

General Terms and Conditions of Purchasing of Herzog Coilex GmbH

Translation - the German version has priority

I. Scope

- These General Terms and Conditions of Purchasing apply to all – current and future – purchase orders for goods, services, work and labor and the handling thereof. We shall not recognize conflicting conditions or conditions deviating from these purchasing conditions specified by the contracting partner unless we expressly agree to their validity. If we accept goods without expressly rejecting the contracting partner's conditions, this can in no case give grounds to assume we accept said conditions.
- Purchase orders shall only be binding if issued by us in writing.
- Offers shall be issued free of charge and without binding effect for us.
- Commercial clauses shall be interpreted in accordance with the latest version of the Incoterms.

II. Prices

- The agreed price shall be a fixed price.
- In prices stated "free domicile", "free ... destination" and other "free/franco" deliveries, the freight and packaging costs shall be included. We shall pay for packaging only if and to the extent that compensation for such is expressly agreed.
- For freight forward deliveries we shall only pay for the lowest available freight costs unless we specify a specific type of shipment.

III. Payment

- Unless otherwise agreed or unless the contracting partner offers more favorable conditions, payments shall be due within 14 days with 3% discount or within 30 days in the full net amount.
- Payment and discount terms shall begin on receipt of the invoice, though not before receipt of the goods or in the case of services not before their acceptance and, insofar as documentation, test certificates (e.g. factory certification) or similar documents are required under the scope of supply, not before said documentation has been handed over to us as contractually agreed.
- If goods supplied earlier than agreed are accepted, the due date for payment shall be based on the agreed delivery date.
- We shall pay by check or bank transfer. Payment shall be deemed to be on time if the check is sent by post on the due date or the transfer is initiated at the bank on the due date.
- Interest after due date shall be excluded. The interest rate for default shall be 5 percentage points above the basic interest rate pursuant to § 247 German Civil Code (BGB). We shall be entitled in all cases to demonstrate that the damages caused by default are lower than those demanded by the contracting partner.
- Our statutory rights of set-off and retention shall apply. The contracting partner may offset only against uncontested or legally established receivables; his rights of retention shall apply only insofar as they are based on the same legal relationship.

IV. Scope of supply

- It shall be part of the scope of supply that
 - the contracting partner shall transfer to us ownership of all technical documents (including those of sub-suppliers) and of other documents necessary for manufacture, maintenance and operation. These technical documents shall be in German and shall comply with the international SI system of units;
 - the contracting partner shall transfer all rights of use necessary to allow the use of the supplies and services by us or third parties taking into consideration any patents, supplementary protection certificates, brands and utility models.
- Should a deviation be made from the agreed scope of supply, the contracting partner shall only be entitled to additional claims receivable or schedule changes if a corresponding written supplementary agreement is concluded with us prior to performance.
- The ordered volumes shall be binding. In the case of excess supplies we shall be entitled to reject these at the expense of the contracting partner.

V. Quality

The contracting partner shall install and maintain a state-of-the-art, documented quality management system of suitable type and scope. He shall prepare records, in particular of quality tests, and make these available to us on request.

The contracting partner hereby consents to the performance by us or a party appointed by us of quality audits to assess the efficiency of his quality management system.

VI. Delivery periods/default in delivery

- Agreed delivery dates and periods shall be binding. The delivery period shall begin on the date of the legally binding purchase order unless otherwise agreed in writing. Anticipated delivery delays shall be notified to us in writing immediately. At the same time suitable countermeasures to avert the consequences shall be suggested to us. If a service is performed before the agreed deadline, we shall be entitled to reject delivery until the due date.
- Unless otherwise agreed in writing, the delivery date or delivery period shall refer to the date on which we receive the goods. This shall also apply to all shipment documents, operating instructions and other certificates necessary to fulfill the contracting partner's supply obligations.
- If the contracting partner defaults in delivery, our statutory rights shall apply. In particular we shall be entitled, after expiry of a reasonable period of grace set by us, to demand damages in lieu of performance. Our claim to delivery shall be excluded only when the contracting party has paid damages.
- The contracting party may only appeal on the grounds of our failure to supply necessary documents if he has still not received the documents after a written demand note.

VII. Force majeure

In the event of Acts of God, labor disputes, civil commotion, official actions and other unforeseeable, inescapable and serious events, the contracting parties shall be temporarily relieved from their obligations during the period such events continue and to the extent that their obligations are affected. This shall also apply in the event that the contracting party concerned is in default. The contracting parties undertake to provide any necessary information which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances.

VIII. Reservation of title

- We shall only recognize any simple reservation of title by the contracting partner to the extent that ownership of the goods is transferred to us upon payment and we are authorized to resell and transfer the goods in the course of normal business. We shall not accept specific forms of reserved title, in particular transferred, subsequent or extended reservation of title, current account reservation or extended corporate reservation of title. Conflicting terms and conditions of the contracting partner shall not be recognized by us; they are hereby expressly rejected and shall not form part of the contract.
- The contracting partner may only demand the return of goods on the grounds of reservation of title if he has previously withdrawn from the contract.

