

General Terms and Conditions of Purchase of Höcker Polytechnik GmbH

I. Scope and conclusion of contract

1.

Our terms and conditions of purchase apply exclusively. We will not accept any conflicting or deviating sales terms of the supplier, unless we have explicitly agreed to their application in writing.

2.

All agreements made between our company and the supplier for execution of contract must be set forth in writing in this contract.

3.

Remunerations or reimbursements for visits, preparation of quotations, projects etc. shall only be granted if agreed in writing in individual cases.

4.

The supplier undertakes to treat as confidential and to not disclose to any third party all commercial and technical details not known to the public which he becomes aware of in the course of the business relationship. He shall oblige his sub-suppliers correspondingly.

5.

The supplier must treat the conclusion of contract as confidential. He shall only be allowed to refer to business contacts with our company in advertising material and reference lists after our prior written approval.

II. Prices and terms of payment

1.

The price specified in the order is fixed. Unless otherwise agreed upon in writing, the price includes delivery "free domicile", "free handover address" or "place of use", including packaging. Our supplier shall take back packaging material at his expense on our premises or at the place of handover.

2.

Our order number, project number and commission details are to be specified in dispatch notes, consignment notes, delivery notes, invoices and any other correspondence.

We will not assume any responsibility for delays in handling an order due to the absence of said details.

3.

The price does not include the statutory value-added tax. The supplier shall be obliged to issue his invoice separately specifying the value-added tax.

4.

Invoices must be sent to us in triplicate upon dispatch of the goods by separate mail. The order number, our article number, project number, commission details, cost unit and order date are to be specified in the invoice. Invoices not submitted in the correct way shall only be considered as received by our company from the date of correction. The supplier shall be responsible for any consequences resulting from non-compliance with the aforementioned obligations.

5.

Unless otherwise agreed upon in writing, we shall pay the purchase price within two weeks from the date of delivery and receipt of an invoice specifying the details according to 2.2 of these terms and conditions. In case of outgoing payment/cheque within two weeks, we shall be entitled to deduct a discount of 3 %, otherwise we shall pay the net amount within 30 days after receipt of the invoice issued in accordance with 2.2 of the present terms and conditions. All aforementioned time limits shall not start to run prior to delivery/performance or hand-over in operational condition.

6.

We are entitled to setoff and retention rights to the extent provided by law.

III. Delivery dates, delivery delay and force majeure

1.

The delivery is to be effected and to be handed over to us at the supplier's expense on the delivery date and at the delivery address specified by us. Considering our logistics organisation, we reserve the right to specify also the measurements (dimensions, volume) of the package as well as their type when ordering.

2.

The supplier shall be obliged to immediately inform us in writing, stating the reasons and the duration of the delay, if circumstances occur or become apparent which might cause a delay.

3.

In case of a delivery delay, we shall be entitled to the statutory claims. We shall have the right, after fruitless expiration of a reasonable period, to claim damage instead of service and to withdraw from the contract. The claim for damages can be explicitly asserted apart from the exertion of the right of withdrawal.

4.

Force majeure and industrial action shall exempt the contractual partners from the obligation to perform as long as the troubles continue and to the extent of their effects. The contractual partners shall be obliged within reasonable bounds to immediately provide the necessary information and to adapt their obligations to the changed circumstances in good faith.

As far as a purchase contract is concerned, we shall be exempted from the obligation to receive and shall be entitled to withdraw from the contract if, due to the caused delay, receipt is no longer of interest for our company. If the supplier owes the manufacture of a work, we shall be entitled to cancel the contract in accordance with § 649 BGB (note of transl.: German Civil Code). In such case, the supplier shall be entitled to the payment of the pro rata work wages accrued until the cancellation. The compensation claim of the supplier shall be omitted if the delay is caused by him. In such case, we shall, apart from the cancellation of contract, be entitled to claim for any damage we have sustained.

5.

In case of a delivery earlier than agreed, we reserve the right to return the goods at the supplier's expense. If the goods are not returned in case of an early delivery, they shall be stored at our company until the delivery date at the expense and risk of the supplier.

6.

Partial deliveries shall only be accepted after explicit agreement. In case of agreed partial deliveries, the remaining quantity must be specified.

IV. Passing of risk and documents

1.

The delivery shall be effected at the supplier's risk to the handover address specified by us. The supplier guarantees that the packaging ensures the safety of the goods during transport until delivery in the country of destination specified by us.

2.

The supplier shall be obliged to exactly indicate our order number, our article number and project number on all dispatch documents. If he fails to do so, we will not assume any responsibility for delays.

3.

Upon delivery, the supplier shall hand over to us in duplicate and in writing all documents, instructions, user manuals, pieces of evidence and guarantees belonging to the delivery item in German. Furthermore, the supplier shall hand over to us the documents, instructions, user manuals and possible evidence of compliance and any other pieces of evidence required for the operation of the item in English.

V. Warranty, remedy of defects and guarantees

1.

