

General Purchasing Conditions of HWG Horst Weidner GmbH



1. Applicability

- 1.1 These General Purchase Conditions ("GPC") are valid for all contracts concerning the ordering and delivery of movable objects (hereinafter also referred to as "Goods") between you as our Supplier (hereinafter also referred to as "Supplier") and us, HWG Horst Weidner GmbH, Germany.
- 1.2 Our GPC apply exclusively; contradicting, additional or from these GPC deviating conditions of the Supplier shall not become part of the contract, unless we have expressly agreed to the validity of these GPC in writing. Our GPC shall also apply if we accept a delivery to the Supplier without reservation while having knowledge of his/her contradictory or deviating conditions.
- 1.3 Our GPC shall only apply if the Supplier is an entrepreneur (sec. 14 German Civil Code, Bürgerliches Gesetzbuch - "BGB"), a legal person under public law or a special fund under public law.

2. Quotations of the Supplier and our Purchase Orders; Export Clause

- 2.1 Offers and quotations made by the Supplier shall be binding and submitted free of charge unless otherwise agreed in writing.
- 2.2 If and to the extent that our purchase orders do not expressly define how long the purchase order will remain valid, we shall be bound to honour them for a period of two (2) weeks from the date of purchase order. Our receipt of a declaration of acceptance shall be decisive in determining whether the Supplier has accepted in time.
- 2.3 The purchase order, along with any amendments or additions and any other agreements reached at the time the contract is concluded, shall be binding provided that we have issued or confirmed them in writing. Communication by e-mail or telefax shall also suffice to satisfy the written form requirement. Our non-response to offers/quotations, requests or other statements issued by the Supplier shall only constitute our approval if and to the extent that this has been expressly agreed in writing.
- 2.4 The Supplier is obliged to inform us, in full and in writing, of any possible approval obligations for (re)exports of his Goods pursuant to the relevant export and customs provisions including the export and customs provisions of the country of the origin of the Goods.

3. Delivery period and Delivery Delays

- 3.1 The delivery period stated in our purchase order is binding.
- 3.2 The Supplier is obliged to inform us immediately in writing if circumstances arise or become apparent that might prevent the delivery period from being met.
- 3.3 If the Supplier fails to provide the agreed performance at all or within the agreed delivery period, or if he is in default, our rights – especially with regard to cancellation or compensation – shall be governed by the statutory regulations. The provisions contained in Article 3.4 shall remain unaffected.
- 3.4 In the event of a default in delivery, we shall, having served notice, be entitled to demand the payment of liquidated damages from the Supplier amounting to 1% for each week of default that has completed up to a maximum amount of 5% of the order value. The liquidated damages shall be credited against the damages to be paid by the Supplier due to the delay in delivery. We may reserve our right to require liquidated damages until final payment has been made. Our further claims and/or rights remain reserved.
- 3.5 Acceptance of a delay in delivery shall not constitute a waiver of our claims.

