



Standard Terms and Conditions of Sale Hottinger Baldwin Messtechnik GmbH (per April 2006)

Please note: This version in the English language is provided for informational purposes only. It does - to the best of our knowledge - accurately reflect the German language version of our standard terms and conditions, but only the German language version shall constitute the legally binding agreement.

1. General

1. These standard terms and conditions of Hottinger Baldwin Messtechnik GmbH (hereinafter referred to as "we") on sales, deliveries and payments for commercial enterprises (hereinafter referred to as **Standard Terms of Sale**) govern exclusively. We hereby reject any customer's terms and conditions, which conflict with or derogate from our Standard Terms of Sale, unless we have expressly agreed to their application in writing. Our Standard Terms of Sale shall govern, even if we have knowledge that the customer's terms and conditions (including any government directives on awarding contracts) conflict with or derogate from our Standard Terms of Sale and we nevertheless unconditionally carry out the delivery to the customer.
2. In order to be of legal effect, any agreements reached between us and the customer concerning the performance of a contract must be memorialised in a written contract. Any modifications of the contract must be made in writing.
3. Our Standard Terms of Sale will also govern all future transactions with the customer in connection with its activities under the current business relationship.
4. Our Standard Terms of Sale apply only to commercial enterprises within the meaning of § 14 (1) of the German Civil Code ("BGB"), governmental legal entities and public funds [*öffentlich rechtlichen Sondervermögen*] within the meaning of § 310 (1) BGB.

2. Bids, Bid Documentation, Scope of Delivery

1. Unless they stipulate otherwise, our bids (offers) are not binding and are freely revocable. Orders of the customer in our Web Shop on the Internet represent an offer following completion of a purchase contract which must first be accepted by us with the transfer of an electronic order confirmation to the customer. Our written order confirmation applies to the scope of our deliveries, while the order confirmation drawn up in electronic format is applicable to orders from our Web Shop. If the customer has accepted a temporary offer made by us in a timely manner and if we have not yet confirmed the order, then the terms of our offer concerning the scope of delivery will govern. Our sales employees are not generally authorised to reach ancillary agreements or make representations, which go beyond the content of the written contract.
2. We reserve the right to make immaterial modifications to the subject matter of delivery (Goods), provided such modifications do not impair the contemplated use. We also reserve the right to modify our products in accordance with customary commercial practices on the basis of the technical advances made. We furthermore reserve the right to modify the colour, form, dimensions and material of the products, unless special agreements were reached with respect thereto.
3. We reserve all proprietary rights and copyrights in the illustrations, sketches, calculations and other documents. These types of documents may not be disclosed to third parties. The aforementioned applies, above all, to any written documents, which are expressly labelled "confidential". The customer may not make any disclosures to third parties without first obtaining our express written consent.
4. In general, the customer must at its own expense institute any safety precautions, which are necessitated by special conditions at the customer's plant. Unless otherwise agreed, these precautions will not be specifically contained in the terms of delivery. The aforementioned shall apply even if we undertake the assembly and start-up operation.

5. All goods and services meet the standards and regulations of the Association of German Electricians (VDE), to the extent they apply regarding the safety of the goods. Discrepancies therefrom are permissible, if and to the extent that the same level of safety can be guaranteed in another manner. Unless otherwise expressly agreed in the individual case, the items delivered by us are not suitable or intended for use in areas requiring special levels of safety (e.g., nuclear power plants and critical medical areas).

