



General Terms and Conditions and Customer Information

A. General Terms and Conditions

1 Scope of Application

- 1.1 These Terms and Conditions of Heinz Soyer Bolzenschweißtechnik GmbH (hereinafter referred to as "Seller") shall apply to all agreements concluded between a businessman (hereinafter referred to as „Customer“) and the Seller relating to all goods/services offered by the Seller. The inclusion of the Customer's own conditions is herewith objected to, unless other terms have been stipulated.
- 1.2 These Terms and Conditions shall apply exclusively even if the Seller unconditionally carries out the delivery in knowledge of terms and conditions of the Customer that conflict with or deviate from the Terms and Conditions of Sale and Delivery of the Seller.

2 Conclusion of the Contract

- 2.1 The product presentations in the Seller's online shop or in its leaflets do not constitute legally binding offers by the Seller, but merely serve the purpose of inviting the Customer to submit a legally binding offer.
- 2.2 The Customer may submit the offer in writing, by fax, e-mail or via the online order form integrated to the Seller's online shop. If an order is placed using the online order form, the Customer submits a legally binding offer of contract for the items added in its online shopping cart after entering its personal data and by clicking the button "send order" during the final step of the ordering process.
- 2.3 The Seller is entitled to accept the Customer's offer by written (letter) or electronically transmitted (fax or email) order confirmation, or by delivery of the goods. The Seller is entitled to reject the order.
- 2.4 The Customer is obliged to ensure that the email address entered for the ordering process is correct so that emails sent to this address by the Seller can be received. Particularly, the Customer is obliged to ensure that, if SPAM filters are used, all emails sent by the Seller or by third parties commissioned by the Seller with the purchase order processing can be delivered.
- 2.5 In the event that the parties stipulated special conditions, these shall generally not apply to current and future contractual relations with the Customer.
- 2.6 Should the Customer be economically incapable of meeting its obligations towards the Seller, the Seller may immediately withdraw from existing exchange agreements with the Customer without notice. This shall also apply if the Customer applied for insolvency. Section 321 of the German Civil Code (BGB) and Section 112 of the German Insolvency Act (InsO) remain unaffected. The Customer shall inform the Seller of any imminent illiquidity in writing at an early stage.

3 Prices and Payment Conditions

- 3.1 All prices indicated by the Seller are net prices in Euro and exclusive of German value added tax (VAT). Packaging and shipping costs, insurance (in particular transportation insurance), customs duties and taxes shall be invoiced separately.
- 3.2 The Seller provides for the following payment methods, unless otherwise agreed:
 - Prepayment by bank transfer
- 3.3 The purchase price shall be paid without deduction within 30 days of the invoice date. Upon receipt of payment within 10 days after the invoice date, the Seller grants a discount of 2% provided that the Customer is not in default with any other liabilities to the Seller. Section 3.2 exclusively applies to the sale of goods, not for other services.
- 3.4 A payment is considered received once the equivalent amount has been credited to one of the Seller's accounts. In case of default of payment the Seller is entitled to charge default interest in the amount of 10 percentage points above the base interest rate as in force from time to time. Other legal rights of the Seller on the grounds of the Customer's default of payment remain unaffected hereby. Should claims be overdue, incoming payments shall be credited against possible costs and interest, and thereafter against the oldest claim.
- 3.5 In the event of unforeseeable cost increases (e.g. currency fluctuations, unexpected price increases by the suppliers etc.), the Seller is entitled to pass on such price increase to the Customer. However, this only applies if the delivery according to the agreement shall take place later than four months after contract conclusion.

4 Delivery and Transport Conditions

- 4.1 In the event that several items relating to different offers are purchased, the Seller shall due to procedural issues be entitled not to undertake a complete delivery. Moreover, the Seller shall be entitled to partial delivery – also in case of fixed delivery dates – provided that is reasonable for the Customer. In case of permitted partial delivery, the Seller shall be entitled to invoice for partial delivery.



- 4.2 Purchase items are generally delivered by dispatch; the Customer may however choose the route and type of dispatch. Delivery times or dates are not binding, unless the Seller explicitly confirms such binding force.
- 4.3 The risk of the purchase items' incidental decline and incidental deterioration is transferred to the Customer as soon as the purchase items have been handed over to a qualified transport person. This shall also apply if the Seller bears the costs of transport. Transportation insurance shall only be arranged on the Customer's specific request and at its own expense. If the Seller owes assembly and installation, the risk shall be transferred after assembly and installation have been completed and the item has been handed over to the Customer.
- 4.4 If delivery to the Customer is not possible, for example because the purchase item does not fit through the entrance door or stairway, or because the Customer is not available at the delivery address provided by it, and even though the delivery date has been announced with a reasonable period of time, then the Customer shall bear the costs of unsuccessful delivery and shall be obliged to pay a general penalty for default. It amounts to 1% for each full week of delay, it however does not amount to more than 8% of the value of the entire delivery or the part of the delivery that has not been accepted. The parties reserve the right to prove that a higher or lower damage did occur.
- 4.5 In the event that the Customer is responsible for the delayed dispatch or delivery, the risk shall already be transferred upon informing the Customer of the readiness for dispatch. Storage costs that may arise are to be borne by the Customer after transfer of risk.

