

STRÄHLE + HESS

Terms and Conditions of the Strähle+Hess GmbH

1. Scope of Application

These terms and conditions (hereinafter referred to as "Terms and Conditions") apply exclusively to all deliveries and services of the Strähle+Hess GmbH (hereinafter referred to as "Strähle+Hess"). Any opposing, deviating terms and conditions of the Customer not contained in these Terms and Conditions will be not accepted by Strähle+Hess, unless Strähle+Hess has expressly agreed in writing to their validity. This also applies if Strähle+Hess performs deliveries or services unreservedly with the knowledge of opposing, deviating or terms and conditions of the Customer not contained in these Terms and Conditions or if the Customer refers in its inquiry or in its order to the application of its terms and conditions

2. Terms of Delivery

Unless Strähle+Hess and the Customer (hereinafter individually or collectively referred to as "Party" or "the Parties") have not agreed otherwise, the products will be delivered ex works Althengstett, Germany according to the currently applicable version of the Incoterms.

3. Packaging

If the Parties have agreed that Strähle+Hess is responsible for the packaging of the products to be delivered, Strähle+Hess will properly package the products in a suitable manner for transport.

4. Product or Process Modifications

4.1 Strähle+Hess is basically self-responsible for its products and processes. Strähle+Hess shall be obligated to inform the Customer of product or process modifications or of modifications regarding the production facility only in the event that these modifications will affect the quality or the design of the products to be delivered to the Customer.

4.2 Insofar as it is reasonable to Strähle+Hess, the Customer is entitled to request modifications of the design and the execution of the products. However, this presupposes that any effect on the costs and delivery dates is resolved appropriately and consensually prior to the implementation of the modification.

5. Audits, other Rights of Access and/or Inspection

If the Customer is entitled to conduct audits at Strähle+Hess or if the Customer is granted other access and/or inspection rights with respect to Strähle+Hess such a right can be exercised only by prior agreement with Strähle+Hess and during the normal business hours without disturbing the operations at Strähle+Hess.

Strähle+Hess is entitled to reject the conduction of audit, access and/or inspection rights if legitimate interests of Strähle+Hess are opposing (e.g. company secrets or other valuable know-how of Strähle+Hess are affected). Alternatively Strähle+Hess is entitled to request for suitable provisions for maintaining secrecy by the Customer.

6. Rights of Inspection, Retention Periods

6.1 Documents and records of all types have to be provided by Strähle+Hess to the Customer or have to be made available for inspection only if this has been agreed upon by the Parties and does not conflict with any legitimate interests of Strähle+Hess.

6.2 If the Parties have agreed to an obligation by Strähle+Hess to retain documents/records, the retention period - regardless of the type of documents/records concerned - shall be a maximum of 5 years unless there are longer retention periods regulated by law.

7. Sub-contractors

Strähle+Hess will endeavour to obligate its sub-contractors to maintain obligations for quality assurance agreed upon by the Parties. Irrespective of this, Strähle+Hess is free in the choice of its sub-contractors and in no case shall be obligated to identify them to the Customer.

8. Investment Protection

If the Customer legitimately (a) discontinues ordering, (b) cancels or terminates an order, (c) makes a technical modification regarding a product, or (d) terminates a project without important reasons Strähle+Hess is responsible for the Customer must reimburse Strähle+Hess for all costs and expenses incurred by Strähle+Hess relying upon the orders within the preceding 6 weeks. This covers especially all useless stocks, prefabricated parts, goods in process, parts or raw materials. Any further exceeding agreements regarding investment protection and any claims for damages against the Customer remain unaffected.

9. Machines, Tools and Moulds

Ownership of machines, tools and moulds used by Strähle+Hess in connection with the production of the products to be delivered to the Customer will only be transferred to the Customer if the Parties have made a separate written agreement to that effect, also with respect to the remuneration for such a transfer of ownership.

10. Deterioration in Financial Situation

If the financial circumstances of the Customer become deteriorated after conclusion of the contract or if other facts after conclusion of the contract are given or become noticeable that legitimate the belief that the payment claim of Strähle+Hess is jeopardised by the inability to perform of the Customer, Strähle+Hess may demand adequate securities from the Customer and/or may revoke any payment terms granted regarding the claim affected and any other claims against the Customer. If the Customer does not present the adequate securities requested by Strähle+Hess within a reasonable time, Strähle+Hess may withdraw from the contract. Existing claims from delivery or due to default remain as unaffected as the rights of Strähle+Hess under § 321 German Civil Code (BGB).

Facts that legitimate the belief that the payment claim of Strähle+Hess is jeopardised by the inability to perform of the Customer are especially the following:

- Distraints or other enforcement measures regarding the property of the Customer
- Occurrence of an insolvency reason (inability to pay (Zahlungsunfähigkeit) or excessive indebtedness (Überschuldung)) regarding the Customer.
- A petition in composition or insolvency regarding the property of the Customer will be filed by the Customer.
- A petition in composition or insolvency regarding the property of the Customer will be filed by a third party unless such a petition will be filed illegitimately.
- Institution of composition or insolvency proceedings against the property of the Customer.
- Institution of composition or insolvency proceedings against the property of the Customer is declined due to lack of mass.
- The commercial credit insurance of Strähle+Hess declines the insurance coverage for a claim against the Customer.

