

General Terms & Conditions

I. General – Scope

1. These general terms and conditions apply to all present and future legal relationships between, on the one hand, Holdijk & Haamberg GmbH and, on the other, the purchaser. Our general conditions of sale apply solely to contractors in the sense of § 310, para. 1 of the BGB (German Civil Code).
2. The general terms and conditions of Holdijk & Haamberg GmbH shall apply exclusively. Conflicting terms and conditions on the part of the purchaser, or stipulations that vary from these terms and conditions of trade will not be accepted, except where Holdijk & Haamberg GmbH have specifically recognised their validity, confirming this in writing.
3. All contracts formed between Holdijk & Haamberg and the purchaser must, accordingly, be set out in writing. Verbal ancillary agreements have no validity.
4. Any rights we have under the statutory provisions over and above these terms and conditions shall remain unaffected.

II. Order confirmation and formation of contract

1. Any offers we make are non-binding. Orders shall not be binding until confirmed in writing. All sales shall also be subject to the conditions specified in the order confirmation.
2. We shall not be bound by the purchaser's conditions of purchase, even where we have not specifically objected to them.
3. All calculations, images, drawings and other documentation are subject to our intellectual property rights and copyright. They may not be passed on to third parties or otherwise made accessible.

III. Delivery and delivery period

1. Deliveries shall be made ex works.
2. Deadlines and dates for delivery and performance proposed by Holdijk & Haamberg GmbH shall be taken as approximations in all circumstances, except where a fixed deadline or date for delivery has been specifically promised or agreed. Where a dispatch has been agreed, delivery periods and dates shall relate to the point of handover to the carrier, freight forwarder or a third party contracted for transportation.
3. Holdijk & Haamberg GmbH may –without prejudice to our rights from the purchaser's default – demand from the purchaser an extension of the delivery period or deadline for performance, or that the delivery period or deadline for performance be moved by a period corresponding to the period during which the purchaser fails to meet its contractual responsibilities in respect of the seller.
4. Holdijk & Haamberg GmbH is not liable where delivery is infeasible, or where delivery is delayed, where this is due to *force majeure* or other factors that could not have been foreseen at the time of formation of the contract (e.g. operational disruptions of any kind, difficulties in procuring materials or power, logistical delays, strike action, lawful lock-outs, shortages of manpower, power or raw materials, difficulties obtaining official permits and permissions, official measures or the failure of suppliers to deliver, to deliver according to the terms of an agreement, or to deliver on time) for which Holdijk & Haamberg GmbH is not responsible. Where such factors significantly hinder Holdijk & Haamberg GmbH in terms of delivery or performance, or make delivery or performance impossible, and the obstacle in question is not transitory in nature, Holdijk & Haamberg GmbH may rescind the contract. In the event of obstacles of a transitory nature, the delivery periods or performance deadlines shall be extended, or delivery periods or performance deadlines shall be moved to after the period of the obstacle in question, plus an appropriate "warm-up period". Where it would be unreasonable to force the purchaser to purchase the delivered goods or services as a result of the delay, the purchaser may rescind the contract by means of immediate written notification to Holdijk & Haamberg GmbH.
5. Should Holdijk & Haamberg GmbH be in default in respect of the delivery of goods or provision of services, or if delivery of goods or provision of services proves impossible, for whatever reason, the liability of Holdijk & Haamberg GmbH shall be limited to compensation for damage as per section VIII. of these General Terms & Conditions.

IV. Prices and payment

1. Where nothing to the contrary has been agreed and confirmed in writing, our prices apply ex works, excluding packaging and insurance, plus statutory VAT at the appropriate rate in each case. The date of unconditional credit to our account is decisive in terms of the deadline for payment and any other agreed terms of payment.
2. Should there be any changes to the calculation basis after formation of the contract due to higher costs of material, an increase in statutory VAT or other such circumstances, particularly technically-justified calculation amendments, we are entitled to recalculate the contract value in proportion to the change to the calculation basis in question.
3. The right to setoff shall solely be available to the purchaser where its counterclaims have been established by law, are uncontested or have been acknowledged by us.

