

# General sales and delivery conditions of HOFFMEISTER GmbH

Status 09.2021

# HOFFMEISTER

Items 1.-16. below apply to all commercial transactions with buyers who are not a consumer within the meaning of Section 13 BGB (German Civil Code) and have their registered office in Germany.

## 1. General

**1.1.** Deliveries and services are exclusively subject to these terms and conditions.

**1.2.** These shall also apply to any future business transactions even if these are not expressly agreed. These conditions are considered to be accepted upon receipt of the goods or service. Any counter-confirmation on the part of the buyer with reference to his own terms and conditions is hereby expressly excluded. This also applies in the case that the buyer has provided a special form for contradiction. Deviations from these terms and conditions shall only be effective if we have expressed our written consent in an individual agreement.

**1.3.** Orders and verbal agreements made with our sales representatives require our written confirmation.

**1.4.** The terms and conditions of business between us and the customer fall under German law.

## 2. Conclusion of contract, mandatory information in electronic commerce

**2.1.** Our offers are non-binding. We reserve the right to make reasonable and acceptable technical changes, including adapting our products to meet new standards.

**2.2.** Upon ordering the goods the customer enters a binding agreement to purchase the goods (contractual offer).

We are entitled to accept the contractual offer made within two weeks after receipt by our company. Acceptance shall be made expressly in written or electronic form or upon sending of the ordered goods.

**2.3.** A contract is concluded subject to correct and timely delivery by our suppliers. This applies only when we are not responsible for non-delivery. Non-delivery is particularly not attributable to us in the event that a congruent hedging transaction is concluded.

**2.4.** In the case of electronic legal relations the confirmation of receipt of the order does not constitute a binding declaration of the acceptance of the offer, unless the acceptance has been expressly declared in the confirmation of receipt.

**2.5.** Insofar as an order is placed electronically, the text of the contract will be stored by us and sent to the customer by email upon request together with these T&Cs. Furthermore, the obligation to provide information pursuant to Section 312 e, paragraph I, nos. 1-3 BGB is excluded (providing technical assistance to remove input errors, providing information according to the regulation on the obligation to provide information, immediate confirmation).

## 3. Pricing, packaging, postage

**3.1.** All prices are in EUR ex works and exclusive of shipping, insurance and VAT costs. Prices quoted in our order confirmation are always subject to the applicable sales tax. For orders under EUR 1,000.00 excluding VAT we reserve the right to charge a fee of EUR 39.00.

**3.2.** Transport packaging is to be returned to us under the terms of the Packaging Ordinance. Should this not be returned within three months after receipt of the goods, we reserve the right to charge for this at cost price. If the delivery value exceeds EUR 1,000.00 excluding VAT, we shall cover the costs of transport packaging and transport to a place of destination within Germany or to the German border. Costs for special buyer requirements with regards to transport or packaging shall be borne by them.

**3.3.** Delivery of samples shall be charged to the buyer, for withdrawal see Item 10.3.

**3.4.** If no express requirements have been made by the buyer as regards packaging and delivery, we reserve the right to choose the method of packaging and transportation.

**3.5.** An shipping surcharge shall apply to deliveries to building sites and third parties which require use of our own lorry.

**3.6.** Confirmed prices are not binding for subsequent orders of similar parts.

## 4. Payment terms

**4.1.** Unless otherwise agreed, our invoices are payable within 8 days (3% discount), within 14 days (2% discount) or within 30 days (no discount). The customer is under contractual obligation to pay the purchase price within 30 days upon receipt of goods. Upon expiry of this deadline the customer shall be in default of payment.

We are entitled, despite contradictory stipulations of the buyer, to offset payments against older debts first. If costs and interest have already been accrued, we are entitled to assign the payment first of all to the costs, then to the interest and last of all to the main debt.

**4.2.** We are entitled to assign any claims against the customer to a third party.

**4.3.** Payment is only considered to have been made when we are in receipt of the amount. In the event of cash payment, which we reserve the right to accept on a case-by-case basis, payment is only considered to have been made when the paper currency has been cashed. Any associated costs and expenses shall be borne by the buyer.

**4.4.** A customer in arrears shall be liable to pay interest at 8% above the base interest rate in accordance with Section 247 of the German Civil Code. We expressly reserve the right to make further claims, in particular for demonstrable loss caused by delay.

**4.5.** If the buyer fails to meet their payment obligations, particularly if a cheque or bill of exchange is not honoured or stops payment, or if other circumstances become known to us under which the creditworthiness of the buyer is brought into question, we reserve the right to debit the complete remaining

debt, even if we are already in possession of a bill of exchange or a cheque. In this case we are also entitled to demand an advance payment or security deposit.

