

International Conditions of Sale for Customers not Resident in Germany

I. Application of the International Conditions of Sale

1. These International Conditions of Sale apply to all customers of C. Hahne Mühlenwerke GmbH & Co. KG - hereinafter referred to as Hahne - whose relevant place of business is **not in Germany**. For customers whose place of business is in Germany, the General Conditions of Sale ("Allgemeine Verkaufsbedingungen") of Hahne apply, which will be forwarded on request. In each case, the relevant place of business is the one which concludes the contract in its own name.
2. These International Conditions of Sale apply to all contracts made on or after 1st April 2009 whose preponderant object is the **supply of goods** to customers. Additional obligations assumed by Hahne do not affect the application of these International Conditions of Sale.
3. Conflicting or differing **terms of business of the customer** do not bind Hahne, even if Hahne does not explicitly object to them or even if Hahne unconditionally renders performance or accepts the customer's performance irrespective of the customer's conflicting or differing terms of business. The provisions of this paragraph equally apply insofar as the terms of business of the customer, irrespective of the contents of these International Conditions of Sale, deviate from statutory provisions.
4. These International Conditions of Sale do not apply, if the customer buys the goods for **personal, family or household use** and if Hahne knew or should have known that at the conclusion of the contract.

II. Formation of the Contract

1. The customer is under an obligation to give **written notice to Hahne** prior to the formation of a contract if the goods to be delivered are to be fit not only for normal use or will be used in circumstances which are unusual or which present a particular risk to health, safety or the environment, or which require a more demanding use or if there is a risk of atypical damages or unusual amounts of loss.
2. **Orders of the customer** are to be put in writing. If the customer's order deviates from the proposal or the tender submitted by Hahne, the customer will emphasize the differences as such.
3. All orders, in particular also those received by employees of Hahne, will **take effect exclusively if followed by a written acknowledgement** of the order by Hahne. The actual delivery of the goods ordered, any other conduct of Hahne or silence on the part of Hahne does not allow the customer to assume the formation of the contract. Hahne can dispatch such written acknowledgement of the order up to and including **14 calendar days after** the customer's order has been received by Hahne. Until this time, the customer's order is irrevocable.
4. The written **acknowledgement of the order** by Hahne shall be **received in time**, if it is received by the customer within 14 calendar days after its date of issue. The customer will inform Hahne without delay, if the written acknowledgement of the order is received with some delay.

5. The written acknowledgement of the order by Hahne sets out all the **terms of the contract** and brings the contract into effect even if - except for the price for the goods and the quantity to be delivered - the written acknowledgement is not consistent with the declarations of the customer in every respect, especially with reference to the exclusive application of these International Conditions of Sale. Particular wishes of the customer, namely warranties or guarantees with reference to the goods or the performance of the contract therefore require express written confirmation by Hahne in every case. The contract will only fail to come into existence if the **customer objects in writing** that the acknowledgement of the order by Hahne is not consistent with the declarations of the customer in every respect and specifies the deviations in writing and the objection is received by Hahne within a short time, at the latest seven calendar days after receipt of the written acknowledgement of the order by the customer.
6. Hahne's **employees**, commercial agents or other sales intermediaries are not authorized to dispense with the requirement of a written acknowledgement of the order by Hahne or to make promises which differ from its content or guarantees. If and to what extent such persons are authorized to make or receive declarations with effect for or against Hahne, is to be determined according to German law.
7. **Changes** to the concluded contract likewise require written confirmation by Hahne.