4. Delivery, Documents, Passing of Risk, Delay in Acceptance

- 4.1 Deliveries within Germany shall be made "free delivery" to the destination specified in the purchase order. If no place of destination is specified and no other agreements have been reached, the consignment shall be delivered to our registered office in Renningen (Germany). The place of destination shall, in each case, also be the place of fulfillment (debt to be discharged at obligator's place of commercial undertaking – "Bringschuld").
- 4.2 Premature deliveries or services are subject to our prior approval. We shall be entitled to reject prematurely delivered Goods or to store them at the Supplier's expenses until the agreed delivery date.
- 4.3 No partial, excess or short deliveries shall be permitted unless otherwise agreed. We reserve the right to accept such deliveries in individual cases.
- 4.4 Each delivery is to be accompanied by a delivery note stating the date (of issue and dispatch), the content of the delivery (article number and quantities) and items identifying our purchase order (date and number). If the delivery note is missing or incomplete, we shall not be liable for any resulting delays in processing or payment.
- 4.5 The risk of accidental loss, destruction or deterioration of the purchased item shall pass to us at the time the item is handed over to us at the place of fulfillment. If and to the extent it has been agreed that a final acceptance of the delivery is required, this shall be decisive in determining the passing of risk. Here, and in all other respects, the statutory regulations applicable to works and services shall apply to the final acceptance accordingly. The handover or acceptance of the Goods shall be deemed to have occurred if we are in default of acceptance.
- 4.6 The statutory regulations shall apply with respect to the point in time that we are deemed in default of acceptance. However, the Supplier must also expressly offer us its services if an assigned or assignable date/time is agreed by when we are required to act or assist (e.g. supply of materials). Should we become in default of acceptance, the Supplier shall, in accordance with the statutory regulations, be entitled to demand reimbursement of the additional costs incurred (Sect. 304 German Civil Code (BGB)). Should the contract relate to an otherwise unsellable item that the Supplier is required to manufacture (one-off production), the Supplier shall be entitled to further rights if we have undertaken to provide our assistance and are liable for failing to provide such assistance.

5. Prices and Terms of Payment

- 5.1 The price stated in the purchase order is binding.
- 5.2 All prices of the Supplier are understood to be quoted with the statutory amount of value-added tax unless this is itemised separately.
- 5.3 Unless otherwise agreed in individual cases, the price shall cover all performances, deliveries and ancillary services provided by the Supplier (e.g. assembly, installation) as well as all incidental costs (e.g. proper packaging, transportation costs including transportation and liability insurance as may apply). The Supplier shall be required to take back the packaging material on our request free of charge.
- 5.4 Payment of the agreed price shall be due within 30 calendar days of complete delivery and performance (including any agreed final acceptance) being made and a correctly issued invoice being received. Should we settle the invoice amount within 14 calendar days, the Supplier shall grant us a 3% cash discount on the net invoice amount.
- 5.5 We do not owe any late payment interest. The interest on arrears shall amount to 5 (five) percentage points above the base rate per annum.
- 5.6 The statutory regulations shall apply in determining if and when we should be in default. In this context, notwithstanding what may be contained in the statutory provisions, the Supplier shall always be required to issue a written warning.
- 5.7 Our rights of offset and liens as well as the defense of unperformed contract shall apply to the extent permitted by law. We shall especially be entitled to withhold due payments provided that we hold claims against the Supplier for incomplete or defective performance.

6. Means of Production

- 6.1 We retain title to, and/or all usage rights and other property rights in, means of production of any kind whatsoever such as drawings, pictures, illustrations, calculations, executive instructions, product specifications and other documents as well as tools, templates, samples, models, company standards, software, and other items, which we provide to the Supplier for the manufacture of the Goods or for other reasons.
- 6.2 If the Supplier, on our behalf, manufactures means of production that paid for by us, then, upon completion of such manufacture, we acquire ownership thereof – to the extent that ownership can be acquired – as well as any and all rights of use and exploitation in respect of industrial or other property rights created. The means of production must be labelled as the property of us. We provide these means of production to the Supplier on a loan basis for the manufacture of the Goods ordered.
- 6.3 The Supplier is obliged to use these means of production exclusively for the manufacture of the Goods ordered by us, or according to other instructions we make. Without our prior express consent Supplier may not make these means of production available to any third party, use them for himself or through any third party, let them be used or copy, rebuilt or reproduce them in any other way.
- 6.4 Items within the meaning of Sec. 6.1 above may be processed or altered by the Supplier only with our written approval and according to our specifications. Any processing or alteration shall be made on our behalf. If such items are processed together with other items not belonging to us, we will acquire a co-ownership interest in the new item equal to the ratio – as at the time of processing – of the value of our items to that of the other items processed.
- 6.5 The Supplier is obliged to handle the means of production with due care and to properly store them; the Supplier may dispose of means of production only with our written approval, even if no deliveries have been made to us with the use of these means of production for a comparatively long period of time. The Supplier must insure the means of production at its own expense at replacement value against damage by fire, water, and theft. The Supplier assigns to us already now all claims for compensation under these insurance contracts. We hereby accept the assignment.
- 6.6 The Supplier undertakes to perform any necessary service and maintenance work on the manufacturing equipment in time and in consultation with us. The Supplier is obliged to inform us immediately of any damage that occurs to the manufacturing equipment.
- 6.7 On our request, the Supplier shall be required to return the items to us in proper working order if they are no longer needed to fulfill the contracts that have been concluded. The Supplier shall not be entitled to withhold or retain the manufacturing equipment for whatever reason.

