

# **General Terms and Conditions of HSM China Ltd., Beijing ("HSM") for Supply Contracts with Corporate Customers (as of 1st December 2019)**

## **1. Application of the Terms and Conditions**

- 1.1** All deliveries and services from HSM, including offers, consulting or other ancillary services, shall be carried out on the basis of the following Terms and Conditions. These also apply for future commercial relationships. HSM does not recognise any purchasing or other Terms and Conditions of the purchaser.
- 1.2** Rules deviating from these Terms and Conditions are only effective if HSM has consented to them expressly in writing or in text form (via email).

## **2. Offer and conclusion of contract**

- 2.1** Offers from HSM are subject to change. The contract shall come into force through an order from the purchaser made on the basis of the offer and its written confirmation by HSM to the purchaser (except that an express order confirmation is not to be expected according to the type of transaction or the purchaser has waived the need for an order confirmation, including through delivery note or invoice). In case of doubt, the content of the order confirmation shall apply.
- 2.2** The documents attached to the offer pursuant to Section 2.1, such as images, drawings, weight and dimensional information are non-binding, unless determined otherwise.
- 2.3** Any additions, amendments and verbal ancillary agreements require the written form in order to be effective.
- 2.4** The purchaser agrees that HSM reserves the right to make changes during the delivery period to the function and form as well as changes to the scope of delivery which in each case result in a technical improvement.
- 2.5** Cost estimates are non-binding. HSM reserves the right to request a fee to draw up cost estimates.
- 2.6** HSM reserves property rights and the intellectual property rights in cost estimates, drawings and other documents. They may not be made accessible to third parties. HSM undertakes to only make documents which are marked as confidential by the purchaser accessible to third parties with the purchaser's consent.

**2.7** The purchaser may not return any goods to HSM, unless HSM expressly consents to the return. This does not apply insofar as the purchaser withdraws from the contract effectively based on the judgment in force subsequent performance.

### **3. Prices and payment terms and conditions**

**3.1** HSM shall charge the prices applicable at the time of the delivery, plus statutory value-added tax.

**3.2** HSM is entitled to amend the prices appropriately if between the time the contract is concluded and the time of delivery there are increases or decreases in costs, in particular on the basis of changes in costs for procurement or manufacturing of the products. HSM shall inform the purchaser about the price change in good time before the delivery. If HSM fails to provide the information in good time, the price which formed the basis of the order confirmation shall apply.

**3.3** Prices are “ex works” (Incoterms 2010) HSM.

**3.4** Subject to agreements deviating from this, the following payment terms apply: Advance payment for all machines on stock in China and 50% advance payment for all machines ordered from Germany.

**3.5** If the purchaser does not properly fulfil its payment obligations, it suspends its payments or if insolvency proceedings are opened over its assets or the opening of such proceedings is rejected for lack of assets, the full purchase price still open shall be due, also insofar as bills of exchange with a later maturity date are pending. The payment is to be made immediately.

**3.6** The presentation of bills of exchange must be agreed upon with HSM and this shall be carried out on account of payment. Credit notes regarding bills of exchange and checks shall be made less the expenses with the value date of the day on which HSM can freely dispose of the equivalent.

**3.7** The purchaser may only claim rights of retention or offset with regard to undisputed counter-claims or the ones established by the judgements or verdicts in force.

### **4. Deliveries, delivery and service period**

**4.1** HSM always strives to delivery as quickly as possible. Binding delivery dates or times are to be expressly agreed. A prospective delivery date mentioned by HSM is not binding.

