

General terms and conditions of purchase

of HARTAL H. Holzhauer GmbH & Co. KG, Fritz-Lürmann-Str. 21, 58638 Iserlohn

Status

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§ 1 Scope, form

(1) These general terms and conditions of purchase (GTCP) apply to all business relations with our business partners and suppliers ("sellers"). The GTCP shall only apply if the seller is an entrepreneur (§ 14 BGB (German Civil Code), a legal entity under public law or a special fund under public law.

(2) The GTCP apply in particular to contracts for the sale and/or delivery of movable goods ("goods"), irrespective of whether the seller manufactures the goods himself or purchases them from suppliers (§§ 433, 650 BGB (German Civil Code)). Unless otherwise agreed, the GTCP in the version valid at the time of the buyer's order or, in any case, in the version most recently communicated to him in text form, shall also apply as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.

(3) These GTPC shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of business of the seller shall only become part of the contract if and insofar as we have expressly agreed to their validity in writing. This consent requirement shall apply in any case, for example even if we accept the seller's deliveries without reservation in the knowledge of the seller's general terms and conditions of business.

(4) Individual agreements made with the seller in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTPC. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

(5) Legally relevant declarations and notifications of the seller in relation to the contract (e.g. setting of a deadline, reminder, withdrawal) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, remain unaffected.

(6) References to the validity of statutory provisions shall only have clarifying significance. Even without such a clarification, the statutory provisions shall therefore apply, insofar as they are not directly amended or expressly excluded in these GTPC.

§ 2 Conclusion of contract

(1) Our order shall be deemed binding upon written submission or confirmation at the earliest. With regard to obvious errors (e.g. typing and calculation errors) and incompleteness of the order including the order documents, the seller shall notify us prior to acceptance for the purpose of correction or completion; otherwise the contract shall be deemed to be not concluded.

(2) The seller is obliged to confirm our order in writing within a period of 5 days or, in particular, to execute it without reservation by dispatching the goods (acceptance). A delayed acceptance shall be considered as a new offer and requires our acceptance.

§ 3 Delivery time and delay in delivery

(1) The delivery time stated by us in the order is binding. If the delivery time is not specified in the order and has not been agreed upon otherwise, it shall be 3 weeks from the conclusion of the contract. The seller is obliged to inform us immediately in writing if he is unlikely to meet agreed delivery times - for whatever reason.

(2) If the seller does not perform his services or does not perform them within the agreed delivery period or if he is in default, our rights - in particular to rescission and compensation - shall be

determined in accordance with the statutory provisions. The regulations in paragraph 3 remain unaffected.

(3) If the seller is in default, we may - in addition to further statutory claims - demand lump-sum compensation for our damage caused by default in the amount of 1% of the net price per completed calendar week, but not more than 5% of the net price of the goods delivered late. We reserve the right to prove that higher damages have been incurred. The seller reserves the right to prove that no damage at all or only considerably lower damage has been caused.

§ 4 Performance, delivery, transfer of risk, default of acceptance

(1) Without our prior written consent, the seller shall not be entitled to have the performance owed by him rendered by third parties (e.g. subcontractors). The seller bears the procurement risk for his services, unless otherwise agreed in individual cases (e.g. limitation to stock).

(2) Within Germany, delivery shall be made "free domicile" to the place specified in the order. If the place of destination is not specified and nothing else has been agreed upon, the delivery must be made to our place of business in Iserlohn. The respective destination is also the place of performance for the delivery and any subsequent performance (obligation to be performed at the place of performance).

(3) The delivery shall be accompanied by a delivery note stating the date (issue and dispatch), the contents of the delivery (article number and quantity) and our order identification (date and number). If the delivery note is missing or incomplete, we are not responsible for any delays in processing and payment resulting from this. A corresponding dispatch note with the same content shall be sent to us separate from the delivery note.

(4) The risk of accidental loss and accidental deterioration of the item shall pass to us upon delivery at the place of performance. If acceptance has been agreed, this is decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly in the case of acceptance. If we are in default of acceptance, this is equivalent to handover or acceptance.

(5) The statutory provisions shall apply to the occurrence of our default of acceptance. However, the seller must also expressly offer us his performance if a specific or determinable calendar period has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the seller may demand compensation for his additional expenses in accordance with the statutory provisions (§ 304 BGB (German Civil Code)). If the contract relates to an unacceptable item to be manufactured by the seller (individual production), the seller shall only be entitled to further rights if we are obliged to cooperate and are responsible for the failure to cooperate.

