

**General Terms of Business (GTB)**  
**Of HEMAS Erntemaschinen Singwitz GmbH**

**I.**

**General regulations**

(1) All of HEMAS' present and future deliveries, including all other services before and after signing a Purchasing Contract are based on this General Terms of Business. The GTB are also valid for all legal transactions, which shall change the Contract and especially if the Contract shall end.

HEMAS hereby contradicts all purchasing conditions of the purchaser. They do not bind HEMAS, even though HEMAS does not contradict again when signing the Contract. At least when receiving the delivered goods, HEMAS' GTB come into force.

(2) All arrangements, which are made between HEMAS and the purchaser to put this Contract into force, are written down in this Contract.

(3) HEMAS' GTB are only valid for business employers, juristic persons of public law and special property under public law according to § 14 BGB and § 310 BGB.

**II.**

**Offers, Documentation and Treaty Conclusion**

(1) HEMAS' offers are not binding, if not clearly indicated by a confirmation. Orders come into force only after a written confirmation from HEMAS or if HEMAS has already begun to deliver the ordered goods. Sub-agreements and alterations need to be confirmed in writing.

(2) Even after confirming orders HEMAS is not bound to deliver, if there occur unforeseen obstacles, which HEMAS can not be blamed for. Such reasons could be e.g. official orders, acts of God or if HEMAS does not get needed parts delivered in time.

(3) All documentation coming with the offer, such as drawings, images, weights and measures are only approximate details, if not confirmed otherwise. All rights in offers, drawings and other documentation are reserved. They are not to be given to third parties without written agreement from HEMAS.

### **III. Term of Delivery**

(1) The Term of Delivery begins when the confirmation is sent, but not before the ordering person hands over all documents, licences, decontrols or goods, which lie within the purchaser's responsibility and not before the deposit is made.

(2) The Term of Delivery is kept, if the ordered goods left the work until the time is up or if HEMAS announced readiness to deliver.

(3) The Term of Delivery has to be prolonged if labour disputes, especially strikes and lockouts, take place and provably influence the completion and delivery of the goods. Unexpected occurrences, which do not lie within the will of HEMAS, are subject to this regulation as well. The regulation includes occurrences as described above as well, if they take place at a supplier's. HEMAS feels obliged to inform its purchasers about the beginning and the end of such occurrences as soon as possible.

(4) After a term of 4 weeks of delay, the purchaser has the right to withdraw from the contract or to demand compensation, if he can prove a loss based on the delayed delivery. The compensation is 0.5% of the worth of the delayed goods for each full week of delay, but max. 5% of the worth of the delayed goods. These qualifications are valid in cases of slight negligence only. HEMAS is not however liable, if the loss would have occurred even if the delivery would have been in time.

(5) If the delivery is delayed because this was requested by the purchaser, HEMAS will charge the costs of the storage, min. 0.5% of the invoice amount for each started month, beginning 1 month after HEMAS announced readiness to deliver. After an appropriate term, HEMAS has the right to use the goods otherwise and to supply the purchaser within an appropriately prolonged term.

(6) The purchaser is only obliged to fulfil all his contract duties, if HEMAS meets the deadlines as mentioned above.

### **IV. Prices and Terms of Payment**

(1) If not otherwise clearly indicated, all prices have to be seen „ex works“ (EXW Singwitz, according to INCOTERMS 2000), excluding packaging and delivery. If not clearly fixed, prices may be adjusted to increased costs. Prices are in Euro (€) according to the European Central Bank. The purchasing prices do not include customs duties and Sales Taxes.

The individual Sales Tax is to be given separately in the invoice.

(2) The purchaser falls behind with his duties, if he fails to settle due payments within 15 days after the date of the invoice or a comparable document. HEMAS reserves itself the right to state delay at an earlier time by sending a reminder according to the settlement date. The

purchaser also falls behind if a certain payment date was arranged and the purchaser did not make the payment until that payment date. Invoices fall due without any discounts. HEMAS reserves its right to deliver only after prepayment or cash on delivery (COD), esp. if ordering first or if payment maturity was exceeded.

