

Terms and Conditions of Sale and Delivery

1. General, Offers, Orders

All products, deliveries and services we, Hübbers Verfahrenstechnik Maschinenbau GmbH, provide for our customers are subject to the following terms and conditions. Changes and amendments to these terms and conditions shall only become valid if expressly confirmed by us in writing. Only orders placed in writing shall have a binding effect. This shall also apply to subsequent amendments to our order. Agreements made by telephone or verbally shall only be valid if confirmed by us in writing inasmuch as that they shall have a binding effect on us. The same shall also apply to any form of amendment to the need for written confirmation itself. All documents pertaining to the offer such as drawings or details of weights and sizes are only deemed to be approximations unless expressly designated as being binding. Estimates or quotations shall only be considered to be approximations and thereby non-binding.

2. Copyrights and other rights

Hübbers reserves its full right of ownership and copyright on estimates and quotations, drawings and other documentation; they may not be disclosed to third parties. Hübbers commits solely to disclose plans to third parties which have been provided and deemed confidential by the ordering party upon the consent of the same.

3. Basic engineering concept, scope of delivery, customer-specific delivery

3.1. Unless otherwise stated in writing, all inquiries shall be presumed to relate to three-phase current at 230/400 V 50 Hz at a control voltage of 230 V.

3.2. Unless otherwise agreed in writing, the following shall not form part of our scope of delivery:

- Preparation of the foundations
- Assembly of the plant/unit
- Service and utility lines and connections such as electricity, water, compressed air, vacuums, gases or disposal lines and facilities, etc.
- Electric wiring between the structural elements and the switch cabinet
- Any guards and safety devices, cable ducts, etc.
- Materials required for the aforesaid services to be performed by the building contractor
- Commissioning of the plant/unit at place of assembly

3.3. All aspects relating to structural analysis of the assembly, erection and operation of the plant/unit at the place of assembly shall be the responsibility of the ordering party. The same shall also apply when the given static conditions are insufficient to such an extent that malfunctions of a permanent or sporadic nature occur during operation of the plant to be supplied. The ordering party and/or operator of the plant shall furthermore assume responsibility for all environmental conditions that may have a detrimental effect on the functionality of the plant.

3.4. Furthermore, Hübbers shall only then be responsible for the proper functioning of the plant to be supplied if, during the production process the materials envisaged to be used in the procedural concept and/or materials forming the basis of such a procedural concept are used as prescribed in terms of their quality, chemical analysis, dimensions, etc. and the specified operational data is exactly adhered to. This shall apply to both the functioning and the successful performance of the plant.

3.5. Hübbers assumes no warranty for the plant where the plant is subjected to conditions during the production process that could not be foreseen at the time the functions of the plant were formally accepted.

3.6. For orders where the work pieces and materials that shall be produced or processed by the plant to be supplied have still not been definitively clarified and solely the ultimate function or ultimate performance has been specified, all testing, proving and clearance approval work performed at Hübbers or the site of the ordering party plus the cost of producing new samples, including materials, incurring costs over and beyond the agreed sales price shall be borne by the ordering party.

3.7. Hübbers hereby reserves the right to make modifications for the purpose of technical improvement.

4. Prices

4.1. All prices are understood to be ex works, packing excluded. All prices shall be subject to value-added tax (sales tax) as provided for by law.

4.2. The ordering party shall not be entitled to withhold payment or offset payment against counter-claims except in cases where such counterclaims are recognized or res judicata.

5. Payment

Payments shall be effected net at a place of payment to be designated by Hübbers and, unless otherwise stated in writing, within a period of thirty (30) days of the due date and receipt of invoice. Following this period, the ordering party shall be liable to pay statutory interest in arrears of 8% above the base rate, such payment being without prejudice to any obligations to compensate for any other additional damage caused by the default.

6. Delivery period, passing of risk, acceptance

6.1. The delivery period shall commence with the dispatch of an order confirmation but not before all documents, permits, clearances and/or receipt of any agreed down payments have been provided in full by the ordering party.

6.2. A delivery time is deemed to have been met when the subject of delivery has left the factory before expiry of the delivery period or the readiness of the plant for shipment has been advised.

6.3. A delivery period may be extended by a reasonable time as a result of measures taken as part of industrial action, especially during strikes and lockouts, as well as due to unforeseen circumstances beyond the control of Hübbers provided that such circumstances are proven to have a significant, adverse effect on the production or delivery of the subject of the order.

6.4. Should the ordering party request a postponement in the dispatch of the product, any storage costs that may be incurred from one month after advice of readiness for shipment has been given onwards shall be borne by the same and, if stored at Hübbers directly, shall amount to no less than a half of one hundredth of the invoice amount for each month that is chargeable. However, should the ordering party fail to take possession of the product after having been set a reasonable period of time to do so, Hübbers shall be entitled to dispose of the subject of delivery and to supply the ordering party with the same product at a reasonably later time.

6.5. Adherence to the delivery date shall be contingent on the ordering party fulfilling its contractual duties.

6.6. The passing of risk shall occur no later than at the time the parts to be supplied have been dispatched to the ordering party and shall also apply where part-shipments are made or Hübbers has assumed other types of service such as shipment costs or transportation and erection of the plant. At the request of the ordering party, the shipment may, at the ordering party's expense, be insured by Hübbers against theft, breakage, transportation damage, fire or water hazards and other insurable risks.

6.7. Should dispatch of the products be delayed as a result of circumstances that lie in the responsibility of the ordering party, all risks shall be passed on to the ordering party on the day the products are ready for dispatch whereby Hübbers shall, at the request and expense of the ordering party, be obliged to effect any insurance that the latter may require.

6.8. Notwithstanding the rights arising from Article 8, all consignments are to be accepted by the ordering party even when these display apparent defects.

