



mit uns **technisch überlegen**

General Terms and Conditions of Purchase

Heinrich Georg GmbH Maschinenfabrik

Section 1 Scope

(1) These terms and conditions apply exclusively to all our orders and requests for quotation. They also apply – in the respective then current version – to all future business relations with the Supplier, even if they are not explicitly agreed upon for each transaction. Any other terms and conditions will not become part of the contract, even if we do not reject them explicitly while being aware of them.

(2) If reference to Incoterms is made in contractual agreements, the Incoterms 2010 shall apply.

Section 2 Offers made by the Supplier

Offers made by the Supplier shall be at no cost to ourselves and shall be binding on the Supplier. The Supplier's offers shall be based on the exact quantities and condition of goods as specified in our requests for quotation and shall expressly point out any deviations there from otherwise.

Section 3 Orders

(1) No orders or agreements are binding unless we issue or confirm them in writing, via facsimile or e-mail. Should any orders or agreements be made orally or by telephone, we must confirm them in writing subsequently for them to be binding, as must any oral ancillary agreements or amendments to the contract. The same principle shall also apply to any deliveries or services that are additionally agreed. Our silence to suggestions, requests, etc. made by the Supplier shall by no means be interpreted as our consent to the Supplier's suggestion.

(2) Any of our orders that the Supplier wishes to accept need to be confirmed in writing by the Supplier. If we do not receive the confirmation of order within two weeks after receipt of the order by the Supplier, we are no longer bound by the order. In case of informal initiation of business, our written order shall qualify as a commercial letter of confirmation.

(3) We do not recognise any order confirmations that vary from our order, even if we do not reject them in writing.

(4) We may demand that changes be made to the goods to be supplied and/or the delivery dates also after the conclusion of the contract where this is reasonable for the Supplier. If contracts shall be amended accordingly, the effects on both sides must be taken reasonably into account, particularly in terms of additional or reduced costs and with regard to the delivery dates.

(5) If the Supplier realises or should realise as an expert in his field that an order is incomplete, or that the purpose pursued by the order cannot be achieved by this delivery, he must inform us accordingly without undue delay and in detail in writing.

Section 4 Delivery periods

(1) The delivery periods and dates specified in our order are bindingly agreed unless the Supplier has explicitly rejected these in writing or we have agreed other dates with the Supplier in writing. If we did not specify delivery dates in our order, the delivery dates specified by the Supplier are bindingly agreed. Whether delivery dates or deadlines are met depends on when goods reach our designated place of use and/or on the time of successful acceptance (*Abnahme*) where acceptance is required.

(2) The Supplier does not have the right to make partial deliveries or provide partial performance.

(3) Should the Supplier realise that he cannot meet the agreed delivery dates, he must notify us accordingly without undue delay in writing, stating the reasons and how long the delay is likely to last.

(4) If we accept supplies or services which are late, this does not amount to waiving any claims or rights.

(5) Should the Supplier be unable to meet agreed deadlines for reasons he is responsible for, we may, after expiration of a reasonable period of grace set by us, demand damages instead of delivery or procure substitute goods from third parties at the Supplier's expense and/or rescind the contract. Should deliveries be delayed repeatedly, and we issue a prior warning letter in writing, we may also revoke any or all orders not performed at that time with immediate effect.

(6) If the Supplier is unable to comply with the agreed deadline or delivery date due to force majeure (e.g. strike at the Supplier, civil unrest, war, fire, flooding) or due to unforeseeable and unavoidable disruption of his own production operations, the delivery period shall be extended by the duration of the disruption. The Supplier may appeal to the aforementioned grounds only on the condition that he informs us immediately about the hindrance and its prospective duration. If the disruption is more than temporary in duration and acceptance of Supplier's late performance is unreasonable for us due to the delay, we have the right to withdraw from the contract

in respect of the part which has not yet been fulfilled. In case of a partial performance, we have the right to withdraw from the contract in its entirety if we have no interest in the partial performance.

(2) Unless the preceding regulations of this Section 4 provide otherwise, the statutory provisions shall apply as regards the Supplier's liability for delays.

