

General Terms and Conditions of Delivery and Assembly of HOPPECKE Batterien GmbH & Co. KG (as of January 2023)

Contract conclusion and general provisions

1. All our – also future – deliveries and services are exclusively governed by these General Terms and Conditions of Delivery and Assembly. These General Terms and Conditions of Delivery and Assembly only apply if the customer is an entrepreneur (§ 14 BGB – German Civil Code), a legal entity under public law or a special fund under public law (*“öffentlich-rechtliches Sondervermögen”*). We hereby explicitly reject any deviating, conflicting or supplementary terms and conditions of business of the customer. We are not bound to such terms and conditions of business, even if we have not explicitly objected to their application again after receipt of the conflicting terms and conditions. Even if we refer to a letter which contains or refers to terms and conditions of the customer or a third party or if we carry out delivery or provide services to the customer without reservation even though we are aware of the customer’s general terms and conditions of business, this must not be deemed to constitute or imply consent to their application.
2. In all cases, our offers for contract conclusion are without engagement and subject to change unless they are explicitly referred to as binding or a specific time limit for acceptance is stated therein. We may accept purchase orders or engagements within 14 days from receipt (*„Zugang“*¹). Acceptance can be declared in writing or text form (*“Textform”* acc. to § 126b BGB – German Civil Code) (e.g. by order confirmation) or implied by delivery of the ordered goods.
3. The legal relationships between us and the customer are exclusively and conclusively governed by the written sales contract including these General Terms and Conditions of Delivery and Assembly. The sales contract contains the entire agreement between the parties regarding the subject matter of the contract. Oral commitments, if any, made by us before contract conclusion are not binding in legal respect and all oral agreements made between the contracting parties are superseded by the written contract unless it is expressly agreed that the oral arrangements shall continue to be effective and binding.
4. Changes and amendments to the agreements made between the contracting parties, including to these General Terms and Conditions of Delivery and Assembly, must be in writing (*“Schriftform”*) to be valid. Our employees other than our managing directors or Prokuristen² are not entitled to enter into oral agreements contrary to the aforesaid requirement. Product guarantees as well as representations and warranties must be expressly referred to as such and confirmed by us in writing.
5. Drawings, illustrations, technical data, specifications of weight, dimensions and performance are only approximate unless the contractually agreed purpose of use requires absolute conformity; in particular, they expressly do not constitute specifically agreed or warranted qualities. We reserve all property rights and copyrights in these documents; they must not be disclosed or made available to third parties without our written consent. Any statements or specifications contained in our product descriptions, technical data sheets or other general information that is publicly available are only binding if we explicitly confirm their binding character.
6. Any legally relevant declarations and notifications to be made to us by the customer after contract conclusion (e.g. fixing of time limits, notice of defects, declaration of withdrawal or reduction of the purchase price) must be made in writing (*“Schriftform”*) or text form (*“Textform”*) (e.g. by letter, email or fax) to be valid.
7. If the goods to be delivered are non-customized goods in stock and if the customer, before delivery of the goods, informs us of its desire to cancel the contract and we accept the customer’s request for cancellation and the customer is not entitled to a contractual or statutory right of withdrawal, the customer has the possibility to cancel the contract against payment of a lump sum of 10% of the net contract price but not less than 200 EUR; this does however not imply customer’s right to claim contract cancellation, withdrawal or termination. Our right to furnish proof of higher damage incurred by us as well as our statutory rights remain unaffected; the lump sum paid by the customer shall be set off against any further monetary claims asserted by us. The customer has the right to prove that we did not incur any damage at all or considerably less damage than the aforesaid lump sum.
8. We do not keep spare parts or replacement parts available beyond the service life of the delivered goods.

