

GENERAL TERMS AND CONDITIONS OF PURCHASE

(Juli 2016)

1. General, Scope of Application

- 1.1 These General Terms and Conditions of Purchase of Hennecke GmbH (hereinafter referred to as "Customer") apply to all business relations with entrepreneurs (section 14 BGB [*German Civil Code*]), public-sector legal entities, or special bodies or funds under public law (hereinafter referred to as "Supplier"). The General Terms and Conditions of Purchase, as amended from time to time, also apply as a framework agreement to future contracts for the sale and/or delivery of goods concluded with the supplier, without our having to refer to them again in each particular case.
- 1.2 Contrary or supplementary terms and conditions of the supplier become part of the Agreement only if and to the extent the customer has expressly agreed to their applicability.
- 1.3 Any deviation and/or supplementary agreement to this General Terms and Conditions must be made in writing and needs to be negotiated individually. This also applies to written form requirement itself.

2. Offer and Conclusion of Agreement

- 2.1 In preparing the offer, the supplier shall adhere precisely to the specifics of the inquiry and in the event of any deviation the supplier is to expressly notify the customer of any such deviation. Quotations bind the supplier for at least 60 working days and may be accepted by the customer at any time during this period.
- 2.2 Our orders are freely revocable until such time as the order is confirmed or, in the absence of an order confirmation, until the time of delivery. The supplier shall confirm our order placement no later than 5 working days upon receipt of the order by means of a written order confirmation or by delivery. A late order confirmation with a deviating delivery date is deemed to be a new offer and requires our confirmation.
- 2.3 Accurate compliance with the specifications referred to in the purchase order, applicable standards and laws, the accepted state of the art, and the quality of the delivery items are essential obligations of the supplier hereunder. Any and all obligations arising from the Agreement are to be discharged by the supplier. The commissioning of subcontractors for manufacturing is permissible only with our prior written consent.

3. Amendments, Modifications and Additions

- 3.1 The customer may at any time, at its equitable discretion, demand reasonable amendments, modifications and additions of the order until such time as the delivery item has been delivered (in the case of work and service agreements: until acceptance). The Supplier is obligated to propose amendments and modifications which it deems necessary and expedient for a successful fulfillment and performance of the Agreement. Upon receipt of the customer's written consent, the supplier shall perform such amendments and modifications.
- 3.2 To the extent an amendment or modification involves an increase or decrease in costs and/or implies that deadlines can no longer be met, the supplier must notify the customer of such circumstances right away when submitting an amendment / modification proposal or promptly upon receipt of the customer's amendment/modification request. Compensation is to be adjusted commensurate with the cost modifications.

4. Delivery, Delivery Delay

- 4.1 Shipping shall be dispatched at the supplier's risk and costs (DDP St. Augustin according to Incoterms 2010). The supplier shall insure the transportation risks at its own account through a suitable insurance policy and shall furnish proof of insurance for inspection upon the customer's demand. In case the freight costs are to be borne by customer by special agreement, the supplier must select the shipping mode affording the most favorable shipping rates. Place of delivery and passing of risk shall be the receiving location as indicated by the customer.

- 4.2 Unless expressly agreed otherwise, the supplier is not entitled to effect partial performance. If, nevertheless, partial performance is rendered and the customer is not interested in such partial performance, the customer may rescind the entire contract.
- 4.3 Unless otherwise expressly agreed, the delivery times and periods specified by the customer are binding. If the supplier becomes aware of any circumstances that would lead to the conclusion that a risk of delivery delay exists, the supplier shall notify the customer of this fact without undue delay. The supplier bears the procurement risk for its performance, unless otherwise agreed in individual cases.
- 4.4 Compliance with the agreed delivery periods and dates is dependent on the receipt of the subject matter (delivery item) at the receiving location specified by the customer; in the case of deliveries involving setup, assembly or other services requiring acceptance, the date of their acceptance shall apply.
- 4.5 In the event of any delivery delays for which the supplier is at fault, the customer may demand, in respect thereof – in addition to further legal claims – liquidated damages in an amount of 1 % of the order value for each completed week of delay, at the most, however, 5 % of the order value. The customer may assert higher damages caused by delay upon furnishing proof. The supplier may furnish proof that the customer suffered lesser damages.
- 4.6 The supplier is authorized to exercise its right of retention only insofar as its counterclaim is based on the same contractual relationship or on an undisputed claim or a claim that is recognized by declaratory judgment. The supplier may only offset with undisputed counterclaims or with counterclaims recognized by declaratory judgment.
- 4.7 The customer's complete order numbers and article numbers must be documented on the delivery notes, shipping advices, and way bills. In addition, the supplier is obligated to draw up a supplier declaration for us upon request.
- 4.8 The supplier shall send a detailed shipping advice, separate from the goods and the invoice, to the customer for each individual consignment at least 3 working days prior to shipping. The date of receipt of the shipping advice at the customer site is decisive. The delivery note and packaging slip are to be attached to the delivery. In the event of shipment by sea, the name of the shipping company and the ship are to be specified in the shipping documents and invoices. If a system or equipment is knocked down into components or is delivered in more than one component, these components are to be labeled and are to be positioned and described in the delivery note in accordance with the labels.
- 4.9 Tools and setup equipment shall not be loaded together with the delivery items, otherwise the supplier shall bear the costs of reloading. Any consignments the customer does not accept due non-compliance with these shipping provisions will be stored at the supplier's expense and risk. The customer is authorized to inspect and determine the content and condition of such consignments. The supplier is also liable for its subcontractors' compliance with the shipping provisions. The supplier is liable to the customer for damages suffered and costs incurred by the customer due to supplier's noncompliance with any of the the above terms and conditions.
- 4.10 The title to patterns, dies, jigs / fixtures and other tools invoiced in full or in part to the customer will pass to the customer at the time these items are delivered to the customer.

