

I. General conditions

1. The following terms and conditions of sale and delivery shall apply to all contracts concluded between the Buyer and HARTING AG (hereinafter Supplier) and to the duties thus established. They shall also apply to all future business transactions, even if they have not been specifically agreed upon again. When placing the order, the Buyer confirms to be contracted to these terms and conditions of sale and delivery and to comply with them. The Buyer's terms and conditions that conflict with these terms and conditions of sale and delivery and which the Supplier has not expressly agreed to in writing are not binding on the Supplier, even if they were not explicitly rejected. Contract conclusions and agreements as well as subsidiary agreements - especially if they deviate from these terms and conditions - which were not recorded in the written form, shall be confirmed in writing by the parties.
2. For deliveries based on one of the contractual formulas of Incoterms, the currently valid Incoterms corresponding to these terms and conditions of sale and delivery are decisive. The trade clauses shall, however, only apply if no differing conditions were agreed upon in special agreements.
3. The Buyer's order is a binding offer which the Supplier can accept within 2 weeks. The Supplier is not obligated to accept the Buyer's order. The Supplier's quotes are subject to change and non-binding, unless otherwise agreed in individual cases.

II. Retention of title and confidentiality

1. The Supplier expressly retains the title and copyright to all documents such as calculations, illustrations and drawings that were made available to the Buyer during the negotiations or the fulfilment of contract. This shall also apply to those written documents that have been marked "confidential" or whose confidential nature should be recognisable to the Buyer.
2. Without the Supplier's prior written consent, quotes and the associated documents may not be made accessible to third parties. The quote and its associated documents, drawings and samples etc. must be returned on request.

III. Extent of obligation to deliver / Small quantities

1. The Supplier is entitled to make partial deliveries and partial performances at any time as long as this is acceptable to the Buyer. For small quantities, the Supplier is entitled to increase the quantity to the smallest packaging unit, as long as this is acceptable to the Buyer.
2. In addition, excesses or shortfalls of the delivery quantity of up to 10 percent are binding on the Buyer for custom productions. This shall apply if partial deliveries in specific quantities were agreed, as well as to individual partial deliveries.

IV. Dispatch / Packaging

1. Loading and dispatch occur at the Buyer's risk in accordance with Incoterms 2010 FCA - Free Carrier (Espelkamp) without insurance. With regard to type of dispatch and shipping route, the Supplier shall endeavour to take the Buyer's requests and interests into consideration; additional costs thus incurred - also when carriage paid was agreed - shall be borne by the Buyer. Notification of readiness of dispatch shall be considered equal to dispatch.
2. At the Buyer's request, packaging the goods is done with the greatest care, dispatch to the best of our judgement, however, without expenses to the Supplier. In this case, the Buyer shall bear the costs.
3. Should the date of dispatch or delivery originally agreed upon be postponed at the Buyer's request, the Supplier shall store the goods at the Buyer's expense and risk for it. In this case, the storage fee payable is 1% of the invoice amount for every month or part thereof, starting with the month following the month notification of readiness for dispatch was made.
4. At the Buyer's request and expense, the Supplier shall insure the shipment against loss, breakage, transport and fire damage.
5. Transport and all other packaging cannot be returned to the Supplier; excepted from this are Euro-pallets. The Buyer must arrange the proper disposal of the packaging at its own account.

V. Prices / Delivery dates

1. Prices are only valid for the relevant confirmed order, FCA - Free Carrier (Espelkamp), Germany, excluding packaging and customs duties, unless otherwise agreed in writing. Unless another currency is explicitly mentioned in the Supplier's offer itself, prices are quoted in CHF and are net plus value added tax. The Supplier's invoices must be paid without deducting a discount, unless otherwise expressly stipulated.
2. The delivery periods/delivery dates quoted by the Supplier are for information only and are therefore not binding on the Supplier, unless they were specifically agreed as mandatory.
3. The delivery period quoted by the Supplier only begins when technical questions have been clarified and written consent regarding the order is on hand. In addition, the Buyer must fulfil all duties incumbent on it properly and on time, in particular, deliver the necessary documents and the materials to be provided on time, issue approvals and other permits and fulfil the agreed upon payment terms.
4. Should the agreed delivery period exceed two months from conclusion of contract, the Supplier reserves the right to change the prices accordingly, if there is an increase or decrease in costs after conclusion of contract, in particular, due to tariff agreements or material price changes. The changes shall be verified towards the Buyer if so requested. Should the price change exceed the prices quoted at conclusion of contract by 10%, the Buyer is entitled to withdraw from the contract.

