

## **Terms and Conditions of Delivery and Payment of häuselmann metall GmbH**

### **1. Scope of Application**

1. These Terms and Conditions of Delivery and Payment shall only apply to entrepreneurs exercising their commercial or independent professional activities and to legal entities under public law. They shall apply to all commercial transactions between häuselmann metall GmbH (**hereinafter referred to as "häuselmann"**) and Customer, even if these parties are not mentioned in later contracts. They shall apply to work performances and services accordingly. In the case of work performances, the acceptance of delivered products shall be replaced by an acceptance, and in the case of services, by an acceptance of the service.
2. Any terms and conditions of Customer that conflict with, supplement, or deviate from these Terms and Conditions of Delivery and Payment shall not become part of the contract unless häuselmann agreed to their validity in writing. These Terms and Conditions of Delivery and Payment shall apply even if häuselmann executes a delivery to Customer without any reservation but fully aware of Customer's conflicting, supplementary, or deviating conditions.
3. Agreements that conflict with, supplement, or deviate from these Terms and Conditions of Delivery and Payment that are concluded between häuselmann and Customer for the execution of a contract must be set forth in the contract in writing. The same shall also apply to the waiver of this written form requirement.
4. Any further rights to which häuselmann is entitled according to legal provisions or other agreements that go beyond these Terms and Conditions of Delivery and Payment shall remain unaffected.

## **2. Conclusion of Contract**

1. Any offers made by häuselmann shall be non-binding unless häuselmann specifically states that a given offer is binding.
2. Pictures, information about weight or dimensions, technical information as well as other descriptions of the products from documents pertaining to the offer are only approximate guides unless they are specifically identified as binding. They do not constitute an agreement on or warranty of a corresponding quality of durability of the products unless they were specifically agreed on as such. Customer's expectations regarding the products shall not constitute an agreement or warranty either.
3. It is Customer's responsibility to assess and determine whether the product is suitable for the use intended by Customer. Unless otherwise agreed upon in writing, häuselmann shall not be required to assess the suitability of the products for the intended use. Any agreed-upon suitability assessment performed by häuselmann shall not discharge Customer from its obligation to assess the suitability of the products for the intended use.
4. häuselmann hereby reserves all ownership, copyright, and other property rights to all offer documents. Such documents may not be made available to third parties. Customer shall immediately surrender all offer documentation to häuselmann if so requested by häuselmann when they are no longer needed in the regular course of business. The same shall apply accordingly for all other documents, drafts, samples, templates, and models.
5. An order shall not become binding until it has been confirmed by häuselmann with a written order confirmation within two weeks from the order date or until häuselmann executes the order within two weeks from the order date, especially if häuselmann fulfills the order by shipping the products. An order confirmation generated automatically that does not have a signature and a name shall be considered as having been made in writing. If the order confirmation contains obvious errors, spelling mistakes, or calculation errors, it shall not be binding for häuselmann.
6. Any failure by häuselmann to respond to offers, orders, requests, or other declarations made by Customer shall only be deemed an approval if this was agreed upon previously in writing.

7. If Customer's financial situation deteriorates significantly or if the justified application for the opening of insolvency or comparable proceedings on Customer's assets is dismissed for lack of assets, häuselmann shall be entitled to withdraw from parts or all of the contract.

### **3.**

#### **Scope of Delivery, Changes to the Products, Delivery**

1. The scope of delivery is determined by the written order confirmation sent by häuselmann. Changes to the scope of delivery by Customer require a written confirmation by häuselmann to be effective. The right to make design and form changes to the products shall remain reserved if these are deviations that are customary in the industry or if these deviations are within the DIN tolerances or if the changes are insignificant and can reasonably be expected from Customer. The same shall apply accordingly to the selection of the material, the specification, and the construction.
2. Partial delivery is permissible unless delivery in parts cannot be reasonably expected from Customer when considering the interests of häuselmann.
3. For technical production reasons, häuselmann reserves the right to over- or under-deliver up to 10% of the scope of delivery. This shall apply regardless of whether there is just one delivery or whether partial deliveries are duly made. No claims for defects may be asserted in this regard. The delivery price shall remain unaffected.
4. If the products arrive at Customer with transport damage, Customer shall promptly inform the shipper of the transport damage and note the transport damage on the documents of receipt. This shall apply as well, if the shipper delivers wrong products to Customer due to a mix-up.

