

General terms of sale and delivery of

HORN Glass Industries AG,

HORN Bau & Service GmbH and

JSJ Jodelt GmbH

(hereinafter referred to as "HORN")



1 Validity

- 1.1. The following general terms of sale and delivery (hereinafter "general terms") are valid for all contracts between HORN and its customers regarding all goods, services, works and deliveries to be supplied (hereinafter "supplies"). Any differing conditions of a customer not explicitly confirmed by HORN in writing do not apply and will not become part of the contract. For customers not being merchants according to sector 1 of the German Commercial Code (Handelsgesetzbuch - HGB) the following general terms are not valid, so the German Civil Code (Bürgerliches Gesetzbuch – BGB) shall be applicable.
- 1.2. Submission of offers by HORN shall be nonobligatory. Documents the offer is referring to, such as pictures, drawings, colours, weights and dimensions are only approximatively relevant. Offers are valid in written form only.
- 1.3. Contracts shall be concluded by acceptance of the customer's order by way of written order confirmation (hereinafter "contract") of HORN, whereby the content of the order confirmation determines the contract conditions firmly for both parties unless the customer contradicts immediately, but within five days after order confirmation at the latest. In case of immediate delivery HORN's invoice shall be considered as order confirmation. Real execution of the customer's order by HORN shall be deemed as implied confirmation of the customer's order. In each and every case these general terms shall be included even without explicit reference thereto, provided that these have been made available to the customer in an appropriate manner. This shall be the case, if these general terms are available under www.hornglas.de.
- 1.4. In case of permanent business relations these general terms are valid also for future contracts in which no explicit reference to these general terms is made, provided that these general terms have been made available to the customer once in a previous contract.

2 Prices

- 2.1. The prices agreed upon are to be understood as ex works, without freight, customs, duties, additional import fees, carriage and packing and are valid 30 days beginning with date of written offer. All occurring duties and taxes for whatever purpose applicable in the country of the customer, or country the supplies are exported to or an installation will be executed are not included.
- 2.2. In case relevant cost factors escalate considerably between offer submission or order confirmation on one hand and delivery on the other hand, both HORN and customer shall enter into an agreement about adequate price adjustment and share of the costs.
- 2.3. As for new orders (= follow-up orders), HORN is not bound to previous prices.

3 Payments

- 3.1. Unless agreed otherwise in writing, invoices are due for payment within eight days after its receipt in the currency invoiced without deduction and free of bank charges.
- 3.2. Payments shall be secured by an irrevocable documentary letter of credit, opened and confirmed at an approved German Bankhouse.
- 3.3. Any delay in payment by the customer results in maturity of all actual receivables. Furthermore, HORN is entitled to stop processing of the contract for duration of the delay and to claim default interest in amount of 9 % per annum above respective base interest rate (Basiszinssatz) as well as to claim for indemnity in case of damages caused by such delays. In case such delay lasts more than four weeks from original payment date, HORN shall be entitled to terminate the contract or to claim for indemnity.
- 3.4. 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 on the customer's account. HORN reserves the right to charge fees amounting up to 2 % of the invoice amount for possibly agreed payment by cheque.
- 3.5. Non-observance of payment dates or circumstances founding reasonable doubts concerning the credit worthiness of the customer shall result in immediate maturity of all receivables against the customer. Furthermore, HORN shall be entitled to demand payments in advance for open deliveries and to terminate the contract after appropriate extension of the original payment date or to claim for indemnity, also to prohibit resale and to retrieve supplies which have not been paid for at the customer's expense.
- 3.6. HORN shall be entitled any time to demand appropriate securities or prepayments for its receivables.
- 3.7. Precondition for any discounts is settlement of all undisputed open and due invoices. For possible payments by bill of exchange, a discount shall not be granted.