V. Shipment and transfer of risk

1. Shipment of the goods that form the subject matter of the contract shall be carried out by us 'ex works', at the purchaser's risk. The risk shall be transferred to the purchaser on dispatch of the goods that form the subject matter of the contract, at the latest on leaving the factory/warehouse. This does not depend on whether the goods are shipped from the place of performance.
2. If shipment of the goods is delayed or if there is a delay in acceptance, the risk will be transferred to the purchaser when the goods are cleared for shipment.
3. The goods will be insured against transportation damage solely where this is specifically requested by the purchaser and at the purchaser's expense. The cost of packaging will be calculated at cost price and packaging is non-returnable.

VI. Retention of title

1. We shall retain title to the purchased item(s) until all payments related to the delivery contract have been received. Where the purchaser is in breach of contract, particularly in the event of payment default, we may take steps to repossess the purchased item(s). Where we are forced to repossess the purchased item(s), we will implicitly rescind the contract. Having repossessed the purchased item(s), we may dispose of the item(s); the amount thus realised being credited against the purchaser's liabilities, less reasonable costs incurred in disposing of the item.
2. The purchased item(s) and/or the item(s) that replaces it under the following terms to which retention of title applies will be referred to below as the 'goods subject to retention of title'.
3. The purchaser shall store the goods subject to retention of title, free of charge, for Holdijk & Haamberg GmbH. The purchaser must treat the purchased item(s) with care; in particular, the purchaser must insure the same at its own expense at the original value against the risk of fire and water damage, and theft.
4. The purchaser may process and sell the goods subject to retention of title in normal business dealings unless they are repossessed (section 9). Goods subject to retention of title must not be pledged or subject to conditional bills of sale.
5. Where the goods subject to retention of title are processed by the purchaser, we hereby agree that the processing operations shall be performed in the name and at the expense of Holdijk & Haamberg GmbH as manufacturer of the goods, and that Holdijk & Haamberg GmbH shall immediately acquire title to, or - where the processing operations are performed using materials from more than one owner or where the value of the processed item exceeds the value of the goods subject to retention of title - joint ownership (partial ownership) of the newly created item. The partial ownership will be equal to the ratio between the value of the goods subject to retention of title and the value of the newly created item. In the event of Holdijk & Haamberg GmbH not acquiring title under such conditions, the purchaser shall immediately cede title to its future possession or - subject to the ratio referred to above - joint ownership of the newly created item as collateral for Holdijk & Haamberg GmbH. Should the goods subject to retention of title be combined with other items to make a single item or be inseparably mixed, and should the other items be regarded as the main item, Holdijk & Haamberg GmbH shall transfer its joint ownership of the single item, where it has ownership of the main item, to the purchaser in proportion, subject to the ratio referred to in the first sentence.
6. In the event of resale of the goods subject to retention of title, the purchaser shall immediately cede the payment for the sale received from the acquiring party to Holdijk & Haamberg GmbH, where Holdijk & Haamberg GmbH has a joint stake in the goods subject to retention of title due to joint ownership. The same applies for any other receivables that replace the goods subject to retention of title or otherwise arise from the resale of the goods subject to retention of title such as, for instance, insurance claims or claims for unauthorised actions in the event of loss or destruction. Holdijk & Haamberg GmbH authorises the purchaser to collect receivables ceded to Holdijk & Haamberg GmbH in its own name. This authorisation may be revoked at any time. Holdijk & Haamberg GmbH may solely revoke this collection mandate in the event of repossession.
7. Where third parties seize the goods subject to retention of title, not least by means of garnishment, the purchaser shall immediately inform them of the ownership of Holdijk & Haamberg GmbH and notify Holdijk & Haamberg GmbH of the same, so that it may enforce its ownership rights. Where the third party is not in a position to reimburse Holdijk & Haamberg GmbH the legal or out-of-court expenses incurred in this context, the purchaser shall accept liability for this.
8. The goods subject to retention of title or the items or receivables that replace them will be released by Holdijk & Haamberg GmbH where their value exceeds the value of the secured claims by 50%. Under such circumstances, Holdijk & Haamberg GmbH shall be free to choose the individual items to be released.

