

Sale and Delivery Terms (as at January 2018)

Below our Sale and Delivery Terms in English language.
However we want to draw your attention to the fact that the English translation exclusively serves informational purposes; solely the German version is legally binding.



Section 1 Scope

- (1) The following conditions apply to all quotes and contracts of Hofmann GmbH concerning the delivery of machines, devices, replacement parts etc. as well as business services with companies, legal entities under public law or special funds under public law.
- (2) The range of goods offered in our online shop likewise addresses only entrepreneurs as defined in § 14 Abs. 1 BGB (German civil code). With his order, the customer confirms that he uses the goods within the scope of his commercial or freelance field of work, and accepts these conditions of sale and delivery..
- (3) Our deliveries, services and offers are supplied exclusively on the basis of these conditions of sale and delivery. They are valid also for all future contractual relations and business transactions with the ordering party even if they are not separately agreed upon.. Contrary or deviating provisions of the Customer shall not apply, even if we do not specifically oppose their application in each individual case.

Section 2 Quotation and Conclusion of Contract

- (1) Our offers are non-binding and subject to potential prior sale.
- (2) The presentation of goods in the online shop does not represent a binding offer. Rather it is a non-binding invitation to order goods from the online shop. With his purchase order, the purchaser makes a legally binding offer for concluding a sales contract. Upon reception of the purchase offer, the purchaser gets an automatically created e-mail confirming that we have received your order (confirmation of receipt). The confirmation of receipt is not equivalent to an acceptance of the purchase offer.
- (3) The contract becomes valid only with our written confirmation of order, or if we ship the goods – without express letter of acceptance – to the purchaser. This shall also apply to a Customer's order that refers to a quotation we have provided. Orders placed with us by the Customer are irrevocable.
- (4) All contracts are executed solely on the basis and content of the contract concluded in writing, including these Sale and Delivery Terms. The contract concluded in writing reflects all agreements between the contractual parties. Oral agreements that are not confirmed by us in writing are invalid. Supplements and amendments to the agreements made, including these Sale and Delivery Terms, must be made in writing to be valid.
- (5) Weight, performance, usage and power specifications as well as drawings and illustrations are only approximate values insofar as we have not expressly indicated them as binding. We reserve the right to make technical changes in accordance with the state of the art.

Section 3 Prices and Payment Terms

- (1) The prices specified in our order confirmations shall apply. The prices stated are net prices denominated in EUR and are ex-works. Delivery costs, including the costs for packaging, loading, stowage and unloading, are borne by the Customer. The value-added tax applicable at the time of delivery shall also be added onto the prices. A payment is regarded as having been made once we can dispose of the amount.
- (2) We are entitled to adjust the prices in line with cost increases that occur between the time of the order and delivery.
- (3) Payment in our online shop can be made optionally via invoice or credit card. We reserve the right to exclude particular modes of payment.
- (4) The net purchase price is due immediately upon receipt of the order confirmation/invoice by the Customer (with no reduction) if no other payment date is specified in the order confirmation.
- (5) Cheques, bills of exchange and other payment orders are accepted only subject to special arrangement and on account of payment. If bills of exchange are accepted, discount charges or other costs shall be borne by the Customer. Crediting of bills of exchange and cheques is subject to the irrevocable receipt of the face value, and the value date shall be the day on which we are able to dispose of the countervalue.
- (6) Should the Customer not effect payment by the due date, interest of 5% above the base rate shall be charged on the outstanding amounts from the due date; this shall not affect the assertion of higher interest rates and further damages in the event of default.
- (7) Should the financial circumstances of the Customer following the conclusion of the contract change in such a way that our claims no longer appear to be sufficiently secured, we shall be entitled to demand payment in advance or the provision of collateral. Should the Customer reject this, we may withdraw from the Contract or demand compensation once a suitable grace period has lapsed to no effect.
- (8) The Customer waives its right to assert a right of retention from earlier or other business transactions within the current business relationship. The set-off with counterclaims is permitted only if the counterclaims have been acknowledged by us or have been determined to be legally binding.

Section 4 Delivery, Delivery Periods, Default in Delivery

- (1) If no agreement is made to the contrary, deliveries are made from our works in Rellingen at the cost and risk of the Customer, including when such deliveries are made using our delivery vehicles.
- (2) Our order confirmation alone is decisive for the scope of the delivery.
- (3) Delivery periods/times that we specify are generally non-binding, unless a fixed time or appointment has been promised or agreed to in writing. The delivery periods begin only once all performance details have been fully clarified and all of the documents required for the execution of the order have been received. Adherence to binding delivery deadlines is subject to the Customer fulfilling all of its contractual obligations. The delivery deadline is regarded as having been observed should the delivery object have left the works before the delivery period expires or have been declared as being ready for dispatch.
- (4) Should the delivery be delayed for reasons attributable to the Customer, it must compensate any damage or loss caused to us by the delay, including any additional charges. Further claims remain unaffected.
- (5) Events of force majeure as well as strikes or lockouts in our primary materials factories or in our operations as well as events that prevent supply manufacture or delivery, shall release us from our delivery obligations for the duration of such events, without this entitling the Customer to assert claims for compensation or to withdraw from the contract.

