



I. Scope of application

1. The following general conditions apply to any foreign business deliveries by HARDTOP Gießereitechnologie GmbH, hereinafter referred to as HARDTOP unless otherwise stated in the proposal or in the order confirmation. These general conditions also apply in the event that HARDTOP has knowledge of conditions from the customer contrary to or diverging from these general conditions and carries out any deliveries without reservation.
2. Any diverging or supplementary conditions from the customer as well as supplementary agreements are binding only if confirmed by HARDTOP in writing.
3. These general conditions also apply to any future foreign business transactions with the customer.

II. Proposal and conclusion of the contract

1. Proposals are valid in the country where the customer and/or of the person or legal entity inviting to make proposals has its place of business. The customer and/or the person or legal entity inviting to make proposals is liable to HARDTOP for any inconvenience and liability resulting for HARDTOP from the use of supplied products outside such country.
2. Unless otherwise provided for, types of contracts and conclusion thereof under trade practice are construed in accordance with Incoterms 2010 including supplements valid at the point of time of the conclusion of the contract.
3. Unless otherwise provided for, the conclusion of the contract is subject to statutory regulations.

III. Scope of supply and services, pricing

1. The delivery obligation includes any deliveries and services confirmed by HARDTOP in writing. In case of any intended special customisation of the delivered product, any such purpose, use and requirements of the delivered product must be expressly and fully described by the customer in the order and confirmed by HARDTOP.
2. Unless otherwise provided for, prices are net prices ex works, excluding packing which is charged separately.
3. HARDTOP is obliged to respect foreign packing, weighing and customs regulations only if the customer provides precise instructions to HARDTOP in a timely manner. Any additional costs resulting therefrom are borne by the customer.
4. HARDTOP reserves the right to increase or decrease prices for contracts with an agreed delivery time of more than four months corresponding to interim changes in costs, especially due to labour agreements or changes in material prices. HARDTOP will inform the purchaser of such a change in price at least four weeks in advance in writing. The customer then has the legal right of cancellation or withdrawal for the effective date of this price change.

IV. Particulars, drawings and other documents

1. Any specifications issued by HARDTOP as to weights and measurements, drawings, explanations, descriptions and illustrations are relevant as approximate values only; documents with final specifications will be supplied upon request in appropriate scale subsequent to the conclusion of the contract. HARDTOP reserves the right to make changes in the technical design on which the proposal is based if and to the extent that the performance and quality of the offered product remain unaffected.
2. HARDTOP reserves exclusive ownership rights and copyrights for all drawings and other documents. Drawings and other documents may not be made available to any third party without HARDTOP's consent and must be returned upon request.

V. Terms of payment

1. Unless otherwise agreed upon, any products are dispatched by HARDTOP only against irrevocable letter of credit or advance payment.
2. Unless otherwise provided for, any payment has to be made as agreed, free of charge and without any deductions, to such paying office as provided by HARDTOP. The payment period is considered to be complied with if the paid amount is at HARDTOP's disposal within such period.
3. In the event that the transfer of money is impossible at the due time for payment in or from any country in which such transfer is required to occur, the customer remains obliged to deposit the equivalent value of the owed amount at the due time for payment in a bank in such country. In case of losses in exchange rates for any such amount deposited in currency other than provided for under the agreement, such losses must be compensated by the customer by supplementary payment.
4. If delivery is delayed without fault of HARDTOP, payments have to be made as would have been required if the delay had not occurred.
5. If the customer is in default in full or in part with payment obligations, the customer is required from that point in time to pay to HARDTOP – without prejudice to any other rights of HARDTOP – default interest per annum in the amount of 9 percentage points more than the German base rate applicable, unless HARDTOP furnishes proof of any larger damage incurred. Fulfilment of all obligations owed to the customer by HARDTOP is dependent upon compliance with any agreed terms of payment and any other obligations owed by the customer to HARDTOP.
6. Any rights of the customer to set off counterclaims or to withhold payment are excluded, unless the counterclaim to be offset or the right to retention is undisputed or has been confirmed by final court decision. HARDTOP is entitled to avoid the exercise of any right of retention by providing security – including by means of guarantee.
7. If it becomes recognizable after the completion of contract (e.g., by application for opening of an insolvency procedure or a comparable procedure) that our purchase price claim is or could become endangered by deficient financial solvency of the customer, we are entitled to the refusal of service and/or – if applicable after setting a deadline – to the withdrawal of the contract (§321 Civil Code).

VI. Time of performance

1. Delivery periods are binding only if confirmed by HARDTOP in writing.
2. As a prerequisite for the observance of delivery periods the order must be entirely clear, approvals must have been granted and HARDTOP must have received any and all documents, payments and securities required from the customer in a timely manner. The delivery period will be extended appropriately if and to the extent that any of the foregoing prerequisites should not be fulfilled on time. The delivery time is considered to be complied with if a shipment is ready for dispatch within the agreed period and such notification has been sent to the customer.
3. In the event that HARDTOP should be unable to carry out supplies and services in a timely manner due to force majeure, obstructions through mobilization, war, embargos and/or the occurrence of other - at the time of closing contract - unforeseeable events (e.g. operating breakdown or trouble, trouble with material or energy procurement, delay of transport, strikes, lawful lockout, lack of manpower, energy or resources, trouble with acquisition of necessary official



permissions, regulatory measures or missing, wrong or late deliveries by suppliers) the delivery period will be extended appropriately, though at least for the duration of the delay.