5 Call Orders

- 5.1 Call orders must be accepted no later than 12 months after the date of the order and shall be paid in full.
- 5.2 If due to the entire call quantity a sliding-scale price has been agreed upon, the Seller shall be entitled to adjust the price according to the quantity scale, provided that the Customer for reasons it is responsible for does not accept the entire call quantity.
- 5.3 After the time limit for a call order has expired and after granting the Customer a deadline extension in writing, the Seller is entitled to withdraw from the contract to the extent of the non-accepted quantities and to claim financial compensation in compliance with statutory requirements.

6 Force Majeure

Events of force majeure which affect the fulfilment of the contract shall entitle the Seller to delay the delivery by the duration of the inhibition and in case of long-term delays to withdraw from the contract as a whole or in part, without any claims arising therefrom against the Seller. Force majeure include all events unforeseeable for the Seller or those – even if foreseeable – that are beyond the Seller's control and whose effects on the contract fulfilment could not be prevented by reasonable efforts on the part of the Seller. Any statutory claims shall remain unaffected.

7 Delay in Performance

- 7.1 In case of a delay in performance the Customer may withdraw from the contract only if the Seller is responsible for the delay.
- 7.2 If the Seller is in default, the Customer shall be obliged to declare at the request of the Seller and within an appropriate period of time whether he intends to withdraw from the contract on the grounds of the default or insists on performance.
- 7.3 If at the Customer's request dispatch or delivery is delayed by more than one month after readiness for dispatch has been communicated, the Client may be charged, for every month commenced, storage costs in the amount of 0.5% of the price of the delivery items, but in no case in the amount of more than a total of 5%.
- 7.4 The contracting parties reserve the right to submit evidence for higher or lower damages.
- 7.5 Aforementioned limitations of liability shall not apply in case of intent, malice and damages due to injury of life, body or health.

8 Reservation of Proprietary Rights

- 8.1 Until the complete payment of the purchase price owed, the Seller reserves the ownership of the goods supplied. The Seller moreover reserves the ownership of the goods supplied until all claims arising from the business relation with the Customer have been fulfilled.
- 8.2 In the event that the delivered goods are processed, the Seller shall be deemed to be manufacturer and shall gain ownership of the newly created goods. If the goods are processed together with other materials, the Seller shall gain ownership proportionate to the invoice value of its goods to the value of the other materials. If the Seller's good, after combining or mixing it with an item of the Customer, is to be considered the main item, the co-ownership of the item shall be transferred to the Seller proportionate to the invoice value of its goods, or – if such is lacking – to the market value of the main item. In such cases the Customer shall be deemed custodian.



- 8.3 The Customer may neither mortgage nor pledge objects under reservation of ownership or legal reservation. The Customer is only entitled to resale in the ordinary course of business under the condition that it assigned all claims against its buyer to the Seller and that the Customer transfers the ownership to its buyer subject to payment. Upon conclusion of the contract the Customer assigns all claims against its buyers related to such resales to the Seller by way of security; the Seller accepts such assignment at the same time.
- 8.4 The Customer is obliged to immediately communicate any access to goods owned or co-owned by the Seller as well as to assigned claims. The Customer is obliged to immediately assign to the Seller any collected amounts, provided the Seller's claim is due.
- 8.5 If the value of the security interest exceeds the secured claims by more than 10%, the Seller shall release a corresponding part of the security interest if so requested by the Customer.

9 Liability for Defects

Should the purchased item be faulty, statutory provisions apply. This shall not apply to items which are not used in accordance with their common manner of use in buildings and where defectiveness has been caused by:

- 9.1 If the defect is marginal claims for defects may not be asserted and the Customer is not entitled to refuse the acceptance of the goods. Significant defects of a part of the delivered goods shall not entitle to the rejection of the entire delivery. However, this shall not apply if the partial delivery is of no interest to the Customer. Moreover, payments by the Customer may be withheld only to an extent that is reasonably proportionate to the existing material defect. If the item is made available free of charge, the Seller shall only be liable for defects if he acted intentionally or with gross negligence.
- 9.2 There shall be no claims based on defects in cases of natural wear and tear or damages arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment or from particular external influences not assumed under the contract and/or from malfunctions that cannot be reproduced. Claims based on defects attributable to improper modifications or repair work carried out by the Customer or third parties and the consequences thereof shall be likewise excluded, unless the Customer can prove that the reported malfunction was not caused by these modifications or repairs.
- 9.3 Claims for defects of used goods are excluded.
- 9.4 The period of limitation for claims for defects shall be one year after transfer of risk. A supplementary performance (replacement delivery or subsequent improvement) may only affect the limitation of the defect causing supplementary performance.
- 9.5 Aforementioned liability limitations and restrictions to the limitation period under Sections 9.1, 9.3 and 9.4 do not apply to recourse claims according to Section 478 BGB and to claims for damages and reimbursement of expenses, which the Customer may assert according to the legal provisions on defects. For the latter claims Section 10 shall apply.
- 9.6 If the Customer is a businessman within the meaning of the German Commercial Code (HGB) it has the commercial duty to examine and notify according to Section 377 HGB. Should the Customer neglect the disclosure duties there stipulated, the goods shall be deemed approved unless the defect could not have been identified during the examination of the goods.
- 9.7 In case of supplementary performance the Seller may choose between subsequent improvement or replacement delivery.
- 9.8 If supplementary performance is rendered by means of replacement delivery, the Customer is obliged to send the initially received goods back to the Seller within 30 days. The parcel containing the returned goods must contain the reason for return, the Customer's name and the number issued for the purchase of the faulty goods allowing the Seller to allocate the returned goods. As long and insofar as the allocation of the return consignment is not possible due to reasons the Customer is responsible for, the Seller is not obliged to accept the returned goods or to reimburse the purchase price. The costs for re-shipping are to be borne by the Customer.
- 9.9 If the Seller delivers an item without defects for the purpose of supplementary performance, the Seller may claim compensation for use according to Section 346, Subsection 1 BGB from the Customer. Other statutory claims remain unaffected.

10 Liability

- 10.1 Liability for default is stipulated under Section 7 conclusively. Incidentally, the Seller shall be liable for compensation for damages and reimbursement of expenses on legal grounds as follows:
- 10.2 Provided the Seller negligently infringes a significant contractual duty (so called cardinal obligation), the liability to pay damages shall be limited to the foreseeable, typically occurring average damage. Significant contractual duties are duties the fulfillment of which is required for the due execution of the contract and the observance of which the Customer may rely on regularly.
- 10.3 Provided the Seller negligently infringes an insignificant contractual duty, the liability to pay damages shall be limited to the order value.



10.4 The limitations of liability shall not apply in the event of wilful intent or gross negligence, in case of harm to life, body or health, in the case of malice, or where the German Product Liability Act (Produkthaftungsgesetz) applies as well as where warranties have been given, unless otherwise provided with regard to the latter.

11 Limitation

Customer claims - excluding claims according to Section 9 - against the Seller shall be time barred after one year from obtaining knowledge, however at the latest five years after the service has been rendered. This shall not apply in case of intent, malice and where the German Product Liability Act applies.

12 Set-off, Retention, Assignment

12.1 The Customer's rights of retention and rights to refuse performance shall be excluded, unless the Seller does not dispute the underlying counterclaims or if these are legally ascertained.

12.2 An assignment of claims arising from the contract concluded with the Customer, particularly assignment of any claims for defects by the Customer shall be excluded.

13 Applicable Law, Court of Jurisdiction

13.1 The law of the Federal Republic of Germany shall apply to all legal relationships between the parties under exclusion of the laws governing the international purchase of movable goods.

13.2 If the Customer is a businessman, a legal entity of public law or a public special estate, the court of jurisdiction for all legal disputes arising from this contract shall be in Munich. The same applies if the Customer does not have a general court of jurisdiction or place of residence in Germany, or if the typical place of residence is not known at the time legal action is commenced. The right to go to court at a different court of jurisdiction remains unaffected hereof.

13.3 The Contractual language is German and English.

B. Customer Information for Electronic Commerce

1 Information on Technical Steps leading to the Conclusion of the Contract

1.1 Provided the Customer uses the Seller's online order form for placing an order, the offer is submitted as follows:

1. Selection of item and clicking of the button "add to shopping cart"
2. Clicking of the button "continue shopping" to proceed with the purchase, or of the button "to cashpoint".
3. Login or new registration
4. Selecting delivery and payment method and clicking of the button "continue".

1.2 The Seller accepts the offer according to Section 2.3 of the General Terms and Conditions of the Seller (see above).

2 Information on the Storage of the Text of the Contract

The text of the contract is saved on the Seller's website and may be retrieved by the Customer free of charge using its password protected customer account by entering the login data.

3 Information on the Technical Means for Identifying and Correcting Input Data Errors

Prior to placing a binding order the Customer may continuously correct its entries via the common keyboard and mouse functions. Additionally, all entries will be displayed once again in a confirmation window and may also be corrected there using the common keyboard and mouse functions.

4 Information on the Languages available for Concluding the Contract

The contract may only be concluded in German or English.