**4.6.** The buyer is only entitled to offset, reduce or withhold payment if warranty claims or counterclaims are asserted, if the counterclaims are deemed legally enforceable. The exercise of a right of retention is only permitted if the counterclaim originates from the same legal relationship.

## 5. Delivery deadlines, delayed deliveries

**5.1.** Delivery deadlines shall commence upon complete clarification of all details of the order.

**5.2.** Adherence to the agreed delivery deadlines requires compliance with the contractual obligations on the part of the buyer.

**5.3.** With the exception of fixed deadlines which have been bindingly agreed, delivery schedules are provided under the premise that we receive our supplies in good time from our suppliers.

**5.4.** The date of dispatch ex works shall determine compliance with the delivery schedule.

**5.5.** As a result of delays to deliveries and services due to force majeure or events that make delivery for us substantially more difficult or impossible (i.e. strikes, lock-outs, official orders, etc.), including for our suppliers or their suppliers, we are not required to meet the originally agreed dates and deadlines. In the case of force majeure events, we reserve the right to postpone the delivery by the period of the force majeure and an appropriate restart period, or to withdraw from the contract fully or partially due to the non-fulfilled part.

**5.6.** If the delay should be more than 2 calendar months, the customer is entitled to withdraw from the contract with regards to the non-fulfilled part after an appropriate grace period of 2 weeks. Should the delivery time be extended or we are released from our obligation, for the buyer is not entitled to any claims for damages.

**5.7.** We can also only invoke the circumstances described in Items 5.3 and 5.4 if we have informed the buyer about these events without delay.

## 6. Delivery contracts with call-off

**6.1.** In the case of agreements with ongoing delivery by call-off, we are to be notified of quantities and delivery dates when the order is placed. We are entitled to produce the complete order volume according to our production plan at an adequate period within the agreed delivery schedule, unless the parties have expressly agreed otherwise. Subsequent amendments to the ordered goods is not permitted if the total order volume has already been produced.

**6.2.** The customer is contractually obliged to organise and reduce the order quantity throughout the duration of the contract. If the order volume has not been accepted during the

call-off period, we are entitled without prejudice to further statutory rights, to demand acceptance and payment of the entire remaining volume. Upon expiry of the contract period the customer shall be in default of acceptance with regards to volumes ordered, but not organised and called-off.

**6.3.** If no call-off period has been agreed and the customer has not called-off any goods within a time usual for such a call-off agreement, we reserve the right to set a deadline for further call-offs and, without prejudice to further statutory rights, shall be entitled to demand the acceptance and payment of the remaining volume after this period has expired without result.

**6.4.** In the case of larger, unforeseeable changes in costs or volumes during the term of the call-off agreement, it is accepted that the prices shall be adjusted by a reasonable amount to compensate for this. The agreed prices cannot be adjusted for any other reason, particularly if a competitor offers a lower price.

## 7. Shipping and risk transfer, acceptance

**7.1.** Risk shall be transferred to the buyer once the shipment has been handed over to the person responsible for transportation or has left our warehouse for the purpose of delivery. This shall also apply if delivery has been arranged free of charge. If delivery is not possible through no fault of our own, risk shall be transferred to the buyer with notification of its readiness to deliver. We shall choose the method of dispatch unless the buyer has expressly requested an alternative form of delivery. Any transport damage must be reported to the forwarding agent of courier upon receipt of the consignment and a written report must be issued.

**7.2.** We shall only arrange transport insurance at the request and expense of the customer.

## 8. Notification of defects, warranty, compensation for damage

**8.1.** We provide warranty for the goods delivered by us according to the following stipulations which contain the warranty rules but are no guarantee in the legal sense. All manufacturers' guarantees shall remain unaffected.

**8.2.** The warranty period is 12 months unless the product supplied has been used for a structure in accordance with its normal mode of use and has caused the latter's defectiveness. The warranty period shall begin upon the date of delivery. If our technical codes of practice or installation instructions are not followed, or if alterations are made to the products, the warranty shall become void if the customer does not show that the one of those conditions resulted in the defect.

**8.3.** The customer is obliged to inform us of any obvious defects within two weeks upon receiving the goods, and to describe the defect in detail. We must be notified in writing of any defects which cannot be discovered within this period even after careful examination, within 2 working days after discovery, and these defects described in detail. If these guidelines are violated, a warranty claim shall cease to be valid. The customer shall bear full burden of proof for all claim prerequisites, especially for the defect itself, the time of its discovery and the timeliness of its reprimand.