3. Prices, Terms of Payment

1. Unless the order confirmation stipulates otherwise, our prices are "ex works" (as defined in Incoterms 2000), and will include boxing in cardboard but exclude value added tax. Shipping costs and costs for special packaging will be billed separately. Unless otherwise agreed, our service will not include taking back, shipping back or disposing of packaging.
2. In the absence of special agreements, our prices will be our respective published list prices. Unless otherwise stipulated in writing, payment must be made net in full to our payment centre following delivery (or if a delay of delivery is caused by the customer, upon notice that delivery is tendered) and within 30 days of the invoice date.
3. If the performance period agreed is 4 or more months after the execution of the agreement or if the performance period is 4 or more months after the execution of the agreement because of circumstances for which the customer was responsible or for which the customer has assumed the risk, then we reserve the right to reasonably increase our prices and to increase the price to the extent necessary to cover costs that arose following the execution of the agreement - specifically as a result of collective bargaining agreements or increases in the cost of materials at the expense of our company. Upon request, these increased costs will be disclosed to the customer.
4. We have the right to apply any customer payments first against its older debts. If costs and interest have already been incurred, then we are entitled to apply the payment first against the costs, then against the accrued interest, and finally against the principal claim.
5. If the customer is late in its payment, we will generally charge interest at eight (8) percentage points above the base interest rate defined in the BGB. If we can prove higher default damages, we will be entitled to enforce such damages.
6. If an instalment payment plan is agreed, the entire amount owed will be called in and accelerated in the event an instalment payment is late.
7. The customer has a right to set-off, only if its counterclaims have been reduced to final, non-appealable judgment, if such claims are uncontested, or if they have been recognised by us. The customer may exercise a right to withhold or refuse performance, only if these same counterclaim requirements are met and, in addition, its counterclaim is based on the same contractual relationship.
8. A payment will be deemed to have been made when we can exercise control over the funds. Until this time, we will retain title to the Goods. If payment is made by cheque, then it will be deemed to have been made only after the cheque has cleared.
9. If we are obligated to perform first and we learn after executing the agreement about circumstances, according to which our payment claim would be jeopardised by the customer's prospective inability to perform, then we may at our discretion demand that additional security be provided within a reasonable period of time or that payment be made against each delivery. If the customer cannot meet this demand, we will have the right to rescind the agreement without thereby waiving any other potential statutory claims.

4. Delivery Schedule and Transfer of Risk

1. Unless otherwise agreed or otherwise implied from the contractual relationship, the delivery schedule stipulated by us is never binding. This also applies to delivery times stated in our Web Shop on the Internet. Our stipulated delivery schedule is subject to the condition that all necessary issues (specifically technical questions) be resolved and the customer has satisfied its obligations.

2. We shall not be liable on the basis of a delay in performance [*Verzug*] for any late deliveries, which are caused by a *force majeure* or by unforeseeable circumstances for which we are not responsible, such as plant disruptions, strikes, lock-outs, shortages in available shipping, difficulties in procuring raw materials, government decrees and late delivery by our suppliers. Any agreed delivery period will be extended for the duration of the hindrance. If the hindrance lasts more than one month, then - after the expiration of a reasonable deadline period - we and the customer will be entitled to rescind that part of the contract, which had not yet been performed. In this case, the parties agree to waive any compensatory damage claims they may have.
3. If, following our delay in performance, the customer provides us with a reasonable grace period, then it will be entitled to rescind the agreement if we do not render due performance prior to the expiry of this period. In this case, the customer will be entitled to compensatory damage claims based on non-performance, only if the delay in performance is based on intentional conduct, gross negligence or a negligent breach of a material contractual duty. Section 8 of these Standard Terms of Sale govern *mutatis mutandis*.
4. The limitations on liabilities pursuant to the paragraphs above will not apply if the parties have agreed to a fixed date of delivery [*Fixgeschäft*] as between businessmen. The same rule will apply, if the customer can claim that its interests in having the agreement performed no longer exist because of a delay for which we are responsible. In these situations, our liability will be limited to foreseeable damages, which are typical for this kind of contract, unless we can be attributed with intentional conduct. Section 8 of these Standard Terms of Sale shall apply *mutatis mutandis*.
5. If the customer defaults in accepting contract performance or breaches its other duties of cooperation, then we will be entitled to demand any damages arising therefrom (including additional expenses). We will have a right either to charge 0.5 percent (0.5%) of the invoiced amount per month as a fee for storing and safeguarding the Goods or to demand indemnification of the actual costs incurred. The risk of accidental loss or accidental deterioration of the purchased property will pass to the customer at the time that the customer is deemed in delay of accepting contract performance. Instalment deliveries or instalment invoicing will be permissible, provided such arrangement does not conflict with a discernable interest of the customer.

