

# **General Terms and Conditions of Heinrich Hofsäß GmbH & Co. KG**

## **Section 1 Applicability**

(1) All deliveries, services and offers from Heinrich Hofsäß GmbH & Co. KG (Hofsäß) shall be based solely on the basis of these General Terms and Conditions. These shall form part of all agreements which Hofsäß concludes with its contractual partner (hereinafter also referred to as "Client") with regard to the deliveries and services it offers. Said terms shall also apply to all future deliveries, services or offers to the Client, even if not specifically agreed.

(2) The terms and conditions of the Client or third parties shall not apply even if Hofsäß does not specifically negate their applicability separately in individual cases. Even if Hofsäß refers to a letter which contains the terms and conditions of the Client or a third party, this shall not constitute acceptance of those terms and conditions

## **Section 2 Offer and Conclusion of the Agreement**

(1) All offers of Hofsäß shall be non-binding and subject to change, unless they are specifically marked as binding or contain a specific acceptance period. Hofsäß may accept any orders or contracts within fourteen days after receipt.

(2) Solely the written purchase agreement including these General Terms and Conditions shall be definitive for legal relations between Hofsäß and the Client. This Agreement fully reflects all agreements between the contractual parties regarding the matter of the Agreement. Any oral assurances by Hofsäß before concluding this Agreement shall not be legally binding and oral agreements of the contractual parties shall be replaced by a written agreement, if it is not expressly evident from them that they shall bindingly continue to be applicable.

(3) Any amendments and additions to the contracts concluded including these General Terms and Conditions shall only be effective if made in writing. With the exception of managing directors or statutory signatories (Prokurists), the employees of Hofsäß shall not be entitled to make any oral agreements deviating from these. In order to meet the written requirement a fax shall suffice, notification using telecommunications, in particular email, shall not be sufficient.

(4) Any information from Hofsäß on the subject of the delivery or services (e.g. weights, dimensions, utility values, loading capacity, tolerances and technical data) as well as representations of the same (e.g. drawings and illustrations) shall only be approximately final, unless the intended contractual use requires exact conformity. These shall not be considered guaranteed characteristics but rather descriptions or identifications of the deliveries and services. Customary deviations and deviations which occur on the basis of statutory regulations or constitute technical improvements, as well as the replacement of components by equal parts, are permissible as long as they do not impair the contractually intended use.

(5) Hofsäß shall retain ownership of or copyright to all the offers and quotations it submits to the Client, as well as any drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and resources. Without the express permission from Hofsäß, the Client may not make these objects as such nor their contents accessible to third parties, publicise them, or use or duplicate them themselves or by third parties. If they are no longer required in the due course of business, or if negotiations do not lead to the conclusion of an Agreement, on request from Hofsäß, the Client must return them in full to Hofsäß and destroy any copies which may have been made.

## **Section 3 Prices and Payment**

(1) Prices shall apply to the deliveries and services listed in the order confirmation. Extra or special services shall be listed separately. Prices shall be quoted in Euro ex works plus packaging, statutory VAT, and in the case of export deliveries, customs duties and charges on export shipments and other public charges.

(2) In so far as the agreed prices are based on the valid Hofsäß list prices and delivery is to be made more than four months after the conclusion of the Agreement, the Hofsäß list prices valid at the time of delivery shall apply (in each case minus an agreed percentage or fixed discount).

(3) Unless otherwise agreed in writing, invoice amounts shall be due within 30 days without any deductions. The receipt of payment at Hofsäß is decisive for the date of the payment. Cheques shall only be valid as payment once they have been cashed. If the Client does not provide payment when it is due, the outstanding amounts shall accrue interest at a rate of 5% p.a. from the day payments mature; the right to assert higher interest and claim further damages in the event of default shall remain unaffected.

(4) Any setting off against counter claims of the Client or the retention of payment due to such claims is only permissible in so far as the counterclaims are uncontested or have been deemed *res judicata*.

(5) Hofsäß is entitled to perform or provide outstanding deliveries or services only in return for advance payment or security, if after the conclusion of the Agreement, circumstances become apparent which could substantially reduce the creditworthiness of the Client and which jeopardise payment of the outstanding claims of Hofsäß by the Client from the respective contractual relationship (including other individual orders to which the same framework agreement applies).

## **Section 4 Delivery and Delivery Time**

(1) Deliveries shall be made ex works.

