

General Purchasing Terms No 105 of HSM GmbH + Co. KG, 86699 Frickingen, Germany ("HSM"), last updated 1 January 2020

1. General

1.1 These General Purchasing Terms apply to all orders which HSM places with its suppliers and to all framework delivery agreements concluded between HSM and its suppliers including the pertaining calls from HSM for goods or services; general terms and conditions of the supplier are not applicable. The execution of orders or calls will be deemed to constitute acceptance of these General Purchasing Terms. Neither the use of general terms or conditions of the supplier on order confirmations or delivery slips nor the acceptance of deliveries or services or payment thereof by HSM shall constitute acceptance of any general terms and conditions of the supplier.

1.2 These General Purchasing Terms of HSM also apply to all future deliveries of goods or services which the supplier makes to HSM until new purchasing terms come into force.

2. Offer, orders and order confirmations

2.1 Orders and calls must be made by signed written instrument to be effective, with transmission by means of telecommunication being sufficient (Section 127(2) of the German Civil Code (*Bürgerliches Gesetzbuch* - BGB)). This also applies to amendments, supplements and side agreements to the delivery agreement.

2.2 HSM is under no obligation to call the quantities stated in framework delivery agreements, unless such quantities are explicitly agreed as minimum quantities to be purchased.

3. Placement of orders

3.1 If the supplier does not accept an order by HSM within 5 working days of receipt, HSM is entitled to cancel the order. Orders placed by HSM in a current business relationship and calls by HSM become binding unless the supplier objects to such order or call without undue delay and no later than 5 working days from receipt.

3.2 The supplier encloses one copy of a delivery slip with each shipment of goods to be delivered to HSM. The supplier shall issue two copies of each invoice.

4. Prices and terms of payment, rights of retention

4.1 Unless explicitly stipulated otherwise in the relevant framework delivery agreement, unit prices agreed in framework delivery agreements apply without changes even if HSM does not call the full quantity agreed in the framework delivery agreement.

4.2 All prices indicated in framework delivery agreements and orders are without VAT; if applicable, (import) sales tax (value-added tax) will be charged in addition in accordance with the VAT rate applicable at the time of delivery of the goods or services.

4.3 The prices and terms of payment agreed in a framework delivery agreement are valid throughout the calendar year during which the framework delivery agreement was concluded, unless explicitly stipulated otherwise in the relevant framework delivery agreement.

4.4 In the event that HSM receives an offer from a third party for goods or services which are equivalent to those covered by a framework delivery agreement between HSM and the supplier but which are offered at a lower price and/or more favourable terms of payment, the supplier is obliged to negotiate with HSM on a corresponding adjustment of the prices and/or terms of payment agreed.

4.5 If, in the course of any calendar year, there are severe changes in the market situation or competitive position of HSM or the supplier, HSM or the supplier, as the case may be, is entitled to demand that the other party engage in negotiations to agree new prices and payment terms which are appropriate in terms of market and competition.

4.6 Payment of an invoice by HSM does not constitute acceptance of the goods.

4.7 Any and all claims of the supplier for remuneration or reimbursement of expenses are payable within 90 days of receipt of a proper invoice. If payment is made within 21 days, the supplier shall grant HSM a discount of 3% on the net amount of the invoice. If payment is made within 30 days, the supplier shall grant HSM a discount of 2% on the net amount of the invoice.

4.8 HSM owes no default interest within the meaning of Section 353 of the German Commercial Code (*Handelsgesetzbuch* - HGB). In the event of default in payment, the statutory provisions shall apply. HSM is entitled to setoff and retention to the extent determined by law.

4.9 The supplier is not permitted to assign any rights or obligations under legal transactions made with HSM. In particular, claims against HSM may not be assigned and checks issued by HSM may not be transferred by endorsement. Section 354a of the German Commercial Code shall not be affected hereby.

4.10 If, according to the contractual arrangements, the supplier has undertaken the assembly or installation of the goods, the supplier shall bear all necessary ancillary expenses such as travel expenses, costs for providing tools and allowances, unless agreed otherwise.

