

TERMS AND CONDITIONS OF PURCHASING

HBE GmbH

§ 1 General Provisions

Our contracts are concluded exclusively on the basis of these Terms and Conditions of Purchasing. This also applies to future transactions. Any deviating terms of the seller are herewith rejected; such are also not accepted even in the case of goods acceptance without repeated express rejection. Our Terms and Conditions of Purchasing apply only to companies as defined by Sec. 310, Par. 1 of the Federal German Civil Code (BGB).

§ 2 Orders – Release Orders

1. Contract content is solely the content of our written orders. Orders placed verbally or supplementary agreements only become valid if confirmed by us in writing.
2. Our orders are to be confirmed in writing within 14 days. After lapse of this period, we are no longer bound to our order.
3. We are authorized to demand alterations to the object of delivery in regard to construction and/or design within a scope that is reasonable for our suppliers. Any price adjustment is to be arranged by mutual agreement.
4. Delivery schedules become binding at the latest if the supplier does not contradict such within one week. We are authorized in the case of delivery schedules to make changes, in particular regarding the delivery time, to the extent that such changes can be reasonably expected from our suppliers.

§ 3 Delivery Period – Delayed Delivery

1. Agreed dates and periods are binding. Should the latest date on which delivery is to occur based on the contract pass without delivery, then the supplier falls into delivery default without the need for a reminder or complaint to be issued on our part.
2. Reception of the goods by us is the decisive factor in regard to compliance with the delivery period.
3. Our supplier is obligated to notify us in writing without delay if circumstances arise or become evident in which the delivery period cannot be complied with.
4. If the supplier has not complied with the agreed delivery date and failed subsequently to comply with a reasonable grace period established by us, then we are authorized to choose at our discretion to withdraw from the contract partially or wholly and/or to demand damages compensation in place of the performance of the agreed service.
5. In the event of delivery delays and with prior written notification to the supplier, we are authorized to demand a contractual penalty in the amount of 0.5 % of the respective goods value for each week of delay that has begun, up to a maximum of 5 % of the respective goods value. The contractual penalty is to be added to the delay damages to be compensated by the supplier. The right of the supplier to produce evidence that such damages are actually lower remains unaffected.

§ 4 Payment Terms – Prices

1. The prices listed in the order are binding and apply, to the extent that nothing to the contrary has been agreed, to “carriage paid” delivery and are additionally to be understood as including packaging, for which we are only liable for return in the event of a separate agreement governing such.
2. Invoices are to be provided in two copies and in accordance with the specifications in our order. In particular, they must contain the customer number, order number and requisition number. Should delays occur due to noncompliance with this obligation, then our supplier is as such liable to us for compensation.
3. To the extent that nothing deviating is agreed in writing, payments ensue within 14 days calculated from delivery and receipt of the invoice with 3 % commercial discount, or net within 30 days following receipt of the invoice. Delivery in accordance with the contract and the presentation of proper invoices are a precondition for such. Payment signifies neither the acknowledgement of proper contract fulfillment nor a waiver of the liability of the supplier on the basis of defects.
4. In the event of payment arrears, we owe arrears interest in the amount of 5 % points above the basic interest rate in accordance with Sec. 247 of the BGB.
5. We are entitled to rights of retention and set-off rights to the extent that such is legislated.
6. Our supplier is only authorized to assign its receivables from us with our prior written consent. If an extended retention of ownership is agreed, then such consent applies as granted.
7. The legally prescribed value added tax is not included in the price and will be separately invoiced in the respective legal amount.

§ 5 Delivery – Packaging – Shipping

1. Delivery and shipment are conducted on a carriage paid basis to our business address or to the delivery location specified by us at the risk of the supplier. The costs of packaging, freight and insurance are the responsibility of the supplier. To the extent that delivery is agreed on an ex-factory basis in an individual case, the supplier must ensure the lowest freighting price for us as well as the proper declaration. The supplier is also liable for transport damages in such case.
2. The supplier is obligated to provide shipment documentation and delivery notes containing our order number and customer number as well as quantity, weight and goods type specifications. Furthermore, the supplier will label the delivery objects in the manner prescribed by us or in the manner mutually agreed where applicable.