Payment, prices, setoff and EU entry certificate

9. Unless otherwise agreed, our prices are ex our works or warehouse, loading included (FCA Incoterms 2020). All other costs such as the costs of packaging, freights, customs duties, insurance premiums etc. as well as the statutory value-added tax are charged separately.
10. If the customer uses an email address in addition to its postal address for business purposes, we may send our invoices solely by electronic transmission (by email) except if the customer objects to the electronic transmission of invoices.
11. Unless otherwise agreed in writing, the agreed price is due for payment net cash without deduction within 30 days from invoicing. Payment is deemed in time if the amount is received by us before the expiry of the aforesaid

period. The customer shall be deemed in default of payment (*“Verzug”*) as soon as the aforesaid period for payment has expired. The customer is liable to pay, during the period of default, interest on the purchase price at the respective current statutory default interest rate. We reserve the right to claim compensation of any further damage incurred by us as a result of the default (*“Verzugsschaden”*). In the relationship with merchants (*“Kaufleute”*), our right to claim interest from the due date (*“Fälligkeitszins”*) pursuant to the German Commercial Code (§ 353 HGB – German Commercial Code) remains unaffected.

12. The customer is only entitled to setoff or retention if and to the extent the customer’s counterclaim is undisputed or has been established by a final non-appealable decision (*res judicata*).
13. We are entitled at any time, also during an ongoing business relationship, to make the delivery of goods, or parts thereof, dependent on advance payment. We will declare this reservation to the customer no later than upon order confirmation.
14. If, in the case of intra-Community delivery which is exempt from VAT according to § 4 no. 1 b) in combination with § 6a UStG (German VAT Act), the customer itself or a carrier commissioned by the customer collects the goods intended for delivery, the customer is obliged to provide us with a signed written declaration confirming that the goods in question are shipped to, and actually enter, another EU member state (*“Gelangensbestätigung”* – entry certificate). The entry certificate must state the name and address of the customer, the designation and quantity of the goods delivered, the date of collection by the customer and that of entry of the goods to the other EU member state as well as the exact destination address. The entry certificate must be submitted to us no later than 1 month after collection of the goods. If the customer, despite our request, fails to comply with this obligation even after expiry of an additional reasonable period granted for submission, we are entitled to subsequently invoice the customer for the statutory value-added tax payable in Germany for the goods delivered.

Delivery, Force majeure

15. Compliance with delivery times is subject to receipt in due time of all documents, necessary permits, authorisations and approvals, especially of plans, to be provided by the customer according to the contract and is further subject to compliance by the customer with the agreed terms of payment and other obligations incumbent on the customer. If the customer fails to fulfil these conditions, the times for delivery or service provision are extended by the period during which the customer fails to comply with its obligations under the contract concluded with us.
16. We are only entitled to make partial deliveries and provide partial services if such partial delivery is reasonably usable for the customer for the purpose intended under the contract and delivery of the remaining goods is secure and the customer does not incur substantial additional expenses or costs as a result of the partial delivery (unless we promise to bear these costs).
17. We accept no liability for any impossibility of, or delay in, delivery or for non-delivery if this is due to force majeure or other events which were unforeseeable at the time of contract conclusion (e.g. any kind of operational disturbance, difficulties in material or energy supply, delay in transport, strike, lawful lock-out, labour shortage or shortage of energy or raw material, difficulties in obtaining necessary official permissions, governmental measures or non-supply, improper or late supply by our suppliers) and which are not attributable to us (*“nicht zu vertreten haben”*); the COVID 19 pandemic constitutes a force majeure event within the meaning of this sec. 17. If any of the aforementioned events impede or prevent us from delivering the ordered goods or performing the ordered services and the impediment is not only temporary, we shall be entitled to withdraw from the contract. If the impediment is only temporary, the periods for delivery or service provision shall be extended, or the dates for delivery or service provision shall be postponed, by the duration of the impediment plus a reasonable start-up period. If acceptance of the delivery or service is unreasonable for the customer due to the delay, the customer shall be entitled to withdraw from the contract by appropriate declaration made to us without undue delay (*“unverzüglich”*).

