

General Terms and Conditions

HY-LINE AG | Switzerland



www.hy-line-group.com

HY-LINE AG
Hochstrasse 355
CH-8200 Schaffhausen | Switzerland

Status August 2024

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1. Validity

These General Terms and Conditions of HY-LINE AG, Hochstrasse 355, CH-8200 Schaffhausen, registration number 02030242310 (hereinafter also referred to as HY-LINE or Supplier) shall apply if the parties expressly declare them to be applicable in the contract, in the offer or in the order confirmation or have tacitly accepted them. Amendments and collateral agreements shall only be effective if HY-LINE confirms them in writing.

These Terms and Conditions shall apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of business, sale or purchase of the contractual partner or customer (hereinafter jointly referred to as "GTC") are hereby expressly excluded and shall only become part of the contract if and to the extent that HY-LINE has expressly agreed to their validity in writing. The Terms and Conditions shall also apply if HY-LINE unconditionally executes or accepts the delivery of the purchased Products and/or Services in the knowledge of conflicting or deviating KAGB. A customer is any company, freelance person or group of persons, such as sole proprietorships, companies, legal entities, corporations, cooperatives, associations, freelance persons or the like, that concludes or wishes to conclude a contract with HY-LINE in the exercise of its commercial, entrepreneurial or independent professional activity. The term Customer also includes potential customers who submit inquiries to HY-LINE or request quotations.

Individual deviating agreements with the customer or contractual partner shall take precedence over these Terms and Conditions, but shall only apply to the specific contract and not to other agreements, unless this has been expressly confirmed in writing by HY-LINE. These Terms and Conditions supersede all previous terms and conditions of HY-LINE.

HY-LINE or the Customer shall hereinafter also be referred to individually as party or jointly as parties.

2. Order, conclusion of contract and scope of the contract

Orders of the Customer shall be placed in writing or in electronic text form. Orders shall only become binding for HY-LINE upon HY-LINE's order confirmation in writing or in electronic text form (hereinafter referred to

as "Order Confirmation"). The content of the contract, including the attached application and operating instructions as well as the technical data sheets, shall be governed solely by HY-LINE's Order Confirmation. Services that are not expressly warranted in the order confirmation, such as documentation, programming, customizing, installation, commissioning, training and application support, are not part of the contract. Prices, price lists, illustrations, service descriptions, information and data on the homepage or in catalogs are for information purposes only, are not binding on HY-LINE and may be changed by HY-LINE at its sole discretion, unless they are expressly designated as binding by HY-LINE in the order confirmation. Orders cannot be canceled. Any change to an order requested by the Customer requires a new order confirmation by HY-LINE. Otherwise the original order confirmation shall remain valid. Change requests may lead to a change in the offer prices and delivery periods as well as to compensation for products already manufactured/assembled and materials already purchased.

3. Delivery and delivery date

The supplier shall deliver the products in the standard version, software in its machine-readable form according to the version valid at the time of delivery. The date according to the order confirmation shall be decisive. Compliance with HY-LINE's delivery obligation is subject to the timely and complete fulfillment of the Customer's obligations.

The delivery period shall be extended appropriately if the Customer fails to complete official formalities or to provide any securities, or if HY-LINE receives important technical specifications only after the order confirmation.

HY-LINE shall be entitled to make partial deliveries. If HY-LINE manufactures the products in whole or in part in a special design for the customer, HY-LINE's work shall be based on the performance specification, in which the customer shall specify, among other things, under which conditions which result is to be achieved. The delivery date shall be deemed to have been met if HY-LINE has handed over the ordered Products on site in accordance with the applicable INCOTERMS (see below).

If the Customer is in default of acceptance, fails to cooperate or if HY-LINE's delivery is delayed for other reasons for which the Customer is responsible, HY-LINE shall be entitled to claim compensation for the resulting damage including additional expenses (e.g. storage costs). The statutory provisions on default of acceptance shall apply without restriction. In this case, the risk shall pass to the Customer at the time when the Products are deemed delivered in accordance with the applicable Incoterms. In addition, HY-LINE shall be entitled to withhold performance under other contracts already concluded or to rescind such contracts.