4.11 Cost estimates and offers are free of charge unless explicitly agreed otherwise.

5. Delivery

5.1 Delivery dates stated in orders and calls are binding. In the event of default in delivery, HSM is entitled to the rights provided by law. Moreover, in the event of a culpable default in delivery, HSM is entitled to demand a penalty of 2% of the delivery value for the first commenced week, 1% for the second commenced week and 0.5% for every commenced week thereafter up to a maximum overall amount of 5% of the delivery value. The penalty can be claimed in addition to performance and will not be deducted from any statutory damage entitlement. In the event of acceptance of delayed goods, HSM can claim such a penalty even without explicit reservation at any time prior to the final payment of the goods delayed. If and to the extent such practice corresponds to the due care of a prudent businessman, especially to ensure uninterrupted production processes at HSM, HSM is entitled to make covering purchases and to demand damages from the supplier for this. The supplier shall also bear any additional costs caused by expedited transport which is necessary to meet specific delivery dates.

5.2 If goods are delivered to HSM prior to the delivery date stated in an order or call form, HSM is entitled to refuse acceptance of the goods and, at the discretion of HSM, to send them back at the supplier's risk and expense or to store them at a third party warehouse at the supplier's expense.

5.3 The supplier is obliged to inform HSM in writing without undue delay if any circumstances occur or become apparent to the supplier which give rise to the assumption that a delivery date stated in an order or call form cannot be met.

5.4 Acceptance by HSM of a delayed delivery of goods or services without reservation involves no waiver of any rights to which HSM may be entitled due to such delayed delivery.

6. Transport, passing of risk

Unless otherwise agreed in the framework delivery agreement or stated in the order, deliveries by the supplier to HSM shall be made DDP (Incoterms 2020) to the HSM plant stated in the order/call form.

7. Quality of the goods delivered and warranty

7.1 The goods delivered have to comply in all respects with the recognised rules of technology, the national and international safety regulations and the agreements regarding the quality of the goods set out in the order or in the framework delivery agreement and – if their observance is part of the order or agreed in the framework delivery agreement – the drawings and samples approved by HSM (performance in conformity with the contract). Any intended deviations from drawings or samples which are binding for the order/call have to be announced and explained by the supplier to HSM in due time by written notice (with transmission by means of telecommunication being sufficient, Section 127(2) of the German Civil Code) and including all details. Such deviations may be carried out only after explicit approval by HSM.

7.2 Performance in conformity with the contract will be assessed by means of a sampling scheme indexed by AQL values (acceptance quality limit) in accordance with DIN ISO 2859-1. As regards type samples or goods or services delivered which do not comply with the given regulations and agreements, the statutory provisions on material and legal defects shall apply – even if the assessment was limited to samples according to AQL 1.5 – unless the order or the framework delivery agreement provides otherwise. In urgent cases in which, for reasons of urgency, setting an additional time limit for the supplier to remedy defects is not possible anymore without causing damage to HSM, HSM is entitled to carry out subsequent improvement itself, or to have subsequent improvement carried out by a third party, at the expense of the supplier.

7.3 If, exercising the due care of a prudent businessman, HSM is required to inspect 100% of all incoming goods as a result of an above-average occurrence of defects in a quality assessment procedure in accordance with clause 7.2, HSM is entitled to demand from the supplier reimbursement of the expenses incurred as a result of such inspection.

7.4 HSM is entitled to return goods to the supplier if they are defective or in excess of the quantities ordered. Such return will be at the risk and expense of the supplier.

7.5 If defects are discovered only during processing or use of the goods, HSM is also entitled to demand reimbursement of the processing expenses made in vain.

7.6 The warranty period is 28 months from delivery of, and transfer of title in the goods to HSM.

7.7 In addition to the rights based on defects, HSM is also entitled without limitation to the recourse claims within a delivery chain as defined by law (supplier recourse pursuant to Sections 445a, 445b of the German Civil Code). HSM is in particular entitled to demand from the supplier precisely the type of subsequent performance (subsequent improvement or replacement delivery) which HSM owes to its customers in an individual case.

7.8 Prior to recognising or fulfilling a claim based on defects asserted by its customer (including reimbursement of expenses in accordance with Sections 445a(1), 439(2) and (3) of the German Civil Code), HSM will inform the supplier and, briefly summarising the facts, ask the supplier for its comments in writing or in text form. If no substantiated comments are submitted within a reasonable period of time and no amicable solution is procured, the claim actually granted by HSM for defects is deemed owed to its customer. The supplier can in this case provide evidence to the contrary.

7.9 The claims of HSM under supplier recourse also apply if the defective goods were further processed by HSM or another entrepreneur, e.g. by incorporation into another product.