VI. Terms of Payment / Offsetting / Retention

1. The purchase price becomes due for payment 30 days after sending the invoice (invoice date), unless otherwise specified on the invoice. Should the goods only be delivered to the Buyer or the agreed delivery location after receipt of invoice, the above mentioned payment period only begins when the goods have been received. Should the Buyer not pay within the specified period, default of payment sets in.
2. In the event of default, the Supplier is entitled to claim default interest in the statutory amount of 8% per annum as well as possible damages. In addition, the Supplier is entitled to cease the delivery of all goods and services to the Buyer until full payment, without itself falling into default or incurring liability.
3. Bills shall only be accepted after express agreement on condition they can be discounted; discounting fees must be paid by the Buyer without deduction within 8 days of notification. Cheques and bills are only accepted as conditional payment.
4. The Buyer is only entitled to the right to offset and to refuse payment if its counter claims have been legally determined, are undisputed or have been accepted by the Supplier. In addition, the Buyer is only entitled to exercise the right to refuse payment if its counter-claim is based on the same business transaction.

VII. Transfer of risk

1. The risk of incidental deterioration and incidental destruction of the contractual object is transferred to the Buyer as soon as the ready-to-operate delivery has been properly handed over to the Buyer, its representatives or vicarious agents.
2. If dispatch and delivery are delayed at the Buyer's request or due to its negligence, the risk of incidental deterioration and incidental destruction is transferred to the Buyer on the day of readiness for shipment for the duration of the delay. However, the Supplier is obligated to take out corresponding insurance at the Buyer's request and expense.
3. For the rest, the risk of incidental deterioration and incidental destruction is transferred to the Buyer when a delay in acceptance occurs.
4. If software has been made available in terms of Section XIII. of these general terms and conditions of sale and delivery by way of electronic communications media (e.g. via the Internet), the risk is transferred when the software leaves the Supplier's sphere of influence (e.g. during downloading).