5. Prices and Payment

- 5.1 The agreed prices are fixed prices. All prices are without Value Added Tax, but include packaging, insurance, transportation and other ancillary costs.
- 5.2 The shipment date, the customer's order number, article numbers and customer's Value Added Tax ID Number are to be noted on invoices and credits. Invoices must correspond to the order's delivery items description, sequence and prices. Any excess or short deliveries / services shall, as a rule, be itemized separately.

5.3 Unless otherwise agreed, payments shall be made (i) within 14 days less 3 % cash discount after receipt of the delivery item or in the event the customer receives an invoice or an equivalent payment request after the receipt of the delivery item within 14 days less 3 % cash discount after receipt of the invoice or equivalent payment request (ii) within 30 days net without deduction after receipt of the delivery item or in the event the customer receives an invoice or an equivalent payment request after the receipt of the delivery item within 30 days net after receipt of the invoice or equivalent payment request. In the event that the delivery item is delivered earlier than agreed, the payment period shall commence at the earliest upon the agreed payment date, even though the customer accepts the delivery. The date of the customer's order to pay is decisive. In the case of work and service agreements, the acceptance date applies instead of the delivery date.

5.4 If customer receives the delivery item or invoice prior to the agreed delivery date, the payment period shall commence no sooner than the agreed delivery date, even if customer accepts the early delivery. If a service contract is concluded between the parties, date of delivery is replaced by date of acceptance.

5.4 Payments do not imply any acceptance of conditions, prices, or characteristics of the delivery item.

6. Warranty (*Gewährleistung*)

6.1 The supplier shall deliver the goods free of material defects and defects in title. The general limitation period for warranty claims (*Gewährleistungsfrist*) is 24 months, starting from the date of delivery to the final customer, but shall in no case exceed 3 years from the date of delivery to the Customer. Longer statutory limitation periods shall not be affected thereby. The time limit set forth in Article 39(2) CISG (to the extent applicable) shall not end prior to expiry of the limitation period stipulated in the present article 6.1.

6.2 The customer's duty to inspect goods delivered from the supplier upon their receipt is limited to apparent defects discoverable by visible inspection, including of delivery documents, as well as defects that become apparent during quality control using random samples (e.g. transportation damages, incorrect or short delivery). If the supplier has its seat in Germany, notification of any defects shall in any case be deemed timely if the customer has given notice of such defects within 5 working days from receipt of the goods or, if such a defect does not become apparent until later, within 5 days from its discovery. If the supplier has its seat outside Germany, notification of defects shall in any case be deemed timely if the customer has given notice thereof within 4 weeks from the date on which he discovered them or ought to have discovered them.

6.3 Any defects must be cured by the supplier, at the customer's choice, either by remedying the defect or by supplying a defect-free item. If the method of cure chosen by the customer proves unfeasible, the supplier may cure the defect in another manner reasonably acceptable to the customer. If a defect cannot be cured altogether, or if the supplier refuses to perform such cure, makes no attempt to undertake it although he has been granted a reasonable period of time, or is not successful in curing the defect, the customer may at any time, notwithstanding any further rights he may have, rescind the contract within the period of limitation set forth in article 6(1) hereof, even if he is unable to return the goods in essentially the same condition in which he has received them. The time limit set forth in Article 49(2) CISG (to the extent applicable) shall not end prior to expiry of the limitation period stipulated in article 6.1 hereof. If the purchase order is for a building, the limitation period stipulated in section 634a (1)(2) of the German Civil Code shall apply.

6.4 The customer produces machinery for the manufacture of industrial goods. If defective parts provided by the supplier are used in the manufacture of such machinery so that a defective machine is obtained, the customer may become liable vis-à-vis its final customers for consequential damage, e.g., loss of production, product rejects, product recalls, damage to property, and personal injury. The supplier has the duty to cover its risk of liability through an insurance policy and to furnish proof of such coverage to the customer upon request.

