



## General Terms and Conditions

As of: July 14, 2016

Hartmetallwerkzeugfabrik Andreas Maier GmbH  
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Germany

- hereinafter referred to as HAM -

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Registration court: Amtsgericht Ulm HRB 640504  
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VAT number: DE 144893861

### § 1 General, scope of application

All offers by HAM are exclusively directed at business persons. The following General Terms and Conditions shall apply to all legal transactions of HAM with its customers, to the extent that no deviating agreements have been made. In general, supplementary or deviating agreements require the written form.

The same shall apply to any amendment of the clause regulating the written form. HAM's staff members, also the senior executives, are not entitled to make contractual or otherwise legally relevant agreements or other representations regarding contractual goods and/or contractual services. General Terms and Conditions of the contractual partner are principally not recognized. Also the supply of products, samples, prototypes and documents as well as the provision of services do not constitute an implied recognition of the General Terms and Conditions of the customers of HAM.

The General Terms and Conditions are available for download at [https://ham-tools.com/en/ham\\_downloads](https://ham-tools.com/en/ham_downloads)

### § 2 Conclusion of contract

#### 2.1

On placing a written or verbal order, the ordering party shall be bound to the contractual offer until they take it back in writing or verbally, but this is possible at the earliest after 14 days. The contract shall become binding if HAM has confirmed it in writing and/ or by fax or by e-mail or if delivery has taken place. Delivery call-offs are binding orders of the customer and are subject to the terms and conditions stated.

#### 2.2

Offers from HAM are principally subject to change. If deliveries take place without order confirmation or delivery contract, then the invoice and/ or the delivery note shall be regarded as the order confirmation on the basis of the applicable General Terms and Conditions of Business of HAM.

All details, drawings, pictures, measurements, values, weights, conditions for use and any other content contained in offers, order confirmations, catalogues, brochures, and other documents by HAM are theoretical approximate values, which are in general non-binding unless they have been expressly designated as binding by HAM or have been expressly agreed contractually.

Regarding the design of standard tools, principally the catalogue information by HAM applies, which, however, is subject to technical further development. Changes caused by the further development do not justify claims by the ordering party.

Commercially acceptable slight variations in color, grain, pattern and form are within the bounds of the contract. The regulation mentioned above also applies to the extent that tools are manufactured and delivered according to drawings. The right to implement constructional or technical changes is reserved, so long as the functionality of the product continues to conform with the latest technical standard.

The information provided in the old catalogue becomes invalid with the publication of a new catalogue.

The ordering party is liable for the correctness of the documentation provided by them, such as drawings, samples, molds, gauges, and similar, HAM is principally not obliged to check them and is not liable for errors in case a check should be carried out. If the drawings or the order of the ordering party does not clearly indicate any design tolerances, then HAM produces according to its experience and the standards common in the industry and/ or within the tolerance limits determined by the according manufacturing process.

For special tools, HAM reserves the right to over-delivery or under-delivery by 10% each of the ordered amount, at least, however, with small quantities of up to 4 units = 1 unit, from 5 units to 11 units = 2 units and from 12 units to 29 units = 3 units.

The minimum order value for special tools is EUR 500.00 per order item. For catalogue goods, the minimum invoice net value is EUR 60.00. In case the order value is below EUR 60.00, HAM has the right to invoice a reasonable minimum quantity surcharge of at least EUR 20.00.

In the case of a cancellation and/ or a return delivery, we will invoice the costs incurred, however at least EUR 40.00.

### **§ 3 Prices and payment conditions**

#### **3.1**

Prices are in Euros excluding value-added tax. Unless otherwise agreed in writing, the HAM price list valid at the time of the conclusion of the contract applies, provided this does not change three months before the delivery date.

All prices are ex works (EXW, Incoterms 2000) and without any additional services, particularly excluding transport, shipping, packaging, insurance, commissioning and any other expenditure concerning the use at the customer's. These are charged case by case, on an additional time and material basis. Our services for application support are principally charged on basis of the hours spent, and the hourly rates are calculated according to the respective current price list with the listed volume discounts plus expenses, e.g. travel expenses.

Unless otherwise agreed, invoice amounts are due without deduction within 30 days after the invoice date.

In the case of faults in the products, the customer has a right to retain only a reasonable proportion of the purchase price, commensurate with the type of fault and the degree of impairment of use.

#### **3.2**

If payment becomes overdue, interest on arrears at the rate of 1.5 % per month shall be levied without further reminder.

