



1. Validity

- 1.1.1. HORN supplies technical components, machines and peripheral plants for the glass industry and thermal process engineering based on the following terms enclosed with the respective goods insofar as no individual agreements have been made which prevail the general terms.
- 1.1.2. Differing terms of a customer not explicitly recognized by HORN in writing are not binding for HORN notwithstanding the fact that HORN did not explicitly object to them.

2. Orders

- 2.1 Insofar as the offer is not binding, also the documents the offer is referring to, such as pictures, drawings, colours, weights and dimensions are only approximatively relevant.
- 2.2 Orders are accepted by written confirmation or timely performance thereof. This order shall be placed taking into consideration the general terms of sale of HORN.
- 2.3 In case of permanent business relations these terms are valid also for future business transactions in which no explicit reference to these terms is made, provided these terms have been made available to the customer with an order previously confirmed by HORN.

3. Prices

- 3.1 Unless agreed otherwise, the prices are valid ex works, without freight, customs duties, additional import fees, carriage and packing (EXW, Incoterms 2000).
- 3.2 In case relevant cost factors change considerably after submission of the quotation or after order confirmation until delivery, HORN and the customer shall come to an agreement concerning price adjustment and share of the costs.
- 3.3 As for new orders (= follow-up orders), HORN shall not be bound to the previous prices.

4. Deliveries

- 4.1 Unless agreed otherwise, shipping of the ordered goods shall be effected at the customer's account.
- 4.2 Appropriate partial shipments as well as minor deviations of up to +/- 10 % shall be admissible.
- 4.3 In case of force majeure HORN shall be entitled to postpone delivery by the period of time the impediment persists plus an appropriate start-up period. Strike, lock-out or unforeseeable incidents, e.g. breakdowns, which render timely delivery impossible in spite of reasonable efforts shall be tantamount to force majeure. This shall also apply if these circumstances occur with the subsuppliers or subcontractors of HORN. If the disturbance persists for more than a month after the term of delivery agreed upon originally has expired, the customer shall be entitled to exercise his rights under section 326 clause 1 and section 3 – 5 BGB (Civil Code), section 376 HGB (Commercial Code). As a matter of principle, his right to terminate the contract shall only apply to the part of the contract which has not been fulfilled yet.
- 4.4 This shall also apply in case the impediments stated above occur during a delay or with a subsupplier.

- 4.5 If a case of force majeure occurs, HORN shall notify the customer thereof immediately.
- 4.6 HORN shall not be obliged to supply goods sold for exportation to a domestic destination nor to supply goods intended for inland delivery to a foreign destination. HORN shall be entitled to request a certificate of export.
- 4.7 Packing shall be effected in accordance with ordinary trade usage, unless a special kind of packing has been agreed.
- 4.8 Auxiliary means of transport made available to the customer shall remain property of HORN notwithstanding deposit of a pledge and shall, unless agreed otherwise, be returned to HORN immediately and directly after the intended use, however, upon expiration of six months since HORN made them available at the latest. If the customer fails in his obligation to return the auxiliary means of transport within the term stated above or in spite of request by HORN fixing a time-limit, HORN shall be entitled to charge the full replacement cost for the auxiliary means of transport to the customer. HORN shall be entitled to refuse acceptance of auxiliary means of transport returned late or damaged. In case of damage, the claim for damages also comprises the cost for disposal.
- 4.9 If the performance of HORN includes assembly work, the customer shall arrange his facilities, infrastructure etc. in such way that the assembly work can be effected at the time and place agreed. If the beginning and/or the end of the assembly work is delayed for reasons the customer is to be held responsible for, the customer shall bear the costs (e.g. accommodation for fitters, additional travel expenses) caused by such delay.

5. Terms of delivery

- 5.1 Terms of delivery start upon the moment of conclusion of the contract, receipt of all documents required for performing the order, receipt of the down payment and the timely orders of material insofar as these were agreed. If shipping is impossible without HORN being at fault, the term of delivery shall be considered as observed upon notification of the goods being ready for shipment.
- 5.2 If an agreed term of delivery is not observed due to the fault of HORN, unless in case of gross negligence or wilful act, the customer shall with exclusion of any other claims be entitled to claim compensation for damage resulting from delay or to terminate the contract after expiration of a reasonable additional period of time, provided the customer has indicated rejection of the performance in writing when fixing the final date.
- 5.3 This compensation for damage resulting from delay shall be limited to 5 % maximum above the base interest rate for the part of the delivery which was not effected in conformity with the contract.
- 5.4 In case certain products are not deliverable within six weeks or sold out permanently, HORN shall inform the customer about extension of the terms of delivery by another eight weeks.
- 5.5 As for orders for goods to be delivered on demand without agreement of duration and deadlines for acceptance, HORN shall be entitled to request binding determination thereof three months upon order confirmation at the latest. If the customer does not comply with this request within three weeks, HORN shall be entitled to fix an additional period of time of two weeks and to terminate the contact after expiration of these two weeks or to refuse delivery and claim damages. If in case of orders for goods to be delivered on demand more than the quantity ordered is demanded, HORN shall be entitled to supply only the ordered quantity or to charge the additional quantity at the current price at their option.

