



Terms and conditions of purchase of the Hilma-Römheld GmbH, 57271 Hilchenbach

General business terms for the purchase of products, raw materials and spare parts
- as of December 2008 -

I. Application of terms and conditions

1. All purchase orders from the Hilma-Römheld GmbH, 57271 Hilchenbach hereinafter referred to as "Purchaser"), and all agreements with the suppliers are exclusively placed subject to the following terms and conditions. The purchaser will not accept any contrary terms and conditions of the supplier, unless he expressly confirms his consent in writing. The lack of a response to terms and conditions, which have been advised by the Supplier, does not signify their acceptance. The same applies to order confirmations. If the Purchaser has concluded a blanket order with the Supplier, the provisions of such a blanket order shall have priority. They may only be amended by these terms and conditions of purchase.
2. The Purchaser's terms and conditions of purchase also apply to any future business with the Supplier even if not explicitly repeated and agreed. Execution of the order is considered to be an acknowledgement of acceptance of these terms and conditions.

II. Order and order confirmation

1. Supply contracts (order and order confirmation) and call-offs as well as their modifications and amendments must be made in writing. Call-offs may also be made by electronic data transmission.
2. The Purchaser may revoke the order if the Supplier has failed to send a written order confirmation within a period of three weeks from the date of receipt of the order. If the order confirmation differs from the order, the Purchaser shall only be bound following acceptance of any such discrepancy in writing.
3. Acceptance of deliveries or services, as well as payments, do not constitute approval.
4. Without the Purchaser's written consent the Supplier is not entitled to pass orders to third parties. If this occurs, the Purchaser may withdraw from the contract in whole or in part and claim damages. If the Purchaser gives his consent, the third party is considered as the Supplier's agent.
5. The Purchaser may request the Supplier to carry out modifications of the item to be delivered with respect to engineering and design, if such a request can be reasonably accommodated. The impact of any such modifications with respect to a change in the purchase price or the delivery date shall be amicably agreed.
6. Purchaser's technical documents, drawings, items, layouts as well as works specifications and other information accompanying the purchase order are essential parts of orders.
7. Any tools, models, samples, drawings or other documents, which the Purchaser puts at the Supplier's disposal, remain the property of the Purchaser and must not be disclosed to third parties without the consent of the Purchaser.

III. Payments

1. Save as otherwise agreed in writing, payments will be made within 14 days of receipt of the invoice with a 3 % cash discount or within 30 days net.
2. Payment will be made by bank transfer or by cheque.
3. The payment period starts once full delivery has been made or a service has been rendered and the invoice in the correct form has been received.
4. Deduction of a cash discount is also permitted when the Purchaser sets payments off or withholds a reasonable proportion of payments in the event of defects; the payment term of 14 days according to no. 1 above in this case starts to run after complete elimination of any defects.
5. Without the prior written consent of the Purchaser, which shall not be unreasonably withheld, the Supplier is not entitled to assign any claims he may have against the Purchaser or to have them collected by third parties. In the case of an extended period of retention of title, the consent is considered as granted. Offset or retention is only permitted if the Supplier has an uncontested or legally valid claim against the Purchaser.

IV. Non-disclosure

1. The parties to the contract undertake to treat any non-obvious commercial and technical information, which are disclosed to them as a result of the business relationship in a confidential manner.
2. Drawings, models, templates, samples and similar items shall not be passed to unauthorized third parties or otherwise made available. Reproduction of any such items is only permitted on a "need to know" basis, taking proper account of copyright provisions.
3. The Purchaser and the Supplier understand that any of the Purchaser's information, drawings, process know-how, materials etc. have been given in trust, in accordance with § 18 of the law on unfair competition and must only be used within the framework of the cooperation between the Parties. The supplier commits to treat these documents and information confidentially and to not disclose them – or their essential contents – to third parties, unless purchaser has granted his express disclosure consent in writing. Marketing by the Supplier or transfer of knowledge to third parties requires the Purchaser's consent. Contraventions are liable to prosecution and will entail indemnity claims.
4. The Supplier shall put all staff having access to the information under an obligation to keep this knowledge secret and not to use it personally or disclose it to third parties. The staff of the Supplier are put under this obligation not only for the duration of their employment but also after they have left. Subcontractors must be put under the same obligation.

V. Supplies, retention of title

1. Materials made available by the Purchaser shall remain his property. Such materials must be stored separately, identified and managed free of charge and shall only be used in fulfilment of the Purchaser's orders.
2. In the case of deterioration or loss, the Supplier is under an obligation to pay compensation. A bill of materials will be presented to the Purchaser at his request.



3. Any materials placed at the Supplier's disposal by the Purchaser for processing shall remain the Purchaser's property. If the Supplier processes the Purchaser's materials with foreign materials, the Purchaser is entitled to co-ownership in the new product in proportion of the value of his materials in relation to the value of the other materials. If the Purchaser's materials cease to exist due to their combination with foreign materials, the Purchaser shall enjoy co-ownership of the new product in proportion to the value of the purchased goods in relation to the value of the other materials at the time when combination takes place. If combining is carried out in a way such that the Purchaser's materials are to be considered as main constituent, it is hereby agreed that the Purchaser transfers proportional co-ownership to the Supplier.