7.10 The statutory recourse claims under Sections 445a, 445b of the German Civil Code and the provisions in clauses 7.7, 7.8 and 7.9 also apply accordingly if the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is applicable to the contractual relationship.

7.11 Each delivery is accepted subject to it being in conformity with the contract, especially in terms of accuracy, completeness, and freedom from defects. Defects discovered will be notified by HSM without undue delay. The supplier waives the objection of a delayed notification of defects in this respect. The notification is timely if made within 8 working days for obvious defects, and within 14 working days for all other defects.

7.12 HSM shall be informed in due time in writing of any major changes in the materials processed by the supplier or in the processing procedure (with transmission by means of telecommunication being sufficient, Section 127(2) of the German Civil Code). HSM is entitled to examine whether the changes have any adverse effects on the goods or other services to be delivered by the supplier. If so requested by HSM, the supplier will make available the documents required for this and allow the examinations required for this to be carried out on site at the supplier.

8. Packaging, return

8.1 No packaging costs will be charged to HSM by the supplier.

8.2 In the event of refusal of acceptance of certain goods or rescission by HSM, the supplier is obliged to collect the goods without undue delay at the location designated by HSM at the supplier's expense. Notwithstanding the above obligation of the supplier to collect the goods, HSM is entitled at any time to return defective goods to the supplier. Such return will be at the risk and expense of the supplier.

8.3 If so requested by HSM, the supplier is obliged to take back at its own expense the packaging materials used for its deliveries to HSM.

9. Product liability, product recalls

9.1 In the event that HSM is held liable based on product liability or producer's liability, the supplier is obliged to indemnify HSM from such claims if and to the extent that the damage was caused by a defect in the goods supplied by the supplier as defined in Section 3 of the German Product Liability Act (*Produkthaftungsgesetz* - ProdHaftG). In cases of fault liability this does not apply if the supplier proves that it is not at fault with respect to the occurrence of the damage despite the fact that the cause of damage falls within the supplier's sphere of responsibility. In connection with its indemnification obligation and liability under this clause, the supplier also assumes all of HSM's costs and expenses, including reasonable costs of legal action or recall campaigns. Prior to launching a recall, HSM will inform the supplier, enable the supplier to participate to a sufficient extent and exchange views with the supplier on how such recall can be carried out efficiently; this is not required in cases where informing or involving the supplier is not possible due to particular urgency. In all other respects, the statutory provisions shall apply.

9.2 The supplier agrees to maintain product liability insurance with lump sum coverage of at least €1 million per personal injury/property damage claim; if HSM is entitled to further damage claims, such claims shall not be affected.

10. Reservation of title, provision of materials, tools, confidentiality, processing

10.1 Title to the goods shall pass unconditionally on delivery of the goods to HSM, regardless of the payment of the purchase price. If HSM in an individual case accepts an offer of the supplier to transfer title subject to payment of the purchase price, the supplier's reservation of title lapses on payment of the purchase price for the goods delivered, at the latest. Any prolonged or extended reservation of title by the supplier shall be excluded.

10.2 Any models, samples, production facilities, tools, materials, drawings, worksheets, standard sheets, print templates and similar items provided by HSM remain the property of HSM and will be kept in custody by the supplier free of charge, with the supplier exercising the due care of a prudent businessman and such property of HSM being kept separately from any other items in the supplier's possession, marked as property of HSM and used by the supplier only to perform the deliveries or services for HSM.

10.3 The supplier is obliged to carry out any maintenance or repair work required on HSM tools timely and at its own expense. The supplier agrees to handle HSM tools properly and professionally and to ensure compliance with the accident prevention regulations applicable to such tools as issued by the employers' liability insurance association in charge of the supplier. Incidents, if any, shall be immediately reported to HSM by the supplier; if the supplier culpably fails to do so, damage claims of HSM shall not be affected thereby.

10.4 If the supplier processes or remodels any materials provided by HSM or combines or mixes them with other items, such processing, remodelling, combination or mixing is made on behalf of HSM. HSM immediately becomes the owner of any items resulting from such processing, remodelling, combination or mixing. If the materials are processed, remodelled or combined together with other items not owned by the supplier, HSM is entitled to co-ownership in the new item in accordance with the ratio of the value of the HSM materials provided which were processed, remodelled, combined or mixed to the value of the new item. If this is not possible for legal reasons, HSM and the supplier agree that on completion of the manufacturing process HSM will immediately become the owner of the new item.

