



Terms and Conditions of Purchase

1. Scope of applicability

- 1.1 These Terms and Conditions of Purchase shall apply to all our orders (supplies and services) exclusively and become an integral part of the contract once our purchase order is accepted or carried out. We do not accept such terms and conditions of the Supplier in any form as may be of contradictory or differing content unless we have explicitly approved their applicability in written form. Any reference in our orders to the Supplier's quotation does not effect our acceptance of his terms and conditions. Our Terms and Conditions of Purchase shall also apply if we accept the delivery of the Supplier without reservation being aware of the existence of terms and conditions of the Supplier that are of contradictory or differing content.
- 1.2 All such agreements as shall be established between ourselves and the Supplier in conjunction with the contracts of purchase or contracts for work and services shall have been put in writing in said contracts of purchase or contracts for work and services, in the present Terms and Conditions of Purchase and in our quotations.
- 1.3 Verbal collateral agreements shall only become binding if confirmed in writing by us.
- 1.4 Provisions prevailing under law shall apply with clarification in respect of same in so far they have not been directly amended or explicitly excluded under the present Terms and Conditions of Purchase.

2. Conclusion of contract and quotation documentation

- 2.1 Our quotations (orders) are binding unless we have specifically confirmed their having subject to confirmation and non-binding character and will be submitted via fax or Electronic Data Interchange (EDI) or e-mail.
- 2.2 The Supplier shall be obliged and undertake to draw our attention prior to acceptance to obvious errors (e.g. clerical and calculation errors) and incompleteness of the order and/or order documentation to enable correction and/or completion to be carried out.
- 2.3 The Supplier shall be obliged to confirm our order in writing within a period of 14 calendar days. Acceptance furnished following expiration of deadline, additions or amendments to an order shall be taken to constitute a new quotation and shall require our written acceptance.
- 2.4 We shall reserve all such title and copyright as shall attach to images, drawings, calculations and any other documentation. They may not be rendered accessible to third parties without our express written approval. They shall be used exclusively for production based on orders originating from ourselves, and they shall be returned without being asked for following completion of the order. They are to be kept secret in any and all dealings involving third parties, in which regard the provisions pertaining to observance of secrecy per 6.3 through 6.6 of the present Terms and Conditions of Purchase shall likewise apply.

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3. Delivery time and penalisation for default of delivery

- 3.1 Where our orders specify a delivery time, same shall be taken to be binding; otherwise delivery or performance of the services shall be effected forthwith. The Supplier shall be obliged and undertake to inform us immediately in writing where such circumstances occur or are identifiable as shall render it impossible to observe the delivery time and/or of performance of the services. The delivery time and/or of performance of the services will not be extended thereby, unless we accept such extension in writing. All additional cost arising from the need to meet the delivery date by way of expedited delivery shall be borne by the Supplier.
- 3.2 Where the Supplier is found to be in default, we shall be at liberty to demand payment of a contractual penalty of amount equivalent to 0.25% of the net value of contract per completed calendar day, however, such penalty shall not exceed 5% of the net contractual value attaching to the goods delivered late. We shall be entitled to demand payment of the contractual penalty in addition to performance on the part of the Supplier or cancellation of the contract. The contractual penalty shall be regarded as the minimum amount of compensation owed. The right to assert claim for further damage sustained shall remain thereby unaffected. Should we accept performance rendered with delay, we shall be required to assert our entitlement to payment of a contractual penalty no later than in conjunction with our final payment.
- 3.3 Early delivery or service performance is only permitted with our written consent. In any case, we shall not be disadvantaged from such delivery and performance, accordingly, the period of payment shall not start prior to the original agreed date, which is also significant for the transfer of risk (we shall only be liable, as the depository). Furthermore, we reserve the right to charge the Supplier any extra cost we from the premature delivery.