§ 6 Replacement Parts

1. The supplier is obligated to stock replacement parts for the products delivered to us for a period of at least 10 years following delivery.

2. Should the supplier intend to cease production of replacement parts for products delivered to us, then the supplier will notify us without delay following a decision regarding such cessation of production. Subject to Par. 1, this decision must be made or have been made at least 6 months prior to the shutdown of production.

§ 7 Defects – Notification of Defects

1. Our supplier is obligated to manufacture and deliver goods to us in accordance with the acknowledged regulations of technology and under compliance with safety regulations and any agreed technical data, etc.

2. We are obligated to inspect goods within a reasonable period for defects. To the extent that nothing to the contrary has been agreed, our reception inspection is limited to a general reception inspection (type of goods, quantity, obvious packaging damages, obvious defects). Defects becoming evident during such inspection qualify as having been duly reported if the defect notification ensues within 14 days from receipt of the goods. Defects that are not recognizable within the above-described requirements for a general reception inspection must be reported without delay upon their discovery; the same applies accordingly for concealed defects.

3. Acceptance or approval of provided samples does not signify waiver on our part of guarantee claims.

4. We are entitled to the legally prescribed rights in the event of defects and breach of obligations by our supplier. In particular, we are entitled to choose elimination of the defects (remedy) or delivery of non-defective goods at our own discretion. Sec. 439, Par. 3 of the BGB remains unaffected.

5. Should our supplier fail to begin remedying defects immediately after our defect notification, then we are authorized, at least in urgent cases and in cases where there is a danger of delays, to sort out defective parts at the expense of our supplier. However, fundamentally in such cases, our supplier should initially be given the opportunity to sort out defective parts on its own. As for the remainder, the regulation in accordance with the above Figure 2 applies.

6. Claims on grounds of defects or breach of obligations are subject to lapse after 36 months from the transfer of risk, in so far as longer legal periods do not take precedence (e. g., Sec. 479, Par. II and Par. III of the BGB).

7. Upon receipt by the supplier of our written defect notification, the statutory limitation of guarantee claims is inhibited. The guarantee period begins anew for replacement parts and remedy of defects unless, based on the behavior of the supplier, we have to assume that the supplier did not see the measure as a necessity, but instead conducted such solely for reasons of maintaining goodwill or similar reasons.

§ 8 Trademarks

1. Our supplier is responsible for ensuring that no claims, in particular damage compensation claims, are made against us by third

parties for usage of the objects of delivery in accordance with the contract on the basis of possible trademarks and trademark registrations, to the extent that such trademarks are established or registered with the German or European patent authorities. Our supplier is to indemnify us from any possible damage compensation claims.

2. Our supplier's damage compensation obligation, respectively, indemnification obligation also extends to such expenditures necessarily arising for us as a result of and in connection with claims by third parties.

3. The above provisions do not apply in the event that our supplier has provided us with objects of delivery according to our specifications, in particular drawings, models and other descriptions, and did not know or was not required to know that such would result in the violation of third party trademarks.

4. Our supplier is obligated to notify us without delay in the event of becoming aware of trademark violation risks, in particular alleged cases of violation.

§ 9 Product Liability – Insurance

1. Our supplier is obligated to exempt us from all damage compensation claims by third parties based on product damages, to the extent that the cause is attributable to the supplier's sphere of responsibility and organization and the supplier itself is liable in the external relationship.

2. In such damages cases, our supplier is obligated to reimburse us for any expenditures arising for us in accordance with Sections 683, 670 of the BGB and Sections 830, 840, 426 BGB resulting from a product recall action conducted by us. We will endeavor to coordinate such product recall actions in regard to their content and scope in advance with our supplier to the greatest extent possible. More extensive legal claims on our part remain unaffected.

