

## **General Terms and Conditions of Purchase**

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

(as at 09.04.2020)

### **§ 1 Scope of application, form**

- (1) These general terms and condition of purchase will apply to all business relationships with our business partners and suppliers (referred to as „seller“). These terms and conditions only apply if the seller is a business owner (§14 BGB), a juridical person of public law or a special fund under public law.
- (2) These general terms and condition of purchase will, in particular, apply to the sale of and/or delivery of movable goods irrespective of the fact whether the seller produces the goods himself or buys them from a subcontractor (§§ 433, 650 BGB). Provided that no other agreement has been made, these general terms and conditions of purchase, in the latest version at the point of order placement or the latest version regarding a framework agreement for similar contract, will apply respectively and without the need of notification of such, in each individual case.
- (3) These general terms and condition of purchase will apply solely. Divergent, adverse or complementary general terms and conditions of business of the seller will only become an integral part of the contract in such a case where we have explicitly confirmed the legitimacy in written form. A consent requirement is necessary in any case, for example, also if we accept a shipment from the seller unconditionally despite being aware of the seller's general terms and conditions of contract.
- (4) In a given case, agreements made with the seller (including collateral agreements, supplements and changes), in any case have precedence over these terms and conditions. Our written confirmation or a contract is determinative for the content of such agreements, subject to counterevidence.
- (5) Legally relevant declarations and notifications of the seller regarding the contract (i.e. deadlines, payment reminders, termination of contract) must be submitted in written form (i.e. letter, email, telefax). These shall not have an effect on legal formal requirements, especially in such a case that the legitimation of the offeror is in any way doubted.
- (6) Reference to the validity or application of legal requirements serves the purpose for the avoidance of doubt. Legal requirements apply for the clarification of such cases to the extent that they are not instantaneously changed or explicitly excluded in these terms and conditions of purchase.

### **§2 Conclusion of contract**

- (1) Our order shall become binding at the point when it placed or confirmed in written form. The seller will inform us of any obvious mistakes (i.e. calculation, written mistakes) and incompleteness of the order including order documentation, for the purpose of correction or for correct completion: otherwise the contract is not classed as fulfilled and complete.
- (2) The seller is committed to confirm our order in written form within 5 days. Particularly the dispatch of the goods shall be carried out without delay (acceptance). A delayed acceptance will be classed as a new offer and shall require our agreement.

### **§3 Delivery time & delayed delivery**

- (1) The defined delivery date in our order is binding. If the delivery date is not defined in the order, this shall be 3 weeks as from the contract date. The seller is committed to inform us (HARTAL), immediately if the agreed delivery date/time, no matter what the reason may be, that the confirmed delivery date can not be realized.
- (2) Should the seller not render the agreed service or not fulfil delivery/supply within the agreed delivery time, HARTAL shall reserve the right, particularly regarding cancellation of the order or indemnification, to make claims in accordance with legal requirements.
- (3) In addition to legal claims, HARTAL can claim a liquidated compensation of our damages caused by the delay for an equivalent to 1% of the net price per complete calendar week, not exceeding a total more than 5% of the net price of the delayed goods. We reserve the right to prove that higher damages have been incurred. The seller reserves the right to prove that either no or less damages have been incurred.

### **§4 Performance, delivery, passing of risk, default in acceptance**

- (1) The seller is not permitted to allow a third party (i.e. subcontractor), to carry out the agreed service without prior written consent from HARTAL. The seller shall carry the procurement risk for this performance/service, if a further agreement has been made with both parties (i.e. limited stock).
- (2) The delivery take place "free of charge" to the location within Germany as defined in the order. In such a case that a delivery location is not defined in the order, delivery shall take place to our headquarter in Iserlohn. The respective destination is also the place of delivery for the goods and any supplementary performance which may arise (any obligation to provide).
- (3) The consignment shall be accompanied by a delivery note including details like the date (issue and dispatch), content of the consignment (item no. and quantity), as well as our order number and order identification/reference. Should the delivery note be missing, we reserve the right to refuse responsibility for any resulting delays in processing or payment delays. Besides the delivery note, the seller is committed to send an advice of delivery including the same details as the delivery note, separately.
- (4) The risk of a possible loss or worsening of a case falls into our responsibility from the point after the handover of goods at the place of delivery. For the case that a handover has been agreed, this point in time applies to the passing of risk. In other respects legal requirements and factory contracts laws apply at the time of a handover. A handover or acceptance of goods is equivalent in the case of a default of acceptance from our side.
- (5) Legal requirements apply where the beginning of our default of acceptance is concerned. The seller shall also explicitly offer us his performance if action or involvement by us is necessary (i.e. ordering of material), has been agreed for a defined or determinable calendar time. Should we get into a default of acceptance, the seller can place a claim for additional expenditure, in accordance with §304 BGB. Should the contract refer to an object to be manufactured or unwarrantable object (manufactured to specification), the seller only reserves further rights if we have committed to collaboration and are responsible to cooperate.

