

General Terms and Conditions of Sale of Herzog Coilex GmbH

Translation - the German version has priority

- I. Scope, offers**
- These General Conditions of Sale apply to all – current and future – contracts with businessmen and companies, legal entities under public law and public-law trusts having regard to supplies and other services including contracts for work and labor and the supply of fungible goods. In the case of drop shipments the price list conditions of the supplier plant shall additionally apply. Purchasing conditions of the Purchaser shall not be recognized even if we do not expressly reject them on receipt.
 - Our offers are non-binding. Verbal agreements, undertakings, assurances and guarantees of our staff in connection with the conclusion of a contract shall become binding only on issue of a written confirmation by us.
 - In cases of doubt, commercial clauses shall be interpreted in accordance with the latest version of the Incoterms.
 - All details such as dimensions, weights, illustrations, descriptions, assembly sketches and drawings in pattern books, price lists and other printed matter are provided on an approximate basis only but shall be as accurate as possible and to this extent shall not be binding for us. The same shall apply to details provided by the supplier plants. Models and drawings shall remain our property.
 - “Purchaser” in the meaning of these Terms and Conditions is also referred to as “Buyer” in contracts for work and labor.
- II. Price**
- Prices are understood to be ex works or ex stocks plus freight and value-added tax.
 - Unless otherwise agreed, the prices and conditions valid on conclusion of the contract shall apply. Goods shall be invoiced on a “gross for net” basis.
 - If taxes or other external costs contained in the agreed price change or are newly introduced more than four weeks after conclusion of the contract, we shall be entitled to amend the price accordingly.
 - We reserve the right to increase the agreed price for volumes not yet delivered if circumstances occur due to a change in the raw materials and/or economic situation which significantly increase the cost of producing and/or purchasing the product concerned from the time the prices were agreed. In this case the Customer may cancel the orders concerned within two weeks of notification of the price increase.
- III. Payment and offsetting**
- Unless otherwise agreed or otherwise stated in our invoices, the purchase price shall be payable immediately after delivery without discount in such a way that we can dispose of the amount on the due date. The Purchaser shall bear the costs of the payment transaction. The Purchaser may offset payment only against uncontested or legally established receivables; the same shall apply to the exercise of rights of retention.
 - If the term of payment is exceeded or in the event of default of payment, we shall charge interest in the amount of 8 percentage points above the basic interest rate of the European Central Bank unless higher interest rates are agreed. We reserve the right to assert further claims for damages caused by default.
 - The Purchaser shall be deemed to be in default of payment at the latest 10 days after our receivable becomes payable without the need for a demand note.
 - On the basis of the authorization given to us by the companies belonging to our Group (§ 18 German Stock Corporation Act (AktG)), we shall be entitled to offset any claims due, for whatever legal reason, to the Purchaser from us or one of said Group companies. The same shall also apply if cash payment has been agreed by one party and payment in bills of exchange or other forms of payment on account of performance has been agreed by the other. In these cases such arrangements shall relate to the balance only. If the claims are due on different dates, our claims shall become payable by no later than the due date of claims due to us. If it becomes clear after conclusion of the contract that our payment claim is at risk due to the Purchaser’s inability to pay, our rights under § 321 of the German Civil Code (BGB) (objection of uncertainty) shall apply. We shall then also be entitled to demand immediate payment of all unexpired claims arising out of the ongoing business relationship with the Purchaser. The objection of uncertainty shall also extend to all further outstanding supplies and services in connection with the business relationship with the Purchaser.
 - All agreed discounts shall relate only to the invoice value excluding freight and are conditional on the full payment of all due liabilities of the Purchaser at the time of discounting. Unless otherwise agreed, the discount terms shall begin from the invoice date.
 - We shall be entitled to offset all claims due to us from the Purchaser against all claims due, for whatever legal reason, to the Purchaser from us.
- IV. Securities**
- We shall be entitled to the standard type and scope of securities for our receivables, including to the extent that they are conditional or limited.
- V. Execution of deliveries, delivery periods and deadlines**
- Our supply obligation shall be conditional upon the correct and punctual supply of goods to us unless we are responsible for the incorrect or delayed supply of goods to us.
