



## **HOBERG & DRIESCH**

### **PURCHASING CONDITIONS OF HOBERG & DRIESCH RÖHRENHANDEL GMBH**

#### **I. GENERAL**

1. Only the following purchasing conditions apply for our current and future business relationships where we are the purchaser, the party placing the order or the customer. By accepting an instruction granted by us or an order placed by us, the supplier or contractor (hereinafter referred to as the "Supplier") declares its acceptance of these Purchasing Conditions.

2. We hereby expressly object to all deviating conditions, particularly the Supplier's sales and / or delivery conditions. There is no need for a later, further objection, particularly when entering into a contract, receipt of the Supplier's order confirmation or when accepting the goods or the other service.

#### **II. ORDER**

1. If the Supplier does not accept our order within 14 days of receipt, then we are entitled to revoke it without the Supplier having any claims. Supply call-ups within supply contracts or successive delivery contracts directed towards continuous deliveries become binding at the latest when the Supplier does not object to our call-up within 7 days after receipt.

2. The written contract and our written confirmation shall be authoritative for the contents of the contracts between us and the Supplier.

#### **III. PRICES**

1. The agreed prices are fixed prices. They are understood to be free to the buyer's address, should no other agreements be made.

2. If nothing is expressly agreed to the contrary in writing, the prices are understood to be inclusive of packaging, shipment costs, freight, cartage at the destination, other charges and ancillary services.

3. Any increased or decreased price arising as a result of model modification is to be notified without undue delay and requires our written confirmation before the goods are delivered. This also applies for modifications instigated by us.

#### **IV. TRANSFER OF RISK, SHIPMENT**

1. The place of performance for all of the Supplier's services is the location to which it has to deliver the goods ordered. The goods travel at the Supplier's risk and for the Supplier's account. The transport insurance is to be borne by the Supplier.

2. Partial deliveries are only permissible with our prior written consent. They are to be expressly labeled as such in the shipment documentation.

3. Cases of force majeure and other disruptive events at our company which are not attributable to us and which significantly make the performance of the acceptance obligation more difficult or make it impossible, e.g. disruptions of all kinds, strikes, lawful lock-outs, release us from our obligations arising out of the contract; impediments of a temporary kind, however, only for the period of the impediment plus a reasonable period. Insofar as we no longer have any interest in the contract, due to the impediment, we can rescind it. Our abovementioned rights apply only if we have informed the Supplier of the impediment without undue delay.

## **V. DELIVERY PERIODS, DELIVERY DATES**

1. The delivery dates and delivery periods given by us are binding. Receipt of the goods by us or at the agreed location is authoritative for compliance with the delivery date or the delivery period.
2. If the Supplier realises that it cannot comply with an agreed delivery date, then it has to inform us immediately. Our rights arising out of default in delivery, particularly claims for compensation are unaffected thereby.
3. In the event of deliveries before the contractually-agreed date, we reserve the right to return the goods at the Supplier's expense or to charge the Supplier for the costs incurred by us due to interim storage and to deduct them from the Supplier's invoices.
4. In the event of default by the Supplier, in addition to more extensive statutory claims we are entitled to demand flat rate compensation of our default loss in the amount of 1% of the net price per completed calendar week, but in total not more than 5% of the net price of the goods delivered late. We reserve the right to prove that we have suffered higher loss. The Supplier reserves the right to prove that we have suffered no loss at all or only a significantly lower amount of loss.

## **VI. DELIVERY NOTES AND INVOICING**

1. A delivery note (dispatch notification) naming the date, number and indication of our order with precise designation of the goods delivered and an invoice in duplicate are to be sent to us on the dispatch date concerning every delivery.
2. In the event of late receipt of the agreed or customary documents and the invoice, the goods are deemed to have been delivered only upon receipt of the complete documents. Costs arising due to late receipt of the documents are borne by the Supplier.

## **VII. PAYMENT**

1. Payments are made, insofar as nothing different is agreed upon, 14 days after receipt of the goods, deducting 3% discount, or without discount on the 15th day of the month following delivery. We are entitled to withhold payment until all of the written documents which underlie the transaction, including a proper invoice, have been received by us.
2. In the event of default in payment, we pay default interest in the amount of 3 percentage points per annum above the basic interest rate, but at least 4 percent per annum, in deviation from the statutory regulations.