§ 5 Prices and terms of payment

(1) The price stated in the order is binding. All prices include statutory value added tax, unless this is shown separately.

(2) Unless otherwise agreed in individual cases, the price shall include all services and ancillary services provided by the seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).

(3) The agreed price is due for payment within 60 calendar days from complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we pay within 14 calendar days, the seller grants us a 3% discount on the net amount of the invoice. In the case of bank transfer, payment is deemed to have been made on time if our bank receives our transfer order before the payment deadline; we are not responsible for delays caused by the banks involved in the payment process.

(4) We do not owe any maturity interest. The statutory provisions shall apply to default of payment.

(5) We shall be entitled to rights of set-off and retention as well as the defence of non-performance of the contract to the extent permitted by law. In particular, we are entitled to withhold due payments as long as we are still entitled to claims from incomplete or defective services against the seller.

(6) The seller has a right of set-off or retention only in the case of counterclaims which have become res judicata or are undisputed.

§ 6 Secrecy and retention of title

(1) We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. The documents are to be kept secret from third parties, even after termination of the contract. The obligation of secrecy shall only expire if and insofar as the knowledge contained in the documents provided has become generally known.

(2) The above provision shall apply mutatis mutandis to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the seller for production purposes. Such objects are - as long as they are not processed - to be stored separately at the expense of the seller and insured to an appropriate extent against destruction and loss.

(3) Any processing, mixing or combination (further processing) of provided items by the seller shall be carried out for us. The same shall apply if the delivered goods are processed by us so that we are considered the manufacturer and acquire ownership of the product at the latest with the processing in accordance with the statutory provisions.

(4) The transfer of ownership of the goods to us must take place unconditionally and without regard to the payment of the price. If, however, we accept an offer of transfer of title from the seller in individual cases, which is conditional on the payment of the purchase price, the seller's retention of title shall expire at the latest upon payment of the purchase price for the delivered goods. In the ordinary course of business, even before payment of the purchase price, we shall remain authorized to resell the goods with advance assignment of the resulting claim (alternatively, the simple reservation of title extended to the resale). All other forms of retention of title are thus excluded in any case, in particular the extended, the forwarded and the retention of title extended to further processing.

§ 7 Quality standards and documentation

(1) For all deliveries and services, the seller shall always comply with the recognized rules of technology, the safety regulations and the agreed technical data and quality standards.

(2) Changes to the delivery item require our prior written or textual consent. If certain quality standards have to be observed for the delivery of services, e.g. compliance with DIN or ISO standards, the seller shall be obliged to comply with these standards without our express notice.

(3) Irrespective of this, the seller shall always check the quality of the delivery items with regard to their condition and composition and provide evidence of this upon request.

§ 8 Use of tools and means of production and confidential documents of the orderer

(1) If the seller uses models, matrices, templates, samples, tools or other means of production made available by us, or if he uses confidential information for the production of the goods and services ordered by us, these may only be used for deliveries and services provided by the seller to third parties with the express, prior, written or textual consent of our company.

(2) Destruction or scrapping of the aforementioned documents and tools provided by us may only be carried out with our prior written or textual approval.

§ 9 Defective delivery

(1) The statutory provisions shall apply to our rights in the event of material defects and defects of title of the goods (including incorrect and short delivery as well as improper assembly, defective assembly, operating or instruction manuals) and in the event of other breaches of duty by the seller, unless otherwise provided for below.

(2) In accordance with the statutory provisions, the seller shall be liable in particular for ensuring that the goods have the agreed quality at the time of the transfer of risk to us. In any event, those product descriptions which - in particular by designation or reference in our order - are the subject matter of the respective contract or have been incorporated into the contract in the same way as these GTPC shall be deemed to be an agreement on quality. It makes no difference whether the product description comes from us, the seller or the manufacturer.

(3) Notwithstanding § 442 paragraph 1 sentence 2 BGB (German Civil Code), we shall be entitled to claims for defects without restriction even if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.

