

General terms and conditions for Haberstroh GmbH.



Haberstroh GmbH

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§ 1 Validity

1. The following General Terms and Conditions listed below apply for all contracts and services rendered by Haberstroh GmbH for companies or legal persons of public law, including the production and delivery of custom parts according to customer specifications upon request for which the required materials are provided by the customer. In this case, the General Terms and Conditions listed below have priority over the General Sales Conditions.

2. Other, opposing or additional General Terms and Conditions are then only applicable if and to the extent that Haberstroh GmbH has expressly consented to their application in writing.

§ 2 Tender and Order Confirmation

1. Our offers are not binding without exception, so far as no other agreements have been expressly made.

2. Orders only apply and are binding after written confirmation of acceptance. This also applies for verbal contracts and agreements made with our representatives.

§ 3 Prices

1. Unless otherwise agreed in the order confirmation, the “ex-works” prices apply excluding packaging. This is calculated separately. We reserve the right to price adjustments particularly as a result of the cost of changing materials and wage costs.

2. Legal VAT is not included in the price; it is shown separately on the invoice.

§ 4 Payment Terms

1. Unless otherwise agreed, the purchasing price is payable within ten days from the date of invoice for 2% discount or within 30 days without discount.

2. Haberstroh GmbH is authorised to charge

interest in the event of default in payment. Default interest is calculated at 8% over the relevant base interest rate. Haberstroh GmbH is authorised to account for higher damages caused by delay in payment. The customer is authorised to prove that only small or no damages resulted from default in payment.

3. We reserve the right to accept bills of exchange on a case by case basis. Discounts and other exchange fees are to be paid by the payer.

§ 5 Retention of Title

1. All services are carried out under the retention of title. This applies until the final repayment of our payment claims.

2. The customer is authorised for the resale of the retention of title goods in normal business transactions. The purchaser here and now assigns to us the receivables from the resale of conditional goods in the amount of the final agreed total (including VAT). This transfer applies irrespective of whether the purchased goods are resold before or after processing. Customer shall remain entitled to collect the receivables even after this transfer. Haberstroh GmbH retains the right to collect the receivables themselves. Haberstroh GmbH, however, will not collect the receivables as long as the customer complies with their payment obligations arising from the proceeds collected, is not in default of payment, and there is no existing application for the initiation of insolvency or cessation of payments.

3. If the service is processed further by the customer and the customer acquires ownership e.g. through installation, mixing or connecting, in accordance with the legal provisions, it will then be agreed between the parties that in this case the reserved ownership of Haberstroh GmbH carries forward to the new objects.

4. The customer is obliged to take care of the purchased objects if they have not yet been granted ownership. The customer is especially obliged to insure the objects at their own expense against theft, fire and

water damage to cover the replacement value. If maintenance and inspection work must be completed, the customer shall perform this at their own expense and in good time.

5. If ownership has yet to be transferred, the customer must inform Haberstroh GmbH in writing immediately if any delivered objects are seized by a third party or are subject to other interventions by third parties. In the event the third party is not in the position to refund Haberstroh GmbH any legal or extra-judicial costs of legal action in accordance with §771 ZPO [German Code of Civil Procedure], the customer is liable for any losses made by Haberstroh GmbH.

6. Hypothecation or assignment of chattels for services is only allowed with prior written consent from Haberstroh.

§ 6 Delivery Dates

1. All delivery date information is supplied to the best of our knowledge, but without assuming any liability. If no concrete delivery date is stated in the relevant contract, all information on the delivery date is considered as the anticipated delivery time.

2. The delivery time given in the offer and/or order confirmation assumes the final clarification of any technical questions, particularly if the technical requirements differ from the standard, catalogue types.

3. It is also required that the possible materials provided by the customer are free from defects and made available. This also includes any drawings necessary for production.

4. If any customer involvement beyond that stated in section 2 is required for delivery, these actions must also be completed for the given delivery time.

5. Interruptions to operation on the part of the customer or during vendor production, including strikes or other interruptions caused by force majeure, may effect the delivery date. Claims for damages are excluded through no fault of Haberstroh GmbH.

§ 7 Set-off and Retention Right

1. The contracting party only retains the right to set-off if their counter-claims are undisputed or have been legally recognized.

2. The contracting party is only authorised to exercise the right of retention so far as their counter-claim is based on the same contractual relationship.

§ 8 Complaints and Transfer of Risk

1. The passing of risk shall occur no later than at the time of delivery to the customer and shall also apply when partial deliveries are made or Haberstroh GmbH has taken on other services such as the shipping charges.

2. If dispatch is delayed due to circumstances that the customer is responsible for, then the risk of accidental loss or degradation of goods is transferred to the customer from the time of the delay caused by the customer (e.g. default of acceptance). However, Haberstroh GmbH is obliged, at the request and the expense of the customer, to effect insurance as requested by the customer.

3. The customer must immediately inspect the goods for defects (§377 HGB [German Commercial Code]) This is no longer the case if the inspection does not take place within 14 days. Defects must be reported to Haberstroh GmbH in writing, otherwise the goods are considered as approved. If the customer violates this obligation, they are not entitled to make any warranty or liability claims.

§9 Warranty

1. If materials are required for the production of custom parts and these are provided by and at the expense of the customer, we exclude any warranty.

2. If planning by the customer is required for production, we also exclude any liability for any defects resulting from this. This does not apply if the mistake is obvious for Haberstroh and the customer

could not have realised the defect.

3. Haberstroh GmbH is governed exclusively by the following risk provisions.

4. Should the goods have any defects caused by Haberstroh GmbH, remedy of defects will be completed at the option of Haberstroh GmbH through repair or replacement.

5. Remedial action in accordance with section 4 is excluded, if defects are caused by the customer or a third party from the customer's sphere attempting to repair the goods improperly or modify the goods and these modifications are at least partially responsible for the defect. The same applies for natural wear and wear through improper handling.

6. If the defect cannot be repaired in accordance with section 4, the customer can withdraw from the contract irrespective of possible damage claims or reduce the compensation.

7. The warranty period is one year.

§10 Liability

1. §9 section 1 and 2 also apply for liability.

2. Haberstroh GmbH is governed exclusively, and for whatever reason, by the following risk provisions.

3. Liability for intention and gross negligence, including fatal injury, bodily or health impairments and including claims

under product liability law always applies. The same applies in the case of warranty.

4. Haberstroh GmbH is liable for any other culpable breach of major contract obligations up to the amount of the damage typically foreseeable upon the conclusion of the contract. Such obligations are recorded in section 1 which shape the contract and are thus significant for the completion of the contract and for the achievement of the contract purpose.

5. Apart from this, Haberstroh GmbH excludes any liability.

6. The statute of limitations for damages claims is one year. The legal statute of limitations always applies for damages claims in the case of section 2 and 3 as well as for fraudulent intent.

7. The aforementioned liability limitations also apply for the benefit of the employees and other Haberstroh GmbH agents.

§ 11 Special Agreements

1. Changes and additions to the contract must be made in writing.

2. All contracts between Haberstroh GmbH and the customer are based on the law of the Federal Republic of Germany excluding UN purchasing law.

3. Unless another exclusive place of jurisdiction applies, the place of jurisdiction for all disputes is Haberstroh GmbH headquarters.