

1. General

All our offers, assemblies, repairs, after-sales services and any other business transactions and services are effected solely on the basis of the Terms and Conditions set out below. Hence, they also apply to all future business relations between the parties, even if these are not expressly agreed again.

HAUSHERR System Bohrtechnik is referred to below as the Contractor, and the party placing the order is referred to as the Customer, irrespective of whether this concerns a purchase contract, a contract for work and services, a contract for work and materials or a service contract.

Any terms and conditions of the Customer to the contrary shall not be accepted and are hereby expressly objected to. They can only become the subject matter of the contract after we have confirmed them in writing. Silence shall not be considered acceptance or consent under any circumstances.

2. Offer

Offers are not binding and are subject to change without notice and apply only if they are accepted by return. They are subject to availability and to prior sale in each case. Cost estimates are not offers. Declarations of acceptance must be confirmed in writing or by fax by the Contractor in order to become legally effective. Drawings and details on weight, dimensions, consumption and performance are without obligation, unless expressly designated as binding in the order acknowledgement. The Contractor reserves the right to incorporate changes and improvements to the design, materials used and workmanship, provided that these do not adversely affect the usefulness of the item of delivery. The documents belonging to the offer, such as illustrations, drawings, particulars on weight and measurements, are only approximate. The Contractor reserves the rights of ownership and copyrights to these documents. They may not be made accessible to third parties.

3. Written form

The written order acknowledgement of the Contractor is relevant for the scope of delivery. There are no verbal collateral agreements at present. Agreements, contractual amendments and supplements at a later stage must be confirmed in writing; this applies particularly to the amendment of this clause.

4. Prices and terms of payment

4.1 The prices underlying the offers and order acknowledgements are agreed ex works without packaging, without freight and dispatch costs, without customs duties and fees for clearance at border crossings, without the installation costs for spare parts, plus the statutory VAT applicable on the date of delivery.

As a basic principle, the prices valid on the date of delivery are relevant for the calculation.

4.2 The terms of payment stated in our invoices, order acknowledgements and offers are applicable. The prices stated therein are payable net immediately, unless otherwise agreed in writing.

4.3 If an express agreement on payment has not been made, the following applies: For the delivery of machines, 1/3 deposit is payable net immediately after receipt of the order acknowledgement, 1/3 net immediately after notification of the readiness for dispatch and the remaining amount net within another 30 days.

All payments due to other sales, services, rent, assemblies, repair contracts, related costs and charges etc. are payable immediately without any deduction free to the bank of the Contractor.

4.4 If payment by instalments is agreed and the Customer culpably falls into arrears with more than one monthly instalment or partly with several instalments so that the amount of one monthly instalment is reached, the entire residual purchase price is immediately payable, unless the Consumer Credit Act [Verbraucherkreditgesetz] is applicable.

4.5 Cheques and bills of exchange are only accepted on account of performance, not in lieu of performance. The Contractor is entitled to refuse the acceptance of cheques or bills without stating any reasons.

4.6 Should price amendments arise during the delivery period as a result of a rise in material prices, changes in the development of wages and salaries etc., the Contractor is entitled to add an appropriate surcharge to the prices underlying the offer. The prices valid on the date of notification of the readiness for dispatch are charged in the case of contracts for successive deliveries, contracts involving other recurring obligations, agreed part deliveries and in case of deliveries on call.

4.7 After the due date, the Contractor charges 8% default interest in accordance with Section 352 and 353 of the German Commercial Code (HGB). The right is expressly reserved to assert any default damage over and above this. The Customer reserves the right to furnish proof that the Contractor suffered no damage or much less damage as a result of the delay in payment.

4.8 The Customer is only entitled to offset counterclaims if the counterclaim is uncontested or has been declared legally valid by a court of law. The Customer may only retain amounts based on counterclaims arising under the same contract, however only up to 10% of the invoice amount at the maximum.

5. Delivery dates

5.1 A period of delivery or service is binding only if it was expressly confirmed as binding by the Contractor. Delivery and service times are observed as far as possible. This requires that at the time of the order confirmation all technical and/or organisational details of the order are agreed with binding effect. If the Customer fails to comply with its duties to assist, the delivery period shall be extended in accordance with the delay caused by the Customer.