7. Provision of Materials

7.1 All materials provided by the customer remain the property of the customer and are to be stored, labeled and administered separately by the supplier at no charge. The materials may only be utilized to fulfill the customer's orders. The supplier bears the risk in the event of loss or deterioration of the materials supplied by the customer.

7.2 The materials supplied by the customer are processed or transformed for the customer. The parties agree that the customer becomes the (joint) owner of the new or transformed object. The supplier stores the new object for the customer at its own expense (free of charge), and with the due care of a prudent business man.

8. Customer and Supplier Documents, Confidentiality

8.1 The customer retains all titles and copyrights to images, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents are to be used exclusively in the performance of the Agreement and are to be returned to the customer upon fulfillment of the Agreement.

8.2 Documents received from the customer are not to be disclosed to any third party; this requirement shall survive the expiry of the Agreement. The duty to observe confidentiality (secrecy) lapses if and to the extent the knowledge contained in the provided documents has become general knowledge.

8.3 The supplier may only refer to business relationships with the customer (e.g., in an advertisement) upon having received the latter's prior written consent

8.4 Drawings and all documents required by the customer for the setup, operation, maintenance, inspection or repair of the delivery items are to be provided by the /supplier free of charge, in due time, and without being solicited. This also applies to the required conformity and manufacturer declarations.

8.5 The supplier shall request the customer's company standards and specifications [*Werknormen*] and guidelines, to the extent they have not yet been provided.

9. Documentation

9.1 Documentation shall be provided in file form, stating customers's purchase and/or order number, at the latest with delivery. Files up to 5 MB may be e-mailed to the address documentation@hennecke.com, larger files are to be saved to data carrier and sent by postal service. The documentation is to be provided both in German and in the language specified in the order, if so requested. The documentation must include the following information:

- Operating Instructions according to EU Machine Directive 2006/42/EC, including Repair Instruction(s) in .pdf or .doc file formats (no scans);
- Lubrication and Maintenance Schedules in .pdf or .doc file formats (no scans);
- Schematic diagrams (hydraulic/pneumatic) in .pdf + MI (ME10), or .dxf file formats;
- Drawings (including manufacturing drawings) and bills of material with unique identifiers for each individual component;
- Identification / labeling of spare and wearing parts, stating their manufacturer and complete type description, more specifically including the unique order description. File format for drawings: .pdf and MI (ME10), .dxf or STEP, SAT (in the case of 3-dimensional renderings); file format for bills of material: .xls or .doc
- Electrical circuit diagrams, set-up plans and terminal schemes according to VDE in the following file formats: E-plan or .pdf; including bills of material stating the manufacturer and complete type description for all items in the following file formats: .xls or .doc
- For printers: documentation according the Printer Directive 97/23/EC.
- Spare parts offer (mechanical and electrical)

10. Tests / inspections

- 10.1 Where tests / inspections are envisaged for the delivery items, the customer and supplier shall bear their respective incurred material and personnel inspection costs themselves. The supplier shall send the customer a binding notice at least 10 days in advance that the delivery items are ready for testing and shall schedule an inspection date with the customer. If a delivery item is not presented on this date, the customer's material and personnel costs shall be borne by the supplier.
- 10.2 Any necessary material certificates for primary materials are to be prepared at the supplier's expense and shall be provided to the customer at the latest with the delivery item itself.
- 10.3 If any defects are identified during goods receipt inspections which give rise to the conclusion that the delivered products need to be remedied by the supplier, the supplier shall bear the associated costs of the repeat quality assurance measures to be performed by customer (repeat of the good receipt inspection etc...) in the amount of a flat fee of 95.00 EUR per notice of defects. This provision shall not affect any additional claims customer may have. The supplier may furnish proof of lesser damage and the customer may furnish proof of greater damage.

11. Reservation of Title

Unless otherwise agreed by the parties in writing, all forms of extended (*erweitert*) or prolonged (*verlängert*) reservation of title are excluded, so that any reservation of title declared by the supplier is only valid until the delivery item delivered to the customer is paid in full and is only applicable to such delivery item.

12. Final Provisions

- 12.1 The place of performance for all of the customer's and supplier's obligations is St. Augustin (Germany).
- 12.2 These General Terms and Conditions of Purchase are governed by the Law of the Federal Republic of Germany and, to the extent applicable, by the UN Convention on Contracts for the International Sale of Goods.
- 12.3 It is agreed that the place of jurisdiction shall be Cologne. In addition, the customer may assert any of its claims at the supplier's place of general jurisdiction. The customer may also opt to have any and all disputes arising out of the business relationship with the supplier finally resolved in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with said Rules. At the supplier's request, the customer must exercise this option with respect to a specific dispute within a period of one week from receipt of such request by making a statement to that effect vis-à-vis the customer, if the Supplier intends to initiate legal proceedings against the customer.

Hennecke GmbH