(3) The purchaser is not released from his duties until the incoming payment is at HEMAS' final disposal.

(4) The purchaser has the right to set off his claims against HEMAS' claims only if his claim is undisputed or legally ascertained. He is only entitled to keep back payments, if his counterclaims are based on the same Contract.

(5) Cheques and Bank transfers are only accepted until legally cashed. Bills of exchange are only accepted instead of payment after prearrangement. Expenses and interests have to be reimbursed by the purchaser.

(6) If the purchaser defaults in his payments, he has to pay interests at a rate of 8% over the valid Basic Interest Rate of the European Central Bank. HEMAS reserves its rights to assert further compensation.

(7) Due deliveries may depend on timely payment. Even if after signing a Contract, HEMAS learns about facts, which reduce the credit-worthiness of the purchaser, HEMAS has the right to withdraw from the Contract. HEMAS has the right to claim immediate payment or return of the delivered goods, not regarding payment maturities. If the purchaser is able to prove these facts wrong, the original Contract remains untouched.

## **V.**

### **Risk transfer, Insurances, Packing**

(1) The risk passes to the purchaser after dispatching the goods even if HEMAS delivers by instalments or takes on other work, e.g. dispatching or putting-up. If requested by the purchaser HEMAS offers to take out insurances for theft, break, transport, fire or water damage and other insurable risks.

(2) If the delivery is delayed because of the purchaser or reasons caused by him, the risk passes to the purchaser on the day of dispatch readiness. Still, HEMAS is obliged to take out the insurance, which is requested by the purchaser on the expenses of the purchaser.

(3) Delivered goods have to be accepted by the purchaser even though the goods may show insignificant defects. The rights fixed in chapter VII remain untouched.

(4) Delivery by instalments is allowed unless the purchaser proves that delivery by instalments is unbearable for him.

(5) Packing is not taken back. The purchaser has to guarantee the refuse disposal. He has to bear the expenses for the refuse disposal.

## VI.

### **Reservation of proprietary rights**

(1) HEMAS reserves its rights of property of the delivered goods until all payments have come in as fixed in the purchasing contract. The reservation of proprietary rights even remains for outstanding claims against the purchaser which are based on other claims connected to the current business relation.

(2) The purchaser has to insure the delivered goods for the purchasing price on his own expenses against damages caused by fire, water, theft and other damages. If the purchaser can not proof evidence of insurance, HEMAS has the right to insure the delivered goods on the expenses of the purchaser.

(3) The purchaser has the right to sell the delivered goods. He is not allowed to pawn the goods, to transfer the goods for security to a third party or to dispose of the goods to the disadvantage of HEMAS' proprietary rights.

(4) If the goods have to be maintained or other service is necessary, the purchaser has to carry them out immediately on his own expenses.

(5) The purchaser is obliged to inform HEMAS immediately in writing, if the delivered goods become object to distraint or any other intervention of a third party, so HEMAS is able to institute proceedings according to Civil Practice Act § 771. If the third party is not able to refund the costs of a judicial or non-judicial proceeding under § 771 CPA or the preparation for the proceeding, the purchaser is liable for these costs.

(6) Any revision or processing of the reserved goods has to be carried out by the purchaser without any duty for HEMAS. If the reserved goods are revised, combined or mingled with other products, which do not belong to HEMAS, HEMAS is entitled to claim property of a share of the newly formed product. The claimed share of the new product has to be the proportionate value of the new product compared to the value of the other used products in the moment of the revision, combination or mixture. If the purchaser acquires the sole property of the new product, he will cede HEMAS a proportionate share of the product compared to the value of the revised, combined or mingled goods without any further arrangement. The purchaser will keep the share for HEMAS for free.