### **4.**

#### **Delivery Time**

1. Delivery times (delivery deadlines and dates) must be agreed on in writing. The delivery deadlines and dates shall be nonbinding unless they were previously specified by häuselmann in writing as binding.

2. The delivery period shall begin at the conclusion of contract, but not prior to the provision of the documents, permits and releases to be obtained by Customer, the clarification of all technical questions as well as the receipt of an agreed-upon prepayment or, in the event of an international transaction, upon receipt of payment in full. If Customer does not provide the documents or permits to be obtained by Customer in a timely manner, does not provide approvals in a timely manner, if Customer does not fully clarify all technical questions in a timely manner, or if häuselmann does not receive the prepayment that was agreed on or, in the event of an international transaction, the payment in full, the delivery date shall be pushed back accordingly. Compliance with the delivery time shall be subject to the condition that Customer's other obligations are duly fulfilled in a timely manner.
3. The delivery time shall be deemed as having been met if the products leave the factory or the warehouse prior to the expiry of the delivery time or if häuselmann has communicated that the products are ready to be picked up or shipped or, in the event acceptance was agreed on, that the products are ready for acceptance. Compliance with the delivery time is subject to a correct, in particular timely, delivery of products to häuselmann, unless häuselmann is responsible for the reason for the incorrect delivery. In the event of an incorrect delivery, häuselmann shall be entitled to withdraw from the contract. häuselmann shall promptly inform Customer, if häuselmann makes use of its right to withdraw, and shall return to Customer any prepayments that may have been made.
4. In the event of a delay in delivery, Customer shall be entitled to withdraw from the contract following the unsuccessful expiration of a reasonable grace period that Customer provided to häuselmann upon having learned of the delay in delivery.

## **5.**

### **Cross-Border Shipments**

1. In the event of cross-border shipments, Customer shall issue all declarations required by the competent agencies for the export from Germany and import into the destination country and, in particular, obtain the documents required by customs and comply with the requirements of potential expert controls or other marketability restrictions.
2. The deliveries are subject to the condition that fulfillment is not impaired by national or international regulations, especially export control regulations as well as embargoes or other sanctions.

3. Delays caused by export controls shall extend the delivery times accordingly; the delivery dates shall be postponed accordingly.

## **6. Prices and Payment**

1. In the absence of a special agreement, the prices shall be deemed ex works or ex stock and do not contain any shipping, packaging costs, insurance, statutory taxes, customs duties, or other charges. Any costs incurred in this regard, especially costs for the packaging and transport of the products, shall be billed separately. The statutory value-added tax shall be listed separately on the invoice at the statutory rate applicable on the date of invoicing.
2. If the price is calculated by weight, the weight specified by häuselmann shall apply. Shipping weights are subject to the technically possible tolerances of the product. If the price is based on weight, any units such as the quantity that are additionally provided shall be non-binding. However, if the price is based on a different unit such as the quantity or meters, for example, other units additionally provided shall be non-binding.
3. Order for which no fixed prices are expressly agreed upon and whose delivery time is a point in time that lies at least four months after the conclusion of contract shall be calculated on the basis of the list prices that apply on the delivery date. The entry of the list price applicable on the order date in an order form or an order confirmation shall not be deemed an agreement on a fixed price. In the event of price increases of more than 5%, Customer shall be entitled to withdraw from the contract in this respect. If so requested by häuselmann, Customer shall promptly declare whether Customer wishes to make use of its right to withdraw. If price increases occur on or before the delivery date, häuselmann shall be entitled to adjust the price accordingly regardless of the offer or the order confirmation. häuselmann shall, in particular, be entitled to adjust the price in the same proportion the German metal quotation changed for the applicable material between the conclusion of contract and the delivery date. If the German metal notation for the applicable material decreases, häuselmann shall be required to adjust its price as well.
4. For lack of a separate arrangement, the delivery price shall be payable net within 14 days from the receipt of the invoice. It shall only be permitted to deduct discounts and other rebates, if this was agreed upon in writing. The discount that was agreed

on or other rebates may only be deducted, if Customer has paid all due receivables relating to the business relationship in a timely manner. The payment date shall be the date on which häuselmann can make definite dispositions of the delivery price. In the event of a default of payment, Customer must pay default interest in the amount of 9% above the respective annual prime rate. Further claims on the part of häuselmann shall remain unaffected.