(2) Deadlines and dates for deliveries and services set by Hofsäß shall only apply approximately, unless a fixed deadline or a fixed date has been assured or agreed. If shipment has been agreed, the delivery deadlines and dates refer to the time when the delivery is passed on to the shipping company, forwarding agent or any other third party contracted with transportation.

(3) Hofsäß may - without prejudice to the rights from the Client being in arrears – demand an extension of the delivery and performance deadlines from the Client or a postponement of the delivery and performance deadlines for so long as the Client does not meet its contractual obligations.

(4) Hofsäß shall not be liable for deliveries which are not possible or for delays to deliveries, if these are due to Force Majeure or other events that were not foreseeable at the time of the conclusion of the agreement (e.g. all kinds of breakdowns in business operations, difficulties with the procurement of materials or energy, delays to transportation, strike, legitimate lock-outs, lack of manpower, energy or raw materials, difficulties in acquiring the necessary official permits, measures imposed by official bodies or institutions, failure to deliver or the failure to deliver promptly by suppliers or incorrect deliveries by suppliers), for which Hofsäß is not responsible. If such events considerably hinder Hofsäß in the delivery or service or render them impossible and the hindrance is not of a temporary nature, Hofsäß is entitled to rescind the Agreement. In the event of hindrances of a temporary nature, the delivery and performance deadlines

shall be extended or the delivery and performance deadlines shall be postponed for the period of time of the hindrance plus an appropriate start-up time. If due to the delay, the Client cannot be expected to accept the delivery or service, it can withdraw from the Agreement through a timely written declaration to Hofsäß.

(5) Hofsäß is only entitled to make part deliveries if these part deliveries can be used by the Client in the scope of the contractual purpose of use, the delivery of the remaining goods ordered is certain and this does not result in considerable extra work or additional costs for the Client (unless Hofsäß declares it is willing to bear these costs).

(6) If Hofsäß is in default with a delivery or service or if a delivery or service is impossible, irrespective of whatever reason, Hofsäß's liability shall be limited to damages in line with section 8 of these General Terms and Conditions.

## **Section 5 Place of Performance, Shipping, Packaging, Passage of Risk, Acceptance**

(1) The place of performance for all obligations from the contractual relationship shall be Niefern-Öschelbronn.

(2) Hofsäß shall be free to select the most suitable shipping method and packaging.

(3) Risk shall pass to the Client at the latest with the handing over of the delivery object (whereby the start of the loading process is definitive) to the shipping company, forwarding agent or any other third party contracted with the transportation. This shall also apply if part deliveries are made or Hofsäß has undertaken to perform other services (e.g. shipping or installation). If the shipping or handing over is delayed due to reasons attributable to the Client, the risk shall pass to the Client from the day on which the delivery object is ready for shipment and Hofsäß has notified the Client accordingly.

(4) The Client shall be responsible for any storage costs incurred after the passage of risk. If storage takes place at Hofsäß, the storage costs shall be 0.25% of the invoice amount of the delivery objects to be stored per full week. This shall be without prejudice to the right to prove and claim higher or lower storage costs.

(5) The consignment shall only be insured by Hofsäß against theft, breakage, transport, fire and water damage or other insurable risks on the express request of the Client and at the Client's expense.

(6) If an acceptance is required, the delivery object shall be deemed accepted

- if the delivery is complete,
- if Hofsäß informs the Client accordingly with reference to the implied acceptance pursuant to this section 5 (6) and has requested the Client to accept the goods/services,
- if twelve working days have elapsed since the delivery and the Client has failed to make an acceptance within this period for another reason apart from due to a fault of which Hofsäß has been notified, which makes it impossible for the object purchased to be used or considerably hinders its use.

## **Section 6 Warranty, Material Defects**

(1) The warranty period shall be one year from delivery or if acceptance is necessary, from the acceptance.

(2) The goods delivered must be carefully examined without delay after arrival at the Client or at a third party it has appointed. The delivery shall be deemed authorised if Hofsäß does not receive a written complaint as specified in section 2 (2) sentence 6 regarding obvious defects or other defects which were recognisable during a careful prompt inspection, within seven working days after the delivery of the goods or otherwise within seven work days after the discovery of the defect or any earlier time when the defect was recognisable for the Client under normal use of the delivery object without any closer inspection. On request from Hofsäß, the apparently faulty delivery object shall be returned to Hofsäß carriage paid. If the complaint is justified Hofsäß shall reimburse the costs of the cheapest shipping method; this shall not apply if the costs increase due to the delivery object being located at a site other than the place of intended use.

