



HERZOG
Braiding machines

CLEVER SOLUTIONS SINCE 1861

General terms and conditions

For deliveries and services performed by us, our General Terms and Conditions shall apply exclusively if we do not agree on a modification in writing in each individual case. Any differing or supplementary conditions of the customer are not binding for us. These terms and conditions shall be deemed to be binding upon acceptance of the goods or services at the latest. If a condition or term does not apply, that does not mean that the others are obsolete.

I. Offer and Conclusion of Contract

1. Our offers are without obligation.
2. Orders are only accepted when we have confirmed them in writing.
3. Additions, amendments or subsidiary agreements, whether made by telephone or orally, require our written confirmation in order to be effective.

II. Prices and Payment

1. If not agreed on otherwise, the prices are to be taken as being ex works and without packing.
2. To the prices is added the value-added tax at its current statutory rate.
3. If not agreed on otherwise, payments are to be made in EURO free of charge to our bank accounts.
4. Bills of exchange are generally not accepted; exceptions require prior agreement.
5. The acceptance of bills of exchange and cheques are only made to facilitate payment; the costs of discounting and collection are to be borne by the customer. We are not liable for any bills of exchange which are not presented in time or for any failure to have a bill of exchange protested.
6. The customer is not entitled to retain payment due to counter claims which were not accepted by us. The customer can only set off claims which are undisputed or which have been finally assessed.
7. In case the solvency of the customer is reasonably doubted, we reserve the right to demand an advance payment or the deposit of a security or to withdraw from the contract if the customer fails to observe the time limit set for such payments.

III. Delivery Period

1. The delivery period starts with the sending of the order confirmation, but not before having received the downpayment.

2. The delivery period is observed when the goods have left our works or the customer has been informed that the goods are ready for dispatch within the said period.
3. The delivery period is adequately extended if the nonobservance is due to mobilisation, war, riot, strike, lockout or other unforeseen impediments which are outside our control. This also applies if these circumstances affect subcontractors. We are also not responsible for the above mentioned circumstances if they occur during an already existing delay. In important cases we will inform the customer as soon as possible of the beginning and end of such impediments.
4. Partial shipments are permitted.

IV. Transfer of Risk and Acceptance

1. The risk will pass to the customer by the latest upon the dispatch of the goods from the works. This is also true for partial shipments or if we have agreed to render further services such as taking over the forwarding costs or the transport and installation. Upon the customer's request we will insure the consignment against theft and damage resulting from breaking, transportation, fire and water, or other insurable risks.
2. The danger of accidental perishing or accidental loss of the goods passes to the Buyer upon transfer to the first carrier the latest. For cross frontier traffic the INCOTERMS in their latest version are applicable.

V. Reservation of Ownership

1. We reserve the right to retain ownership of all goods delivered by us until all claims resulting from the business relationship have been completely settled.
2. Pledges or chattel mortgages are inadmissible. In case of a pledge by a third party, we have to be notified immediately.
3. In case of a default in payment, the customer is obligated to return the goods subject to our reservation of ownership, even if we choose not to rescind the contract. In this case, the customer is hereby obliged to irrevocably grant us the right to immediately pick up the goods and to gain unrestricted access to his business and warehouse premises for this purpose. The assertion of our reservation of ownership and seizure of the goods under reservation do not constitute a rescission of contract on our part. Following any seizure of goods under ownership reservation we are entitled to dispose of such goods at our discretion. All proceeds from the disposal of the goods is to be credited against the debts of the customer, less any reasonable disposal costs incurred.

VI. Liability for Defects in Delivery and Service

1. We grant a guarantee of 6 months (3 months for 3-shift operation) starting with the taking into operation. This guarantee comprises assured properties as well as all faults or damages which are demonstrably due to circumstances before the time of the transfer of risks. Especially all parts which are useless or considerably affected in their usefulness due to poor constructions, poor materials or a faulty execution will be repaired or replaced free of charge. Replaced parts become our property. When the delivery of the goods, the installation or the taking into operation is delayed through no fault of us, our liability expires 8 months after readiness for shipment the latest. Our guarantee does not apply to damages or faults caused by a

faulty installation, operation or repair, a negligent maintenance, replacement materials, chemical, electro-chemical or electrical influences as long as they are no fault of us.