5. In the case of international transactions, payment shall, in deviation from paragraph 3, be rendered prior to delivery unless something else was previously agreed on in writing.

## **7. Acceptance**

1. Customer shall be obligated to accept the products, if acceptance was agreed upon in writing. In this case, either party shall be entitled to demand partial acceptance. Unless otherwise agreed upon in writing, acceptance shall take place in the factory or the warehouse of häuselmann. The parties shall prepare an acceptance report about the acceptance, which shall be signed by both parties.
2. If häuselmann, following the completion of the performance, provided Customer with a reasonable acceptance period and if Customer did not refuse acceptance within this period and claiming at least one defect, such a situation shall be considered equivalent to a written acceptance. If Customer starts using the products or resells them, or if Customer waives acceptance, such a situation shall be considered equivalent to a written acceptance as well.
3. Acceptance may not be refused due to immaterial defects. Customer may, in particular, not refuse acceptance, if any acceptance criteria that were agreed on have been met.

## **8. Transfer of Risk**

1. The risk of accidental loss and accidental deterioration shall transfer to Customer as soon as the products are handed over to the person carrying out the transport or leave the factory or warehouse of häuselmann for shipping purposes. If

acceptance was agreed upon in writing, the risk shall transfer to Customer upon acceptance. If picked up by Customer, the risk shall transfer to Customer with the pickup readiness notification, unless the risk was already transferred in accordance with clause 2. Clause 1 to clause 3 shall apply as well if partial delivery is made or if häuselmann has assumed further responsibilities such as the transport costs.

2. If Customer is in default of acceptance, häuselmann may ask for a reimbursement of the damages that were incurred, unless Customer is not responsible for the nonacceptance of the products, and reimbursement of any additional expenses. häuselmann shall in particular be entitled to store the products during the default of acceptance at the cost of Customer. The flat fee charged for storing the products shall be 0.5% of the net invoice amount per started calendar week. Further claims on the part of häuselmann shall remain unaffected. Customer shall have the right to demonstrate that häuselmann incurred no or significantly lower costs. The same shall apply if Customer fails to meet other cooperation obligations unless Customer is not responsible for the failure to meet other cooperation obligations. The risk of accidental loss or accidental deterioration of the product shall transfer to Customer at the latest at the time Customer is in default of acceptance. Following an unsuccessful expiry of a deadline set by häuselmann, häuselmann shall be entitled to dispose of the products otherwise and to deliver products to Customer with a reasonably extended period.
3. If shipment is delayed or, if written acceptance was agreed upon, said acceptance is delayed due to circumstances for which häuselmann is not responsible, the risk shall transfer to Customer with the shipping or acceptance readiness notification.
4. Notwithstanding Customer's claims for defects, Customer must take delivery of the products even if they have minor defects.

## **9. Claims for Defects**

1. Customer's defect-related rights require that Customer inspects the products upon delivery, if reasonable including a sample processing or sample use, and that Customer has informed häuselmann of obvious defects immediately in writing, at the latest two weeks following the delivery of the products. Hidden defects must be reported to häuselmann in writing as soon as they are discovered. Customer must describe the defects in its notification of häuselmann in writing. In the planning, construction, assembly, connection, installation, start-up, operation and

maintenance of the products, Customer must furthermore comply with the requirements, instructions, guidelines, and conditions in the technical notices, assembly, use and operating instructions and other documents pertaining to specific products, ensure especially that the servicing is duly performed and use recommended components. Customer shall have no claims for defects that occurred due to a violation of this obligation.