(7) By now, the purchaser cedes the claims against third parties at the rate of the invoice amount of HEMAS (incl. VAT) in case he should sell the reserved product, disregarding whether the product has been sold with or without processing. This arrangement does not need any further agreement. The purchaser is allowed to collect the claims even after the ceding. The right of HEMAS to collect the claim by itself remains untouched. HEMAS will not collect the claim as long as the purchaser fulfils his liabilities to pay, does not delay the payment and as long as there is no petition for insolvency or payment stop. If this is the case, HEMAS is allowed to claim the announcement of the ceded claims and their debtors. The purchaser shall tell all details for the collection, hand over all necessary documents and inform the debtors about the ceding.

(8) If the purchaser should act in breach of the contract, esp. if payment is delayed, HEMAS

has the right to take back the delivered goods after expiration of an agreed term. The purchaser is obliged to return the delivered goods. The purchaser has to bear the costs of the return. The assertion of a proprietary right by HEMAS and the ceding of the delivered good do not mean withdrawal from the contract.

(9) HEMAS will decontrol the securities of the purchaser on his demand, if the realizable value of the claims resigned to HEMAS exceeds the claims to be secured by over 10% or if the estimated value of the transferred goods exceeds the claims to be secured by over 50%. Which securities are to be decontrolled is HEMAS' decision.

## **VII. Defect claims**

For defective deliveries HEMAS is liable under exclusion of other claims and in accordance with chapter VIII as follows:

(1) All parts, which turn out to be of no use or considerably restricted use within a period of 12 month after risk transfer, are to be exchanged or mended for free according to the judgement of HEMAS, if the defect was caused before the risk transfer (e.g. defective type, building-material or quality). The ascertainment of such a defect has to be reported to HEMAS in writing immediately. To preserve the defect rights, the purchaser has to report obvious defects or defects, which are ascertained when checking the goods after reception, to HEMAS in writing immediately, at most 10 days after delivery. These regulations are also valid for deliveries by instalments. Insignificant or customary deviations in production, design or coloration are not to be seen as defects.

(2) If HEMAS fails twice to postfulfil the contract, the purchaser has the right to demand depreciation or to withdraw from the contract.

(3) Replaced parts pass into the property of HEMAS.

(4) HEMAS does not assume liability for damages, which were caused by the following reasons:

Unsuitable, improper or damage-causing use, defective assembly or putting into operation by the purchaser or third parties, usual wear out, defective or careless treatment, improper means, exchange materials, chemical, electro-chemical or electrical influences, if these are not caused by a fault of HEMAS'.

(5) The purchaser has to give HEMAS the necessary time and possibility for mending or replacement after informing HEMAS. If not, HEMAS is not bound to the defect liability. The purchaser is allowed to mend a defect by himself or with the help of a third party only, if the operational safety is endangered, to avoid an excessively high damage or if HEMAS falls behind with its service. If this is the case, the purchaser has the right to claim compensation for the costs. The purchaser has to inform HEMAS immediately about such cases.

(6) Costs for necessary mending and/or replacement deliveries (e.g. transport, cost of material) are chargeable to HEMAS. HEMAS has the right though, to find the most

inexpensive solution. Additional costs, which appear because the delivered goods were transported to another place than the residence or the commercial office of the purchaser, will not be borne by HEMAS.

(7) For the replaced part and the mending the period of guarantee starts with the dispatching of the part or the ending of the mending and runs out after the usual term of guarantee. The term of liability for the delivered goods will be extended for the length of the break caused by the mending.

(8) HEMAS is not legally liable for consequences caused by improper changes or repair carried out by the purchaser or third parties without previous permission of HEMAS.

(9) Consumption material, such as lamps, fuses, batteries and so on, is not part of the guarantee.

(10) The mentioned restrictions for the liability are not valid, if HEMAS maliciously hid a defect or assumed a guarantee, which can only be assumed after a written declaration from HEMAS.

(11) If delivered goods are returned to HEMAS during the term of guarantee and HEMAS ascertains during the survey, that the defect was caused by the improper treatment of the purchaser, HEMAS will present an offer for the repair. Costs for the survey have to be borne by the purchaser, in case it's not a matter of guarantee.