VIII. Retention of title

1. Irrespective of the transfer of risk on delivery, the delivered goods remain the property of the Supplier (retention goods) until all of the Supplier's claims from the business relationship with the Buyer have been paid (incl. charges from default). If there is a current account relationship, the retention of title relates to the acknowledged debit balance.
2. The Buyer is entitled to sell the retention goods within the normal course of business as long as it properly fulfils its duties due under the business relationship with the Supplier and does not find itself in payment default. The Buyer is not entitled to pledge the retention goods or assign them as security. The Supplier is authorised to have the retention of title recorded in the registers intended for this at any time.
3. If the Buyer behaves contrary to the contract, in particular, in the case of default, the Supplier is entitled to withdraw from the contract and demand the return of the retention goods after an appropriate period of grace (Art. 107 and 214 (3) OR) granted to the Buyer has expired without result. When the Supplier repossesses the retention goods, a withdrawal from the contract is constituted.
4. The Buyer now already assigns all claims that accrue to it against its customer or a third party from the resale of the processed or unprocessed retention goods to the Supplier as security and this in the amount of the final invoice of all of the Supplier's claims against the Buyer. If the Buyer's customer is a current account customer, the advance assignment also relates to the acknowledged debit balance as well as the existing "causal" debit in the event that the customer becomes insolvent. The Supplier accepts the assignment.
5. The Buyer continues to be entitled to collect claims after the assignment. This shall not affect the Supplier's right to collect the claims; it will, however, not collect the claims as long as the Buyer fulfils its payment obligations from the payments received, does not default on payment, does not apply for insolvency proceeding to be instituted and payments are not stopped. However, if this is the case, the Supplier can demand that the Buyer discloses the assigned claims, their debtors and all information necessary to collect, hands over the related documents and notifies the debtor (third party) of the assignment.
6. Processing and transforming the retention goods by the Buyer shall always be carried out for the Supplier. Should the retention goods be processed or mixed with other items that do not belong to the Supplier, the Supplier shall acquire co-ownership in the new item in the same ratio as that between the value of the retention goods (final invoice amount incl. VAT) and the value of the other processed or mixed item at the time of processing or mixing. The same shall apply to the new item created through processing or mixing as does to the retention goods. In the event that the retention goods are irreversibly combined with other items that do not belong to the Supplier, the Supplier shall acquire co-ownership in the new item in the same ratio as that between the value of the retention goods (final invoice amount incl. VAT) and the value of the combined items at the time of combination. If the Buyer's item emerges as the main item after mixing or combining, the Buyer and the Supplier agree that the Buyer shall assign proportional co-ownership of this item; the Supplier herewith accepts the assignment. The thus created Supplier's sole or co-ownership of an item shall be stored by the Buyer for the Supplier free of charge. The Buyer also assigns the claims arising against third parties through combining the contractual item with a property to the Supplier as security.
7. The Buyer must treat the retention goods with care, store them separately from other goods or mark the Supplier's retention goods clearly, and adequately insure them at its expense against damage, in particular, fire and water damage and theft.
8. The Buyer must inform the Supplier immediately of any compulsory enforcement measures by third parties over the retention goods, the assigned claims and other securities and furnish the documents necessary for an intervention. This shall also apply to other types of interferences. The costs for out-of-court settlements to release or regain the goods shall be borne by the Buyer. This shall also apply to the costs of a justified judicial intervention, if they cannot be recovered from the third party.
9. If the liquidable value of existing securities exceeds the claims being secured by more than 15%, the Supplier is obligated to release adequate securities at the Buyer's request and the Supplier's choice. The selection of securities to be released is incumbent on the Supplier.

IX. Delay in delivery, force majeure, delay in acceptance

1. In the event of force majeure such as fire, war or industrial action and other unforeseeable or unavoidable damage events, for which the Supplier is not responsible, the delivery period shall be extended by a corresponding period of time. This shall also apply to late deliveries of essential raw or production material and other necessary components provided the delay is not caused by the Supplier. In this case, the Supplier will inform the Buyer immediately of the delay. Otherwise in these events, if the economic significance or the content of the performance are extensively changed or have a serious impact on the Supplier's operations, and if it is subsequently realised that the performance is actually impossible, the contract shall be adjusted accordingly. Should this not be justifiable economically, the Supplier has the right to withdraw from the contract in full or in part. In recognition of the seriousness of such an event, the Supplier must notify the Buyer of its intention to withdraw immediately, even if an extension of the delivery period was initially agreed upon. Compensation claims by the Buyer based on such withdrawal are excluded.
2. The provisions in Section XII. shall apply accordingly to the Supplier's liability for the delay in delivery. Other legal claims and rights of the Buyer, arising from the Supplier's delay in delivery, which it is entitled to aside from the compensation claims are not affected.

X. Acceptance and fulfilment

1. The Buyer must accept or approve ordered products, especially custom-made products, even if they exhibit insignificant deviations which do not interfere with the function of the product.
2. If FCA - Free Carrier (Espelkamp) was agreed, notifying the Buyer that the contract goods are ready for dispatch, shall be considered to be the fulfilment of the delivery contract.