4. INCOTERMS

Unless a specific place of performance has been agreed between the parties, delivery by HY-LINE to the Customer shall be made in accordance with FCA (Fee Carrier/Free Carrier) at the registered office of HY-LINE, Hochstrasse 355, 8200 Schaffhausen, Switzerland (INCOTERMS 2020), which shall also be the place of performance for any subsequent performance. Unless otherwise agreed between the parties, HY-LINE shall be entitled to determine the packaging itself. Special requests regarding packaging, shipment and insurance shall be communicated to HY-LINE in due time and may affect the price. Any expenses in this respect shall be borne by the Customer.

If the Supplier provides services at another location, the Customer shall reimburse the travel and accommodation expenses.

5. Delay in delivery

Non-compliance with the delivery date by HY-LINE shall only entitle the Customer to rescind the contract if the delivery has not been made after a written reminder by the Customer and after expiry of a reasonable grace period set in the individual case and the Customer declares rescission within three days.

In the event of force majeure, HY-LINE shall be entitled to a reasonable extension of the agreed delivery dates. Unavoidable events such as natural disasters of any kind, in particular storms, earthquakes, floods, volcanic eruptions, but also

fire, traffic accidents, hostage-taking, war, riots, civil war, revolution, terrorism, sabotage, strikes, border closures, pandemics/epidemics, etc. shall be deemed force majeure. If the force majeure lasts longer than 6 (six) months, either party may withdraw from the corresponding contract without liability and with immediate effect.

If HY-LINE is prevented from fulfilling its obligations due to the occurrence of other circumstances beyond its control, such as delays in the delivery of essential raw materials due to their shortage for any reason whatsoever, problems in the supply chain (in particular in the event of delays in delivery by suppliers and/or service providers), shortage of procurement materials and products or components, or strikes in public transportation affecting freight transport, which HY-LINE was unable to avert despite reasonable care in the circumstances of the case, these circumstances shall also be deemed force majeure and the delivery period shall be extended accordingly, unless the delivery or service becomes permanently impossible and/or the mutual contract is frustrated as a result. In such cases, the delivery period may be extended by a maximum of 8 (eight) weeks. After expiry of this extension, both HY-LINE and the Customer may withdraw from the contract without the other party being entitled to claim damages. The Customer shall only be entitled to compensation for damages caused by delay if he can prove intent or gross negligence on the part of HY-LINE, but not exceeding twenty percent of the value of the delayed delivery. Further claims arising from delays in delivery are excluded.

6. Software and know-how

The customer may use the software, work results, know-how, data carriers and documentation provided to the intended extent, but may not pass them on to third parties. The ownership thereof and the right to further use shall remain with the Supplier, its licensors or sources of supply, even if the Customer or the Customer's downstream purchasers or users subsequently modify software programs or know-how records.

Any extension or modification of the software by the customer or the customer's downstream purchasers or users requires the written consent of the supplier. Extensions, modifications or the deletion of software or firmware by the Customer or the Customer's downstream buyers or users shall release HY-LINE from liability for warranty, guarantee, damages, consequential damages or product liability, to the extent permitted by law and possible, even if HY-LINE has consented to them. If an exemption from liability towards third parties is not possible, the Customer shall indemnify HY-LINE financially in the event of a breach of this agreement against the costs and expenses incurred by HY-LINE in connection with the liability. Ownership and the right to further use shall remain with the Supplier or its licensors or sources of supply, even if the Customer or the Customer's downstream purchasers or users subsequently modify the computer programs, work results or know-how records. The customer or the customer's downstream purchasers or users may make a maximum of three copies of the software for security and archiving purposes. A larger number of copies or use for other purposes requires the express consent of the Supplier. The customer or the customer's downstream purchasers or users must affix the same property right notices to all modifications and copies as to the original. The customer or the customer's downstream buyers or users shall take the necessary measures to protect computer programs, work results and documentation from unwanted access or misuse by unauthorized persons. The Customer shall agree with its downstream purchasers or users to comply with the terms and conditions set forth herein in the Terms and Conditions and shall ensure that these terms and conditions are disclosed to and acknowledged by the downstream purchasers or users. The Customer shall be liable to HY-LINE for this.

7. Documentation

The Customer shall be entitled to one copy of the user documentation in the Supplier's usual version, if available to HY-LINE. Additional copies or documentation in languages not already available may be invoiced separately by the Supplier.

Deviations in the documentation, namely in descriptions and illustrations, are permitted, provided that the documents fulfill their purpose.

8. Confidentiality

Neither party shall disclose to third parties any information from the other party's business which is neither generally accessible nor generally known and shall make every effort to prevent third parties from gaining access to such information. On the other hand, each party may continue to use knowledge that it acquires in the course of its business activities.