6. Extra services

- 6.1 Apart from the main and additional services agreed, extra services in addition to those agreed do not have to be performed.
- 6.2 A claim for performance of such extra services shall only arise from written agreement, in which these are explicitly referred to as “extra service” or “supplement”.

7. Industrial property rights

- 7.1 The legal liability of HORN concerning the existence of rights of third parties based on industrial or other intellectual property (“industrial property rights”) is limited to such industrial property rights being effective in the Federal Republic of Germany. If the goods are to be resold to another state (“third country”) or are to be used in another way in a third country in conformity with the agreement made between the parties, HORN shall pursuant to the legal provisions also take the responsibility for that there are no industrial property rights existing in the third country which might be asserted with regard to the customer. If the parties have made no agreement on resale or use in a third country, HORN shall pursuant to the legal provisions take the responsibility for that there are no industrial property rights existing in the Federal Republic of Germany and in the country of the customer’s registered office.
- 7.2 If HORN has to supply according to drawings, models, samples or using parts made available by the customer, the customer shall take the responsibility for that no industrial property rights of third parties are infringed. The customer shall indemnify HORN from claims of third parties and pay compensation for damage caused. If HORN is prohibited production or delivery by a third party referring to an industrial property right belonging to them, HORN shall be entitled to stop work without investigating the legal situation.
- 7.3 HORN is entitled to copyrights and possibly to industrial property rights for models, machines, sketches and drawings made by them or by third parties on behalf of HORN. This shall also apply to such written documents designated as “confidential”. Transmission thereof to third parties by the customer requires explicit written approval.

8. Passing of the risk

- 8.1 Insofar as the goods are to be delivered to a place other than the place of performance, the risk shall pass to the customer as soon as the goods leave the supplying factory also in case of delivery with prepaid freight. In case shipment is delayed for reasons HORN cannot be held responsible for the risk shall pass to the customer already upon notification of the goods being ready for shipment.
- 8.2 Upon written request by the customer the goods will be insured against storage risk, damage by breakage, transport damage and fire damage at the customer’s expense.

9. Reserve of title

- 9.1 The supplied goods shall remain the property of HORN until full payment of the invoice amount and of all other receivables for deliveries and services arisen and arising from the business relations with HORN. For current accounts the reserved title of the deliveries (reserved goods) shall be valid as security for the account balance of HORN. If a liability of HORN arising out of a bill is legally founded in connection with payment of the purchase price, the reserve of title shall not be discharged before the bill of exchange has been honoured by the customer as the drawee.
- 9.2 Treatment or processing by the customer shall be effected excluding acquisition of title according to section 950 BGB (Civil Code) on behalf of HORN; HORN shall

become co-owner of the merchandise created that way in proportion of the net invoice value of the customer's goods to the net invoice value of the treated or processed goods; the merchandise created that way shall serve as reserved goods for securing the claims of HORN in conformity with clause 1. If the title of HORN is discharged because of adjunction, intermixture or processing, the customer shall already now transfer the rights of ownership and expectancies the customer is entitled to with regard to the new stock or merchandise to HORN to the extent of the invoice value of the reserved goods, in case of processing in the proportion of the invoice value of the reserved goods to the invoice value of the other goods used, and the customer shall store the new stock or merchandise for HORN free of charge. The co-ownership of HORN shall be valid as reserved goods in the meaning of these provisions.

9.3 In case of processing/intermixture with other goods not belonging to HORN by the customer, the provisions of sections 947, 948 BGB (Civil Code) shall be effective with the consequence that the co-ownership share of HORN of the new merchandise shall now be valid as reserved goods in the meaning of these provisions.

9.4 Resale of the reserved goods is permitted to the customer – as long as he is not in delay – on the condition that the customer also agrees upon reserved goods with his client. The customer shall not be entitled to other dispositions concerning the reserved goods, particularly pledging and transfer of ownership by way of security. Using the reserved goods for performance of contracts for services and contracts for work done and materials supplied shall also be considered as resale.

9.5 In case of resale the customer shall already now assign all claims with all subsidiary rights to HORN, which arise from the resale with regard to his clients. Upon request by HORN the customer shall be obliged to give all information and to transmit all documents required for assertion of the rights in relation to the ultimate buyers.