III. Obligations of Hahne

1. Subject to an exemption according to section VII.-1. b) Hahne must **deliver the goods** specified in the written acknowledgement of the order and transfer the property in the goods. Hahne is **not obliged to perform obligations** not stated in the written acknowledgment of the order by Hahne or in these International Conditions of Sale, in particular Hahne is under no obligation to deliver accessories not explicitly listed or to advise the customer. Hahne is in no case liable to perform duties associated with the putting of the goods into circulation outside Germany.
2. Hahne's obligations under the contract made with the customer are owed only to the customer. Third parties not involved in the conclusion of the contract, in particular the **customer's clients**, are not entitled to request delivery to be made to them or to bring any other contractual claim against Hahne. The customer's responsibility to take delivery continues to exist even if it **assigns rights to third parties**. The customer gives Hahne an unlimited indemnity against all claims made by third parties against Hahne out of the contract made with the customer. The indemnity includes in particular the reimbursement of expenses incurred by Hahne and is granted by the customer waiving any further conditions or other objections, in particular waiving any defence of limitation.
3. Hahne undertakes to deliver goods of average kind and quality taking account of the **tolerances customary in trade** concerning the kind, quantity, quality and packaging. Hahne is entitled to deliver **quantities** that are inferior or superior to those agreed upon, in particular insofar as the packaging units suggest quantity divergences. Hahne is entitled to make **part deliveries** and to invoice them separately.
4. If further **specification** is required in relation to the goods to be delivered, Hahne will carry this out having regard to its own interests and to the identifiable and legitimate interests of the customer. A request to the customer to specify the goods, or to participate in the specification, is not required. Hahne does not undertake to inform the customer of the specification it has made or to give the customer the option of a differing specification.
5. Hahne undertakes to place the goods **at disposal for collection by the customer** at the agreed time of delivery at the place of delivery indicated in the written

acknowledgement of the order or by way of precaution at its premises in Löhne/Germany. Previous separation or marking of the goods or notification to the customer of the goods being placed at disposal is not required. Hahne is not obliged to arrange for the shipment of the goods or to insure the goods. Under no circumstances, not even when INCOTERMS are agreed Hahne is obliged to inform the customer of the delivery or to examine the goods with respect to their conformity with the contract on the occasion of delivery. The agreement of **INCOTERMS** in Group F, Group C or Group D or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; moreover, the provisions laid down in these International Conditions of Sale continue to apply.

6. Agreed **delivery time periods** or **delivery dates** are subject to the customer's procuring any required documents, releases, permits, approvals, licences or any other authorizations or consents in sufficient time, opening letters of credit and/or making down-payments as agreed and performing all other obligations incumbent upon it properly and in good time. Moreover, agreed delivery time-periods begin on the date of the written acknowledgement of the order by Hahne. Hahne is entitled to deliver earlier than at the agreed delivery time.
7. Without prejudice to its continuing legal rights, Hahne is entitled to fulfil its obligations **after the delivery time agreed upon**, if it informs the customer that it will exceed the delivery time limit and of the time period for late performance. Subject to the aforesaid conditions, Hahne is entitled to make repeated attempts at late performance. The customer can object to late performance within reasonable time, if the late performance is unreasonable. An objection is only effective, if it is received by Hahne before commencing late performance. Hahne will reimburse necessary additional expenditure, proven and incurred by the customer as a result of exceeding the delivery time to the extent that Hahne is liable for this under the provisions laid down in section VII.
8. **Risks as to price and performance** even in relation to goods which are not clearly identifiable to the contract and without it being necessary for Hahne to give notice, pass to the customer at the latest as soon as the loading of the goods has begun or as soon as the customer does not take delivery in accordance with the contract or title to the goods has passed to the customer. The **loading of the goods** is part of the customer's obligations. The agreement of **INCOTERMS** in Group F, Group C or Group D or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; moreover, the provisions laid down in these International Conditions of Sale continue to apply.
9. Hahne is not obliged to procure documents or certificates not expressly agreed, to obtain any licences, authorizations or other **documents** necessary for the export, transit or import, to satisfy security measures, such as the United States Container Security Initiative, in respect of containers or to procure customs clearance. However, Hahne renders at the customer's request, risk and expense every assistance to the customer. The agreement of **INCOTERMS** in Group F, Group C or Group D or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; moreover, the provisions laid down in these International Conditions of Sale continue to apply.
10. Hahne **is not obliged** to bear levies, duties and charges accruing **outside Germany**, to comply with weight and measuring systems, packaging, labelling or marking requirements or registration or certification obligations applicable outside Germany or to comply with any other legal provisions applicable to the goods outside Germany. Hahne is not obliged to make available documents or other written materials about the goods in any language other than German or to take back according to legal provisions regarding waste-disposal from the customer or a

third party goods delivered to the customer or packaging material. Irrespective of any statutory provisions, the customer shall at its own cost take care of or in any other way ensure renewed utilization, material recycling or otherwise prescribed waste-disposal of the goods delivered by Hahne to the customer and of the packaging material.

