

Hawle Conditions of Sale 2019

Last updated January 2019 / valid as of 01.01.2019



1 General

1.1 All offers, sales transactions, deliveries and other services provided by E. Hawle Armaturenwerke GmbH (henceforth referred to as „Hawle“) to our customers as of 01.01.2019 are subject exclusively to the following Conditions of Sale.

1.2 Hawle shall not recognise any conflicting or deviating terms and conditions of the customer unless Hawle has expressly agreed to their validity in writing.

1.3 Supplements and amendments to these Conditions of Sale as well as ancillary agreements must be made in writing in order to be effective. This also applies to the waiver of the written form requirement.

1.4 In the event that individual provisions of these Conditions of Sale are or become invalid, the remaining provisions shall remain effective. Ineffective provisions shall automatically be replaced by legally effective provisions which come as close as possible to the economic intent of the contracting parties.

1.5 It is the responsibility of the customer to assess the technical and legal suitability of the goods offered by Hawle for the use intended by the customer or his buyers. The customer is also required to observe export and import restrictions.

1.6 Any administrative authorisations required for the import of goods into their country of destination or for the use intended by the customer or his buyers must be obtained by the customer in good time. In the event that such authorisations are not obtained in good time, delivery dates and periods shall be extended accordingly.

1.7 Hawle reserves the property rights and copyrights to the product catalogue sheets, drawings, product photos, cost estimates and other documents prepared by Hawle. These documents may not be disclosed to third parties without the prior permission of Hawle.

2 Conclusion of contract

2.1 All offers and price lists issued by Hawle are subject to change and non-binding, unless expressly agreed otherwise, and only become binding once Hawle has confirmed the order in writing or performed an action set by Hawle in fulfilment of the contract (e.g. delivery/shipment of the goods).

2.2 Following the confirmation of the order or the performance of an action in fulfilment of the contract by Hawle, the customer may withdraw from the contract only with the prior written consent of Hawle. Unilateral withdrawal from the contract on the part of the customer is not permitted.

3 Prices and terms of payment

3.1 All documents pertaining to an offer such as drawings, illustrations and weight specifications shall only be regarded as approximate unless they are expressly designated as being binding. This reservation applies in particular to obvious errors, typographical errors, printing errors and miscalculations.

3.2 Unless otherwise agreed, the prices quoted by Hawle are in EURO Ex Works Frankenmarkt (EXW, Incoterms 2010), excluding in particular packaging, transport costs, transport insurance, sales tax and export and import duties. Packaging, loading, transport costs and transport insurance as well as potential taxes and duties shall be invoiced separately by Hawle.

3.3 Any changes in wage costs due to collective or statutory regulations or internal agreements as well as changes in other costs relevant to the calculation of costs necessary for the provision of the service, such as the costs incurred for materials, energy, transport, third-party work, financing, etc., shall entitle Hawle to increase the prices accordingly. For this reason, the customer shall have neither the right to withdraw from the contract nor the right to assert that the basis of the transaction has ceased to exist. Orders confirmed by Hawle are exempt from potential price changes.

3.4 Unless otherwise agreed, net payment must be made by the customer within 30 days from the date of invoice. Payments will be offset against the oldest claim due in each respective case.

3.5 The possibility of offsetting payments against claims made by Hawle is excluded.

3.6 In the event that the customer defaults on payment, Hawle shall be released from all further service and delivery obligations and be entitled to withhold any outstanding deliveries or services or to demand advance payments or guarantees.

3.7 In the event that, upon conclusion of the contract, a significant deterioration in the financial circumstances of the customer occurs, or if circumstances become known which from Hawle's point of view are likely to reduce the creditworthiness of the customer, Hawle shall have the right to change due dates for outstanding claims, withhold deliveries to the customer and adjust conditions for future legal transactions with immediate effect.

4 Delivery

4.1 Orders confirmed by Hawle shall be fulfilled by Hawle as swiftly and diligently as possible. The delivery dates and periods announced by Hawle are merely intended to serve as a guideline and are always non-binding unless the stated delivery dates and periods have been expressly designated as binding by Hawle.

4.2 In the event of force majeure or any unforeseeable obstacle for which Hawle is not responsible, delivery dates and deadlines shall be reasonably extended by the duration of the impediment. This shall also apply if Hawle's sub-suppliers encounter such impediments. These include, in particular, official measures, strikes and lock-outs, natural disasters, market-related problems with material procurement as well as import and export restrictions.

4.3 Hawle deliveries may always be divided into sub-deliveries. Hawle is at liberty to make partial deliveries or provide partial services and to issue partial invoices to the customer.

4.4 National and international goods traffic is subject to the terms of delivery FCA, 4890 Frankenmarkt, Hawle dispatch warehouse (Incoterms 2010), unless another delivery clause has been explicitly agreed.

4.5 In the case of a sales shipment, the transfer of risk takes place once the purchased item has been handed over to the first carrier. Where acceptance of a service is required, Hawle's notification of readiness for acceptance shall be decisive for the transfer of risk.

4.6 The customer is obliged to accept the deliveries and services provided by Hawle as per contract. In the event of default of acceptance or a culpable breach of other obligations to cooperate on the part of the customer, Hawle is entitled to demand compensation from the customer for any damage incurred as a result, including any additional expenses.

