

General Terms and Conditions of Purchase of HUECK Rheinische GmbH

1. General Terms, Area of Application

1.1 The present General Terms and Conditions of Purchase (*Allgemeine Einkaufsbedingungen (AEB)*) (hereinafter referred to as "Terms") apply to all business relations between HUECK Rheinische GmbH (hereinafter referred to as "Hueck") and its contractors and suppliers (hereinafter referred to as "Supplier"). The Terms apply only if the Supplier is a businessperson (sec. 14 German Civil Code (*BGB*)), a legal entity under public law or a public-law special fund.

1.2 The Terms apply in particular to contracts for the sale and/or delivery of movable objects (hereinafter referred to as "Goods") regardless of whether the Supplier manufactures the Goods itself or purchases them from other suppliers (secs. 433, 651 *BGB*). The relevant applicable version of the Terms applies as framework agreement also to future contracts for the sale and/or delivery of movable objects with the same Supplier without Hueck having to make express reference to this fact in each individual case.

1.3 These Terms apply exclusively. Deviating, conflicting or supplementary terms of business of the Supplier do not become part of the contract unless and until Hueck expressly agrees to their application in writing. These Terms apply in every case, i.e. even if Hueck accepts deliveries without reservations from the Supplier in the knowledge of the Supplier's terms and conditions of business.

1.4 Individual agreements made with the Supplier in the individual case (including collateral agreements, addenda and amendments) always take priority over these Terms. A written contract or written confirmation of order from Hueck is binding for the content of such agreements.

1.5 Declarations and notifications of legal relevance to be given by the Supplier to Hueck after conclusion of the contract (e.g. setting of deadlines, reminders, declaration of withdrawal) must be in writing to be valid.

1.6 References to the application of statutory provisions have clarifying effect only. Accordingly, the statutory regulations apply even without such clarification, unless they are modified or expressly excluded in these Terms.

2. Conclusion of the Contract

2.1 Orders from Hueck are deemed to have binding effect at the earliest when submitted or confirmed in writing. The Supplier must notify Hueck if there are obvious errors in the order or order documents (e.g. misspelling or arithmetical errors) or if it is/they are incomplete, so that Hueck may correct or complete the order prior to its acceptance; otherwise the contract is deemed not to have been concluded.

2.2 The Supplier is obliged to confirm the order from Hueck within a period of 10 days in writing or to perform the same by shipping the Goods without making any reservations (acceptance). A delayed acceptance constitutes a new offer and requires acceptance by Hueck.

3. Delivery Period and Delays in Delivery

3.1 The delivery period specified by Hueck in the order is binding. If no delivery period is specified in the order or is otherwise agreed, it is 2 weeks from the date of conclusion of the contract. The Supplier is obliged to notify Hueck without delay in writing if the Supplier – for whatever reasons – is foreseeably unable to adhere to the agreed delivery dates.

3.2 If the Supplier does not perform its service or does not do so within the agreed delivery period or gets into default, the rights of Hueck, especially with regard to withdrawal and damages, are determined by the statutory regulations. This does not affect the stipulations in para. (3) below.

3.3 If the Supplier gets into default, Hueck may require payment of a contractual penalty of 1% of the net price per complete calendar week, however, a maximum of 5% of the net price of the Goods or service delivered late. Hueck is entitled to demand the contractual penalty in addition to performance and the damages owed by the Supplier under the statutory regulations as the minimum amount of compensation; this does not affect claims to higher damages. If Hueck accepts the delayed performance, Hueck must claim the contractual penalty at the latest at the time of the final payment.

4. Performance, Delivery, Passing of the Risk, Default in Acceptance

4.1 The Supplier may not have the service owed by the Supplier performed by third parties (e.g. subcontractors) without the prior written consent of Hueck. The Supplier bears the risk of procurement for its services, unless the order is manufactured to specifications.

4.2 Within Germany, delivery must be made "free to consignee" to the place specified in the order. If no destination is specified and unless otherwise agreed, delivery must be made to the registered office of Hueck in Viersen. The relevant destination is also the place of performance ("*Bringschuld*": i.e. the Supplier is obliged to perform on Hueck's premises as the entity to whom the service is owed).

4.3 The consignment must be accompanied by a delivery note giving the date (of issue and shipment), contents of the consignment (article numbers and quantity) and quoting the Hueck purchase order (date and number). Hueck bears no responsibility for any delay in processing or payment resulting from the fact that the delivery note is missing or incomplete. Advice of shipment must also be sent to Hueck separately from the delivery note, but with the same content.