In the event of work performance, the period commences on the hand-over or the unhindered release of the object of the work performance.

5.2 If the Contractor is in delay, the Customer is entitled to withdraw from the contract by means of a written declaration of withdrawal after setting a reasonable additional period in writing pursuant to Section 326 of the German Civil Code (BGB). An additional period of at least two weeks is considered reasonable for an agreed delivery time of up to six weeks, and an additional period of at least four weeks for an agreed delivery time of more than six weeks, beginning on the expiry of the agreed delivery or service period or the delivery period extended after clarifying all details pursuant to No. 5.1 of these Terms and Conditions.

After the expiry of the period in vain, the Customer is entitled to withdraw from the contract by means of a written declaration of withdrawal. Claims for damages based on default are barred, unless the occurrence of default is based at least on the gross negligence of the Contractor.

5.3 If circumstances arise for the Contractor or its sub-suppliers due to unforeseeable, unavoidable events, delays in the delivery of essential materials or due to force majeure or due to other reasons for which the Contractor is not responsible which prevent the execution of the order in due time or render it impossible, the binding delivery and service times agreed shall be extended by the duration of the hindrance. If it is impossible to execute the order on account of such circumstances, the delivery obligation of the Contractor no longer applies to the exclusion of all claims of the Customer. If the hindrance lasts for longer than three months, the Customer is entitled to withdraw from the contract as regards the part not yet fulfilled after setting a reasonable additional period in writing.

5.4 The Contractor is entitled to make part deliveries.

5.5 If the dispatch is delayed at the Customer's request, this shall not cause any postponement of the payment. In such a case, the date on which the readiness for dispatch is notified is considered the date of delivery.

5.6 Claims of the Customer due to delayed or late delivery are barred, unless the Contractor is responsible for wilful intent or gross negligence. Any claim is limited in terms of amount to a maximum of 5% of the delivery value.

5.7 If the goods are manufactured to the special dimensions requested by the Customer and therefore cannot be used otherwise, the damage caused to the Contractor is the full invoice amount. If the Contractor claims damages otherwise, it shall amount to 30% of the purchase price. The damage shall be stated at a higher or lower amount if the Contractor furnishes proof of a greater damage or the Customer of less damage. If the Contractor withdraws from the contract with the consent of the Customer before completion of the ordered goods, at least 30% of the purchase price is payable as compensation for lost profit and for the costs incurred.

6. Place of performance and transfer of risk

6.1 The place of performance for all performance by the Contractor is its principal place of business. Deliveries are effected solely at the risk of the Customer. The risk of the destruction or deterioration of the item to be delivered passes to the Customer as soon as the goods are handed over to the person executing the transport or have left the warehouse of the Contractor for dispatch, even if part deliveries are effected and the Contractor has assumed other payments, e.g. the costs of dispatch or carriage and erection in an exceptional case. Upon request and at the expense of the Customer, the goods are insured by the Contractor against transport damage and loss. If dispatch becomes impossible without any fault on the part of the Contractor, the risk passes to the Customer upon notification of the readiness for delivery.

6.2 The delivery of items shall be accepted by the Customer, even if minor defects are apparent, without prejudice to the rights under section 11.

6.3 Part deliveries are admissible and can be reasonably expected of the Customer.

7. Warranty

7.1 The Contractor performs under the warranty either by effecting subsequent improvement or delivering a replacement at its discretion.

If the Contractor fails to comply with the foregoing obligations within a reasonable period after receiving a written request from the Customer, or should subsequent improvement or the delivery of a replacement fail three times to lead to the contractually presumed success, the Customer is entitled to demand a reduction or to withdraw from the contract.

7.2 Obvious defects shall be notified in writing within one week after hand-over or after provision of any other service, however at least prior to any resale or prior to installation of the goods. Hidden defects or the absence of warranted characteristics shall be immediately notified to the Contractor in writing.

7.3 The warranty period amounts to 6 months from the date on which the risk passes for purchase contracts, otherwise 6 months after acceptance of the subject matter of the contract.