Shipment, packaging, passing of risk, approval

18. The goods to be delivered are shipped at the customer’s expense and risk. The risk passes to the customer upon hand-over of the goods (the beginning of loading is decisive) to a forwarder or carrier, but no later than upon departure from our warehouse or works, even if delivery is made free destination. This also applies in the case of partial deliveries or if we have agreed to provide supplementary services (such as shipment or assembly). If the customer is in default of acceptance in accordance with sec. 19 below, the risk shall pass to the customer as soon as the default of acceptance occurs. In this case we are entitled to issue the invoice for the goods affected by the default in acceptance.
19. The customer is obliged to accept the goods on the agreed date. If the goods are not accepted in due time, the customer shall be in default of acceptance (§ 293 BGB – German Civil Code). In this case, the customer undertakes to store the goods immediately, but at the latest within (3)

¹ An order is deemed received (*“Zugang”* in terms of German law) if and as soon as it has come into the recipient’s sphere in the way that the recipient can reasonably be expected to take note of it.

² The „Prokurist“ is the holder of a “Prokura” which is a special authority granted under § 48 et seq. of the German Commercial Code to act on behalf of the company in respect of all transactions in and out of court within the scope of mercantile trade.

- working days, in a warehouse to be determined by the customer ("interim or subsequent storage"). The costs for such interim or subsequent storage shall be borne by the customer due to the default of acceptance. Alternatively, the customer is obliged to provide us with an address for the storage of the goods within the same period. The transport of the goods to the named warehouse shall then be at the expense and risk of the customer. This shall also apply if we organise the transport on behalf of the customer.
20. If the customer is in default with the timely interim or subsequent storage of the goods or with the notification of the address for such storage, we shall be entitled to carry out this interim or subsequent storage ourselves at the customer's expense or to instruct an external warehouse keeper in our own name and at the customer's expense. In this case we shall only be liable for the proper selection of the warehouse keeper.
21. In addition, the customer is obliged to pay a lump sum compensation amounting to 1% of the net price of the goods for each week or part thereof of default in acceptance, but not more than a total of 5% of the net price of the goods affected by the default in acceptance. Our right to furnish proof of higher damage incurred by us as well as our statutory rights remain unaffected; the aforesaid lump sum shall be set off against any further monetary claims asserted by us. The customer has the right to prove that we did not incur any damage at all or considerably less damage than the aforesaid lump sum
22. Unless specifically agreed otherwise, we may in our discretion choose the mode of packaging and – in case we carry out shipment for the customer – also the mode of shipment and the transportation means. We will only insure the goods against theft, breakage and damage during transport or damage by fire or water or other insurable risks upon the customer's explicit request and at the customer's expense.
23. If the delivered goods are subject to approval ("*Abnahme*"), the risk passes to the customer upon approval. If the customer has not declared approval of the goods, the delivered goods shall nonetheless be deemed approved if and as soon as
- the delivery and - if we have also taken over assembly - also the assembly has been completed,
 - we have informed the customer to that effect, thereby pointing out that otherwise the goods will be deemed approved according to this sec. 23 (fictitious approval), and have requested the customer to inspect the goods for approval,
 - since delivery or assembly, a period of time has passed within which, given the specific nature of the delivered goods, the customer could reasonably be expected to inspect the delivered goods for approval under normal conditions, but in no case more than 12 working days ("*Werktage*"), or the customer has started to use the delivered goods (e.g. by operating or commissioning them) and, in this case, 5 working days ("*Werktage*") have passed since delivery or assembly and
 - the customer, during such period, has not inspected the goods for approval for reasons other than a defect reported to us which prevents or substantially impairs the use of the delivered goods.