9. Where the purchaser is in breach of contract - particularly in the event of payment default - and Holdijk & Haamberg GmbH terminates the contract (repossession) Holdijk & Haamberg GmbH may demand the surrender of the goods subject to retention of title.

VII. Warranty claims

1. The warranty period shall be one year from delivery or, where acceptance is required, from acceptance. This period does not apply to claims for compensation for damage made by the purchaser due to death, personal injury or damage to health, nor to intent or grossly negligent breach of duty on the part of Holdijk & Haamberg GmbH or subcontractors working for it, which come under the statute of limitations in accordance with statutory regulations.
2. The items supplied must be carefully inspected immediately on delivery to the purchaser or to a third party nominated by the purchaser. The items will be deemed to have been accepted by the purchaser in respect of visible defects or other defects that could have been detected by careful, immediate inspection if Holdijk & Haamberg GmbH has not received written notification of defects within seven working days of delivery. In relation to other defects, the delivered goods will be deemed to have been accepted by the purchaser if Holdijk & Haamberg GmbH does not receive a notification of defects within seven working days of the point at which the defect was identified; if the defect could have been identified by the purchaser under normal conditions of use at an earlier stage, the earlier date will be applicable to the start of the complaint period. At the request of Holdijk & Haamberg GmbH, a rejected delivered item may be returned carriage paid to Holdijk & Haamberg GmbH. Where the complaint is justified, Holdijk & Haamberg GmbH shall reimburse the cost of the most inexpensive mode of shipment; this does not apply where the costs increase due to the delivered item being situated in a place other than that of intended use.
3. In the event of material defects in the delivered goods, Holdijk & Haamberg GmbH may and, indeed, is obliged to repair or replace the goods in question at its discretion, within a reasonable time frame. Should this not be possible, either because to do so would be infeasible or unreasonable, or on refusal or unreasonable delay of repair or replacement, the purchaser may rescind the contract or reduce the purchase price appropriately.
4. Where a defect is due to a fault on the part of Holdijk & Haamberg GmbH, the purchaser may invoke the compensation conditions set out in section VIII. of these General Terms & Conditions.
5. The warranty shall be invalidated if the purchaser makes changes to the delivered goods itself or has a third party make changes to the delivered goods, in both cases without seeking prior permission from the seller, making repair of the defect impossible or unreasonably complicated. In any event, the purchaser must bear any extra costs incurred in repairing the defect due to the changes made. No liability will be assumed for the following instances in particular: unsuitable or improper use; incorrect installation, for instance, commissioning by the purchaser or a third party; normal wear and tear; incorrect or negligent handling; inappropriate maintenance; unsuitable operating equipment; defective construction work; unsuitable foundations, and chemical, electro-chemical or electrical factors for which Holdijk & Haamberg GmbH is not responsible.
6. Any one-off agreement with the purchaser to deliver used items shall exclude any form of warranty for defects.