Section 5 Prices, dispatch, packaging, transfer of risk and title

(1) Prices are fixed once agreed, and include the costs of packaging, freight and transport to our specified delivery address and/or point of use. Where the contractual agreement requires us to bear the cost of transport, the least expensive manner of transport must be chosen.

(2) Dispatch is at the Supplier's risk. The risk of all kinds of deterioration, including loss by accident, remains with the Supplier until delivery to our specified delivery address and/or place of use. We are 'SVS/RVS Waiver Customer' (SVS/RVS-Verzichtskunde). If the Supplier nevertheless takes out transport insurance, any costs incurred through such insurance shall be borne by the Supplier.

(3) Title to goods supplied passes to us when they are paid for. We do not accept any extended or prolonged retention of title on the Supplier's part.

(4) The Supplier is obliged to avoid unnecessary packaging so as to minimise our disposal costs.

Section 6 Warranty

(1) The Supplier's warranty obligations are governed by the statutory provisions unless otherwise stipulated in these terms and conditions or in any other written agreement between ourselves and the Supplier. For the avoidance of doubt: the Supplier's liability for damages is solely subject to Section 7 below.

(2) The Supplier shall ensure that all supplies and services he provides are state-of-the-art, comply with relevant legal requirements and instructions and guidelines of the competent authorities, mutual indemnity associations and professional associations, and meet the functions and specifications required. This applies accordingly to the compliance with all the data and quality standards as stated in our orders, drawings and/or supply specifications which define the target condition of the goods or services to be provided by the Supplier. Should these specifications have to be varied in exceptional cases, the Supplier must obtain our prior consent to this in writing. This consent does not affect the Supplier's warranty and guarantee obligations. Should the Supplier have any concerns as to our desired manner of performance, he must inform us in writing without undue delay.

Unless we agree with the Supplier on a different target condition of the goods to be provided by the Supplier, the Supplier's product information (e.g. in catalogues) shall be deemed agreed upon as minimum specifications.

(3) We are obligated to inspect the supplied goods and to lodge complaints about defects only to the extent stipulated in the statutory regulations. If we have a duty under said regulations to complain of defects, the complaint is deemed to be on time if it is lodged with the Supplier within 14 working days after delivery of the goods, in the case of obvious defects, or within 14 days after a hidden defect has been discovered or could have been discovered by due inspection.

(4) The Supplier shall remedy any defects in supplies or services notified to him by us during the warranty/guarantee period, which includes failing to meet guaranteed data and the absence of warranted specifications and quantities, on our request without undue delay and free of charge. This includes all ancillary costs, repair or replacement of defective components, which is at our sole choice, without prejudice to any further or other claims in law, and, more particularly, the right to rescind, demand a reduction of the price and/or damages.

(5) Should the Supplier fail to meet his guarantee or warranty obligations within a reasonable respite set by us, due to fault on his part, we may have the measures necessary to remedy the defect be carried out by ourselves or by third parties, at the Supplier's risk and expense, without prejudice to his warranty or guarantee obligations. In urgent cases, we may remedy defects ourselves, or engage a third party to do so at the Supplier's expense, having consulted the Supplier. Where required to ensure that we can supply our own customers on time or if there is a risk of exceptionally high losses, we may remedy minor defects ourselves without consulting the Supplier beforehand and without prejudice to the Supplier's guarantee or warranty obligations.



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[6] The warranty period is 24 months unless explicitly agreed otherwise in writing with the Supplier, or a longer warranty period is stipulated by law for the product to be supplied by the Supplier. The warranty period begins no earlier than the date when the goods have been handed over to us or to the third party specified by us, at our designated delivery address or point of use. If acceptance procedures are required, the warranty period begins on the date of acceptance as stated in our written declaration of acceptance. The warranty periods shall be extended for supplied parts by the duration that the defective item cannot be used in the intended manner on account of the defect. In the event of subsequent fulfilment (Nacherfüllung), the original warranty period shall begin anew for the replacement or newly delivered parts. [7] Acknowledgement of receipt or acceptance of supplied goods does not release the Supplier from his warranty obligations, even if we are aware of a defect. [8] Approval of drawings submitted to us by the Supplier does not release the Supplier from his warranty obligations. [9] Without our express written approval the Supplier may not alter the goods once contracts are signed or during the delivery period, even the most minor changes, and even if our specifications, dimensions, analyses, formulae, production methods etc. as prescribed and/or agreed with the Supplier in each case remain unchanged. No such variations may be made until we have given our consent in writing. Should the Supplier fail to meet these obligations through fault on his part, he will be liable for all our costs and those of third parties incurred in examinations, obtaining expert opinions, additional calculations, reprocessing, replacement supplies etc.