7.4 If operating or maintenance instructions of the Contractor are not followed, modifications are made, parts are changed or consumables are used which do not comply with the original specifications, any warranty shall lapse, unless the Customer refutes an appropriately substantiated allegation of the Contractor that it was one of these circumstances that caused the defect.

7.5 The Contractor assumes no liability or responsibility for the suitability of the service or products under the contract, unless it gave an express warranty in this connection. Deviations in the quality of the subject matter of the contract delivered by the Contractor and of descriptions, technical particulars, dimensions, weights, drawings and illustrations are permitted if these comply with the current delivery standard and state of the art.

7.6 A warranty is excluded for the delivery of used items, insofar as legally admissible, unless the subject matter of the contract is lacking a warranted characteristic.

7.7 Consumables and parts subject to wear are excluded from the warranty, unless intentional or grossly negligent conduct is involved.

7.8 A warranty is not accepted particularly in the following cases:
Unsuitable or improper use, incorrect assembly or commissioning by the Customer or third parties, natural wear, incorrect or negligent treatment, improper maintenance, unsuitable means of operation, poor construction work, unsuitable building ground, chemical, electrochemical or electrical influences, unless the Contractor is responsible for these.

7.9 If the Customer or a third party effects subsequent improvement improperly, the Contractor is not liable for any consequences arising therefrom. The same applies to modifications carried out on the subject matter of the contract without the prior approval of the Contractor.

8. Returns

If it is agreed that a new and unused machine or new and unused accessories and spare parts may be returned, the purchase price to be taken into account shall be reduced by 15% for the storage of the returned items. If used machines, accessories or spare parts are returned, the price is applicable which is reasonable in view of the general state on the date of return to the Contractor. In case of later changes or any further use until a new device is delivered, any repairs required for maintaining operational readiness shall be carried out by the Customer or the Contractor shall bear the costs of such repairs. Unless otherwise agreed, the delivery of the item being returned is effected at the cost and risk of the Customer.

9. Repair/assembly

Cost estimates do not include any fixed prices. Insignificant amounts in excess of the amount estimated are permitted, unless the prices were expressly designated as binding. Exceeding the estimated amount by 15% is considered insignificant. If it should be discovered during the repair/assembly that it is necessary to perform additional work, the scope of the work may be exceeded by up to 15% without requesting the approval of the Customer.

10. Reservation of title

10.1 The Contractor reserves title to the delivered goods until payment in full of the purchase item or the subject matter of the contract and any other invoice amounts still outstanding from other transactions at the same time, including interest and other additional charges.

10.2 During the period in which title is reserved, the Customer is obliged to protect the reserved property from access by third parties at its expense and to immediately insure it against fire, theft and machinery breakdown in favour of the Contractor and furnish proof thereof on request. Otherwise the Contractor is entitled to take out appropriate insurance itself at the expense of the Customer.

10.3 The Customer hereby assigns any claims to compensation and recourse claims against third parties and insurances to the Contractor. The Contractor accepts this assignment.

10.4 In the event of conduct contrary to contract by the Customer, in particular a delay in payment, the Contractor is entitled, after having given notice, to take back the subject matter of the contract and the Customer is obliged to surrender the subject matter of the contract.

10.5 Any application of the Customer to open insolvency proceedings entitles the Contractor to withdraw from the contract and demand the immediate return of the subject matter of the contract.

10.6 The Customer is entitled to dispose of the goods subject to reservation of title during the ordinary course of business, however only as long as it is not in arrears with payments. It is not entitled to pledge the reserved goods or assign them as security. Any attachments, seizures or other disposals by third parties must be immediately notified to the Contractor. The Customer is obliged to notify pledgees of the existing reserved property. Moreover, irrespective thereof, the Customer undertakes to assign goods purchased by it subject to reservation of title only in a manner that ensures that the Contractor remains the owner of the reserved goods. Notwithstanding this, the Contractor reserves an extended reservation of title at all events if the claim arising from the reservation of title, once the latter lapses, replaces the reservation of title. This claim is hereby assigned to the Contractor at the maximum delivery values.

10.7 In the event that the reserved property is resold to third parties, the Customer hereby assigns as security all the claims and rights acquired from the resale to the Contractor until payment in full of the purchase price or rather the subject matter of the contract plus interest and expenses.