6.9. Part-shipments shall be permissible.

7. Retention of title

7.1. All goods supplied by Hübbers shall remain the property of Hübbers until all claims (including receivables) that Hübbers may be entitled to now or in the future on whatever legal grounds have been met by the ordering party. Whilst the processing, conversion or transformation of the goods shall be performed on behalf of Hübbers as the manufacturer, these shall not constitute any obligations or duties on the part of the same. By way of security, the ordering party hereby assigns in full any and all claims to Hübbers that may arise from the resale of the goods subject to retention of title or on any other legal grounds (insurance, tortious act). Hübbers hereby grants the ordering party the revocable authority to collect any and all claims assigned to Hübbers for its account and on behalf of the same. At the request of Hübbers, the ordering party shall disclose the assignment of such claims and furnish with the necessary information and documents. Should a third party attempt to seize the goods under retention of title, the ordering party shall inform said party of the right of ownership held by Hübbers and inform Hübbers immediately. Any costs or damages involved shall be assumed by the ordering party.

7.2. In the event that the ordering party should act contrary to the provisions of the contract (most notably with respect to failure to meet payments), Hübbers shall, at the expense of the ordering party, be entitled to require the return of the goods subject to retention of title and, if necessary, the assignment of the ordering party's claim for return of the property that he/she may hold against any third parties. Neither the return nor the seizure of the goods subject to retention of title on the part of Hübbers shall constitute a withdrawal from the contract.

7.3. Hübbers shall be entitled to have the goods insured against theft, breakage, fire, water and other forms of damage at the expense of the ordering party, provided that the ordering party has not provided evidence of having taken out such insurance itself.

7.4. The ordering party may neither pledge the subject of delivery nor make an assignment as security for a debt. In the event that the goods are pledged or seized or any other form of means of disposal occurring through third parties, the ordering party shall inform Hübbers immediately.

8. Liability for defects in quality or title

Hübbers shall be released of any form of warranty obligations in the event that a defect be attributable to the performance description or a directive of the ordering party, or to materials or building components supplied or prescribed by the same, or to improper handling, excessive overload or external influence, or to the nature of the advance performance of another company. Approved working plans/drawings shall also be subject to the tolerances provided for under German industrial norm (DIN) regulations. Complaints regarding quality and/or scope of the delivery shall only be accepted if made in writing immediately subsequent to delivery or assembly of the goods in question. Liability shall extend to subsequent performance. Should the subsequent performance fail to provide the required results or should further attempts at subsequent performance be deemed unreasonable for the ordering party, the ordering party shall be entitled to require a reduction of the purchase price (diminution) or to withdraw from the contract.

9. Compensation/Damages

With the exception of the following, no claims for damages asserted by the ordering party shall be accepted: damage resulting from injury to life, limb or health due to the failure of Hübbers to comply with its duties, or any other form of damage founded on the gross negligent or wanton failure on the part of Hübbers to comply with its duties. A breach of duty on the part of a vicarious agent or authorized representative of Hübbers shall be deemed a breach of duty on the party of Hübbers itself. Should Hübbers be liable for the breach of duty, the ordering party shall be equally entitled to withdraw from the contract under the same conditions provided that this does not relate to defects in the object of purchase.

10. Limitation

Claims made on the basis of any defects of quality relating to goods sold by Hübbers shall be subject to a limitation period of two (2) years from the day of delivery. A liability resulting from wanton or gross negligence shall be subject to the legal limitation periods.

11. Installation of the subject of delivery

11.1. Should installation of the object be agreed as part of the scope of delivery, the ordering party shall remunerate Hübbers to the extent of its expenses incurred as per its labour rates valid at that time. All building measures, including supply and utility lines, support fixtures and cable ducts, as well as disposal lines, must be completed to such an extent that installation of the plant may commence immediately subsequent to delivery and continue forthwith without interruption. The substrate must be completely dry and hydrated. The rooms in which the plant is to be erected must be in compliance with the specific requirements of the plant and sufficiently shielded from any external influences, be well illuminated and sufficiently heated.

11.2. To ensure adequate storage of the machine parts, materials, tools, etc., the ordering party shall provide a dry, lit and enclosed room that is both monitored and supervised. The risk of storage and assembly shall be borne by the ordering party.

11.3. The ordering party shall, at its own expense, assume and provide the following in due time:

- A sufficient number of support teams and skilled workers as deemed necessary by Hübbers;
- The facilities and materials required to install the plant and put it into operation;
- The unloading of the structural components and their transportation to the place of installation.

11.4. All risks involved in transporting the structural components shall be assumed by the ordering party.

12. Place of fulfilment, court of jurisdiction

This contract shall be governed by the provisions of Germany's Civil Code (BGB) and Commercial Code (HGB). The place of fulfillment for all deliveries and services arising from this contract, including those arising from cheques or bills of exchange, shall be that of the registered offices of Hübbers. For all disputes arising from this contractual relationship, the court of jurisdiction shall be that of the registered offices of Hübbers inasmuch that the parties to the contract are businessmen, legal entities under public law or are separate estates under public law. However, Hübbers shall also be entitled to bring an action in the court of jurisdiction of the ordering party.

13. Supplementary provisions for export sales agreements

13.1. Contracts concluded with partners abroad shall solely and exclusively be governed by the substantive, objective laws of Germany and – to the extent possible – to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

13.2. The language used in all contracts shall be German. However, wherever possible a translation of the same shall be provided in English and marked as such or – to the extent possible – be provided in the language of the partner to the contract and marked as such.

13.3. All deliveries shall be effected ex works Bocholt as per the Incoterms in their respectively valid version.

13.4. The place of fulfillment shall be Bocholt or the place of delivery specified in the contract as per the aforesaid Incoterms.