5. Retention of Ownership

1. We will retain title to the delivered items until receipt of all payments arising from the business relationship with the customer. In the event the customer breaches the agreement (specifically any default in payment following a reasonable grace period), we will be entitled to repossess the delivered property. The aforementioned right will not apply, if the customer has already filed for bankruptcy or bankruptcy proceedings have been commenced, as a result of which we are prohibited from immediately repossessing the delivered items.
2. A rescission of the agreement does not constitute a waiver of the right to enforce compensatory damage claims against the customer. We are entitled to sell the delivered items following repossession. The proceeds from the sale will be applied against the customer's liabilities, less a reasonable charge for the disposition costs. The foreclosure rules of the German Bankruptcy Code ("*InsO*" or *Insolvenzordnung*) shall continue to apply.
3. The customer is obligated to treat the Goods with due care. It is specifically required, at its own cost, to adequately insure against any damages arising from fire, water and theft. Replacement value shall be deemed to be adequate insurance coverage. If any repair or inspection work is required, the customer must conduct such work at its own cost and in a timely manner.
4. If a third party attaches or otherwise seizes the Goods, the customer must promptly inform us in writing. The customer shall be liable to us for any judicial or extra-judicial costs arising from any necessary legal action taken pursuant to § 771 of the German Civil Code ("*ZPO*") (Third party action against execution of a debt).
5. The customer is entitled to resell the Goods in the ordinary course of business. It hereby agrees, however, to assign to us any and all claims in the amount of the final invoice (including value added tax), which it will be entitled to collect upon resale to a purchaser or third party, irrespective of whether the delivered goods were resold with or without any physical alterations.

6. The customer will continue to be entitled to collect on the accounts receivables even after the assignment. We will be authorised, however, to collect the receivables ourselves, if the customer no longer discharges its payment obligations from the collected proceeds, defaults in its payment, files for bankruptcy, or suspends payments. In these cases, we may demand that the customer identify the assigned receivables and the debtors, make any and all statements necessary to collect on such accounts, deliver all related materials and documents, and inform the debtors (third parties) about the assignment of their accounts. We will not be able to collect on the accounts, however, if this procedure is proscribed by the Bankruptcy Code.
7. Any processing of or alterations to the delivered items will be deemed to have been undertaken by the customer on our behalf. If the delivered item is co-mingled, combined or otherwise processed with items owned by other persons, then we shall acquire joint ownership of the new property in a proportion equal to the value of the delivered item (final invoice amount including value added tax) to those other processed items as of the time the items were co-mingled, combined or otherwise processed together. The same rules that apply to items sold under a title retention arrangement will apply to new items of property created by virtue of the processing.
8. The customer shall also assign to us the third-party receivables that accrue when the delivered goods are bount to real estate, as security for our receivables from them.
9. We agree, at the customer's demand, to release the collateral to which we are entitled when the value of our collateral exceeds the secured receivables by more than 20%. We reserve the right to select the items of collateral for release.
10. If the Goods are located abroad, the following will apply:
 - 10.1 If the Goods were delivered prior to the payment of all amounts owed by the customer under the agreement, then we shall retain our ownership until complete payment, to the extent that this arrangement is permissible under the laws applicable in the location in which the Goods are located. If these laws do not permit title retention, but rather permit us to retain certain other property or security interests in the Goods, then we will be permitted to enforce these types of rights.
 - 10.2 The customer agrees to cooperate with us in our efforts to safeguard our ownership or other property rights in the Goods.

6. Warranty

1. A business customer [Kaufmann] may not enforce his or her warranty rights (defect claims), unless he or she inspects the goods immediately after receipt as per § 377 of the German Commercial Code ("HGB") and notifies us in writing about any discovered defects promptly after inspection and about any latent defects promptly after their discovery. The aforementioned notice must describe the details of the defect. If the customer is not a business person, then he or she must notify us in writing within 14 days following the receipt of the goods, otherwise all defect claims are excluded.
2. Defect claims will not arise, if the deviations in quality are only minor or the adverse effect on usability is merely insignificant.
3. We reserve the right at our option to cure the defect at no extra charge or provide substitute performance with respect to any components or services, which exhibit a physical defect during the limitation period defined in this section 6 (8), provided the cause of the defect already existed at the time that the risk of loss passed.
4. The customer may withhold payments in the event of defect notices only to the extent that such a withholding of payment is proportionate to the defects that arose. These payments may be withheld only if the requirements set forth in section 3 (7) sentence 2 are met.
5. If the customer complains about defects, which it incorrectly attributes to us but for which we were not responsible, then we will be entitled to charge the customer any reasonable expenses that arose in order to remedy or identify the defect.
6. We will not be liable for any customer claims based on expenses incurred for the purpose of substitute performance (including shipping costs, labour costs and material expenses), if such expenses were increased as a result of subsequently delivering the items to a location other than the original place of delivery, unless this delivery to a new place was a condition set forth in the agreement. We have the right to charge the customer any such additional costs without having to provide prior notice.