**8.4.** In the case of a justified complaint we can, at our discretion, either rectify the defect or deliver a replacement. Rectification shall comprise neither the disassembly of the defective goods nor reinstallation if this installation was not part of our original service. Upon delivery of a replacement, functioning item we are entitled to request that the defected item is returned.

**8.5.** If the subsequent fulfilment fails after a reasonable period set by the customer, the customer may at their discretion demand either a decrease in payment (reduction) or withdrawal from the contract. The customer is not entitled to withdraw however in the event of only a minor breach of contract with regards to the service, especially in the case of minor defects.

**8.6.** Should the customer choose to withdraw from the contract on the grounds of a defect of title or material defect, the customer is not entitled to claims for damages. Should the customer assert a claim

for damages following unsuccessful subsequent performance, the goods shall remain with the customer if he deems this reasonable. The amount of compensation shall be limited to the difference between the purchase price and the value of defective goods. This does not apply if we deliberately brought about the lack of conformity with the contract.

**8.7.** Claims by the buyer due to expenses required for supplementary performance, particularly transport, travel, work and material costs, are excluded, to the extent that these expenses increase because the goods delivered by us were subsequently moved to a different location other than the buyer's place of business.

**8.8.** In the absence of any express agreement to the contrary, only our product description in our sales catalogue or, in the case of custom-made products, a countersigned agreement and approval sample where applicable is crucial to the contractual condition and quality of lights, assembly and installation material. The approval sample serves to control the agreement, this sample does not serve as an indication of quality. Any public statements, promotions or advertisements do not constitute any additional contractual representation as to the condition of the goods.

**8.9.** Warranty claims against us may only be asserted by the contracting party itself and are not assignable.

**8.10.** If the buyer plan contains specifications which we regard as critical or impractical from a manufacturing or light engineering point of view, we will notify the buyer thereof by submitting a counterproposal. The buyer is, in this case, obliged to check our proposed amendments for their use in its production. We do not assume any warranties or liabilities with regards to suitability of our proposed amendments for the buyer's intended use of the goods.

**8.11.** Hoffmeister has installed a quality management system certified according to DIN EN ISO 9001. All products are regularly tested during production according to our QM manual. The buyer is entitled to inform of the nature and scope of quality tests which accompany production in the form of an audit. Any tests in addition to those specified in our QM manual require a special written agreement between the buyer and us with an exact description of the test parameters and methods.

**8.12.** Our quality management system does not release the buyer from the necessity to carry out a proper check of the incoming goods.

## 9. Limitation of liability

**9.1.** We assume no liability in the event of a slightly negligent breach of contractual obligations.

**9.2.** In the case of slightly negligible breaches of duty our liability shall be restricted to the foreseeable, contractually typical, immediate average damage depending on the type of goods. This also applies in the case of slightly negligible breaches of duty on the part of the seller's legal representatives or vicarious agents.

**9.3.** The above limitations of liability do not apply to customer claims arising as a result of product liability or in the event of bodily harm, impairment to health or loss of life of the customer.

**9.4.** Customer claims for damages shall lapse after one year starting with the delivery of the goods. This does not apply to customer claims arising as a result of product liability or in the event of bodily harm, impairment to health or loss of life of the customer.

## 10. Return of goods

**10.1.** The return of goods for reasons other than product defect requires our prior written consent. This is not permitted for custom-made products, expired products and lamps.

**10.2.** In the case of such return of goods we will refund 70% of the calculated price for undamaged goods in their original packaging. The customer reserves the right to provide evidence that the costs incurred by us for inspection, processing, new packaging and handling in our factory are less than the deduction of 30%. If the goods are damaged or not in their original packaging we shall charge specific costs, however no less than 60% of the original price, whereby the customer is also entitled to provide evidence that the costs incurred are lower than calculated.

**10.3.** Samples are only refunded if returned in a visual and technical damage-free condition and the sample is related to an order.

## 11. Retention of title

**11.1.** We shall retain ownership of the goods supplied until all obligations arising from the business relationship have been met, including taxes and costs. The buyer is obliged to carry out our request for special storage and insurance of the goods subject to retention of title and is to provide evidence of this upon request. In the case of repayment of the purchase price by means of cheque/draft, our retention of title shall not lapse when the customer's cheque is paid in, but only with the payment of the last refinancing paper.

**11.2.** The buyer is entitled to make available the reserved goods – even if they have been further processed – in the ordinary course of its business. It shall retain title of the goods until repayment has been made in full. The buyer may not assign our reserved goods or pledge them as security and shall immediately notify us in writing of any third-party seizure or other third-party interventions.

