

<b>DW-D-VK-06</b>	<p><b>General and Standard Terms and Conditions of Delivery and Payment</b></p> <p><b>for orders via our Online Shop</b></p> <p>for HAVER &amp; BOECKER OHG products (Wire Weaving Division)</p> <p>Ennigerloher Straße 64, D-59302 OELDE</p> <p>Version dated 14.06.2012</p>
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## 1. Scope

These terms and conditions apply exclusively to online orders placed by entrepreneurs (see section 14 of German Civil Code [BGB], e.g. industry, trade, crafts and trading organisations), legal entities under public law or special funds under public law. Furthermore they solely apply with respect to supplies and services of our online shop (also called “E-Shop” in the context of the Online Shop).

These terms and conditions are intended for orders and deliveries within the area of the European Union (also referred to as EU-area); they also analogously apply however to orders from outside the EU-area and for deliveries to countries outside the EU-area insofar as their contents are applicable and not otherwise agreed.

Except otherwise explicitly agreed, our supplies and services are rendered exclusively subject to these terms and conditions. These terms and conditions solely apply, even if we deliver unconditionally despite being aware that the customer has other contradictory terms and conditions. We herewith express our objection to those terms and conditions of the customer which are not explicitly recognised and acknowledged by us.

## 2. Conclusion of contract, subject matter of the contract, contract languages

We are entitled to accept orders within a four-week period. Contract languages are German and English. In the event of disputes in interpretation, the language used by the orderer is decisive. If the orderer uses both languages, we shall decide with equitable discretion which language shall be decisive in the case of dispute.

Contracts are being concluded by way of our written or electronic confirmation of order, which shall be transmitted to the customer by standard methods (e.g. e-mail, fax or letter). Should we not accept an order or for example not be in agreement with the customer’s preferred mode of payment, we shall advise the orderer accordingly. Similar applies in e.g. cases in which we suggest to orderers outside of the EU-area or for deliveries to regions outside of the EU-area that instead of these present terms and conditions the General Terms and Conditions of Supply and Payment – Wire Weaving Division – Export should apply or separate provisions should apply.

The description of products and/or services as specified in our confirmation of order is exclusive and binding. Should the confirmation of order deviate from the order, the consent of the orderer shall be deemed given unless objected to in writing without delay. Similar applies to price details. Should prices for products and/or services change after receipt of order, we reserve the right to make appropriate adjustments. The confirmation of order shall make specific reference to such adjustments.

In cases where we agree to an order with explicit reference to changes – e.g. with respect to an orderer specified mode of payment – a contract is only concluded after the orderer has advised us of his consent to the changed order.

Any decorative or descriptive materials shown on images of products offered by the online shop are not part of the scope of order.

We explicitly reserve all rights with respect to availability of merchandise and changes to products as a result of technical further developments, model changes etc. We accept no liability in the event of printing errors or deviations from the image as shown, including colours.

Performance specifications refer to the specified purpose and set up conditions as per the respective operating instructions. At orderer’s request, we shall be pleased to provide operating instructions. Deviations of dimensions, weight and quality and any other technical specifications are acceptable within normal tolerances (see also application of standards DIN ISO 9044, DIN ISO 14 315 and DIN ISO 3310, as

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erstellt:	Christian LUCKEI	Service Vertrieb / Controlling	14.06.2012	01
freigegeben:	Walter HAVER	Geschäftsführung		
Verteiler:	Internet und Intranet HB			

pertinent), without the customer being entitled to derive rights from such deviation of whichever kind. Similar applies to performance data – also under proper usage – and for deviations in design, materials and/or colour of product.

Details, figures and images are only binding in that they are explicitly referred to as being binding or their being binding is specifically agreed.

Other deviations are subject to separate agreement.

Contracting parties shall confirm verbal agreements in detail without delay in writing (e.g. via mail or fax) or electronically (e-mail). Verbal agreements only become binding after confirmation of order.

### **3. Drawings and descriptions**

If a contracting party provides the other party with drawings or technical documentation concerning products to be delivered or their production, such shall remain the property of the presenting partner.

### **4. Currency, prices, VAT, conditions of payment**

All prices and price components are quoted exclusively in EURO. Invoices shall be issued solely in EURO.

The prices specified for our products in the online shop are in Euro and are exclusive of VAT and shipping costs (packing and postage/freight costs, see Section 5 below). The value added tax valid at time of invoicing (applicable to deliveries within Federal Republic of Germany) and the shipping costs shall be invoiced separately. The invoiced amounts are due within 10 days after date of invoice less 2 % discount or within 30 days net.

In accordance with Article 4 in conjunction with Article 6a of the German Turnover Tax Act (UStG) we are exempt from VAT in cases in which

- the goods are delivered in another EU member state,
- the customer is an entrepreneur and the goods are purchased for the purpose of his business, and
- it is assured that the customer pays taxes on the purchase in his home state.

