

General Sale and Delivery Conditions

For Customers

Version February 2019

1. Validity

- 1.1 The following conditions are valid for all deliveries and services by hartmannvonsiebenthal the brand experience company GmbH (referred to in the following as 'HVS'), where the contractual partner is acting in the capacity of
- a. Entrepreneur within the meaning of § 14 BGB (German Civil Code) or
 - b. Legal person in public law or a special fund under public law.
- 1.2 In the event that the contractual partner is not acting within any of the above definitions in law, particularly if the contractual partner is a Consumer within the meaning of § 13 BGB, then the contractual partner is obliged to inform HVS immediately of this fact in writing. The information simultaneously represents a rejection of the offer communicated by HVS.

2. General

- 2.1 HVS provides all deliveries and services exclusively in accordance with these conditions.
The general terms and conditions of the contractual partner shall not become part of the contract where not confirmed expressly in writing by HVS. This is also valid if HVS confirms an order without once again expressly excluding the general terms and conditions of the contractual partner or if HVS executes the contract within a specific reservation.
Where nothing is agreed in writing to the contrary the contract is agreed solely on the basis of the content of the written order confirmation by HVS.
- 2.2 Orders always require confirmation. All the documentation or all the specification information exchanged, such as illustrations, drawings and data on performance, weight or dimensions are to be considered preliminary approximations until they are expressly declared binding.
- 2.3 Where the information in the offer specification or the order confirmation has become binding it shall constitute the agreed quality (§ 434 BGB). Other characteristics are only considered agreed if they have been confirmed by HVS in writing.
- 2.4 HVS retains all titles (ownerships), industrial property rights and copyrights in connection with cost estimates, drawings and other information, whether material or immaterial – including those in electronic form ('documents'). These shall not be made available to third parties. HVS shall not issue to third parties any information or documents that are marked confidential by the contractual partner without the express consent of the contractual partner. A consent is considered given where HVS is obliged to provide information to its subcontractors in the course of contract fulfilment, providing that HVS has passed on comparable obligations to the relevant subcontractor.
- 2.5 The documents must be returned immediately to HVS on demand if the contract is not concluded.

3. Scope of deliveries and services

- 3.1 The scope of deliveries and services depends on the information from HVS in the order confirmation. All agreements and modifications must be confirmed by HVS in writing.

4. Prices and payment conditions

- 4.1 Where nothing is agreed to the contrary, the price is to be understood 'ex works' in accordance with INCOTERMS 2010 and is to include standard packaging, excluding VAT.
- 4.2 Where no other agreement has been reached, the contract price must be paid without deductions or fees to the HVS bank account or the payment point named by HVS, as follows:
- 50% down payment upon receipt of the order confirmation and the invoice;
 - 30% at completion of planning and receipt of the invoice.
 - 20% at acceptance and receipt of the invoice.

All sums are payable 14 days after receipt of the corresponding invoice where nothing is agreed to the contrary.

- 4.3 If fulfilment of the contract is delayed because of a lack of instructions, input by contractual partners or authorisations or documents, even though HVS is ready to perform or if the provision of services is delayed by more than three months because of circumstances for which HVS is not responsible, then the full contractual amount may be invoiced and the total is due 14 days after invoicing.
- 4.4 The contractual partner can offset against payment obligations only with undisputed or legally determined demands.
- 4.5 A right of retention of payments is only given if this is based on undisputed or legally determined counter-demands based on the identical contractual relationship.
- 4.6 If the contractual party is in default due to a partial payment then the remaining total sum will become due immediately. HVS retains the right in this event to interrupt work on the subject of the contract until the sum demanded has been paid in full. HVS is then also entitled to demand extension of times and can demand advance payment for further services or the provision of reasonable securities prior to the performance and can also withdraw from the contract after giving a reasonable period to cure the payment default and can claim compensation.
The same is valid in the event that the insolvency application is made or insolvency proceedings are initiated on the property of the contractual partner.
- 4.7 In the event that subsequent changes become necessary to drawings and documents or property or if additional or modified changes are made, then HVS retains the right to adjust the agreed contractual price, taking into account the modified conditions and the additional work. The contractual price is increased automatically. However, the price adjustment shall not increase the contractual price by an individual event by more than 30%. Where a price adjustment is considered necessary above this value in the course of the project, HVS shall inform the contractual partner of this fact immediately.
- 4.8 In addition to the contract price the contractual partner shall compensate HVS for all auxiliary costs (software licences, travelling expenses, travel time, release, packaging, disposal, cranes, elevators, lifting apparatus, electricity, water, duplication, plotting etc.). Travelling is work time and shall be additionally remunerated.