(4) The statutory provisions (§§ 377, 381 HGB (German Commercial Code) shall apply to the commercial duty to examine and give notice of defects with the following proviso: Our obligation to inspect is limited to defects which are openly apparent during our incoming goods inspection under external examination including the delivery documents (e.g. transport damage, wrong and short delivery) or which are recognisable during our quality control in a random sampling procedure. Insofar as acceptance has been agreed, there is no obligation to inspect. Otherwise, it depends on the extent to which an investigation is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Notwithstanding our duty to inspect, our complaint (notice of defect) shall be deemed to be prompt and timely if it is sent within 10 working days of discovery or, in the case of obvious defects, of delivery.

(5) Subsequent performance shall also include the removal of the defective goods and their reinstallation, provided that the goods have been installed in or attached to another object in accordance with their nature and purpose of use; our legal claim to reimbursement of corresponding expenses shall remain unaffected. The seller shall bear the expenses required for the purpose of inspection and subsequent performance even if it turns out that there was actually no defect. Our liability for damages in the event of unjustified requests for the removal of defects remains unaffected; however, in this respect we are only liable if we have recognized or grossly negligently failed to recognize that there was no defect.

(6) Without prejudice to our statutory rights and the provisions in paragraph 5, the following shall apply: If the seller does not fulfil his obligation to provide subsequent performance - at our discretion either by remedying the defect (rectification of defects) or by delivering a defect-free item (replacement delivery) - within a reasonable period of time set by us, we may remedy the defect ourselves and demand from the seller reimbursement of the necessary expenses or a corresponding advance payment. If the subsequent performance by the seller has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline need be set; we shall inform the seller of such circumstances without delay, if possible in advance.

(7) Otherwise, in the event of a material defect or defect in title, we shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we are entitled to compensation for damages and expenses in accordance with the statutory provisions.

§ 10 Supplier recourse

(1) In addition to claims for defects, we shall be entitled without restriction to our legally determined rights of recourse within a supply chain (supplier recourse according to §§ 445a, 445b, 478 BGB (German Civil Code)). In particular, we are entitled to demand exactly the type of subsequent performance (repair or replacement) from the seller that we owe to our customer in the individual case. Our statutory right of choice (§ 439 para. 1 BGB (German Civil Code)) is not restricted by this.

(2) Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses in accordance with §§ 445a paragraph 1, 439 paragraph 2 and 3 BGB (German Civil Code)), we shall notify the seller and request a written statement, giving a brief description of the facts. If a substantiated statement is not made within a reasonable period of time and no amicable solution is brought about, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the seller is responsible for providing proof to the contrary.

(3) Our claims arising from supplier recourse shall also apply if the defective goods have been further processed by us or another entrepreneur, e.g. by installation in another product.

§ 11 Producer liability

(1) If the seller is responsible for product damage, he shall indemnify us from third party claims to the extent that the cause is within his sphere of control and organization and he is liable himself in the external relationship.

(2) Within the scope of his obligation to indemnify, the seller shall reimburse expenses pursuant to §§ 683, 670 BGB (German Civil Code) which arise from or in connection with a third-party claim, including recall actions carried out by us. We shall inform the seller about the content and scope of recall measures - as far as possible and reasonable - and give him the opportunity to comment. Further legal claims remain unaffected.

§ 12 Limitation period

(1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise provided for below.

(2) Notwithstanding § 438 (1) No. 3 BGB (German Civil Code), the general limitation period for claims for defects is 3 years from the transfer of risk. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year period of limitation shall apply accordingly to claims arising from defects of title, whereby the statutory period of limitation for real claims for restitution of property of third parties (§ 438 paragraph 1 no. 1 BGB (German Civil Code) shall remain unaffected; furthermore, claims arising from defects of title shall in no case become statute-barred as long as the third party can still assert the right - in particular in the absence of a period of limitation - against us.

(3) The statute of limitations of the right of purchase including the above extension shall apply - to the statutory extent - to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB (German Civil Code) shall apply here, unless the application of the limitation periods of the law on sales leads to a longer limitation period in an individual case.

§ 13 Choice of law and place of jurisdiction

(1) These GTPC and the contractual relationship between us and the seller shall be governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the seller is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in Iserlohn. The same shall apply accordingly if the seller is an entrepreneur within the meaning of § 14 BGB (German Civil Code). In all cases, however, we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions or a prior individual agreement or at the general place of jurisdiction of the seller. Priority statutory provisions, in particular those concerning exclusive jurisdiction, shall remain unaffected.

Iserlohn, 09.04.2020