

## 1. VALIDITY ETC.

1.1 The following conditions of sale and delivery shall apply to offers, product range, services, servicing and deliveries from Holm & Halby ("H&H"), regardless of any other conditions provided in the order by the orderer. Any deviations shall only apply if agreed in writing.

1.2 In these present conditions of sale and delivery, the term "delivery" is to be understood as any services and goods delivered by H&H, including equipment, equipment installation and setup, consultancy services, training, and technical service.

## 2. PRICES

2.1 Information on prices and deliveries is provided subject to the proviso that changes can be made up until the time of delivery.

2.2 Unless otherwise expressly specified in the offer/order confirmation, the initial installation and setup of delivered equipment is not included in the quotation, but will be invoiced separately.

2.3 All prices are exclusive of value-added tax and are subject to change at any time and without prior notice until the time of delivery. After delivery and until payment, the customer is obliged to accept changes in the price that are caused by documented costs incurred by H&H as a result of changed duties, taxes, charges, etc. concerning the agreed delivery.

2.4 When prices are stated in a foreign currency, payment shall be made in the currency stated and to the special foreign currency account indicated by H&H for such payments.

2.5 In case of exchange rate fluctuations larger than 2%, H&H reserves the right to adjust prices without prior notice.

## 3. PAYMENT

3.1 Payment shall be made no later than eight (8) days from invoice date.

3.2 If delivery is postponed as a consequence of the customer's situation (claimant's default), the customer is obliged to settle the invoice as if the delivery had taken place at the agreed delivery time.

3.3 In case of overdue payment, interest will be charged from the due date at 8% above the discount rate of Danmarks Nationalbank (the Danish central bank). Interest is charged for each month started.

3.4 The customer is not entitled to set off any counterclaims against H&H, unless such counterclaim has been accepted by H&H in writing, and nor is the customer entitled to retain any part of the purchase price due to any kind of counterclaim.

## 4. RETENTION OF TITLE

4.1 H&H retains the full ownership of the delivery until payment of the purchase price plus any additional interest and costs has been made in full.

4.2 If the delivery is meant to be built into or joined with other items, the delivery is not covered by the retention of title once such incorporation or joining has taken place.

## 5. DELIVERY

5.1 Goods shall be delivered Ex Works, cf. Incoterms, from the address of H&H's storage facilities in Brøndby. Thus, the risk of destruction by fortuitous events passes to the customer as from the time when the delivery is being put at the customer's disposal at H&H's storage facilities. The prices quoted by H&H are, in consequence hereof, exclusive of transportation costs. H&H is at any time entitled to select the method of delivery that H&H finds most suitable.

5.2 The time of delivery is fixed by H&H to the best of H&H's judgement and in accordance with the conditions that prevail at the time of the order confirmation. A postponement of the delivery time by fourteen (14) days as a consequence of H&H's situation shall in all respects be considered to constitute delivery in due time, and consequently the customer cannot on that ground invoke a remedy for breach of contract against H&H.

5.3 If delivery is delayed because of H&H being in a situation as indicated in subsection 11.3 (force majeure), the delivery time shall be postponed by the duration of the obstacle. However, if the obstacle persists for more than three (3) months, both parties shall have the right to cancel the agreement without incurring any liability. This condition shall be applicable regardless of whether the cause of the delay arose before or after the expiration of the agreed delivery time.

5.4 In the above-mentioned situations, H&H shall without undue delay notify the customer of changes in the agreed delivery time.

5.5 The customer shall at any time be entitled to request that the time of delivery be deferred prior to initiation of the production. If the customer requests deferral of the desired time of delivery after H&H's initiation of the production, H&H shall be entitled to invoice 90% of the agreed price of the delivery at the originally agreed time of delivery, whereas invoicing of the remaining purchase amount shall be deferred until the arrival of the deferred

time of delivery. In instances where the customer has requested a deferral of the desired time of delivery after H&H's initiation of the production, H&H shall additionally be entitled to charge storage rent for each accrued month. The agreed claim period, cf. clause 10.1 below, shall, in case the customer requests deferral of the desired time of delivery after H&H's initiation of production, start no later than 6 months after expiry of the originally agreed time of delivery.

H&H shall be entitled to charge a fee to cover additional costs incurred, including for the use of internal resources for the handling of situations in which the customer changes an accepted time of delivery.

5.6 If the customer chooses to defer a time of delivery after the purchased equipment has been dispatched from H&H's supplier to H&H's storage facilities, H&H shall be entitled to invoice for the equipment in full. H&H shall additionally be entitled to invoice for storage rent for each accrued month where the equipment is stored, starting with the first day of the next month pursuant to H&H's storage prices in force.

## 6. PACKAGING

6.1 The disposal of packaging is the customer's responsibility.

6.2 Packaging shall only be accepted in return by written agreement.

## 7. INSTALLATION AND SETUP

7.1 The customer is responsible for ensuring that access and installation conditions are such that H&H can effect delivery without hindrance. If the conditions prevent H&H from fulfilling a planned delivery, any additional costs incurred by H&H in this respect shall be subsequently invoiced.