**11.3.** Should the buyer process or convert goods delivered by us with other goods not belonging to us, this processing or converting is effected for us as the manufacturer free of charge. According to this we will acquire property or common ownership at the ratio of the value of our product to the total value of the item created by the converting. The buyer shall store the newly created item for us free of charge. As a result the buyer processing our goods with the goods of another supplier we will become joint owners of the new item. Insofar as we are owners or joint owners of the new item arising as a result of processing or converting, the applicable conditions for use shall apply to them and our co-ownership share of the reserved goods.

**11.4.** The buyer now assigns to us any claims to which we are entitled as a result of resale at the time of its existence. If the goods subject to retention of title are sold on after being processed with goods that do not belong to us, this transfer of claims shall only be carried out in the amount of the sales value of our reserved goods. If the third-party debt is higher than our claim, the claim against a third-party purchaser shall only be assigned to us to the value of our reserved goods.

**11.5.** The buyer is entitled to collect claims assigned to us by a third-party purchaser on our behalf. Amounts obtained by the customer are however to be transferred to us immediately. We reserve the right to collect claims from a third-party purchaser if this is made known to us for this purpose.

**11.6.** In the case of the customer's behaviour contrary to the contract, especially with regards to default in payment or violation of the obligations mentioned above in Sections 1 and 2, we are entitled to withdraw from the contract and reclaim the goods irrespective of other statutory rights as a result of this violation on the part of the customer.

## 12. Intellectual property right, copyright

**12.1.** The buyer shall ensure that the goods which we manufacture according to his specifications do not violate third-party intellectual property rights. If claims are made against us by a third party due to a violation of intellectual property rights during manufacture or delivery of such items, the buyer is to exempt us from such claims. In such cases we will only file for litigation if the buyer asks us to do so and confirms in writing his willingness to assume the costs incurred hereby. We reserve the right to demand security due to process costs in this case.

**12.2.** The customer is contractually obliged to use the documents and diagrams, as well as constructive services and suggestions for the design and manufacture of lights for the agreed purpose only. He is not permitted to make these available to third parties or publish them without our consent.

## 13. Manufacturing equipment, tools

**13.1.** Manufacturing equipment (tools, production facilities) are all items produced to manufacture the ordered lamps designed or for sample, and their intended purpose is based on manufacturing the ordered parts. It is agreed that the buyer shall bear the manufacturing costs in whole or in part; these shall be listed separately to the product price in the invoice.

**13.2.** Costs for maintenance and proper storage as well as the risk of any damage to or destruction of manufacturing equipment shall be borne by us up to an overall quantity agreed upon conclusion of the contract. The following Item shall apply to costs for the production of spare parts resulting from wear and tear: 13.1.

**13.3.** We will store the manufacturing equipment free of charge for two years after the last delivery to our contractual partner. Upon expiry of this period we give our contractual partner the opportunity to express their wish for further storage within 6 months. The storage deadline shall end if within 6 months no request for further storage is made or no new order is placed. If a new order is placed within this timeframe, this period will proceed anew according to this clause.

**13.4.** The customer does not gain ownership of the manufacturing equipment produced by us, even if he has borne the cost for this in whole or in part. The customer is, however, entitled to remove the tools if these are delivered again despite warning of poor quality or if we are unable to deliver by an appropriate date.

**13.5.** The customer is likewise obliged to treat all business and technical information confidentially that is not general knowledge and of which it becomes aware during the course of business. Drawings, models, templates, samples and similar items must not be made available to third parties. Reproduction of such items is only permitted within the framework of operating requirements and subject to copyright approval.

## 14. Disposal

The non-private buyer undertakes to ensure the disposal of delivered products in accordance with the guidelines on Waste Electrical and Electronic Equipment. The buyer shall transfer this obligation to his contractual partner in the event of resale.

## 15. Export of luminaires

Due to different safety regulations, standards, testing and installation guidelines from country to country, we strongly advise against exporting the delivered luminaires, which are intended for use in Germany, to other countries, even within the EU. We especially do not assume any warranty for the possibility, reliability or functionality of our products delivered for use within the German market when used abroad.

## 16. Data protection

The settlement of the business relationship is supported by a data processing system. Accordingly, customer data (address, delivery products, delivery quantities, prices, payment, cancellations, etc.) is created in an automated file and stored until the end of the business relationship. The buyer shall be informed of this data storage. Legal basis: Sections 27 et seqq. 33BDSG (German Federal Data Act).

## 17. Place of performance, court of jurisdiction

The court of jurisdiction and place of performance for all direct and indirect disputes arising from the contractual relationship, including bill of exchange suits, is the court of Schalksmühle. The customer shall bear all fees, costs, and expenses incurred in connection with any successful legal prosecution of the outside Germany.

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