- 4.2** Observation of the delivery deadline is subject to correct and timely self-delivery.
- 4.3** Deliveries are “ex works” (Incoterms 2010) HSM.
- 4.4** The following applies for the observation of bindingly agreed delivery times or deadlines:
- Insofar as the goods are shipped at the business premises of HSM (“ex works” HSM), the time mentioned in Section 5 is authoritative.
  - If the goods are not shipped at the business premises of HSM on the basis of a special agreement, the time at which the goods are ready for handover or leaving the works or the warehouse of HSM is authoritative.
- 4.5** Force majeure events entitle HSM to defer the delivery or service for the duration of the hindrance, plus an appropriate start-up period. A force majeure event shall be equivalent to all circumstances which make the delivery or service substantially more difficult or completely impossible for HSM on the basis of circumstances which HSM is not responsible for, in particular foreseeable interruptions in operations or traffic disruptions, strikes, lawful lock-out, sovereign measures etc., and indeed irrespective of whether these circumstances arise for HSM, its suppliers or its sub-contractors. If the hindrance lasts longer than 3 months, or if the enforcement of the contract by HSM becomes unreasonable for other reasons, each party is entitled to withdraw from the contract with regard to the part not yet fulfilled.
- 4.6** Insofar as HSM defaults, the purchaser can claim a compensation for delay amounting to 0.2 % for each completed week of default, but in total up to a maximum of 3 % of the invoice value of the deliveries or supplies affected by the default, except that the purchaser has suffered no or a lesser disadvantage. Any claims for compensation going beyond this are excluded, unless,
- the default is based on the intent or gross negligence of HSM or its vicarious agents or
  - there is a culpable breach of a material contract duty (see Section 8.1) or
  - a commercial transaction for delivery by a fixed date was agreed.
- 4.7** Irrespective of Section 4.6, the purchaser is, in the case of default, entitled to withdraw from the contract after the end of a suitable period of grace set by it, if the delivery was not offered by HSM up to the end of the period. Such period of grace of at least 4 weeks is appropriate, unless only a shorter period of grace is agreed by the parties in the individual case.
- 4.8** Goods notified as ready for collection are to be collected immediately. If the goods are not collected within 5 work days, HSM is entitled at its own option

to ship the goods to the purchaser at the latter's costs, or at its discretion to store the goods at the purchaser's costs and to charge them as delivered. Section 5 and the statutory provisions regarding the default of acceptance remain unaffected.

**4.9** HSM is entitled at all times to make part deliveries and part services.

**4.10** If and insofar as HSM is not provided with information about the material specification of the goods to be processed with the HSM's product (type, volumes, bulk weight, size, etc.), HSM cannot undertake any feasibility checks pursuant to DIN ISO 9001 or otherwise check the suitability of the product for the purpose strived for. Neither collecting its own material data nor making its own selection of a product on the basis of the prospectuses from HSM by the orderer can replace individual consulting by HSM oriented towards the specific field of application. Therefore, in these cases, any warranty or other responsibility or liability of HSM for the suitability of the selected product no longer applies for the planned use. Possible responsibility of HSM for the correctness of the information contained in the prospectuses shall remain unaffected by this.

**4.11** HSM is not responsible for damages which arise as a result of improper handling, failure to comply with the assembly, operating or service and maintenance instructions delivered by HSM together with the product, or an installation site unsuited for the operation of the product or as a result of natural wear and tear. In the case of damages caused by failure to comply with the assembly instructions or by operation of the product at an installation site unsuited for the operation of the product, the preceding sentence does not apply if HSM installed the product and put it into operation, unless the purchaser instructed HSM to install the product at this site in spite of HSM having pointed out its unsuitability.

**4.12** Maintenance and service work may only be carried out by HSM technicians or authorised service companies in order to make a warranty claim, unless the purchaser proves when making warranty claims that the defect concerned was not caused by the maintenance and service work carried out by others. HSM is not liable for damages which arise as a result of interference by third parties.

## **5. Transfer of risk**

The risk of damage to and loss of the goods transfers to the purchaser as follows:

- insofar as the goods are shipped at the business premises of HSM ("ex works", Incoterms 2010), at the time at which HSM informs the purchaser that the goods are ready for collection,

- insofar as the goods are not shipped at the business premises of HSM, at the time of handing over (including to a transport person) or, if the purchaser is in default of acceptance, at the time at which HSM offers the hand-over.

## **6. Warranty**

**6.1** HSM warrants that the goods are free from material defects. Insofar as nothing else is agreed expressly and in writing, the qualities described in the product descriptions, technical specifications and labels authorised by HSM are considered as agreed qualities. Public statements, praise or advertising are neither part of a quality agreement, nor do they define the contractually required use.

**6.2** Claims for defects are excluded if, in the case of patent defects, they are not raised immediately in writing, but at the latest within 10 days following receipt of the goods, stating the delivery note and invoice number as well as with a description of the defect reported. Concealed defects are to be reported immediately after they are discovered within the warranty term as stated in Section 6.5; the burden of proof for the concealment of the defects is carried by the purchaser.

**6.3** Should a product from HSM, contrary to expectations, display defects within the period stated in Section 6.2, for which HSM shall be responsible, the purchaser can claim for defects according to the applicable law and these General Terms and Conditions. Defect claims by the purchaser are initially limited to the right to subsequent performance. Until the subsequent performance fails, the purchaser is not entitled to reduce the purchase price or withdraw from the contract, at its discretion. Possible claims for compensation by the purchaser within the framework of Section 8 remain unaffected.