## **VIII.**

### **Compensation**

(1) If HEMAS because of legal regulation has to bear the costs for a damage, which has been caused negligently, HEMAS is only limited liable and is only bound to the following conditions:

There is only a liability for the breach of essential duties of the contract. Additionally the liability is restricted to typical damages, which can be foreseen when signing the contract. This restriction is not valid for the injury of life, body and health. If the damage is covered by an insurance taken out by HEMAS (except for sum assurances), HEMAS is only liable for disadvantages of the purchaser until the insurance company paid compensation. However, HEMAS is only liable for disadvantages, which originate in the damage, e.g. increased premium or interest disadvantage. In all other cases, HEMAS is not liable for damages, which were caused slightly negligent because of a defect of the delivered goods.

(2) Disregarding a fault of HEMAS, the liability of HEMAS remains untouched, if the defect was maliciously hidden, if HEMAS assumed a guarantee or procurement risk and if the case falls under the Law of Product Liability.

(3) The liability because of delayed delivery has been finally fixed in chapter III (4).

(4) As far as the liability of HEMAS for damages is excluded or restricted, the personal liability of the employees, representatives and fulfilment assistants is also excluded or restricted. In any case, the liability for compensation is restricted to typical damages, which

can be foreseen.

(5) There are no further claims, esp. no claims based on damage-causing use of the delivered goods.

(6) If according to chapter VIII the purchaser has a right to compensation, they are in lapse after a period of 12 month. The legal regulations for lapse of compensation are valid in cases of product liability, intention, culpable negligence, injury of body, life or health and in case the contract got violated. If the law necessarily includes instructions for longer terms, these terms become valid.

## **IX.**

### **Impossibility, Contract Adjustment and Right of Withdrawal**

(1) The purchaser has a right to compensation, if the delivery should become impossible, unless HEMAS is not responsible for the impossibility. However, the claim of compensation is restricted to damages typical to the contract, i.e. at most 10% of the value of the parts of the delivery, which can not be put into operation. If the whole ordered goods should become impossible to deliver, the maximum compensation is 10% of the total value. This restriction is not valid, if HEMAS is necessarily liable according to the Law of Product Liability, in cases of intention, culpable negligence or injury of life, body or health. The above-mentioned does not include changes in the onus of proof to the disadvantage of the purchaser. The right of the purchaser to withdraw from the contract remains untouched. If the purchaser withdraws from the contract, he has no right to claim compensation instead of delivery additionally.

(2) If an act of God (e.g. mobilization, war, rebellion, strike or lockout) should change the economical significance or the content of the delivery or if it should have a serious effect on the company, the contract will be made fit according to the good faith. If this is economically untenable, HEMAS has the right to withdraw from the contract. If HEMAS plans to make use of this right, HEMAS informs the purchaser immediately after discerning the consequences of this decision, even if there was an agreement of prolongation of the delivery term for the time being.

## **X.**

### **Changes in design and form**

HEMAS has the right to make changes in design and form of the ordered goods within the usual limits of tolerance, if the total performance of the goods is not harmed.

## **XI.**

### **Exclusion of Ceding**

The ceding of claims based on the contract through the purchaser is excluded.

## **XII.**

### **Place of Performance, Court Jurisdiction, Legal Choice**

(1) Place of performance for all deliveries, incl. return deliveries, and payments is Singwitz near Bautzen.

(2) Court jurisdiction for both parties and for all direct and indirect disputes, which base on this contract situation, is Bautzen. This is also valid for proceedings in legal cases concerning bills of exchange and cheques. HEMAS has the right though, to institute proceedings at any other court, for which reasons can be given.

(3) For this contract, the Law of the Federal Republic of Germany is obligatory.

## **XIII.**

### **Final regulations**

Should one or more of the regulations fixed in this GTB be or become void, they will be replaced by valid regulations or legal grounds, which come closest to the economical intentions of the original regulation or even correspond to them. The validity of the remaining GTB stays untouched.