



Terms and Conditions

General Terms and Conditions of Sale of
HOTSTART Europe GmbH, Hansestrasse 79, 51149 Cologne, Germany

1 Scope of Application

- 1.1 These General Terms and Conditions of Sale shall only apply to contracts of Hotstart Europe GmbH ("Hotstart") with entrepreneurs within the meaning of § 14 BGB (German Civil Code), legal entities under public law and special funds under public law ("Customer").
- 1.2 The contractual relationship between Hotstart and the Customer shall be governed exclusively by these General Terms and Conditions of Sale. Any terms and conditions of the customer conflicting with or deviating from our General Terms and Conditions of Sale shall not be accepted. Hotstart's General Terms and Conditions of Sale shall apply exclusively even if, without any further reservation, services are rendered in the knowledge that the customer's terms and conditions are contrary to or deviate from Hotstart's General Terms and Conditions of Sale.
- 1.3 These General Terms and Conditions of Sale shall also apply to all future contracts between Hotstart and the customer for the sale of goods - subject to the renewed inclusion of amended terms and conditions of sale - without the need for their renewed express inclusion.

2 Contractual Declarations

- 2.1 Offers made by Hotstart are non-binding and subject to change without notice, unless they are expressly marked as binding or contain a specific acceptance period.
- 2.2 All agreements made between Hotstart and the customer shall be documented and sent to both parties in this summarized form. Transmission by e-mail shall be sufficient to comply with the written form requirement.

3 Offer and Contract Documents

Hotstart reserves the property rights and copyrights to offers and cost estimates as well as to illustrations, drawings, calculations, brochures, catalogs, models, tools and other documents or aids. Information and documents designated as "confidential" or the confidentiality of which results from the nature of the matter shall be treated as confidential and may only be disclosed to third parties with the express written consent of Hotstart. Upon Hotstart's request, these items must be returned in full and any copies made must be destroyed if they are no longer required by the customer in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

4 Prices

- 4.1 Unless otherwise stated in Hotstart's offer, Hotstart's prices are quoted in EURO, net (excluding VAT), "ex works" (EXW Cologne).
- 4.2 Hotstart shall be entitled to pass on to the Customer any increases in freight costs, shipping charges, insurance premiums and the like occurring after the conclusion of the contract if delivery is to take place later than 8 weeks after the conclusion of the contract. The same shall apply with regard to customs duties, levies, taxes and the like which directly or indirectly increase the price.
- 4.3 Taxes and other duties incurred for deliveries and services in the country of receipt shall be borne by the customer.

5 Terms of Payment

- 5.1 Customer shall pay Hotstart's claims for payment within 30 days from the date of invoice net without any deductions. All payments shall be made to the account indicated on the invoice. Hotstart reserves the right to request an advance payment (cash in advance).
- 5.2 The customer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been acknowledged by Hotstart. The customer also has no right of retention due to counterclaims that have not been legally established, disputed or acknowledged by Hotstart.



Terms and Conditions

6 Services

- 6.1 In the absence of agreements to the contrary, Hotstart shall be entitled to make partial deliveries.
- 6.2 In the case of contracts whose performance extends over a longer period of time, each delivery shall be deemed to be a completed transaction. A defective or untimely partial delivery does not affect the rest of the contract.
- 6.3 The scope of the entire delivery shall be determined by Hotstart's written confirmation of the order within 3 working days; in the event of an offer by Hotstart with a time limit and acceptance within the time limit and in the absence of a timely confirmation of the order, the offer itself shall be decisive.
- 6.4 Information provided by Hotstart on the subject matter of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as representations provided by Hotstart (e.g. drawings and illustrations) are only approximately authoritative, unless the usability for the contractually intended purpose requires exact conformity. The aforementioned details are not guaranteed quality features, but descriptions or identifications of the delivery or service. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements as well as the replacement of components by equivalent parts are permissible insofar as they do not impair the usability for the contractually intended purpose.