If customer provides us with a valid VAT identification number (VATIN) for cross-border deliveries to another EU member state the invoice shall be issued free of VAT. Customer shall advise us of any changes to his VATIN by latest at time of next order. If the VATIN provided is invalid the invoice cannot be issued free of VAT.

Invoices shall be forwarded at our discretion either electronically or in writing according to our choice unless otherwise agreed.

If invoiced electronically the availability and provision of internet access and online connections to retrieve invoice data shall be to the debt of and risk of the customer.

The customer may only assert set-off and/or retention rights with respect to our claims if his counter claims are determined without further legal recourse, are undisputed or are recognised by us. Any claims of the customer with respect to ourselves may not be assigned.

If terms of payment are not met we are entitled to charge default interest at the rate charged by our bank for current account loans, but not less than 8 percentage points above the relevant base rate of the European Central Bank.

In case of late payment we are entitled to advise the customer in writing that we shall refrain from fulfilling further going obligations until outstanding payments are received.

Should it become apparent after conclusion of contract that our claim is jeopardised due to the customer's lack of ability to pay, we have the right to refuse to render performance and to set the customer a reasonable deadline within which he shall make payments concurrently (reciprocal and simultaneously) with supply or provide collateral. In the event of customer refusal or deadline expiry without payment we are entitled to withdraw from the contract and claim damages.

We are entitled to set-off all claims we have against the customer against all claims the customer has against us or those domestic companies in which Haver & Boecker has direct or indirect interests. Upon request we shall advise the buyer of details of affected group companies.

## **5. Delivery, default on delivery**

Unless otherwise agreed we shall deliver "ex works" (Incoterms) within Germany for shipments of net value below EUR 1,000.00. Deliveries within Germany with a net value from EUR 1,000.00 upwards shall be delivered free buyer's address.

Cross-border deliveries within the EU-area shall be shipped by road carrier or airfreight. In the case of road carrier delivery shall be DAP (Incoterms) stipulated place of delivery, in the case of airfreight CPT (Incoterms) stipulated place of delivery). These modes of shipping also apply to deliveries outside of the EU-area – unless otherwise regulated.

Shipping costs (costs of packaging plus postage/freight) are indicated after shopping basket is filled but before order is sent.

When placing his order, the orderer explicitly agrees to delivery periods standard in the mail order sector. If a delivery period is agreed, this commences with receipt of our confirmation of order. The delivery period does, however, not commence before receipt of any information necessary from and to be provided by the orderer. Delivery date shall be the calendar week in which we transfer the merchandise to the carrier. The carrier then requires a reasonable period for delivery. Dates specified in the confirmation of order shall be construed as non-binding guideline values unless a fixed date is explicitly agreed. An agreed delivery period shall extend in a reasonable fashion in the event of force majeure.

Delivery shall be made to the address specified by the customer. If the customer provides incorrect, incomplete or inexact delivery address details, then customer shall be responsible for any costs arising as a result and shall bear the risk of any delay in delivery resulting.

When ordering several products we are entitled to arrange partial delivery and separate invoicing insofar as the agreed shipping costs are not exceeded.

Should we be in default customer entitlement to claim for damages incurred due to delay is limited to a lump sum default compensation for each full week of delay amounting to 0.5 % of the value of the non-punctually delivered or not properly usable part and shall not exceed in total 5 % of the net order value. This limitation does not apply in the event of gross negligence by legal agents or senior management, in the case of intent or in the case of legally specified compulsory default liability. A deficient delivery shall not be construed as delayed delivery.

If delivery is delayed and if the customer sets a reasonable extension of time with the explicit written advice that after expiry of this date he shall refuse to accept the delivery, then in the event of fruitless expiry of the extension of the original term the customer is entitled to rescind the contract subject to legal provisions. There is no need to set an extension of the original term if superfluous under law. Upon demand customer shall advise within a reasonable period whether he intends to make use of his right of revocation.

Subject to the provisions in Section 8 of these general terms and conditions, no furthergoing claims may be derived by the customer from the delay, in particular no damages.

If the customer is in default of acceptance, we are entitled to either keep the merchandise in store for which we may charge storage fees incurred and at the same time demand fulfilment of contract or after setting a reasonable extension of time to withdraw from the contract and use the merchandise in some other fashion. In the event of withdrawal from contract any costs incurred due to non-fulfilment of the contract shall be to the debt of the customer.

## **6. Retention of title**

We retain the right of ownership of the goods until all claims resulting from the business relationship with the customer have been settled in full.

The customer is entitled to resell the goods within the ordinary course of business provided he satisfies obligations arising from the business relationship with us in a timely fashion. The Customer may neither pledge goods subject to retention of title nor assign them as security for a debt. Customer is obliged to secure our rights in the event of credited resale of the goods to which retention of title applies.