7. Reservation of Title on delivered Goods

The Supplier shall only be allowed to reserve title to Goods if and to the extent that this relates to our obligation to pay for the products to which the Supplier reserves title. In particular, all forms of extended retention of title are hereby prohibited.

8. Defective Delivery

- 8.1 With respect to notices of non-conformity and the duty to examine Goods, the statutory provisions (Sections 377, 381 German Commercial Code (HGB)) shall apply with the following proviso: notice of non-conformity is deemed to have been served in time if it reaches the Supplier within a period of ten (10) working days of the Goods being accepted or the defect being detected.
- 8.2 Our statutory rights to make warranty claims against defects shall remain in full. At our discretion, we shall be entitled to request supplementary performance in the shape of rectification of the defect, a replacement delivery or the production of completely new Goods in accordance with the statutory provisions. The Supplier shall be obliged to reimburse us for the damage incurred as well as the expenses accrued through the need for supplementary performance.
- 8.3 In the event that supplementary performance is not carried out within a reasonable period of grace, or failed, or the period of grace was superfluous,

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- we may, in accordance with the statutory provisions, withdraw from the contract or reduce the purchase price and claim damages in lieu of performance or claim compensation for wasted expenditure. Should we be entitled to make warranty claims against defects above and beyond the statutory rights in respect of defects, these shall remain unaffected.
- 8.4 Should the Supplier fail to comply with its obligation to provide supplementary performance within a reasonable period of grace set by us without having recourse to refuse to provide supplementary performance, we shall equally be entitled to perform the necessary tasks ourselves or engage a third party to do so, in each event at the cost and risk of the Supplier.
- 8.5 If the specific urgency of the situation and/or an otherwise unexpected, disproportionately high degree of damage in relation to the warranty obligation makes it impossible to inform the Supplier of the defect and the pending damage and to set the Supplier a deadline – no matter how short – to remedy the situation, we shall be entitled to perform this task without delay and without previously coordinating with the Supplier.
- 8.6 The receiving of Goods as well as the processing, payment and reordering of Goods not yet found to be defective or the subject of a complaint shall not constitute our approval of the delivery or a waiving of our warranty claims based on defects.
- 8.7 Delivery of our notice of defects to the Supplier shall suspend the running of the statute of limitations for warranty claims based on defects until such time as the Supplier finally rejects our claims or declares the defect to be rectified or otherwise refuses to continue to negotiate about our claims.
- 8.8 Where replacement deliveries and the removal of defects are concerned, the statute of limitations for warranty claims based on defects for replaced and rectified parts shall be reset unless the conduct of the Supplier has led us to assume that it did not believe it was obliged to perform the measure and instead only provided a replacement delivery or removed the defect as a gesture of goodwill or for similar reasons.
- 8.9 Notwithstanding Sect. 438, para. 1, no. 3 or § 634 a para. 2 no. 1 BGB, the general statute of limitations for warranty claims based on defects is three (3) years from the passing of risk unless the peremptory provisions of Sections 478 and 479 apply. If and to the extent that final acceptance has been agreed, the statute of limitations shall commence with final acceptance.
- 8.10 Our statutory rights of recourse within a supply chain (Supplier recourse pursuant to Sections 478, 479 BGB) shall remain fully intact in addition to our warranty claims based on defects. Our Supplier recourse claims resulting from Sections 478, 479 BGB shall equally apply if the Goods have been further processed by us or one of our customers, e.g. if they have been installed in another product, prior to being sold to a consumer.
- 9. Indemnification from Industrial Property Right Infringements**