## **VIII. COMPLAINTS ABOUT DEFECTS, WARRANTY**

1. The statutory provisions apply for the commercial inspection and complaint obligations with the following proviso: the delivery is checked by us in a proper business routine for quality and quantity deviations. The inspection obligation in this context is limited to defects which are discovered during our incoming-goods check through external appraisal, including of the delivery documentation, as well as during our quality check limited to visual checks in a random-sample process (e.g. transport damage, wrong or shortfall deliveries). Defects identified in this context (obvious defects) are to be notified without undue delay. Defects not identifiable during the incoming inspection (hidden defects) are to be notified without undue delay after discovery of the defect. In addition, the Supplier waives the objection of late complaints about defects.
2. In addition to the statutory warranty claims which fully remain in existence, we can ask the Supplier for rectification of defects or a replacement delivery, as we choose. In such case, the Supplier is obliged to bear all of the expenditure necessary for the purpose of defect rectification or replacement delivery. The right to compensation, in particular due to non-performance, remains expressly reserved.
3. In deviation from § 442 paragraph 1, sentence 2 of the German Civil Code (BGB), we are entitled to defect claims without limitation even if we were unaware of the defect as a consequence of gross negligence when entering into the contract.

4. The costs expended for the purpose of inspection and subsequent improvements by the Supplier (including any disassembly and installation costs) are to be borne by the Supplier even if it transpires that no defect was actually present. Our compensation liability in the event of unjustified defect rectification request remains unaffected; in this regard, we are liable, however, only if we have recognised or failed to recognise due to gross negligence that there was no defect.

5. We have recourse claims against the Supplier in corresponding application of § 478 and § 479 of the BGB (recourse in the consumer goods supply chain) if we have to take the purchase item back from our customer as a consequence of defectiveness or if our customer has reduced the purchase price, even if the contract relationship between the Supplier is not part of a consumer goods supply chain.

6. In the case of defect rectification and replacement deliveries, the warranty period restarts for the subsequently improved or replaced parts.

7. We do not waive warranty claims by accepting or approving presented designs or samples.

8. The statutory warranty periods and periods of limitations apply.

## **IX. PRODUCT LIABILITY**

1. If the Supplier is responsible for product damage, then it is obliged to indemnify us against third-party claims insofar as the cause is within its sphere of influence and organisation and it is liable itself in the external relationship.

2. In the framework of its indemnification obligation, the Supplier is obliged to reimburse expenditure pursuant to § 683 and § 670 of the BGB which arises out of or in connection with third-party claims, including recall actions conducted by us. We will inform the seller - insofar as possible and reasonable - about the contents and scope of recall actions and give it the opportunity to respond. More extensive statutory claims remain unaffected.

3. The Supplier is obliged to take out and maintain product liability insurance for personal injury and property damage, whose coverage sum is usual and reasonable in light of its business operations.

## **X. RETENTION OF TITLE**

1. A simple right of retention expressly wanted by the Supplier is not objected to. However, a prolonged retention of title and group clauses is hereby objected to.

2. The Supplier will release the securities held by it insofar as their value exceeds the claims to be secured by more than 20%.

## **XI. COMPLIANCE WITH STATUTORY PROVISIONS AND FREEDOM FROM PROPRIETARY RIGHTS**

The Supplier is liable for ensuring that all statutory provisions and other official orders are complied with in the framework of the manufacturing and that the use of the goods delivered does not breach such provisions or third-party proprietary rights of any kind. The Supplier indemnifies us against all third-party claims which are raised against us due to a breach of such provisions or proprietary rights of all kinds.

## **XII. SUPPLIER DECLARATIONS, PROOF OF ORIGIN, EXPORT CHECKS**

1. Separate supplier declarations are to be given pursuant to VO (EC) Nr. 1207/2001, declaring the country of origin and customs tariff number, for all goods delivered. Should long-term supplier declarations be used, changes to the information provided in the long-term supplier declaration must be notified in a separate letter to our customs department. The obligation to make supplier declarations, declaring the country of origin and customs tariff number, also exists for goods delivered without preferential origin.

2. Preferential proof of origin is to be provided without request for suppliers which are not domiciled in the EU. Autonomous certificates of origin are to be presented upon request.

3. The Supplier undertakes to notify us of existing export permit obligations for all materials delivered (inter alia national export list number as well as that of the USA). The notification is given together with the supplier declaration or the proof of origin directly to our customs department. All of the detrimental consequences of incomplete notification or failure to give the notification are borne by the Supplier. Notification in other commercial documents is not permissible.

### **XIII. FINAL PROVISIONS**

1. The legal venue for all disputes arising out of the business relationship between us and the Supplier is our company's headquarters or the Supplier's headquarters, as we choose. For lawsuits against us, our company's headquarters is the exclusive legal venue.

2. The relations between us and the Supplier are exclusively governed by the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 does not apply.

As of: 1 January 2018