4. Performance of service, delivery, export control, transfer of risk

- 4.1 Performance of service within Germany shall be on a "carriage-paid" basis to the location specified in the order. Where no place of destination has been specified and nothing to the contrary has been agreed, delivery shall be effected to our place of business at: Ludwig-Erhard-Ring, 31157 Sarstedt free of any charges at the expense and risk of the Supplier. A given place of destination shall be taken to have the status of place of effect (obligation of debtor to perform at creditor's address).
- 4.2 Where performance of service originates abroad (outside of Germany), the trade term specified in our order shall be considered as agreed. Where no such term has been specified, DDP Sarstedt (Incoterms 2010) shall apply. Is this not possible, trade term can be switched to DAP to place of destination (Incoterms 2010). In any case, the Supplier shall bear all costs and risk for the delivery and/or performance of services till our place of business in Sarstedt.
- 4.3 In any case, the Supplier shall bear all costs and risk of unloading if delivery has to be carried out on sites or directly to third parties. In case of delivery to third parties we reserve the right to send Helmke shipping documents.
- 4.4 Delivery shall be accompanied by a declaration of conformity and a delivery note, which shall specify detail in respect of date (issue and despatch), contents of the delivery (article number and quantity) as well as our order reference (date and number). Where the delivery note is found not to have been enclosed or to be incomplete, we shall not be held accountable for such delays in processing and payment as shall derive there from. Independent of this advice, we shall also be furnished with advice of despatch under separate cover and containing the same details.

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- 4.5 In addition, the supplier shall comply with all relevant provisions of the national and international foreign trade, export and customs regulations comply obtain the necessary permits. Latest before the delivery date the Supplier will also send us all information and data of foreign trade, export and customs law, which we need for the import and export and for the case of a subsequent re-exportation of goods and services.
- 4.6 Any type of retention of title by the Seller is invalid. We reserve our right to resell the deliveries and services at home and abroad.
- 4.7 The risk of loss or impairment of the goods by accident shall pass to us upon transfer of the goods at the place of performance.
- 4.8 The Supplier shall not be entitled to have performance owed rendered by third parties (e.g. subcontractors) unless our prior written approval has been secured.

5. Prices and terms of payment (early settlement discount), off-set

- 5.1 The price specified in the order shall be binding, unilateral price changes are not permitted. All prices are to be understood as including Value Added Tax calculated at the rate prevailing under law per agreed date of delivery in so far as same is not shown separately.
- 5.2 Where nothing to the contrary has been agreed in specific cases, the price shall be taken to include all services and supplementary work performed on the part of the Supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. appropriate packaging, transportation charges, also including transport and third-party liability insurance).
- 5.3 The price agreed shall be due and owing within 30 calendar days as of complete delivery and performance of service (including any such acceptance procedure as may have been agreed) and receipt of an appropriately formulated invoice. Where we effect payment within a period of 14 calendar days, the Supplier shall undertake to grant us an early settlement discount equivalent to 3 % of the net amount of invoice. An improper invoice will be returned and shall be considered in such a case as not submitted. In this case the agreed term of payment shall be suspended and shall start again with the sending of the new invoice.
- 5.4 In case of a notice of defect or any other complaint we reserve our right to a complete refund of the corresponding price until identified defects are remedied.
- 5.5 The Supplier may only offset such claims against our own as are undisputed or legally recognized.
- 5.6 Our obligation to fulfil this contract is subject to the proviso that the fulfilment is not prevented by any impediments arising out of national or international foreign trade legislation or by any embargos or any other sanctions.

6. Retention of title and observance of secrecy

- 6.1 We reserve title to all such substances and materials (e.g. software, finished products, semi-finished products) as well as to all such tools, templates, samples and other items as shall have been made available to the Supplier for production purposes. All such items shall, in so far as they are not subjected to processing procedure, be required to be committed to safekeeping by and at the expense of the Supplier and to be insured against destruction and loss to such extent as is held to be customary.
- 6.2 Processing, intermixture or bonding of items made available by us shall be deemed to have

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been carried out by the Supplier on our behalf. Where, following such processing, intermixture or bonding as shall involve the goods of third parties, title in favour of said parties shall continue to prevail, we shall acquire co-ownership of the new item thereby created in measure equivalent to the ratio existing between the value of the goods made available by ourselves and that of the third-party goods.