 - Details of delivery periods shall be approximate. Delivery periods shall begin on the date of our order confirmation and shall only apply subject to the timely clarification of all details of the order and punctual fulfillment of all obligations of the Purchaser, such as the obtaining of technical certificates, the issue of letters of credit and guarantees or the payment of advances.
 - Delivery periods and deadlines shall refer to the time of dispatch ex works or ex stocks. If the goods cannot be dispatched on time for reasons beyond our control, delivery periods and deadlines shall be deemed to have been met on notification of readiness for shipment.
 - Events of force majeure shall entitle us to defer delivery for the duration of the hindrance plus a reasonable start-up period. The same shall apply when said events occur during an existing delay. Force majeure is deemed to include currency, trade policy and other sovereign measures, strikes, lockouts, operational disturbances beyond our control (e.g. fire, machine breakdowns, raw material or energy shortages), transportation route obstructions, delays to import/customs clearance and similar circumstances which, beyond our control, make delivery difficult or impossible. It is immaterial whether said circumstances arise at our company, the supplier plant or a sub-supplier. If one of the aforesaid events makes the execution of the contract unreasonable for one of the parties, in particular if the execution of the contract is delayed to an extent that is unreasonable for one of the parties, in particular if the execution of significant parts of the contract is delayed by more than 6 months, said party can cancel the contract.
 - If the delivery periods are not met, the Purchaser’s rights under §§ 281, 323 BGB shall only apply if the Purchaser sets us an appropriate period for delivery expressly stating – at variance with §§ 281, 323 BGB – that the Purchaser will refuse the delivery after expiry of this period, after expiry of the period without delivery claims for fulfillment difficult or impossible. In the event of delayed performance we shall bear liability in accordance with Section XII. For damages caused by the delay for which the Purchaser provides evidence. We shall inform the Purchaser immediately of the term of the delay. On gaining knowledge of the term of the delay, the Purchaser shall immediately inform us of the anticipated amount of damages caused by the delay. If the anticipated amount of damages exceeds 20% of the value of the volume affected by the delayed delivery, the Purchaser shall be obligated to immediately make corresponding hedge purchases, if appropriate to utilize hedge purchase opportunities identified by us, while withdrawing from the contract for the volume affected by the delayed delivery; in the case of the additional hedge purchase and the damages caused by the delay in the interim period shall be reimbursed by us on presentation of evidence. If the Purchaser fails to meet his hedge minimization obligations in accordance with the above paragraph, our liability for damages verifiably caused by delay shall be limited to 50% of the value of the volume affected. This shall not affect Section XII.
 - The Purchaser may withdraw from the contract without notice if the entire delivery becomes impossible for us prior to the transfer of risk. In addition, the Purchaser may withdraw from the contract if part of the delivery for a purchase order becomes impossible and the Purchaser has a justified interest in rejecting the partial delivery. If this is not the case, the Purchaser shall pay the agreed price for the partial delivery. The same shall apply in the event of incapacity on our part. Otherwise Section XII shall apply.
- VI. Reservation of title**
- All delivered goods shall remain our property (reserved property) until all claims have been fulfilled, including in particular the outstanding balance claims due to us in the framework of the business relationship (reservation of balance) and claims established unilaterally by an insolvency administrator in the exercise of his duties. This shall also apply to future and conditional claims, e.g. from accepted notes, and also such cases where payments are made on specifically designated claims. This reservation of balance shall finally expire on payment of all receivables covered by this reservation of balance still outstanding at the time of payment. We are entitled to assign our payment claims vis-à-vis the Purchaser.
 - With regard to the treatment and processing of reserved property, we shall be deemed to be manufacturer in the meaning of § 950 BGB without being committed in any way. The treated or processed goods shall be regarded as reserved property in the meaning of clause No. 1. If the Purchaser processes, combines or mixes the reserved property with other goods, we shall obtain co-ownership in the new goods in the proportion of the invoiced value of the reserved property to the invoiced value of the other goods used by such combining or mixing, our ownership expires. The reserved property transfers to us in our ownership rights to the new goods in proportion to the invoice value of the reserved property and shall keep them in safe custody for us free of charge. Our co-ownership rights shall be regarded as reserved property in the meaning of clause No. 1. The Purchaser may sell the reserved property only within the normal course of his business in accordance with his normal business terms and provided he is not in default of payment and provided also that he reserves title and transfers to us any claims arising out of the resale in accordance with clauses No. 4 to 6. The Purchaser shall not be entitled to dispose of the reserved property in any other way. Use of the reserved property to fulfill contracts for work and labor shall also be deemed to be resale in the meaning of this Section VI.
