

**1. Area of Application**

- (1) These Terms of Sale and Delivery shall be deemed to form an integral part of all our offers and of contracts with all purchasers who at the time of concluding the contract transact their business in their commercial or self-employed capacity (entrepreneurs) or are legal entities under public law or represent special assets under public law, both in current and in future business relations.
- (2) Objection is hereby expressly raised against any business conditions quoted by the purchaser that deviate from these Terms of Sale and Delivery.

**2. Offers, Declarations, Orders**

- (1) Our offers are understood without engagement, subject to prior sale.
- (2) Incoming orders shall not be binding upon us until such time as we have acknowledged them in writing. Any verbal agreements that have not been confirmed in writing shall be deemed null and void.
- (3) All orders shall be processed exclusively in accordance with our Terms of Sale and Delivery. Any deviations from said terms require our prior confirmation in writing. Any orders placed by the purchaser shall be irrevocable.
- (4) All documents, such as illustrations, drawings and information concerning weights, capacities, consumption and/or energy requirements shall be understood as information with approximate value unless we have expressly referred to same as binding upon us. Subject to technical changes according to the latest state of technology.
- (5) Our prices are understood as ex works delivery, without engagement. As a principle, the prices charged shall be the prices valid on the day of delivery.

**3. Delivery Obligations, Delivery Periods and Acceptance**

- (1) The sole criteria for the scope of delivery shall be the provisions of our order acknowledgement.
- (2) Acts of God like strikes or lockouts in either factories manufacturing our start materials or in our plant, or any event that may prevent supply manufacture or delivery, shall during the period of said act or event, release us from our obligation to deliver, and the purchaser shall forfeit all rights to claim for damages and/or rescission.
- (3) Unless otherwise agreed, deliveries shall be understood ex works Rellingen, including packing, at the purchaser's risk and expense, even in the event that delivery is carried out using our own vehicles.
- (4) We reserve the right to determine the packing and method of delivery in accordance with standard commercial practices. The packing shall be invoiced at cost price and is non-returnable.
- (5) Except as otherwise provided by contractual agreement, the purchaser shall be deemed as having accepted delivery of the goods upon taking them into service, however latest 14 days after delivery, unless the purchaser has expressly objected thereto in writing within the aforesaid period.

**4. Claims for defects**

- (1) Any complaints arising from apparent defects must be lodged in writing as soon as reasonably possible, latest however within a preclusive period of 14 days (criterion is receipt at our premises). Failure to observe this time limit shall result in forfeiture of all rights to claims for defects. The burden of proof for observance of the time limit shall be incumbent upon the purchaser.
- (2) The purchaser's claims for defects shall be limited to subsequent fulfillment. Only in the event of impossibility in respect of subsequent fulfillment shall the purchaser have the right to choose between abatement of the purchase price (reduction) and rescission of contract.
- (3) All claims for defects shall be forfeited in the event that the purchaser himself or a third party carries out repairs on the machine/device supplied unless he obtained our prior approval.
- (4) We reserve the right to inspect any complaints ourselves and subsequently fulfill the contract as necessary or arrange for another expert to inspect and authorize said expert to carry out any necessary repair. In the event that the inspection shows that the claim for defects is unfounded, we or a third party authorized by us are prepared to carry out the repair at the purchaser's expense and inform the purchaser of the estimated cost. The purchaser shall then decide whether or not to issue an order for repair.
- (5) Any machines or devices sold and designated as second-hand or any spare parts (due to normal wear) shall be exempt from claims for defects.
- (6) The purchaser is herewith informed that satisfactory marking quality can only be obtained with a combination of marking equipment, marking material and proper operation of the marking machine.
- (7) The goods (machines/devices) manufactured and delivered by us are conform with EU Directives. This is assured with our declaration of conformity. Subsequent technical changes or supplements, which are not conducted by us or not with our approval, are not subject to our declaration of conformity and, together with defects caused to the goods delivered by us as a result, are excluded from our claims for defects.

**5. Instruction for Operational Personnel**

In the event that the purchaser should require instruction for his operational personnel, this can be arranged to take place at the factory for a limited period on the purchase machine and at the purchaser's risk. It is also possible for our own mechanics to provide instruction on site. The attached information sheet (**see enclosure**) for personnel instruction shall form an integral part of these Terms of Sale and Delivery.

**6. Copyrights and Patents**

The purchaser shall not infringe any industrial property rights, rights of invention, patents and/or registered designs we may hold on any machines or devices, excepting those in respect of subcontracted components. Imitation and slavish duplication of any machines and/or devices purchased is strictly forbidden.