- 6.3 The Supplier shall undertake and be obliged to observe strict secrecy in respect of the conditions attaching to the order and all such information and documentation as may have been made available for the purpose of execution of same. Obligations pertaining to observance of secrecy shall remain in place following completion of a given contract. They shall not expire until the knowledge contained in the documentation made available and other items of information, as well as such as is of pertinence to production processes, has accessed the public domain.
- 6.4 The Supplier shall undertake and be obliged, upon being requested to do so by us, to immediately surrender to us the documentation required to deal with enquiries or to complete orders upon provision of a given service or upon premature termination of contract.
- 6.5 The Supplier shall not be at liberty to draw attention in advertising materials, brochures, etc. to its pursuit of business relations with our company without having sought and secured our approval in advance, nor shall it be at liberty to exhibit items manufactured on our behalf.
- 6.6 The Supplier shall undertake and be obliged to impose upon its sub-suppliers such obligations in respect of observance of secrecy as may be held to be consistent with those stipulations contained in the foregoing clauses.
- 6.7 For each case of violation of one of the in clauses 6.3 to 6.6 set out obligations of these conditions the supplier undertakes to pay a penalty of EURO 10,000.00. The supplier shall, however, be entitled to prove that the actual damages resulting from its violation of clauses 6.3 to 6.6 were lower.

7. Defective delivery and self-help

- 7.1 In so far as nothing to the contrary is stipulated hereinafter under this section of the present Terms and Conditions of Purchase, those provisions currently prevailing under law shall apply in the event of material defect and/or defects of title in respect of the goods (including faulty delivery and short delivery, improper assembly and flawed assembly, operating or user instructions) and any other form of breach of obligation on the part of the Supplier.
- 7.2 As provided for under statutory provisions prevailing, the Supplier shall, in particular, be liable for ensuring that the goods possess the applicable DIN-, VDE and similar regulations as well as the agreed structural quality upon transfer of risk. Agreement in respect of structural quality shall be deemed to have been created by virtue of those product descriptions which constitute the subject matter of a given contract or, in a manner similar to the present Terms and Conditions of Purchase, are afforded constituent status within such contract on the basis, in particular, of their having been identified by way of designation or reference within the framework of our order. In this regard, it shall be immaterial as to whether the product description originates from us, from the Supplier or from the manufacturer. In case no agreement on the technical documentation was taken, the Supplier shall send us free of charge drawings, technical calculations, test reports, descriptions and service regulations and instructions in English and German, before delivery time and/or performance of services. Unless otherwise agreed in the order, hardware and software always constitute a single product.

