

General Terms and Conditions of Business

§1 General

The following General Terms and Conditions of Business apply to all business relations between our business partners and HESS Cash Systems GmbH for all shipments, services provided and offers submitted. The General Terms and Conditions of Business are deemed to be agreed with the business partner upon the award of the first contract and apply in their latest version to all future contracts, including such contracts where no explicit reference is made to their applicability.

Our General Terms and Conditions of Business apply exclusively; we do not acknowledge any other terms and conditions stipulated by the business partner unless have explicitly confirmed the validity of the same in writing. This also applies even if we perform a delivery without reservation despite knowing that the terms and conditions stipulated by the business partner differ from our own.

§2 Offer, Subject of the Contract

1. Any offers we submit verbally or in writing are always subject to confirmation and non-binding. Contracts do not become legally binding on us until we have confirmed the same within a reasonable period or have performed the same with the approval of our business partner and in line with the contract; in such cases the tacit agreement of the other party is deemed to be sufficient.
2. The type and scope of deliveries and services are governed by our written order confirmation.
3. We reserve the right to deviate to the extent commonly acceptable in business from the specifications indicated in prospectuses, illustrations, drawings and other descriptions, and especially in terms of dimensions, colours, designs, shapes and other deviations that do not restrict usage for the contractually agreed purpose. The business partner may not derive any claims from such deviations.
4. Illustrations, drawings, dimensions, weights and any other technical specifications or details only serve to designate the subject of the contract and do not constitute a guarantee of characteristics.

§3 Prices

1. Unless otherwise indicated in the order confirmation, our prices apply to shipments ex factory or warehouse, excluding freight, packaging, insurance, assembly, any other ancillary costs and sales tax at the rate legally prevailing on the date of delivery; these items will be indicated separately on the invoice.
2. We are entitled to increase our prices accordingly if wage and/or material costs increase after agreement of the contract. This does not apply within a period of 4 weeks from agreement of the contract or if a fixed price is agreed in writing in individual cases.

§4 Delivery, Transfer of Risk

1. Deliveries are shipped ex factory or ex warehouse at our discretion and for the account of the business partner. The business partner bears the risk of shipment, even if carriage paid delivery or shipment using our own means of transport is agreed. Unless otherwise agreed, we determine the shipment route and means of transport.
The risk is transferred to the business partner upon our delivery of the goods to a forwarding or freight company or upon loading of the goods onto proprietary vehicles for purposes of transportation to the business partner. If despatch is not possible for reasons beyond our control, and especially if delays occur at the request of, or for reasons caused by the business partner, the risk is transferred to the business partner upon notification that the goods are ready for shipment.
2. We are entitled to ship partial deliveries and provide partial performance and also to ship before the agreed date after corresponding advance notification. If the business partner falls behind in the performance of its relevant obligations relating to the contract (e.g. by not calling up the goods in time, insufficient specifications, incomplete indication of the despatch address) and/or in accepting even just one partial shipment, we are entitled to define a period of grace of 2 weeks, and subsequently to take any measures we deem necessary – where possible – including storing the goods at the cost and risk of the business partner, despatching the goods, rescinding part or all of the contract, or demanding compensation for non-performance of either part or all of the contract; a warning of refusal to accept performance is not required. Our rights of deposit and self-help sale remain unaffected.

§5 Delay in / Impossibility of Performance

If delays arise in performing our delivery obligations through minor negligence on our part, the business partner is entitled to demand compensation in an amount of 0.5% for each week of delay from the start of such week, but maximum 5% in total of the value of the partial or overall shipment that cannot be used or cannot be used in time for the purposes of the contract as a result of delays in / impossibility of performance. This level of damages must be lowered or raised if we can prove that the business partner has suffered less, or if the business partner proves that it has suffered more damage.

Notwithstanding the right to rescind the contract in the event of defects (see Section 11 Warranty), the business partner may only execute its right of rescission on grounds of delays in / impossibility of performance if a duty for which we are responsible has been breached.

In the case of delays, rescission of the contract or claims for damages may only take the place of performance if the business partner has granted us a reasonable period of grace of at least 4 weeks in writing and has expressly indicated that it will rescind the contract and/or assert claims for damages in the case of non-performance during this period of grace. Following expiry of this period of grace, the business partner is obliged to clarify at our request whether it continues to insist on delivery, or whether it will assert a claim for damages or rescind the contract. If the business partner does not make any such declaration of its intentions within a reasonable period defined by us, the business partner is no longer entitled to refuse delivery or to assert the aforementioned rights.