4. If any of HARDTOP's suppliers fail to supply HARDTOP at all, or fail to supply HARDTOP correctly or in a timely manner, and if suppliers do still not supply HARDTOP in a timely manner even despite covering purchases or other hedging transactions, HARDTOP may withdraw from the contract. Such a hedging transaction is considered to exist if on the date of conclusion of the contract HARDTOP has a supply contract, which, on an objective basis assuming smooth operation, is such that with it HARDTOP can supply the customer with the same certainty as it has promised. In any such event, HARDTOP will promptly notify the purchaser of any such circumstances.
5. The customer may claim payment of any contractual penalty only in case of separate agreement on such penalty. Claims for damages incurred by the customer resulting from any delayed delivery – including, without limitation, claims based on wrongful breach of contract, claims based on tort in case of negligent conduct and claims for remote damages – are generally excluded. That does not apply if and to the extent that liability is mandatory under statutory regulations in case of intentional or grossly negligent conduct, of guarantees or of breach in simple negligence of essential contractual obligations for damages which are, under the assumption of intended use, foreseeable and typical of the type of contract.
6. Any additional costs resulting from any interruption or delay caused by the customer of work to be carried out by HARDTOP are borne by the customer.
7. If shipment is delayed for reasons for which HARDTOP is not accountable, HARDTOP is entitled to store any product to be delivered at the customer's risk and to claim compensation for the costs involved. HARDTOP is entitled, but not obliged, to insure any such product against storage risk at the customer's expense.
8. If the customer's scope of obligations includes providing means of transport for delivery and if the customer fails to provide such means of transport at the time indicated in the contract, HARDTOP will be discharged of its delivery obligation through storage and insurance of any product at the customer's risk and expense. The Forwarder's Certificate of Receipt certifies delivery in accordance with the contract.

VII. Inspection and acceptance

1. Inspections in the presence of the customer or of any of the customer's agents as well as special inspections must be agreed upon prior to any such inspection; HARDTOP is entitled to charge the costs for any such inspection to the customer.
2. If an acceptance inspection is to be carried out for the delivered product, such inspection has to be carried out in HARDTOP's manufacturing plant. Acceptance occurs if the customer does not raise any justified complaints until the end of the inspection.
3. In case of waiver by the customer of an agreed acceptance inspection or in the case that the customer is not present at any such inspection, acceptance is deemed to have occurred through inspection by HARDTOP.
4. If inspections are delayed for reasons for which HARDTOP is not accountable, any potential additional costs resulting therefrom shall be borne by the customer.

VIII. Passing of risk

1. Generally, the risk passes to the customer when the delivered product leaves the manufacturing plant or is put at the customer's disposal within the manufacturing plant.

2. However, if and to the extent that pricing is subject to Incoterms 2010 including supplements valid at the point of time of the conclusion of the contract and that such regulations contain any different provisions on the passing of risk, such different regulations apply. If shipment is delayed for reasons for which HARDTOP is not accountable, the risk passes to the customer upon the notification that the shipment is ready for dispatch.

IX. Delivery of products deviating from the agreement

1. As a prerequisite to any claims, the customer must have sufficiently complied with all statutory requirements of inspection and notification of defects, especially according to §377 Commercial Code.
2. Variations of delivered products do not constitute any deviation from the agreement if such variations are within the limits of tolerances stated in the proposal or of otherwise regularly allowable variations.
3. Excluded are claims for goods deviating from the agreement as a result of
 - a. unsuitable or improper use or treatment of products, including, but not limited to, excessive use conditions or improper storage,
 - b. incorrect assembly or installation,
 - c. natural wear and tear or
 - d. unauthorized repair or alteration of products.
4. In the event of delivery of products deviating from the agreement, the customer is entitled to withdraw from the contract or to claim substitute delivery only if claims for damages against HARDTOP are excluded or if the customer cannot reasonably be expected to use such products deviating from the agreement and to claim compensation for any remaining damage. In any such cases, HARDTOP is entitled first to eliminate defects. In the event that such elimination of defects fails and/or causes any delay, which the customer cannot reasonably be expected to accept, the customer is entitled at its option to withdraw from the contract or to claim substitute delivery. The customer is also entitled to such rights if the elimination of defects causes any inconvenience, which the customer cannot reasonably be expected to accept, or if reimbursement of any potential expenses incurred by the customer is uncertain.

