

General Conditions of Purchase

1. Conclusion of contract

1.1 The contract between HÄUSSERMANN GmbH ("the customer") and the contractor is based solely on these General Terms and Conditions of Purchase. General terms and conditions of the contractor are hereby rejected. The customer's general terms and conditions of purchase also apply to all future deliveries and services of the contractor to the customer up to the validity of the customer's new General Terms and Conditions of Purchase.

1.2 Orders, agreements and changes are only binding if they are issued or confirmed by the customer in writing, by fax or in electronic form. The correspondence must be with the purchasing department. Agreements with other departments require, insofar as agreements are to be made which change the points stipulated in the contract, the express written confirmation by the purchasing department in the form of an addendum to the contract.

1.3 Orders and delivery schedules shall be deemed accepted if the contractor does not object in writing within one week of receipt. However, the customer is also entitled to withdraw within a further week, unless a written acceptance by the contractor has been previously declared.

1.4 The contractor must treat the conclusion of the contract confidentially. He may only designate the customer as a reference to third parties with their written consent. The contractor shall treat confidentially the information made available to him in connection with the conclusion and performance of the contract, unless such information is or becomes generally known.

1.5 Cost estimates, initial samples and samples in general are binding and shall not be reimbursed, unless expressly agreed otherwise in writing.

2. Prices

2.1 The agreed prices are fixed prices and are subject to the respectively applicable value added tax duty free point of use, including packaging and freight costs. If a price is agreed "ex works" or "ex warehouse", the customer will only pay the cheapest freight costs. All costs incurred up to handing over to the carrier, including loading and excluding trash money shall be borne by the contractor. The type of pricing does not affect the place of performance agreement.

2.2 The customer reserves the right to recognize excess or short deliveries.

3. Trade Terms

The Incoterms 2010 in the version valid at the time of conclusion of the contract apply to the interpretation of the commercial clauses.

4. Proofs of origin, VAT proofs, export restrictions

4.1 Proofs of origin requested by the customer shall be provided by the contractor with all necessary information and duly signed. The same applies to VAT-related proof of foreign and intra-community deliveries.

4.2 The contractor will inform the customer immediately if a delivery is wholly or partly subject to export restrictions under German or other law.

4.3 Contractors from member states of the European Union are obligated, within 30 days of acceptance of the order and then within the first two months of each calendar year, to provide the customer with long-term supplier declarations in accordance with the applicable European regulation. If this cannot be done for individual deliveries of goods, proof of origin must be given at the latest with invoicing.

5. Delivery, deadlines, delays

5.1 Deviations from the contracts and orders of the customer are only permitted after prior written consent.

5.2 Agreed dates and deadlines are binding. Decisive for the observance of the delivery date or the delivery period is the receipt of the goods at the customer. If delivery is not "ex works" (DDU or DDP according to Incoterms 2010), the contractor must provide the goods in good time, taking into account the time to be agreed with the carrier for loading and shipping.

5.3 If the contractor has taken over the installation or assembly and nothing else has been agreed, the contractor shall bear all necessary ancillary costs, such as travel expenses, provision of the tooling and release, subject to deviating regulations.

5.4 If agreed dates are not adhered to, then the statutory provisions apply in principle. As soon as the contractor identifies difficulties in terms of production, supply of primary materials, observance of deadlines or similar circumstances which could hinder him from delivering on time or at the agreed quality, the contractor must immediately inform the ordering department of the customer. The obligation to comply with the agreed deadlines remains unaffected.

5.5 In the event of default by the contractor, the customer may, after the expiry of a reasonable grace period set by him, have the delivery not yet performed by the contractor carried out by a third party at the expense of the contractor. In lieu thereof, the customer can withdraw from the contract after the fruitless expiry of a grace period set by him.

5.6 The unconditional acceptance of the delayed delivery or service does not constitute a waiver of the claims for compensation due to the delayed delivery or service; this shall apply until full payment of the fee owed by the customer for the delivery or service concerned.

5.7 Partial deliveries are generally inadmissible, unless the customer has expressly consented to them or these are reasonable for the customer.

5.8 For quantities, weights and dimensions, subject to any other proof, the values determined by the customer during the incoming inspection shall be decisive.

