

Hansa Armaturen GmbH

INTERNATIONAL TERMS AND CONDITIONS OF SALE

Applicable in international (cross-border) business transactions with entrepreneurs and legal persons under public law

1. General provisions

- 1.1 The supply of fittings, parts of fittings, installations or other products of Hansa Armaturen GmbH (hereinafter: "HANSA") shall be governed exclusively by the following Terms and Conditions. Terms and conditions that conflict with or deviate from these Terms and Conditions shall not apply, unless their application has been expressly approved by HANSA in writing. The following Terms and Conditions shall apply even if HANSA makes the delivery to the customer without reservations while being aware of the customer's conflicting or deviating terms and conditions.
- 1.2 All agreements made between HANSA and the customer must be recorded in writing. Oral agreements made prior to or at the time of conclusion of the contract must be confirmed by HANSA in writing in order to be valid.

2. Items purchased

The items purchased shall be finally determined by the specifications set out in the confirmation of the order. Deviations which are customary in the trade shall not result in the goods being considered not to be as agreed.

3. Formation of contract

- 3.1 All offers of HANSA shall be subject to change and non-binding unless they are expressly designated as binding.
- 3.2 Pictures, drawings, information about weight, measurement, performance and consumption and other descriptions of the goods that may be contained in the documentation which forms part of the offer shall be approximations only unless they are expressly stated to be binding. Such items shall not constitute an agreement on, or guarantee of, an according quality of the goods.
- 3.3 Orders shall not become binding until they have been confirmed by HANSA by means of a written order confirmation. Order confirmations that are generated using automatic devices and, therefore, do not contain a name and signature shall be deemed written order confirmations. If HANSA does not respond to offers, orders, requests, or other declarations from the customer, this shall only be deemed approval if an express written agreement to this effect has been made between HANSA and the customer. To the extent that an order confirmation contains obvious errors, misspellings or calculation mistakes, it shall not be binding upon HANSA.
- 3.4 Cost estimates shall be non-binding and must be paid for unless expressly otherwise agreed.

4. Prices

- 4.1 Unless a specific agreement has been made, all prices are "ex works" (EXW, as defined by Incoterms® 2010; D-47138 Duisburg), excluding packaging, freight and insurance.
- 4.2 If something other than "ex works" has been agreed, the costs incurred for packaging, freight and insurance shall be charged separately.
- 4.3 The prices stated in the order confirmation shall apply. If the customer does not receive an order confirmation or if the order confirmation does not contain any prices, the price list applicable at the time the respective delivery is made shall apply.

- 4.4 To the extent that deliveries of replacement parts and return shipments of repaired goods are not covered by liability for defects as to quality, HANSA shall charge reasonable lump-sum costs for shipping and packaging plus the remuneration for the goods or services provided by HANSA.
- 4.5 In deviation from Sec. 195 German Civil Code, HANSA's claims for payment shall become time-barred after five years.

