

Terms and Conditions of Purchase of Hutzel Seidewitztal GmbH

To be applied in respect of:

1. **Persons who, on conclusion of the contract, are acting in execution of their commercial or independent professional activities (traders)**
2. **Legal entities under public law or a special fund under public law**

I. General

1. All deliveries, services and offers from our suppliers shall be carried out exclusively on the basis of these General Terms and Conditions of Purchase. They are a part of all contracts that we conclude with our Supplier concerning the deliveries or services that they offer. They also apply to all future deliveries, services and offers of the Supplier, even if they have not been agreed separately.
2. The terms and conditions of our Supplier or of third parties do not apply, even if we have not explicitly rejected their validity in individual cases. Our Terms and Conditions of Purchase also apply if, in the knowledge of conflicting conditions of purchase or of conditions of purchase that differ from our own on the part of the Supplier, we accept or pay for deliveries of products and services from the Supplier (hereafter referred to as the subject of the contract). Even if we refer to a written document that includes the terms and conditions of the Supplier or of a third party or makes reference to such conditions, this does not constitute acceptance of the validity of those terms and conditions.

II. Conclusion of contract and contractual Changes

1. Orders, transactions and forecast delivery schedules, together with changes and additions to these, must be made in writing. Orders and delivery schedules can also be arranged by remote data transmission or fax.
2. Verbal agreements made before or on conclusion of contract require written confirmation from the purchasing department to become valid. Item 2.1, clause 2 remains unaffected.
3. Verbal agreements made after conclusion of contract, in particular retrospective changes and additions to our Terms and Conditions of Purchase – including this clause requiring written form – and collateral agreements of any sort also require written confirmation from the purchasing department to become valid.
4. We have the right to change the time and place of delivery and the type of packaging at any time in writing, with a period of notice of at least five calendar days before the agreed delivery date. The same applies to changes to product specifications insofar as these can be implemented as part of the normal production processes of the Supplier without significant extra cost; in this case, the period of notification in accordance with the preceding clause is at least 10 calendar days. We shall reimburse the Supplier for additional reasonable costs arising from such a change on submission of proof thereof. If such changes result in delays in delivery that cannot be avoided by reasonable effort in the normal production and business operations of the Supplier, the originally agreed delivery date shall be postponed accordingly. After careful consideration, the Supplier shall notify us in writing of the additional costs or delay in delivery to be anticipated in good time before the delivery date, at least however within 2 working days of receipt of our notification in accordance with clause 1.
5. Quotations are binding and free of charge, unless otherwise explicitly agreed.
6. Insofar as our offers do not explicitly include a period of commitment, we are entitled to withdraw if the Supplier does not accept the order within 2 weeks. The determining factor for punctual acceptance is our receipt of the confirmation of acceptance. Forecast delivery schedules become binding if the Supplier does not reject them within five days of their receipt.
7. We have the right to terminate the contract at any time by written declaration with specification of the cause if we are no longer able to use the ordered products in our business operations as a result of circumstances that come about after conclusion of the contract. In this event, we shall reimburse the Supplier for the services performed in part.

III. Delivery

1. One copy of a delivery note must be attached to every delivery. All of our order details must be evident from this.
2. Agreed delivery dates and periods are binding. The determining factor for compliance with the delivery date or delivery period is receipt of the goods by us. If delivery has not been agreed "ex works" (DDU or DDP in accordance with Incoterms in the version currently applicable), the Supplier shall provide the goods in good time, taking into account the period agreed with the shipping agent for loading and transport.
3. Delivery must not be made too early or too late. If a delivery arrives too early, we have the right to value the invoice at the delivery date specified in our order. In addition, we may return the goods at the expense and risk of the Supplier. If a return is not made in the case of early delivery, the goods shall be stored by us until the delivery date at the expense and risk of the Supplier.
4. If the Supplier has taken responsibility for the set-up or assembly and no other agreement has been made, the Supplier shall bear all of the necessary additional costs, such as travel costs, provision of tools and daily allowances, subject to other regulations.
5. The Supplier is obliged to inform us immediately in writing if circumstances come about or can be anticipated under which the delivery period or the agreed delivery quality cannot be observed.
6. If the latest date by which delivery must be completed can be determined on the basis of the contract, the Supplier shall be in default on expiry of that date, without a reminder being necessary on our part.
7. In the event of default in delivery, the statutory rights are available to us without limitation, including the right to withdraw and the right to compensation in place of performance after the unsuccessful expiry of a suitable period of grace.
8. In the event of delays in delivery, we have the right after prior written warning to the Supplier to demand a contractual penalty in the amount of 0.5%, up to a maximum of 5%, of the order value concerned for every week of the delay that commences. The contractual penalty shall be deducted from the damages for delay to be paid by the Supplier.
9. The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims to which we are entitled as a result of the delayed delivery or service; this applies pending full payment of the amounts owed by us for the delivery or service in question.
10. Partial deliveries are in principle not permitted unless we have explicitly consented to them. Otherwise, all costs for subsequent deliveries are at the expense of the Supplier. If these regulations are not observed, the invoices are deemed not to have been issued until receipt of a corrected copy or until final clarification. We reserve the right to set the value date to the date of receipt of the correct invoice or the day of the final clarification.
11. The risk shall only be transferred to us, even if shipping has been agreed, when the goods are handed over to us or our agent at the place at which the goods are to be delivered in accordance with the contract.
12. The values determined by us on receipt of the goods of numbers of units, weights and dimensions shall be definitive, unless other proof is provided.