Such period of grace as indicated in paragraph 3 is dispensable if we seriously and finally refuse to perform the contract as agreed or if special circumstances arise that justify immediate rescission after consideration of the interests of both parties.

The business partner is not entitled to rescind the contract prior to performance of the same becoming due or on grounds of only minor breaches of our duties. Finally, the business partner may not rescind the contract under any circumstances if the business partner is solely or largely responsible for the circumstances that would justify such rescission or if circumstances beyond our control arise during the acceptance delay on the part of the business partner.

Claims for compensation are governed by Section 12 of these General Terms and Conditions of Business.

§6 Force Majeure

If delays in delivery or performance occur as a result of force majeure or other events beyond our control that make delivery substantially difficult or impossible, such as subsequent, unforeseeable problems in procuring materials, interruptions in operations, strikes, lockouts, staff shortages, transportation shortages, commercial regulations, etc., including such events that affect our contractors or their subcontractors, we are entitled to postpone delivery and/or performance for the duration of the impediment plus a reasonable lead time or to rescind all or part of the contract relating to the issues still awaiting performance.

The business partner is entitled to rescind that part of the contract which remains unfulfilled after a reasonable period of grace if the impediment lasts for more than 3 months and to demand reimbursement of any advance payments. All other rights are excluded. In the case of partial shipments, the business partner may only rescind the entire contract if it has no interest in the partial performance of the contract.

§7 § 7 Terms of Payment

1. Unless otherwise agreed, payments are due net for each shipment.
2. Bills of exchange or cheques are not deemed to constitute payment. We accept bills of exchange, cheques and securities under reserve of all rights and without guarantee of punctual presentation. Discount charges and ancillary fees are borne by the business partner.
3. Irrespective of any other purpose of payment defined by the business partner, we are entitled to use payments to first offset older debts of the business partner. Costs and interest will be paid first, followed by the principal claim.
4. The business partner is only entitled to offset our claims or to assert a right of retention if the counter-claim of the business partner has been legally ascertained, is undisputed, or has been acknowledged by us in writing.
5. The business partner is deemed to be in default of payment after receipt of a reminder from us. No such reminder is required if a specific payment term is stipulated or if payment is due within a specific period following occurrence of an event. Even without a reminder, the

business partner is deemed to be in default of payment at the latest 30 days after receipt of our invoice or, if it is not possible for us to determine the date on which the invoice was received, 30 days after receipt of the delivery. From the start of default, we are entitled to charge interest at a rate of 8% above the base rate. The right to assert further claims for damages caused by the delay remain unaffected.

6. We can notify the business partner of any outstanding claims from the current year at year end. Objections on the grounds of incorrectness or incompleteness of this notification must be raised by the business partner at the latest within 4 weeks from receipt of the notification. Punctual despatch is deemed to be sufficient. Omitting to raise objections within good time constitutes agreement with the notification. We will note this consequence separately on the notification.

§8 Retention of Title

We retain title to any goods shipped until such time as our invoice has been paid in full and any preceding deliveries and performance including any ancillary claims have been paid or until we can freely dispose of any payments made by cheque or bill of exchange (Section 449 I Civil Code (BGB)). This also applies to payments effected for specific claims. The addition of individual items to an open account and balancing the account and acceptance of the same do not affect the retention of title.

If the business partner sells goods to which we hold right of retention on their own or together with other goods to which we do not hold title, the business partner assigns to us its claims arising from this sale in an amount equivalent to the value of the goods to which we hold right of retention, together with all ancillary rights. If we hold co-title to the goods that are sold, the assignment of this claim extends to include the amount equivalent to the proportionate value of our co-ownership. We authorise the business partner to collect the claims assigned to us under reserve of revocation. If the business partner falls behind in its obligations to us, it must name the debtor to us and notify the sale of the assignment. In such cases, we are also entitled to notify the relevant debtor ourselves of the assignment and to avail ourselves of our authorisation to collect the outstanding claim.

If the business partner is in breach of contract, and especially if it defaults on payment, we are entitled to the return of the goods to which we retain title following a reminder and a period of grace, and the business partner is obliged to return the same. Asserting our right of retention and garnishing the delivered goods do not constitute a rescission of the contract. The business partner already agrees to allow the agents we commission to collect the goods to which we retain title to access its premises for the purpose of collection.

The business partner is only entitled and authorised to sell, utilise or install the goods to which we retain title in the usual course of business and only on condition that the claims assigned to us are actually transferred to us. The business partner is not entitled to dispose of the goods to which we retain title in any other way. In particular, the business partner may not assign the delivered goods nor transfer ownership of the same as collateral.

