

General Terms and Conditions of Hoffmeier Industrieranlagen GmbH + Co. KG

(As of 30 June 2015)

§ 1 Validity of conditions

1. All quotations, orders, contractual relations, deliveries and services are exclusively subject to these General Terms and Conditions of Hoffmeier Industrieranlagen GmbH + Co. KG (hereinafter referred to as "Hoffmeier"). They apply without restriction unless the quotation, the order or the order confirmation contain provisions to the contrary.
2. These General Terms and Conditions shall also apply to all future business transactions between Hoffmeier and the Customer without the necessity of a renewed reference to the General Terms and Conditions as long as the laws regarding sales contracts (Kaufvertragsrecht) and/or work and service contracts (Werkvertragsrecht) are applicable to these transactions.
3. The General Terms and Conditions of Hoffmeier apply exclusively. The terms and conditions of the contractual partners shall not be valid.
4. No oral side letters have been agreed. Neither have amendments and additions to this contract been made.
5. The General Terms and Conditions of Hoffmeier are on principle considered to have been agreed if contracts involve international legal relations and, in particular, if they are entered into with foreign contractual partners or refer to deliveries and services involving other countries. If, under international private law, the inclusion, validity and application of General Terms and Conditions are to comply with specific legal rules, the contractual partners expressly agree the application of German law.

§ 2 Contract conclusion

1. Contract conclusion requires an offer of contract/a customer order and a written declaration of acceptance/order confirmation by Hoffmeier.
2. Any information supplied by Hoffmeier in brochures, advertisements, descriptions and offers of services are not binding unless their binding character has expressly been agreed in the contract.
3. Any drawings, sketches, plans, pictures, measurements and other service-related details that have been produced by the Customer or his vicarious agent either at the beginning or retrospectively and that have become the object of service performance are binding only if their binding character has expressly been agreed in the contract or in a subsequent written side letter.
4. Whether Hoffmeier is bound to an offer of contract, an order or other declarations shall depend on their respective content and otherwise on the statutory provisions.
5. Hoffmeier reserves the right to carry out construction changes at any time as far as they appear technically necessary useful and do not impair the value and the usability of the delivered goods. However, Hoffmeier is not obliged to carry out technical changes on products that have already been delivered. Furthermore, minor changes are permitted at any time as long as the Customer can reasonably be expected to accept them.
6. All documents relating to the quotation, all drawings, brochures, quotations or other papers shall remain the property of Hoffmeier. If copyright applies, it shall remain with Hoffmeier. The mentioned documents must neither be passed on, published, copied nor used for a purpose other than the one that has been agreed without prior consent by Hoffmeier.
7. Applying for and obtaining the necessary approvals from the authorities or other bodies is not one of the duties that are incumbent upon Hoffmeier. If the performance of certain services by Hoffmeier depends on such approvals, the Customer shall, at his own cost, be obliged to provide Hoffmeier with the approval and all documents necessary to perform the said services.
8. Compliance with all requirements and duties arising from the German Health and Safety Ordinance on Building Sites (BaustellV), in particular the drawing up, implementing and monitoring of a health and safety plan is exclusively incumbent upon the Customer.
9. All contracts, additions or amendments to contracts and other contractual design-related declarations must be made in writing unless the parties agree that an oral agreement be applicable irrespective of the missing written form.
10. If contracts involve international legal relations and, in particular, if they are entered into with foreign contractual partners or refer to deliveries and services involving other countries, the contractual partners agree that, as a rule, German law be applied. As a matter of principle, this shall apply to all legal issues associated with the concluded contract, in particular to conclusion, interpretation, performance, failure to perform, liability, warranty, payments, statute of limitations etc.