Section 5 Delivery, Packaging, Transfer of Risk, Acceptance

- (1) We choose the packaging and delivery method in the customary manner.
- (2) The risk passes to the Customer at the latest upon the delivery goods (whereby the beginning of the loading process is decisive) being handed over to the forwarder, freight forwarder or other third party commissioned to carry out the delivery. Should the delivery or handover be delayed as a result of a circumstance for which the Customer is responsible, the risk passes to the Customer on the day on which the delivery goods are ready for dispatch and we informed the Customer of this fact. The customer shall bear the storage costs following the transfer of risk.
- (3) If nothing to the contrary has been contractually agreed, the goods are regarded as being accepted upon initial usage, but no later than 14 days following delivery, provided that the Customer does not expressly reject such acceptance in writing within this period.
- (4) Transport damage or missing goods are to be reported to the forwarder immediately upon delivery and reported to us in writing.

Section 6 Claims for Defects

- (1) The warranty period amounts to twelve months starting upon the successful receipt by the Customer of the goods supplied by us.
- (2) The Customer must observe its commercial inspection and notification obligations. If it is clearly discernible, any defect must be reported in writing immediately, but no later than within 14 days of receipt (by us) of the goods. A hidden defect is to be reported to us in writing immediately upon its discovery. Should the Customer fail to provide such notification, the contractual object shall be regarded as approved, including in view of the defect.
- (3) Should a defect exist, as supplementary performance we are entitled to choose between repairing the defect or providing a replacement delivery. The Customer may withdraw from the contract or reduce remuneration only if the supplementary performance fails.
- (4) The warranty is waived should the Customer make repairs to the delivery goods itself or arrange such repair by a third party without our prior consent and should the rectification of defects thereby be made impossible or unreasonably impeded. In any case, the Customer must bear any additional costs of defect rectification arising as a result of the repair.
- (5) For every defect notification, we reserve the right to inspect and test the rejected goods. Should an inspection find that no claims for defects apply, we or a third party authorised by us are prepared to make repairs at the cost of the Customer and shall inform the Customer of the anticipated costs. The Customer shall decide whether the repair order is granted.

- (6) Machines and devices sold and indicated as used as well as wear parts (through customary use) are excluded from the liability for defects.
- (7) The Customer is hereby informed that flawless marking quality is possible only in conjunction with marking equipment, marking materials and the proper operation of the marking machines.
- (8) The goods (machines/devices) manufactured and delivered by us comply with EC directives. This is ensured through our declaration of conformity. Subsequent technical alterations or additions not carried out by us or carried out without our approval are not subject to our declaration of conformity and are excluded from our liability for defects, including defects caused to the goods supplied by us as a result.

Section 7 Instructions for the Operating Team:

Should the Customer desire instruction to be provided to the operating team, this can take place in the factory for a limited period, using the machines to be supplied to the user, at the risk of the Buyer. This instruction may also be provided on site by one of our assembly staff. The data sheet attached (see [Appendix](#)) for instructions is a component of these Sale and Delivery Terms.

Section 8 Copyright and Patents

If commercial property rights, inventor rights, patents and/or utility model rights exist for the machines and devices sold by us, excluding supplied parts, these may not be violated by the Customer. The imitation or slavish copying of the machines and devices sold is expressly forbidden.