4.4 The risk of accidental loss or deterioration of the Goods passes to Hueck at the time of handover at the place of performance. If acceptance has been agreed, this is binding for the passing of the risk. The statutory provisions of the law governing contracts for work and services otherwise also apply to acceptance. Handover or acceptance is deemed to have taken place if Hueck is in default with acceptance.

4.5 The statutory provisions determine the time at which Hueck is in default with acceptance. The Supplier must make an express offer of performance to Hueck even if a specific or ascertainable calendar period is agreed for an act or cooperation by Hueck (e.g. provision of material). If Hueck is in default with acceptance, the Supplier may require refund of its additional expenditure under the statutory provisions (sec. 304 Civil Code (*BGB*)). If the contract concerns an individual item to be manufactured by the Supplier (manufactured to specifications), the Supplier has more extensive rights only if Hueck undertook to cooperate and bears responsibility for failure to cooperate.

5. Prices and Terms of Payment

5.1 The price specified in the purchase order is binding. All prices are quoted inclusive of the statutory rate of value-added tax, unless it is shown separately.

5.2 Unless otherwise agreed in the individual case, the price includes all services and associated services of the Supplier (assembly, fitting) as well as all associated costs (e.g. proper packaging, transport costs, including any transport insurance and liability insurance). The Supplier must take back packaging if Hueck so requests.

5.3 The price agreed is due for payment within 30 calendar days from the date of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If Hueck makes payment within 14 calendar days, the Supplier grants Hueck 3% discount on the net amount of the invoice.

5.4 Hueck does not owe any interest from the due date. This does not affect the Supplier's claim to the payment of default interest. The statutory provisions apply to determine the time at which Hueck is in default. In any case, however, a reminder from the Supplier is required.

5.5 Hueck has the rights of set-off and withholding and the defence of non-performance of the contract to the extent provided for by statute. In particular, Hueck is entitled to withhold due payments as long as Hueck has claims against the Supplier based on incomplete or defective services.

5.6 The Supplier may exercise a right of withholding or set-off only with regard to receivables or claims that are undisputed or that have been established with final and legally binding effect.

6. Confidentiality and Reservation of Title

6.1 Hueck reserves all title and copyright to illustrations, plans, drawings, calculations, instructions for performance, product descriptions and other documents. Such documents are to be used solely for performance of the contract and must be returned to Hueck on completion of the contract. The documents must be kept confidential towards third parties, even after termination of the contract. The duty of confidentiality extinguishes if, and to the extent to which, the information contained in the documents handed over has entered the public domain.

6.2 The aforementioned provision applies *mutatis mutandis* to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, models, designs and other items that Hueck has provided to the Supplier. Such items must, unless they are being processed, be kept separately in safe-keeping at the expense of the Supplier and insured to the customary extent against loss or destruction.

6.3 Any processing, mixing or combining by the Supplier of items provided is undertaken on behalf of Hueck. In the event of processing, mixing or combining with items of third parties whose rights of title exist, Hueck acquires co-ownership of the new item in the proportion to the value of the item provided by Hueck to the other items.

6.4 The transfer to Hueck of title to the Goods takes place unconditionally and regardless of payment of the price. Excluded are all forms of extended reservation of title, so that a reservation of title

declared by the Supplier takes effect only until payment for the Goods delivered to Hueck and applies only to these.

7. Defective Delivery

7.1 Unless otherwise determined below, the statutory provisions govern the rights of Hueck in the event of material defects or legal defects in the Goods (including wrong delivery or short delivery, improper assembly, defective assembly instructions or operating instructions).

7.2 The Supplier is liable under the statutory provisions in particular for the Goods having the agreed properties at the time of the risk passing to Hueck. Deemed to be an agreement on the properties are in any case those product descriptions which are incorporated, in particular by description or by reference in the purchase order from Hueck, as subject matter of the relevant contract or which were incorporated into the contract in the same manner as these Terms. It makes no difference whether the product description originated from Hueck, the Supplier or the manufacturer.

7.3 In derogation of sec. 442 (1) sentence 2 Civil Code (*BGB*), Hueck has unlimited claims based on defects even if Hueck was unaware of the defect at the time of concluding the contract due to gross negligence.

7.4 The statutory duties of examination for defects and submission of any necessary complaints under secs. 377, 381 German Commercial Code (*HGB*) apply subject to the following conditions: Hueck's duty of examination is limited to defects that become obvious during Hueck's goods-received inspection with outer examination, including examination of the delivery documents, and Hueck's random sample procedures in quality control (e.g. transport damage, wrong delivery or short delivery). If acceptance has been agreed, there is no duty of examination. Otherwise, it depends on the extent to which an examination is usual according to proper business procedures taking account of the circumstances of the individual case. This does not affect Hueck's duty to complain about defects discovered later. In all cases, Hueck's complaint (notice of defect) is deemed to be without delay and in good time if it is received by the Supplier within 7 working days.