13. For software that is part of the delivery, including the associated documentation, we have, in addition to the right to its use to the extent permitted by law (§§ 69a ff. of the German Copyright Act (UrhG)), the right to its use with the agreed features and to the extent required for the application of the product in accordance with the contract. We may also prepare a back-up copy without explicit agreement.

IV. Force Majeure

Force majeure, industrial disputes, operational interruptions that are not our responsibility, disturbances, official measures and other unavoidable events shall entitle us, regardless of our other rights, to withdraw from the contract wholly or partly, insofar as they are of considerable duration and have as a consequence a considerable reduction of our needs.

V. Shipping Advice, Prices, Conditions of Payment, Invoice Details

1. The price specified in the order is binding.
2. In the absence of other written agreement, the price includes delivery and transport to the delivery address specified in the contract, including packaging.
3. If under the agreement made the price does not include packaging and the payment for the packaging – which is not only on loan – is not specified explicitly, this shall be charged at demonstrable cost price. On demand, the Supplier must take back the packaging at its own expense.
4. If no specific agreement has been made, the prices are deemed to be duty paid ex works (DDP in accordance with Incoterms in the version currently applicable), including packaging. VAT is not included.
5. Unless otherwise agreed, the invoice shall be settled either within 14 days with deduction of a discount of 3 % or within 60 days without discount from the due date of the remuneration account and receipt of both the invoice and the goods or the performance of the service. Payment shall be made subject to checking of the invoice. In order for the payments owed by us to be deemed to be on time, receipt of the transfer instruction by the bank shall be sufficient.
6. A single copy of the invoice shall be sent with details of the account number and other identifying details to the address printed on the order; it should not be enclosed with the deliveries.
7. In all order confirmations, delivery papers and invoice numbers, our order number, the item no., the delivery quantity and delivery address should be quoted. Should one or more of these details be missing and as a result, in the course of our normal business, processing be delayed by us, the payment periods specified in section 4 shall be extended by the period of the delay.

VI. Claims for Defects and Recourse

1. The statutory provisions concerning material defects and defects of title apply, unless otherwise specified below.
2. Acceptance is on condition of inspection for the absence of defects, and in particular for correctness, completeness and suitability. We are entitled to inspect the subject of the contract insofar as and as soon as this is possible in accordance with the orderly conduct of business; complaint shall be made by us concerning any defect identified immediately upon its identification. To this extent, the Supplier shall not have recourse to objection on the grounds of delayed notification of complaint.
3. The right to determine the type of supplementary performance is fundamentally ours. The Supplier has the right to refuse the type of supplementary performance selected by us under the conditions of § 439 para. 3 of the German Civil Code (BGB).
4. Should the Supplier not commence rectification of the defect immediately on demand of such rectification by us, in extreme cases, in particular to avoid acute danger or prevent greater damage, we have the right to carry this out ourselves or to have it carried out by a third party at the Supplier's expense. Claims for material defects expire in two years, unless the item has been used for a building in accordance with its normal use and has caused its defectiveness. The period of expiry for claims of material defects begins with the delivery of the subject of the contract (transfer of risk).
5. In the event of title defects, the Supplier shall also indemnify us against any existing claims by third parties. In respect of title defects, a limitation period of 10 years shall apply.
6. On receipt of our written notification of defects by the Supplier, the expiry of warranty claims shall be limited. In the event of replacement delivery and rectification of defects, the warranty period for replaced and repaired parts shall begin again, unless we must assume from the behaviour of the Supplier that the latter did not deem itself obliged to carry out the measure, but only completed replacement delivery or rectification of defects as a gesture of good will or for similar reasons.
7. If we incur costs as a result of the defective delivery of the subject of the contract, in particular transport, travel, work, material costs or costs for inspection on entry that goes beyond the normal extent, the Supplier must bear these costs.
8. If we take back products manufactured and/or sold by us as a result of the defectiveness of the subject of the contract provided by the Supplier, or if the purchase price obtained by us was reduced as a result or we were otherwise disadvantaged as a result, we reserve the right to recourse against the Supplier, while the normal requirement to set a time limit for our claims for defects shall not apply.
9. We are entitled to demand from the Supplier compensation for the expenses we incurred in respect of our customer because the latter has asserted against us a claim for reimbursement of the expenses required for the purpose of subsequent performance, in particular costs of transport, travelling, work and materials.
10. Notwithstanding the provisions under item 8.5, the limitation in cases under items 8.8 and 8.9 shall begin not earlier than 2 months from the moment that we have satisfied the claims asserted against us by our customers and not later than 5 years from the date of delivery by the Supplier.
11. If a material defect is detected within a period of 6 months from the transfer of risk, it shall be assumed that the defect already existed at the time of the transfer of risk, unless such an assumption is incompatible with the nature of the item or of the defect.