4 Terms of Delivery

- 4.1. Unless agreed otherwise, supplies shall be delivered according to Ex Works (EXW) – Incoterms 2020.
- 4.2. Appropriate partial shipments as well as minor deviations of up to +/- 10 % shall be admissible.
- 4.3. HORN shall neither be obliged to deliver supplies for exportation to a domestic destination nor to deliver supplies for domestic delivery to a foreign destination. HORN shall be entitled to request a certificate of export.
- 4.4. Packing shall be effected in accordance with ordinary trade usage, unless a special kind of packing has been agreed.
- 4.5. Auxiliary means of transport made available to the customer shall remain property of HORN notwithstanding deposit of a pledge and shall 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 time period 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.
- 4.6. HORN reserves the right to alter the design of the scope of supply. Modifications on customer's request require confirmation by HORN in written form to be valid. Price changes originated by such modifications will be indicated in written form before realization.
- 4.7. If the scope of supply includes assembly and/or installation work, the customer shall arrange his facilities, infrastructure etc. in such way that these works can be executed within the agreed time schedule and milestones. In case of any obstacles to execute proper performance, HORN is obliged to give notice immediately in writing or oral. The agreed time schedule and milestones will be postponed accordingly until such obstacles have been removed. Occurring costs (e.g. accommodation for fitters, additional travel expenses) shall be borne by the customer.
- 4.8. Agreed delivery dates are fixed subject to receipt of all documents required for performing, receipt of the down payment (if agreed upon) and receipt of the timely orders of material (if agreed upon). If shipping is impossible or delayed due to reasons not attributable to HORN, the respective delivery date shall be replaced by HORN's notice about readiness for shipment.
- 4.9. If a delivery date is not observed due to reasons fully attributable to HORN the customer shall be entitled to claim for indemnity with respect to such delays, if HORN fails to deliver subsequently after expiration of a grace period of another four weeks and if the customer additionally has indicated rejection of the delivery in writing.
- 4.10. The customer shall immediately inform HORN about any modification of the time schedule and/or postponement of milestones. In such case, HORN is entitled to claim all proven costs due to such postponements against the customer. In case such postponements last more than three (3) months, the parties will arrange to a revised time schedule.
- 4.11. As for call-orders 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 time period of two weeks and to terminate the contract after expiration of this additional time period or to refuse delivery and claim all resulting damages according to German law. If the customer demands an exceeding quantity in relation to the agreed quantity of the call-order, HORN shall be entitled to its discretion either to deliver the originally ordered quantity or to deliver the exceeded quantity by charging the additional price on basis of the actual price list.
- 4.12. All supplies to be delivered by HORN shall be listed as entire scope of supply in the order or order confirmation. Additional supplies, performance or other extra services (hereinafter "additional supply") shall only arise from written agreement. With regards to such additional supply the following procedure shall be executed: a) change request by the customer b) offer by HORN c) negotiation and agreement about content and price of additional supply in writing d) execution by HORN. Without written agreement according to lit. c) HORN is not obliged to provide or deliver any additional supply.

5 Acceptance

- 5.1. The customer is obliged to carry out all acceptance tests in form of cold test, hot test and performance test promptly after respective notification of readiness by HORN. All results of any test shall be documented in a written acceptance report. If respective test is not carried out within 180 days after HORN's notification of readiness, the test will be deemed as successful. The same applies in case a written acceptance report has not been created or the customer puts the supplies into operation (e.g. by start of production). After execution of all acceptance tests or lapse of time after respective notification of readiness the scope of supply shall be deemed as entirely approved. If supplies do not require acceptance tests, the scope of supply shall be deemed as approved after proper handover to the customer.

6 Force majeure

- 6.1. In case of industrial dispute in the company, disturbance, force majeure and other unforeseeable and inevitable incidents HORN is concerned is not responsible for, HORN shall be exempted from its obligation of delivery respectively acceptance for the period the disturbance persists and to the extent of its impact. If the disturbance persists for more than one month after the date of delivery originally agreed has expired, each party shall be entitled excluding all other claims to terminate the contract with regard to the quantity concerned by the disturbance of delivery or acceptance. If partial delivery has been supplied, the customer is obliged to pay this partial delivery. In such case any assertion of claims for damages shall be excluded.
- 6.2. The regulations in this clause 6.1 shall also apply in case the impediments stated above occur with a sub-contractor or during delay of HORN. If a case of force majeure occurs, each party shall notify the other party thereof immediately.