5. Delivery deadlines

- 5.1 Only the deadlines that are given and determined in the order confirmation as contractual deadlines are binding. All other information on deadlines is non-binding if are not given otherwise, expressly and in writing. In any case a deadline only begins once the contractual partner has submitted the necessary documentation, authorisations and approvals and not before the agreed advance payment has been received. If these prerequisites are not fulfilled in time by the contractual partner then the contractual deadlines shall be extended by a reasonable period; this is not valid if HVS is responsible for a delay.
- 5.2 A contractual deadline is considered met if the relevant contractual performance is usable for most part at this date.

- 5.3 If the failure to meet the contractual deadlines is caused by an Act of God, such as e.g. mobilisation, war, public disorder, uprising or similar events such as e.g. labour disputes, strike, exclusion, adverse weather conditions, times related to customs clearance or other circumstances outside the influence of HVS then the delivery deadlines shall be extended by a reasonable period. This is also valid for obstructions affecting subcontractors. The circumstances described here are also considered out of the control of HVS if they occur in the course of an existing default period. HVS shall inform the contractual partner as quickly as possible of the beginning and end of such obstructions.
- 5.4 If the shipment is delayed by circumstances that are in the sphere of influence of the contractual partner then the partner is obliged to pay a storage fee, beginning one month after the notification of readiness for shipping of the objects of the contract. In the event of storage by HVS or a subcontractor this fixed fee is 0.5 % of the invoice total for each month or part thereof, to a maximum of 5 %.
In this case HVS reserves the right to dispose of the object of the contract, following fruitless expiry of a reasonable extension, and to provide replacement goods to the contractual partner within a reasonable delivery period, retaining HVS's remaining rights.
- 5.5 The contractual partner can withdraw from the contract if the full fulfilment of the contract becomes impossible for HVS prior to the transfer of risk. The contractual partner can also withdraw from the contract if the fulfilment of parts of an order becomes impossible and the partner has a legitimate interest in the return of a partial delivery. If this is not the case then the contractual partner is obliged to pay the corresponding contractual price for the partial delivery. Clause 10 also applies.
- 5.6 If the impossibility is caused by an error at acceptance or if the contractual partner is solely or primarily responsible for the circumstances that caused the impossibility then the contractual partner remains obliged to provide the consideration.
- 5.7 If HVS fails to meet the dates agreed voluntarily ("Verzug") and thus causes damage to the contractual partner then the partner is entitled to claim compensation according to the following: The Liquidated Damages shall be 0.3 % of the value of the part of the delivery that cannot be used in time in accordance with the contract because of the default for each full week of delay. The maximum amount of LD shall not exceed a maximum 5 % of the total remuneration. The compensation shall be the sole and only compensation which satisfies all claims against HVS for any delay.
- 5.8 If the contractual partner notifies HVS of the default and grants a reasonable extension after the delivery deadline – taking account of statutory exceptions – and if this extension expires fruitlessly, then the contractual partner is entitled to withdraw from the contract in accordance with the statutory regulations.
- 5.9 Further claims resulting from defects or delayed delivery are only subject to the regulations in Clause 10.2 of these conditions. All agreed and due contractual fines must be offset against such claims.
- 6. Transfer of risk and acceptance**
- 6.1 Where nothing is agreed to the contrary, risk is transferred to the contractual partner ex-works in accordance with INCOTERMS 2010, at the latest at acceptance.
- 6.2 HVS shall insure the shipments against theft, damage through breakage, transport, fire, water and other insurable risks on the demand and at the expense of the contractual partner if asked so.
- 6.3 If the contractual partner does not demand the above insurance then the partner shall carry all risk of accidental destruction and/or deterioration of the performance where the responsibility of HVS for the destruction/deterioration cannot be proven.
- 6.4 If the shipment is delayed by circumstances outside the influence of HVS then the risk is transferred to the contractual partner on the day on which the readiness for shipment is announced. HVS declares itself willing to arrange the insurance demanded by the contractual partner at the partner's expense.
- 6.5 The contractual partner must accept the objects of the contract without prejudice and reserving the rights in Clause 9, even if they have insignificant defects.