11. Spare Parts

Upon conclusion of the contract Strähle+Hess does not enter into an obligation to supply the Customer with spare parts for the products. If necessary, the supply of spare parts and the conditions will be negotiated at the appropriate time.

12. Force Majeure

In case of Force Majeure, i.e. in case of non-foreseeable events on which Strähle+Hess has no influence and which Strähle+Hess is not responsible for (e.g. official actions and orders (irrespective if they are valid or invalid), fires, floods, storms, explosions or other natural disasters, disturbances of operation, wars, riots, labour disputes, inclusive strikes and lockouts) Strähle+Hess shall be temporarily relieved from its obligations during the period of time such events continue and to the extent its liabilities are affected. The afore-stated shall also be applicable in case that Strähle+Hess is already in default. Strähle+Hess is committed to give the Customer the necessary information which may reasonably be expected without delay, and to adjust its obligations in good faith to the changed circumstances. If it is impossible for Strähle+Hess to fulfil the obligations within an appropriate period of time due to such events, both Parties are entitled to withdraw in full or in part from the contract. No damages may be claimed for such a withdrawal.

13. Condition of Products

With respect to its deliveries, Strähle+Hess has only to comply with the approved technical practice, the relevant safety regulations and the agreed technical data. Any further demands concerning the conditions and/or the utilization of the products to be delivered to the Customer require an express written agreement between the Parties.

14. Warranty Claims

- 14.1 Prior to the start of production (processing or installation), the Customer shall in any case grant Strähle+Hess the opportunity to verify complaints concerning the products delivered by Strähle+Hess and to take corresponding corrective action (e.g. rejection, removal of defects, replacement delivery). The parts claimed to be defect shall be made available to Strähle+Hess without delay at the request and expense of Strähle+Hess. In the event that Strähle+Hess is not responsible Strähle+Hess may reject the claim.
- 14.2 In the event the defect is discovered only after start of production the Customer is entitled to claim supplementary performance and indemnification for cost of transport (without towing cost) as well as cost of dismantling and installation (cost of labour; cost of material only if agreed upon), which are required for the supplementary performance, or to reduce the purchase price.
- 14.3 The charging of complained products by the Customer is only possible after acceptance of the claim by Strähle+Hess. In every case of non-accepted claims, Strähle+Hess and the Customer shall confer and determine suitable measures.
- 14.4 The Customer is not entitled to assert claims if the defect is due to violation of maintenance and installation instructions, unsuitable or unauthorized utilization, incorrect or negligent handling and natural wear, in addition to interference with the products on the part of the Customer or third parties. A warranty claim of the Customer does not arise if the defect is attributable to the non-observance of care or installation instructions, inappropriate or unsuitable use, incorrect or careless treatment, normal wear and tear as well as to engagements to the product supplied made by the Customer or a third party.
- 14.5 The statute of limitations on warranty claims by the Customer against Strähle+Hess is 24 months starting from the date of delivery of the products to the end customer, however no more than 30 months from the transfer of risk to the Customer.

15. Claims based on Defects of Title

- 15.1 Strähle+Hess only warrants that the products delivered by Strähle+Hess to the Customer do not violate any third-party proprietary rights within the EU. "Proprietary Rights" in the meaning of these Terms and Conditions are patents, utility models, design patents, trademarks - each inclusive their applications - and copyrights.
- 15.2 Should a third party assert justified claims against the Customer for an infringement of Property Rights by products delivered by Strähle+Hess and used as stipulated in the contract, Strähle+Hess shall be liable to the Customer within the period of time set forth in Section 14.5 as follows: At the option and expense of Strähle+Hess, Strähle+Hess shall either acquire the right to use the deliveries concerned, or modify them so that the Proprietary Right is no longer infringed, or replace them. Should this be impossible to do on reasonable terms, the Customer shall have the statutory right to withdraw from the contract or to reduce the purchase price. The obligation of Strähle+Hess to pay damages shall be in accordance with Section 17.
- 15.3 The abovementioned obligations shall exist only if the Customer informs Strähle+Hess immediately in writing of the claims asserted by the third party, has not acknowledged infringement, and all defensive measures and settlement negotiations are reserved to Strähle+Hess. Should the Customer cease to use the deliveries in order to reduce damages or for other important reasons, it shall point out to the third party that cessation of use cannot be construed as an acknowledgement of an infringement of Proprietary Rights.
- 15.4 The Customer shall have no claims insofar as the Customer is solely responsible for an infringement of Proprietary Rights. Furthermore, Customer's claims are excluded insofar the infringement of a Proprietary Right has been caused by the Customer's special instructions, by an application not envisaged by Strähle+Hess, by a modification of the deliveries by the Customer or through use together with products not delivered by Strähle+Hess.