2. In the event of defective products, häuselmann shall, at its discretion, be entitled to supplementary performance by remediation of the defect or the delivery of a product free from defects. In the case of supplementary performance, häuselmann shall be required to pay all expenses necessary for the supplementary performance, in particular transport, mileage, work, and material costs, but not for the dismantlement and re-installation costs, which are not reimbursed. Any personnel and material costs that Customer asserts in this context shall be invoiced at cost. Replaced parts shall become the property of häuselmann and shall be returned to häuselmann.
3. If häuselmann is not willing or able to provide supplementary performance, or if the supplementary performance fails twice, Customer may, at its discretion, withdraw from the Agreement or change the delivery price. This shall not affect any claims for damages or reimbursement of expenses. The same shall apply if the supplementary performance fails, cannot reasonably be expected from Customer, or is significantly delayed for reasons that are in the areas of responsibility of häuselmann.
4. Customer may not withdraw from the contract if Customer is unable to return the performance rendered and if this is not due to the fact that the return is impossible due to the nature of the service received because häuselmann is responsible for this fact or the defect did not arise until the products were processed or reconfigured. The right to withdraw shall not apply either if häuselmann is not responsible for the defect and if Customer must provide compensation for lost value instead of a return.
5. No claims for defects shall arise for defects caused by natural wear, in particular on wear parts, improper handling, installation or use or storage or improperly performed modifications or repairs of the products by Customer or third parties. The same shall apply to defects attributable to Customer or due to a technical cause other than the original defect.
6. Customer may not be entitled to claims to a reimbursement of expenses instead of damages in the place of performance if a reasonable third party would not have incurred the expenses as well.



7. häuselmann does not provide any warranties, in particular no quality or durability warranties, unless other provisions are established in writing in individual cases.
8. The limitation period for Customer's claims for defects is one year unless a sale of consumer goods occurs at the end of the supply chain (the end customer is a consumer). If the defective products have been used for a structure according to their usual use and have caused its defectiveness, or if there is a defect in a structure, the limitation period shall be five years. The limitation period of one year shall also apply to tort claims that are based on a defect of the products. The limitation period shall begin with the delivery of the products. The limitation period of one year shall not apply to the unlimited liability of häuselmann for damages relating to the breach of a warranty or an injury to life, body, or health, for intent and gross negligence, as well as for product defects or to the extent häuselmann assumed a procurement risk. A reaction by häuselmann to a claim for defects asserted by Customer shall not be considered an entry into negotiations about the claim or the circumstances giving rise to the claim if häuselmann has fully rejected the claim for defects.

## **10. Liability by häuselmann**

1. häuselmann shall be fully liable for any damages resulting from the breach of a warranty or from an injury to life, body or health. The same shall apply in case of intent or gross negligence or if häuselmann assumed a procurement risk. häuselmann shall only be liable for slight negligence if essential duties were breached which result from the nature of the contract and which are of particular importance for the achievement of the purpose of the contract. In the case of a breach of such duties, default, and unenforceability, the liability of häuselmann shall be limited to such damages that are typically expected to arise in the context of this Agreement. A mandatory statutory liability for product defects shall remain unaffected.
2. Where liability by häuselmann is excluded or limited, this shall apply as well to the personal liability of the employees, workers, staff, representatives and vicarious agents of häuselmann.

## **11. Product Liability**

1. Customer shall not modify the products; in particular, it shall not modify or remove existing warnings about dangers in the event of improper use of the products. If this obligation is not met, Customer shall, concerning their internal relationship, indemnify and hold häuselmann harmless from any third-party liability claims unless Customer is not responsible for the product modification.
2. If häuselmann issues a product recall or warning due to a product defect in the products, Customer shall assist to the best of its abilities with the measures that häuselmann considers necessary and useful and support häuselmann in this regard, especially in connection with the determination of the required customer data. Customer shall be required to bear the costs of the product recall or warning unless, under product liability principles, it cannot be held responsible for the product defect. Further claims on the part of häuselmann shall remain unaffected.
3. Customer shall promptly inform häuselmann in writing of any risks Customer becomes aware of when using the products and of possible product defects.

## **12. Third-Party Property Rights**

Customer warrants that the supply and use of the products does not infringe any domestic or foreign patents, utility models, licenses or other industrial property rights and copyrights of third parties, provided the products are manufactured in accordance with the drawings or other information provided by Customer. If häuselmann is held liable by a third party for an infringement of such rights as a result of the supply or use of the products, Customer shall be required to indemnify and hold häuselmann harmless from these claims. Clause 1 and clause 2 shall not apply, if Customer is not responsible for the infringement of such rights.