11. Without prejudice to its continuing legal rights, Hahne is entitled to **suspend the performance of its obligations** so long as, in the opinion of Hahne, there are grounds for concern that the customer will wholly or partly fail to fulfil its obligations in accordance with the contract. In particular, the right to suspend arises if the customer insufficiently performs its obligations to enable payment to Hahne or a third party or pays late or if the limit set by a credit insurer has been exceeded or will be exceeded with the forthcoming delivery. Instead of suspending performance Hahne is entitled at its own discretion to make future deliveries, even if confirmed, conditional on payment in advance or on opening of a letter of credit confirmed by one of the big German commercial banks. Hahne is not required to continue with performance of its obligations, if an assurance given by the customer to avoid the suspension does not provide adequate security or could be challenged pursuant to an applicable law.
12. Except as provided in section III.-7., Hahne is only obliged to inform the customer of **possible disruption in performance**, once the commencement of the disruption is definitely certain for Hahne.

IV. Price for the goods, Payment and Taking Delivery of the Goods

1. Irrespective of continuing obligations of the customer to guarantee or to enable payment, the customer undertakes to pay the **agreed price for the goods** in the currency specified in the written acknowledgement of the order transferring it without deduction and free of expenses and costs to the financial institution designated by Hahne. To the extent that a price for the goods has not been agreed, the price which is at the agreed time of delivery Hahne's usual price for the goods will apply. Hahne's employees, commercial agents or other sales intermediaries are not authorized to accept payments.
2. The payment to be made by the customer is in any event **due for payment** at the time specified in the written acknowledgement of the order, or otherwise on receipt of the invoice. The due time for payment arises without any further pre-condition and, in particular, does not depend on whether the customer has already taken delivery of the goods and/or the documents and/or has had an opportunity to examine the goods. The **periods granted for payment** will cease to apply and outstanding accounts will be due for immediate payment, if insolvency proceedings relating to the assets of the customer are applied for or commenced, if the customer without providing a justifiable reason does not meet fundamental obligations due towards Hahne or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness or if the cover given by a credit insurer is reduced on grounds for which Hahne is not responsible.
3. The customer warrants that all legal requirements and documentations for the fiscal treatment regarding **value added tax** of the delivery and/or any service will be fulfilled. To the extent that Hahne has to pay German and/or foreign value added tax, the customer will indemnify Hahne in all and every respect without prejudice to any continuing claim by Hahne. The indemnity is granted by the customer waiving any further requirements or other defences, in particular waiving the defence of limitation or prescription and also includes the reimbursement of the expenses incurred by Hahne.

4. Regardless of the currency and of the jurisdiction of any court, Hahne is entitled at its own discretion to **set off** incoming payments against claims existing against the customer by virtue of its own or assigned rights at the time of payment.
5. Any statutory rights of the customer to **set-off** against claims of Hahne are excluded, except where the corresponding claim of the customer is in the same currency, is founded in the customer's own right and has either been finally adjudicated or is due and undisputed.
6. Any statutory rights of the customer to **suspend payment** or to suspend taking delivery of the goods or to **raise defences or counterclaims** are excluded, except where despite written warning by the customer Hahne has committed a fundamental breach of its obligations due and arising out of the same contractual relationship, and has not offered any adequate assurance.
7. The customer undertakes to make agreed calls sufficiently in advance and **to take delivery** of the goods at the delivery time without taking any additional period of time and at the place of delivery indicated in the written acknowledgement of the order by Hahne or by way of precaution at the premises of Hahne in Löhne/Germany. The customer is only entitled to refuse to take delivery of the goods if it avoids the contract in accordance with the rules in section VI.-1.