3. Our supplier is obligated to conclude and maintain a product liability insurance policy with a coverage sum of 5 million € per person / case of material damage. The supplier will verify such to us upon request.

§ 10 Tools – Production Facilities

1. Tools, installations and models that we provide for the supplier or that are manufactured for purposes of contract fulfillment and separately invoiced to us by the supplier remain or become our property. They are to be recognizably designated as our property by the supplier, carefully maintained, insured against all types of damages and used only for contractual purposes. In the absence of a deviating agreement, each of the contract partners bear half of the maintenance and repair costs of such objects. However, in so far as such costs are attributable to defects in objects manufactured by the supplier or to improper usage on the part of the supplier, its employees or other vicarious agents, then such costs are the sole responsibility of the supplier. The supplier is obligated to inform us without delay regarding all damages, not just significant dama-

to such objects. Upon request, the supplier is obligated to issue these objects in proper working order to us if such are no longer required for fulfillment of the contracts concluded with us.

2. Our supplier is obligated to insure tools and other production facilities belonging to us at the replacement value at the expense of the supplier (fire, water, theft). Our supplier already cedes to us now any possible indemnity claims from such insurance policies. We already accept this cession effective immediately.

3. Our tools and other production facilities, etc., are to be maintained and serviced by our supplier as required. The supplier is additionally obligated to have repair work done punctually at the supplier's expense.

4. These provisions are supplemented by the following regulations under XI.

§ 11 Retention of Title – Supplied Documentation and Objects

1. If we provide our supplier with parts or documentation, we retain the ownership of such. Processing and alterations by our supplier are conducted for us. In the event of the inseparable mixture of our reserved goods with objects not belonging to us, then we acquire co-ownership of the new object at the ratio of the value of the reserved item to the other mixed object(s) at the time of their mixture with one another. Should such mixture be conducted in a manner in which the item(s) not belonging to us is/are regarded as the main item(s), then the supplier herewith transfers proportional co-ownership to us.

2. Our supplier maintains our sole ownership or co-ownership for us with the proper professional care.

3. Retention of Title clauses from our supplier are fundamentally excluded.

4. All documentation or objects, in particular tools and production facilities that we provide to the supplier for bid tendering or for the completion of an order, may only be used for the purpose of such bid tendering and/or the completion of the delivery transaction. In particular, they may not be used for other purposes or reproduced. They also may not be made accessible to third parties. After completion of the order, such documentation and/or such items are to be returned to us free of charge. A right of retention does not exist.

§ 12 Confidentiality

1. Our supplier is obligated to maintain secrecy toward everyone regarding all information, illustrations, drawings, calculations and other documentation received from us, regardless of their nature. Such documentation and information may only be revealed to third parties with our prior written consent. The confidentiality obligation also applies after termination of this contract. It only expires if the provided documentation, drawings, calculations and other information become generally known.

2. Our supplier is furthermore obligated to maintain all non-publicized commercial and technical information or knowledge of which the supplier becomes aware through our business relationship as business secrets; in particular, models, patterns, samples, tools and similar objects may not be provided to or otherwise made accessible to unauthorized third parties. The reproduction of such objects, except within the framework of business operational necessities, is prohibited, subject to deviating regulations.

3. The supplier is obligated to use the knowledge and experience acquired in the process of completing our order solely for the completion of orders from our company and to refrain from making such known to third parties.

4. Any permissible subcontractors used by our supplier are to be obligated accordingly.

5. Our supplier may only advertise our mutual business relationship with our prior written consent.

§ 13 Jurisdiction, Legal Domicile

1. Exclusive legal domicile is our business headquarters. We are nevertheless also entitled to file a claim at the headquarters of our contract partner.

2. In the absence of a deviating agreement, the place of fulfillment is our business headquarters.

3. Our contracts are subject to the laws of the Federal Republic of Germany under exclusion of the UN Convention on Contracts for the Sale of International Goods (CISG).

4. The contractual language is German; should correspondence be conducted solely in the English language, then English is also the contractual language.