IX. Performance of deliveries and transfer of risk

- The contracting partner shall bear the risk of accidental loss and accidental deterioration, including for "franco" and "free domicile" deliveries until the goods are handed over at the place of destination.
- The specified shipment addresses shall be observed. Deliveries to an address other than the receiving address specified by us shall not signify the transfer of risk for the contracting partner even if the delivery is accepted at said address. The contracting partner shall bear additional costs incurred by us as a result of goods being delivered to an address other than that specified by us.
- Partial deliveries shall be subject to our approval and shall be marked as such.
- Excess or short deliveries shall only be permissible within the normal framework.
- Packaging costs shall be borne by the contracting partner unless otherwise agreed in writing. If in an individual case we bear the costs of packaging, this shall be charged to us at the lowest rate. The take-back requirements shall be based on the latest version of the packaging ordinance of August 21, 1998. In the case of freight-paid return of packaging to the station of origin, the packaging shall be credited at 2/3 of the invoiced value.
- The storage of items required for the performance of services on our premises shall only be permissible in allocated storage spaces. In respect of such items the contracting partner shall bear full responsibility and the entire risk until the transfer of risk.
- For transportation, the statutory provisions, in particular the provisions of the law on the transportation of hazardous goods and the applicable hazardous goods regulations including the respective annexes and appendices shall be observed.
- In the case of rail freight, the declaration of the goods in the consignment notes shall comply with the applicable regulations of the rail authority. Costs and damages incurred as a result of incorrect declaration or failure to declare shall be borne by the contracting partner.
- The contracting partner shall obtain written confirmation of the receipt of shipments from the specified receiving address.

X. Declarations of origin

In the event that the contracting partner submits declarations of origin with regard to the goods sold, the following shall apply:

- The contracting partner undertakes to permit the customs authority to examine documentary evidence of origin and to provide the necessary information on this and supply any confirmations required.
- The contracting partner is obligated to offset the damages incurred as a result of the declared origin not being recognized by the competent authority due to a lack of documentary evidence or inability to check, unless he is not responsible for these consequences.

XI. Transfer/assignment

The contracting partner shall not be entitled to transfer performance of the contract in whole or in part to third parties and/or to assign claims existing against us in whole or in part to third parties without our prior written approval.

XII. Termination

- We shall be entitled to terminate the contract in full or in part without specifying reasons. In such cases we shall be obligated to pay appropriate compensation for all deliveries and/or services carried out up to that point as well as material procured and work performed. All further claims of the contracting partner are excluded.
- We shall also be entitled to terminate the contract if insolvency proceedings are filed against the property of the contracting partner or the contracting partner discontinues payments. The contracting partner shall be entitled to take possession of material and/or semi-finished products including any special operating resources on fair conditions.

XIII. Liability for defects and statute of limitation

- The contracting partner shall supply us with the goods free of defects of quality and title. In particular he shall guarantee that his supplies and services comply with the recognized rules of the art and the contractually agreed properties and fulfill the intended use.
- We shall inspect the goods on receipt for quality and completeness to the extent which can reasonably be expected of us and which is technically feasible for us. Notifications of defects shall be deemed to have been issued in good time if they are received by the contracting partner within eight workdays by mail, fax, e-mail or telephone. The notification period for obvious defects shall begin on acceptance of the goods at the destination and for concealed defects on the date on which we – or in the case of drop shipments our customers – identify the defect.
- If the goods are defective, our statutory rights shall apply at our discretion. Rectification of the defect shall be deemed to have failed after the first failed attempt by the contracting partner. Our right to withdraw from the contract shall also apply when the infringement by the contracting partner concerned is insignificant.
- We may demand that the contracting partner reimburse the expenses in connection with a defect which we have to bear in respect of our customer if the defect already existed at the time of the transfer of risk to us.
- The statutory limitation periods shall apply in respect of our claims for defects. They shall begin on punctual notification of the defect in the meaning of clause No. 2 above. The contracting partner's liability for defects shall end at the latest ten years after delivery of the goods. This limitation shall not apply insofar as our claims are based on facts of which the contracting partner was aware or could not have been unaware and which he failed to disclose to us.
- The contracting partner hereby assigns to us – on account of performance – all claims he has against his suppliers on account of and in connection with the supply of defective goods or such goods which lack assured or guaranteed properties. He shall hand over to us all documents necessary for asserting such claims.

XIV. Place of performance, legal venue and applicable law

- Unless otherwise agreed, the place of performance for delivery is our plant.
- The legal venue is our company's domicile. We may also bring an action against the contracting partner at his legal venue and at the legal venue of our registered branch establishment with whom the contract was concluded.
- For all legal relations between us and the contracting partner, German law shall apply in addition to these provisions and to the exclusion of the "United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980" (UN sales law).

XV. Applicable version

The German version of these General Terms and Conditions of Purchasing shall apply.