## **13. Force Majeure**

1. If häuselmann is prevented from the fulfillment of the contractual obligations and, in particular, from the delivery of the products due to force majeure, häuselmann

shall be released from the duty to perform for the duration of the impairment as well as a reasonable start-up time without being required to indemnify Customer. The same shall apply if it becomes unreasonably difficult or temporarily impossible for häuselmann to fulfill its obligations due to unforeseeable circumstances that are not in the area of responsibility of häuselmann such as a labor dispute, delivery problems at a supplier, or significant malfunctions. This shall apply as well if these circumstances arise at a subcontractor. This shall apply as well if häuselmann is already in default. If häuselmann is released from its duty to supply, häuselmann shall return any prepayments already made by Customer.

2. häuselmann shall be entitled to withdraw from the contract after the expiry of a reasonable deadline if such an impairment lasts for more than four months and häuselmann is no longer interested in the fulfillment of the contract due to the impairment. At the request of Customer, häuselmann shall announce at the end of the deadline whether häuselmann intends to make use of its right to withdraw or if häuselmann will deliver the products within a reasonable period of time.

## **14. Retention of Title**

1. Until the delivery price and any receivables due to häuselmann that are associated with the business relationship with Customer are paid in full, the delivered products shall remain the property of häuselmann. For the duration of the retention of title, Customer shall be required to treat the products subject to retention of title with care. In particular, Customer shall be required to sufficiently insure the products at its own cost against fire, water, and theft damages at replacement value. Customer shall prove the conclusion of the insurance if requested by häuselmann. Customer hereby assigns to häuselmann any compensation claims from this insurance. häuselmann hereby accepts the assignment. If the assignment is not allowed, Customer hereby instructs the insurer to exclusively make any payments to häuselmann. Further claims on the part of häuselmann shall remain unaffected.
2. Customer may only sell the products subject to retention of title in the context of regular business operations. Customer shall furthermore not be entitled to pledge the products subject to retention of title, to assign them as security, or to dispose of them in any other way that endangers the ownership of häuselmann. In the event of pledges or other third-party interference, Customer shall promptly notify häuselmann in writing and provide all information necessary, inform the third party of the ownership rights of häuselmann, and assist with any steps taken by

häuselmann to protect the products subject to retention of title. If the third party is unable to reimburse häuselmann for the judicial and nonjudicial expenses incurred for the assertion of the ownership rights of häuselmann, Customer shall be required to reimburse häuselmann for the resulting losses unless Customer is not responsible for the breach of duty.

3. Customer hereby assigns any receivables from the resale of the products with all ancillary rights to häuselmann, regardless of whether the products subject to retention of title are resold with or without processing. häuselmann hereby accepts this assignment. If an assignment is not allowed, Customer hereby instructs the third-party debtor to exclusively make any payments to häuselmann. Customer is irrevocably authorized to collect the receivables assigned to häuselmann as a trustee for häuselmann in its own name. The amounts collected shall promptly be forwarded to häuselmann. häuselmann may revoke the collection authorization from Customer as well as the right of Customer to resell products for cause, in particular if Customer does not fulfill its payment obligations vis-à-vis häuselmann in an orderly manner, falls into default, stops its payments, or if insolvency proceedings or similar proceedings for the settlement of debts against the assets of Customer are requested by Customer itself, or the justified request of a third party for the opening of insolvency proceedings or similar proceedings for the settlement of debts against the assets of Customer is denied due to a lack of assets. In case of a blanket assignment by Customer, the claims assigned to häuselmann have to be explicitly excluded.
4. If so requested by häuselmann, Customer shall be required to notify the third party debtor promptly of the assignment and shall provide häuselmann with the information and documents which are necessary for the collection.
5. In case of conduct that violates the Agreement, in particular in case of a default in payment by Customer, häuselmann shall, irrespective of its other rights, be entitled to withdraw from the contract after the expiration of a reasonable grace period set by häuselmann. Customer shall promptly provide häuselmann or its agents with access to the products subject to retention of title and hand them over. After a corresponding notification in due time, häuselmann may use the products subject to retention of title for the satisfaction of its payable claims against Customer in other ways.
6. Customer shall always process or modify the products subject to retention of title on behalf of häuselmann. Customer's remainder to the products subject to retention of title shall remain with the processed or transformed product. If the products are processed or modified with other products which are not owned by häuselmann,

then häuselmann shall obtain co-ownership in the new product in the proportion of the value of the supplied products to the other processed products at the time of the processing or modification. The same shall apply if the products are joined or mixed with other items which are not owned by häuselmann in such a way that häuselmann loses its full ownership. Customer shall store the new items on behalf of häuselmann. Otherwise, the same provisions as for the products subject to retention of title shall apply to the product created by processing or modification as well as joining or mixing.