**6.4** HSM shall not assume the expenses necessary for the purposes of subsequent performance, in particular transport, routes, labour and material costs insofar as they increase, because the goods have been subsequently shipped to a site other than the purchaser's branch, unless the shipment corresponds with its intended use. Moreover, HSM shall also be entitled to reject the subsequent performance, if (1) it is legally or practically impossible; (2) the defective goods are not suitable for the subsequent performance or too expensive for subsequent performance; or (3) the purchaser fails to claim for defects in accordance with Section 6.3.

**6.5** Claims for defects prescribe as follows

- HSM SECURIO alternating current equipment: 3 years.
- HSM Classic and Pure alternating current equipment: 2 years.

- HSM shredstar: 1 year. The warranty obligation for shredstar models is limited to the free delivery of replacement equipment against the return of the defective equipment.
- HSM Powerline and ProfiPack: 2 years in case of use in single-shift operation; in case of use in multi-shift operation, the warranty period amounts to 6 months.
- other products: 1 year in case of use in single-shift operation; in the case of use in multi-shift operation, the warranty period amounts to 6 months.
- Used machines which are no older than twelve months are: 6 months. No warranty is provided for older used machines.

The authoritative time for the start of the prescriptive period is the time risk is transferred (Section 5 above). Mandatory statutory requirements on prescription remain unaffected, in particular for intentional or grossly negligent fault, for personal injury, for breach of duties for claims under the Product Liability Law or from a warranty undertaken.

- 6.6** No compensation will be paid during the warranty period for damages which were caused by wear and tear, improper handling, natural erosion or as a result of the interference of a third party or other reasons, for which HSM shall not be responsible. Service, adjustment and readjustment work are not owed as work under warranty.
- 6.7** The products from HSM may only be operated in an area protected from the weather for the entire period of its operation. This protection from the weather must already exist on-site before delivery, installation and putting into operation.

## **7. Warranty for selected equipment**

- 7.1** HSM provides a separate warranty for HSM solid steel cutting shafts in alternating current file shredders in the product lines HSM SECURIO and HSM Pure for the entire lifetime of the equipment (HSM Lifetime Warranty). This does not include file shredders with cut size 0.78 x 11 mm, 1 x 5 mm, 2.2 x 4 mm, 2 x 2 mm and the model HSM Classic nanoshred 726. All warranty statements going beyond this require the written form in order to be effective.
- 7.2** For damages which were caused by wear and tear, improper handling, natural abrasion or by interference of a third party or other reasons, for which HSM shall not be responsible, no compensation will be paid within the framework of the warranty period granted in Section 7.1. Service, adjustment and readjustment work caused by defects which did not arise as a result of repairs are not included.

## **8. Compensation for damages**

- 8.1** Unless stated otherwise in these Terms and Conditions, HSM is only liable to pay compensation for foreseeable damages in the case of intent and gross negligence and only in all other cases if a material contract duty (cardinal duty) is breached. Material contract duties are such duties which allow for the proper fulfilment of the contract in the first place and on the fulfilment of which the purchaser had entrusted and may have entrusted, and the culpable failure to fulfil such duties puts the achievement of the purpose of the contract at high risk.
- 8.2** Compensation of indirect damages, consequential losses and lost profits is excluded.
- 8.3** Liability for personal injury, liability for fraudulent intent, from a guarantee of quality given by HSM as well as liability under the Product Liability Law remain unaffected by the limitations of Section 8.1 and 8.1.
- 8.4** The purchaser indemnifies HSM from possible claims by third parties which arose for these third parties either (i) on the basis of changes in the object of the delivery which the purchaser or a third party made after the transfer of risk (Section 5) without the prior written consent of HSM, or (ii) on the basis of the installation or the operation of the object of the delivery at an installation site not recommended by HSM in the assembly instructions or not released by HSM in the individual case because of its lack of suitability for safe operation; or (iii) on the basis of infringement upon the intellectual property rights or know-how of third parties by the technical drawings or information furnished by the purchaser for HSM's manufacturing the goods.

## **9. Retention of title**

- 9.1** Delivered goods remain the property of HSM (goods subject to retention) until the fulfilment of all liabilities of the purchaser from the business relationship with HSM, especially payment of full price for goods by purchaser. The retention of title persists in particular if individual claims of HSM are recorded, balanced and acknowledged in a current invoice.
- 9.2** HSM is entitled to demand the goods subject to retention from the purchaser without setting a deadline and without withdrawing from the contract if the purchaser defaults on the fulfilment of its obligations towards HSM. There is only a withdrawal from the contract when the goods subject to retention are taken back if HSM has declared this expressly in writing.
- 9.3** The purchaser is obligated to treat the goods subject to retention with care for HSM, to maintain and repair them at its own costs, as well as to insure them sufficiently against loss and damage at its own costs within the framework of what is demanded of a prudent businessman. It hereby assigns its claims from the

insurance contracts to HSM in advance. So long as and insofar as the purchaser is not in default on payment, HSM shall make payments from the insurer to the purchaser for the costs of repair services already undertaken. Payments by the insurer for the loss of the goods subject to retention shall be offset by HSM with possible payment obligations of the purchaser not yet fulfilled, and excess amounts shall be paid out to the purchaser, where applicable.