V. Delivery of non-conforming Goods or Goods with Defective Title

1. Without prejudice to any exclusion or reduction of liability of the seller provided by law, delivery does **not conform with the contract** if the customer proves that, taking into account the terms in section III., at the time the risk passes the packaging, quantity, quality or the description of the goods is significantly different to the specifications laid down in the written acknowledgement of the order, or in the absence of agreed specifications, the goods are not fit for the purpose which is usual in Löhne/Germany. Even if the goods would have been non-conforming according to the legal requirements applicable in Löhne/Germany, the goods shall be deemed to conform with the contract, to the extent that the legal requirements applicable at the place of business of the customer do not impede the usual use of the goods.
2. To the extent that the written acknowledgement of the order by Hahne does not contain an explicit statement to the contrary, Hahne is in particular **not liable** for the goods being fit for a purpose which is not usual in Löhne/Germany or for complying with further reaching expectations of the customer or for possessing the qualities of a sample or a model or for their compliance with the legal requirements existing outside of Löhne/Germany, for instance in the customer's country. Hahne shall also not be liable for any non-conformity with the contract occurring after the time the risk has passed. To the extent that the customer, either himself or through third parties, initiates the removal of non-conformities without the prior consent of Hahne, Hahne will be released from its liability.
3. The customer is obliged vis-à-vis Hahne to **examine** every single delivery comprehensively for any discoverable or typical lack of conformity with the contract at the place of delivery and moreover as required by law. A counter-check is required for official samples taken, which has to be officially sealed and sent to Hahne.
4. Without prejudice to any exclusion or reduction of liability of the seller provided by law, the goods delivered have a **deficiency in title** if the customer proves that the goods are not free from enforceable rights or claims of third parties at the time risk passes. Without prejudice to further legal requirements, third parties rights or claims founded on industrial or other intellectual property constitute a deficiency in title only to the extent that the rights are registered and made public in Germany and prevent

the usual use of the goods in Germany. Irrespective of the legal requirements applicable in Germany, title to the goods is not defective, to the extent that the legal requirements applicable at the place of business of the customer do not impede the usual use of the goods.

5. The customer is obliged vis-à-vis Hahne to give notice to Hahne of any lack of conformity with the contract or any deficiency in title, and in any event directly and in writing. Such notice has to be formulated in such a precise manner as to enable Hahne to effect remedy measures without need for further requests and to secure possible claims against Hahne's suppliers and moreover as required by law. Hahne's employees, commercial agents or other sales intermediaries are not authorised to accept **notices** or to make any statements concerning lack of conformity with the contract or of title and its consequences.
6. Following **due notice** according to section V.-5., the customer can rely on the remedies provided by these International Conditions of Sale. The customer has no other rights or claims whatsoever and no claims of a non-contractual nature. In the event of **notice not having been properly given**, the customer may only rely on remedies if Hahne has fraudulently concealed the lack of conformity with the contract or the deficiency in title. Statements by Hahne as to the lack of conformity with the contract or as to the deficiency in title are for the purpose of explaining the factual position only, but do not entail any waiver by Hahne of the requirement of proper notice.
7. The customer is **not entitled to remedies** for delivery of non-conforming goods or goods with a deficiency in title, insofar as the customer is liable vis-à-vis third parties for conditions of the goods or their fitness for a use which are not subject of the agreement with Hahne, or if the customer's claim is based on foreign law not in force in Germany.
8. To the extent that the customer in accordance with the terms of these International Conditions of Sale is entitled to remedies because of delivery of non-conforming goods or goods with defective title, it is entitled to demand in accordance with the terms of the UN Sales Convention **delivery of substitute goods or repair or to reduce the price for the goods**. The delivery of substitute goods or repair does not lead to a recommencement of the limitation period. The reduction of the price for the goods is limited to the damages suffered by the customer. Further claims for performance are not available to the customer. Irrespective of the customer's remedies, Hahne is always entitled in accordance with the provision in section III.-7. to repair goods which do not conform with the contract or to supply substitute goods or to avert the customer's remedies by giving it a credit note of an appropriate amount.