The Contractor accepts the assignment. It undertakes to notify the Contractor of the resale in writing.

10.8 If the goods or products of the Contractor are processed by the Customer, the Contractor acquires ownership of the new items to the exclusion of Section 950 of the German Civil Code (BGB). In the event that the goods or products are combined or mixed with other materials and/or substances, the statutory provisions under Sections 947 and 948 of the German Civil Code apply.

10.9 The Customer is entitled to collect receivables from the resale in its own name until revoked in writing by the Contractor. The revocation can be effected if the Customer fails to duly meet its payment obligations.

10.10 In the event of conduct contrary to contract by the Customer, in particular a delay in payment, the Contractor is entitled to take back the reserved goods or, if appropriate, to demand the assignment of the Customer's claims for surrender against third parties. The taking back or the seizure of the reserved goods by the

Contractor does not constitute a withdrawal from the contract, unless the Consumers Credit Act applies.

10.11 Any processing or transformation of the goods delivered is always effected on behalf of the Contractor as a producer, however without any obligation for it. If the (co-)ownership of the Contractor is extinguished as a result of combination, it is hereby agreed that the value of Customer's (co-)ownership to the bought-in item (invoice value) passes to the Contractor in due proportion.

10.12 For all payments of the Customer, whether these are in cash, by cheque, transfer etc., which are effected in exchange for a bill (acceptor's bill) issued by the Contractor and accepted by the Customer, the underlying payment obligation is met only once any recourse to the Contractor as the issuer of the bill is excluded. The security interest of the Contractor, in particular the reservation of title to the goods delivered, continues to exist until the bill has been honoured by the Customer.

11. Complaints

The Customer must notify the Contractor of obvious defects in writing within one week after receipt of the delivery at the latest. In addition, the Customer must observe the duty to examine and give notice of defects pursuant to Sections 377 and 378 of the German Commercial Code (HGB).

12. Right of the Contractor to withdrawal

In the event of unforeseen events as specified under section 5 of the General Terms and Conditions of Sale and Delivery, the Contractor is entitled to withdraw from the contract in whole or in part insofar as they significantly alter the commercial significance or the content of performance or considerably affect the operations of the Contractor and in the event that the impossibility of execution is subsequently discovered.

The Customer has no claims for damages as a result of such a withdrawal. If the Contractor intends to exercise its right of withdrawal, it must immediately notify the Customer thereof after gaining knowledge of the implications of this event. The Contractor shall notify the Customer thereof even if it initially agreed with the Customer that the delivery time would be exceeded.

13. Limitation of liability

Claims for damages based on a positive violation of a contractual duty, culpa in contrahendo, and based on tortious acts are barred both against the Contractor and against its sub-contractors or vicarious agents, unless intentional or grossly negligent conduct is involved. This also applies to claims for damages based on non-performance, however only to the extent that the compensation of indirect or consequential damage is demanded, unless liability is based on a warranty which is intended to protect the Customer against the risk of such damage. Any liability is limited to the damage foreseeable on conclusion of contract.

14. Currency

All payments must be effected in EURO, unless otherwise agreed in writing.

15. Data protection

Pursuant to Section 26 (1) of the Federal Data Protection Act, we point out that we process all customer and supplier-related data with the aid of electronic data processing.

16. Place of jurisdiction/Applicable law

In case of all disputes arising under the contract, legal action must be brought before the court competent for the Contractor's principal place of business or the branch executing the delivery if the Customer is a registered merchant or legal entity under public law or a public-law special fund. The Contractor is also entitled to bring action at the principal place of business of the Customer.

The laws of the Federal Republic of Germany are exclusively applicable. In addition to the foregoing provisions, German laws are also exclusively applicable to contracts with foreign customers whose corporate domicile or residence is abroad. The laws on the uniform international sale of moveable goods (UN law) are not applicable.

17. Partial invalidity

These Terms and Conditions and all contracts concluded by us apply also if individual provisions of the concluded contracts should prove to be invalid. If required, the parties concluding the contract are obliged to agree an effective replacement provision which most closely approximates the purpose of the invalid provision.