7. Any statutory recourse claims, which the customer may have against us based on the sale of goods to consumers (§§ 478, 479 BGB), are disclaimed with respect to the agreements between the customer and its purchasers to the extent that such claims exceed the purchaser's statutory defect claims.
8. The customer's defect claims will be time-barred 36 months after the risk of loss has passed. The Statute of Limitations for defect claims will apply, however, if such claims exceed 36 months and these Standard Terms of Sale do not provide otherwise: such as for property, which is typically used for buildings (§ 438 (1) No. 2b BGB), for recourse claims (§ 479 (1) BGB), for structures and construction defects (§§ 634 a, 438 (1) No. 2a BGB) and for those cases in which the defects were caused by intentional or grossly negligent conduct or through the fraudulent concealment of a defect. The above stipulated rules notwithstanding, a reduced limitation period of 12 months will apply to any consequential damages [*Mangelfolgeschäden*], which are governed by § 437 No. 3 or § 634 No. 4 BGB (compensatory damages based on defects), unless legal limitation periods for defect claims exceed 24 months. If, as a result of a defect, substitute contract performance is required, then the limitation period will be tolled only until the performance of such substitute contract performance and will not begin to run anew.
9. Before the customer can enforce any additional claims or rights (rescission, price reduction, compensatory damages, cost reimbursement), we must be granted an opportunity to conduct substitute contract performance within a reasonable period of time, unless we have provided a warranty or guarantee which stipulates otherwise. If our substitute contract performance fails after at least two attempts, if substitute contract performance is not possible, if we refuse such substitute contract performance or it is otherwise be unfair and unreasonable for the customer, then the customer may rescind the agreement or reduce the consideration to be paid. Section 8 of these terms and conditions apply to the enforcement of any compensatory damage claims by the customer.
10. Section 8 of these terms and conditions will apply to compensatory damage claims based on defects. No additional claims and rights may be enforced against us or our agents based on any physical defects.

7. Industrial Property Rights/Defects in Title

1. Unless otherwise agreed, we are obligated to deliver the Goods free and clear of any third party rights only in the country in which the place of delivery is located.
2. In the event that we are responsible for breaching third party intellectual property rights, we will have the right, in our discretion and at our costs, to acquire a license, which will be fit for the agreed or required use, or to modify the Goods such that the intellectual property right is not infringed, or to replace the Goods, provided that such replacement does not impair the customer's agreed or required use of the Goods. If such action would be impossible or unreasonable for us, then the customer will be entitled to enforce its statutory claims and rights. Section 8 will govern any compensatory damage claims.
3. Section 6, subsections (4), (5), (8) and (10) of these Standard Terms of Sale govern *mutatis mutandis*.

8. Compensatory Damage Claims and Liability Based on Other Grounds

1. The customer will have no rights to enforce any defect damages based on defects in the services we owe to the customer and to enforce any consequential damages (including lost profits) caused by such defects, unless we caused the defects based on our intentional, grossly negligent or negligent breach of our material duties. This limitation on liability also applies to any customer claims for reimbursement of any expenses caused by the defects.
2. In the event we intentionally breached our duties, our liability would not be subject to a liability cap. Our liability for compensatory damages will be limited, however, to a maximum of 150% of the order total in the event of negligence and to a maximum 200% of the order total in the event of gross negligence, unless otherwise agreed in writing in any individual case.