VII. Product Liability and Recall

In the event that we are held liable to recourse on the basis of product liability, the Supplier shall be obliged to indemnify us against any such claims if and insofar as the damage was caused by a defect in the subject of contract delivered by the Supplier. In cases of liability based on fault, however, this shall only be applicable if any fault is attributable to the Supplier. Insofar as the cause of damage lies in the Supplier's sphere of responsibility, the Supplier shall bear the burden of proof in this connection. In these cases, the Supplier shall meet all costs and expenses, including the legal costs, if any, and the costs of a recall action. Otherwise, the statutory provisions apply.

VIII. Execution of Work

Any persons who, in performance of the contract, complete any work at the factory premises must observe the provisions of the respective factory regulations. Liability for accidents that befall such persons on the factory premises is excluded, unless such accidents are caused by wilful or negligent breach of duty on the part of our legal representatives or vicarious agents.

IX. Provision of Materials

All materials, parts, containers and special packaging provided by us remain our property. They must only be used in accordance with the respective regulations. The processing of materials and the assembly of parts shall be carried out on our behalf. It is understood that we shall be co-owners of the products manufactured with the use of our materials or parts in the proportion of the value of the materials provided to the total value of the complete product. To this extent, such products shall be held in safekeeping for us by the Supplier.

X. Spare Parts

1. The Supplier is obliged to stock spare parts for the products delivered to us for a period of at least 10 years after delivery.
2. If the Supplier intends to cease production of the spare parts for the products supplied to us, it shall notify us immediately after the decision to cease production has been taken. This decision must be taken at least 3 months before production ceases, subject to section 1.

XI. Documents and Secrecy

1. All business or technical information (including any features that can be gathered from items, documents or software that is handed over and other knowledge or experience) must, as long as it is not demonstrably known to the public, be kept secret from all third parties and shall only be made accessible to those persons in the Supplier's own company who must necessarily be involved in using it for the purpose of delivery to us and who have also been obliged to observe secrecy; it remains our exclusive property. Except for the purpose of deliveries to us, such information must not be copied or commercially used without our prior written consent. At our request, all information originating from us (including all copies or notes made, if applicable) and all items on loan must be immediately and completely returned to us or destroyed. We reserve all rights to such information (including copyright and the right to apply for industrial property rights, such as patents, utility models, semiconductor protection, etc.). Insofar as these were made available to us by third parties, this reservation of right shall also apply for the benefit of such third parties. The Supplier's retention of title shall only apply insofar as it relates to our payment obligation for the products concerned to which the Supplier reserves title. In particular, extended or prolonged retentions of title are not permitted.
2. Any products that have been made according to documents created by us, such as drawings, models and the like, or according to our confidential information or with the help of our tools or copies of our tools must neither be used by the Supplier itself nor be offered or supplied to a third party. The same applies accordingly to our print orders.
3. In the Supplier's advertising, reference may only be made to our business relationship if we have given our written consent to such reference. The Supplier shall oblige its subcontractors accordingly.

4. The Supplier shall notify us without being asked to do so of patents or utility models that exist in respect of the goods delivered by the Supplier. The Supplier shall guarantee that no proprietary rights of third parties are being breached in connection with its delivery in countries of the European Union, North America or other countries in which it manufactures the products or has them manufactured. The Supplier is obliged to indemnify us against all claims made by third parties in relation to the breach of commercial rights specified in section 1 and to reimburse us for all necessary expenses in connection with such claims. This right exists irrespective of any guilt on the part of the Supplier. The Supplier declares itself willing to support us on demand in any legal dispute that is pursued against us in connection with such a breach of any proprietary rights. The Supplier further declares its willingness to appear on demand in such legal disputes at its own expense.

XII. Assignment

The Supplier is not entitled to assign its claims from this contractual relationship to third parties. This does not apply to monetary claims.

XIII. Place of Performance

The place of performance is the location to which the goods are to be delivered in accordance with the contract.

XIV. General Provisions

1. Should a provision of these conditions and of any further agreements concluded be or become invalid; the validity of the remaining provisions shall not be affected thereby. The contracting parties are obliged to replace the invalid provision with a clause that comes as close as possible to its economic purpose.
2. Insofar as is legally permissible, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the court with local and material jurisdiction for 71144 Steinbronn. We are further entitled at our discretion to sue the Supplier in the jurisdiction of its registered office or its branch office or in the jurisdiction of the place of performance.
3. German law applies exclusively to the contractual relationships, with the exception of conflict of laws and the United Nations Convention on contracts for the International Sale of Goods (CISG).

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