5. Terms of payment

- 5.1 Unless otherwise agreed in writing, the purchase price plus the cost of packaging, freight and insurance, where applicable, shall be payable without any deduction and free of charge for HANSA within 30 days of the receipt of the invoice, by transfer to a bank account of HANSA the details of which have been stated in the invoice. The deduction of a discount for prompt payment must be agreed in writing.
- 5.2 Payments shall be made in the currency in which the price is stated in the invoice. If no currency is stated in the invoice, the price must generally be paid in EUROS.
- 5.3 A payment shall be deemed made when HANSA is able to dispose of the amount. If HANSA accepts means of payment other than cash, payment shall again be deemed made when the amount owed has been credited unconditionally to the bank account of HANSA and/or when HANSA is able to dispose of such amount.
- 5.4 If the time allowed for payment is exceeded by more than 30 days, this shall constitute a material breach of contract.
- 5.5 HANSA may, without prejudice to any other legal remedies, charge interest at a rate of 9 percentage points above the base rate of the European Central Bank; the customer shall be free to prove that the interest loss actually suffered remains significantly below this amount.
- 5.6 If the customer defaults on a payment, HANSA shall have the right to demand immediate payment of all claims arising from the business relationship which are due and not subject to any defences.
- 5.7 The customer shall only have the right to set its own claims off against claims of HANSA if and to the extent that the customer's claims are undisputed or have been established in a judgment that cannot be appealed against or are ready for a decision after they have been pending at law.
- 5.8 The customer shall only have the right to retain payments if and to the extent that the customer's claims are undisputed or have been established in a judgment that cannot be appealed against or are ready for a decision after they have been pending at law.
- 5.9 HANSA shall have the right to make the performance of outstanding deliveries or services contingent upon the customer paying in advance or providing security if circumstances become known after the conclusion of the contract which could significantly reduce the customer's creditworthiness and jeopardize the payment of HANSA's outstanding claims under the relevant contract by the customer. This shall apply accordingly if the customer refuses to pay, or fails to pay, any outstanding claims of HANSA and undisputed objections against HANSA's claims or objections that have been established in a judgment which cannot be appealed against do not exist.

6. Delivery (transport); delivery periods; default

- 6.1 The scope of the delivery shall be as set out in the written order confirmation from HANSA. Any