#### **3.3**

The customer may only off-set with counterclaims that are uncontested or recognized or titled.

#### 3.4.

HAM has the right to adjust the agreed prices, also for frame contracts, provided that, after the conclusion of the contract but before the delivery, an essential change in the price factors such as raw materials, subcontracted parts, wages, social insurance charges, taxes etc. occurs. HAM has the right to adjust the price list to a reasonable extent in proportion to the influence of the said cost factors. Upon request by the customer, HAM will disclose the calculation, limited to the price-increasing factors.

HAM is only obliged to change the technical design and model of delivery items if the customer assumes the according additional costs and if this is technically feasible and reasonable for HAM with regard to delivery capability and delivery times.

HAM products are always competitive regarding price, quality, innovation skills and safety. However, this is not the basis of the contract, even if this is laid down in the General Terms and Conditions of our customers.

### **§ 4 Delivery and transfer or risk**

#### 4.1

Upon delivery of the goods to a carrier or other person charged with performing transport, the risk shall be transferred to the customer.

#### 4.2

HAM always has the right to supply partial quantities in acceptable quantities.

#### 4.3

In the case of delivery to a foreign country, all additional costs incurred, in particular customs duties, customs additional costs, fees for additional documents, import sales tax etc. shall be to the account of the customer.

This also applies to additional transport costs from the border. Where call-off delivery agreements are concerned, binding quantities must be notified at least two months before the delivery date in writing, provided that no alternative arrangement has been agreed. Any supplementary expenses caused through late call-off or subsequent changes shall be to the account of the customer. Assured delivery dates cease to be in force in the case of late call-off.

To the extent that HAM delivers prototypes and/ or test samples, HAM remains owner of all property rights of the supplied items. The transfer to third parties is excluded. Any use is only permitted for testing purposes, any type of warranty and liability is excluded.

HAM remains also owner of the items. Should no delivery contract be concluded, the delivered items have to be returned.

### **§ 5 Delivery date**

#### 5.1

Delivery dates defined by time intervals shall begin, at the earliest, when confirmation of the order is sent out. The delivery date shall be deemed as complied with if the goods leave the HAM works on the due date. HAM falls into default without reminder only if a written, binding, agreed delivery date for a particular calendar day has been exceeded. In this case the customer shall grant a reasonable period of grace of at least 2 weeks.

Events of force majeure, unforeseeable circumstances and other unforeseeable disruptions of the business operations of HAM or its suppliers, which owing to the circumstances of the case are unavoidable despite appropriate care taken by HAM or its upstream suppliers, postpone the delivery date by an appropriate period. In such cases, HAM is relieved of its duty to perform if delivery within a reasonable period of grace is not possible.

If, for the fulfilment of the purchase agreement, HAM has closed a corresponding covering transaction agreement with its upstream suppliers, then HAM is not obliged to deliver if the upstream supplier cannot deliver. HAM has a duty to inform the customer immediately of such circumstances and to return without delay any monies possibly already paid.

#### 5.2

HAM may refuse to deliver if, after conclusion of the contract, facts become known which indicate that the customer's ability to fulfil his part of the agreement is jeopardized by a lack of funds and/or creditworthiness. In this case, delivery shall only take place if the customer makes advance payment or provides adequate security. In this case HAM is also entitled to call not due claims due immediately.

HAM has the right to set the customer an adequate period in which to make advance payment or provide security and to withdraw from the contract after this period has expired. The setting of such a period may be dispensed with if the customer at the time of concluding the contract has maliciously or negligently withheld known facts or facts which were unknown through negligence on his part.

#### 5.3

If a customer does not fulfill his agreed or necessary obligation to cooperate in a timely manner, e.g. material delivery, delivery of upstream products, documentation or the provision of technical information, all agreed delivery dates are no longer valid. Additionally, the customer bears the additional cost incurred.

### **§ 6 Information by the customer**

The customer is liable for the accuracy and timeliness of his information and other information provided by him for the purpose of preparing an offer. All additional costs incurred due to false or delayed information are borne by the customer; agreed delivery dates are no longer valid.

### **§ 7 Retention of title and withdrawal from the contract**

All deliveries of HAM are performed under retention of title. The respective delivered goods shall remain the property of HAM until full payment has been received in respect of all goods delivered and of any outstanding sums for services previously rendered. Upon request of the customer to this effect, HAM undertakes to release all securities in so far as the value of such securities exceeds the outstanding sums thereby secured by more than 20 %. The choice of securities to be released shall be at the discretion of HAM.