9.6 If the reserved goods are resold by the customer together with other goods, HORN shall be assigned the receivables from resale in proportion of the invoice value of the reserved goods to the invoice value of the other goods. In case of resale of goods HORN has a co-ownership share of in conformity with the provisions above, HORN shall be assigned a share of the receivables corresponding to the co-ownership share of HORN.

9.7 HORN shall to be notified immediately of levy of execution or confiscations of the reserved goods by third parties. Intervention costs arising therefrom shall always be at the customer's expense unless they are borne by third parties.

9.8 Further claims for damages remain reserved.

10. Payment

10.1 Unless agreed otherwise in writing, invoices are due for payment within eight (8) days upon receipt in the currency invoiced without deduction and free of bank charges.

10.2 As soon as the agreed term of payment is exceeded, delay in payment shall occur without further reminder. This is valid in relation to a consumer after this had been pointed out to him separately in the invoice.

- 10.3 If a discount has been granted in writing, settlement of all undisputed invoices previously due shall be a precondition for this. For possible payments by bill of exchange, a discount shall not be granted.
- 10.4 In case the agreed term of payment is exceeded interests amounting to 5 % above the base interest rate shall be charged unless HORN proves higher interest on the debited balance. For business relations with an entrepreneur interest amounting to 8 % above the base interest rate shall be charged.
- 10.5 Rejection of cheques and bills of exchange remains reserved. Cheques and bills of exchange eligible for rediscount shall only be accepted as conditional payment, all expenses in connection with this are at the customer's account. HORN reserves to charge fees amounting to 2 % of the invoice amount for possibly agreed payment by cheque.
- 10.6 Non-observation of terms of payment or circumstances founding reasonable doubts concerning the credit worthiness of the customer shall result in immediate maturity of all receivables of the supplier. Furthermore HORN shall be entitled to demand payment in advance for open deliveries and to terminate the contract after appropriate extension of the original term or to demand damages instead of the performance, also to prohibit resale to the customer and to fetch back goods which have not been paid for at the customer's expense.
- 10.7 HORN shall be entitled any time to demand securities usual in their volume and extent at their option or cash in advance for their receivables, also insofar as these are conditioned or limited in time.

11. Notification of defects

For contractual agreements in relation to merchants the following provisions shall be valid:

- 11.1 The customer shall be obliged to examine himself suitability of the goods for the use intended by him. Preparations possibly made for the customer by HORN, advice and recommendations possibly given by HORN are not binding, unless explicitly agreed otherwise; these shall be examined carefully by the customer before being put into practice, if necessary by obtaining expert advice from third parties.
- 11.2 Notifications of defect in conformity with section 377 HGB (Commercial Code) shall be effected immediately and five days upon receipt of the goods at the latest in writing and presenting a copy of the invoice. When the customer notifies a defect he shall immediately give HORN the opportunity to convince themselves of the defect and the customer shall in particular make the criticized goods or samples thereof available to HORN. HORN may request the customer at their option to send the criticized goods for inspection or subsequent remedy to HORN instead of making them available to HORN.
- 11.3 For hidden defects this term shall be extended to one week upon ascertainment of the defect.
- 11.4 If the notification of defect is well founded, HORN shall at their option be obliged to subsequent improvement or replacement. If subsequent improvement fails in spite of several attempts, the customer shall be entitled to demand diminution of the purchase price or to terminate the contract and demand reimbursement of the additional expenses. Upon request replaced parts shall be returned to HORN unfree.

If the customer chooses to terminate the contract he shall not be entitled to additional claim for damages because of the defect. In case only part of the supplied goods is defective, the customer shall only be entitled to terminate the entire contract if the defective part is an essential component of the plant.

- 11.5 Replacement for consignments lost or damaged during transport shall not be effected, unless HORN is charged of wilful act or gross negligence. The customer shall be obliged to settle the damage directly with the carriers within the terms fixed by them.
- 11.6 Unauthorized re-working and improper handling shall result in loss of all warranty claims. This shall apply in particular if the customer does not observe the explicit instructions and recommendations by HORN for handling the plant. Only for mitigation of disproportionately big damages or if HORN is in delay concerning correction of the defect the customer shall be entitled to effect subsequent improvement after previous notification to HORN and to demand reimbursement of reasonable cost.

12. Contractual exclusion of set-off / right of retention

- 12.1 Set-off of the customer's claims against receivables of HORN shall be excluded, unless these claims are undisputed and legally enforceable by execution.
- 12.2 The customer shall only be entitled to right of retention insofar as his counterclaim is founded on the same contractual relations.