VI. Lead times, delivery times and transfer of risk

1. Save as otherwise provided for in writing, delivery is made on the basis "free point of destination". The risk of accidental loss and/or deterioration of the goods will be transferred to the Purchaser at the time of delivery. If delivery includes erection or assembly and if delivery is in the form of services, the risk will be transferred to the Purchaser upon acceptance.
2. If unforeseen circumstances occur, or if the Supplier anticipates such circumstances which give him reason to believe that he will be unable to comply with his duties in whole or in part at the due time, the Supplier will inform the Purchaser immediately in writing of any delay, its estimated duration and the reasons for its occurrence. Failing this, the Supplier will not be entitled to cite such reasons for any delay in fulfilling his contractual obligations.

VII. Force Majeure

1. Events of force majeure which prevent the parties from meeting their contractual obligations will release the partners from their contractual obligations for the duration of such events. This also applies if such events occur at a time when the partner concerned is in default.
The affected party shall in this case inform the other party immediately and comprehensively, as far as this is reasonably practicable, and in particular inform the latter on the type and expected duration of the event. The parties shall try to adapt their respective obligations in good faith to the new situation. In case that the event of force majeure shall continue for more than five working days, then this contract may be terminated both in full or partially by either party. Such termination shall not affect partially rendered services, unless the receiver of such partial service has no longer an economic interest in the performance of the residual services due to this termination.

VIII. Quality and documentation

1. The Supplier, with respect to the goods and services he supplies, shall adhere to generally recognized codes of practice, all applicable legal requirements, government regulations including provisions of the employers' liability insurance association, generally accepted rules relating to health and safety at work and occupational medicine, the rules and regulations applicable in his own company, as well as any technical specification agreed upon.
Machines and technical equipment shall be supplied complete with an operating manual and the manufacturer's declaration of conformity according to the EC standard, in accordance with the Machinery Directive. If possible, the Supplier's products shall bear the CE mark. If no CE mark has been issued, adherence to the above provisions and regulations must be demonstrated at the Purchaser's request. Any modifications to the items to be supplied require the Purchaser's prior consent in writing.
The Supplier is responsible for continuously checking the quality of his products. The partners shall inform each other of any possibilities for quality improvement.
2. If no agreement has been made between the Supplier and the Purchaser as to the nature and extent of tests, testing equipment and methods, the Purchaser will, at the Supplier's request, engage in discussions on details of testing based on his experience, knowledge and capabilities, in order to define the actual position with regard to test engineering. Furthermore, the Purchaser will inform the Supplier, at his request, of any applicable safety regulations of the Purchaser.
The Purchaser shall not be responsible towards the Supplier for the completeness of the information provided in accordance with no. 2 above. The result of corresponding negotiation shall only then be considered as agreement on the type and scope of tests, test materials and methods if this is stipulated expressly between the Supplier and the Purchaser.
3. When offering materials, objects and substances which are defined as hazardous in the Ordinance on Hazardous Substances, or materials, objects and substances, which due to their nature, properties or condition may jeopardize the safety of persons or have a harmful impact on the environment, and which require special precautions to be taken with regard to packaging, carriage, storage, handling and disposal in order to comply with the applicable regulations and provisions, the Supplier undertakes to provide the Purchaser with a safety data sheet as per § 14 of the Ordinance on Hazardous Substances and an accident procedures sheet, together with his quotation. The same applies to information on marketing restrictions imposed by law. If the materials or objects are modified, the Supplier undertakes to deliver modified data and specification sheets. The supply of products involving the use of carcinogenic substances is prohibited. Before delivering hazardous materials, an investigation into whether it could be possible to supply substitute materials must be carried out by the Supplier.
4. Products and substances, e.g. packaging materials, which must be taken back by the manufacturer / distributor (§ 24 KrWlWaste Act), shall be taken back by the Supplier free of charge. Suitable means of collecting such materials shall be provided by the Supplier.

IX. Analysis of defects, warranty

1. The Supplier undertakes to ensure that his supplies and services correspond to the quantity and quality agreed, that they have assured properties and comply with the generally recognized codes of practice.
2. The Supplier must check goods which have been delivered within a reasonable period of time to check for any deviations in quality or quantity. A notice of defects will be considered as having been filed in time, if it is presented to the Supplier within a period of five working days from the date of receipt of the goods at the Supplier. For defects of products, works and deliveries, which can not be detected immediately despite thorough control or for defects which can only be detected when the delivered goods are in use, the notice of defect shall be deemed effected in time if it is presented to the Supplier within a period of five working days from the detection of the defect at the Supplier's premises.
3. Without prejudice to any warranty claims the Purchaser may have under law, he is entitled to request either the removal of defects or replacement goods from the Supplier. In these circumstances, any expenses incurred in the removal of defects or the supply of replacement goods shall be borne by the Supplier.