 - The Purchaser hereby assigns to us any claims resulting from the resale of the reserved property together with all securities which the Purchaser acquires for the claims. Such claims shall serve as security to the same extent as the reserved property itself. If the reserved property is resold by the Purchaser together with other goods not purchased from us, any claims resulting from such resale shall be assigned to us in the ratio of the invoiced value of the reserved property to the invoiced value of the other goods sold. In the case of resale of goods in which we have co-ownership rights according to clause No. 2, the assignment shall be limited to the part which corresponds to our co-ownership rights.
 - The Purchaser shall be entitled to collect any claims receivable resulting from this contract or other contracts with the Purchaser is jeopardized by us, at the latest in the event of default of payment, failure to honor a bill of exchange or filing for bankruptcy. We shall exercise our right of revocation only if it becomes evident after conclusion of the contract that payment resulting from this contract or other contracts with the Purchaser is jeopardized by the Purchaser’s inability to pay. At our request, the Purchaser shall immediately inform his customers of such assignment and furnish us with the documents needed to collect the claims. In no case is the Purchaser authorized to assign the claims.
 - The assignment of claims receivable resulting from the resale is not permissible unless the assignment takes place in the form of a genuine factoring agreement by which the assignment is notified and in which the claims do not exceed the value of our secured receivable. Our receivable shall fall due immediately upon crediting of the factoring proceeds.
 - The Purchaser shall inform us immediately of any seizure or any other attachment by a third party. The Purchaser shall bear any costs necessary to suspend such seizure or attachment or return the reserved property insofar as such costs are not reimbursed by a third party.
 - Should the Purchaser default in payment or fail to honor a bill of exchange, we shall be entitled to take back the reserved property and to enter for this purpose the Purchaser’s premises. The same shall apply should it become evident, after the conclusion of the contract, that payment resulting from this contract or other contracts with the Purchaser is jeopardized by the Purchaser’s inability to pay. If the reserved property is taken back, this shall not be regarded as withdrawal from the contract. The provisions of the insolvency code shall remain unaffected.
 - Should the total invoiced value of the existing securities exceed the secured claims including ancillary claims (interest, costs, etc.) by more than 50%, we shall be obligated, at Purchaser’s request, to release securities in the corresponding amount at our discretion.
- VII. Grades, dimensions and weights**
- Unless otherwise agreed, grades and dimensions shall comply with the DIN/EN standards and material specifications applying at the time the contract is concluded, or in the absence of these with standard commercial practice. Deviations in grade, dimension and weight shall be permissible in accordance with DIN/EN or prevailing practice. References to standards, such as DIN/EN or their components such as material specifications, plant test certificates and testing standards, and details of grades, dimensions, weights and applicability shall not be regarded as assurances or guarantees, nor shall declarations of conformity, manufacturer declarations and corresponding marks such as CE and GS.
 - The weights measured by us or our supplier shall apply. The weighing note shall serve as a record of the weight. Insofar as legally permissible, weights can be measured without weighing according to standards. The standard additions/reductions shall not be affected (commercial weights). Quantities, coil numbers, etc. indicated in the shipment paper shall be non-binding with regard to goods charged by weight. Unless goods are normally weighed individually, the total weight of each shipment shall apply. Discrepancies against the calculated individual weights shall be distributed equally over all the individual weights.
- VIII. Acceptance testing**
- If an acceptance test has been agreed, it shall take place at the supplier plant or in our warehouse immediately after notification of acceptance readiness. The Purchaser shall bear the personnel costs of acceptance testing, the material/equipment costs of acceptance testing shall be charged in accordance with our price list or the price list of the supplier plant.