(3) In the event of defects in the delivered objects, Hofsäß shall undertake and is entitled to opt in a timely manner to either repair the defect or provide a replacement. In the event of Hofsäß being unsuccessful, i.e. impossibility, unreasonableness, refusal or unacceptable delay or the remedy or replacement, the Client is entitled to withdraw from the Agreement or reduce the purchase price accordingly.

(4) If a defect is due to the fault of Hofsäß, the Client can in certain circumstances be entitled to claim damages under the conditions set forth in section 8.

(5) In the event of faults in components from other manufacturers, which Hofsäß is unable to remedy due to licensing reasons or actual reasons, Hofsäß shall optionally assert warranty claims against the manufacturer and supplier on the Client's behalf or assign said claims to the Client. Any warranty claims against Hofsäß shall only exist for these types of defects under the other preconditions and subject to the proviso of the General Terms and Conditions, only if the judicial implementation of the aforementioned claims against the manufacturer and supplier were unsuccessful or futile, e.g. due to insolvency. During the legal dispute, the relevant warranty claims of the Client against Hofsäß cannot expire.

(6) The warranty shall cease to apply if the Client without prior agreement from Hofsäß changes the delivery object or has it changed by third parties and as a result the remedy becomes impossible or unreasonable. In any case, the Client must bear the extra costs of the remedy resulting from the modification.

(7) A delivery of used goods agreed in individual cases with the Client shall be made under exclusion of any warranty for defects.

## **Section 7 Property Rights**

(1) Hofsäß shall vouch for the fact that pursuant to section 7, the delivery object is free of industrial property rights or copyrights of third parties. Every contractual party shall inform the other party without delay in writing if any claims are asserted against it due to the infringement of such rights.

(2) If the delivery object infringes an industrial property right or copyright of a third party, Hofsäß shall, as it sees fit, at its own cost change or exchange the delivery object in such a way that no third party rights are infringed any longer, but that the delivery object still meets the contractually agreed functions, or generate a right of use for the Client by concluding a license agreement. If this is not possible within a reasonable period, the Client is entitled to withdraw from the Agreement or to reduce the purchase price accordingly. Any claims for damages by the Client shall be governed by the limitations of section 8 of these General Terms and Conditions.

(3) In the event of infringements by products of other manufacturers delivered by Hofsäß, Hofsäß shall optionally assert claims against the manufacturers and upstream suppliers on behalf of the Client or assign said claims to the Client. Any claims against Hofsäß shall

only exist for these types of defects in line with this section 7 if the judicial implementation of the aforementioned claims against the manufacturers and upstream suppliers were unsuccessful or futile, for example due to insolvency.

## **Section 8 Liability for Damages Caused by Fault**

(1) Hofsäß's liability for damages, regardless of the legal cause, but in particular due to impossibility, delay, faulty or incorrect delivery, infringement of contractual duties, infringement of duties during contract negotiation and action in tort, in so far as there is a party at fault in each case, shall be limited in accordance with this section 8.

(2) Hofsäß shall not be liable in cases of simple negligence of its bodies, legal representatives, employees or other aides, in so far as it is not a question of infringement of essential contractual obligations. Obligations to supply and install the delivery object punctually free of essential defects, as well as any duties of consultation, protection and care, which will enable the Client to use the delivery object in accordance with the contract or which serve the purpose of protecting the life and limb of personnel of the Client or the Client's property against considerable damage are considered essential to the Agreement.

(3) If Hofsäß is liable for damages on the grounds of and in accordance with section 8 (2), this liability shall be limited to damages which on conclusion of the Agreement Hofsäß had foreseen as a possible consequence of a contractual infringement or which by applying due care and diligence should have foreseen. Any direct damage and consequential damage resulting from defects in the delivery object shall only be subject to compensation if such damage is typically to be expected if the delivery object is used as intended.

(4) In the event of liability for simple negligence, Hofsäß's obligation to pay damages for damage to property and the resulting additional financial damage shall be limited to the maximum amount per claim in accordance with the current indemnity limit of the product liability insurance or the indemnity insurance even if it is a case of infringement of obligations essential to the Agreement.