- 6.6 Partial deliveries are permissible where they do not cause the contractual partner unreasonable disadvantage.
- 7. Retention of title**
- 7.1 The objects of the contract remain the property of HVS until all payment obligations and claims in connection with the delivery contract have been fulfilled. If the contractual partner culpably violates contractual obligations, particularly if the partner fails to fulfil its payment obligations then HVS is entitled to withdraw from the contract after a reasonable period and to take back possession of the objects of the contract; the statutory regulations, for example regarding the lapsing of a reparation term, remain unaffected. The fact that HVS takes back objects of the contract and/or exercises the rights of retention of title or has objects of the contract seized shall not lead to the assumption that withdrawal from the contract has taken place if HVS does not expressly declare otherwise.
The contractual partner is obliged to return the objects in question.
The contractual partner is obliged to inform HVS immediately in writing of a seizure, processing or other intervention by a third party.
- 7.2 If the contractual partner applies for insolvency then HVS is entitled to withdraw from the contract and to demand the immediate return of the objects of the contract.
- 7.3 HVS is entitled to insure the objects of the contract at the expense of the contractual partner against theft, damage through breakage, fire, water and loss through other circumstances if the contractual partner does not prove that it has already put insurance in place against these risks itself.
- 7.4 The contractual partner only has the right to re-sell the objects of the contract in the current course of business on condition that it receives payment from the buyer or makes the transfer of ownership to the buyer dependent on the buyer fulfilling its payment obligations. However the contractual partner already now transfers all claims on its buyers or third parties that result from re-sale in advance to HVS, regardless of whether the objects of the contract have been processed or not. The contractual party remains entitled to collect these claims regardless of the assignment. The right of HVS to collect the claims remains unaffected by this. However HVS undertakes not to collect the claims as long as the contractual partner fulfils its payment obligations in an orderly manner.
The contractual partner is obliged to inform HVS on demand of the assigned claims and the corresponding debtors and to transfer all necessary information with regard to the collection, and to submit the relevant documents and inform the debtors of the assignment.
Where the objects of the contract are sold together with other objects that were not supplied by HVS the claim of the contractual partners on its buyers is only considered assigned to the extent that it corresponds to the sum of the contract price agreed between HVS and the contractual partner.
- 7.5 The processing or reworking of objects that are subject to retention of title (referred to in the following as protected objects) is also carried out by the contractual partner for HVS. Where protected objects are processed or combined inseparably with other objects that are not the property of HVS, then HVS shall become the joint owner of these processed or combined objects at the time of the processing or combination. If objects supplied by HVS are installed in other portable objects or inseparably combined with them and if this other object is considered the significant part then the contractual partner shall transfer the right of joint ownership to HVS where the substantial part belonged to the partner.
In this event the contractual partner exercises the right of joint ownership for HVS jointly. In all other contexts the object that is manufactured by processing, reworking, connection or installation is subject to the same regulations as the protected objects.
- 7.6 HVS consents to the release of the relevant part of the securities in its favour, where the contractual partner demands this, to a value that exceeds the total claim to be secured by 20%. HVS is entitled to decide which individual securities are to be released.

8. Installation, construction supervision and initial operation

8.1 If HVS has taken over the construction, the assembly, the construction supervision and/or the initial operation of the objects of the contract then HVS is not obliged to start the work of the suitable employees or fulfilment of these performance obligations until the contractual partner has expressly confirmed in writing that all necessary preliminary work is complete and the equipment and materials that are necessary to carry out the performance, e.g. scaffolding, lifting equipment, electricity, water, heating etc. are available, for which the contractual partner is responsible, so that HVS can begin work immediately.

If the preparatory work is not fully completed then the contractual partner is liable for all the additional costs this causes.