7 Delivery Period

- 7.1 The commencement of the delivery period stated by Hotstart is conditional upon the timely and proper fulfillment of all obligations to cooperate on the part of the customer and the clarification of all technical questions. The deadlines and dates promised by Hotstart shall always be approximate unless a fixed deadline or date has been expressly promised or agreed.
- 7.2 The delivery period shall be deemed to have been complied with if the delivery item has left the factory or notification of readiness for shipment has been given by the time the delivery period expires.
- 7.3 The delivery period shall be extended by the period of a temporary impediment to performance for which Hotstart is not responsible, such as, in particular, in the event of operational disruptions of any kind or official measures. This shall also apply if the temporary impediment to performance for which Hotstart is not responsible occurs at subcontractors. Hotstart shall not be responsible for the aforementioned circumstances even if they occur during an already existing delay.
If the Customer cannot reasonably be expected to accept the delivery or service as a result of the delay, the Customer may withdraw from the contract by giving Hotstart immediate written notice of withdrawal from the delivery date.
- 7.4 If the shipment is delayed at the request of the customer, the customer shall be charged, starting one month after notification of readiness for shipment, for the costs incurred for storage, but in the case of storage at Hotstart at least 1 percent of the invoice amount for each month. Hotstart shall, however, be entitled to otherwise dispose of the delivery item after setting and fruitless expiry of a reasonable deadline. If the customer is in default of acceptance or violates other obligations to cooperate, Hotstart shall be entitled to claim from the customer the damages incurred by Hotstart in this respect, including any additional expenses. In this case the risk of accidental loss or accidental deterioration of the goods shall also pass to the customer at the time the customer is in default of acceptance.
- 7.5 Hotstart shall be entitled to perform outstanding deliveries or services only against advance payment (c.i.a.) or the provision of security if, after the conclusion of the contract, it becomes aware of circumstances which are likely to substantially reduce the creditworthiness of the customer.

8 Delivery conditions and transfer of risk

- 8.1 Incoterms 2010: EXW Cologne. CIP possible on request.



Terms and Conditions

- 8.2 Unless otherwise agreed, the goods shall be shipped “ex works” (EXW Cologne) at Customer’s risk and expense, even if partial deliveries are made. The mode of shipment and packaging shall be at the discretion of Hotstart. If Hotstart complies with shipping instructions issued by the customer, this shall be done at the expense and risk of the customer without any obligation on its part.
- 8.3 At the customer’s request, Hotstart shall insure the shipment at the customer’s expense against theft, breakage, transport, fire and water damage as well as other insurable risks.
- 8.4 If the shipment is delayed due to circumstances for which the customer is responsible, the risk shall pass to the customer from the day of readiness for shipment; however, Hotstart shall be obliged to effect the insurances requested by the customer at the customer’s request and expense. A transfer of risk shall also occur in the event of a delay in shipment for which Customer is responsible.
- 8.5 Delivered goods shall be accepted by the customer without prejudice to the rights under No. 10 of these General Terms and Conditions of Sale, even if they show minor defects.

9 Obligation to give notice of defects

- 9.1 Notification of defects must be made in writing and without delay within the meaning of § 377 of the German Commercial Code (HGB). Delivered goods shall also be deemed to have been accepted in view of a defect if the customer does not enable Hotstart to carry out a proper inspection of a notified defect without undue delay upon Hotstart’s request.
- 9.2 Notification of defects must be made in writing.

10 Warranty

- 10.1 In the event of defects notified in due time which do not only insignificantly reduce the value or the usability of the goods, Hotstart shall, at its option, either deliver faultless replacement goods, remedy the defect (repair) or deliver a faultless good by reducing the agreed delivery price. In the case of a replacement delivery the customer is only entitled to withdraw from the contract or to reduce the purchase price after two unsuccessful attempts. Hotstart shall provide warranty for the replacement delivery only to the same extent as for the original delivery. The limitation period for all warranty claims is 12 months.
- 10.2 The preceding paragraph does not limit claims of the customer in case of intent and claims for damages according to No. 11 of these General Terms and Conditions of Sale.
- 10.3 The warranty shall not apply if the customer modifies the goods or has them modified by a third party without Hotstart’s consent and if this makes it impossible or unreasonably difficult to remedy the defect. In any case, the customer shall bear the additional costs of remedying the defect resulting from the modification.
- 10.4 Any delivery of used items agreed with the customer in individual cases shall be made to the exclusion of any warranty for material defects.