**7. Reservation of Ownership**

- (1) All sales shall be subject to reservation of ownership. The machines and/or devices shall remain our property until such time as the purchase price and any outstanding amounts owed to us by the purchaser have been paid in full. In the event that the purchaser intends to limit the extent of reservation of ownership, he shall notify us accordingly as soon as reasonably possible. In the event that the purchaser disposes of any machines and/or devices we have delivered, either alone or in combination with other equipment, to a third party prior to settlement of due payment, the purchaser shall undertake to reserve the right of ownership. The purchaser shall already this day assign to us his claim in respect of the purchase price due from resale to the buyer to the equivalent of the amount due for payment to us by the purchaser. This shall apply irrespective of whether the machines and/or devices we have delivered have been resold with or without processing. In the event that the machines and/or devices we have delivered have been resold after combination, processing, or together with other goods, the outstanding amount due to the purchaser from the buyer shall be deemed as assigned to us to the equivalent of the amount of the purchase price contracted between us and the purchaser. We shall be entitled to present to the buyer notice of said assignment.
- (2) The purchaser shall be entitled to collect on our behalf the amount assigned to us in advance. We shall have the right to revoke with immediate effect the authorization to collect and collect the due amount ourselves. The purchaser shall, on demand, be obliged to notify

us of the name and address of the buyer, and the amount of the assigned claim, and to provide us with all information required to assert our claim.

- (3) The purchaser shall be obliged to provide us at all times on demand with information concerning the whereabouts of the reserved machines and devices delivered and concerning the outstanding claim from the resale.
- (4) Attachments or transfers of ownership by way of security in respect of the reserved property and also disposals in respect of claims assigned to us shall be inadmissible.
- (5) The purchaser shall be obliged to notify us in writing as soon as reasonably possible about any attachments in respect of the object of purchase and/or the assigned claim or any other claims which third parties may lodge in respect of the object of purchase. In the event of an attachment we shall also be furnished at the same time with a copy of the attachment order.
- (6) In the event of any action by the purchaser not in conformity with the terms of the contract – in particular default or delay in payment – after a fruitless dunning procedure we shall be entitled to demand the return of the reserved property or, if applicable, assignment of the purchaser's claim for restitution against third parties. It will not be necessary to grant an additional period of time. Neither the return of the goods to us nor our attachment of the reserved property shall constitute rescission. The purchaser shall in the event of the return of goods bear the cost of any depreciation in value suffered by the object of purchase (reserved property) as a result of interim operation.

#### 8. Terms of Payment

- (1) Our invoices shall be payable within 8 days of invoice date, strictly net cash.
- (2) No discounts for cash are admissible while previous invoices remain outstanding.
- (3) Cheques and bills of exchange shall only be accepted in payment after prior written approval and shall be subject to the usual reservations. Upon receipt of bills of exchange, the standard discount and collection charges levied by banks after the due date and also the cost for revenue stamps shall be charged payable immediately to us in cash. We shall not be held liable for punctual presentation and protest. The maximum currency of a bill of exchange shall be 3 months. Payment with bills of exchange shall not constitute cash payment.
- (4) As soon as the purchaser falls in arrears (30 days after due date and receipt of invoice or an equivalent demand for payment), we shall be entitled to charge interest at the rate banks demand for an open credit, however not less than 5 percent over and above the base rate quoted by the European Central Bank at the time. We reserve the right to claim for additional compensation for default.
- (5) In the event that the purchaser gets into financial difficulties or delays payment or one or more of his bills of exchange are protested or he is subject to attachments or his financial situation deteriorates to a considerable extent, we shall be entitled to rescind the contract as far as the purchaser shall not have fulfilled his contractual obligations and demand cash payment for any further deliveries.
- (6) The purchaser shall renounce any claim to right of retention arising from any previous or other transactions associated with the current business relationship. Setting off with counterclaims shall be deemed inadmissible unless said counterclaims have been recognized by us and are due for payment or have been determined to be final and legally binding.

#### 9. Limitation of Liability

- (1) In the event that the purchaser is unable to utilize the delivery item as contractually agreed because we either prior to or subsequent to conclusion of contract negligently omitted or wrongly imparted suggestions or advice or as a result of a violation of other subsidiary contractual obligations - in particular with regard to instructions for operation and maintenance of the delivery item, the provisions of sections 4 and 9.(2) shall apply accordingly, whereby any further claim shall be deemed excluded.
- (2) With respect to any damage not incurred to the delivery item itself, including default or delay in delivery, we shall only be liable - irrespective of any legal reasons - in the event of
  - a. intent;
  - b. gross negligence on the part of the proprietor / the institutions or an officer of the company;
  - c. negligent harm to life, body or health;
  - d. defects which we fraudulently concealed or for whose absence we had warranted;
  - e. defective quality of the delivery item, insofar as liability applies in accordance with the product liability law with respect to personal injury or property damage associated with the private use of items.
- (3) In the event of negligent violation of substantial contractual obligations, we shall also be liable for gross negligence on the part of non-executive employees and in the event of slight negligence, whereby in the latter case liability shall be limited to the extent of typical damage that could reasonably have been foreseen at the conclusion of contract.
- (4) Irrespective of their legal nature, any further claims shall be deemed excluded. This shall also apply to any claims for fruitless costs or expenses.