Reservation of title

24. We reserve title to the goods sold and delivered to the customer (goods subject to reservation of title) until all our current and future claims arising from the sales contract and an ongoing business relationship (secured claims) have been paid in full.
25. Until further notice according to para. c) below, the customer is allowed to resell and/or work or process the goods subject to reservation of title in the ordinary course of business. In this case, the following supplementary provisions shall apply:
- The reservation of title extends to the full value of any items generated by, or arising from, the processing, mixing, integration or combination of the goods subject to reservation, in which case we shall be considered as the manufacturer. If, in the case of processing, mixing, integration or combination of the delivered goods with third-party goods also delivered subject to reservation of title, the ownership rights of the third parties subsist, we shall acquire co-ownership of the new items according to the proportion of the invoice values of the processed, mixed, integrated or combined goods. In all other respects, the generated or arising item shall be subject to the same provisions as the goods delivered subject to reservation of title.
 - The customer already now assigns to us by way of security any and all claims against third parties arising from the resale of the goods subject to reservation of title or of the newly generated item, in the full amount of the claims or, as the case may be, in the amount of our co-ownership share as described in the preceding para. a). We hereby accept the assignment. The customer's obligations specified in sec. 26 also apply with respect to the assigned claims.
 - The customer remains entitled to collect the claims. We agree not to collect the assigned claims ourselves as long as the customer duly fulfils its payment obligations, the customer's ability to fulfil its obligations is not impaired and we do not invoke our reservation of title by exercising any of our rights under sec. 27. However, if the situation should arise, we may request the customer to disclose to us the details of the assigned claims and the corresponding debtors, provide us with all information required for collection, hand over to us all related documents and notify the debtors (third parties) of the assignment. In addition, we shall be entitled in this case to revoke the customer's authority to further resell and process the goods subject to reservation of title.
26. The customer is not entitled prior to full payment of the secured claim to pledge the goods subject to reservation of title or transfer title to them to a third party by way of security. The customer shall notify us in writing or text from ("*Textform*") without undue delay ("*unverzüglich*") of any petition in
- insolvency filed against the customer or of any interference or measure taken by third parties against the goods belonging to us (e.g. seizure).
27. If the customer is in breach of the contract, especially in the case of non-payment of the purchase price due, we are entitled to withdraw from the contract according to the statutory provisions and request return of the goods based on the withdrawal and the reservation of title. If the customer fails to pay the purchase price due, we shall only be entitled to assert the aforesaid rights if we have granted the customer a reasonable additional period for payment beforehand which has expired without result or if the grant of such an additional period is dispensable according to the statutory provisions.
28. If the value of the security provided to us exceeds, not only temporarily, the amount of our claims by more than 10 %, we are obliged upon request by the customer to release an appropriate part of the security which we may choose in our discretion.

