

# **T E R M S   O F   S A L E**

## **A   N   D   D   E   L   I   V   E   R   Y**

### **O   F**

## **H   T   B   E   N   D   I   X   A   /   S**

### **1. APPLICATION**

- 1.1. Unless HT Bendix A/S in writing accepts another agreement basis, these Terms of Sale and Delivery shall apply to all agreements concluded by HT Bendix A/S and the buyer.
- 1.2. The buyer's purchase terms and the like shall not be binding on HT Bendix A/S.
- 1.3. HT Bendix A/S shall be entitled to amend the Terms of Sale and Delivery without notice.

### **2. OFFERS, ORDERS AND ACCEPTANCE**

- 2.1. Offers made by HT Bendix A/S on the basis of measurement of incorrect drawings made by the buyer shall be made without responsibility for HT Bendix A/S.
- / 2.2. Unless otherwise specified, offers shall be binding for 8 days from date of offer. Offers shall be subject to the goods remaining unsold.
- 2.3. The buyer's orders shall not be binding on HT Bendix A/S before the buyer has received a written order confirmation.

2.4. In the event that HT Bendix A/S' order confirmation is not in agreement with the buyer's order, the buyer shall make a complaint immediately after receipt of the order confirmation; otherwise the buyer shall be bound by the order confirmation.

### **3. HT BENDIX A/S' DELIVERY**

3.1. HT Bendix A/S' delivery shall only comprise the products specified in the order confirmation, and HT Bendix A/S undertakes to deliver products of usual good quality as regards materials and processing on the terms specified in these Terms of Sale and Delivery. HT Bendix A/S shall be entitled to deliver +/− 10 percent of the agreed quantity.

3.2. Production information, illustrations, drawings, and information on technical data, e.g. weight, dimensions, volume, strength, load capacity, output, surface, materials for instance in catalogues, brochures or other advertising literature from HT Bendix A/S are for guidance only.

3.3. All intellectual property rights, drawings, sketches, technical specifications, etc. are the property of HT Bendix A/S and shall not be copied or passed on to third party without the prior acceptance of HT Bendix A/S. The products delivered shall neither be manufactured, imitated or passed on to third party for such purpose.

### **4. PLACE OF DELIVERY**

4.1. Delivery shall be EX WORKS from the business address of HT Bendix A/S, cf. Incoterms 2020, unless otherwise agreed.

### **5. PRICES**

5.1. Unless otherwise agreed, prices shall be exclusive of VAT, freight and duties, and in DKK.

5.2. HT Bendix A/S reserves the right to adjust the accepted prices in the event of changes in exchange rates, material prices, production costs, labour costs, transport costs, rates of duty, and in the event of government intervention and other circumstances beyond the control of HT Bendix A/S (cf. the events mentioned in section 13).

### **6. TERMS OF PAYMENT**

6.1. HT Bendix A/S shall be entitled to invoice the buyer for all deliveries, which have been delivered or which have been reported ready for delivery by HT Bendix A/S, if the agreed date of delivery has occurred.

- 6.2. Unless otherwise agreed in writing, the terms of payment shall be net cash on delivery or notice of readiness from HT Bendix A/S respectively.
- 6.3. If payment is not effected on time, HT Bendix A/S shall be entitled to interest on the amount due at any time from date of invoice at a rate of interest of 1.5 per cent per commenced month.
- 6.4. The buyer shall not be entitled to set off any counterclaim which HT Bendix A/S has not approved in writing.

## **7. RETENTION OF TITLE**

- 7.1. The products sold shall remain the property of HT Bendix A/S until the entire purchase price under the agreement has been paid.

## **8. TIME OF DELIVERY, ETC.**

- 8.1. The time of delivery is stated in the order confirmation. In the event that delayed delivery is caused by one of the events specified in section 13 or by the buyer's act or omission, the time of delivery shall be extended accordingly.
- 8.2. In case of delay the buyer shall make a specified complaint in writing without delay, otherwise the buyer shall forfeit any remedies for delay of delivery.
- 8.3. In case of delay HT Bendix A/S shall never incur liability for operating loss, loss of earnings, loss of profit or other indirect loss. HT Bendix A/S' liability shall never exceed the invoice price exclusive of VAT for the part of the delivery which has been delayed.

## **9. CLAIMANT'S DEFAULT**

- 9.1. If the buyer fails to collect the products or to order their dispatch after the date of delivery has occurred, HT Bendix A/S shall be entitled to store and insure the products for the buyer's account and to forward an invoice for the delivery.
- 9.2. If the buyer fails to collect the products despite so requested in writing, HT Bendix A/S shall – also in cases where the products have been specially made according to the buyer's instructions or specifications – be entitled to sell these at the best possible price for the buyer's account.