 - If, for reasons beyond our control, the acceptance test is not carried out, not carried out on good time or not carried out in full, we shall be entitled to ship the goods without acceptance testing or to store them at the expense and risk of the Purchaser and to invoice them to him.
- IX. Shipment, transfer of risk, packaging, partial delivery**
- We shall determine the route and mode of shipment as well as the forwarder and freight carrier.
 - Goods reported ready for shipment in accordance with the contract must be collected immediately, otherwise we shall be entitled to assign a demand note to ship or store the goods at our discretion at the expense and risk of the purchaser and to issue an immediate invoice. The legal provisions on default of acceptance remain unaffected.
 - If, for reasons beyond our control, transport via the planned route or to the planned destination in the planned time is impossible or severely impeded, we shall be entitled to deliver via a different route or to a different destination; the additional costs incurred shall be borne by the Purchaser. The Purchaser shall be given the opportunity to comment in advance.
 - On handover of the goods to a forwarder or freight carrier, though no later than on the goods’ departure from the warehouse or supplier plant, the risk, including that of confiscation of the goods, for all transactions, including franco-domicile and carriage-free deliveries, shall pass to the Purchaser. We shall take out insurance only on the instructions and at the expense of the Purchaser. Unloading commitments and costs shall be borne by the Purchaser.
 - The goods shall be delivered without packaging and without rust protection. We shall deliver packaged goods if this is standard commercial practice. We shall provide packaging, protection and/or transport aids according to our experience at the expense of the Purchaser. They shall be returned to our warehouse. We shall not bear costs incurred by the Purchaser for the return transport or for disposing of the packaging.
 - We shall be entitled to make partial deliveries to a reasonable extent. Standard excess and short deliveries in respect of the agreed volume shall be permissible. The indication of an “approximate” volume shall entitle us to exceed/fall short of the agreed volume by up to 10% and invoice accordingly.
- X. Release orders, successive deliveries**
- Contracts concluded for successive deliveries shall specify appropriate monthly release-order volumes with a breakdown of grades. Otherwise we shall be entitled to determine the volumes and grades at our own discretion.
 - If the total volume of the individual release orders exceeds the contractual volume, we shall be entitled but not obligated to deliver the additional volume. We may invoice the additional volume at the prices applying for the release order or delivery.
 - In the case of release orders, goods reported ready for shipment shall be approved for release immediately. Otherwise, after issuing a warning, we shall be entitled to choose whether to ship them or place them in storage of our own choice at the Purchaser’s expense and risk and invoice them immediately.
- XI. Liability for quality defects**
- The goods shall be deemed to comply with the contract if they do not deviate or do not deviate significantly from the agreed specifications at the time of the transfer of risk. The contractual compliance and defect-free quality of our goods shall be determined exclusively on the basis of the agreed specifications on the quality and volume of goods ordered. We shall only accept liability for a specific intended use or a specific property to the extent that this is expressly agreed; otherwise the suitability and application risk shall be borne exclusively by the Purchaser. We accept no liability for the deterioration, loss or improper treatment of the goods after the transfer of risk.
 - The contents of the agreed specifications and any expressly agreed purpose of use shall not establish a guarantee; the acceptance of a guarantee shall be subject to a written agreement.
 - The Purchaser shall inspect the goods immediately on receipt. Claims for defects shall only exist if defects are notified immediately after receipt of the goods and reported in writing to us. Contentious defects must be notified in writing immediately after detection, and in all cases before expiry of the agreed or statutory period of limitation.
 - If a quality defect exists, we may, at our own discretion – taking into account the concerns of the Purchaser – meet our obligations either by delivering a replacement or by rectifying the defect. If the defect is not material, the Purchaser shall only be entitled to reduce payment.
If we fail to meet our obligations within an appropriate period, the Purchaser may set us a reasonable period of grace for meeting them. If this period expires without success, the Purchaser may either reduce the purchase price or withdraw from the contract. No further claims exist in respect of Section XII, remains unaffected.
 - If a defect of release exists, we shall be entitled to meet our obligations by removing the defect of title within two weeks from receipt of the goods. Otherwise clause No. 4 paragraph 2 shall apply accordingly.