If enforcement measures are taken by third parties on the goods to which we retain title or on the assigned claims, the business partner must inform us immediately and provide us with the documentation needed to protest such measures.

Any and all goods to which we retain title must be insured by the business partner at its own expense, especially against fire and theft. All claims against the relevant insurance company relating to the goods to which we retain title are hereby assigned to us; we hereby accept this assignment.

§9 Title to Stored Data and Software

1. The business partner will be provided with the software and the data stored in the electronic control unit (central process unit), the deposit and withdrawal equipment and other equipment only for use within the framework of the normal operation of the relevant equipment, without the same forming the subject of the purchasing contract. We grant the business partner a non-exclusive, permanent and irrevocable licence free of charge to use the industrial property rights contained within, or represented within the goods by the computer software, or supplied as spare parts. The licence expressly excludes the right to modify, adapt, reproduce or duplicate this software and to distribute, provide to third parties, sell or otherwise make available the industrial property rights contained within, or represented by the software.
2. The programming data stored on the electronic control unit and on all personal computers (PCs) incorporated into the system are not destined for the business partner or any other third parties.
3. Anyone who procures, duplicates or makes these programming data available or accessible to third parties is committing a criminal act.
4. The entire software and these data remain our property in every case (even if they are not specifically secured by encryption, metal casing and seal in individual cases).
5. The business partner will treat any and all information relating to the goods provided by us – during or at delivery of the goods – regardless of whether verbally or in writing – together with any and all information we have designated as confidential (“Confidential Information”) as strictly confidential if such information is not generally accessible in the public domain. In particular, such Confidential Information includes, but is not restricted to, details of industrial property rights and all software programmes, including their source codes, all flow charts, diagrams or data relating to the software, together with the method of processing.
6. The business partner may only disclose Confidential Information only to members of staff and only to the extent that these members of staff require the information in order to use the goods for contractually agreed purpose; the business partner may not use any of the Confidential Information for its own purposes nor for the benefit of third parties unless this is explicitly allowed by law or we have given prior written approval. The business partner will ensure that its staff, employees and distribution partners comply with the same complete non-disclosure obligations relating to the information as if they were personally subject to these conditions.

§10 Notification of Defect

Obvious defects, i.e. title or material defects, short, surplus or incorrect shipments and the lack of a characteristic of the delivered goods or service that was possible guaranteed by us (defects) must be notified in writing immediately, at the latest 14 days after receipt of the goods; defects that are not immediately obvious must also be notified to us in writing immediately, at the latest within 14 days of detecting the defect.

Any and all warranty claims against us are excluded if defects or other complaints are not notified to us within the periods defined in the aforementioned paragraph.

§11 Warranty

1. In the event of a defect we can choose to rectify the defect (repair) or supply a substitute product within a period of 12 months from handover of the delivery item to the business partner, provided that notification of the defect was received within the periods defined in Section 10 of these Terms and Conditions of Business and provided that the business partner can prove that the product was already defective prior to the transfer of risk. Our liability for claims arising from injuries to life and limb or to health hazards caused by a defect extends to 24 months from handover of the delivery item. Warranty is excluded on delivery items that have been used.
2. The business partner can assert its statutory rights of rescission and decrease, instead of accepting a repair or replacement of the defective product, and can assert claims for damages and expenses – the latter pursuant to Section 12 of the Terms and Conditions of Business - after two attempts by us to repair the defect or after one replacement delivery does not result in the rectification of the defect or if we refuse without just cause to perform, or unnecessarily delay any necessary repair or replacement delivery, or if the business partner cannot reasonably be expected to accept a repair of the defect for any other reasons.

In the case of third-party products, our warranty is restricted to the assignment of claims held by us against the supplier of the third-party product. If the business partner is not able to assert its warranty claims against the supplier of the third-party product, we provide a guarantee within the framework of these Terms and Conditions.

The business partner must grant us, in consultation with the business partner, the necessary time and opportunity to perform repairs or replacement deliveries.

Otherwise we are not obliged to perform repairs or replacement deliveries if these are only possible at unreasonable expense. Such expense is deemed to be unreasonable when the costs exceed 25% of the purchasing price of the delivery item.

Any parts replaced as part of the warranty become our property.

If the notification of defect is unjustified, we are entitled to demand reimbursement of the costs incurred by us from the business partner.

We accept no warranty for only minor deviations from agreed properties and for insignificant impairment of usability, nor for damages caused, in particular, by the following: Unsuitable

or improper use, incorrect assembly and/or commissioning by the business partner or a third party, natural wear, incorrect or inadequate treatment – especially, excessive strain, unsuitable work aids, replacement materials, chemical or electrical influences, unless we are to blame for them, whereby we can only be held liable for premeditation or gross negligence.