The supplier shall hand over the item ordered by our company at the handover place specified by us or at our premises free from material defects and defects in title. A material defect shall also be deemed to exist if the agreed assembly by the supplier or his vicarious agent has been carried out improperly or if the assembly instruction is of poor quality, unless the item has been properly assembled. A material defect shall also be deemed to exist if the supplier has delivered another item or an insufficient quantity.

2.

The supplier guarantees that all things and objects delivered by him and all services provided by him comply with the state-of-the-art technology, the relevant legal provisions, the regulations and guidelines of the authorities, professional and trade associations to be observed as well as with the required functions and specifications, and that they meet the requirements of the accident prevention and occupational safety and health regulations as well as the generally accepted technical rules relating to safety and occupational medicine. He guarantees that the item delivered by him complies with the provisions of the machinery and equipment safety regulations both according to German law and according to the EC guidelines and specifications, unless this is already included in the freedom from material defects which is to be provided. If during manufacture, sale or operation of delivered items hazard or risk analyses have been drawn up or are to be drawn up, the supplier shall hand over such analyses to us upon our request. He shall point out to us whether and to what extent such analyses exist or are to be drawn up. Furthermore, the supplier shall guarantee that the technical condition of the goods ordered by our company complies with the requirements (accident prevention rules, electrical connections etc.) of the country of destination specified in our order and that said goods can be used there.

The supplier shall inform us about any deviations from the aforementioned regulations and obtain our written consent.

If the supplier is concerned about the type of execution desired by us, he shall immediately inform us in writing, 5 days after ordering at the latest.

3.

We shall immediately notify the supplier in writing of obvious defects of the delivery/service as soon as such defects are detected in the due course of business, within two weeks after delivery at the latest.

4.

The provisions of §§ 377, 378 HGB (note of transl.: German Commercial Code) shall not apply with respect to us.

5.

By reason of the defects of delivery/service notified during the warranty and guarantee period, including the non-observance of guaranteed dates, subsequent fulfillment may be demanded. Upon demand, the supplier shall immediately and free of charge, including all additional costs, remedy the defects at our discretion by repair or by replacement of the defective parts or by means of a replacement delivery free from defects.

Further legal claims, in particular claims for cancellation of contract (withdrawal), reduction, damages and reimbursement of expenditure incurred in vain shall remain unaffected.

We shall be entitled to the rights conferred by the warranty given by the supplier or a third party for the quality of the item or the fact that the item will keep a certain quality for a certain period of time (guarantee of durability) irrespective of the legal claims.

6.

If the supplier fails to meet his warranty or guarantee obligations within a reasonable time limit set by us, we shall have the right to take the necessary measures ourselves or have them taken by a third party at the expense and risk of the supplier, irrespective of his warranty or guarantee obligation.

In case of particular urgency or imminent danger, we shall have the right to remedy the defect ourselves or have it remedied by a third party at the supplier's expense. Minor defects may also be remedied by ourselves - in fulfillment of our duty to mitigate loss -, the expenses being charged to the supplier without affecting the warranty and guarantee obligation of the latter. The same shall apply in case of exceptionally high damages.

7.

The supplier shall supply the item to be delivered by him to us in new condition without any labelling, i.e. generally neutral. The supplier shall label the ordered articles with a bar code specified by us on our request. Advertising stickers and advertising type plates shall only be allowed upon explicit written agreement. This shall also apply to advertising stickers or advertising type plates which are not immediately apparent. This prohibition does explicitly not include the information and information labels required by the relevant regulations.

8.

If we must warrant or provide compensation due to defects of an item manufactured or sold by our company or due to the assumption of a guarantee for an item manufactured or sold by our company and if this is caused by a defective item delivered to us by the supplier and breaking an agreed guarantee, the supplier shall reimburse us for all costs accruing in this connection. Upon our request, the supplier shall complete at his own expense the warranty work or replacement deliveries to be provided by him at the place of use of the machines or plants manufactured or delivered by us.

If he fails to comply with a corresponding request within a period of three workdays after the assertion of such request, we shall be entitled to take all measures required for remedying the defect or achieving the guaranteed condition at the supplier's expense.

VI. Periods of warranty and guarantee

1.

The statutory limitation for warranties and guarantees is 36 months from passing of risk at the place of receipt or use specified by us. All fixed terms begin on the 1st January of the year following the delivery. A term begins upon acceptance by our customer at the latest.

If written acceptance is agreed, the term shall begin on 1st January of the year following the written acceptance.

2.

The warranty period for delivered spare parts is three years after handover to us. This period begins upon putting the spare part into service at the latest.

3.

Claims for subsequent fulfillment, damages and compensation for expenditure incurred in vain expire by limitation after three years. This period of limitation begins on the 1st January of the year following the arising of the claim.

The claims arising from a withdrawal declared effective or from a reduction and claims arising from guarantees also expire by limitation after three years. The period of limitation begins on the 1st January of the year following the arising of the claim.

4.

The period of limitation of all warranty and guarantee claims begins anew, in fact beyond the general rules of suspension (§§ 203 ff. BGB), as far as the supplier was obliged to warranty, and in case of spare parts, the value of the delivered spare part is not only inessential in relation to the total value of the item delivered by him. In case of warranty work, the period of limitation begins anew at the end of the year in which the supplier has completed or subsequently fulfilled the warranty work, provided that the supplier was obliged to warranty or subsequent fulfillment and that the value of the warranty/subsequent fulfillment work is not only inessential in relation to the value of the total item he has delivered.