### **§ 5 Prices and terms of payment**

- (1) The price defined in the order is legally binding. All prices are inclusive of value added tax if not declared separately.

(2) Provided that no other agreement has been made, in individual cases, the price includes all goods and services of the seller (i.e. assembly, installation) as well as all other expenses like regular packaging, transport costs including possible insurances for transport and liability insurance.

(3) The agreed price is due for payment within 60 calendar days after complete delivery and services (and if applicable, after an agreed acceptance/inspection) and after the receipt of a correct invoice in according to all agreed terms and conditions. The seller shall grant us a discount of 3% on the net price, if the invoice is settled within 14 days after receipt. Referring to bank remittances, payment is classed as paid in time as soon as the notice for settlement has been received by our bank within the agreed payment deadline: we are not responsible for delays caused by banks during the payment process.

(4) We shall not owe maturity interest. Legal regulations shall apply in the case of delayed payment.

(5) We reserve the right of set-off and retention within the legal scope of application as well as the objection of non-fulfilled contract terms. In particular, we reserve the right to withhold payment for as long as an order or service is incomplete or in the case of inadequate services or goods from the seller are outstanding.

(6) The seller has a right of set-off or retention only in the case of counterclaims that have been legally established or are undisputed.

## **§ 6 Confidentiality and reservation of ownership**

(1) We reserve the property rights and copyrights on illustrations, drawings, calculations, realization instructions, product descriptions and other documentation. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. The documents must be kept secret from third parties, even after termination of the contract. The obligation of secrecy does not expire until 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 (i.e. software, finished products and semi-finished products), as well as to tools, templates, samples and other items which we provide the seller with for production. 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 objects by the seller is produced for us. The same applies to further processing of the delivered goods by us, so that we are considered the manufacturer and with further processing in accordance with the legal regulations therefore acquire ownership of the product.

(4) The transfer of ownership of the goods to us must be unconditional and has no regard to the settlement of the price. However, in individual cases, we will accept an offer from the seller, the reservation of title of the seller expires with the purchase price payment for the delivered goods at the latest. We also reserve the right in the ordinary course of business, prior to payment of the purchase price for the resale of the goods with advanced assignment of the resulting claim (alternatively, the simple and extended to reselling retention of title). In any case, all other forms of retention of title are herewith excluded, the retention of title, in particular the extended, the forwarded and the further processing extended retention of title.

## **§ 7 Quality standards and documentation**

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

(2) Changes to the object of delivery require our prior written or textual granted consent. If certain quality standards are specified for the delivery of services to be complied with, e.g. compliance with DIN or ISO standards, the seller shall be committed to comply without explicit notice from us.

(3) Irrespective of this, the seller shall be responsible for the quality of the delivered items with regard to quality and composition must always be checked and proof supplied upon request.

#### **§ 8 Use of tools and production equipment as well as confidential documents of the purchaser**

(1) If the seller uses models, matrices, templates, samples, tools or other means of production provided by us, or uses the tools for other means of production ordered by us for goods and services or discloses confidential information, this must be explicitly stated by us, with prior written or textual consent of our company for deliveries and services which are provided by the seller to third parties.

(2) Destruction or scrapping of the above-mentioned equipment provided by us is not permitted. Documents and tools may only be used after prior written or textual permission has been granted stating the approval of our company.

#### **§ 9 Defective delivery**

(1) For our rights in case of material defects and defects of title of the goods (including wrong and short delivery as well as improper assembly, defective assembly, instruction manual or operating instructions) and other breaches of duty by the seller, statutory provisions will apply, unless otherwise specified below.

(2) In accordance with the statutory provisions, the seller is liable, in particular, for the fact that the goods transferred to us have the agreed quality. As an agreement on the quality, product descriptions apply in any case, which - in particular by designation or reference to our order, are the subject of the respective contract or are incorporated in the same way as these general terms and conditions. It makes no difference whether the product description is from us, from the seller or from the manufacturer.

(3) Notwithstanding § 442 Para. 1 S. 2 BGB, we shall be entitled without limitation to claim for defects even if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.

(4) For the commercial duty of examination and notification of defects the legal regulations apply (§§ 377, 381 HGB) with the following proviso: Our duty of inspection is limited to defects, which are checked during our incoming goods inspection under external examination including the delivery documents are openly displayed (e.g. transport damage, incorrect and short delivery), or are identifiable during our quality control by means of random sampling. As far as an acceptance is agreed, there is no obligation to examine the goods. For the rest, it depends on the extent to which investigation, taking into account the circumstances of the individual case according to proper business, is feasible. Our obligation to report defects discovered at a later point in time, remains untouched.