If the goods are subsequently moved to a location other than the offices of the business partner and if the costs - especially transportation, route, labour and material costs - of the repair or replacement delivery increase as a result, these increased costs will not be reimbursed to the client unless the relocation is appropriate for the use of the goods as intended.

Entertainment equipment does not require an official permit. If the non-requirement of a permit is questioned in individual cases, our contract partner is only entitled to claim subsequent performance to convert the system to a game not requiring a permit.

§12 Compensation

1. Unless otherwise agreed in these provisions, all claims on the part of the business partner for compensation of damages of any type, including the reimbursement of expenses and indirect damages, are excluded. This applies, in particular, to all breaches of contractual obligations and to civil offences. The exclusion of liability also applies to any performing or vicarious agents we may use.
2. We can only be held liable in these aforementioned cases if we, our executives or vicarious agents are found to have acted with gross negligence or premeditation, and in all cases where we, our executives or vicarious agents have culpably infringed material contractual obligations (cardinal obligations) and, in doing so, jeopardised the purpose of the contract overall.
3. In the case of an infringement of cardinal obligations, however, our liability in cases of only minor negligence is limited to the equivalent of the order value.
4. If in the latter mentioned case the value of the order does not correspond to the typically foreseeable damage in exceptional instances, our liability is limited to the amount of typically foreseeable damage.
5. The exclusion of liability does not apply to claims arising in connection with the Product Liability Act or if a guarantee has been given for the properties or durability of the delivery item and the express purpose of the guarantee was to provide the business partner with insurance against damages not occurring to the delivery item itself. Furthermore, the exclusion of liability does not apply to damages arising in connection with injuries to life and limb or health hazards.
6. No liability whatsoever is accepted for damages to property or assets or injuries of any kind caused by impermissible manipulation of the equipment and/or accessories by third parties.

§13 Trial Delivery

If the business partner keeps a piece of equipment bought on trial above and beyond the agreed trial period, it is deemed to have agreed the purchase of the same. The purchasing price will be invoiced in full if we have specifically notified the business partner of this fact at delivery or if it does not return the piece of equipment within one week from our request.

§14 Collateral Security

If, following the agreement of the contract, we become aware of circumstances that considerably impair the credit-worthiness of the business partner, or if justified doubts as to the solvency of the business partner arise, or if the business partner's disclosure of its assets proves to be incorrect, and if such circumstances jeopardise the performance of its obligations towards us, or if the business partner does not meet the agreed payment dates, we can demand the immediate payment of all claims outstanding against the business partner, including any bills of exchange due at a later date. The business partner will be notified in writing of the accelerated payment. In such cases we can also demand the provision or increase of collateral within a reasonable period or rescind the contract; we will notify the business partner in advance if we intend to enforce our right of rescission if the business partner does not fulfil its obligation to provide or increase collateral within the stipulated period. This does not apply if the business partner is in default of payment. In this case we are entitled to rescind the contract immediately.

As long as we still hold title to any goods as a result of our right of retention (Section 8), we can demand that the machines be put at our disposal (including collection at their locations) instead of demanding the return of the delivered goods. The business partner agrees to assign all or part of its rights to the installation contracts to us at our request and to take all necessary security precautions (including the provision of keys) to prevent unauthorised collection of the monies in the machines by others. At our request, the business partner will provide us with a complete list of the installation locations and hereby agrees to our assigning all rights transferred to us, especially the collection rights, to third parties.

In the event of a justified demand to return the delivered goods and following the return of the delivered goods, we are entitled to sell these ourselves at the best possible terms for the account and risk of the business partner. The proceeds from the sale will be offset against the business partner's outstanding liabilities after deduction of reasonable sale costs. Any surplus proceeds will be paid to the business partner.

§15 Claim Entitlements and Rights of the Business Partner

The business partner may only assign claim entitlements to third parties if we expressly approve the same in writing. We agree to approve the assignment if the third party exempts us from dual recourse if payment is mistakenly effected through no fault of our own.

§16 Applicable Law, Jurisdiction

The place of performance is our registered office in Magstadt.

This contract is subject to the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) is hereby explicitly excluded.

Our registered office in Magstadt is the legal venue as long as the contract partner is a merchant entered in the commercial register (Vollkaufmann), legal entity under public law or a special fund under public law. The plaintiff is entitled to file suits in the jurisdiction of the respondent.

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