3. The customer may not enforce any compensatory damage claims based on a breach of a durable quality guarantee [*Haltbarkeitsgarantie*] (§ 443 (2) BGB), which was provided by us or our agent, if we did not culpably cause the breach.
4. In all other cases, the customer will have no compensatory damage claims or expense reimbursement of the customer, irrespective of the legal basis upon which any such claims are made, specifically breach of express or implied contract or tortious acts (*unerlaubter Handlung*).
5. The aforementioned limitations on liability will not apply to any claims made pursuant to §§ 1, 4 of the German Products Liability Act, to cases involving intentional conduct, to cases involving the culpable injury to life, limb and health and to cases resulting from any warranties made regarding the existence of any specific quality [*Beschaffenheitsgarantie*] (quality guarantee). Our liability in the event of negligence will always be limited, however, to the foreseeable damages arising from a contract of this type, unless otherwise agreed.
6. The rules set forth in subsections (1) through (5) above will not trigger a change in the burden of proof.
7. The personal liability of our employees, workers, staff members, representatives and agents is disclaimed or limited to the same extent as our liability is disclaimed or limited.
8. The time limitation on any claims between us and the customer are based on section 6 (8) of these Standard Terms of Sale, unless the claims are based on the Products Liability Act.

9. Special Rules concerning Software

1. If the Goods or any portion thereof includes software, which was developed by third parties, then the scope of the rights and entitlements granted to the customer will be determined in accordance with the third party's license terms, which we will include in the delivery and which we will send in advance upon demand. The aforementioned applies specifically to software such as operating systems and comparable components of the delivered system. We will provide suitable advance notice to the customer in the event that software from third parties will be included in the delivery (e.g., by naming the third party manufacturer in the bid documentation).
2. If the Goods we deliver include software developed by us (either as a component of the devices or as an independent product), then the following terms shall apply:
 - 2.1 Unless otherwise specifically agreed to in writing in the individual case, the transfer of software for purposes of use in return for a one-time payment constitutes a sale at law.
 - 2.2 We grant the customer a non-exclusive, transferable right to use the software developed by us on a single computer system for an indefinite period of time. Using the software in the course of ASP (Application Service Providing), network operation, data processing center operation, and outsourcing is inadmissible. In the absence of written approval, the software may be used for the customer's own purposes only. The software may not be leased, either expressly or implicitly, or transferred to third parties (except for transfer per Section 9, paragraph 2.3) without our prior written consent.
 - 2.3 A transfer of the license to a third party requires that the software be completely deleted from the customer's system and that the media (including all documentation related thereto), which had been provided by us, be transferred to the purchaser of the software, and that the customer does neither keep a copy of the software nor use the software for his or her own purposes.
 - 2.4 Subject to any other written terms, the customer shall be responsible for installing the software.
 - 2.5 The customer is prohibited: a) from in any manner disclosing to third parties the software or any related material without our prior written consent (except for a complete transfer in accordance with section 9, subsection (2.3)); b) from modifying the software without our prior written consent; c) from creating works derived from the software or copying the written materials; or d) from translating or modifying such software or preparing any derivative works based on the written materials. The foregoing provision shall not apply if the user is entitled, either by law or expressly by contract, to engage in any of the individual acts.
 - 2.6 We reserve all rights to the software developed by us and any related material as well as to any modifications we performed. The software and related materials must be used and stored in such a manner that they are reasonably safe from any use, reproduction or disclosure in violation of the agreement.
 - 2.7 One copy may be made for back-up purposes. A reference to our copyrights must be made or applied to the back-up copy. If a copyright and/or registration number appears in the software, this information may not be removed.