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- changes to the scope of the delivery must be confirmed by HANSA in writing to be valid. HANSA reserves the right to make changes to the construction or form of the goods to the extent that such changes are insignificant and not unreasonable for the customer.
- 6.2 Delivery periods must be agreed in writing.
- 6.3 The delivery period shall commence when HANSA dispatches the order confirmation, but not before all documents, (customs) permits, inspections and approvals to be obtained by the customer have been provided in full, all technical issues have been clarified, and the agreed down-payment, if any, has been received. In order for the delivery period to be adhered to, the customer must timely and properly perform its other obligations.
- 6.4 An agreed delivery period shall be deemed met if the goods have left HANSA's business premises by the time the delivery period expires or – if the customer has announced that it will refuse acceptance and the goods have not, therefore, left the business premises – HANSA has given notice that the goods are ready for dispatch. The delivery shall be conditional upon HANSA being timely and properly supplied by its own suppliers.
- 6.5 If the failure to comply with delivery periods is due to force majeure or other obstacles for which HANSA is not responsible, such as war, terrorist attacks or import and export restrictions, including obstacles affecting suppliers, the agreed delivery periods shall be extended for the duration of the existence of such obstacles. This shall also apply if HANSA and/or suppliers of HANSA are affected by industrial action.
- 6.6 In the event of late delivery, the customer shall have no right to cancel the contract as provided by law.
- 6.7 If the customer has ordered the goods in a legally binding manner and the goods do not contain any defects, an exchange of the goods shall not be possible, as a general rule. If HANSA decides in exceptional cases to take the goods back from the customer as a gesture of goodwill, HANSA may charge a fixed handling fee in an amount equal to 20% of the value of the goods.
- 6.8 The customer's claims for damages arising from late delivery, if any, shall be governed by clause 12 below.
- 6.9 If the customer defaults on its obligation to take delivery of the goods or if the customer wilfully or negligently breaches other duties to cooperate, HANSA may claim damages for the losses suffered by HANSA, including additional expenses, if any, in the sum of 0.5% of the price of the goods included in the delivery, at maximum, however, in the total sum of 5% of the price of the goods included in the delivery. The contracting parties shall be free to prove that a larger or smaller amount of additional expenses was actually incurred. This shall not affect any further claims that may result from the customer defaulting on its obligation to take delivery.
- 6.10 In the event of return shipments at the customer's initiative for which HANSA must bear the costs, the choice of the carrier shall be agreed with HANSA before the return shipment is made. If the customer fails to comply with this obligation, HANSA shall not bear the difference between the costs of the carrier chosen by HANSA and the costs of the carrier chosen by the customer.
- 6.11 For shipments to third parties, HANSA shall charge a supplement of 10% of the value of the goods, at minimum, however, the shipping costs actually incurred.
- 6.12 If the customer fails to inform HANSA in due time of the carrier, HANSA may, without prejudice to any other legal remedies, conclude the transport contract with a carrier on customary terms at the expense and risk of the customer.
- 6.13 The transport packaging and all other packaging in accordance with the German Packaging Ordinance shall not be taken back by HANSA; an exception shall be made for standardized reusable packaging, such as Euro pallets and wire pallet containers. The customer shall be obliged to arrange at its own expense for the disposal of the packaging. In doing so, the customer must comply with the disposal requirements prescribed by law and ecologically (recycling loop).
- 6.14 To the extent that the goods were delivered to the customer on Euro pallets or wire pallet containers (load carriers), the customer shall be obliged to return the same number of load carriers of the same type and quality to HANSA at the place where the original delivery occurred.
- 6.15 Partial deliveries and according invoices shall be permitted unless the customer cannot reasonably be expected to accept them.
- 7. Use of software**
- 7.1 If and to the extent that the delivery includes software, the customer shall be granted the non-exclusive right to use the software supplied, including its documentation. The software provided may only be used on the delivery item intended for this purpose.
- 7.2 The customer may reproduce, adapt or translate the software, or convert it from object code to source code, only as permitted by law (Sections 69 a *et seq.* German Copyright Act). The customer undertakes not to remove or alter the manufacturer's specifications – in particular, copyright notices – without the express prior written consent of HANSA.
- 7.3 All other rights in the software and documentation, including any copies thereof, shall remain with HANSA or the supplier of the software. The granting of sub-licences shall not be permitted.
- 8. Transfer of risk**
- Unless expressly otherwise agreed, delivery shall be "ex works" (EXW, as defined by Incoterms® 2010; D-47138 Duisburg), which means that the risk of accidental loss or destruction of, or of an accidental deterioration in, the goods shall pass to the customer as soon as the goods have been handed over to the person in charge of carrying out the transport or have left the warehouse of HANSA for shipment. This applies also if partial deliveries are made or if HANSA has assumed further obligations, such as bearing the transport costs or assembling the goods at the customer's place. At the request of the customer, HANSA shall insure the goods at the customer's expense against the risks specified by the customer by taking out a transport insurance policy.
- 9. Taking delivery**
- The customer shall have no right to refuse to take delivery of shipments because of insignificant defects. The customer shall be obliged to take delivery even if the goods supplied exceed, or fall short of, the agreed quantity by up to 5% or if the goods supplied are delivered slightly early.
- 10. Complaints and notifications of defects**
- 10.1 The customer shall forfeit its right to claim that the goods or documents are not as agreed if this fact can be seen at the time the goods are received and the customer does not report this fact to HANSA, along with a detailed description of the respects in which the goods or documents are not as agreed,

without undue delay and in any case within 15 days after the goods are received at the customer's place of business or at any other agreed place of delivery. The adhesive labels on the cardboard boxes, the labels specifying the contents and the inspection sheets that are enclosed with the shipment shall be sent to HANSA along with the notification. Any other defects as to quality shall be reported by the customer in writing without undue delay after they are discovered.

- 10.2 If, upon receipt of the goods at the customer's place of business or at any other agreed place of delivery, there are indications that the goods might not be as agreed (obvious and hidden defects), the customer shall forfeit its right to claim that the goods are not as agreed if the customer fails to carry out the necessary examinations without undue delay and does not inform HANSA within 15 days after a finding to this effect has been made that the goods are not as agreed.
- 10.3 HANSA shall cease to be liable for the goods or documents not being as agreed if this fact is not timely and properly reported pursuant to clause 10.1 or 10.2 above or if the customer fails to make use of the legal remedies resulting from this fact by providing HANSA with written notice within a preclusion period of 24 months of the receipt of the goods by the customer.
- 10.4 The right shall be forfeited even if the customer has a reasonable excuse for not giving proper notice.
- 10.5 If a notification of defects is unjustified, HANSA may demand to be compensated by the customer for the expenses incurred by HANSA, unless the customer proves that the unjustified notification of defects was not due to wilful misconduct or negligence on the part of the customer.