## 8. PRODUCT INFORMATION ETC.

8.1 Drawings, specifications etc. made available by H&H before or after conclusion of the agreement shall remain the property of H&H and shall as such be treated as confidential by the customer. Consequently, the provided material shall not be disclosed to or in any other way be brought to the notice of any third party without written consent by H&H, nor shall it be abused in any other way. Furthermore, upon request from H&H, the customer is obliged to return drawings, specifications and service manuals made available, as well as all copies of these, after use.

8.2 H&H maintains all belonging intellectual property rights, arising prior to or in relation to the completion of the delivery, including copyrights, knowhow, designs, utility models, and rights that may form the basis of patents, to deliveries and associated drawings, specifications, etc.

## 9. PRODUCT CHANGES

9.1 H&H reserves the right to change without prior notice the specifications agreed upon, provided that the change does not inconvenience the customer.

## 10. LACK OF CONFORMITY AND COMPLAINTS

10.1 Unless otherwise agreed, H&H provides a twenty-four (24) month claim period for the customer to notify H&H of any manufacturing defects and lack of conformity of the delivered – or invoiced – equipment. The claim period shall start on the date of delivery or on the date of the invoice issued by H&H whichever comes first. In the case of consumables, the customer shall give prompt notice of lack of conformity or damage upon receipt. The claim period is provided in accordance with the Danish Sale of Goods Act.

10.2 Upon delivery and after the initial installation and setup of delivered equipment, the customer shall immediately inspect the delivery as required by proper trade custom.

10.3 If the customer wishes to rely on a lack of conformity, after he has discovered it or ought to have discovered it, the customer shall immediately forward a notice in writing to H&H, specifying the nature of such lack of conformity. The customer shall not be entitled to rely on a lack of conformity if he fails to notify H&H as described herein after he has discovered or ought to have discovered such lack of conformity. Additionally, the customer shall not be entitled to rely on a lack of conformity if he has not, within fourteen (14) days after the delivery date or – to a relevant extent – completed initial installation and setup of delivered equipment, relied on a visible lack of conformity (i.e. a defect which should have been discovered during the inspection described in subsection 10.2) by notice to H&H.

10.4 If the delivery is non-conforming, H&H shall be entitled to, within reasonable time, remedy the lack of conformity by repair or alternatively to replace the delivery subject to the discretion of H&H.

10.5 For parts that have been replaced or repaired, cf. subsection 10.4, H&H shall assume the same responsibility as for the original delivery for the remainder of the twenty-four (24) month claim period provided in subsection 10.1, or for a period of ninety (90) days should this provide better coverage for the customer. The duty of inspection, described in

subsection 10.2, and the duty to give prompt notice, described in subsection 10.3, shall equally apply for replaced or repaired parts.

10.6 The claim period for the customer to notify H&H of any manufacturing defects and lack of conformity shall become void immediately if equipment has been modified or interfered with without the assistance of H&H.

10.7 Any transport and accommodation costs for H&H's technicians related to services provided on the Faroe Islands, Iceland and Greenland as well as islands not connected by a bridge will be invoiced. This will include the time of service technicians who are unduly delayed when carrying out tasks.

#### **11. LIMITATION OF LIABILITY**

11.1 The liability of H&H towards the customer shall never exceed the invoice amount for the delivery in question.

11.2 H&H disclaims liability for any operational loss, loss of profits, loss or destruction of data on electronic data media, or any other indirect losses related to the delivery, including indirect losses as a result of delayed or defective delivery.

11.3 If performance of the agreement has been made impracticable or unreasonably onerous by one of the following circumstances (force majeure), no claim can be made against H&H: Labour disputes, including disputes between H&H and H&H employees, and any other obstacle beyond the control of the parties, such as fire, epidemics and government intervention resulting from epidemics, war, mobilization or unforeseen call-ups for military service of similar scale, requisitions, confiscation, foreign-exchange control regulations, revolts and riots, lack of means of transport, general shortage of goods, restrictions on power, and defects or delays in deliveries from sub-suppliers due to any of the circumstances cited in this subsection. Any such mentioned circumstances that arose before submission of the offer/order confirmation shall only exempt H&H from liability if their effect on the fulfilment of the agreement could not be foreseen at that time.

11.4 If circumstances as mentioned in subsection 11.3 should occur, H&H shall inform the customer thereof in writing without undue delay.

11.5 In so far as H&H should incur liability to any third party in relation to deliveries to the customer, e.g. in case of, but not limited to, the customer's resale of a delivery to a third party, the customer is obliged to indemnify H&H against any claim for damages which exceeds the liability for damages of H&H under subsections 11.1 - 11.4.

11.6 The limitations of H&H's liability contained in subsections 11.1 - 11.5 shall not apply in the event of damage caused by H&H's deliberate or grossly negligent conduct.

#### **12. PRODUCT LIABILITY**

12.1 H&H shall only be liable in so far as it is provided by mandatory rules in the applicable law on product liability. Consequently, H&H shall only be liable for direct personal injury or direct losses resulting from damage to goods that are mainly intended for non-commercial use – and which were used in a non-commercial setting by the injured party.