- 2.8 Defect claims of the customer for the delivered software will only arise, if the delivered software does not materially achieve the main functions agreed or contractually stipulated, or does not meet the recognised standard of technology or contains any errors, which will more than marginally reduce or eliminate its value or its fitness for ordinary or contractually stipulated use.
- 2.9 Unless expressly agreed otherwise, the software supplied by us is not error tolerant and was not developed or produced for purposes of use in a dangerous environment, in which a failure-free operation is absolutely necessary, such as in nuclear installations, aircraft navigation or communication systems, in aviation safety, in life-support machines or in weapons systems in which the failure in technology would directly cause death, personal injury or severe damages to property or the environment.
- 2.10 Any errors or bugs in the software will be removed, unless there is a defect which substantially restricts the fitness for use of the software and to the extent such action would be fair to the customer, exclusively by providing the customer with new programme versions as part of the continued product development and care. The customer is required to reasonably support us - in the event any programme failures are identified - by sending us the error reports and any other requisite information at our request. A delivery of any new programme version will not generally cause the warranty period to commence to run anew.
- 2.11 Even upon expiry of the defect claims the customer is not entitled to remove errors or bugs in the software himself or herself or to have them removed, unless, upon request of the customer, we have refused to remove the errors or bugs for an appropriate value.
- 2.12 Otherwise, with respect to the software, the general provisions of the agreement and these Standard Terms of Sale (specifically those terms relating to warranty and our liability) govern.

10. Confidentiality

Both parties mutually covenant not to disclose to any third parties the know-how and business secrets, to which they become privy during the performance of this agreement as well as any know-how, which is not generally known, and agree to bind their employees to this covenant.

11. Electronic invoices – Contact data

1. If the customer has provided an email address, we retain the right to send our invoice to the customer exclusively in electronic format to this address when the electronic invoice complies with all legal requirements, including the tax law regulations concerning VAT.
2. If the contact data of the customer changes, in particular with regards to name, address and email address, the customer is obligated to inform us immediately in writing, by fax, by email to info@hbm.com or by amending their data in the customer area of our Web Shop on the Internet.
3. The customer must ensure that the email address they have provided will be available at the time of entering the information, and that messages will be received and not be forwarded, blocked or rejected because the mailbox is full.
4. If the customer culpably breaches the above obligations regarding maintenance of their contact data, the customer will be liable to us for any resulting damages.

12. Claims under Insurance Policies

If, as co-insured parties with respect to the Goods, we are granted direct claims against the customer's insurance carrier, the customer hereby grants us its consent to enforce such claims.

13. Obligations under the German Electrical and Electronic Equipment Act or ElektroG

1. The customer assumes the obligation to properly dispose of the delivered goods at its own expense and in compliance with legal requirements upon termination of use. The customer indemnifies HBM from any obligations or resulting legal claims of third parties assumed under ElektroG, section 10 (2) (Producer Obligation to Take Back WEEE).
2. The customer has to contractually bind any commercial third parties to whom the delivered goods are transferred to properly dispose of these goods at their own expense and in compliance with legal requirements upon termination of use and, if these goods are transferred again, to impose a corresponding follow-up obligation. If the customer, however, fails to impose a corresponding obligation upon any third parties to whom the delivered goods are transferred, the customer is obligated to take back the delivered goods at its own expense and to properly dispose of these goods in compliance with legal requirements upon termination of use.
3. The customer must by no means transfer the delivered goods or parts of them to any private third parties, because these goods have been classified as solely commercial use per ElektroG.

14. Judicial Forum – Place of Performance

1. If the customer is a business person [*Kaufmann*], then our principal place of business in Darmstadt will be the judicial forum for any and all claims arising from or related to this agreement. We reserve the right, however, to bring legal action against the customer in the courts located in its domicile or in the judicial forum for the customer's branch office.
2. Unless our order confirmation provides otherwise, our principal place of business will be the place of performance.

15. Miscellaneous

1. Unless it conflicts with the legitimate interest of the customer, we shall be permitted, upon giving prior notice, to inspect the products (delivered by us) at the plant, to record the operating results, and to show the products to our prospective customers.
2. The data provided to us will be processed and stored in an electronic data processing system in accordance with the applicable laws and regulations, especially with the German Bundesdatenschutzgesetz (German Data Protection Act) - BDSG. Any personal data will be protected against misuse in accordance with the applicable laws and regulations.
3. The relationship between the parties will be governed exclusively by German law. The UN Convention on the International Sale of Goods (UNCITRAL/CISG) does not apply.
4. With respect to any written documentation, we will be bound by the German-language text only.
5. Should any provisions of the agreement or these Standard Terms of Sale be invalid, the validity of the remaining provisions hereof or thereof will not be affected thereby.

Per April 2006