11 Liability

- 11.1 Hotstart’s liability shall in principle be limited to damage caused by Hotstart or its bodies, legal representatives, employees or other vicarious agents intentionally or through gross negligence. Hotstart shall be liable for slight negligence only in the event of injury to life, body or health and in the event of a breach of duties essential for the fulfillment of the purpose of the contract.
- 11.2 If Hotstart is liable for slightly negligent breaches of duty, Hotstart’s liability shall be limited in type and amount to the damages typical for contracts of the type in question, which were foreseeable at the time of the conclusion of the contract or at the latest at the time of the commission of the breach of duty or which it should have foreseen when exercising due care. This shall not apply in the event of injury to life, body or health.



Terms and Conditions

- 11.3 Indirect damage and consequential damage resulting from defects of the goods shall furthermore only be compensable insofar as such damage is typically to be expected when using the delivery item as intended.
- 11.4 To the extent that Hotstart's liability is excluded or limited, this shall also apply to the personal liability of Hotstart's employees, representatives and vicarious agents.
- 11.5 Insofar as Hotstart provides technical information or acts in an advisory capacity and such information or advice is not part of the scope of services owed by it, this shall be done expressly to the exclusion of any liability.
- 11.6 The above limitations of this No. 11 of the General Terms and Conditions of Sale shall not apply to Hotstart's liability for wilful misconduct, for guaranteed characteristics, for injury to life, body or health or under the Product Liability Act.

12 Retention of Title

- 12.1 The delivered goods shall remain the property of Hotstart until full, irrevocable and unconditional payment of all present and future claims arising from the legal relationship between Hotstart and the customer until the transfer of ownership. Until the purchase price has been paid in full, the customer is not permitted to resell, pledge or assign by way of security or otherwise dispose of the delivered goods, nor is the customer permitted to put the goods into operation or use them or to make any changes thereto, in particular such changes which result in a loss of the new value of the goods.
- 12.2 The customer shall be obliged to handle the goods with care as long as ownership has not passed to him. In particular, he shall be obligated to sufficiently insure them at his own expense against damage by fire, water and theft at replacement value. If the customer has not demonstrably taken out such insurance itself, Hotstart shall be entitled, but not obliged, to take out such insurance at the customer's expense.
- 12.3 Insofar as maintenance and inspection work is required, the customer must perform such work in a timely manner at its own expense.
- 12.4 The customer shall inform Hotstart without delay of any execution measures or other interventions by third parties in the goods subject to retention of title, handing over the documents necessary for such proceedings. Insofar as the third party is not in a position to reimburse Hotstart for the judicial and extrajudicial costs, the customer shall be liable for the loss incurred by Hotstart.
- 12.5 Hotstart is obligated to release securities of its own choice to which it is entitled insofar as their estimated value exceeds 150 percent of the sum of the outstanding claims.

13 Place of Performance

The place of performance for all mutual obligations shall be Cologne.

14 Applicable Law

The law of the Federal Republic of Germany shall govern all legal relations between Hotstart and the customer arising from or in connection with this contract. The applicability of the UN Convention on Contracts for the International Sale of Goods is excluded.

15 Jurisdiction

The place of jurisdiction for all disputes between Hotstart and the customer arising out of or in connection with this contract shall be Cologne, Germany, or - in the event of proceedings initiated by Hotstart - at Hotstart's option also the customer's place of business, provided that the customer is a merchant, a legal entity under public law or a special fund under public law. Mandatory statutory provisions on exclusive places of jurisdiction remain unaffected by this provision.