#### 10. Statute of Limitations

Any claims on the part of the purchaser - for any legal reasons whatsoever - shall become statute-barred after a period of 12 months from date of supply of the purchased item or from date of handing over of the purchased item at the purchaser. The legal time-limits shall apply to claims made under the provisions of section 9.(2) a - e.

#### 11. Utilization of Software

Insofar as software is included in the scope of supply, the purchaser shall be granted a nonexclusive right to use said software and the documentation associated therewith. Said software shall be supplied for use in conjunction with the delivery item for which it has been provided. Utilization of said software on more than one system is prohibited.

The purchaser shall only be entitled, within the scope of the provisions of § 69a ff UrhG (German copyright laws), to copy, revise, translate or convert the object code into source code. The purchaser undertakes not to remove or alter in any way without our prior express permission any references to the manufacturer, in particular any copyright details.

All other rights in respect of said software and associated documentation, including any copies, are reserved by us or the software supplier. The purchaser shall not be entitled to grant sublicenses.

#### 12. Applicable Law, Jurisdiction, Partial Invalidity

- (1) These business relations and the entire legal relationship between us and the purchaser shall be governed by the laws of the Federal Republic of Germany, with the exception of UN legislation covering sales and purchases.
- (2) In the event that the purchaser is a registered merchant as stipulated in the Commercial Code, a legal entity in public law or represents special assets under public law, Pinneberg or Itzehoe shall be stipulated as exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. Otherwise the legal venues shall apply. However, we shall be entitled to institute proceedings at the purchaser's place of business.
- (3) In the event that any provision in these terms and conditions or any provision within the framework of any other agreements is or becomes legally ineffective, this shall not affect the legal effectiveness of any other provisions or agreements.

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## ***Instruction for operational personnel***

It has always been part of tradition at HOFMANN to make constant use of innovation in setting new standards in marking technology and moving decisively to promote them. Progressive development, however, is also accompanied by more demanding, more complicated technology - like in all other fields with regard to technique. Nowadays, numerous systems consist of a combination of mechanics, hydraulics, pneumatics and electronics. A new machine is often enough barely on a par with older models.

As a rule, this process means a constant rise in demands on the technical understanding of operating personnel and their technical skill. It can take a long time before the operating personnel have familiarized themselves with a new technology and show a complete command of the machine. When all is said and done, the resultant quality depends on how well the machine, the marking material and the operating personnel work together. In this case, instruction is only able to provide basic knowledge, and in no way can it replace necessary everyday practice.

In order to ensure that your new machine can reach peak performance and a maximum rate of utilization as rapidly as possible, it is essential for the operating personnel to receive comprehensive instruction. Training ought to be thoroughly prepared in liaison with our after-sales service department and, as far as possible, conducted under conditions similar to those "on the job". In our experience, it is absolutely essential to include the following questions in your checklist:

- Your operating personnel must be adequately qualified and specifically selected for training with the new machine and, of course, must be present. Note: Avoid initially sending third parties for training! In case there could be any language difficulties you have to consult an interpreter.
- The practice course must be sufficiently long in order to guarantee a professional training of your personnel (Note: A few metres practice course on your premises are not sufficient!).
- You have to ensure that a sufficient quantity of suitable marking materials is on hand.
- The marking material earmarked for practising must be exactly the same as the material that will be used later in real marking operations.
- Note: A change in material supplier and/or change of material quality can have a substantial (negative) influence on the function of the machine and the quality of the marking. Often enough, it is then necessary to readjust the machine.
- Operating instructions and other pertinent documentation must be well known by the operating personnel and permanently available during operation of the machine in order to avoid respectively to correct any troubles which may occur.
- In case your operating personnel cannot speak/understand the German language you have to assure that the operating instructions are available in the corresponding translation (for this purpose we can assist you).
- Point out to your personnel that each technical unauthorized modification at the machine and/or an unqualified operation of the machine exclude any warranty claims and shall be considered null and void for any defects and damages resulting from this.

We wish you a smooth-running of your operators training and remain

**HOFMANN GMBH**