2. The customer's right to make a claim comes under the statute of limitations in any case 6 months after the time of the punctual complaint, however, with the expiry of the guarantee period the earliest.
3. The customer is obliged to grant us the opportunity to follow up the complaint, in particular, to make available to us the defective goods and their packaging for our inspection. Refusal to comply shall release us from our warranty commitment. If for reasons of maintaining industrial safety or to avoid excessive damage it should become urgently necessary, the customer is entitled to remedy any defects himself or have a third party remedy the defects and to demand from us reimbursement for any necessary costs incurred. This also applies if we should be in default with remedying the defects ourselves. In any case, the customer is obligated to inform us without delay.
4. Should the customer, in the event of a defect, require subsequent performance from us, we are entitled at our discretion either to remedy the defect ourselves or make substitute delivery. Defective goods for which exchange has been made are to be returned to us. If no remedy or substitute delivery is possible or is refused or does not eventuate within a reasonable period of time to be defined by the customer, or fails, for any other reason we can be held responsible for, the customer is entitled to rescind the contract or demand a reduction in price.
5. We do not accept liability for damage to or defects in the goods supplied which have resulted from natural wear, excessive load, use in contravention of our operating instructions, unsuitable or improper use, faulty assembly or incorrect commissioning on the part of the customer or any third party, subsequent modification by the customer or third parties, incorrect or negligent handling, unsuitable ground or surface at the installation site, chemical, electro-chemical or electrical influences, provided that they are not attributable to any fault on our part.
6. All further claims of the customer are excluded, in particular, claims for damages in lieu of performance and damages for any other direct or indirect damage, including collateral and consequential damage – irrespective of the legal grounds on which such claims may be based. This does not apply
 - in the case of our malicious non-disclosure of any legal imperfection in title of defects of quality or in the case of any undertaking on our part of the goods' warranted qualities,
 - if the damage was due to any wilful intent or gross negligence on our part, on the part of our legal representatives or vicarious agents or due to any negligent violation of any essential contractual obligations by any of these parties, or
 - in the case of any culpable breach of duty on our part, or the part of our legal representatives or vicarious agents resulting in personal injury or health impairment.

However, in the case of ordinary negligence, our liability to pay damages is limited to the extent of any foreseeable damage typical in contracts such as the one between the parties hereto.

VII. The Buyer's Right of Rescission and other Liabilities of the Supplier

1. The Buyer is entitled to rescind from the contract when we are unable to fulfil our delivery obligations before passing the risk. The same applies in case of our inability to perform.

2. The Buyer furthermore has the right to rescind when we are in delivery default and have exceeded the granted, sufficient grace period culpably.
3. The same right is due to the Buyer in case we let a granted grace period for the settlement or rectification of defects in sense of the delivery conditions expire without results. The appropriate grace period only starts when the defect and our liability towards the same has been sustained and proved. The Right of Rescission also applies in case of impossibility of inability of rectification through us.
4. Excluded are all other claims of the Buyer, especially regarding rescission of sale, cancellation or reduction; furthermore regarding compensation of any damages, either a positive breach of contract, responsibility upon conclusion of the contract, default of possible accessory obligations or tortious act. This exclusion of liability does not apply in case of intention or gross negligence of our management or senior employees.
5. If the goods delivered cannot be used by the customer in accordance with the contract because we breached contractual ancillary obligations, failed to render or rendered false proposals or advice, the provisions under no. VI. hereof are valid accordingly, any further claims excluded.

VIII. Copyright

1. We reserve the right to retain Ownership and Copyright of all pictures, drawings, technical charts or other documents. They must not be made available to third parties without our permission and are to be returned immediately upon request.
2. All pictures of products in our brochures are in accordance with the execution at the time the pictures have been made. Technical modifications can be made at any time.

IX. Place of Performance and Jurisdiction

1. Place of Performance for both parties is Oldenburg. For all disputes arising out of the contract the sole place of jurisdiction is Oldenburg. This applies also to special procedures deciding claims arising out of a bill of exchange or actions for assertion of a claim concerning payment of a cheque. We are also entitled to sue the other party at their domicile.
2. For export deliveries the German Law is applicable and the latest version of the Incoterms, excluding the "Uniform Law on the International Sale of Goods" (Haager Übereinkommen dd 01.07.1964).

X. BDSG note, Federal Data Protection Act (Act for protection against the misuse of personal data in data processing)

1. According to § 26 of the data protection act we are bound by law to inform you that we store your data, as far as necessary for our business and permitted under the BDSG, in our data department.

XI. Partial Invalidity

1. If a provision is invalid in whole or in part, this does not affect the validity of the other provisions.