10.5 Any models, samples, production facilities, tools or drawings which HSM makes available to the supplier may not be copied or disclosed to any third party without the prior written consent of HSM. They shall be protected from unauthorised access and use by appropriate confidentiality measures and insured against damage. The supplier shall return them to HSM at the supplier's expense and without a separate request if the supplier does not need them anymore for further performance of the delivery or service and HSM has not explicitly allowed the supplier to keep them.

10.6 Tools, moulds or similar items which are produced entirely at the expense of HSM become the property of HSM once produced. For tools which are produced partly at the expense of HSM, HSM and the supplier shall agree on a separate, individual arrangement regarding ownership. Products manufactured according to documents designed by HSM such as drawings, tools and similar documents or other confidential information or by means of tools provided by HSM may be neither used by the supplier itself nor offered or supplied by the supplier to a third party. This also applies accordingly to print orders placed with HSM.

10.7 If the supplier violates the prohibition of unauthorised use or breaches the duty of confidentiality, HSM is entitled to rescind the contract in whole or in part and to demand damages, without prejudice to any other rights.

10.8 HSM reserves all rights in any items or information provided (including copyright and the right to file industrial property rights such as patents, designs, semi-conductor protection, etc.).

10.9 If the title of HSM is impaired by third parties, in particular in the event of seizure or attachment, the supplier shall inform HSM without undue delay, sending all available documents such as attachment minutes, and advise the relevant third party of the title held by HSM. HSM will charge the supplier for any costs incurred as a result of the impairment of title.

11. Industrial property rights (design protection; third party rights)

11.1 The supplier is responsible in accordance with clause 11.2 for ensuring that the goods delivered or other services provided by the supplier do not infringe any third party industrial property rights.

11.2 The supplier is obliged to indemnify HSM and the customers of HSM from any and all claims which third parties may assert against HSM or HSM customers on account of infringement of industrial property rights as referred to in clause 11.1, and to reimburse HSM all necessary expenses made in connection with such claim. This does not apply to the extent that the supplier proves that the supplier neither is responsible for the industrial property right infringement nor should have been aware of such infringement at the time of delivery if it had exercised the care of a prudent businessman. Any further statutory claims based on legal defects of the goods or services delivered to HSM shall not be affected thereby.

11.3 HSM will inform the supplier without undue delay of the claims asserted against HSM and assist the supplier in the defence of such claims.

11.4 Furthermore, the supplier is obliged to deliver to HSM such goods in place of the goods concerned which do not interfere with the rights of third parties, observing all specifications agreed, or to procure for HSM the right to use such rights free of charge to the extent required. If the supplier holds any industrial property rights of its own for specific applications of the goods delivered, the supplier shall grant HSM a right of joint use of such rights to the extent required and free of charge.

12. General

12.1 If individual provisions of these General Purchasing Terms are invalid, the validity of the remaining provisions shall not be affected thereby. In place of the invalid provision such valid provision shall be deemed to have been agreed with retroactive effect which is as close as possible to the economic meaning of the invalid provision.

12.2 If the supplier's registered office is within the European Economic Area (EEA), the place of jurisdiction for all disputes arising from or in connection with the contractual relationships governed by these General Purchasing Terms shall be Frickingen, Germany. However, HSM is also entitled at its discretion to take legal action against the supplier at the place where the supplier's registered office or branch office is located or at the place of performance.

12.3 If the supplier's registered office is outside the EEA, all disputes arising from or in connection with this agreement shall be resolved with final effect in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by an arbitrator appointed in accordance with those Rules. The place of arbitration shall be Meersburg, Germany. The language of the proceedings shall be German in this case. The court having jurisdiction pursuant to Section 1062 of the German Code of Civil Procedure (*Zivilprozessordnung* - ZPO) shall be the OLG Stuttgart (Freiburg divisions).

12.4 The place of performance shall in all cases be the place of receipt agreed in the order or stated by HSM in the call form.

12.5 If the supplier's registered office is outside the Federal Republic of Germany, the United Nations Convention on the International Sale of Goods of 11 April 1980 (CISG) shall apply. If the supplier's registered office is in the Federal Republic of Germany, German law shall apply, with the exception of the CISG and private international law.

13. Export regulations

The supplier assures that the delivery is in compliance with all laws and regulations of the country of export and that all required governmental permits have been obtained.