11. Defects as to quality/Defects as to title

- 11.1 Claims for defects as to quality shall become time-barred within 24 months. The preceding provision shall not apply if longer, mandatory limitation periods are prescribed by law.
- 11.2 The limitation period for defects as to quality shall commence upon receipt of the item (clause 5 above). A repair or replacement delivery, if made as a gesture of goodwill, shall not result in the limitation period starting anew.
- 11.3 The customer's right to cancel the contract shall be excluded if the goods have already been delivered, unless the non-conformity of the goods constitutes a material breach of contract and is not remedied by HANSA within a reasonable additional period of time of not less than 4 weeks set by the customer.
- 11.4 The customer's claims regarding expenses that need to be made for the purposes of the repair or replacement delivery, in particular, transport, travel, labour and materials costs, shall be borne by HANSA. However, such claims shall be excluded to the extent that the expenses are higher as a result of the delivery item having subsequently been brought to a place other than the customer's place of business – unless such relocation is in accordance with the intended use of the delivery item.
- 11.5 In the event that the goods contain an insignificant defect, the customer may only reduce the purchase price. A defect shall be deemed insignificant if it does not reduce the value of the goods by more than 10%.
- 11.6 Defects as to quality shall not include:
- Natural wear and tear; typical wearing parts are, in particular, the products offered by HANSA as replacement parts. Upon request, HANSA will provide the customer with a list of replacement parts;

- Qualities of the goods or damage resulting from improper handling, storage or maintenance, from failure to comply with installation and maintenance instructions (see HANSA installation and operating manual) or from excessive strain or use after the risk has passed;
- Qualities of the goods or damage resulting from force majeure, from extraordinary external impacts that are not intended according to the contract or from the goods being used in a manner which does not correspond to their contractually intended or customary use.

Claims for defects as to quality shall not exist if the goods are altered by a third party, unless the alteration did not cause the defect or the third party was expressly instructed by HANSA.

HANSA shall not be liable for any quality of the goods which is due to the construction or the material chosen if the customer prescribed the construction or material.

- 11.7 Warranty claims of the customer for defects as to quality shall be excluded if and to the extent that the customer had the defect removed by technically inexperienced third parties.
- 11.8 Warranty claims may be asserted by the customer only. The customer shall have no right to assign its warranty claims against HANSA unless HANSA has expressly approved such assignment in writing.
- 11.9 The provisions of this clause 11 shall apply accordingly to defects as to title which do not consist in an infringement of third-party property rights.

12. Claims for damages

- 12.1 Strict liability for damages under the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded. Taking the following clauses into account, the contracting parties shall generally only be liable for damages in cases where they have acted wilfully or negligently.
- 12.2 HANSA shall be liable without limitation for damage resulting from breach of guarantee or from death, bodily injury or damage to health. The same shall apply to wilful misconduct and gross negligence, mandatory statutory liability for product defects (especially under the German Product Liability Act), and liability if defects were concealed with fraudulent intent. In cases of slight negligence, HANSA shall only be liable if material obligations are violated which result from the nature of the contract and are of particular importance for achieving the purpose of the contract. If such obligations are violated, and also in the event of default or if performance is impossible, HANSA's liability shall be limited to the damage that can typically be expected with this contract.

13. Retention of title

The goods supplied shall remain the property of HANSA until the purchase price has been paid in full. The customer shall be obliged to take all measures which are necessary to comply with this retention of title – or any equivalent security interest in the country in which the customer is based or in the country of destination, if different – and furnish HANSA with supporting documentation upon request. Failure to comply with this clause shall constitute a material breach of contract.