VIII. Liability of supplier, exclusion from liability

1. The liability of Holdijk & Haamberg GmbH for compensation of damage, irrespective of the legal grounds, but particularly due to infeasibility, delay, defective or incorrect delivery, breach of contract, breach of duty, breach of duties during contract negotiations or civil wrong shall be limited in accordance with this section (VIII.) where fault can be apportioned in the case in question.
2. Holdijk & Haamberg GmbH is not liable in the event of ordinary negligence of its management bodies, legal representatives, staff or other subcontractors, where this does not concern breach of obligations essential to the contract. Obligations essential to the contract are those relating to punctual delivery and installation of the delivered item, its being free of legal deficiencies and material defects that would impair its ability to function or its fitness for use to more than an inconsiderable degree, plus obligations to provide advice, protection and to exercise care that enable the purchaser to use the delivered item, or that aim to protect the purchaser's staff from personal injury or protect the purchaser's property from significant damage.
3. Where Holdijk & Haamberg GmbH is liable in terms of compensation for damage in accordance with VIII. (2), liability is limited to damage or loss that Holdijk & Haamberg GmbH could have reasonably assumed to be a possible consequence of breach of contract on formation of the contract or that it should have anticipated by applying due care and attention. Indirect damage or consequential loss that results from defects in the delivered goods is, furthermore, solely subject to replacement where the damage or loss could be expected if the delivered goods were subjected to the intended use.
4. In the event of liability for ordinary negligence, the duty of Holdijk & Haamberg GmbH to replace the goods under the terms for damage to property shall be limited to EUR 6.000.000, for financial losses EUR 1.000.000, per claim (in line with the limit of its product liability insurance or personal liability insurance cover at the time), even where it concerns a breach of obligations essential to the contract.
5. The exclusions and limitations of liability referred to above shall apply to the same extent where the management bodies, legal representatives, staff and other subcontractors of Holdijk & Haamberg GmbH are concerned.
6. Where Holdijk & Haamberg GmbH provides technical information or advice and this information or advice does not form part of the services agreed in the contract, it must be provided free of charge and with the exclusion of any liability.
7. The restrictions of this section (VIII.) do not apply to the liability of Holdijk & Haamberg GmbH due to deliberate actions, specifically guaranteed characteristics, death, personal injury or damage to health, or liability under the terms of the German Federal Product Liability Act (*Produkthaftungsgesetz*).

IX. Industrial property rights

1. Under the terms of this section (IX.), Holdijk & Haamberg GmbH is responsible for the delivered goods being free from third-party industrial property rights or copyright. Either partner to the contract shall immediately notify the other partner in writing, should it be made aware of a claim in respect of a breach of any such right.
2. In the event of the delivered goods being in breach of third-party industrial property rights or copyright, Holdijk & Haamberg GmbH may, at its discretion and at its own expense, modify or exchange the delivered goods in such a way that they are no longer in breach of the industrial property rights or copyright referred to above, yet continue to fulfil the contractually-agreed functions, or, alternatively, obtain right of use for the purchaser by entering into a licence agreement for the purchaser. Should Holdijk & Haamberg GmbH not be able to achieve this within a reasonable period of time, the purchaser may rescind the contract or reduce the purchase price appropriately. Any claims for compensation for damage or loss shall be subject to the limitations of section VIII. of these General Terms & Conditions.
3. Where goods of other manufacturers supplied by Holdijk & Haamberg GmbH infringe such rights, Holdijk & Haamberg GmbH may, at its discretion, enforce its claims against the manufacturers and sub-suppliers at the purchaser's expense or assign them to the purchaser. In such cases, claims against Holdijk & Haamberg GmbH shall solely be acknowledged under the terms of this section (IX.), where the claims referred to above against the manufacturers and sub-suppliers enforced by the courts are unsuccessful or have little prospect of success, for instance, due to insolvency.
4. The industrial property rights relating to designs and drawings made by Holdijk & Haamberg GmbH, and to its software and devices are held by Holdijk & Haamberg GmbH, even where the purchaser has assumed the costs for the same.

X. Miscellaneous

1. This contract is subject to the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
 2. We may process data obtained due to the existence of a relationship with our customers in line with the provisions of the German Federal Data Protection Act (*Bundesdatenschutzgesetz*).
 3. Unless otherwise specified in the order confirmation, our place of business is the place of performance. The legal venue is the court with jurisdiction over the site of our registered office.
 4. Should any of the stipulations and terms above be unworkable or subject to exploitation through a loophole, the other stipulations and terms shall remain unaffected. Any stipulations that are found to be unworkable shall be replaced by new provisions that aim to match the economic effect.
- Status as of August 2018
Holdijk & Haamberg GmbH
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