§ 3 Period of delivery and performance

1. Time limits and deadlines are only binding if they have been agreed in writing in the contract.
2. A delivery period commences on the day of the dispatch of the order confirmation and is complied with if, by the end of the delivery period, the goods have left the works/ware-house or if the goods are ready for shipment and the Customer is notified accordingly.
3. If the Customer needs to perform preliminary work, obtain documents, approvals or acceptance certificates or pay an agreed deposit/make an advance payment, the delivery period shall not start until these preliminary services have been performed.
4. If periods and deadlines are expressly agreed as non-binding in the contract, exceeding them will generally not be seen as a reason to be in default.
5. If the delayed performance is due to a permanent disruption of operations caused by force majeure, interventions by the authorities, problems relating to energy supplies, strikes/lockouts or raw material exhaustion, Hoffmeier shall not be in default. This also applies to delays caused by other unforeseeable extraordinary circumstances that prevent Hoffmeier from fulfilling its part of the contract and that the company was not able to avert in spite of employing all the care that it is reasonably expected to use according to the circumstances of the respective case. If no performance periods have been agreed, work is to begin immediately after order confirmation but, at the latest, 12 working days after the request by the Customer, as long as the Customer has provided the documents and approvals required under clause 2, number 7. of these Terms and Conditions, an unimpeded start of the assembly at the building site is ensured and Hoffmeier has received any advance payments that may have been agreed.
6. If any one of the impediments listed under number 5 lasts longer than three months, the Customer shall, after granting a period of grace, be entitled to withdraw from the unfulfilled part of the contract.
7. As a matter of principle, all declarations and measures that establish rights, maintain rights and maintain obligations must be made in writing unless there are express agreements to the contrary, and shall not become effective until the receipt of the written declaration at the headquarters of Hoffmeier.
8. If the performance of Hoffmeier depends on deliveries from sub-suppliers, Hoffmeier can impose a self-delivery reservation to its duty of performance. If such a reservation clause has been included in the contract, Hoffmeier and its Customer have the right to withdraw from the contract if, for reasons that the company cannot be held responsible for, within a period of three months from the due date, self-delivery can either not take place at all or not in accordance with the contract and if Hoffmeier has tried in vain to obtain a replacement delivery by a sufficient covering purchase or by undertaking other reasonable efforts.

§ 4 Prices

1. The applicable prices are those that are given in the order confirmation provided by Hoffmeier and shall be exclusive of any value added tax.
2. Unless there are agreements to the contrary, the prices are in given in Euros ex works and are exclusive of any and all costs and charges relating to packaging, transport and assembly. The Customer is not entitled to make and Hoffmeier is not entitled to accept payments, advance payments, additional payments or comparable payments in any other currency.
3. If a performance that has not been included in the contract is requested, Hoffmeier is entitled to additional remuneration. Prior to performance, the Customer should be notified of any additional work that is considered necessary.
4. If Hoffmeier is in charge of delivery and assembly, it will charge the respective travelling and assembly costs in addition to the price for the performance/goods in accordance with applicable company rates.
5. Extra costs are charged for overtime and any work carried out at night, on Sundays and Bank/religious holidays as well as for work carried out under harsh conditions in line with the collectively agreed sector-specific rates.
6. Hoffmeier has the right to pass on any changes to the contractually agreed pricing and costing basis caused by changes to the law, by adjusting the contract price accordingly. In addition, Hoffmeier has the right to adjust its prices if a delivery time of more than four months has been agreed and if it can be proven that the costs for wages, material, assembly or goods from sub-suppliers have risen by more than 10 % during that time.

§ 5 Payment

1. All rules and regulations regarding payment modes, due dates and payments are based on the written contractual agreements and are generally governed by the regulations valid under German private and commercial law as well as the trading customs of German law.
 2. In the absence of a specific agreement, every payment is to be made upon its statutory due date without any deductions to the account designated by Hoffmeier. Hoffmeier is entitled to issue invoices for partial payments.
 3. Invoices covering assembly and other services are always payable forthwith and without deductions.
 4. Payment must be made within seven days after invoice receipt. If payment without deductions fails to be made by the Customer to one of the designated accounts held by Hoffmeier within 14 days of invoice receipt, the Customer is in default even in the absence of further reminders.
 5. If the Customer is in default (section 288, paragraph 2 of the German Code of Civil Law [BGB]), Hoffmeier shall be entitled to charge interest at the rate of 8% above the base lending rate of the ECB from the day of default. Hoffmeier shall also have the right to charge a higher interest rate if it has demonstrably taken out a loan for the minimum amount due on which it is charged higher interest rates.
 6. Notwithstanding section 366, paragraph 1 of BGB, Hoffmeier shall offset any incoming payments made by the Customer primarily against the Customer's older debt, secondly against any interest accrued and finally against the costs that have arisen even if the Customer stipulates that the money be used for the payment of other items.
 7. If the Customer fails to perform in spite of the default and being given a period of grace, if cheques or bills of exchange are not honoured, if he suspends payments or if a substantial deterioration of his financial circumstances occurs, Hoffmeier can refuse the performance incumbent upon it wholly or in parts until the Customer has fully performed his part of the contract or if such performance is secured.
- If the Customer's inability to pay occurs prior to contractual performance by Hoffmeier or if he refuses payment for good before Hoffmeier fulfils its part of the contract, Hoffmeier shall also be entitled to refuse its own performance for good and claim damages for non-performance. The agreed damages amount to a minimum of 25 % of the contract value. Hoffmeier reserves the right to prove and ask for higher damages.