Section 7 Liability

[1] Except as otherwise provided in Section 7 para. 3 and 4 below, the Supplier is liable in accordance with statutory provisions for damages caused by wilful action or gross negligence, damages for injuries to life, body or health and for breaches of guarantees given. For any other breach of duty the Supplier's liability is limited as stipulated in Section 7 para. 2 below and for consequential damages excluded. For the avoidance of doubt: the Supplier's liability under any other regulation of these General Terms and Conditions of Purchase – e.g. according to Section 10 para. 1, 2, 4 and Section 11 para. 5 – remains unaffected therefrom. [2] For any breach of duty for which the Supplier's liability is not unlimited in accordance with Section 7 para. 1 above, the Supplier's liability is limited as follows:

- The Supplier is not liable for lost profit or stop of production suffered by us.
- Furthermore, the Supplier's liability is limited to the price for such delivery or performance which is the basis for our claim for damages. For damages exceeding said price, the Supplier shall, in addition, only be liable insofar as such damage is covered by the Supplier's insurance.

This limitation of liability does not affect the Supplier's obligation to hold us harmless from any third party claims as stipulated in para. 3 of this Section 7.

[3] The Supplier will indemnify us against any and all claims, on whatever grounds in law, which third parties may bring against us based on defects of the Supplier's goods, and will reimburse our necessary costs incurred in asserting our rights, including but not limited to costs of reasonable legal representation. The afore-said reimbursement also includes the costs of any precautionary recall campaign insofar as such campaign is in our customers' interests or to protect third parties according to our due discretion. The Supplier has to reimburse us for the costs of such recall campaign even after expiry of the warranty period, if we have carried out the recall due to a respective directive issued by public authorities or in order to prevent risks to the life and health of product users or external third parties (*innocent bystanders*).

[4] The statute of limitation of claims for damages which result from a faulty delivery or performance is governed by Section 6 para. 6 of these General Terms and Conditions of Purchase *mutatis mutandis*.

[5] The Supplier will also insure himself against all product liability risks with sufficient cover and furnish proof of that insurance to us on demand.

Section 8 Third-party rights

[1] If royalties are payable for contractual use of the supplied goods, also in combination or interaction with other items, these royalties shall be borne by the Supplier.

[2] The Supplier warrants that all goods supplied – also in combination or interaction with other items – are free of intellectual property rights of third parties and, in particular, that neither the supplies or services and/or using the goods supplied infringe any patents or other third party intellectual property rights within the Federal Republic of Germany.

[3] If third-party intellectual property is infringed by delivery or performance by the Supplier, the Supplier is obliged first and foremost to ensure that the infringement is remedied, either by procuring the rights or by modifying the supplied item or by supplying a modified item, providing this is reasonable and acceptable for us.

[4] Not affecting sub-section [3] above, the Supplier will indemnify us against claims by third parties for any breaches of intellectual property rights and will bear any and all costs we incur on this account. This afore-said obligation does not apply if we conclude agreements with the third party in respect of such claims, in particular if we conclude a settlement agreement, without the Supplier's consent.

[5] Sub-sections [1] – [4] of this Section 8 shall apply accordingly for such countries to which we export the goods delivered to the Supplier's knowledge.

Section 9 Invoices and payments

[1] Invoices shall be issued no earlier than the date on which the product, including all contractually relevant documents, is delivered. Invoices must be sent separately by post; they may not be enclosed with the goods.