(5) The liability exclusions and limitations above shall apply to the same degree in favour of the bodies, legal representatives, employees and other aides of Hofsäß.

(6) If Hofsäß provides technical information or becomes active in an advisory capacity and this information or consulting does not form part of the contractually agreed performance scope, this shall occur free of charge and under exclusion of all liability.

(7) The limitations of this section 8 shall not apply to Hofsäß's liability due to intent, for guaranteed characteristics, due to the injury of life, limb and health or according to the product liability law.

## **Section 9 Reservation of Title**

(1) The following agreed reservation of title shall serve to secure all of the current and future claims of Hofsäß against the Client from the delivery relationship existing between the contractual partners for turned parts (including outstanding balance claims from a current account relationship from this delivery relationship).

(2) The goods delivered by Hofsäß to the Client shall remain the property of Hofsäß until full payment of all secured accounts receivable. The goods subject to reservation of title as well as the items or claims in lieu of these goods according to this clause shall hereinafter be referred to as Reserved Goods.

(3) The Client shall retain the Reserved Goods free of charge for Hofsäß.

(4) The Client is entitled to process and sell the Reserved Goods in normal business dealings up until the enforcement event (paragraph 9). Pledging as collateral and as security shall be prohibited.

(5) If the Reserved Goods are processed by the Client, it is agreed that processing takes place in the name of and on behalf of Hofsäß as manufacturer and Hofsäß shall directly acquire ownership. If processing is carried out with materials from a number of owners or the materials processed are of higher value than the value of the Reserved Goods, Hofsäß shall be granted co-ownership (fractional ownership) of the newly created goods in the ratio to the value of the Reserved Goods. In the event that no such acquisition of title should arise for Hofsäß, the Client shall already assign its future ownership – or in the abovementioned ratio – co-ownership of the newly created goods as security to Hofsäß. If the Reserved Goods are combined or inseparably mixed with other goods to create an integral object, and if one of the other objects is considered the principal object, Hofsäß - in so far as it owns the principal object - shall assign the co-ownership to the integral object to the Client in the ratio stated in sentence 1.

(6) In the event of resale of the Reserved Goods, the Client already assigns to Hofsäß as security its claims against the purchaser, in the event of co-ownership of Hofsäß in the Reserved Goods in the scope of its share in the Reserved Goods. The same shall apply to other claims which arise in place of the Reserved Goods or are created otherwise with regard to the Reserved Goods, such as insurance claims or claims in tort in the case of loss or destruction. Hofsäß revocably authorises the Client to collect the accounts receivable assigned to Hofsäß in its own name. Hofsäß may revoke this collection authorisation only in the case of an enforcement event.

(7) If third parties try to take possession of the Reserved Goods, particularly through attachment, the Client shall notify the third party without delay that it is the property of Hofsäß and inform Hofsäß accordingly in order to enable it to assert its ownership rights. If the third party is not in a position to reimburse Hofsäß with the court fees or out-of-court expenses it incurs in connection with this, the Client shall be liable to Hofsäß for these costs.

(8) The Reserved Goods as well as the items or claims in lieu of the Reserved Goods shall on request be released by Hofsäß as it sees fit, if their value exceeds the value of the secured claims by more than 50%.

(9) If Hofsäß withdraws from the Agreement, due to an infringement of the Agreement by the Client – in particular default- (enforcement event), Hofsäß is entitled to demand the return of the Reserved Goods.

## **Section 10 Final Provisions**

(1) Hofsäß is entitled to select the place of jurisdiction for any disputes arising from the business relationship between Hofsäß and the Client either in Niefern-Öschelbronn or the seat of the Client. For any suits filed against Hofsäß, Niefern-Öschelbronn shall be the sole place of jurisdiction. Any mandatory provisions of applicable law regarding exclusive jurisdiction shall remain unaffected by this clause.

(2) The relationship between Hofsäß and the Client shall solely be subject to German law. The United Nations Convention on the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

(3) If the Agreement or these General Terms and Conditions contain gaps, in order to fill said gaps, legally effective provisions shall be deemed agreed, which the parties to the Agreement would have chosen according to the financial goals and purpose of these General Terms and Conditions, if they had known about the gap.

Please note:

The Client is aware that in accordance with section 28 of the Data Privacy Act, Hofsäß saves data from the contractual relationship for data processing and reserves the right to transfer this data to third parties (e.g. insurance companies) in so far as this is necessary to fulfil the Agreement.