7. If so requested by Customer, häuselmann shall be required to release the securities to which it is entitled insofar as the realizable value of the securities subject to the consideration of any customary bank assessment reductions exceeds the receivables of häuselmann from the business relationship with Customer by more than 10%. The valuation is based on the invoice value of the products subject to retention of title and the nominal value of the receivables. häuselmann shall be responsible for the selection of the items to be released.
8. If products are delivered into other legal systems where this retention of title provision does not have the same security effect as in the Federal Republic of Germany, Customer hereby grants häuselmann a corresponding security interest. If this makes additional measures necessary, Customer shall do anything to promptly provide häuselmann with such security interest. Customer shall assist with all measures that are necessary and useful for the effectiveness and enforceability of such collateral rights.

## **15. Confidentiality**

1. The parties shall be required to keep confidential all information which becomes available to them and which is designated as confidential or which, considering other circumstances, is recognizable as business or company secrets for a period of five years from delivery and to neither record nor disclose or exploit such information unless this is necessary for the business relationship.
2. The confidentiality obligation shall not apply if it can be proven that the information was already known to the receiving party or known by or accessible to the public prior to the commencement of the contractual relationship or if it becomes generally known or accessible through no fault of the receiving party. The burden of proof lies with the receiving party.

3. The parties shall ensure by means of suitable contractual agreements with the employees and agents working for them, in particular their freelancers and any contractors and service providers working for them, that these likewise refrain from any exploitation, disclosure, or unauthorized recording of such business and company secrets for a period of five years from delivery.

## **16. Data Protection and Privacy**

1. The parties shall comply with the statutory provisions governing data protection, in particular the EU General Data Protection Regulation ("GDPR"), in the execution of the contract and shall require their employees to do the same.
2. The parties shall process any personal data received (names and contact information of the respective contact person) exclusively for the fulfillment of the contract and shall protect these with security measures in line with the latest state of technology (Art. 32 GDPR). The parties shall delete the personal data as soon as their processing is no longer required. Any statutory retention requirements shall remain unaffected.
3. Should a party process personal data on behalf of the other party in the context of the execution of this contract, the parties shall enter into a respective commissioned data processing agreement pursuant to Art. 28 GDPR.

## **17. Final Provisions**

1. Any assignment of rights and obligations by Customer to third parties shall be permitted only with the prior written consent of häuselmann.
2. Customer may only offset any counterclaims if they were upheld by a court of law or if they are undisputed. Customer may only assert a right of retention if its counterclaim pertains to the same contractual relationship.
3. The legal relationships between Customer and häuselmann shall be subject to the law of the Federal Republic of Germany with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

4. If Customer is a merchant as defined in the German Commercial Code (Handelsgesetzbuch), a legal entity under public law or a public special asset, the exclusive place of jurisdiction for all disputes arising from the business relationship between Customer and häuselmann shall be the registered seat of häuselmann. häuselmann shall furthermore be entitled to file a claim at Customer's seat as well as any other permitted jurisdiction. Arbitration clauses are rejected.
5. The place of fulfillment for any performance by Customer and häuselmann shall be the seat of häuselmann, unless agreed otherwise in writing.
6. The languages of the contract are German and English.
7. Should a provision contained in these Terms and Conditions of Delivery and Payment be or become fully or partially invalid or unenforceable, or should these Terms and Conditions of Delivery and Payment contain a loophole, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be deemed to have been replaced with such a valid or enforceable provision which best reflects the purpose of the invalid or unenforceable provision. A loophole shall be deemed to have been replaced with such a provision which, given the purpose of these Terms and Conditions of Delivery and Payment, corresponds to what would have been agreed between the parties to the contract had they been aware of the matter from the start.