13. Warranty

- 13.1 The customer shall be entitled to warranty claims exclusively in case of essential defects. An essential defect is existing if the value of the defective object is at least 10 % of the total order value and/or functioning of the entire plant is considerably impaired by the existence of this defect. Considerable impairment is given when the entire plant cannot be used for the intended purpose (e.g. in conformity with the description of function / operating instructions).
- 13.2 The warranty period shall be 12 months in relation to a merchant; for purchase of consumer goods this warranty period shall be 24 months.
- 13.3 Wearing parts which are individually listed in the wearing parts list shall be excluded from the warranty. The same shall apply in case of faulty or negligent handling, unsuitable or improper use and storage or non-observation of instructions for processing and operation. Variances customary in trade and in this branch from the documents the offer is based upon (pictures, drawings, colours, weights and dimensions) shall not found a defect of quality. As for goods sold as downgraded material, the customer shall not be entitled to warranty claims for the indicated faults and such faults he usually has to expect. If the customer is an entrepreneur and the goods differ in their nature from what was to be expected according to particular public statements of the seller, the manufacturer or from assistants, especially in advertising or for identification of certain qualities of the goods, a defect in quality shall only be existing if these statements were explicitly made the subject of a quality agreement between the parties.
- 13.4 The warranty period shall start at the moment of acceptance by the customer himself or by a person of acceptance designated by him.

14. Warranty for the existence of certain qualities

- 14.1 The warranty for the existence of certain qualities of the object of delivery require the written form in the order confirmation. Reference to technical standards

shall serve for order description. The warranty shall not include the risk of consequential damages unless HORN, their employees or persons employed in performing an obligation by HORN act wilfully or with gross negligence.

- 14.2 If HORN has given advice out of the contractual performance, HORN shall only be liable for functioning and suitability of the object of delivery in case of explicit written warranty. The state of the art at acceptance of the order is relevant.

15. Acceptance

- 15.1 The supplied goods shall be accepted when HORN transmits them to the customer as agreed.
- 15.2 It shall be equal to acceptance by the customer if the customer uses the goods for the intended purpose respectively puts them into operation.

16. Liability

- 16.1 Claims for damages because of culpa in contrahendo, of breach of duty and from illicit act shall be excluded insofar as the damage was not caused by wilful act or gross negligence. In case of breach of essential contractual obligations HORN shall be liable also in case of slight negligence; in this case the liability of HORN in relation to an entrepreneur shall, however, be limited to compensation for foreseeable, typically occurring damages. In this context liability is in particular excluded for lost profits, loss of production as well as other damages not being in direct causal connection. These as well as all other limitations of liability in these provisions shall not be valid for claims in conformity with the product liability law or from warranties given for the quality of the goods nor shall they be valid in case of fatal and physical injuries and injury to health.
- 16.2 Limitation of liability shall be valid to the same extent for persons employed in performing an obligation and for vicarious agents.
- 16.3 Claims for damages of the customer which are not claims from liability for defects shall become statute-barred two years at the latest after the moment when the customer obtained knowledge of the circumstances founding the claim and of the person of the damaging party or had to obtain such knowledge without gross negligence. Otherwise the legal statutory periods of limitation shall apply with regard to these claims.

17. Additional agreements

- 17.1 Other additional agreements shall become integral part of the contract exclusively in case of explicit agreement.
- 17.2 Additional verbal agreements including contracting out the written form require the written form to become effective.

18. Applicable law

- 18.1 Any other generally binding regulations shall be explicitly and categorically excluded. In addition to these general terms of business the following provisions and laws shall be valid in the following ranking: Commercial Code, Civil Code in their respective versions.
- 18.2 The provisions of the Act on international purchase of tangibles as well as on conclusion of international purchase contracts (CISG) for tangibles shall herewith be explicitly excluded.

19. Place of performance and place of jurisdiction

- 19.1 The place of performance is Plößberg as the registered seat of the supplying factory.

19.2 Within the scope of section 38 Code of Civil Procedure, Weiden is valid as the special place of jurisdiction for all litigations arising from the contract, notwithstanding the right of HORN to file a suit at another legally admissible place of jurisdiction.

19.3 This shall also apply to proceedings restricted to documentary evidence, summary bill-enforcement procedures and cheque proceedings.

20. Final stipulations

20.1 In case agreements of the concluded contract are entirely or partially ineffective, effectiveness shall not be affected otherwise. The contracting parties engage to replace the ineffective agreement by such agreement closest to the intended purpose of the contract.

20.2 The rights of the customer arising from the contracts concluded with HORN are not assignable.

20.3 The customer fully agrees with all stipulations of the contract in their contents.