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4.7 Hawle is entitled to make changes to the technical design of the goods ordered, provided that these do not result in significant functional changes and the customer does not demonstrate the unreasonable nature of such changes. Unreasonableness is to be ruled out if the change constitutes a technical improvement or is caused by the further development of the state of the art or by legal or official measures.

4.8 In principle, the customer is not entitled to refunds or replacements. Refunds and replacements are only possible in exceptional cases and require the prior written consent of Hawle.

4.9 The goods delivered by Hawle to the customer are intended for use or resale in the customer's country of residence or in the country of the place of delivery.

5 Reservation of title

5.1 All goods delivered by Hawle remain the property of Hawle until payment has been made in full.

5.2 The customer is authorised to resell the goods in the regular course of business, even during the period in which the goods are subject to reservation of title. If, however, the customer is in default of payment to Hawle, Hawle may prohibit the resale of the goods subject to reservation of title.

5.3 The customer herewith cedes to Hawle all purchase price claims, including all ancillary rights, arising from a resale of the goods to his customers. Hawle accepts this assignment. These purchase price claims serve as security for the goods subject to retention of title.

6 Warranty

6.1 The customer must inspect the received goods with respect to quantity and quality immediately upon receipt. Written notices of defects must be submitted by the customer immediately after receipt of the delivery, but at the latest within 10 days from the date of delivery and prior to any handling or processing, otherwise excluding any warranty claims and/or claims for damages and/or avoidance on account of mistake, but do not entitle the customer to retain the invoiced amounts or portions thereof.

6.2 The warranty period for defects which were not detected during the inspection of the shipment is six months from the date of delivery and is neither extended nor interrupted by attempts at improvement; it also applies to partial deliveries. Notification of any such defects must be given in writing within 10 days from the date the defect was discovered, otherwise excluding warranty claims and/or claims for damages and/or avoidance on account of mistake, but do not entitle the customer to retain the invoiced amounts or portions thereof.

6.3 It has been agreed between Hawle and the customer that a hydrostatic pressure test in accordance with EN 805 is to be performed after laying a pipeline but prior to the main backfilling of the pipe trench or further constructional measures in shafts, plants or buildings which restrict accessibility to the valves and pipe fittings. If such a test is not performed, the customer or his customers shall be charged with contributory negligence of at least 50% in the event of damage. The customer agrees to inform his customers accordingly and to pass on this obligation to perform the described hydrostatic pressure test to his customers.

6.4 Possible warranty obligations generally cover the defective goods, but not the expenses otherwise associated with correcting the defect such as excavation costs, working hours and travel expenses.

6.5 The customer always bears the burden of proving that the delivered goods were defective at the time of delivery.

6.6 The place of performance for warranty obligations is always the place of delivery agreed for the original delivery.

6.7 Hawle shall be free to decide whether to fulfil possible warranty claims by means of replacements, improvement measures, price reductions or conversions.

7 Damages and liability

7.1 Any consulting provided by Hawle, whether verbal or in writing, is non-binding and does not release the customer from his obligation to examine the goods with respect to their suitability and the intended purpose. This applies above all, but not exclusively, to the suitability of the goods for the use intended by the customer or his customers, in particular to their suitability for the substances (gases and/or liquids) to be conveyed.

7.2 Hawle shall be liable for damages caused to the customer in the course of processing the business transaction in an amount not exceeding the value of the order placed with Hawle, and only in the event of gross negligence on the part of Hawle or gross negligence on the part of the executors working for Hawle, with the exception of personal injuries in which case Hawle shall be liable even in the event of minor negligence. The burden of proving gross negligence always lies with the injured party.

7.3 IN NO EVENT SHALL HAWLE BE HELD LIABLE, WHETHER IN TORT OR CONTRACT, FOR INDIRECT DAMAGES, CONSEQUENTIAL DAMAGES, PURELY PECUNIARY LOSSES, FOREGONE PROFITS OR DAMAGES ARISING FROM DELAYS OR OUT OF THIRD PARTY CLAIMS.

7.4 The time limit for asserting claims for damages is one year from the date on which the customer gains knowledge of, or is subject to, negligent ignorance of the damage and the injuring party.

7.5 In the event that the customer himself is held liable under product liability law, he undertakes to immediately notify Hawle thereof by telephone or in writing and to immediately inform Hawle of the address of the claimant, failing which the customer's right of recourse against Hawle arising from product liability will cease to apply. Negotiations of claims arising from product liability with respect to Hawle products shall be conducted exclusively by Hawle.

8 Place of performance, court of jurisdiction, applicable law

8.1 The place of performance for both delivery and payment is always 4840 Vöcklabruck/Austria, even if a different place of delivery has been agreed individually.

8.2 The exclusive court of jurisdiction for all disputes arising from legal transactions between the customer and Hawle is the competent court in 4840 Vöcklabruck/Austria. Moreover, Hawle is also entitled to sue at the customer's registered office.

8.3 All legal transactions between the customer and Hawle are subject exclusively to Austrian substantive law, excluding international conflict of law rules. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.