8.2 Where a delay or an interruption occurs during construction, assembly or initial operation for reasons for which neither HVS nor its agents are responsible for the contractual partner is obliged to pay the additional costs incurred by HVS by the delay, the interruption or the hindrance, even if the contractual partner is not responsible for this (except if the event of an act of God). HVS is also entitled to a reasonable extension of the performance period.

The obligation of the contractual partner to observe the agreed payment plan remains unaffectedly valid.

8.3 Where HVS has been commissioned with construction supervision this only covers, unless anything to the contrary has been agreed expressly in writing, the plausibility testing of documents and a rough quality check on site. The contractual partner is aware that full construction supervision would demand the presence of at least two construction supervisors for each active and company throughout the entire performance period. Due to the supervision works performed by HVS, it is surely not possible to discover all or even only substantial defects but rather only to monitor essential activity in the course of the site visit. HVS expressly advises to order a full construction supervision with a third party. If not ordered, the contractual partner decided against full construction supervision for reasons of cost.

If requested and in accordance with availability HVS is happy to support the contractual partner with additional staff as part of an extension of contract.

9. Claims for defects

HVS is liable for defects in quality and title as follows, excluding other claims – without compromising Clause 10:

Defects of quality:

9.1 All parts that prove to be defective because of circumstances that existed before or on the date of transfer of risk shall be either rectified or exchanged for a non-defective part, at the cost and option of HVS. If this kind of defect is discovered in the objects of the contract then the contractual partner shall inform HVS immediately of this fact.

Exchanged parts become the property of HVS. If HVS so demands then the contractual partner is obliged to dispose the exchanged parts at his own cost or to return them to HVS.

9.2 There is no liability for faults resulting from the following circumstances, among others, as long as they are not caused by wilful misconduct of HVS:

- a) unsuitable or incorrect use,
- b) incorrect installation or initial operation,
- c) installation of spare parts that are not originals,
- d) normal wear and tear,
- e) incorrect or negligent handling,
- f) incorrect electric voltage,
- i) consequences of incorrect calculations by or information from the contractual partner.

HVS does not accept liability for faults that occur subsequently as a result of the installation conditions or unsuitable repair or handling by the contractual partner or by third parties.

9.3 Following consultation with HVS the contractual partner shall grant the time and opportunity deemed necessary by HVS to carry out the reparation and exchange work. Otherwise HVS is released from liability for the resulting consequences. The contractual partner is only entitled to resolve the defects itself or have third parties resolve the defects in urgent cases where safety is at risk or in cases of the risk of substantial damage and where this action is necessary to prevent the same and can claim compensation from HVS for the necessary costs; HVS must be informed immediately in writing of these cases.

9.4 With regard to the direct costs that are incurred through the rectification or exchange, HVS shall bear the costs of their own repair and shipping – where the claim proves to be justified. HVS shall also carry the costs of the exchange and the installation and also the costs of the necessary deployment of fitters or auxiliary staff, including travelling costs where this does not cause unreasonable difficulty or expense for HVS. All work regarding responsibility for defects shall be carried out on the building site in the workshop areas.

9.5 If the contractual partner has set HVS a reasonable period for the rectification or the exchange of a defective part – except in the case of a statutory exception – and this period has passed fruitlessly, then the contractual partner can withdraw from the contract in accordance with statutory regulations. In the case of insignificant defects, the contractual partner is only entitled to claim a reduction of contractual price. The right to reduce the price is excluded as long as the rectification or exchange has not failed after the third attempt.

Further claims are subject to the regulations in Clause 9 of these conditions.

9.6 HVS is not liable for the consequences where the contractual party or third party carries out unsuitable repair work. The same is true for modifications to the objects of the contract without the prior, written consent of HVS.

9.7 HVS can claim compensation from the contractual partner where HVS has incurred costs or expenses if (a) the defect claimed by the contractual partner is found not to exist or (b) HVS is not responsible for the claimed defect.

Defects of title

9.8 If the use of the objects of the contract violates the industrial property rights or copyrights that are valid in the Federal Republic of Germany then HVS is obliged, at its option, to either obtain the right to continue use for the contractual partner or to modify the objects of the contract in a way that is reasonable for the contractual partner such that the industrial property rights are no longer violated.

If this is not possible for economic reasons or within a reasonable time then the contractual partner is entitled to withdraw from the contract. HVS is also entitled to withdraw from the contract in the above circumstances.