8. The offsetting of any claims against potential counter-claims of any kind by the Customer is excluded unless the counter-claims have been recognised by declaratory judgement or are indisputable. The withholding of payment or reductions of the purchase price on this part of the Customer are also excluded as long as no mandatory statutory regulations are breached unless the stated defects or counter-claims put forward have been recognised by declaratory judgement or are indisputable.
9. If the Customer honours his duties of payment and fulfils his part of the contract by offering a bill of exchange, he is obliged to pay all associated costs and expenses including taxes. The acceptance of bills of exchange and cheques does not constitute an offer to delay the payment of debt.

§ 6 Warranty

- Hoffmeier provides warranty in accordance with the statutory rules and regulations or – if VOB/B has been agreed – pursuant to section 13, part B of the German regulations regarding the awarding of public works contracts (VOB/B) based on the following provisions:
1. Hoffmeier warrants to provide its shipments and performance and to produce its work in such a way that they have the agreed qualities and comply with the recognised technical rules.
 2. The warranty period is based on the statutory rules and regulations or on VOB/B if agreed.
 3. The Customer is obliged to examine the shipment/performance forthwith and to notify the supplier in writing within ten days of any obvious potential defects. Compliance with the warranty period is ensured if the notification is sent off in due time. As for the rest, section 640, paragraph 2 of the German Code of Civil Law (BGB) shall apply. The deficient items must be kept in the state they were in at the time when the defect was discovered, to be viewed by Hoffmeier.
 4. The parties agree in principle that a formal acceptance procedure be carried out. A written protocol documenting acceptance is to be produced.
 5. If, within the warranty period, a defect of the shipment or performance is discovered, Hoffmeier shall initially be entitled to choose its own remedy, which either consists in the correction of the defect or replacement. Hoffmeier shall have at least three opportunities to remedy the defect.
 6. As long as Hoffmeier complies with its obligations to remedy the defect, the Customer does not have the right to demand a reduction of the purchase price, a withdrawal from the contract or damages. The Customer can only assert these rights if all attempts to cure the defect have failed or if Hoffmeier has refused to undertake any attempts due to disproportionately high costs. If the contract refers to the execution of construction work, withdrawal from the contract shall also be excluded if the attempt to cure the defect has failed. Instead, the Customer has the right to terminate the contract.
 7. If the operational or maintenance instructions provided by Hoffmeier are not complied with, if the shipped goods and objects of performance have been altered, if parts are replaced or consumables are used that do not comply with the original specifications, no warranty shall be given unless the Customer can prove that the defect has not been caused by these interventions.
 8. Hoffmeier is liable for replacement deliveries and repair work to the same extent as for the original object of performance; the warranty period for replacement deliveries shall start anew.
 9. Claims for damages arising from the warranty for defects, the breach of contractual duties, from faults occurring during the conclusion of the contract and from unlawful acts, which are not based on the simultaneous breach of a main contractual duty of performance by Hoffmeier, can neither be made against Hoffmeier nor their vicarious agent unless the damage has been caused by intent or gross negligence. The aforementioned restriction of liability does not affect claims of the Customer that are based on product warranty. Neither do the restrictions of liability apply to physical injuries or damage to health that can be attributed to Hoffmeier or to loss of life suffered by the Customer, his statutory representative, vicarious agent or persons other than the Customer.

§ 7 Ban of assignment

The assignment of performance claims, payment claims, warranty claims or other secondary claims as well as of claims for damages against Hoffmeier is excluded.

§ 8 Passing of risk

1. If, upon the Customer's request, the goods are sent to him, the risk of accidental loss and accidental deterioration of the goods is passed on to the Customer upon the goods being delivered to the company commission or to the shipment independently of whether the shipment is made from the place of performance and/or who pays the shipment costs. If the goods are ready for shipment and if shipment or inspection are delayed due to reasons for which Hoffmeier cannot be held responsible, the risk shall pass on to the Customer upon him being notified that the goods are ready for dispatch.
2. Otherwise and depending on the legal character of the respective contract, the transfer of risk is governed by the statutory rules and regulations. If the German law regarding work and service contracts (Werkvertragsrecht) applies, the risk is transferred to the Customer as soon as the goods have been inspected and approved. After completion of performance, the result of the work (Werk) needs to be inspected forthwith. This also applies to self-contained partial performances. If the Customer delays inspection, the risk is transferred to him at the time of default. The same applies if, for reasons attributable to the Customer, the assembly is interrupted and if, by common consent, the supplier has passed on to the Customer's care all performances executed by that time.