5.9 Regarding software belonging to the delivery scope of the product, in addition to the right to use to the extent permitted by law (§§ 69a et seq. UrhG), the customer has the right to use this software with the agreed performance features and in a contractually agreed manner. The customer may also create a backup copy without explicit agreement.

5.10 The contractor shall bear the material risk until acceptance of the goods by the customer or the customer's representative at the place to which the goods are to be delivered according to the order.

5.11 Force majeure, labor disputes, work interruptions without fault, unrest, official measures and other unavoidable events shall entitle the customer, without prejudice to his other rights, to withdraw from the contract in whole or in part, unless they are of insignificant duration and result in a considerable reduction of the customer's requirements to have.

5.12 If insolvency proceedings are applied for over the contractor's assets or if an out-of-court settlement procedure is applied for, the customer is entitled to withdraw from the contract in whole or in part.

6. Quality

6.1 The delivery must comply with the agreed specifications.

6.2 The contractor must constantly align the quality of his products to be supplied to the customer with state-of-the-art technology and notify the customer of possible improvements and technical changes.

6.3 The contractor must set up and maintain a quality management system which is suitable in terms of type and scope and complies with state-of-the-art technology. He must keep records, in particular about his quality checks, and make them available to the customer on request.

6.4 The contractor hereby consents to quality audits to assess the effectiveness of its quality assurance system by the customer or one of his agents, possibly with the participation of the Customer of the Customer.

6.5 At the request of the customer, the contractor is obliged to conclude a quality assurance agreement with the customer.

6.6 At the request of the customer, the contractor will carry out a stock revision several times in the calendar year if required.

7. Claims for defects and recourse

7.1 Acceptance always takes place under the reservation of an examination for freedom from defects, in particular also on correctness, completeness and suitability. The customer is entitled to inspect the subject matter of the contract as far as and as soon as this is possible according to the orderly course of business; discovered defects are reported by the customer immediately after discovery. In this respect, the contractor waives the objection of the delayed notice of defects.

7.2 It is customarily the customer's right to choose the type of supplementary performance. The contractor is entitled to refuse the type of supplementary performance chosen by the customer under the conditions of § 439 para. 3 BGB.

7.3 If the contractor does not immediately begin to remedy the defect after the request by the customer, the customer is entitled in urgent cases, in particular to avert acute dangers or avoid major damages, to do so at the contractor's expense by himself or by a third party.

7.4 Claims for defects shall be time-barred within 24 months, but not before expiry of 6 months after the complaint has been made, unless the item has been used in accordance with its customary use for a building and has caused its defectiveness. The period of limitation for claims for material defects begins with the delivery of the subject of the contract (transfer of risk). The limitation period acc. Section 479 BGB remains unaffected.

7.5 Recourse claims of the customer in accordance with §§ 478, 479 BGB are in particular to the contractor, if the customer bears such claims against a third party. This also applies in the event that the delivery item has been installed or further processed by the customer or a third party. In addition, these claims are also entitled to the customer if the third party or the end customer is not a consumer but an entrepreneur.

7.6 In the case of defects of title, the contractor shall also release the customer from any claims of third parties. With regard to defects of title, a period of limitation of 10 years applies.

7.7 For parts of the delivery repaired or repaired within the limitation period of the customer's claims for defects, the period of limitation begins to run again at the time at which the supplier has completely fulfilled the customer's claims for subsequent fulfillment.

7.8 If the customer incurs costs as a result of the defective delivery, in particular costs for transport, travel, labor, materials or costs for an incoming inspection exceeding the usual scope, the contractor shall bear these costs.

7.9 If the customer withdraws products produced and / or sold as a result of the defectiveness of the contractual object delivered by the supplier or has therefore been reduced to the customer's purchase price or if the customer has otherwise been claimed, the customer reserves the right of recourse against the buyer contractor, whereby it is not necessary for the customer's rights of defects to set an otherwise required deadline.

7.10 The customer shall be entitled to demand compensation from the contractor for expenses incurred by the customer in relation to his customers, because he is entitled to compensation for the expenses required for the purpose of supplementary performance, in particular transport, road, labor and material costs.