HVS shall continue to indemnify the contractual partner from undisputed or legally determined claims of the owner of the violated industrial property rights.

9.9 The obligations of HVS in Clause 9.8 are complete and conclusive in the event of the violation of industrial property rights – Clause 10 remains unaffected.

They are only applicable if

- The contractual partner informs HVS immediately and in writing of supposed violations of industrial property rights,
- The contractual partner has not yet recognised a violation and gives HVS all possible support in the defence against the alleged claim and/or enables HVS to carry out the modifications described in Clause 9.8,

- The contractual partner has submitted copies of all communication, notifications and other measures in connection with the alleged violation to HVS,
 - HVS has been given the right to all defence measures, including settlement out of court,
 - The defect of title did not result from instruction to the contractual partner or
 - The violation was not caused by an unauthorised modification by the contractual partner or use of the objects of the contract contrary to the agreement.
- 9.10 Claims for rectification or exchange are subject to a limitation period of 12 months, beginning at the statutory start of the contract; the same is true analogously for withdrawal and price reduction. This is not valid where longer periods are compulsory by law except in cases of intent, fraudulent concealment of a defect or violation of a quality guarantee. The statutory regulations regarding suspension or restart of the limitation period remain unaffected.

10. Liability

- 10.1 HVS liability for damage – for whatever legal reason – is limited to the following circumstances:
- a) Intent,
 - b) Gross negligence,
 - c) Damage to life, limb or health,
 - d) Defects in objects of the contract that were fraudulently concealed from HVS or for which HVS provided a quality guarantee,
 - e) Defects in the objects of the contract where the manufacturer is liable in accordance with the German law on product liability for damage to persons or property in objects not used for commercial purposes.
- 10.2 In the event of the violation of essential contractual obligations HVS is also liable for damage resulting from simple negligence, whereby the scope of liability is limited to typically foreseeable damage. Not foreseeable damage shall be for example without limitation any claim regarding losses or damage resulting, for example, from downtime for the objects of the contract or parts thereof or loss of productivity, loss of interest, loss of profit, loss of or defects in business contracts, additional financial costs or for all indirect, specific or consequential damage incurred by the contractual partner in connection with the contract.

11. Limitation period for claims

- 11.1 All claims by the contractual partner, except those in accordance with Clause 9.10, on whatever basis, come under the statute of limitations 12 months after transfer of risk.
- 11.2 The statutory limitation periods are valid for replacement claims in accordance with Clause 10.

12. Intellectual property, use of software

- 12.1 The contractual partner is only entitled to use all documents and other information that includes intellectual property and was transmitted by HVS for the purpose of using the objects of the contract. The contractual partner is not entitled to transfer such documents or information to third parties and may not use them for other purposes, e.g. to replicate the objects of the contract (or parts thereof) or to reverse engineer and/or manufacture components, equipment or parts. This obligation of the contractual partner continues beyond the end of the contract.
- 12.2 Where the scope of delivery includes software the contractual partner shall receive non-exclusive usage rights for the software provided as well as the relevant documentation.
- 12.3 The contractual partner undertakes not to remove or modify manufacturer information, including copyright marks, without the express, prior permission of HVS.
- 12.4 All other rights in connection with the software and the relevant documentation, including copies of the same, remain the property of HVS or, where applicable, the original software supplier. The transfer of sub-licences requires the prior, written consent of HVS.

13. Partial invalidity

If a regulation in these conditions is or becomes wholly or partially ineffective, then this shall not affect the effectiveness of the remaining contract, the remaining clauses or the remaining parts of a clause.
The parties shall replace an ineffective regulation with an effective one that comes as close as possible to the economic intention of the ineffective regulation.

14. Place of performance and court of jurisdiction

- 14.1 The place of performance is Berlin, Germany. In the event of any dispute arising from this contract, including disputes concerning cheques of bills of exchange, the suit must be filed at the court responsible for HVS, currently the local or district court in Berlin.
- 14.2 HVS is also entitled to file a suit at the location of the headquarters of the contractual partner.
- 14.3 German civil law applies to the exclusion of the UN sales convention of April 11, 1980 ("CISG").