7.5 The Supplier bears the costs expended by the Supplier for examination and improvement even if it should become apparent that no defect was actually present. Hueck's liability for compensation for unjustified demands for elimination of defects remains unaffected; however, Hueck is liable only if Hueck was aware – or was unaware due to gross negligence – that there was no defect.

7.6 If the Supplier fails to meet its obligation to subsequent performance – at Hueck's discretion by elimination of the defect (subsequent improvement) or by delivery of Goods free of defects (replacement delivery) – within a reasonable deadline set by Hueck, then Hueck may eliminate the defect itself and claim the necessary expenses for the same or a corresponding advance payment from the Supplier. If subsequent performance by the Supplier fails or is unreasonable for Hueck (e.g. because of special urgency, risk to operating safety or a threat of disproportionately greater damage), no deadline is required; the Supplier must be notified without delay and in advance, if possible.

7.7 Otherwise Hueck is entitled under the statutory provisions, in the event of material or legal defects, to reduce the selling price or to withdraw from the contract. Moreover, Hueck is entitled to compensation for any damages and refund of expenses under the statutory provisions.

7.8 The Supplier undertakes, when delivering technical equipment, to supply Hueck with spare parts for the usual service life subject to the usual trade conditions.

8. Proprietary Rights

8.1 The Supplier is liable for ensuring that no patents, copyrights or other proprietary rights of third parties are infringed by its delivery and the use by Hueck that is foreseeable to the Supplier.

8.2 If a claim is brought against Hueck by a third party by reason of infringement of such a proprietary right, the Supplier will indemnify Hueck against these claims on the first written demand and refund all expenses necessarily incurred by Hueck because of the claim.

8.3 The aforementioned conditions do not apply if the Supplier has delivered Goods according to the drawings, designs, models or similar specifications provided by Hueck and does not know or need not know that proprietary rights have been infringed.

8.4 At Hueck's request, the Supplier must apply the brands and company name of Hueck to the Goods ordered by Hueck. Goods so labelled may only be delivered to Hueck. Accordingly, these labels must be removed from Goods returned to the Supplier for the free disposal of the Supplier prior to use for any other purpose.

9. Manufacturer's Liability

9.1 If the Supplier is responsible for damage caused by a product, the Supplier is obliged to discharge Hueck from third party claims to the extent that the cause lies in the Supplier's area of control and organisation and the Supplier itself is liable in relations with third parties.

9.2 Within the framework of the Supplier's duty of indemnity, the Supplier must refund expenses as per secs. 683, 670 German Civil Code (*BGB*) arising from, or in connection with, any claim of third parties including any recall actions undertaken by Hueck. As far as possible and reasonable, Hueck will notify the Supplier of the contents and scope of any recall actions and give the Supplier an opportunity to make a statement. This does not affect further statutory rights.

9.3 The Supplier undertakes to arrange and maintain product-liability insurance with a lump-sum cover amount of EUR 5 million per personal-injury/property-damage claim.

10. Statute of Limitations

10.1 Unless otherwise agreed below, the mutual claims of the contractual parties become time-barred in accordance with the statutory regulations.

10.2 In derogation from sec. 438 (1) No. 3 Civil Code, the general limitation period for claims based on defects is 3 years from the date of passing of the risk. If acceptance has been agreed, this determines the start of the limitation period. The 3-year limitation period also applies to claims based on legal defects, in which case the statutory limitation period for in rem claims for surrender of third parties (sec. 438 (1) No. 1 *BGB*) remains unaffected; claims arising from legal defects do not become statute barred for as long as such third party is still able to bring claims against Hueck - in particular because limitation has not taken effect.

10.3 The limitation periods for the law governing contracts of sale including the above extension apply to the statutory extent to all contractual claims based on defects. If Hueck also has claims based on a defect outside the contract, the normal statutory limitation period applies to the same (secs. 195, 199 *BGB*), unless the application of limitation periods under the law governing contracts of sale determines a longer limitation period.

11. Choice of Law and Place of Jurisdiction

11.1 The law of the Federal Republic of Germany exclusively governs these Terms and all legal relations between Hueck and the Supplier to the exclusion of all international and supranational (contractual) law systems, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

11.2 If the Supplier is a registered merchant for the purposes of the commercial register, a legal entity under public law or a public-law special fund then the exclusive (also international) place of jurisdiction for all disputes arising from or in connection with the present Contract is the registered office of Hueck. This place of jurisdiction is not exclusive for Hueck.