VI. Avoidance of the Contract

1. The **customer** is only entitled to **declare the contract avoided**, if the respective applicable legal requirements are complied with, after it has threatened Hahne with avoidance of the contract in writing and an additional period of time of reasonable length for performance fixed in writing has expired to no avail. If the customer claims delivery of substitute goods, repair or other performance, it is bound for a reasonable period of time to the chosen remedy, without being able to exercise the right of declaring the contract avoided. In any event, the customer must give notice of avoidance of the contract within reasonable time in writing and to Hahne directly.
2. Without prejudice to its continuing legal rights, **Hahne** is entitled to avoid the contract in whole or in part without compensation if the customer objects to the application of these International Conditions of Sale, if the written acknowledgement of the order by Hahne is received by the customer more than 14 calendar days after its date of issue, if insolvency proceedings relating to the assets of the

customer are applied for or commenced, if the customer without providing a justifiable reason does not meet fundamental obligations due towards Hahne or towards third parties, if the customer has provided inaccurate information regarding its creditworthiness, if the cover given by a credit insurer is reduced on grounds for which Hahne is not responsible, if Hahne through no fault of its own does not receive supplies properly or on time, or if for other reasons Hahne cannot be expected to fulfil its obligations by means which taking into consideration its own interests and that of the customer as far as ascertainable and legitimate at the time of formation of the contract, are unreasonable in particular in relation to the agreed counter-performance.

VII. Damages

1. On the basis of the contract with the customer or in consequence of the contractual negotiations carried on with the customer **Hahne** is only obliged to **pay damages** in accordance with the following provisions:

a) The customer is required in the first instance to **rely on other remedies** and can only claim damages in the event of a continuing deficiency. The customer cannot claim damages as an alternative to other remedies.

b) **Hahne is not liable** for the conduct of suppliers or subcontractors or for damages to which the customer has contributed. Neither is Hahne liable for impediments which occur, as a consequence of natural or political events, acts of state, industrial disputes, sabotage, accidents, terrorism, biological, physical or chemical processes or similar circumstances and which cannot be controlled by Hahne with reasonable means. Moreover, Hahne is only liable to the extent that the customer proves that the executive bodies or members of staff of Hahne deliberately or in circumstances amounting to gross negligence have breached contractual obligations owed to the customer.

c) In the event of liability Hahne will compensate within the limits of lit. d) the **losses** of the customer to the extent that the customer proves that it has suffered an unavoidable loss caused by the breach of contractual obligations by Hahne and **foreseeable** to Hahne, at the time of the formation of the contract in respect of the occurrence of the loss and its amount. Moreover, the customer is required to **mitigate its loss** as soon as a breach of contract is or ought to be known.

d) Hahne is **not liable** for loss of profit or damage to reputation. Moreover, the **amount of damages** for late or non-existent delivery is limited to 0,5 per cent for each full week of delay, up to a maximum of 5 per cent, and for other breaches of obligations is limited to an amount of 200 per cent of the value of the non-conforming part of the contract. However, this subparagraph does not apply to gross negligence by the executive bodies or the management of Hahne.

e) For breach of contractual obligations owed to the customer, Hahne is obliged to pay damages exclusively in accordance with the provisions of these International Conditions of Sale. Every reliance on **concurrent bases of claim**, in particular of a non-contractual nature, is excluded. Equally excluded is any recourse against Hahne's company organs, employees, servants, members of staff, representatives and/or those employed by Hahne in the performance of its obligations on grounds of breach of contractual obligations owed by Hahne.

f) Insofar as the limitation period may not already have barred the claim, claims for damages brought by the customer are excluded after **six months** beginning with the rejection of the claim for damages by Hahne.

2. Irrespective of Hahne's continuing legal or contractual claims the **customer** is obliged to pay **damages** to Hahne as follows:

a) In the event of **delay in payment** the customer will pay the costs of judicial and extra-judicial means and proceedings, usual and accruing within the country and abroad, as well as (without evidence being necessary) interest at the rate applicable in Löhne/Germany for unsecured short-term loans in the agreed currency, at least however interest at 8 per-cent points over the base rate of the German Federal Bank (Deutsche Bundesbank).

b) In the case of a failure to take delivery of the goods by the customer or of seriously **late taking delivery** of the goods by the customer, Hahne is entitled to claim damages without evidence being necessary up to 15 per cent of the value of the goods to be delivered.

