bill of exchange issued in connection with the business relationship, our claims are deemed not to be fulfilled.
- 6.3 If should we in exceptional circumstances agree to take back products, we charge at least 25% of the invoice value, but at least € 75, - to cover our costs. In principle, we do not take back custom-made products.

7. Liability for defects

- 7.1 Warranty claims of the contract partner have as prerequisite that the latter has properly complied with his investigative and complaint obligations owed pursuant to § 377 HGB.
- 7.2 Insofar as there is a defect in the purchased object, the contract partner is entitled, according to his own choice, to subsequent fulfillment in the form of a removal of defects or to delivery of a new flawless object. In case of the removal

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- of defects or replacement delivery, we are obliged to bear all expenditures necessary for the purpose of subsequent fulfillment, including transport, travel, work and material costs in particular, insofar as these are not increased through the purchased object being transferred to a location other than the place of performance.
- 7.3 If the subsequent fulfillment fails, the contract partner is authorized, according to his own choice, to demand resignation or reduction.
- 7.4 We are liable according to the legal stipulations, provided that the contract partner makes damage restitution claims applicable, which are based on deliberate action or gross negligence, including any deliberate action or gross negligence of our agents or assistants. Provided we are not accused of any deliberate contract violation, the damage restitution liability is limited to typically-occurring, foreseeable damage.
- 7.5 We are liable according to the legal stipulations, provided that we culpably violate a significant contractual obligation; however, in this case also, the damage restitution liability is limited to typically-occurring, foreseeable damage. As far as the contract partner is entitled to a claim to restitution of damage instead of the performance, our liability is also limited, within the framework of 7.3, to replacement of typically-occurring, foreseeable damage.
- 7.6 Liability because of culpable injury to life, limb or health remains unchanged; this applies also for mandatory liability according to the product liability law.
- 7.7 Provided nothing different is regulated above, liability is excluded.
- 7.8 The statutory limitation period for warranty claims is 12 months, calculated from legal passage of risk.
- 7.9 The statutory limitation period in case of a supply regress, according to §§ 478, 479 BGB, remains unchanged; this is five years, calculated from delivery of the deficient material.
- 7.10 The guarantee is voided if the specifications concerning the processing or operation given in the operating instructions, or in any other way, have not been followed, or if changes were carried out to the supplied objects by the customer or by third parties without our approval.
- 7.11 In case of entitled and punctual customer complaints, the guarantee is implemented, according to our choice, subject to exclusion of further warranty claims and either through ourselves or in our responsibility by a third party, through improvement repair, replacement of a part or replacement delivery. If we decide on an improvement repair, we can demand the sending of the deficient part or the device to the representative agency responsible for the customer. If we decide on the replacement of a part or on a replacement delivery, the replaced part or the supplied goods pass into our ownership. If the customer also makes an entitled complaint about the implemented improvement repair, the partial exchange or the replacement delivery, and is not prepared to await a further retro-improvement attempt, the replacement of a part or a

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replacement delivery, he has the right to demand reduction or to resign from the contract.

7.12 With regard to the direct costs arising through the repair or replacement delivery, we bear the costs of the spare part, including the dispatch in case of entitled customer complaints. The contract partner has to bear all further costs.

8. Protection of reservation of ownership

8.1 We reserve ownership of the purchased object until receipt of all payments from the supply contract. In case of contract-adverse behavior of the contract partner, in particular in case of missed payment, we are authorized to take back the purchased object. A resignation from the contract is implied in the resumption of the purchased object through ourselves. After taking back the purchased object, we are authorized to its utilization, where the utilization net profit is to be set against the legal obligations of the contract partner - minus adequate utilization costs.

8.2 The contract partner is obliged to handle the purchased object carefully; in particular he is obliged to provide adequate insurance at his own costs against fire, flood and theft damage at the reinstatement value. Provided that maintenance and inspection work is necessary, the contract partner must carry this out in time at his own costs.

8.3 In case of attachments or other interventions by third parties, the contract partner has to inform us immediately in writing, so that we can make a complaint pursuant to § 771 ZPO. As far as the third party is not able to reimburse us the legal and extrajudicial costs of a complaint pursuant to § 771 ZPO, the orderer is liable for any losses arising for us.

8.4 The contract partner is entitled to sell the purchased object further in proper business transactions; however he transfers to us at this time all claims in the amount of the final amount invoice (including VAT) of our claim, which accrue to him from the further sale with respect to his consumers or third parties, and independently of whether the purchased object has been sold with or without further processing. The contract partner remains authorized to the redemption of this claim, also after assignment. Our authority to collect on the claim itself remains unchanged by this. However we are obliged not to collect on the claim as long as the contract partner complies with his obligations to pay from the received net earnings, if he does miss any payment and in particular if he is not subject to an application to the opening of any conciliation or insolvency proceedings or if he does not suspend payment. However, if this is the case, then we can demand that the contract partner announces to us the transferred claims and their debtors, provides all specifications necessary for the collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

8.5 The processing or reorganization of the purchased object through the contract

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partner is always carried out for us. If the purchased object is processed with other objects not belonging to us, then we acquire co-ownership of the new object in the relationship of the value of the purchased object (billing document amount, including VAT) to the other processed objects at the time of processing. In addition, the same applies for the object arising from the processing, similar to the purchased object supplied under reservation.

- 8.6 If the purchased object is processed inseparably with other objects not belonging to us, then we acquire co-ownership of the new object in the relationship of the value of the purchased object (billing document amount, including VAT) to the other mixed objects at the time of mixing. If the mixing is implemented in such a manner that the object of the contract partner is considered to be the main object, then it is deemed valid as arranged that the contract partner transfers to us co-ownership proportionately. The contract partner guarantees for us the thus arisen sole ownership or co-ownership.
- 8.7 The contract partner also transfers to us claims for the protection of our claims against him, which develop with respect to a third party through the connection of the purchased object with a ground site.
- 8.8 We are obliged to release the securities provided to us, on request of the contract partner, in respect that the realizable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released is our responsibility.

9. Place of performance, place of jurisdiction and applicable law

- 9.1 The respective dispatch location is place of performance for the delivery. Our company headquarters is place of performance for payments.
- 9.2 Place of jurisdiction is Rostock.
- 9.3 The law of the Federal Republic of Germany applies; the validity of the UN Purchase Right is excluded.

The general supply and business conditions presented here apply for the following companies:

1. HKS GmbH - industrial manufacturer of compensators and hoses
Schonenfahrerstraße 1
Germany-18057 Rostock
2. HKS ssb GmbH - sandblasting, cutting, coating
Schonenfahrerstraße 1
Germany-18057 Rostock