## **10. LIABILITY FOR DEFECTS AND COMPLAINTS**

- 10.1. Immediately upon receipt of the products the buyer shall check the delivery to make sure that it is intact and in accordance with the agreement.
- 10.2. HT Bendix A/S must receive any complaints within eight (8) days from delivery of products. The complaint shall be made as soon as the defect is registered or

ought to have been registered, and it must be in writing and the complaint must specify the defects on account of which claims are made, otherwise the buyer shall forfeit any remedies for defects. Complaints shall not exempt the buyer from paying the purchase price on the agreed due date.

- 10.3. In the event that the products delivered are defective, HT Bendix A/S shall be entitled to remedy the defect through repair or replacement delivery if this can be effected within 30 days from the time at which HT Bendix A/S received the necessary documentation that the complaint is lawful. If the defect is remedied, the buyer shall not make any other claims based on a defect, including proportional reduction or compensation.
- 10.4. HT Bendix A/S shall in no circumstances be liable for operating loss, loss of earnings, loss of profit or other indirect loss. The liability of HT Bendix A/S shall never exceed the invoice amount exclusive of VAT for the defective products. Furthermore, HT Bendix A/S shall in no circumstances be liable to pay any costs of removal or remounting of defective products, just as the buyer's costs of registration of defects shall be of no concern to HT Bendix A/S. On remedy and replacement delivery the products sold shall be returned to HT Bendix A/S in their original packaging and at the buyer's expense and risk.

## **11. PRODUCT LIABILITY**

- 11.1. The buyer shall indemnify HT Bendix A/S to the extent that liability is imposed on HT Bendix A/S with respect to third party for such damage or such loss which HT Bendix A/S according to sections 11.2. - 11.4. is not liable for to the buyer.
- 11.2. HT Bendix A/S shall not be liable for personal injury unless the buyer proves that the injury is attributable to acts or omissions on the part of HT Bendix A/S.
- 11.3. HT Bendix A/S shall not be liable for damage to real and personal property. HT Bendix A/S shall neither be liable for damage to products made by the buyer or to products in which these form part or to damage to real or personal property caused by such products as a result of the delivery. HT Bendix A/S shall neither be liable for damage to the buyer's products in which the delivery is incorporated.
- 11.4. Unless otherwise provided by mandatory rules HT Bendix A/S shall in no circumstances be liable for operating loss, loss of earnings, daily or agreed penalties, loss of time, loss of delivery or other indirect loss. Unless otherwise provided by mandatory rules the liability of HT Bendix A/S shall never exceed the insurance sum of HT Bendix A/S' product liability insurance. In the event that third party makes claims against the buyer in accordance with section 11, the buyer shall inform HT Bendix A/S to that effect without delay.

## **12. LIMITATION OF LIABILITY**

12.1. HT Bendix A/S shall in no circumstances be liable for indirect damage or loss of any kind, including daily or agreed penalties, which the buyer may incur in relation to third party, or the buyer's operating loss, loss of time, loss of delivery or similar indirect loss. Although HT Bendix A/S might waive claims or rights with respect to the buyer in some cases, this shall not mean that HT Bendix A/S has waived such claims or rights in other cases than the specific one agreed upon.

## **13. FORCE MAJEURE**

13.1. HT Bendix A/S shall not be liable for non-performance or delayed performance of agreements attributable to force majeure, war, riots, civil commotion, government intervention or intervention by public authorities, fire, strikes, lockouts, export and/or import prohibitions, mobilisation, vandalism, exchange controls, delayed deliveries and/or non-deliveries from sub-contractors, transport obstacles, including ice obstacles or transport accidents, power supply and similar production difficulties or any other cause beyond the control of HT Bendix A/S.

13.2. In the event that delivery free of defects or on time is hindered temporarily due to one or more of the above circumstances, delivery shall be postponed for a period corresponding to the duration of the obstacle plus a reasonable period for normalisation of events. HT Bendix A/S shall in the above case inform the buyer of the change or expected change of the time of delivery without undue delay. Delivery affected on the thus postponed date of delivery shall in any circumstances be considered on time. In the event that the delivery obstacle can be expected to last for more than 12 weeks, both HT Bendix A/S and the buyer shall be entitled to cancel the agreement without this being considered a breach of contract and without the parties being entitled to make claims on that account.

## **14. LAW AND VENUE**

14.1. Each and every dispute that may arise between the parties in connection with these Terms of Sale and Delivery shall be settled according to Danish law, however excluding Danish Rules on choice of Law. HT Bendix A/S shall be free to choose whether the matter shall be settled by arbitration or by the ordinary courts of law. In the event that arbitration is preferred, the rules of procedure of Danish Arbitration shall apply. The court of arbitration shall be sitting in Herning.

In the event that the ordinary courts of law are preferred, the venue shall be the local court of the district in which HT Bendix A/S is domiciled at any time.