In the case of the re-sale of contractual goods, the customer assigns his claims with ancillary rights to HAM already at this point for reasons of security. Apart from the revocation possible at any time, the customer has the right to recover the assigned claim. So long as the right of title of HAM is upheld, HAM has the right to assure itself at any time of the correct and proper storage and handling on site and to recover the said goods after a suitable period of grace in case of default, without such step involving withdrawal from the contract.

All costs for the necessary recovery of the goods, including any possible renewed delivery, are borne by the customer.

### **§ 8 Withdrawal from the contract**

#### 8.1

If the customer refuses to accept a duly ordered product, or if the customer declares prior to delivery either verbally or in words to that effect, also by non-response to a corresponding

written request containing notification of the legal consequences of this paragraph, that he will not accept the goods, then HAM may store the goods at its own warehouse or a third-party's warehouse or may without further reminder withdraw from the contract and demand damages instead of delivery. In case the customer is in default of acceptance he has to pay for the incurred storage costs after a default period of more than 14 days.

#### 8.2.

In the case of HAM withdrawing from the contract due to conduct of the customer, in particular due to overdue payment or any other rescission of the contract initiated by the customer following delivery and recovery of delivered goods, HAM has the right to claim damages and compensation for expenditure incurred.

#### 8.3

In consequence of non-fulfilment, HAM has the right to claim damages at a fixed sum to the amount of 30 % of the net order volume. For expenditure arising from the contract, such as transport, return transport and installation costs etc., HAM shall further receive compensation to the value of the respective costs incurred. The hourly rate per employee is EUR 75.00 plus value-added tax and travel expenses of EUR 0.90 per km plus value-added tax. These rates shall also apply in all other cases within these General Terms and Conditions, in which the costs incurred so far shall be to the account of the customer.

#### 8.4

HAM remains entitled to prove and to claim higher damages than the fixed compensation rates given above, and the customer remains entitled to present for proof lower damages to HAM.

### **§ 9 Warranty**

HAM warrants the faultless condition of its tools in accordance with the contractual specifications within a warranty period of one year, calculated from the date of transfer. The customer must notify any complaints concerning incomplete or incorrect delivery or complaints concerning obvious or normally recognizable deficiencies in writing at the latest 14 days after receipt of the goods. Should the customer fail to make such deficiency notification within the said period or should he have used or resold said goods, then they shall be deemed to have been accepted without reservations.

In the production process of technically complex products, minimal scratches and or smaller surface damage can occur, which, however, are unavoidable due to the production process. This does not constitute a fault to the extent it does not negatively influence the functionality of the part.

Warranty claims at the discretion of HAM shall be limited to rectification of the deficiency or replacement. Prior to the start of further processing, HAM shall be given the opportunity to sort out as well as to remedy any defects or for subsequent and substitute deliveries.

HAM only has to bear the costs for product recalls in case HAM has acted with gross negligence. Should the customer initiate an investigation procedure, deciding on whether there should be a recall, the customer is obliged to involve HAM in this procedure. Should it turn out that HAM is not responsible for a defect, structural defect or any other deficiency, the customer has to compensate HAM for all expenses. Any further claims of the customer, particularly all forms of claims for consequential damage arising from deficiencies shall be excluded with the exception of personal injury, to the extent that HAM is deemed to have acted with gross negligence. In particular, HAM shall not be liable for damage that has not occurred on the delivered object itself.

In particular, HAM shall not be liable for lost profits or for any other damage to assets of the customer. This limitation of liability shall not apply in cases when the reason for the damage is

based on intent, gross negligence or malice. Where claims for damages are given according to this paragraph, these shall expire one year after transfer of the tools and are, as far as the damage amount is concerned, limited to the insurance sums of the liability insurance taken out by HAM. The prerequisite for all warranty claims of the customer is that the customer shall make all reasonable efforts of cooperation to bring about the rectification of the deficiency, especially by documented notification of the deficiency as soon as it is noticed. In the assessment of the reasonability of rectification periods the difficulties encountered by HAM with regard to the capability of their suppliers to deliver shall be taken into account.