- 9.4** In the case of processing or other restructuring of the goods subject to retention, the purchaser shall be active for HSM, but without obligating HSM. If the goods subject to retention are processed, mixed with or attached to things belonging to third parties, HSM shall acquire co-ownership in the results in the ratio of the respective invoice values. If the goods subject to retention are processed, attached or mixed with a principal thing of the purchaser, the purchaser transfers from now the co-ownership in the new thing to HSM in the ratio of the purchase price to the value of the principal thing. The respective share of co-ownership is considered goods subject to retention within the meaning of Section 9.1.
- 9.5** The purchaser may sell the goods subject to retention in the ordinary course of business under the normal terms and conditions, provided that he is not in default on payment. The same applies for any use of goods subject to retention in the fulfilment of a work contract. It is not permissible to resell if the purchaser agrees a non-assignment clause with its buyer, according to which the claims generated from the resales of the goods subject to retention are prohibited to assigned by purchaser to HSM. In the case of a resale, the purchaser is to make the transfer of ownership dependent on the full payment of the purchase price or work payment. The purchaser is not entitled to pledge, agree chattel mortgages or other encumbrances on the goods subject to retention.
- 9.6** In order to secure HSM's claim to the purchase price, the purchaser assigns all claims arising from a resale within the meaning of Section 9.5 to HSM. All claims which arise for the purchaser from damage or loss to the goods subject to retention against the respective party which caused the damage are also assigned; with regard to possible incoming payments on these claims, Section 9.2 Sentences 3 and 4 apply accordingly. So long as the purchaser fulfils its contractual duties entered into towards HSM and the fulfilment of these duties is not put at risk, the purchaser can collect the claims assigned itself.
- 9.7** The purchaser is to inform HSM immediately about compulsory enforcement measures by third parties against the goods subject to retention or the claims assigned in advance, handing over the documents necessary for an intervention. The purchaser bears all costs which have to be expended to set aside the access of third parties to the reserved or secured property of HSM and to replace the object, provided that they cannot be collected from third parties, unless the access by third parties is carried out to satisfy undisputed or legally established claims of the third parties against HSM.



**9.8** Upon justified request from HSM, the purchaser is obligated to disclose the assignment to its buyers and to give HSM the information and documents necessary to collect the debt. HSM is to be informed immediately about access by third parties to the goods subject to retention or the claims assigned.

## **10. Indemnification**

**10.1** If the proper use of the goods delivered leads to the infringement of intellectual property rights or know-how of third parties domestically, HSM shall, as it chooses, grant the purchaser the right to further use or modify the object of the delivery in a way which is reasonable for the purchaser so that there is no longer any breach of the property right (subsequent performance). The purchaser is obligated

- to inform HSM immediately about claims for possible breaches of intellectual property rights or know-how against the purchaser and/or its buyers,
- to support HSM to defend against the claims made and to allow for the enforcements of the subsequent performance measures, and
- to take judicial defence measures following instruction from HSM and only to acknowledge such third party claims or to conclude judicial or extrajudicial settlements regarding them following the written consent of HSM.

**10.2** HSM's right to refuse subsequent performance pursuant to Section 6.4 remains unaffected.

**10.3** HSM indemnifies the purchaser from undisputed or legally established claims of the holder of the property right concerned.

**10.4** The above-mentioned claims of the purchaser prescribe one year after the transfer of risk. The authoritative time for the start of the prescriptive period is the time the risk is transferred (Section 5 above). Mandatory statutory requirements on prescription remain unaffected, in particular for intentional or grossly negligent fault, for personal injury, for breach of duties for claims under the Product Liability Law or from a warranty undertaken.

**10.5** HSM is not liable for the breach of property rights if at least one of the property rights from the family of property rights from which the claims are derived, is not disclosed by competent authority in charge of intellectual property rights. Furthermore, HSM is not liable

- if the breach of the property right was caused by the fact that the purchaser arbitrarily changed the object of the delivery or used it in a way which did not conform with the provisions of the contract;

- the breach of the property right is based on an instruction or the (technical) information from the purchaser carried out on the delivered goods by HSM.