If the customer is in breach of contract, in particular default in payment, we have the right to withdraw after the expiry of a reasonable extension of time; the legal provisions stipulating under which conditions no deadline needs to be fixed are unaffected. Customer is obliged to release the merchandise. We are entitled to withdraw from the contract if an application is made to open insolvency proceedings against the estate of the customer.

All claims and rights arising from the sale or from authorised leasing of the goods to which we have proprietary rights are herewith assigned to us by the customer to secure such rights. We accept the assignment herewith. Any processing of the goods by the customer is in all cases carried out in our name. If the goods are processed with items that are not our property we acquire joint ownership of the new product in a ratio of the value at time of processing or mixing of the goods delivered by us to that of the other items processed.

If our goods are compounded with or inseparably mixed with other movable objects into a unitary item and if this other item is considered the primary item, the customer assigns to us proportional ownership insofar as the primary item is his property. Customer shall protect ownership or co-ownership for us. The other provisions concerning goods to which retention of title applies shall analogously apply to the processing and compounding or mixing of the item created.

With regard to enforced execution measures by third parties on the goods to which retention of title applies, claims assigned to us or other collateral, customer shall advise us without delay and shall provide us with all necessary documentation such that we may intervene. This also applies to any impediments of any kind to the goods subject to retention of title.

If the value of collateral exceeds the value of secured demands by a total of more than 20 per cent, we may upon customer demand and at our discretion release securities to that extent.

## **7. Claims relating to material defects and legal defects**

We extend the following warranties for material defects on products:

Complaints shall be forwarded to us in writing compliant with Article 377 of the German Code of Commercial Law (HGB). The goods shall be inspected for integrity upon receipt as legally required. Any obvious deficiencies shall be documented by appropriate comments on the bill of delivery and shall be advised to us within one week of receipt of the goods. Hidden deficiencies shall be advised to us in writing within one week of their discovery. We shall be granted sufficient opportunity and time to determine the deficiencies identified/complained about. Goods subject to complaint shall be returned to us upon request without delay; we shall bear the costs of shipping if the complaint is justified. If the customer does not comply with these obligations or undertakes incorrect changes to the merchandise without our explicit written consent he waives any possible claims for compensation for damages and defects.

All product components that are associated with material deficiencies either at time of transfer of risk or those with deficient performance at time of acceptance shall be either rectified or delivered new free of charge at our discretion upon timely complaint. Parts replaced by us as part of this rectification become our property at time of disassembly. Customer shall grant us reasonable time and opportunity to undertake rectification. We are released from the obligation of supplementary performance within the scope of legal provisions. In the case of only negligible deviation from agreed or standard properties which only negligibly reduce the value and/or suitability of the merchandise no material deficiencies shall be construed.

We shall bear costs incurred by us by the supplementary performance. This does not apply in so far as our expenses, in particular for travel and transport, are increased because the product has been subsequently moved to a place other than the place of fulfilment.

Should we not comply with the obligations arising from liability for material defects or not be contractually compliant within a reasonable time our customer may set a written final deadline within which we must meet our obligations. If this period expires without successful rectification, customer may demand reasonable reduction in price, withdraw from the contract or undertake necessary rectification himself or have such done by a third party at our expense and risk. Upon our demand customer shall advise us within a reasonable period as to which right he intends to assert.

Reimbursement of costs is excluded insofar as costs are increased as a result of the goods having been brought to some other place after delivery unless this is compliant with the proper use of the goods. The statutory rights of recourse against us only exist insofar as the customer has not reached any agreements with his customer which go beyond the statutory claims for defects.

Further claims on the part of the customer relating to or in connection with defects or follow-up damages from defects only exist for whatever legal reason in accordance with the provisions specified in Section 8 of these terms and conditions.

The limitation of actions for material defects on new products is 24 months after transfer of risk.

Unless explicitly agreed otherwise on a case-by-case basis, advanced claims of the customer due to material defects on used products are excluded, except when otherwise stipulated in Section 8 of these terms and conditions.

We may not be held liable for any consequences arising from the following circumstances: unsuitable or incorrect servicing, repair or use, in particular overloading, incorrect assembly or incorrect commissioning by the customer or third parties, typical wear and tear.

If the customer or third parties undertake incorrect changes or repairs to the product without our prior and explicit consent, no rights exist to claims arising from such or its consequences.

Descriptions, warranties or representations and other statements relating to our products – made either prior to or whilst conclusion of contract – shall not be construed as having the character of guarantees. Any durability or other guarantee is subject to explicit written agreement. Insofar as a declaration of guarantee exists we shall only indemnify to the scope in which the guarantee has the purpose of securing the customer against damages incurred.

The characteristics of the goods are subject exclusively to the agreed technical delivery specifications.

The limitation of actions arising from material defects shall be in accordance with statutory provisions notwithstanding any deviating agreements.