X. Liability for damages

1. The liability of HARDTOP for breach of contractual obligations as well as in tort is excluded.
2. This exemption from liability does not apply in cases of deliberate intent or gross negligence. In case of ordinary negligence, it does not apply
 - a. to damages resulting from the injury of life, body or health or
 - b. to damages resulting from the breach of an obligation the fulfilment of which makes the proper execution of the contract possible in the first place and the observance of which the customer relies on and may rely on regularly (cardinal obligation), whereas liability is in this case limited to compensation of, under the assumption of intended use, foreseeable, typically occurring damage.
3. The liability limitations resulting from the above paragraphs do not apply in case of fraudulent concealment of a defect or in case of acceptance of a guarantee for the quality of the goods. The same applies to claims of purchasers according to product liability law.
4. Where liability for damages towards HARDTOP is excluded or limited, this also applies with regard to the personal liability of clerks, employees, staff, representatives and agents of HARDTOP.



XI. Obligation to hold harmless from product liability claims

1. The customer is under the obligation to hold HARDTOP harmless from any claims raised against the company by third parties on the ground of any damage which may have been caused by any product received from HARDTOP, regardless of whether such damage is caused solely by such product or in correlation with any other product built into any final product (product liability).
2. HARDTOP's liability under clauses IX and X remains unaffected.

XII. Reservation of proprietary rights

1. Unless otherwise agreed, the delivered goods remain the property of HARDTOP until any claims from the delivery contract with the customer to which HARDTOP is entitled have been fully paid.
2. The customer has to inform us immediately and in writing about seizures, application for opening of an insolvency procedure or other interventions of third parties.
3. The purchaser is authorized to resell goods standing under title retention in the proper course of business and/or to process them. In this case, the following regulations apply.
 - a. The retention of title applies to all originating products that are produced through processing, mixture or linking of our goods to their full value and we are valid as a manufacturer. If a third parties' property rights continue through processing, mixture or linking with their goods, we acquire joint ownership comparatively of the calculation values of the processed, mixed or linked goods. Apart from that, the same is valid for the originating product and for the product delivered under retention of title.
 - b. Amounts receivable against third parties emerging from the resale of the good or product will be assigned to us now in full or according to our joint ownership according to above paragraph for security reasons. We accept the cession. The purchaser's duties mentioned under 2 are still valid in view of ceded amounts receivable.
 - c. For the collection of amounts receivable, the purchaser remains authorized alongside us. We obligate ourselves not to collect the amounts receivable as long as the purchaser meets their payment obligations, is not in default, does not file for insolvency and no other lack of his willingness to perform is given. If this is, however, the case, we can demand the purchaser to announce to us the ceded amounts receivable and their debtors, to provide all essential information, to hand over the corresponding documents and to inform the debtors (third parties) of the cession.
4. In the event that such reservation of proprietary rights as provided in the foregoing form is ineffective under the laws of the country of destination, the customer is obliged to cooperate in the establishment of any such security right in favor of HARDTOP in accordance with the laws of such customer's domestic country.

XIII. Limitation of rights of HARDTOP

Payment claims of HARDTOP are subject to a limitation period of five years beginning at the end of the calendar year in which such payment claim is due.

XIV. Export clause

1. In compliance with national and international statutory regulations on export control, the customer accepts the obligation to obtain, prior to any exportation of products or technical information received from HARDTOP, any export licenses or other documents which may be required.

2. The customer accepts the obligation to refrain from any sale, export, re-export or any other transmission, whether direct or indirect, of products or technical information to any person, company or other commercial entity or country if and to the extent that such sale, export, re-export or other transmission should be illegal under national or international law, decrees, treaties or conventions. The customer further accepts the obligation to inform any recipients of these products or technical information of the necessity to observe any such laws, decrees, treaties and conventions. The customer will obtain any necessary licenses, export and import documents and certificates which may be required for the sale and resale of such products at its own expense. Any potential denial of import or export permits does not give rise to any rights to return products nor to claims for damages.

XV. Arbitration

1. Any dispute arising from or in the context of any agreements entered into between HARDTOP and the customer relating to the foreign business delivery or to the validity of such agreements will be referred to the German Institute for Arbitration "Deutsche Institution für Schiedsgerichtsbarkeit e.V." (DIS) for final and binding arbitration in accordance with the rules of arbitration of that institution, excluding the jurisdiction of the public courts of law. The arbitration court may also deliver a decision, which is binding for public courts of law on the validity of this arbitration clause. The arbitration court shall consist of three arbitrators generally, of one arbitrator if the amount in dispute is under 50,000 €.
2. The applicable law is the law of the Federal Republic of Germany including the Convention on the International Sale of Goods (CISG) as substantive law.
3. The language to be used in the arbitration proceedings is German.
4. The place of arbitration is Magdeburg.

XVI. Final provisions

1. Any amendment to or termination of agreements must be made in writing. The requirement of written form also applies to any agreed cancellation or waiver of this provision.
2. Unless otherwise agreed in the agreement, the place of performance and the place of payment is the place of business of HARDTOP.
3. In the event that any individual provisions of this agreement should be ineffective, the agreement remains binding in any of its other parts. In the event that any provision should be ineffective in full or in part, HARDTOP and the customer will promptly make best efforts to achieve the economic result intended by such provision in any other way that is legally permissible.