XI. Warranty

1. The Buyer must inspect the delivered products for visible defects immediately and check the quantity, and if necessary send a written and justified notification of defect to the Supplier within 5 workdays. Written and justified notification of hidden defects and legal defects must be made within 5 days after discovery. The Buyer may not claim for defects if it did not properly meet its obligations to inspect and make notification of defect.
2. Assurances are only considered assurances if they are specifically marked as such and are unmistakably recognisable as such.
3. If there is a defect on the purchased item, the Supplier is entitled to decide to either remove the defect or to deliver a new defect-free item within an appropriate period (subsequent performance). If the defect is removed, the Supplier is obligated to bear all expenses necessary for the removal of the defect, in particular, transport, travel, labour and material costs, as long as these are not increased by the fact that the contract object was moved to a different location than the place of fulfilment. If notification of defect was unjustified, the Supplier is entitled to have the Buyer reimburse all expenses and damages incurred, provided the Buyer has recognised or negligently has not recognised that there is no defect, but that the cause of the claimed symptom lies within its own sphere of responsibility.
4. If the removal of defect is not performed within an adequate period of time, the Buyer can - irrespective of possible compensation claims according to Section XII. - demand a reduction in the purchase price or withdraw from the contract if accepting the goods has become unacceptable to the Buyer.
5. The Supplier is liable pursuant to legal provisions should the Buyer assert compensation claims that are based on intent or gross negligence, including intent or gross negligence on behalf of the Supplier's representatives or vicarious agents. Furthermore, the Supplier is liable for the breach of an assurance as well as for injuries to life limb and health for which it is responsible.
6. Warranty claims cannot be made for insignificant deviations from the agreed specifications, for merely insignificant interference with its usability, as well as for natural wear and tear or damages that arise after the transfer of risk due to faulty or negligent treatment, excessive use, unsuitable operating materials, or that arise due to special external influences that were not expected pursuant to the contract as well as software errors that cannot be replicated. If the Buyer or third parties conduct improper alteration and maintenance work, then warranty claims can also not be asserted for this and the consequences thus arising.
7. Liability for indirect damage and consequential damage shall be excluded within the legally permissible framework.
8. For software made available for an unlimited period of time according to Section XIII. of these terms and conditions of sale and delivery, the following shall apply additionally: Only verified and replicable deviations from specifications shall be considered material defects of the software. In particular, a material defect does not exist if it does not appear in the latest version of the software delivered to the Buyer and its use is acceptable to the Buyer. The defect and the corresponding data processing environment must be specified in as much detail as possible. Claims for material defects do not exist:
 - for only insignificant deviations from the agreed character,
 - for only insignificant interference of usability,
 - for damages incurred due to faulty or negligent treatment by the Buyer or third parties,
 - for damages incurred due to special external influences that were not expected according to the contract,
 - for alterations made by the Buyer or third parties and the consequences thus arising,
 - for software extended by the Buyer or third parties beyond the interface intended by the Supplier,
 - in the event that the software made available is not compatible with the data processing environment used by the Buyer, however, the Supplier has tested this and expressly confirmed its compatibility and functionality.If the Supplier does not choose a different type of subsequent performance, removal of defects occurs by removing the material defect of the software as follows:
 - (aa) The Supplier shall deliver an update or a new upgrade to replace the software, as long as this is available to the Supplier or obtainable at a reasonable cost. If the Supplier has granted the Buyer a multi-user licence, the Buyer may make a corresponding number of copies of the update or upgrade delivered.
 - (bb) Until an update or upgrade has been delivered, the Supplier shall make an interim solution available in order to prevent material defects, as long as this is possible at a reasonable cost and the Buyer can no longer process tasks that cannot be delayed due to the material defect.
 - (cc) If a data carrier or a document that was delivered is faulty, the Buyer can only demand that the Supplier replaces this with a defect-free item.
 - (dd) The Supplier shall remove the defect at its discretion either on the Buyer's or Supplier's premises. Should the Supplier decide to remove the defect on the Buyer's premises, the Buyer must make hardware and software as well as other operating conditions (including the necessary computing time) available to the Supplier together with suitable service personnel. The Buyer must make the documents and information it possesses to remove the material defect available to the Supplier.
9. In the case of warranty claims, the Buyer may withhold payments that are in an adequate proportion to the existing material defects. The Buyer may only withhold payment, if a claim for defects is asserted which the Supplier acknowledges.
10. Otherwise Section XII. shall apply to compensation claims. Additional claims from the Buyer or claims not regulated in this Section X. asserted against the Supplier and its vicarious agents due to material defect are excluded. For the rest, legal provisions shall apply.
11. A period of limitation of 12 months after transfer of risk shall apply to the assertion of the Buyer's rights and claims based on defects - including defect-related compensation claims. The assertion of defects and the removal of defects do not interrupt the warranty period.