3. Within the bounds of what is legally possible as well as within what is usual in the trade, the **customer** is in its commercial relationships with its clients obliged to **limit its liability** both in principle and in amount.

VIII. Other Provisions

1. **Title of the goods** that have been delivered **remains with Hahne** until settlement of all claims existing against the customer. The allocation of risk as to price and performance in section III.-8. is not affected by the reservation of title.
2. The customer shall, without any demand being necessary, inform Hahne if Hahne has to observe any particular duties of reporting or registration or providing information or prior notification or **retaining documents** or any other **requirements for access to market**, under the provisions in force in the customer's country or in the country where the goods are to be used. Moreover, the customer will **monitor the delivered goods** in the market and inform Hahne directly and in writing of any concern that the goods might pose a risk to third parties.
3. Without prejudice to Hahne's continuing claims, the customer will indemnify Hahne without limit against all claims of third parties which are brought against Hahne on the grounds of **product liability** or similar provisions, to the extent that the liability is based on circumstances which - such as, for example, the presentation of the product - were caused by the customer or other third parties without express written consent of Hahne. In particular, the indemnity also includes the reimbursement for expenses incurred by Hahne and is granted by the customer waiving further conditions or other objections, in particular without requiring compliance with control and recall obligations, and waiving any defence of limitation.
4. In relation to pictures, drawings, calculations and other **documents** as well as computer-software, which have been made available by Hahne in a material or electronic form, the latter reserves all proprietary rights, copyrights, other industrial property rights as well as know-how rights.
5. All communications, declarations, notices etc. are to be drawn up exclusively in **German or English**. Communications by means of fax or e-mail fulfil the requirement of being **in writing**.

IX. General Basis of Contracts

1. The **place of performance** and payment for all obligations arising from the legal relationship between Hahne and the customer is Löhne/Germany. This provision also applies if Hahne assumes the costs of money remittance, renders performance for the customer somewhere else or payment is to be made in exchange of documents or goods or in the case of restitution of performances already rendered. The agreement of **INCOTERMS** or of clauses such as "delivery free....." or similar

ones merely involve a variation of the provisions as to the transportation and the transportation costs; moreover, the provisions laid down in these International Conditions of Sale continue to apply.

2. The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (**UN Sales Convention / CISG**) in the English version as well as the usage in force in Germany govern the legal relationship with the customer. The UN Sales Convention applies, above and beyond its own area of application, and regardless of reservations adopted by other states, to all contracts to which these International Conditions of Sale are to be applied according to the provisions of section I. Where standard terms of business are used, the **INCOTERMS 2000** of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Conditions of Sale.
3. The **formation of contract**, including agreements as to the jurisdiction of courts and arbitrators, and the **rights and obligations of the parties**, also including pre-contractual and collateral obligations, as well as the interpretation are exclusively governed by the UN Sales Convention together with these International Conditions of Sale. Outside the application of the UN Sales Convention, the legal relationship between the parties is governed by the non-uniform Swiss law, namely by the Swiss Obligationenrecht.
4. All contractual and extra-contractual disputes arising out of or in connection with contracts to which these International Conditions of Sale apply, shall be finally resolved by **arbitration** according to the Rules of the London Court of International Arbitration (LCIA) without recourse to the ordinary courts of law. The tribunal shall consist of three arbitrators, one of them shall be nominated by the claimant, one of them by the defendant and the chairman shall be nominated by the LCIA, or if the amount in dispute is inferior to € 50.000, there shall be one arbitrator nominated by the LCIA. The place of the arbitration shall be Zurich/Switzerland, the languages used in the arbitral proceedings shall be German and/or English. Instead of bringing an action before the arbitral tribunal, Hahne is also entitled to bring an action before the national courts having jurisdiction in Löhne/Germany or at the customer's place of business, or before other courts having jurisdiction according to law. Every claim or counterclaim by the customer before a national court is excluded.
5. If provisions of these International Conditions of Sale should be or become partly or wholly ineffective, the remaining arrangements will continue to apply. The parties are bound to replace the ineffective provision with a legally valid provision, as close as possible to the commercial meaning and purpose of the ineffective provision.