[2] Invoices must correspond to our order in their wording and as regards the numbering of the goods. Any additional services and supplies must be separately itemised in the invoice with a reference to our respective prior written order.

[3] Unless otherwise agreed, payments shall be made at our option within 60 days net cash without deductions or within 14 days with deduction of a 3% discount, provided that we have no complaints about the delivery or service performed. The applicable criterion for the term of payment is the date of our receipt of the proper invoice and all requisite documents (e.g. material inspection certificate). Delays in payment due to the Supplier failing to issue invoices in accordance with this Section 9 are the responsibility of the Supplier.

[4] Even if we were aware, at the time of paying the purchase price, that the supplied goods are defective, settlement of the invoices may not be construed to mean that we waive any claims arising from the goods being defective.

[5] We may set off amounts due to the Supplier against any amounts due to our affiliated companies. The Supplier may not set off his own claims unless his counterclaims are legally established, are undisputed or are acknowledged by us. He may not exercise any right of retention unless his counterclaim is based on the same contractual relationship.

[6] The Supplier may not, without our prior consent in writing (which we will not refuse unreasonably) assign his claims against us to any third parties or engage any third parties to collect them. If the Supplier for his own part is supplied subject to extended reservation of title (*verlängerter Eigentumsvorbehalt*), our consent for the purposes of the preceding clause is deemed to be given. Should the Supplier in violation of sentence 1 hereof, assign his claims to a third party without our consent, that assignment will be binding nonetheless, although we may pay, in our own election, the Supplier or the third party with exonerating effect.

Section 10 Goods supplied by us

[1] The Supplier shall examine any goods supplied by us without undue delay upon delivery by us or by our supplier and, should there be a defect, notify us without undue delay. Should the defect become apparent at a later point in time, such notification shall be made without undue delay after the defect has been discovered. If the Supplier fails to perform these obligations, he must indemnify and hold us harmless from and against any damage or losses resulting from such failure (e.g. forfeiture of warranty claims against our own supplier). Furthermore, if the Supplier breaches the aforesaid examination and notification duties, he will be liable to us for any defects of the goods he supplies to us, even where such defects are due to defects of the goods supplied by us.

[2] The Supplier shall mark all goods supplied by us as our property and store these goods separately from other products so that the goods supplied by us can be identified as such beyond any doubt for the entire duration of their storage and, where technically feasible and reasonable for the Supplier, also during their processing. The Supplier is liable to us should any goods we provide to him be lost or damaged. The Supplier shall insure the goods provided by us against fire, water, theft and similar causes of loss at his own expense at minimum at their market value. The Supplier shall inform us without undue delay should any of the goods supplied by us be impaired in law or fact.

[3] All processing of materials provided to the Supplier by us shall be performed for us. All such materials remain our property while being worked and processed. The parties agree that we shall acquire co-ownership in the products made using materials or components provided by us in proportion of the value of the goods supplied by us to the total value of the product. The same applies should we lose title by way of mixing or mingling.

[4] If we incur losses due to the Supplier acting in breach of his duties as stipulated in sub-sections [2] – [3] above, the Supplier shall compensate us for such losses, unless the Supplier is not responsible for the breach of duty.



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Section 11 Drawings/documents, intellectual property rights

(1) All documents, drawings, samples, etc. that we provide to the Supplier for a quote or for production of the delivery items shall remain our property; we reserve our copyright and all other intellectual property rights in such items. The Supplier is not authorised to use any information, ideas or other know-how contained therein for purposes other than the preparation of a quote for us or the performance of the contract – unless the information, ideas or other know-how were known to the Supplier already before he received them from us or the Supplier lawfully obtained them otherwise at a later point in time. Such

documents, drawings, samples etc. along with all copies thereof, shall be handed over to us without delay at our request, and of the Supplier's own accord if no order ensues, unless the Supplier has a justified interest in retaining individual documents. Sentences 1 and 2 above shall apply accordingly for the drawings and other documents that are drafted by the Supplier in accordance with our special instructions.