5.

If claims are made against us on account of violation of official safety regulations or because of national or international product liability provisions or laws due to the defectiveness of our products and if such defectiveness is caused by the delivery of the supplier, we shall be entitled to obtain full compensation for any damages resulting therefrom from the supplier. Such damage shall also include the costs of a precautionary recall campaign.

The supplier shall mark the delivery items such that they can be permanently identified as his products. He shall, however, not use any advertising stickers or advertising type plates.

6.

The supplier shall be obliged to maintain and shall permanently maintain a product liability insurance and shall submit to us the insurance policy upon our request.

VII. Retention of title

As far as we provide our supplier with parts, we shall explicitly reserve the title thereto. Processing or transformation by the supplier shall always be carried out on our behalf. If our goods subject to retention of title are processed together with other items which do not belong to us, we shall acquire co-ownership of the new item to the extent of the value of our item (purchase price plus value-added tax) compared to the other processed items at the time of processing.

If the item provided by us is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item to the extent of the value of the goods subject to retention of title (purchase price plus value-added tax) compared to the other mixed-in items at the time of mixing. If the mixing is carried out such that the supplier's item is to be considered as the main item, it shall be deemed as agreed that the supplier shall transfer co-ownership to us pro rata. The supplier shall take custody of the sole and co-ownership on our behalf.

Tools provided by us are our property. The supplier shall be obliged to exclusively use the tools for the manufacture of the goods ordered by us. The supplier shall be obliged to insure at his expense and at their replacement value the tools owned by us against damage caused by fire, water and theft. The supplier shall transfer any compensation claims to us by now. We hereby accept the transfer. The supplier shall be obliged to carry out in good time any maintenance and inspection work possibly necessary on our tools as well as any service and repair work at his expense. He shall immediately inform us about any malfunctions. If he culpably fails to do so, claims for damages shall remain unaffected.

We shall have the right to demand the return of the provided tools at any time. The supplier permits us by now to enter his premises during regular business hours, in order to collect the tools owned by us from there.

The supplier shall be obliged to keep strictly secret all illustrations, drawings, calculations and other documents and information handed over by us. They shall only be allowed to be disclosed to third parties upon our explicit written consent. The obligation for secrecy shall also apply after performance of contract. It shall only expire when and as far as the production lists included in the illustrations, drawings, calculations and other documents handed over by us have become public knowledge.

As far as the security rights which we are entitled to according to the preceding provision exceed the purchase price of all our goods subject to retention of title and not yet paid by more than 10 %, we shall be obliged to release the security rights at our discretion upon the supplier's request.

VIII. Supplier's retention of title

As far as the supplier retains the title to the delivered item upon delivery until full payment, we shall take notice thereof. It is, however, explicitly agreed that a passed-on retention of title or current account reservation does not exist. The retention shall fully expire upon payment of the respective delivery item by us. We shall be entitled to assemble the delivery item together with other items and to combine them into a new item. In such case, the supplier shall not acquire any co-ownership of the item manufactured by us. Our claim against our customer shall be deemed to have been assigned to the supplier to the amount of his claim against us. He shall not obtain an own right to collect. He shall only be entitled to collect if we do not meet our payment obligation despite notice to pay stating a reasonable time limit.

IX. Trade mark rights

The supplier shall ensure that all deliveries/services are free from third-party trade mark rights and in particular that the delivery and the use of the delivered items do not infringe any patents, licenses and other third-party trade mark rights. The supplier shall indemnify us and our customers against third-party claims resulting from possible infringements of trade mark rights. We shall be entitled to obtain the permission to use the respective delivered items and services from the rightful owner at the supplier's expense.

X. Drawings

All drawings which we handed over to the supplier for the manufacture of the goods shall remain our property. They must be immediately returned to us upon our request. The supplier shall only be allowed to make copies upon our explicit consent. He shall destroy existing copies upon our request. All copy rights of these drawings are solely ours.

If the supplier manufactures on the basis of our drawings, the supplier shall use these drawings exclusively for processing our orders. Handing-over to third parties or a use for third parties shall be excluded, irrespective of the fact that such drawings are owned by the supplier.

XI. Final provisions

1.
If individual parts of these General Terms and Conditions of Purchase are ineffective, the validity of the other provisions shall remain unaffected. As far as the provisions are ineffective, the contract contents are subject to the statutory provisions.
2.
The supplier shall not be entitled to pass the order on to third parties without our prior written consent.
3.
The supplier shall not be entitled to assign his claims against us without our prior written consent which shall not be unreasonably withheld.
4.
Unless otherwise agreed upon, the place of performance for the obligation to deliver shall be the delivery address or place of use desired by us; for all other obligations of both parties Hilter.
5.
The place of jurisdiction shall be Hilter. The contracts are exclusively governed by the laws of the Federal Republic of Germany.