Defects in quality

29. The customer's rights in the case of defects in quality or title are governed by the statutory provisions unless otherwise agreed hereinafter.
30. Customer's claims for defects are subject to the condition of compliance by the customer with the statutory obligation to inspect the goods and give notice of defects, if any (§§ 377, 381 HGB – German Commercial Code). If the delivered goods are intended for integration into other items, the delivered goods must be inspected before the integration. If a defect is found upon delivery, during the inspection or later, the customer is obliged to give us written notice of defect without undue delay ("*unverzüglich*"). In any case, apparent defects must be reported to us within 7 business days ("*Arbeitsstage*") of delivery; defects which could not reasonably be detected in the inspection must be reported within the same period, counted from detection. If the customer fails to duly inspect the goods and/or to give due notice of defect, our liability for the not reported or not timely or not duly reported defect shall be excluded according to the statutory provisions.
31. If the delivered goods are defective, we may choose in our discretion whether to fulfil our subsequent performance obligations ("*Nacherfüllung*") by rectifying the defect ("*Nachbesserung*") or by delivering a non-defective substitute instead ("*Ersatzlieferung*").
32. Unless agreed otherwise, the place of subsequent performance ("*Erfüllungsort*") is our corporate domicile in Brilon.
33. We are entitled to make the subsequent performance ("*Nacherfüllung*") dependent on the customer's payment of the purchase price due. The customer is however entitled to withhold such part of the purchase price as is appropriate and reasonable with regard to the existing defect.
34. The customer is obliged to grant us the time and opportunity required for the subsequent performance ("*Nacherfüllung*"); in particular the customer is obliged to hand the allegedly defective goods over to us for inspection and testing. If we deliver a substitute ("*Ersatzlieferung*"), the customer is obliged to return the defective goods to us according to the statutory provisions. If we are not obliged to provide assembly under the original contract, any subsequent performance shall not include disassembly/removal of the defective goods and reassembly of the repaired or new goods either.
35. If the goods are actually found to be defective, we bear the expenses required for the examination, testing and subsequent performance ("*Nacherfüllung*") including but not limited to the costs of transport, labour, material, tolls and, where applicable, the cost of disassembly and reassembly. Otherwise, we are entitled to claim from the customer reimbursement of the costs incurred by us in connection with the unjustified request for defect rectification (including but not limited to the costs of examination, testing and transport) except when the customer was reasonably unable to see the non-defectiveness of the goods.
36. We do not accept any liability for the following:
- Defects caused by damage, wrong connections or improper operation or by non-compliance by the customer with the manufacturer's instructions or information;
 - damage by improper use or use contrary to the intended purpose;
 - damage caused by force majeure (e.g. lightning stroke);
 - defects caused by dirt or wear and tear due to overstraining of mechanical and/or electronic parts;
 - damage caused by extraordinary mechanical, chemical or atmospheric impact.
37. If the subsequent performance ("*Nacherfüllung*") has failed or a reasonable period fixed by the customer for subsequent performance has expired or is dispensable according to the statutory provisions, the customer may withdraw from the contract or reduce the purchase price. In the case of a minor defect, the right of withdrawal is excluded.
38. The customer's claims for reimbursement of expenses required for the subsequent performance ("*Nacherfüllung*") including but not limited to the costs of transport, labour, material and tolls are excluded if and to the extent that these expenses are increased because the delivered goods have been subsequently relocated to a place other than the place of delivery or, where applicable, the contractually agreed place of installation unless such relocation is in line with the intended use of the goods.
39. The customer is only entitled to statutory recourse claims against us insofar as the customer has not accepted in its agreement with its own customer any obligations beyond the statutory claims for defects. This applies accordingly to the scope of the customer's recourse claim against us.
40. The customer's claim to damages or reimbursement of futile expenses is, also in the case of defective goods, subject to the limitations and conditions laid down in sections 50 to 52; any further claims are excluded.

Industrial property rights and copyrights; defects in title

41. Unless otherwise agreed, we are obliged to ensure that the delivered goods are free of third-party industrial property rights and third-party copyrights (hereinafter "IP rights") only with respect to the country of destination of the delivered goods and the country where the goods are intended to be used under the contract.
42. If a third party asserts justified claims against the customer for an infringement of IP rights caused by the goods delivered by us which are used by the customer in conformity with the contract, we shall be liable to the customer during the period stated in sec. 52 as is described in the following:
- We shall, in our discretion and at our expense, either procure a right of use for the goods in question or change them in the way that they no longer cause an infringement of the IP right or replace the infringing goods. If we are unable to provide this at conditions reasonably acceptable to us, the customer shall be entitled to the statutory rights of withdrawal or reduction of the purchase price.
 - Our liability for damages is exclusively governed by sections 50 to 52 below.
 - We only accept liability as described above if and to the extent that the customer has notified us in writing of the claims asserted by the third party without undue delay ("*unverzüglich*") and has not acknowledged the infringement and makes sure that all defence measures and settlement talks are reserved to us unless non-compliance by the customer with these obligations does not cause any worsening of our legal position. If the customer, for reasons of mitigation of damage or other good cause, discontinues the use of the goods, the customer shall point out to the third party that the discontinuation of use does not constitute or imply acknowledgement of the IP rights infringement. If the infringement of IP rights is attributable to the customer ("*zu vertreten haben*"), the customer is precluded from asserting any claims.
43. The customer is also precluded from asserting any claims if the infringement of IP rights is due to special requirements or specifications given by the customer or was caused by a special kind of use of the goods which we were unable to foresee or by the fact that the goods were modified by the customer without our prior consent or were used together with other products not delivered by us, which we could not reasonably foresee.
44. In all other respects, in the case of an IP rights infringement, the provisions of the preceding sections 29 to 40 apply accordingly to the customer's claims described in the preceding sec. 42 a); the same shall apply for any other defects in title.