7 Liability

- 7.1. HORN is obliged to deliver the supplies to the customer without defects. A defect is defined as essential variance between actual and contractual determined technical specifications of the scope of supply which significantly reduces its serviceability and functionality. Variances of documents the contract is based upon, customary in trade and in this branch (e.g. pictures, drawings, colors, weights and dimensions), shall not be deemed as defect. The same applies for supplies sold as downgraded material with the customer's approval.
- 7.2. Notifications of defects shall be sent immediately, but five working days upon receipt of the supplies at the latest in writing together with presenting a copy of corresponding invoice. For hidden defects, the time limit for notification shall be extended to five working days upon ascertainment of the defect.
- 7.3. In case a defect occurs, HORN is obliged at its discretion to improve or replace the defective part. If the improvement or replacement fails twice within reasonable period of time, the customer shall be entitled to (i) reduce the contract price in amount of the value of the defective part or (ii) terminate the contract or (iii) claim for indemnification under legal prerequisites of the German law. The customer's right to terminate the contract according to subsection (ii) is limited to such extensive and essential defects leading to complete uselessness of the entire scope of supply.
- 7.4. Warranty agreements as well as agreements about contractual penalties must be concluded by individual agreement solely, designated as "warranty" or "penalty" and require written form to be valid. Reference to technical standards, technical specifications and performance parameters in contracts, orders, offers or other parts of the contract shall serve for project description only and constitute neither a guarantee nor a penalty agreement.
- 7.5. If supplies differ in their nature from what was to be expected according to public statements of HORN, manufacturers or assistants, especially in advertising or for identification of certain qualities, a defect in quality shall only be deemed if these statements were explicitly made subject of a certain quality agreement between the parties.
- 7.6. Any liability for parts under normal wear and tear as well as for consequential damages (e.g. loss of production, loss of profit, other economic losses etc.) is excluded.
- 7.7. Liability is excluded as far as HORN or its vicarious agents did not act deliberate or reckless. This shall not apply for violations of essential contractual obligations, of product liability law (Produkthaftungsgesetz) and injury to life, limb or health.
- 7.8. In case of assertion of damage claims, HORN's accountability shall however, be limited to compensation of foreseeable, typically occurring damages.
- 7.9. Warranty period shall be 12 months, starting from acceptance according to clause 5, but 18 months after delivery at the latest. This shall not apply to indemnity claims due to deliberated or reckless actions and claims due to violations of product liability law (Produkthaftungsgesetz) or injury to life, limb or health.
- 7.10. Interference, unsuitable or improper use and storage or non-observance of instructions for processing and operation as well as improperly usage with regard to supplies shall result in loss of all warranty and other rights in relation to defects. Only for mitigation of disproportionately big damages or if HORN is in delay with improvement or replacement actions the customer shall be entitled to execute subsequent improvement after previous notification to HORN and to demand reimbursement of reasonable cost.

8 Industrial property rights

- 8.1. The legal liability of HORN with respect to third parties' rights based on industrial or other intellectual property (hereinafter "industrial property rights") is limited to such industrial property rights being effective in the Federal Republic of Germany. Furthermore, HORN assures that in the country of the customer's registered office or in the country of delivery place third parties' industrial property rights do not exist which exclude or limit operation or usage of the supplies.
- 8.2. If HORN is obliged to deliver according to drawings, models, samples or using parts made available by the customer, the customer guarantees non-infringement of third parties' industrial property rights. The customer is obliged to indemnify HORN from third parties' claims. If HORN is prohibited from 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.
- 8.3. HORN is appertained to copyrights and 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 HORN's explicit written approval.