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- 7.3 The Supplier guarantees the flawless quality and completion or performance of the goods or services ordered and expressly warrants that the same will be free from defects during the warranty and/or guarantee period mentioned in clause 11 of this condition.
- 7.4 Our obligation to give notice of defect shall be confined to such defects as are readily identifiable (e.g. transportation damage, faulty delivery and short delivery) within the framework of goods'-receipt inspection procedure and on the basis of exterior appraisal (also of the delivery documents) as well as within the framework of random-testing quality-control procedure. For the rest, examination based on the circumstances surrounding a specific case will depend on whether the normal course of business will accommodate such examination.
- 7.5 In all instances, our claim (notification of defects) shall be deemed to have been immediate and timely where it is received by the Supplier within a period of 14 days as of receipt of goods. The Supplier shall, as such, dispense with submission of claim to the effect that notification of defect was not effected on time. Our obligation to give notice of defect in the case of defects detected at a later stage shall remain unaffected.
- 7.6 The Supplier shall upon our request forthwith replace defective goods with goods free from defects or to improve the same to the standard provided for by the contract. He has also to compensate us for all costs incurred due to repair or replace (e.g. transportation, installation and removal costs).
- 7.7 Costs incurred by the Supplier in conjunction with examination and rectification shall also be borne by the Supplier, except in cases of intent or gross negligence, where it is established that there was, in fact, no defect.
- 7.8 Should the Supplier fail to honour its obligation to effect supplementary performance in the form of rectification of the defect or supply of a defect-free product within a reasonable period as stipulated by us or supplementary performance through the Supplier has failed, we shall be at liberty to rectify the defect ourselves without prejudice to our rights in any way. In such event, we shall be entitled to demand that we be compensated for expenditure thereby incurred or that funds be advanced in adequate amount. Where supplementary performance effected by the Supplier is unacceptable for the Supplier or for us (e.g. on grounds of particular urgency, endangerment of the business premises or threat of occurrence of excessive damage), we shall not be required to fix a time limit regarding our self-help. It shall be deemed a requirement that the Supplier be informed without delay and, where possible, prior to our initiating the process of self-help.
- The Supplier shall only be required to assume the costs thereby incurred by us in so far as said costs do not incorporate profit. The labour rate for self-help shall be deemed fixed and amounts to 69.00 Euros/per hour.
- In addition, the Supplier shall be at liberty to appoint an independent appraiser to confirm the defect.
- 7.9 We shall be at liberty to carry out minor adjustments or remedies to the product at our own expense in the interests of a smooth production process without being required to secure prior agreement in respect of same; your obligation to render supplementary performance shall not be thereby affected.
- 7.10 Acceptances or approvals of drawings submitted to us and acknowledgements of the receipt of deliveries and services, their temporary use and payments made thereof are not deemed to contain a waiver regarding our warranty claims or other rights with respect to defective deliveries and/or services.

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8 Quality control

- 8.1 The Supplier shall undertake and be obliged, when manufacturing the products or performing of services ordered, to comply with state of the art and technical rules in force at the time of execution, in particular EC directives and regulations (amongst others, Low-voltage Directive 72/23 EEC, Electromagnetic Compatibility (EMC) D 89/336/EEC, where applicable), VDE regulations and rules of industrial safety, environment protection and safety regulation as well as with the pertinent standards and similar bodies of rules must be complied with.

The Supplier shall undertake and be obliged to sustain all industrial authorisations as well as any other authorisations necessary to ensure the deliveries and performance of the services

Accordingly, the Supplier shall undertake to issue a declaration of conformity with those directives applicable and to present said declaration of conformity together with the requisite evidence of quality and conduct of test procedure as well as authorisations upon our request.

Presentation of the aforementioned documentation shall be a requirement for delivery and services to be deemed to have been performed in full.

At any time we may further require a report on the deliveries and services we have ordered, in particular concerning the stage of their production as well as to examine the work during the production.

- 8.2 Furthermore, the Supplier shall undertake and be obliged to advise readiness for testing having thereby afforded such notice as will enable our employees to participate in quality control procedure.

Our Purchaser indicated at the Order shall be advised in writing of readiness for testing affording thereby a period of notice of 2 weeks.

- 8.3 As soon as we have been informed as to the precise date of completion of production, we shall decide whether testing procedure is to be conducted or whether despatch of the parts may take place directly.

Where quality-control procedure is to take place on the premises of the Supplier, the Supplier is requested to make available to our quality-control official all such test protocols and any other such test documentation as may be deemed requisite and is required to be generated up to the point-in-time of testing and is consistent with production status at said point in time.

Where the participation at test procedure on the premises of the Supplier is dispensed with, the aforementioned test documentation shall be sent to our Purchaser indicated at the Order.

All test protocols shall be required to show our order number, order item and contract number.

- 8.4 Personal costs incurred through the engagement of the quality-control official shall be for our account. Material costs incurred through the conduct of test procedure shall be for the account of the Supplier.

Should, however, test procedure be required to be repeated for reasons for which the Supplier may be held accountable (e.g. non-achievement of readiness for testing despite advice of readiness or for reasons of defect), we shall charge all and any additional costs thereby incurred to the Supplier. Where defective status is established, all such measures are required to be implemented in conjunction with elimination of defect as shall serve to ensure that agreed deadlines are observed. Said measures shall extend to include an increase of personnel availability as well as overtime and/or weekend work. All costs thereby incurred shall be for the account of the Supplier.