## **11. Confidentiality**

**11.1** All commercial or technical information (including features which can be derived from objects or software handed over) which originate from HSM, so long as and insofar as they were not evidently publicly known to the purchaser or were known to the purchaser without any breach of the confidentiality obligations of a third party, or are known following their disclosure by HSM or were determined by HSM for resale by the purchaser, are to be kept secret from third parties and may only be provided to such persons in the purchaser's own business or a sub-contractor of the purchaser who are also both obligated to maintain confidentiality and instructed to fulfil their respective operational tasks on the basis of knowledge of this information; the information remains the exclusive property of HSM. With the agreement of HSM, such information may not be reproduced or used commercially. On request, all information originating from HSM including copies and recordings produced and objects handed over on loan are to be returned to HSM immediately and in full, or are to be destroyed in coordination with HSM.

**11.2** There is no confidentiality obligation pursuant to Section 11.1 if the information mentioned in Section 11.1 is already publicly known (or has become publicly known) without fault of the purchaser or the purchaser must disclose the information on the basis of mandatory legal provisions or judicial or extrajudicial orders, and the purchaser has informed HSM about this obligation immediately and in writing.

**11.3** HSM reserves all rights in the information mentioned in Section 11.1 (including copyrights and the right to register industrial property rights, such as patents, samples of use, semi-conductor protection etc.).

## **12. Use of software**

**12.1** Insofar as software is included within the scope of delivery, the purchaser shall be granted the non-exclusive right, which is only transferable together with the goods, but which cannot be sub-licensed, to use the delivered software including its documentation. The right of use shall only be granted for use for the goods it is determined for. It is forbidden to use the software on more than one system.

**12.2** The purchaser may only use, reproduce, edit, decode or convert the object code to the source code of the software to the extent which is legally permitted. The purchaser is obligated not to remove manufacturer specifications in software provided - in particular copyright notices - or to change them without the prior express consent of HSM.

**12.3** All other rights in the software and the documentation including their copies remain with HSM or the supplier of the software.

### **13. EU VAT identification number**

The purchaser is obligated to provide HSM with all information required for issuance of the official legitimate invoice by HSM to the purchaser without having to be specially requested to do so. The purchaser is obligated to issue HSM on request with the necessary information regarding its capacity as a businessman, regarding the use and transport of the delivered goods as well as the fulfilment of the statistical reporting obligation (if applicable). The purchaser is obligated to reimburse any expenses, in particular processing fees, which HSM incurs as a result of incorrect information from the purchaser hereunder.

### **14. Consumer dispute resolution**

We only sell our products, which are suitable for private households, through specialist retailers, meaning that our direct customers are not consumers within the meaning of the law. We point out that we are not prepared and are not obligated to take part in a dispute resolution procedure before a consumer arbitration body.

### **15. Court of jurisdiction and place of performance**

**15.1** Should individual clauses of these General Terms and Conditions be ineffective in whole or in part, this shall not affect the effectiveness of the remaining clauses or the remaining elements of the ineffective clause. The parties shall replace an ineffective provision with such a provision which comes closest to the economic purpose of the ineffective provision. The same applies for any loopholes.

**15.2** The place of performance and payment is where HSM is located.

**15.3** Any dispute arising out of or in connection with this General Terms and Conditions or the contract, which cannot be resolved amicably by the parties within thirty days after such dispute has arisen, shall be finally submitted for arbitration to Shanghai International Economy and Trade Arbitration Commission ("SHIAC") acting on the basis of its Rules of Arbitration. The arbitration shall be held in Shanghai and be conducted in Chinese language. The arbitration tribunal shall consist of three arbitrators. Each party shall appoint one arbitrator. The third arbitrator, who is to act as chairman, shall be appointed jointly by the arbitrators appointed by both parties respectively based on their agreement. In case the joint appointment fails, such chairman shall be appointed by the President of SHIAC upon the

parties' joint authorization. If a party fails to appoint its arbitrator within one month after receipt of the notice of arbitration issued by SHIAC, the relevant arbitrator shall also be appointed by the President of SHIAC. The arbitration award shall be final and binding for the parties. The arbitration fee shall be borne by the losing party except as otherwise awarded by the arbitration tribunal. Except for the issues in dispute under the arbitration, other provisions of this General Terms and Conditions or the contract shall continue to be performed during the arbitration.

**15.4** The law of the People's Republic of China applies exclusively, to the exclusion of the UNCISG of 11th April 1980.