The parties shall also impose this obligation on their employees, staff, agents, vicarious agents, customers, suppliers, buyers and consultants.

The aforementioned obligation of confidentiality shall also apply beyond the termination of the contractual relationship.

Tools, molds, models, samples, materials, parts, plans, drafts, drawings, data carriers, process descriptions, calculations, conditions, economic conditions, prices and other documents or information that HY-LINE makes available to the Customer for or in the context of the performance of the sale, delivery or service shall remain the property of HY-LINE.

9. Information obligation of the customer

The customer must inform the supplier in good time of any special technical requirements and of the statutory, official and other regulations at the place of destination, insofar as they are of significance for the execution and use of the products.

10. Acceptance and notification of defects

Unless a special acceptance procedure has been agreed, the customer must inspect the products within 5 (five) working days of receipt and notify any defects in writing without delay, stating the exact circumstances and nature of the defect notified.

If defects become apparent later within the guarantee or warranty period which could not have been discovered even with careful inspection (hidden defects), the customer must notify the supplier of these in writing immediately, but at the latest within 48 (forty-eight) hours of discovery.

If the Customer fails to properly inspect the goods and/or give notice of defects within the aforementioned period, liability for the defect not notified or not notified in time or not properly notified shall be excluded and the Customer's claim shall be forfeited. Claims of the Customer in respect of delivered products shall also be forfeited if the defects were caused by improper handling, use, storage or handling of the products by the Customer or other parties, if the Customer prevented HY-LINE from inspecting the products for defects or if the products were processed or mixed and cannot be identified as originating from HY-LINE.

11. Warranty

HY-LINE warrants that its products are free from defects in material, design, workmanship and manufacture. If a product is defective, HY-LINE shall repair or replace the delivery of defective products at HY-LINE's discretion, to the exclusion of any further statutory claims. In case of warranty for warranted characteristics, HY-LINE may, at its option, reduce the purchase price appropriately or rescind the contract if the defect is so serious that it cannot be remedied within a reasonable period of time or if the rectification of the defect would be too costly for HY-LINE. In the event of a replacement delivery, the Customer shall return the defective products to HY-LINE upon HY-LINE's request. The products delivered by HY-LINE may not be returned without HY-LINE's prior written consent. Unless otherwise specified or agreed between the parties, the return shipment shall always be at the expense and risk of the Customer. Subsequent performance does not include the uninstallation of the defective products or the reinstallation.

If there is actually no defect upon inspection, HY-LINE may claim compensation for the costs incurred due to the unjustified request for subsequent performance.

HY-LINE shall be liable for warranted characteristics which are expressly designated as such in the written order confirmation. HY-LINE shall not assume any warranty if the Customer has made improper modifications, installations, maintenance, operating errors, normal wear and tear or repairs (e.g. non-use

of original spare parts) to the delivered products, has disregarded HY-LINE's instructions for use or has caused transportation damage. The warranty does not extend to cosmetic defects that do not impair the functionality of the products. Any further warranty, including liability for auxiliary persons or consequential damages, indirect damages or punitive damages, is excluded. The regulation according to Art. 199 of the Swiss Code of Obligations remains reserved.

Unless otherwise provided for in these Terms and Conditions, including the following provisions, HY-LINE shall only be liable for damages in cases of intent and gross negligence. The Customer may only rescind or terminate the contract due to a breach of duty that does not consist of a defect if HY-LINE is responsible for the breach of duty. An unrestricted right of the Customer to rescind the contract is excluded.

Claims for material defects do not exist in the case of wear and tear due to normal use, in the case of spare parts and such assemblies and parts that have to be replaced regularly, or if the defect or damage has arisen because the Customer has not notified a defect in due time or the products have been improperly handled or overused. Insofar as HY-LINE's liability is limited or excluded, this shall also apply to the liability of our employees, representatives and other vicarious agents.

Warranty rights and remedies may not be assigned to third parties without HY-LINE's prior written consent. Warranty claims shall expire 12 months after delivery of the products (cf. INCOTERMS). In the case of partial deliveries, the aforementioned period shall run individually.

The Supplier shall provide the warranty at its discretion either at its premises or at the Customer's premises, who shall grant the Supplier free access. Dismantling and assembly, transportation, packaging, travel and accommodation costs shall be borne by the customer. Replaced parts shall become the property of the Supplier.