4. The Purchaser is entitled to reclaim tooling costs incurred by him, if the Supplier has demonstrated on a number of occasions his inability to supply faultless goods.
5. In the event that the Supplier fails to sort out, rectify or supply replacement goods immediately (the following working day) the Purchaser may for this part withdraw from the contract and return the goods to the Supplier at the Supplier's risk. In urgent cases, the Purchaser may carry out the repair himself or have it carried out by a third party. Any costs arising from such activity shall be borne by the Supplier.
6. If the Supplier has repeatedly delivered defective goods, the Purchaser may, after giving a written warning and if there is a further delivery of defective goods, withdraw from the contract for that part of the contract which has not been fulfilled.
7. The Supplier warrants that all elements subject to individual orders are his sole property and that they do not infringe third parties' rights (such as lien rights, other creditor instruments from assignments of claims or other credit securities, factoring, conditional sale etc.). The Supplier shall be responsible for legal defects irrespective of his fault.
8. Upon first request the supplier shall hold the Purchaser harmless against claims by any third party, raised because of defects or product damages of his deliveries and due to his share of causation. The Supplier warrants that he has concluded an appropriate product liability insurance.
9. The warranty period expires 24 months after the date of delivery to the Purchaser. If the legal warranty period is longer, it shall prevail. For delivery parts which were overhauled or repaired within the warranty period this period shall commence from that date upon which the Supplier has totally satisfied the Purchaser's claims in remediation.
10. Save as otherwise stated herein, the warranty is subject to applicable legal provisions.

X. Liability

1. The Purchaser's right to claim damages shall in no way be restricted by the assertion of one of the above warranty rights. The Supplier shall indemnify the Purchaser against any damages arising from a breach of the contractual obligations or from a defect, including for losses of profit.
2. Unless otherwise stated herein, the Supplier shall indemnify the Purchaser for those damages arising directly or indirectly from a defective delivery, a violation of administrative safety rules or any other legal cause for which the Supplier is responsible.
 - a). If under foreign law third-party claims are asserted against the Purchaser in circumstances where he is not at fault, the Supplier shall be liable to the Purchaser insofar as he would be directly liable and exempts the Purchaser to that extent. Any settlement concerning the damage between the Purchaser and the Supplier shall be subject to the principles of § 254 BGB. This also applies to direct claims asserted against the Supplier.
 - b) For measures undertaken by the Purchaser to ward off damage, in particular call-backs, the Supplier shall reimburse the costs for those measures and/or release the Purchaser from them upon the latter's first request inasmuch as the Supplier is responsible for the occurrence of the conditions due to which those measures needed to be introduced. The Purchaser will inform the Supplier on the content and scope of those measures – without any legal obligation to do so -, inasmuch as this is practically possible and reasonable and offer him the possibility to make an own statement.

XI. Property rights

1. The supplier warrants that no property rights of third parties restrict the normal use of the goods; and in particular that there is no infringement of property rights of third parties. This applies to the Supplier's country as well as to any other country. If, however, claims are brought forward against the Purchaser due to possible infringement of third parties' rights such as copy, patent and other intellectual property rights, the Supplier shall hold the Purchaser harmless and release him from any obligation in connection to this.
2. The above provisions shall not apply if the Supplier delivers goods produced in accordance with documents, samples, models or similar instructions provided by the Purchaser and if he did not know and did not have to know that this would lead to an infringement of the rights of third parties. Due to his technical knowledge and branch experiences, however, the Supplier is also in those events obligated to control the possibility of a possible infringement of the property rights of third parties and to inform the Purchaser on possible objections, if any.
3. In the event of an infringement of a property right, the Purchaser is entitled to obtain approvals for delivery, commissioning, use etc. from the owner of the property rights at the Supplier's cost, inasmuch as these costs are not disproportionate.

XII. Transfer and set-off

1. The Supplier may only transfer the rights and obligations from this contract with the prior written consent of the Purchaser.
2. The Supplier may only set-off claims from transactions performed by him and which are subject to these Terms and Conditions against an undisputed or legally binding claim.

XIII. General provisions

1. If a party to the contract suspends payment, or if an application for insolvency proceedings or judicial or extra-judicial proceedings for the settlement of debts is filed, the other party shall be entitled to withdraw from that part of the contract which has not yet been fulfilled.
2. If any of these provisions or any additionally agreed provisions is or will become invalid, such a provision shall not affect the validity of those remaining. The parties to the contract shall replace the invalid provision with a valid provision, which shall meet as closely as possible the economic purpose of the original.
3. This contract shall exclusively be governed by and construed in accordance with the laws of the Federal Republic of Germany, the terms of the "United Nations Convention on Contracts for the International Sale of Goods" are non-applicable.
4. If the Supplier is a merchant, legal person of public law or a special fund under public law or has no domestic place of general jurisdiction, the parties agree to present any litigation in connection with or concerning the subject matter of this contract to the exclusive jurisdiction of the courts at the seat of the Purchaser.