- 8.5 It shall be assumed that quality-control procedure has been preceded by a complete workshop

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and functional-efficiency test. The workshop test shall be conducted by the Supplier and shall extend to include, amongst other things, a 100% test for completeness along with all such tests as are required under law to be conducted. It shall be required in this regard, in particular, that compliance with those performance parameters specified be verified on the basis of certified records/certificates of goods'-measurement and item-testing procedures, which shall incorporate test results and shall be handed over to us in conjunction with quality control.

- 8.6 Quality testing and the issue of release for despatch shall not release the Supplier from its liability. This shall remain in place and undivided as though testing procedure had not been conducted in the first place.
- 8.7 We reserves the right to demand proof of the Seller's quality control system and the Seller's documentation of the quality tests executed, and to carry out audits on the Seller's premises at any time. In case of defects in the quality control system or errors of the documentation of quality tests we are authorised to charge the Supplier the costs of the audit.

9. Supplier recourse and producer liability in the event of resale by JHC customers and producer liability in the commercially-based transaction of business

- 9.1 Where our customer engages in resale to a consumer, provision 7.6. of the present Terms and Conditions of Purchase pertaining to self-help in the event of defect shall not apply.
- 9.2 Our right of recourse within a delivery chain as provided for under law shall remain unreservedly intact as shall all entitlements in our favour in respect of defective delivery.
- 9.3 Where the Supplier may be held accountable for product defect, i.e. the cause for same is to be found within said Supplier's sphere of control and organisation, and liability in respect of dealings with third parties attaches to the Supplier itself, said Supplier shall indemnify us against the claims of third parties.
- 9.4 With the framework of the aforementioned obligation to indemnify, the Supplier shall undertake and be obliged to compensate us for all such expense as shall be incurred as a result of or in conjunction with the assertion against us of claims of third parties as well as such as shall be incurred as a result of product-recall action. We shall undertake, to whichever degree possible and reasonable, to inform the Supplier as to the content and extent of product-recall actions and to likewise afford the Supplier the opportunity to make representations in respect of same.

10. Suspension, Cancellation

- 10.1 We reserve the right to order the Supplier to suspend the performance of the contract at any time. If the performance of the contract is suspended for more than three months, the Supplier will have to prove to us in detail that it has incurred costs resulting from such suspension. However, we shall not be liable to the Supplier for any loss of profits. The Supplier may claim compensation only for such proven costs. The Supplier may not claim compensation for any costs incurred as a result of a suspension of less than three months, or, in the case of a suspension of more than three months, for the costs incurred during the first three months.
- 10.2 In additional, we reserve the right to withdraw from the contract, as a whole or in part, irrespective of any fault on the part of the Supplier. In such a case, the Supplier is only entitled to charge us for the services proved to have been performed by the date of withdrawal

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11. Statute of limitation

- 11.1 Contrary to those provisions prevailing under law, our claims under clause 7 shall be time barred after the expiry of 36 months from the date of transfer of risk, unless a longer period is not agreed. In so far as it has been for deliveries with installation and assembly agreed that an acceptance test shall be conducted, the period of limitation shall commence upon completion of same.
- 11.2 Should exchange or improvement be demanded and/or carried out, the period for these deliveries and services shall commence anew.

11. Applicable law and jurisdictional venue

- 11.1 The present Terms and Conditions of Purchase shall be governed by German law. The provisions of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG) shall not apply.
- 11.2 Where the Supplier holds the status of merchant within the meaning of the Uniform Commercial Code (*Handelsgesetzbuch*), a body corporate under public law or separate property under public law, our registered office in Hanover shall be taken to be the sole jurisdictional venue for all disputes deriving from the contractual relationship. This shall include instances of international dispute. We shall, however, also be entitled to institute legal action at the place of performance attaching to the obligation to supply.

12. Salvatorial (escape) clause

Should individual provisions attaching to the present Agreement be or become ineffective under law, the effectiveness of the remaining Agreement shall not be thereby affected.

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