

# HB-Maschinenbau GmbH Terms and Conditions of Purchase

## **1. Scope of validity, definitions, rights to objects, interpretations**

### 1.1

Our terms and conditions of purchase apply exclusively. Any terms and conditions of the Supplier that conflict with or deviate from our terms shall not be recognised; this shall also apply in the event of unreserved acceptance of the delivery.

If there are discrepancies or contradictions between the provisions of these terms and conditions of purchase and the contract, the provisions of the contract shall take precedence.

These terms and conditions of purchase shall also apply to all our future transactions and legal relationships with this Contractor, even if they are not expressly stated again. 'Goods' within the meaning of these terms and conditions of purchase are items, rights and other contractually agreed services of whatever type and legal nature.

### 1.2

Any general terms and conditions of sale and delivery of the Contractor (= third-party GTCs) that conflict with or deviate from our terms and conditions of purchase do not form part of the contract. This also applies if we have not individually objected to the third-party GTCs provided or communicated to us or if we refer to correspondence from the contractual partner in which reference is made to his terms and conditions. The acceptance of goods by us without objection shall not constitute acceptance of third-party GTCs.

### 1.3

Drawings, drafts and other templates provided by us to the Contractor, regardless of whether they are originals or reproductions, are only provided to the Contractor on loan and remain our property. They may not be used for other purposes, reproduced or transmitted to third parties or otherwise made known to them and must be returned to us as soon as possible or at our request, but in any case immediately after the order has been executed.

### 1.4

If we provide objects that are used in the goods, these shall remain our property. The Contractor carries out processing or remodelling on our behalf, and in the event of processing or mixing with third-party property, we shall acquire co-ownership in the ratio of the fair market value of our items to that of the other items at the time of processing or mixing.

### 1.5

If we provide the Supplier with objects, in particular tools, for the manufacture of the goods, we shall remain the indirect owner and the Supplier as the direct owner shall store these objects for us at his own risk.

They remain our property, they must be labelled and treated by the Supplier as our property and must only be used for the fulfilment of his delivery and performance obligations towards us. The Contractor shall carry out any necessary maintenance, care and repair and provide insurance in our favour against theft, damage or destruction by fire or other natural hazards at his own expense.

The Supplier must return these items to us or to the third party designated by us at our request at any time, without the Supplier being entitled to assert a right of possession, a right of retention or any other right against the claim for return. If third parties gain access to these items, the Supplier must inform us immediately in writing and support our defence against interference with our rights of ownership and possession. We are entitled at any time to inspect, examine and exchange these items at the Supplier's premises or to have this done for us by third parties.

### 1.6

For immaterial objects, in particular binary files, character strings and other IT data, and also for design drawings, plans, documents, models, electronic data carriers, drawings and similar company documents, the provisions of section 1.5 apply analogously.

### 1.7

If we do not exercise or repeatedly fail to exercise rights to which we are entitled under these terms and conditions of purchase or the contract with the Supplier or in law, or if we do not expressly assert them at a certain point in time or do not expressly reserve them, this shall never constitute a declaration that we waive our rights or our compliance with the provisions on which they are based for the past or for the future or do not assert our claims.

If we do not make a declaration, this shall not be interpreted as consent.

1.8

The headings of the sections of these terms and conditions of purchase are for convenience only and are not to be used to determine, identify or interpret the substance of the respective provisions.

## **2. Quotes, permissible forms for declarations and contracts, price agreement, Origin, Secrecy**

2.1

Contracts for goods and all amendments and supplements to them must be in writing within the meaning of section 126 (I) and (II) German Civil Code (BGB), excluding all other forms such as text form or transmission by telecommunications or electronic means; section

2.2 remains unaffected.

2.2

Unless one party expressly declares otherwise in its contractual offer or its declaration of acceptance or unless otherwise agreed in the contract, the written form – also contrary to the above clause 2.1 and also for the conclusion of a contract – is deemed to be complied with by exchange of letters, text form, letter transmission by fax, declarations transmitted by telecommunications or electronic means and electronic data exchange.

2.3

Verbal agreements shall only be effective if they are confirmed immediately by one party in an authorised form.

2.4

In the absence of an express written price agreement, a contract is not concluded and a performance request is not binding on us unless expressly agreed otherwise in a permissible form.