 - We may refuse to meet our obligations if this is only possible at unreasonable expense. Unreasonable expense generally exists if the direct costs of meeting our obligations including the necessary expenditures exceed 150% of the final invoiced price (excluding sales tax) of the goods concerned. This shall not include costs in connection with the installation and removal of the defective item and costs incurred by the Purchaser for remedying a defect itself without the statutory requirements being met.
 - We shall not bear expenditures incurred as a result of the sold goods being sent to a different destination than the agreed place of performance unless this corresponds with their contractually agreed use.
 - After the Purchaser has performed an agreed acceptance test, claims for defects which could be identified given the agreed type of acceptance testing shall be excluded.
 - In the event of claims, the Purchaser shall immediately give us the opportunity to inspect the goods concerned; on request the goods concerned or a specimen thereof shall be made available to us at our expense. In the event of unjustified claims, we reserve the right to charge the freight and handling costs as well as the inspection expense to the Purchaser.
 - In the case of release orders, goods reported ready for shipment shall be approved for release immediately. We shall have no claims for defects with regard to the specified reasons for downgrading and any defects which can normally be expected.
 - The Purchaser’s rights of recourse against us pursuant to § 478 BGB shall be limited to the statutory scope of third-party claims for defects against the Purchaser and shall be conditional upon the Purchaser meeting his obligation to notify defects to us pursuant to § 377 of the German Commercial Code (HGB).
- XII. General limitation of liability and period of limitation**
- Unless otherwise specified in these Terms and Conditions, we shall bear liability for damages due to the infringement of contractual and non-contractual obligations, in particular unenforceability, default, culpability on initiation of the contract and impermissible acts, only for intent or gross negligence on the part of our legal representatives or vicarious agents, and in the event of culpable infringement of significant contractual obligations. In the event of culpable infringement of significant contractual obligations – except in cases of intent or gross negligence on the part of our legal representatives and vicarious agents – we shall bear liability only for damages foreseeable and typical for this type of contract. Any further liability on our part, including for damage and consequential damage caused by defects, is excluded.
 - These restrictions shall not apply in the event of culpable infringement of significant contractual obligations insofar as the fulfillment of the purpose of the contract is at risk, in cases of mandatory liability under the product liability act, in the event of injuries to life, body or health, nor if and to the extent that we maliciously conceal defects or have guaranteed their absence. This shall not affect the rules concerning the onus of proof.
 - Unless otherwise agreed, claims for defects and contractual claims of the Purchaser against us on account of and in connection with the delivery of goods shall expire by limitation one year after delivery of the goods. This shall not affect the statutory periods of limitation for goods used in accordance with their usual purpose for a building which have caused a defect in the building. Furthermore, sentence 1 shall not apply in cases of gross negligence, intent, injuries to life, body or health, and fraudulent concealment of a defect.
The rectifying of defects or supply of replacement goods shall not cause the period of limitation to begin again.
- XIII. Export certificate, sales tax**
- If a Purchaser registered outside the Federal Republic of Germany (foreign buyer) or his representative collects goods or transports or sends them to a third country, the Purchaser shall furnish us with the export certificate required under tax law. If this certificate is not provided, the Purchaser shall pay the sales tax on the invoiced amount for the export shipment applying in the Federal Republic of Germany insofar as we can claim tax exemption for export deliveries.
 - For shipments from the Federal Republic of Germany to other EU member states, the Purchaser shall notify us prior to shipment of his sales tax identification number under which his profit and income tax is handled within the EU. Otherwise he shall pay the statutory sales tax amount owed by us in addition to the agreed purchase price for our supplies.
- XIV. Place of performance, legal venue and applicable law, miscellaneous**
- The place of performance for our deliveries is the supplier plant for supplies ex works and our warehouse for all other supplies. The place of performance for the Purchaser’s obligations and the legal venue for both parties to the contract is the domicile of our company. We shall also be entitled to bring an action against the Purchaser at his general legal venue.
 - The substantive law of the Federal Republic of Germany shall apply to the exclusion of the “United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980” (CISG).
 - If a provision of these General Terms and Conditions of Supply and Payment is or becomes invalid, this shall not affect the validity of the other conditions.