HAM has the right to refuse rectification of the deficiency until such time as the customer shall make a reasonable down payment on the total price taking the existing deficiency into account, in particular that part of the price relating to any non-deficient parts. If the customer makes a complaint about a deficiency which does not constitute a deficiency or which is one for which the customer is responsible, then the customer shall be liable for any costs incurred, to the extent he is deemed to have acted negligently.

The warranty shall become invalid in its entirety if products of HAM are not used for their intended purpose or are used in exceptional operational circumstances or if the tools are treated or used inexpertly in any other way or if they are not properly or not at all maintained and looked after. This shall also apply to deficient commissioning, natural wear and tear, deficient or negligent treatment, the use of unsuitable equipment as well as chemical and/ or electrical influences which are beyond the common operational circumstances.

The warranty and the liability shall also become invalid if the products of HAM are processed or modified in any way. In this case the onus of proof that the processing or modification is not the root cause of the deficiency or damage incurred shall lie with the customer.

If two successive rectification attempts prove unsuccessful, then rectification shall be deemed to have failed. The right to withdraw shall be excluded to the extent as the deficiency is deemed to be minor.

## **§ 10 Liability**

HAM shall be liable for compensation claims arising from damage to health, life or body either by the intent, gross or slight negligence of its legal representatives and/ or its agents. For other damage arising from the contractual or non-contractual breach of obligation HAM shall be liable only in cases of gross negligence and intent by its legal representatives, agents or employees, in so far as they do not constitute a breach of essential contractual or cardinal obligations. In the case of a breach of essential contractual or cardinal obligations, HAM shall be liable even in cases of slight negligence, however only for damage foreseeable at the time of conclusion of the contract.

HAM shall not be liable for providing information or advice unless this expressly constitutes an integral part of the contract. Information and advice relating to the processing of an order are principally not essential contractual obligations, for which liability shall be limited to serious fault and foreseeable damage. If there should be liability in line with the previous paragraphs, this is limited to the claim sum covered by HAM's liability insurance.

Upon the customer's request, an insurance confirmation in its common form and content can be made available.

## **§ 11 Confidentiality**

The customer is obliged to keep all sensitive know-how and other sensitive corporate and product information which he obtained strictly confidential.

To the extent that documents, objects and other information is transmitted and/ or passed on in the course of the business relationship, these are protected by copyright.

The customers of HAM agree to treat as strictly confidential the protected documents, objects and other information and to neither copy them nor reproduce them, forward them, distribute them or to otherwise make them available to any third parties and/ or to provide knowledge of them to any third parties in any other way.

Any use whatsoever of the protected documents, objects or other information without contractual basis and without the consent of HAM is also prohibited. The protected items may only be made available to those persons for whom access to the said documents is absolutely necessary for the purpose of fulfilling the contract and in the framework of the cooperation.

The supplier is also obliged to treat as confidential any other information marked as confidential or of an obviously confidential nature and to use such information only within the framework of the contractual purpose. This obligation continues to apply also after termination of the business connection. All samples, drawings and other documentation of HAM, the transfer of which bears no direct relation to the purpose of the contract, shall also remain the physical property of HAM.

## **§ 12 Development results, inventions, property rights**

All deliveries and services by HAM principally do not include any kind of transfer of rights of use of HAM's copy rights. This applies in particular to delivered drafts, drawings, proposals and other documentation.

HAM remains principally owner of all rights of any kind to product know-how, technical design, material composition, design and any kind of development results, especially all rights of use and exploitation of development results, even if this only concerns product adjustments. The flow of information from the customer to HAM does principally not establish any joint copyright to development results. Only in the situation that HAM should not be ready and/ or able to deliver serial products in sufficient quantities and with competitive quality and/ or technology at usual market prices is HAM obliged to grant the customer a simple but not transferrable license charged at usual market prices to produce the product themselves or have it produced.

In the event that a customer develops development results with the significant contribution by HAM or with the provision of indispensable information and in the event that this leads to customer's copyright and/ or joint copyright with that customer, or, as the case may be, any other industrial property rights, including any in joint ownership, the supplier shall grant HAM the exclusive, transferable and sub-licensable right of use of these development results for any type of use, without restrictions in place, time, and content, to the extent this is lawful.

## **§ 13 Delivery of software**

In case HAM supplies software to customers, in particular for delivery and warehouse logistics, the following conditions of use shall apply:

As regards the software and the documentation, HAM grants the customer a non-exclusive right to use the said contractual services only in the framework of this contract, only for the customer's own purpose and only in the customer's company for the duration of the contractual relationship with HAM:

The rights of use are not transferable and not sub-licensable. Also any other type of transfer to any third party (rent, leasing, SAS) is excluded. The delivery of source data is excluded.