2.5

In the absence of an express declaration to the contrary, any price quotation shall always be understood to mean that the goods or services are to be handed over to us or provided at Metten or another expressly agreed place of delivery and that all costs, duties, fees, taxes, customs duties, insurance, freight and packaging incurred or caused up to that point are included in the price.

2.6

All communications from the Supplier to us, his delivery notes and his invoices must state our order and request data and our material number. Deliveries to us that are carried out by a transport company must at least state our order number on the accompanying documentation, otherwise we are entitled to refuse acceptance of the delivery.

2.7

If so requested by us, the Supplier must declare and/or prove the origin of the goods to us in writing. 2.8

The Supplier is obliged to maintain strict confidentiality with regard to all other information that comes to his knowledge while working for us.

He is also obliged to impose these obligations on his own personnel and subcontractors. On request and after completion of the order, the documents and all copies and duplicates must be handed over to us.

Reference advertising with our name or similar is only permitted with our prior consent.

All records, documents and files that are relevant to the performance must be submitted by the Supplier without specific request at the time of performance at the latest.

In the event of a breach of these obligations, the Supplier shall be fully liable to us in accordance with the statutory provisions.

### **3. Orders. Acceptance period. Contractual content. Inspection. Condition. Quantities**

#### 3.1

Contracts shall be concluded in writing or by the Contractor declaring his acceptance to us in a permissible form within 14 days of receipt of our order; our right to specify a shorter or longer period in the order shall remain unaffected. After expiry of these 14 days or expiry of the deadline set by us in the order, we shall be entitled but not obliged to cancel our order until we receive the declaration of acceptance. Even without his declaration of acceptance, the Contractor's first action towards us in fulfilling our order is deemed to be his declaration to us that he accepts our order in its entirety.

#### 3.2

If the Contractor only accepts our order with deviations, the Contractor must expressly point this out to us in a prominent place; the contract shall only be concluded with our consent.

#### 3.3

Unless expressly declared in our order, the order does not constitute acceptance of any offer previously submitted to us by the Supplier; rather, our order alone determines the substance of the contract offered by us to the Supplier.

#### 3.4

Unless expressly stated otherwise in a permissible form, the Supplier's offers to us and our orders shall always be understood on the basis that the goods are of suitable quality for the specified purpose or for the purpose arising from the nature of the item or customary in the industry, that they fulfil the legal provisions applicable in Germany and the requirements for CE marking, that all substances, preparations and objects of the Supplier satisfy the specifications and other provisions of the REACH Regulation, the goods are not subject to any trade or export restrictions applicable in Germany and the goods comply with the information in the technical descriptions, test certificates, certificates of origin, certificates or confirmations that we have requested from the Supplier or received from him prior to conclusion of the contract or that have been generally published by the Supplier or with his knowledge and that the goods are supplied to us free of third-party rights.

#### 3.5

The Contractor must examine our order competently and with the care customary in the industry and must offer to change the character of the goods if changes are necessary or expedient with regard to statutory or other mandatory provisions that have already been amended or are amended by the time of delivery or for technical reasons. This also applies to repeated deliveries/services within the framework of a contract previously concluded.

#### 3.6

Without our prior express written consent, the Supplier is not authorised to change the character of the goods agreed in the contract or to deviate from the quantity agreed in the contract or specified in our delivery instruction. Deviations shall entitle us to refuse acceptance.

### **4. Acceptance. Dates. Quantities. Delays, contractual penalty, force majeure, transfer of risk**

#### 4.1

Dates, deadlines and quantities set out in the contract are binding. If we have the right to request partial deliveries from the Supplier, the details in our delivery instruction shall be binding. Receipt of the goods at the contractually agreed place of delivery shall be decisive for compliance with the delivery date or delivery period.

#### 4.2

The Supplier must inform us immediately in a permissible form if he realises that he is unable to deliver the goods to us in accordance with the contract or the delivery instruction despite all possible and reasonable measures. The Supplier must inform us verifiably and in permissible form of all reasons for this and the measures taken by him to remedy the situation and must notify us at the same time of the new delivery date with which he can reliably comply. Our rights arising from delay in delivery and breach of contract remain unaffected.

#### 4.3

If the Contractor culpably defaults on a delivery or service owed to us, he shall forfeit a contractual penalty of 0.15% of the gross remuneration agreed for these goods for each day of default, but not more than five per cent of this remuneration in total. We reserve the right to demand the penalty until payment for these goods. Our right, taking into account the contractual penalty, to claim any additional damages, and the right of the Contractor to prove to us that we have not suffered damages, shall remain unaffected.