§ 9 Preliminary work of the Customer

1. If, prior to the performance by Hoffmeier, pre-construction measures need to be carried out by the Customer, these must have progressed to such an extent prior to the start of the performance by Hoffmeier that work can commence as soon as the goods are delivered and be carried out without interruption.
2. If, for reasons attributable to the Customer, the start, continuation or completion of the work is delayed and if he does not, upon the request of Hoffmeier, remedy the situation forthwith, Hoffmeier can, while the contract is maintained, claim damages or set the Customer a suitable deadline for the fulfilment of the contract and declare that it will terminate the contract after the deadline has expired without results. In the case of a termination, Hoffmeier can, in addition to the costs for any work produced by that time, claim for extra costs that the company has incurred by making an offer that produced no results and by storing and maintaining the owed item.

§ 10 Retention of title

1. Hoffmeier shall retain title to the delivered goods/the provided object of performance until all claims against the Customer that are, for whatever legal reasons, presently arising or will arise for Hoffmeier in the future (including the settlement of all outstanding balances) have been fulfilled.
2. Upon third parties seizing the retention goods, in particular in the case of attachments of property by court authorities, pledging, statutory or contractual pledges or claims for possession, the Customer shall indicate the items owned by Hoffmeier and inform the company forthwith in writing. Potential costs and damage caused by a breach of this duty shall be borne by the Customer.
3. If the Customer acts in breach of contract, in particular if he is in default of payment, Hoffmeier shall be entitled to take back the retention goods at the Customer's cost.
4. The Customer shall only be entitled to resell or process the retention goods in the case of his normal business transactions. If the Customer resells the items on credit, the Customer shall retain title vis-à-vis the purchaser. Herewith, the Customer assigns the rights and claims arising from this retention of title vis-à-vis the purchaser to Hoffmeier who accepts the assignment. The Customer shall not be entitled to use the retention goods for security purposes or to carry out transfers by way of security/assignments for security purposes. Already now, the Customer assigns his claims arising from the resale of the retention goods against the respective purchaser to Hoffmeier, who accepts the assignment. The Customer shall only remain entitled to collect the assigned claims as long as he complies with his obligations towards Hoffmeier, in particular as long as he is not in default with payments and does not suffer loss of property. Hoffmeier can, at any time, revoke its consent to the collection of claims by the Customer and notify the Customer's purchaser of the assignment. Upon request of Hoffmeier the Customer shall provide details on any assigned claims required for collection and notify the debtors/purchasers of the assignment.
5. The customer may undertake the processing or changing of the retention goods on behalf of Hoffmeier without this resulting in obligations for Hoffmeier. If the Customer processes or changes the goods supplied by Hoffmeier, if he joins, mixes or combines them with other goods, Hoffmeier shall become the owner of the produced goods without the Customer acquiring them on a temporary basis (Durchgangserwerb). When the retention goods are processed, combined, mixed or merged with other goods that are not owned by Hoffmeier, Hoffmeier is entitled to joint ownership of the new goods based on the proportion of the invoiced value of the retention goods compared with the other processed goods at the time of their processing, combining, mixing or merging. If the purchaser acquires sole ownership of the new goods, the contractual partners agree that the purchaser concedes to Hoffmeier joint ownership of the new goods based on the proportion of the invoiced value of the processed or combined, mixed or merged retention goods and stores them free of charge on behalf of Hoffmeier.
6. If the retention goods are resold together with other goods without or after having been processed, combined, mixed or merged, the aforementioned assignment of future claims applies only up to the amount of the invoiced value of the retention goods that is resold together with other goods.
7. Hoffmeier undertakes to relinquish, upon the request of the Customer, the securities that are due to the company in accordance with the aforementioned provisions in whatever way it sees fit, if their value exceeds the claims to be secured by 20 percent or more.
8. If, under international private law, the agreement, validity and execution of the provisions on retention of title are to comply with specific legal rules, the contractual partners herewith expressly agree the application of German law.

§ 11 Place of jurisdiction, severability

1. These General Terms and Conditions as well as the entire legal relations between the contractual parties are subject to the laws valid in the Federal Republic of Germany with the exception of the United Nations Convention on Agreements for the International Sale of Goods (CISG).
2. If the Customer has 'Kaufmann' (merchant) status as defined by the German Code of Commercial Law (HGB) or is a legal entity under public law or an alternative body (Sondervermögen) under public law, Hamm shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.
3. If contracts involve international legal relations and, in particular, if they are entered into with foreign contractual partners or refer to deliveries and services involving other countries, the contractual partners agree that Hamm shall be the exclusive international place of jurisdiction and stipulate that the German law of civil procedure shall, in terms of international law, be the only governing law of procedure.
4. Should one provision contained in these General Terms and Conditions or one provision that is part of other agreements be or become ineffective, the effectiveness of the remaining provisions or agreements shall not be affected hereby.