For legal defects relating to the product we provide the following warranty:

We are under the obligation to supply products free of commercial property rights and copyrights of third parties. If third parties should launch legitimate claims arising from an industrial property right or copyright against products or parts thereof we shall at our discretion and expense in relation to the delivered goods concerned either obtain a right of use, modify them to the effect that the property right or copyright is not infringed or exchange the product (or the affected parts thereof). If we should be unable to do so at fair and reasonable conditions, the customer is entitled to the statutory rights of rescission of the contract. Subject to the provisions of Section 8 of these terms and conditions, the customer is not entitled to raise any claims for reimbursement of expenditure fruitlessly spent or compensation claims.

## **8. Other rights, further liability**

The following terms and conditions apply for claims for damages because of, in relation to and in place of the performance for whatever legal reason and also for reimbursements and claims for compensation (hereinafter referred to as compensation claims). The provisions in the case of default on delivery (Section 5 of these terms and conditions) take precedence.

We shall not be liable for compensation claims against us, in particular for consequential damages such as lost profit, damages due to interruptions in operations, loss of production and use, indirect damages. Similar applies to property losses. These restrictions do not apply to the following cases:

- Intent,
- -gross negligence by legal agents or senior managers, in which cases liability is limited to compensation for contract-typical, foreseeable damages,
- -guaranties, whereby liability is limited to the extent to which the warranty had the purpose of indemnifying the customer against the losses incurred,
- -injury to life, physical injury or damages to health,
- -claims arising from the German product liability act (Produkthaftungsgesetz) or similar foreign laws, if applicable,
- -culpable breach of a cardinal contractual obligation. Cardinal shall be deemed those contractual obligations which protect the principal contractual legal positions of the customer which the contract grants the customer in accordance with its content and purpose; cardinal are also such contractual obligations the fulfilment of which allows proper execution of the contract on first principles and compliance with which the customer may assume. In the case of ordinary negligence liability is, however, limited to replacement of typical contractual and foreseen damages insofar as liability is not due to injury to life, physical injury or damage to health.
- -in other cases where statutory law states obligatory liability.

The reversal of the burden of proof is not associated with the above provisions.

Further claims are excluded.

The customer accepts the obligation to dispose of the delivered goods after termination of use at own expense compliant with legal provisions for the specific item being disposed of. Customer indemnifies the supplier against obligations in accordance with Article 10 para 2 ElektroG (manufacturer's obligation to accept goods) and any claims arising in this connection.

## **9. Force majeure**

Force majeure, industrial disputes, unrest, official measures, missing deliveries from our suppliers and other unforeseeable, unavoidable and serious occurrences release the contracting parties from performance obligations for the duration of the interruption and in the scope of their impact. This also applies if these occurrences take place at a time in which the affected contracting party is in default unless he bears responsibility for the delay due to intent or gross negligence. The contracting parties are obliged to provide all necessary information without delay insofar as such is reasonable and to adjust their obligations to the altered circumstances and to act in good faith.

## **10. Data protection**

We shall ensure the protection of customer data transmitted to us in all data processing activities (e.g. collection, processing and transfer) in compliance with legal regulations. Any data necessary for business processing shall be stored and managed by us in compliance with pertinent EU directives (Data protection directive and Data protection directive for electronic communications) as well as the German data protection act (BDSG). Addresses shall be used by us and within the Haver & Boecker Group exclusively for in-house commercial advertising and marketing purposes. Customer may object to this use of data for advertising and marketing purposes at any time by sending an appropriate advice by post to **Haver & Boecker OHG, Dept. Particle Analysis, Ennigerloher Straße 64, D-59302 Oelde**, or by e-mail to [pa-eshop@haverboecker.com](mailto:pa-eshop@haverboecker.com). This shall, however, not apply to data necessary for processing orders. After receipt of such objection we shall no longer use, process or transmit the affected data for purposes other than processing of orders.

When placing an order customer is deemed to declare his consent that we may pass on contractual data (company, name, first name, street, street number, post code, place, region) for a check of creditworthiness and taking into account the interests worthy of protection (excluding transmission or use) to third parties who are in turn obliged to us in a similar fashion to treat data as confidential. This advice is given in accordance with Article 33 para. 1 German data protection act (BDSG).

## **11. Miscellaneous, form, jurisdiction and applicable law**

Any changes and deviations to our confirmation of order must be confirmed in writing or electronically before they come into effect. This specification of form also applies with respect to changing or cancelling this specification of form.

The contractual relationship between the contracting parties is subject to the laws of the Federal Republic of Germany; furthermore the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded. Sole court of jurisdiction for disputes arising as a result of or in relation to this contract is Münster, Germany. This also applies if the customer has no court of jurisdiction in Germany. We do, however, reserve the right to invoke the courts at the customer's domicile.