Warranty and limitation periods shall not be interrupted by the acknowledgement or rectification of a defect, unless otherwise stipulated by mandatory statutory provisions.

12. Limitation of liability

HY-LINE's liability under the sales and delivery contracts shall be limited to the fulfillment of the contractual obligations and shall in any case be limited to compensation for direct damages. Any other liability, in particular for indirect damages, punitive damages and consequential damages, loss of profit, loss of revenue, loss of data and loss of use, is hereby expressly excluded to the extent permitted by law. In no event shall HY-LINE's liability exceed the value stated in the order confirmation.

Liability for slight negligence is excluded.

HY-LINE's liability towards the Customer for any legal reason (purchase and delivery contract, general terms and conditions, tort, etc.) shall be limited to 10% of the purchase price paid by the Customer.

If the actions or omissions of the Customer or its vicarious agents cause injury to persons, damage to property of third parties (including end customers) or other damage and HY-LINE is held liable for this reason, HY-LINE shall have a right of recourse against the Customer. The Customer shall indemnify HY-LINE in full, and HY-LINE shall provide the Customer with copies of the relevant documents.

13 Prices, terms of payment and retention of title

Unless otherwise stated, prices are quoted in Swiss francs excluding VAT, fees, charges, customs duties, transportation, packaging, insurance, installation, commissioning, training and application support. They are due for payment net within fourteen days of invoicing. The payment deadlines must also be met if the transportation or delivery of the products is delayed or prevented by force majeure, if minor parts are missing or if rework is to be carried out without the customer being prevented from using the products. The customer may only offset counterclaims, even if they arise from the same contract or its avoidance, with the written consent of the supplier or if a legally binding court judgment exists.

If the customer does not meet the payment deadlines, he must pay default interest of 8% from the due date without a reminder. The Customer may not withhold payments due to complaints.

In addition, HY-LINE shall be entitled to withhold performance under other contracts already

concluded or to rescind such contracts until the Customer has provided sufficient security or advance payment in an amount determined by HY-LINE. Any agreed discounts and/or rebates may not be claimed if the Customer is in arrears with the payment of another invoice. HY-LINE shall also have the right to unilaterally shorten payment periods.

The delivered and undelivered Products shall remain the property of HY-LINE until full payment and settlement of all claims arising from the business relationship, including any claims yet to arise. HY-LINE shall be entitled to have the retention of title to the products delivered to the Customer entered in the relevant register without any further involvement of the Customer. The Customer shall immediately notify HY-LINE in writing if an application for the opening of insolvency proceedings or an attachment of the Customer's assets is filed or if third parties seize the products belonging to HY-LINE. The products subject to retention of title may not be pledged to third parties or assigned as security before full payment of the secured claims.

14. Export

The customer is responsible for compliance with domestic and foreign export regulations.

15. Resale

Unless otherwise agreed by the parties, these Terms and Conditions or the nature of the transaction, the customer may resell the products modified or unchanged.

If the customer resells the products, he must ensure that all obligations arising from software licenses, confidentiality and any reservations of approval for re-export are transferred to the respective purchaser.

16. Data protection

The Parties shall comply with the statutory data protection provisions. HY-LINE processes personal data in accordance with its privacy policy, which is currently available at the following link: <https://www.hy-line-group.com/ch-de/datenschutz>

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17. Intellectual property

Drawings, technical documents, models, templates, samples, drafts, designs, etc. as well as all registered and unregistered intellectual property rights in connection with HY-LINE's products shall remain the sole property of HY-LINE and its affiliated companies. The Customer is not permitted to use, reproduce or pass on to third parties drawings, samples, drafts, designs, etc. for purposes other than those for which they were handed over to him without HY-LINE's prior written consent.

If HY-LINE manufactures products according to drawings, technical documents, models or templates provided to HY-LINE by the Customer, HY-LINE shall not assume any responsibility for the infringement of third-party property rights and any resulting claims. The Customer shall fully indemnify HY-LINE against any third-party claims.

18. Choice of law and place of jurisdiction

This legal relationship shall be governed by Swiss law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

19. Place of jurisdiction

The exclusive place of jurisdiction shall be HY-LINE's registered office in Switzerland. However, HY-LINE may also bring an action before the court at the Customer's domicile.

Please note!

The German version is the only binding version. This English language version is a purely informative translation without liability for the quality of the translation.