12.2 Except as stipulated in subsection 12.1, H&H disclaims any product liability, including, but not limited to, loss or destruction of data on electronic data media.

12.3 In so far as H&H should incur liability to any third party, e.g. in case of, but not limited to, the customer's resale of a delivery to a third party, the customer is obliged to indemnify H&H against any claim for damages which exceeds the product liability of H&H under subsections 12.1 - 12.2.

12.4 The limitations of H&H's liability contained in subsections 12.1 - 12.3 shall not apply in the event of damage caused by H&H's deliberate or grossly negligent conduct.

#### **13. RETURNS**

13.1 The return of deliveries shall only be accepted subject to a prior written agreement between the customer and H&H.

13.2 Where the customer is entitled to cancel the purchase, or if the delivery is returned to H&H for replacement or repair, the delivery shall be returned to H&H in the original packaging and shipped for the customer's account and risk. In so far as transport costs etc. are inflicted on H&H, H&H is entitled to claim reimbursement of these costs and to set off these costs against any claim the customer might make against H&H. After repair or in case of replacement, the customer is obliged to, at his own account and risk, collect the repaired or replaced delivery at the premises of H&H. The fee payable for the return of ordered goods approved in writing shall equal 20 % of the invoiced price – however, no less than DKK 500.

13.3 If the customer, before delivery of an agreed order, notifies H&H of its wish to cancel the order, H&H shall be entitled to invoice the customer for all costs paid in relation to the contract performance up to the notice of cancellation, plus an amount corresponding to the profit H&H would have had if the sale had been completed.

#### **14. LOAN OF EQUIPMENT**

14.1 Borrowed equipment shall be returned to H&H in the original packaging.

14.2 The customer guarantees that borrowed equipment is stored and used properly and is insured both during transport to and from the customer's premises and while at the customer's premises.

14.3 The customer shall be required to fully compensate H&H for any damage caused to the borrowed equipment.

#### **15. ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

15.1 H&H shall be entitled to assign all rights and obligations concerning the delivery in question to a third party without the prior consent of the customer.

#### **16. APPLICABLE LAW AND JURISDICTION**

16.1 Any dispute which may arise between the customer and H&H related to agreements on deliveries subject to these conditions of sale and delivery, shall be settled by the Maritime and Commercial Court in Copenhagen in accordance with the rules of Danish law, or if the Maritime and Commercial Court should not have subject-matter jurisdiction, the dispute shall be settled by the district court of H&H's place of business.

#### **17. TECHNICAL SERVICE AND OTHER SERVICES**

17.1 Service activities and deliveries thereof – H&H offers technical service on a time and materials basis and service contracts adapted to the equipment and its use pursuant to separate written agreement specifying the agreed service activities and the price thereof.

17.2 Working hours – Unless otherwise agreed in writing, all services and repairs shall be performed within the normal opening hours of H&H: Monday – Thursday between 8:00 and 16:00, Friday between 8:00 and 15:30. Work performed outside normal working hours shall be invoiced according to current overtime rates.

17.3 Prerequisites – Consumables and supplies of electricity, gas, water, reagents, etc. needed for equipment operation are the customer's responsibility. For service to be performed, all qualities and quantities shall be made available as instructed by H&H and the manufacturer. In the event that these prerequisites are not fulfilled, any additional time needed or additional materials needed shall be invoiced on a time and materials basis to meet the need for such consumables and supplies.

17.4 Reservations – The following types of work are not normal service activities and shall be invoiced separately:

A: Work described in the operator's manual.

B: Additional expenses incurred and additional time spent because the equipment has been moved to another address or because access has been made difficult.

C: Repair of defects that are due to inappropriate placement of equipment, inappropriate use or treatment, lack of maintenance, and connections/installations not made by H&H.

D: Abortive visits: If H&H, against all expectations, should not be able to gain access to the equipment for an agreed scheduled service visit, H&H reserves the right to invoice the customer for the abortive visit for at least one (1) hour and the rate of one (1) zone.

E: EHS. Additional time and additional materials used in connection with the customer's requirements imposed on H&H in relation to EHS (Environment (E), health (H) and safety (S)) shall be invoiced separately.

17.5 Prices – H&H reserves the right to make annual price adjustments.

17.6 Service contracts shall be invoiced in advance.

17.7 Duration of service contracts. A service contract can be cancelled by either party at four (4) months written notice before the expiry of a period. A period corresponds to one (1) year and starts on the date of entry into force of the service contract. Unless otherwise agreed in writing, the minimum duration of service contracts shall be 36 months.

17.8 H&H provides a twelve (12) month claim period for the customer to notify H&H of any defect in replaced spare parts, and a three (3) month claim period for him to object to the work performed by the service technician.

#### **18. WORDING OF THE CONDITIONS OF SALE AND DELIVERY**

18.1 This text is an English translation of Holm & Halby's "Salgs- og Leveringsbetingelser". In case of discrepancies between the Danish text and the English translation, the Danish text shall prevail.

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