14. Cancellation of the contract

- 14.1 If the customer breaches the contract, in particular, if the customer defaults on its payment obligations, HANSA may – without prejudice to any other contractual and statutory rights – cancel the contract after a reasonable additional period of time set for

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- performance has expired. The setting of an additional period of time may be dispensed with if the requirements stipulated in clause 5.4 above are met.
- 14.2 HANSA shall additionally have the right to cancel the contract without setting an additional period of time for performance if the customer has stopped payment, filed for insolvency or applied for the institution of similar proceedings against its assets for debt settlement purposes.
- 14.3 After notice of cancelation of the contract has been given, the customer must grant HANSA or HANSA's agents without undue delay access to the goods which are subject to the retention-of-title clause and surrender such goods. For the purposes of the settlement of HANSA's due claims against the customer, HANSA may sell the goods which are subject to the retention-of-title clause otherwise after a timely announcement to this effect. Upon deduction of reasonable selling costs, the proceeds from sale shall be credited against the customer's liabilities.
- 14.4 The provisions of this clause 14 shall not operate to limit any statutory rights or claims.
- 15. Confidentiality**
- 15.1 The customer undertakes to treat any agreements made from time to time as strictly confidential. The customer undertakes to treat all commercial and technical details which are not obvious and of which the customer obtains knowledge as a result of the business relationship as a business secret.
- 15.2 Drawings, models, patterns, samples or similar items may only be used for the purpose of performing the contract and must not be made available to, or otherwise accessible by, unauthorized third parties. Such items may only be reproduced where this is necessary for operational reasons, within the limits defined by copyright law.
- 16. Duty to cooperate**
- The parties mutually undertake to take all reasonable measures which are necessary to achieve the purpose of the contract and to refrain from whatever would conflict with achieving and maintaining the purpose of the contract.
- 17. Governing law**
- All contracts entered into as part of the business relationship between HANSA and the customer and their conclusion shall be governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG). Any matters that are not dealt with in the Convention or cannot be decided in accordance with the basic principles of the Convention shall be decided in accordance with the substantive law applicable at HANSA's place of business.
- 18. Arbitration/Place of jurisdiction**
- 18.1 Whenever a legal dispute arises out of and in connection with this agreement and its implementation, the contracting parties may choose whether to turn to the ordinary courts of law or whether to bring the matter before an arbitral tribunal.
- 18.2 If the parties turn to the ordinary courts of law, the exclusive place of jurisdiction for all disputes arising out of and in connection with this agreement and its implementation shall be Stuttgart, Germany (in the event of local court proceedings, the Local Court of Stuttgart in D-70190 Stuttgart, Germany). However, HANSA shall additionally have the right to sue the customer instead at the customer's place of business.
- 18.3 If the parties turn to an arbitral tribunal, all disputes arising out of or in connection with the present agreement shall be finally decided in accordance with the Arbitration Rules of the German Institution of Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit e.V.* (DIS)). The DIS Arbitration Rules are available in German, English, French, Spanish, Chinese, Russian and Turkish, amongst other languages, at <http://www.dis-arb.de/de/16/regeln/uebersicht-id0>.
- 18.4 The arbitral tribunal shall be comprised of three arbitrators. Unless otherwise agreed between the parties, at least one of the individual arbitrators must have studied law and completed such studies successfully. The arbitrators must be in command of the language of the arbitral proceedings.
- 18.5 The language of the arbitral proceedings shall be German unless the parties agree on another language for the arbitral proceedings.
- 18.6. The place of arbitration shall be Stuttgart, Germany.
- 19. Place of performance/Miscellaneous**
- 19.1 The place of performance for all obligations that are to be performed by the parties shall be Stuttgart, Germany.
- 19.2 Any transfer or assignment of rights and obligations of the customer to third parties shall require the written consent of HANSA.