15.5 More extensive claims on the part of the Customer or claims against Strähle+Hess or against our vicarious agents based on defects of title other than those regulated in this Section 15 are excluded.

16. Product Liability

16.1 If product liability claims are asserted against the Customer as a result of bodily injury or material damage caused by a defect of the products delivered by Strähle+Hess, then Strähle+Hess shall hold the Customer free and harmless of any claim only to the extent that Strähle+Hess would be directly liable to the third party. Compensation between Customer and Strähle+Hess shall be settled by applying the principles of § 254 of the German Civil Code (BGB) correspondingly.

16.2 For actions to avoid any damage (e.g. recalls) and the resulting necessary and substantiated costs and expenses, Strähle+Hess shall be only liable to the Customer if and insofar as Strähle+Hess is legally obligated thereto.

16.3 If the Customer intends to assert a claim against Strähle+Hess according to the afore-stated provisions, the Customer shall forthwith consult Strähle+Hess and shall comprehensively inform Strähle+Hess. The Customer shall give Strähle+Hess the opportunity to investigate the damage occurred. The Parties shall agree upon the steps to be taken, especially in the case of negotiations for a settlement.

17. Limitation of liability

17.1 Strähle+Hess is only liable for any damage claims and reimbursement of needless expenditures - in accordance with § 284 BGB - (hereinafter referred to as "Damages") against the Customer due to deficiencies of delivery or performance or caused by violation of other contractual or non-contractual obligations, in particular caused by tort, due to wilful intent or gross negligence. Excluded from this limitation shall be those Damages that are based on injury to life, limb or health, on the assumption of a guarantee (according to § 443 BGB) or of a procurement risk, the violation of material contractual obligations as well as on liability according to the Produkthaftungsgesetz (German Product Liability Law).

17.2 Damages caused by the violation of material contractual obligations are limited to such Damages that must have been foreseeable by Strähle+Hess at the time of conclusion of contract as typical damages (hereinafter referred to as "Typical Damages") provided that the liability is not due to wilful intent or gross negligence and not based on injury to life, limb or health, on the assumption of a guarantee or of a procurement risk.

17.3 Typical Damages in the meaning of Section 17.2 are:

- a) in each case: in maximum damages in the amount of the purchase price of the contract affected
- b) in maximum: damages in the amount of the turnover the Customer purchased products from Strähle+Hess in the preceding calendar year.

In any case Typical Damages in the meaning of Section 17.2 are not any indirect damages (e.g. recovery for loss of profit, damages resulting from interruption of business).

17.4 Irrespective of Section 17.3 the amount of Damages to be paid by Strähle+Hess to the Customer shall be determined by having, adequately in favour of Strähle+Hess, due regard to the economic situation of Strähle+Hess, nature, scope, and duration of the business relationship, possible causative or responsible contributions by the Customer according to § 254 BGB and a particularly disadvantageous situation of installation of the part supplied. Especially Damages, cost and expenditures which shall be paid Strähle+Hess to the Customer have to be in an appropriate relationship to the value of the products being delivered.

17.5 All limitations of liability shall apply to the same extent to vicarious agents.

17.6 A change in the burden of proof to the disadvantage of the Customer is not associated with the provisions in this Section 17.

17.7 Material contractual obligations pursuant to Section 17.1 and 17.2 are all obligations whose fulfilment the proper performance of the contract makes possible in the first place and on whose compliance the Customer has relied on and was able to rely on.

18. Proprietary Rights

18.1 Existing Proprietary Rights shall remain with the respective Party. A transfer of Proprietary Rights requires an express written agreement between the Parties.

18.2 Strähle+Hess is solely entitled to the rights - in particular the Proprietary Rights - in all working results achieved by Strähle+Hess in connection with the cooperation between Strähle+Hess and the Customer.

18.3 The granting of a right of use of a Proprietary Right pursuant to sections 18.2 and 18.3 in favor of the Customer - of any type whatsoever - requires an express written agreement between Strähle+Hess and the Customer.

18.4 The Parties are jointly entitled to the rights - in particular the Proprietary Rights - in all working results achieved jointly by the Parties in connection with the cooperation (hereinafter "Joint Proprietary Rights"). In such a case, the Parties will file a joint application for industrial property rights; the costs of such a joint application will be divided. Should one Party not be or no longer be interested in applying for or pursuing a Joint Proprietary Right, then that Party shall enable the other Party to effect the application or continue exercising the Joint Proprietary Right in its own behalf and at its own expense.

18.5 The Parties may use and exploit Joint Proprietary Rights only jointly. The granting of sub-licenses to third parties for Joint Proprietary Rights or the transfer to third parties requires the prior written approval of the other Party.

19. Retention of Title

Strähle+Hess reserves title to all products delivered to the Customer until complete payment of all claims to Strähle+Hess which result from the business connection with the Customer.

20. Applicable Law, venue

20.1 Substantive German law shall apply exclusively, without giving effect to its conflict of laws provisions.

20.2 Place of jurisdiction for all disputes in connection with the contract is Stuttgart, Federal Republic of Germany.