XII. Compensation

1. The Buyer's claims for defects and for the reimbursement of expenses (hereinafter:

compensation claims), irrespective of the legal reason, in particular, due to breach of duties under the contractual obligation and due to impermissible conduct are excluded if they exceed the measure described in these terms and conditions of sale and delivery.

2. The Supplier is liable according to legal provisions for its own faults and the faults of its legal representatives and vicarious agents only in cases of intent or gross negligence, a lack of guaranteed characteristics of the goods as well as injury to life, limb and health. If the Supplier is responsible for a breach of essential contract duties due to slight negligence, liability is limited to the purchase price of the goods. Essential contract duties in terms of this limited liability clause are those that when met actually make the proper implementation of the contract possible, when breached jeopardise the attainment of the contract purpose, and those that the Buyer can ordinarily expect to be adhered to. The above provisions are not associated with a change of the burden of proof to the Buyer's disadvantage.
3. Should the Buyer be entitled to compensation claims according to this Section XII., these shall become time-barred within one year. Legal statutes of limitation shall apply to compensation claims under the product liability law, in case of intent, gross negligence, injury to life, limb and health or due to a breach of essential contract duties.
4. If liability for defects towards the Buyer is excluded or limited, this shall also apply to the personal liability of the Supplier's officers, employees, colleagues, representatives and vicarious agents.

XIII. Use of software, providing software

1. This Section XIII. shall apply exclusively to providing standard software, which has been supplied for use as part of or in connection with a delivery of the associated hardware (hereinafter called "software") as well as to the entire delivery if a breach of obligation or an impairment of performance originates from the software. For the rest, the remaining provisions of these terms and conditions of sale and delivery shall apply exclusively to the hardware. The provisions of this Section XIII. relating to "software" shall not apply to firmware.
2. If a documentation is provided, then the term "software" in the following also includes this documentation to the extent agreed in the contract.
3. If software is part of the scope of delivery, the Buyer shall be granted a non-exclusive right to use the software supplied. It is merely made available for use with the delivery object it is intended for. Using the software in more than one system is prohibited. The right of use is limited to the time agreed upon, in the absence of such an agreement the right of use is unlimited.
4. All other rights to the software, including copying it, remain with the Supplier or with its software supplier. Granting sub-licences is not permitted.
5. Unless otherwise agreed with Buyer in the contract, the Supplier shall in no way be obligated to provide software services. This requires a separate agreement.
6. If a fixed-term right of use has been granted, the following provisions shall additionally apply:

The Buyer may only use the software with the hardware specified in the contract documents (e.g. software product certificate), in the absence of such a specification, with the hardware delivered with the respective software. The Supplier must expressly consent in writing to using the software with another machine and, when using the software with a functional machine, the Buyer must pay an adequate additional charge to the Supplier; this shall not apply if and when the Buyer temporarily uses the software to the agreed extent in a replacement machine because of a defect in the agreed machine.
7. The software is provided exclusively in machine-readable form (object code), unless otherwise agreed or in source code if an inclusion of open source software according to Section XIII. No. 12 is planned.
8. The Buyer is only allowed to make a copy of the software that is used exclusively for security purposes (security copy). The security copy must be marked as such and safely stored by the Buyer. Otherwise, the Buyer may only copy the software within the framework of a multi-licence according to No. 13.
9. The Buyer is not entitled to change, reconvert, decode the software nor extract elements (de-compile). The Buyer may not remove any alphanumeric and other characters from the data carrier and must transfer them unchanged to every security copy. The Buyer is not entitled to remove or change the manufacturer's data, in particular, copyright notices, without the Supplier's prior express approval.
10. The Buyer may only transfer the right to use the software to third parties in conjunction with the machine or the data carrier for which the software was provided by the Supplier. In case of a transfer of the right of use to third parties, the Buyer must ensure that the third party is not granted additional rights to use the software than the Buyer is entitled to according to this Section XIII., and that at least the existing duties under this contract relating to software are imposed on the third party. Hereby, the Buyer is not allowed to retain copies of the software. If the Buyer delivers the software to a third party, the Buyer shall be responsible for observing possible export requirements and must indemnify the Supplier from obligations in this regard.
11. If the Buyer is given software for which the Supplier only has a derivative right (third party software), the conditions of use agreed between the Supplier and its licensor shall additionally apply and have precedence over the provisions of this Section XIII.
12. If and when the Buyer is given open source software, the conditions of use that the open source software is subject to shall additionally apply and have precedence over the provisions of this Section XIII. In this case, the Supplier shall provide the Buyer with the source code on request, provided these conditions of use allow the source code to be disclosed. The Supplier shall refer to the existence and the conditions of use of third party software and open source software provided and make the conditions of use accessible on request. If the Buyer violates these conditions of use, not only the Supplier but also its licensor shall be entitled to assert the claims and rights thus arising in its own name.
13. In order to use the software in several machines or at several workplaces simultaneously, the Buyer needs a separately agreed right use. The same shall apply to using the software in networks, even if this does not result in copying the software. In the above mentioned cases (hereinafter together called "multi-licence"), the following points (aa) and (bb) shall additionally apply and have precedence over the provisions of this Section XIII.:
 - (aa) A pre-requisite for a multi-licence is an explicit written confirmation from the Supplier about the number of copies the Buyer is permitted to make of the software provided and about the number of machines or workplaces in which the software may be used. With regard to multi-licences for fixed-term software, it is stipulated that the Buyer may only transfer multi-licences to third parties if they are completely transferred together with all the machines in which the software may be used.
 - (bb) The Buyer shall observe the directions on copying that it receives from the Supplier