9 Secrecy

- 9.1. Tools, models, drawings and other documents made available by HORN or produced for HORN may only be used for the purpose of proper performance of respective contract.
- 9.2. Establishment as well as processing and treatment by HORN of such tools, models, drawings and other documents not explicitly included in the scope of supply shall be made for HORN as producer with the consequence that HORN shall acquire ownership thereof.
- 9.3. The customer is obliged to keep absolute silence and to treat as own company secrets all observations, perceptions and information out of negotiations, project discussions and documents as well as information about HORN's products in general. The customer shall impose the same obligation on all affiliated companies, suppliers and persons acting and already acted in connection with respective contract.
- 9.4. Design, technology, operation of and specific technical information in context with the supplies are HORN's knowhow and therewith business secrets. The customer is obliged to treat this knowhow as own company secret, not to transfer this knowhow to third parties in any kind and to establish proper protection against unauthorized access (e.g. by password protection of data, IT encryption). The customer is obliged to instruct its personnel, sub-contractors and other suppliers to observe the same confidentiality within the acceptable limits of legislation. Knowhow being delivered within the scope of supply is excluded from this obligation.

10 General terms

- 10.1. In case of bankruptcy of the customer, HORN has the right to cancel the contract with immediate effect. In such case, the customer is obliged to pay for the works executed and for supplies delivered until date of cancellation.
- 10.2. The supplies shall remain property of HORN until full payment of the contract price and of all other receivables for deliveries and services arisen and arising from ongoing business relations between HORN and the customer (reservation of title). For current accounts, the reserved title of the supplies (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 constituted in connection with a payment, the reservation of title shall not be discharged before the bill of exchange has been honored by the customer as drawee.
- 10.3. If HORN makes goods/merchandise hereinafter ("provisions") available to the customer, these shall remain property of HORN during the ongoing business relation have been completed. These provisions shall be marked as another's property and be stored free of charge separately from the customer's property.
- 10.4. Treatment or processing of reserved goods by the customer shall be effected excluding acquisition of title according to par. 950 German Civil Code (Buergerliches Gesetzbuch – BGB) on behalf of, but without legally obliging HORN: HORN shall become co-owner of the new merchandise created in proportion of the net invoice value of its reserved goods to the net invoice value of the new merchandise; the new merchandise shall serve as reserved goods for securing the claims of HORN. 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 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 new merchandise, and the customer shall store the new merchandise for HORN free of charge.
- 10.5. Resale of the reserved goods is permitted to the customer – if not being in delay – on the condition that the customer also agrees upon reservation of title with his client (extended reservation of title). 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 execution of contracts for work or contracts for work and materials by the customer shall also be considered as resale.
- 10.6. In case of resale the customer shall already now assign all claims including 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 these clients.
- 10.7. HORN shall be notified immediately about any 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 third parties bear them.

11 Place of delivery, applicable law and place of jurisdiction

- 11.1. Unless agreed otherwise, the place of delivery and performance is Ploessberg, Germany as registered office of HORN.
- 11.2. Applicable law shall be German law. In addition -but not substituting- to these general terms, the following regulations and laws are valid in the following ranking: German Commercial Code (Handelsgesetzbuch - HGB), German Civil Code (Buergerliches Gesetzbuch - BGB) in their respective versions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.
- 11.3. Where legally permissible, place of jurisdiction for all disputes arising from the contract shall be Weiden i.Opf., Germany, notwithstanding the right of HORN to institute legal proceedings at another competent court of jurisdiction permitted by law. This also applies to proceedings restricted to documentary evidence, summary bill-enforcement procedures and cheque proceedings.

12 Final provisions

- 12.1. Changes and supplements of any contract become valid in written form only, including the agreement itself to contract out the written form.
- 12.2. In case clauses of the contract become partially or entirely ineffective, residual validity shall not be affected. The contracting parties shall engage in such case to replace the ineffective clause by such agreement closest to the intended purpose of the contract. The same shall apply in case of gaps in the provisions requiring settlement.
- 12.3. HORN is entitled to assign claims arising from respective contract and to order third parties to perform contractual obligations. HORN will give notice to customer upon request.
- 12.4. Any set-off of the customer's claims against HORN's receivables shall be excluded, unless these claims are undisputed and legally enforceable by execution.
- 12.5. Retention rights by the customer can only be claimed to the extent that his counterclaim is based in the same contract.