#### 4.4

The agreement of new deadlines in the event of a delay or the unconditional acceptance of goods delivered late shall not constitute a waiver of the rights to which we are entitled due to delayed delivery.

#### 4.5

All events of force majeure and operational disruptions of any kind for which we are not responsible and that cause a restriction or cessation of our operations shall entitle us to postpone the fulfilment of agreed acceptance obligations or, if performance at a later date is no longer of interest to us, to withdraw from the contract in whole or in part. Force majeure shall include strikes, lock-outs and other circumstances at either our or third parties' premises that cause prolonged disruption to our operations and make it significantly more difficult or impossible for us to fulfil our obligations. We are obliged to inform the Contractor of such situations and their effects on the business relationship in permissible form in a timely and reasonable manner.

#### 4.6

All events of force majeure and operational disruptions of any kind for which the Supplier is not responsible and that cause a restriction or cessation of his operations shall entitle the Supplier to postpone the fulfilment of agreed delivery obligations or, if performance is no longer possible for him at a later date, to withdraw from the contract in whole or in part. Force majeure shall include strikes, lock-outs and other circumstances at the Supplier's or third parties' premises which cause prolonged disruption to the Supplier's operations and make it significantly more difficult or impossible for the Supplier to fulfil his obligations. The Supplier is obliged to inform us of such situations and their effects on the business relationship in permissible form in a timely and reasonable manner.

#### 4.7

The risk shall only pass to us upon delivery of the goods to the agreed place of delivery and unconditional acceptance by us.

### **5. Initial inspection. Warranty. Producer liability. Statute of limitations**

#### 5.1

We only have to inspect goods delivered to us externally for recognisable transport damage, for obvious defects and on the basis of the transport documents for the quantity and to identify the delivery with the contract or delivery instruction; otherwise we have no obligation to the Supplier to inspect goods on receipt. We only carry out inspections using application, production or product-related test methods in accordance with the circumstances of our proper business procedures. If we complain about goods within 7 working days of their delivery, this complaint shall in any case be deemed to be timely, unless it concerns defects that were already evident when the goods were delivered. If in individual cases the 'immediacy period' pursuant to section 377 German Commercial Code (HGB) is longer than 7 working days, this longer period shall apply. Our payment for goods does not imply that these goods have been inspected, accepted or are in conformity with the contract.

#### 5.2

In the event of defective fulfilment of contract or breach of duty in fulfilment, we shall be entitled to the full statutory claims. In particular, the Supplier is responsible for ensuring that the supplied item complies with the contractual and statutory requirements and does not exhibit any other defects. The supplied item must satisfy the currently recognised rules of science and technology and also the applicable environmental, health and safety and accident prevention regulations.

In the event of defects, we shall in particular be entitled to demand, at our discretion, either rectification of the defect or supply of a defect-free item (supplementary performance); the Supplier shall bear the full costs thus incurred.

We are further entitled to the statutory claims for damages in full and without limitation.

Acceptance of the goods or of a sample or specimen shall not automatically release the Supplier from liability for defects.

If claims are asserted against us for defects or damage to our products that were caused or contributed to by goods delivered to us by our Contractor in a defective manner or in breach of duty, the provisions of sections 478, 479 BGB shall apply accordingly for our recourse against the Contractor, unless we have further claims based on other statutory or contractual provisions.

### 5.3

The Contractor shall indemnify us against any obligation arising from manufacturer's liability, including any expenses arising from and in connection with recall campaigns, that affect us owing to non-conformity of the goods supplied by the Contractor and insofar as these deviations were caused within the Contractor's sphere of control or organisation or were not recognised through breach of duty. This shall also apply where we have further processed the goods. Further statutory claims to which we are entitled remain unaffected.

The indemnification must be granted on first request.

### 5.4

Unless otherwise agreed in our contractual agreement with the Contractor, the commencement and limitation periods for our claims arising from defective or otherwise unlawful fulfilment of the contract shall be governed by the statutory provisions, whereby the duration of each statutory limitation period is extended by a period of six months. Where the supplied item is re-supplied by way of supplementary performance, the limitation period shall begin to run afresh if this is to be regarded as acknowledgement of the supplementary performance obligation. The same shall apply concerning rectification of defects for the rectified part of the supplied item.