together with the multi-licence. The Buyer must record where all copies are located and show this to the Supplier on request.

XIV. Buyer's samples and documents

1. Unless there is an agreement to the contrary, samples are always delivered free of charge and are otherwise only approximately decisive.
2. If the Buyer has made drawings, documents or other information available, it guarantees that the contracted use of these drawings, documents or other information does not violate any third party rights.

XV. Proviso, end-use certificate

1. Concluding individual contracts and the respective fulfilment of the contract by the parties is subject to the proviso that no obstacles due to national or international legal provisions, especially export control regulations, conflict with this.
2. The Buyer undertakes to furnish a binding end-use certificate in terms of valid export control regulations on request.
3. Each party must adhere to all valid laws and regulations when fulfilling its duties, including all laws, regulations, standards and requirements relating to consumer protection, health, safety, the environment, customs, import/export etc. on an international, national, country-specific or country and local level. In particular, the Buyer shall adhere to all anti-corruption laws and declares that the goods (including possible technical data associated with them) are not exported to, sold in or otherwise relocated to a country which is not the country specified in the address on the front of these terms and conditions of sale and delivery. The Buyer undertakes to adhere to all valid import, export, customs, licensing and product registration requirements.
4. If the Supplier's products are installed, used, distributed as well as exported, the Buyer shall expressly indicate that exporting the products could be subject to a permit issued by the State Secretariat for Economic Affairs SECO pursuant to the Federal Act on War Material (KMW) and the Export Control Regulations (GKV). The Buyer is responsible to make the possibly necessary permit applications on time and in proper form.
5. Should the Buyer request that the Supplier delivers the goods directly to an international recipient, the Buyer is responsible to make the necessary declarations to the Supplier and furnish the permit applications on time and in proper form.

XVI. Place of fulfilment / Legal venue / Applicable law

1. Unless otherwise agreed, the place of fulfilment for all payments including returns is Volketswil, Switzerland.
2. The exclusive local and international legal venue is the court responsible for the Supplier's registered office. However, the Supplier is also entitled to bring action at the Buyer's registered office or choose an arbitration in terms of Section XVII. as an active or passive participant. As future respondent in a legal action, the Supplier is, however, obligated at the Buyer's request to exercise its option pursuant to sentence 2 of this paragraph immediately, even before litigation.
3. Swiss substantive law shall govern the legal relationships in connection with this contract, under the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

XVII. Arbitration

Should the Supplier choose arbitration to settle disputes, the final decision shall be made according to the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution under the exclusion of legal recourse. Unless otherwise agreed, the legal venue shall be determined according to the above Section XVI. No. 2; the court of arbitration should have one arbitrator; the language of proceedings is German.

XVIII. Transferability of the contract

The Buyer may only transfer its rights from the contract to third parties after the Supplier gives its prior consent.