- The Supplier undertakes to indemnify us, on our first written request, from all claims made against us by third parties resulting from an infringement of industrial property rights in connection with a Supplier delivery and with the contractually agreed use of products supplied by the Supplier. The Supplier shall furthermore reimburse to us all expenses that become necessary in connection with such a claim. The aforementioned claims shall not exist if the Supplier is able to prove that it is not responsible for the breach of duty underlying the industrial property right infringement.
- 10. Product Liability**
- 10.1 The Supplier shall be obliged to indemnify us and hold us harmless from and against any and all third-party claims which arise from domestic or foreign product liability and are due to a defect of the product supplied by the Supplier to the extent that the Supplier is responsible for the product defect and the damage sustained according to the principles of product liability law. This shall not affect further claims of us.
- 10.2 On the same conditions, the Supplier must also reimburse us for all expenses which result from, or which we incur in connection with, any precautions – in particular, product warnings, an exchange of products, or product recalls – taken by us against our being held liable under product-liability law. Where possible and reasonable, we will advise the Supplier of the contents and scope of the measures to be taken and give the Supplier the opportunity to comment thereon.
- 10.3 The Supplier shall obtain insurance cover for all product liability risks, including for the risk of product warnings and product recalls, in the amount of at least EUR 5 (five) million per occurrence - blanket contractual liability - for bodily injury and property damage, and shall submit a copy of the insurance policy to us on request in order for us to verify this. The Supplier must maintain this insurance coverage, even after all mutual contractual obligations have been fully performed, for a period of 10 (ten) years after we place the processed delivery items on the market.
- 10.4 We shall be entitled to require that the Supplier permanently label the products to be delivered to us to the extent that this can be done with reasonable effort.
- 11. General Liability**
- 11.1 We are liable – irrespective of the legal basis – for damages or for the compensation of wasted disbursements according to the following provisions in para. (a) and (b):
- (a) In case of intention or gross negligence our liability is unrestricted. In case of simple negligence, we are only liable for damages deriving from the breach of a material contractual obligation (obligation which enables the due performance of the contract and the Supplier generally relies on and may rely that it is complied with); in this case, however, our liability shall be limited to the foreseeable damage, typical of this type of contract.
- (b) The restrictions on liability set forth in para. (a) do not apply as far as we have fraudulently concealed a defect or assumed a guarantee of the quality of the thing, for damages deriving from the injury of life, body or health as well as in the event of liability under the German Product Liability Act (Produkthaftungsgesetz).
- 11.2 As far as liability is excluded or restricted vis-à-vis us the same applies for the individual liability for damages of our legal representatives and our vicarious agents.
- 12. Final Provisions**
- 12.1 The Supplier may only transfer rights and obligations to a third party, or have the deliveries or material parts of the deliveries carried out by a third party, with the prior written consent of us.
- 12.2 Subcontractors of Supplier will be deemed parties employed by the Supplier in the performance of its obligations (“Erfüllungsgehilfen”). They must be notified to us upon request.
- 12.3 If the Supplier is a merchant in the meaning of the German Commercial Code (HGB), a corporate body under public law or a special fund under public law, the place of jurisdiction for any and all possible disputes based on the business relations is Renningen, Germany. We are entitled to take action at the Supplier’s place of business as well as at any other permitted place of jurisdiction.
- 12.4 The relations between us and the Supplier are exclusively subject to the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods as of 11 April 1980 (CISG) does not apply.
- 12.5 If single provisions of these GTC are or become invalid, the validity of the other provisions is not affected.
- As of 14 December 2015