## **6. Payments. Discount. Assignments. Due date. Offsetting**

### 6.1

Unless otherwise agreed, we shall fulfil our payment obligations – subject to contractual fulfilment and correct issue of invoices – within 30 days of receipt of the invoice, but not before delivery of the goods or provision and acceptance of the service or before complete handover of contractually agreed documentation or other documents, with a deduction of 3% discount, or within 60 days with no deduction. We are entitled to make payment by sending crossed cheque or by bank transfer at our discretion. Payment shall be deemed to be timely if we can prove that we issued the payment order to the financial institution or sent the cheque to the Contractor within the aforementioned period.

If the invoices do not contain the information specified in point 2.6, the 30-day period for discount shall not begin until the day on which all the information we require has been provided. We do not honour cash on delivery shipments; the resultant costs shall be borne by the Supplier.

If the Supplier's terms of payment are more favourable, these shall apply without his GTCs being recognised in other respects.

### 6.2

Without our prior written consent, which may not be unreasonably withheld, the Contractor is not entitled to assign his payment or other claims against us or to authorise third parties to collect them on his own behalf.

### 6.3

If our Contractor suffers financial collapse (= over-indebtedness, insolvency or imminent insolvency) and an application is therefore made to open insolvency proceedings against his assets, all our claims against him shall be deemed due and unconditionally payable at the time the insolvency application is filed, even if the claims are old, subject to a condition subsequent or subject to a condition precedent.

Insofar as we have claims against our Contractor at that time that are not for money or the monetary amount of which is undetermined or uncertain, we shall be entitled, at our reasonable discretion, to quantify the monetary amount owed to us by the Contractor and to demand this from him.

### 6.4

If insolvency proceedings are instituted against the assets of our Contractor, we shall also be entitled to offset against his claims any claims to which we are entitled that are still conditional or not yet due and/or that are due to a third party in which we have a direct or indirect interest at that time or which then has an interest in us. Insofar as claims against the contractual partner at that time are not for money or the monetary amount of which is undetermined or uncertain, we shall be entitled, at our reasonable discretion, to quantify the monetary amount owed to us.

## **7. Withdrawal and overall liability**

- 7.1 The Supplier's statutory right of cancellation shall be neither excluded nor limited. Likewise, statutory or contractual rights and claims to which we are entitled shall be neither excluded nor limited.
- 7.2 We shall be liable without limitation only for intent and gross negligence (including that of our legal representatives and vicarious agents) and for injury to life, limb and health. We shall also be liable without limitation for the provision of guarantees and assurances if a defect covered by them triggers our liability. There is also no limitation in the case of liability arising from hazardous situations.
- 7.3 In the event of any other culpable breach of material contractual obligations (cardinal obligations), our remaining liability shall be limited to the foreseeable damage typical for the contract.
- 7.4 Otherwise, our liability – for whatever legal reason (in particular claims arising from breach of primary and secondary contractual obligations, unauthorised actions and other tortious liability) – is excluded.
- 7.5 The same (exclusions, limitations and exceptions) shall apply for claims arising from culpa in contrahendo.
- 7.6 In the event of reimbursement of expenses, this clause 7 shall apply accordingly.
- 7.7 Any exclusion or limitation of our liability shall also apply to our legal representatives and vicarious agents.
- 7.8 A reversal of the burden of proof is not sought. Cardinal obligations are essential contractual obligations, i.e. those obligations that characterise the contract and on which the contractual partner may rely; they are therefore the essential rights and obligations that create the conditions for the fulfilment of the contract and are indispensable for achieving the purpose of the contract.
- 7.9 The Supplier's liability is regulated in Section 5 and by law.

## **8. Applicable law. Place of jurisdiction and final provisions**

### 8.1

All claims and legal disputes shall be governed by the law of the Federal Republic of Germany with the exception of the provisions of the UN Convention on Contracts for the International Sale of Goods, unless otherwise stipulated in the contract and/or these terms and conditions of purchase.

### 8.2

The place of jurisdiction for all claims and legal disputes is D-94469 Deggendorf, but we are also entitled to bring a legal dispute against the Supplier at the court of his general place of jurisdiction.

### 8.3

If individual provisions of these terms and conditions of purchase are invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by mutual agreement by a provision that corresponds to the economic purpose of the invalid provision. This shall apply analogously if these terms and conditions of purchase are invalid as a whole.

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