Any type of processing, translation, de-compilation, modification and other distribution of the

contractual objects, in particular the software, is forbidden.

The production of program and/ or data copies is only allowed for contractual purposes and only for backup purposes to a necessary extent.

Regarding standard software products of other manufacturers which might be used in the framework of the contractual performance, the license conditions of the according standard software products shall apply. To the extent HAM installs and/ or uses own software of the customer, the customer ensures that he is the owner of the according rights of use.

HAM has the right to revoke the rights of use granted in this paragraph for good cause. Good cause is in particular when the customer uses the software contrary to the contract, violates against this paragraph on the right of use despite a warning and/ or is in default of payment regarding a considerable part of the remuneration.

The rights of use end with the termination of the business relationship with HAM. In this case, the customer has to delete the complete software and to return to HAM and/ or destroy all documentation and possible data carriers. In the case of destruction, this has to be proven.

## **§ 14 Data protection**

### 14.1

The customer agrees that the personal data included in the purchase contract are saved for the purpose of internal processing and analysis. He agrees that we use them for newsletters.

### 14.2

HAM shall have the right to apply to the SCHUFA [*German general credit protection agency*] or any other information source for credit information on the customer. The customer shall give his express consent to said application.

HAM and the service providers commissioned by HAM use the personal data for handling and completing the requests, orders, complaints and other measures in connection with the contractual purpose. In an individual case it may be necessary for HAM to pass on the data to its contractual service providers or other subcontractors.

HAM is also entitled to use the data for marketing purposes, advertising and other forms of customer care. For the purpose of making a decision about the formation, implementation or ending of the contractual relationship we can obtain and use creditworthiness data with the information file (including the probability values established from the address data). HAM can pass on personal data about due and unpaid and undisputed demands to the credit agency four weeks after the receipt of the first (or second) of a total of two written warnings. This agency makes the data available to other businesses for checking the creditworthiness when there is a legitimate interest.

Further regulations, individual details and information can be found in the HAM Privacy Statement which you can find on our homepage [www.ham-tools.com/Datenschutzerklärung](http://www.ham-tools.com/Datenschutzerklärung). Of course you can revoke or refuse this permission for the use and processing of data for marketing purposes at any time by sending us an appropriate message. You can do this by mail with an informal letter to Hartmetallwerkzeugfabrik Andreas Maier GmbH, Stegwiesen 2, 88477 Schwendi-Hörenhausen or by e-mail to [info@ham-tools.com](mailto:info@ham-tools.com).

## **§ 15 Termination of the contract**

Upon the termination of the business relationship, the customer is obliged to return all objects, documents and other items received from HAM within the context of the performance of a contract with HAM. This applies particularly to samples, drawings, plans and other documents



made available. Upon the termination of the contract, any right of use for documents stated and any other copyrightable work granted by HAM within the scope of the contract, shall end as well.

### **§ 16 Auditing**

To the extent that HAM is obliged to have auditing processes and/ or to supply information, the limit is always where HAM-specific know-how and/ or internal company data are concerned.

### **§ 17 Spare part deliveries**

HAM is obliged to deliver spare parts, but only to the extent that HAM is capable of doing this and under usual market conditions.

### **§ 18 Jurisdiction and place of fulfillment**

#### 18.1

This contract is governed by non-unified German law, namely the BGB and HGB [*German Commercial Code*]. The provisions of the Vienna United Nations Convention of April 11, 1980 on Contracts for the International Sale of Goods (CISG) are not applicable.

#### 18.2

Place of jurisdiction for any legal disputes arising from the contractual relationship is Biberach. Arbitration agreements of the customers are in no way accepted by HAM.

#### 18.3

For all customers from non-German-speaking countries technical documentation, descriptions etc. have to be made available in English.

#### 18.4

If the customer has no registered office within Germany or if he transfers it away from Germany after the conclusion of the contract or if his place of residence or the place he usually resides is not known at the time of filing a lawsuit, at the choice of HAM the place of fulfillment and jurisdiction is the place of HAM's headquarters or that of the supplier.

#### 13.5

Should individual provisions of these General Terms and Conditions be or become invalid, then the validity of the remaining provisions shall remain unaffected.

The invalid clause will be replaced by a regulation as close as possible to the intended purpose of the invalid clause.

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