Irrespective of our duty to examine, our complaint (notice of defects) shall apply in any case as immediate and timely if they are received within 10 working of being noticed or reported, or, in the case of obvious defects, from the point of despatch of the goods.

(5) Subsequent performance shall also include the removal of the defective goods and their reinstallation, provided that the goods, according to their nature and purpose of use, into another object or fixed to another part - our legal claim for replacement of corresponding expenses remain unaffected. The seller shall bear the expenses even if it turns out that there is no defect in the goods regarding the information required for the purpose of testing and subsequent performance, if it is established that there is no actual defect in the goods. Our liability for damages in the event of unjustified requests for rectification remains unaffected; in this respect, however, we shall only be 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 supplementary performance - after our choice to rectify the defect (rectification of defects) or by delivery of a defect-free item (replacement delivery) - within a timeframe set by us, we may remedy the defect ourselves and reimbursement by the seller shall account for the necessary expenses or a corresponding advance payment. If the subsequent performance by the seller has failed or is unreasonable for us (e.g. because of special urgency, endangerment of the operational safety or threatening disproportionate damages), there is no need for a deadline; we shall inform the seller immediately, if possible in advance.

(7) In other respects, we are entitled to claim damages in the event of a material defect or defect of title in accordance with the statutory reduction of the purchase price or to withdraw from the contract. In addition, according to statutory provisions, we have the right to claim compensation for damages and expenses.

### **§ 10 Supplier recourse**

(1) Our legally determined rights of recourse within a supply chain (supplier recourse in accordance with §§ 445a, 445b, 478 BGB) shall, in addition, entitle us to claims for defects without restriction. In particular, we are entitled to determine the exact type of subsequent performance (rectification of defects or replacement delivery) and to demand this from the seller we are committed to supply to our customers individual cases. Our legal right of choice (§ 439 Abs. 1 BGB) is not restricted by this.

(2) Before we accept a claim for defects asserted by our customer (including reimbursement of expenses in accordance with §§ 445a para. 1, 439 para. 2 and 3 BGB (German Civil Code), acknowledge or fulfill a claim, we will inform the seller and request a written statement regarding the facts of the case. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is brought about, then the sum actually granted by us shall apply, regardless of the defect claim as owed to our customer. In this case the seller is responsible for the evidence to prove the contrary.

(3) Our claims arising from supplier recourse shall also apply if the defective goods have been damaged by us or another business, e.g. through the use together with another product (incorporation into another part).

### **§ 11 Producer liability**

(1) If the seller is responsible for a product damage, he shall indemnify us in this respect from claims made by a third party, if the cause is within his sphere of control and organization and he himself is liable in a third party relationship.

(2) Within the scope of his obligation to indemnify, the Seller has to reimburse expenses pursuant to §§ 683, 670 BGB, which arise from or are connected to a claim by third parties, including goods returns carried out by us. We will inform the seller about the content and scope of recall measures - as far as possible and reasonable - giving him the opportunity to comment. Further legal claims remain unaffected.

### **§ 12 Limitation Period**

(1) Mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise specified in the following.

(2) Notwithstanding § 438 para. 1 No. 3 BGB, the general limitation period for claims for defects is 3 years from transfer of risk. As far as an acceptance is agreed upon, the statute of restrictions shall expire from the time of acceptance. The 3-year period of limitation shall also apply accordingly to claims arising from defects of title, whereby the statutory period of limitation for claims for restitution in rem of third parties

(§ 438 para. 1 No. 1 BGB) remains unaffected; Claims arising from defects of title shall furthermore be time-barred in no case, the third party has the right - especially in the absence of limitation - for claims against us.

(3) The periods of limitation of the right of purchase including the above extension apply - within the legal scope - for all contractual claims for defects. As have the right for non-contractual claims for damages, the regular statutory provisions for damages shall apply - (§§ 195, 199 BGB), if the application of the statute of limitations of the purchase right in individual case does not lead to a longer period of limitation.

### **§ 13 Choice of law and place of jurisdiction**

(1) The law of the Federal Republic of Germany under exclusion of international uniform law, in particular UN sales law, shall apply to these Terms and Conditions of Purchase and the contractual relationship between us and the seller.

(2) If the seller is a merchant as defined by the German Commercial Code, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from the contractual relationship is our registered office in Iserlohn, exclusively, and also internationally. The same applies if the seller is an entrepreneur as defined in § 14 BGB. We do however, have the right to institute legal proceedings at the place of delivery performance or delivery obligation in accordance with these terms and conditions or, as the case may be, referring to a prior individual agreement or at the general place of jurisdiction of the seller. Priority statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

Iserlohn, 2020 April 4<sup>th</sup>