Section 9 Reservation of Title

- (1) All deliveries are subject to reservation of title. The machines, devices and spare parts supplied by us remain our property until the purchase price has been paid in full and all claims that we have against the Customer have been settled. Any foreseeable restriction in the reservation of title is to be reported to us immediately. Should the machines and/or devices and/or spare parts supplied by us be sold to third parties alone or in connection with other equipment before the purchase price has been paid by the Customer, the Customer undertakes to reserve ownership rights. It shall assign us the purchase price claim from the buyer arising from the further sale in the amount to which payment is still outstanding for our purchase price. This applies irrespective of whether the machines and/or devices and/or spare parts supplied were sold on without or following further processing. Should the machines, devices or spare parts supplied by us be sold on after being connected or processed with other goods or alongside other goods, the Customer's claim against its buyer in the amount of the purchase price agreed between us and Customer is regarded as assigned. We are entitled to inform the buyer of the assignment.
- (2) Provided that ownership has not yet been transferred, the Customer undertakes to treat the purchased object with care, and in particular to insure it sufficiently against fire, water and theft damage at its own expense. If maintenance and inspection work is required, the Customer is to carry this out in good time at its own expense.
- (3) The Customer is entitled to collect the claim assigned to us in advance. We have the authority to collect with immediate effect and to collect the claim ourselves. At our request, the Customer undertakes to inform us of the names and address of its buyer and the amount of the claim assigned and to provide us with all information required for the assertion of the assigned claim.
- (4) The Customer undertakes, at our request and at any time, to provide us with information regarding the retention of the machines, devices and spare parts supplied subject to reservation of title and the claim arising from the resale.
- (5) Pledges or collateral agreements concerning the goods subject to the retention of title as well as disposals of the claims assigned to us are not permitted.
- (6) The Customer shall inform us immediately and in writing of any pledging of the purchase object and/or the assigned claim or other claims that third parties have asserted with regard to the purchase object. In the case of pledging, a copy of the pledging record is to be sent to us at the same time.
- (7) In the case of conduct by the purchaser that is in breach of contract – delayed payment in particular – we are entitled following a reminder to take back the goods subject to the retention of title or, if necessary, to demand the assignment of the Customer's right to recover possession against third parties. It is not necessary to set a grace period. The withdrawal or the seizure of the goods for which we retain title shall not be regarded as a withdrawal from the contract. Value reductions that arise for the purchase object (goods subject to the retention of title) through business transacted in the meantime are to be borne by the Customer upon withdrawal.
- (8) In the case of the processing with goods still under the ownership of a third party, we acquire co-ownership of the newly created items. The extent of the co-ownership results from the proportion of the invoice value of the goods supplied by us to the invoice value of the remaining goods.

Section 10 Limitation of Liability

- (1) If the delivery object cannot be used in a contractually compliant way by the Customer for reasons for which we are at fault as a result of the non-performance or faulty execution of proposals and advice given before or after the conclusion of the contract or through the violation of other ancillary contractual obligations, in particular instructions for the operation and maintenance of the delivery object, Sections 4 and 10 (2) shall apply accordingly, to the exclusion of further claims of the Customer.
- (2) For damage to persons we are liable in accordance with statutory provisions and otherwise only in the event of malice and gross negligence by the management or managerial employees. Liability under product liability law for the fraudulent concealment of a defect or the assumption of a guarantee shall remain hereby unaffected.
- (3) In the event of the culpable breach of major contractual obligations, we are also liable in the event of the gross negligence of non-managerial employees and in the event of slight negligence; liability in the latter case is limited to contractually typical damage that could reasonably have been anticipated.
- (4) Further claims are excluded, regardless of their legal basis.

Section 11 Software Use

If software is included in the delivery, the customer is granted a non-exclusive right to use the provided software and its documentation. It may be used on the delivery object intended for this purpose. The software may not be used on more than one system. The Customer may copy, edit, translate or convert object code into the source code for the software only to the legally permissible extent (Sections 69a et seq. German Copyright Act). The Customer shall not remove or amend manufacturer specifications, especially copyright symbols, without our prior express consent. All other rights to the software and documentation, including copies thereof, remain with us or with the software provider. The Customer is not entitled to issue sublicenses.

Section 12 Data

- (1) The personalized data collected within the scope of an order are used by Hofmann for handling and processing the inquiries. This data is collected, processed and used exclusively within the framework of the applicable data protection laws..
- (2) If applicable, data required for business processing is handed over to associated companies and shipping agents for the purpose of order processing. This data may be used by the associated companies exclusively for this purpose.
- (3) Moreover Hofmann uses this address and order data for advertising purposes. The customer can contradict the use of the data for advertising purposes anytime. The contradiction can be effected via informal communication by mail to Hofmann GmbH, Industriestrasse 22, 25462 Rellingen, or via e-mail to (info@hofmannmarking.de).

Section 13 Place of Fulfilment, Applicable Law, Place of Jurisdiction, Severability

- (1) The place of fulfilment for both parties and for all current and future claims arising from the contractual relationship shall be Rellingen.
- (2) The law of the Federal Republic of Germany shall apply exclusively, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- (3) The exclusive place of jurisdiction for all disputes arising both directly and indirectly from the contractual relationship shall be Itzehoe. Furthermore, we are entitled to assert claims against the Customer at its headquarters.
- (4) Should a provision of these Sale and Delivery Terms or a provision of other agreements be or become valid, the validity of all remaining provisions or agreements shall remain hereby unaffected. In this case, the parties shall replace the ineffective provision with an effective provision that attains as closely as possible the economic success intended with the ineffective provision.

HOFMANN GmbH

Instruction for operating 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