(2) The Supplier shall treat the documents referred to in sub-section (1) above as well as all other received information relating to the order or to the execution of the order as business secrets and shall treat them accordingly as confidential. We shall treat any documents and information that we receive from the Supplier in connection with the order or execution of the order as business secrets if we are explicitly notified of the need to keep them secret. The duty to observe secrecy shall not apply if the content of the documents are facts in the public domain or which later enter the public domain without this being due to a breach of duty by the Party to maintain secrecy.

(3) The Supplier shall provide us, with his offer, with any essential drawings and documents that are required to discuss the technical details of the goods to be delivered. However, such discussion or other form of involvement in design work on our part shall not release the Supplier from his exclusive responsibility for the product or from any ensuing warranty or other obligations.

(4) The Supplier shall provide us with all drawings and documents that we or our customers require to install, operate, service, maintain or repair the supplied item, in due time – at the latest on delivery – of his own accord and free of charge.

(5) If we incur losses due to the Supplier acting in breach of his duties as stipulated in this section 11, the Supplier shall compensate us for such losses, unless the Supplier is not responsible for the breach of duty.

Section 12 Securing of Supply

(1) If the delivery items are goods especially developed for us, in particular if we have directly or indirectly contributed to the costs of development and/or the manufacturing materials, the Supplier warrants to supply us at all times with the delivery items according to our needs and to accept orders from us as long as we require the delivery items. We will provide the Supplier in good time with the anticipated supply volume deducted from the forecasts of customer requirements. Unless explicitly agreed otherwise, the Supplier shall not have the right to a specific quantity being bought by us.

(2) To secure the production of spare parts at us, the Supplier hereby undertakes to ensure the supply of the delivery items required in connection with said production for at least 15 years after the end of manufacturing of our products in which the delivery items are integrated. If the Supplier realises within this period that it will no longer be possible to ensure this, the Supplier must inform us about the end of the supply possibility without undue delay and, if the Supplier is unable to offer us any other reasonable possibility of supply, to provide us with the opportunity of procuring an all-time requirement 12 months before the production is stopped.

Section 13 Quality assurance and control

(1) The Supplier must implement an appropriate state-of-the-art quality assurance system, and must provide us on request with proof of such implementation. In case we should deem this to be necessary, the Supplier shall conclude with us a quality assurance agreement to this effect.

(2) If quality checks have to be performed as regards the delivery items, the personal costs of acceptance shall be borne by us and the material costs by the Supplier unless explicitly agreed otherwise.

(3) The date of completed production shall be stated in a binding manner no later than one week before acceptance procedures are conducted.

(4) If a second visit by the Quality Officer is necessary due to established defects, the personal costs for such checks shall be borne by the Supplier, too. The same principle shall apply if the supplied item is not presented to the Quality Officer on the date specified in sub-section (2) above.

Section 14 Correspondence

Our order number and the order date must always be stated in letters, dispatch notes, invoices and other correspondence. If several orders are made, each order must be treated separately in correspondence.

Section 15 General provisions

(1) If the Supplier is unable to meet his obligations on time when due or stops payments or insolvency proceedings (including preliminary insolvency proceedings) are instituted against the Supplier's assets, we shall have the right to rescind the contract with respect to such part as has not yet been performed by the Supplier. This rescission right must be exercised by us within one month after we obtain knowledge of any of the aforesaid circumstances.

(2) These terms and conditions and all legal relations between us and the Supplier are governed by the laws of the Federal Republic of Germany, under exclusion of the Vienna Convention on Contracts for the International Sale of Goods (CISG).

(3) If the Supplier is a registered merchant or – without being registered – has full commercial capacity within the meaning of the German Commercial Code, the sole place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship is Siegen, Germany. However, we also have the right to sue the Supplier at any other place of competent jurisdiction.

(4) The place of performance for all contractual obligations is Kreuztal, Germany.

(5) Should any provision of these terms and conditions, or any provision in other related agreements be or become invalid or unfeasible, this shall have no impact on the validity of all other provisions or agreements. The invalid or unfeasible provision shall be replaced by one that comes closest to the business intentions the Parties had when concluding the affected agreement. The same principle shall apply in the case of a contractual loophole.