Assembly and disassembly

45. If, in the context of sales contracts or otherwise, we are commissioned to fill, commission or assemble storage batteries, charging stations or other goods to be delivered (with or without performing any follow-up services), the conditions set out below shall apply in addition unless otherwise agreed in writing upon contract conclusion:
46. The agreed services are charged at the flat rates or hourly rates agreed in the contract. If no such rates have been agreed, our current flat rates according to the price list valid at the time shall apply.
47. If installation, assembly, disassembly or commissioning is delayed for reasons, especially reasons relating to the installation site, which are not attributable to us ("*nicht zu vertreten haben*"), the customer shall bear the reasonable cost incurred for the waiting time, recharging of the storage batteries delivered, if required, and additional travels by our staff which may become necessary.
48. The customer, prior to the commencement of the work or service, shall provide us with detailed information about the situation on site and draw our attention to any existing particularities. The agreed remuneration is subject to the condition of unhindered access to the place of performance and fulfilment of the customer's obligations to cooperate and assist.

49. We charge the customer for any disposal of material which may become necessary in connection with the disassembly or return of storage batteries at our usual rates.

Liability

50. Unless otherwise stipulated in these General Terms and Conditions of Delivery and Assembly including the provisions set out below, our liability for breach of contractual and non-contractual duties is governed by the statutory provisions.
51. We are liable for damages, regardless of the legal basis, only in the case of
- wilful misconduct,
 - gross negligence by the company owner/ executive bodies or executive employees,
 - wilful or negligent injury to life or limb or health,
 - defects which were fraudulently concealed or the non-existence of which was warranted,
 - defects of the delivered goods if and to the extent that the Produkthaftungsgesetz (German Product Liability Act) provides for liability for personal injury or damage to privately used property.

In the case of wilful or negligent breach of essential contractual duties ("*wesentliche Vertragspflichten*") which are duties the fulfilment of which is an indispensable condition for the proper performance of the contract and on the compliance with which the contractual partner usually relies or is reasonably allowed to rely, we are also liable for gross negligence by non-executive employees and for slight negligence ("*leichte Fahrlässigkeit*"); in the latter case our liability is however limited to the typical and reasonably foreseeable damage. Any further claims are excluded.

Limitation

52. All claims of the customer, regardless of the legal basis, become time-barred after expiry of 12 months. The limitation periods runs from hand-over of the goods; if the goods are subject to approval ("*Abnahme*"), the limitation period runs from the time of approval. Wilful or grossly negligent misconduct, claims asserted under the Produkthaftungsgesetz (German Product Liability Act) and damage resulting from an injury to life or limb or health are subject to the statutory limitation periods. The statutory limitation periods also apply with respect to defects of a construction ("*Bauwerk*") as well as for goods which, according to their regular purpose, were used for a construction and have caused a defect in the construction. Other special statutory provisions on limitation (including but not limited to § 438 subs. 1 no. 1, § 438 subs. 3, § 444, § 445b BGB – German Civil Code) remain unaffected, too.

Place of performance, place of jurisdiction and applicable law

53. The place of performance ("*Erfüllungsort*") is Brilon.
54. If the customer is a merchant ("*Kaufmann*") or a legal entity under public law, the place of jurisdiction is our corporate domicile in Brilon. The same applies if the customer has no place of general jurisdiction ("*allgemeiner Gerichtsstand*") in the Federal Republic of Germany. We are however also entitled, in our discretion, to sue the customer at its domicile. However, for actions brought against us, the exclusive place of jurisdiction is Brilon. This is without prejudice to any mandatory statutory provisions governing exclusive jurisdiction.
55. All legal relationships between us and the customer are exclusively subject to the law of the Federal Republic of Germany which governs the legal relationships between domestic parties. The application of UN Sales Law is excluded.

Personal data

56. The processing of personal data is governed by our privacy policy which is available at www.hoppecke.com/en/privacy/.