7.11 Notwithstanding the provision in number 7.6, the statute of limitation in the cases of numbers 7.9 and 7.10 commences at the earliest 2 months after the date on which the customer has fulfilled the claims directed against the customer by the customer of the customer, but no later than 5 years after delivery by the contractor.

7.12 If a material defect occurs within 18 months after transfer of risk, it is assumed that the defect already existed at the time of the transfer of risk, unless this assumption is incompatible with the nature of the item or the defect.

7.13 The contractor is liable for no fault of any kind for guaranteed condition of the deliveries. For such breaches of duty the limitation period of § 479 BGB applies.

7.14 In addition to the provisions made in the preceding paragraphs, the statutory provisions shall apply.

8. Product liability

8.1 If a claim has been made against the customer under German or other product liability laws, the contractor shall cede to the customer insofar as he would be directly liable. A contractual liability of the contractor remains unaffected. The contractor is obligated to indemnify the customer from such claims if and insofar as the damage has been caused by a defect in the object of the contract delivered by the contractor. In cases of fault-based liability, however, this only applies if the contractor is at fault. Insofar as the cause of the damage lies within the area of responsibility of the contractor, he bears the burden of proof to that extent. In such cases, the Contractor will bear all costs and expenses, including the costs of any legal action or recall. Otherwise, the statutory provisions apply.

8.2 The customer shall inform the contractor immediately if he wishes to make a claim on him in accordance with the preceding paragraph. The customer shall, as far as this is reasonable for the customer, give the contractor the opportunity to investigate the cause of damage and to coordinate with the customer on the measures to be taken, e.g. settlement negotiations.

8.3 The contractor is obliged to take out a product liability and recall cost liability insurance with a coverage for personal / material and pecuniary losses of at least 2.5 million Euro per claim during the term of this agreement and to provide proof thereof to the customer at any time. Depending on the demand of the customer of the customer, the capabilities of the contractor, the business relationship and the liability risks, the customer will ask the contractor to extend his insurance coverage both in terms of cause and amount. The contractor undertakes to examine these claims and to agree as far as possible. If an insured event occurs, the customer and the contractor are obliged to inform each other about all circumstances and incidents related to the insured event. The contractor is obliged to inform his liability insurer about the contents of these conditions of purchase and to provide the customer with a counter-signature of these conditions of purchase a written proof of the existing insurance protection and a written confirmation of his liability insurer with the latter confirms the undamagedness of this agreement. If the liability insurer changes, the contractor must submit the corresponding proof to the customer without further request.

9. Property rights

9.1 The contractor warrants that the contractual use of the delivery items does not violate the rights of third parties. The contractor is aware of the intended use of the delivery items by the customer. As soon as the contractor recognizes that the use of his deliveries and services leads to the use of third-party property rights applications or industrial property rights, he must inform the customer. In the case of infringement, the contractor exempts the customer from all claims asserted by third parties against the customer due to the infringement of property rights. In case of infringement, the contractor is also obligated to either grant the customer the right to use the respective delivery items in accordance with the contract free of charge or to modify them in such a way that the infringement of property rights ceases, but the delivery items are nevertheless in conformity with the contract.

9.2 The Contractor shall notify the use of published and unpublished proprietary or licensed intellectual property rights and applications for protection of the delivery items.

9.3 The contractor shall promptly notify the customer of any inventions that may arise in connection with or on the basis of this contract with him and / or his vicarious agents, submit all documents necessary for the assessment of the invention and provide all information requested by the customer regarding the inventions. This applies accordingly to all know-how that may arise for the contractor and / or its vicarious agents within the context of or on the occasion of the performance of the contract. The contractor assigns to the customer the right to make protective rights registrations for all inventions arising in connection with or on the basis of this contract with him and / or his vicarious agents. The above rights granted and transfers of rights are settled at the prices agreed for the delivery items.

10. Execution of works

Persons who carry out work in the factory premises in fulfillment of the contract must observe the provisions of the respective company regulations. The liability for accidents that occur to these persons on the factory premises is excluded, as far as these were not caused by intentional or grossly negligent breach of duty of the legal representatives or vicarious agents of the customer.

11. Provision and co-ownership

Materials, parts, containers and special packaging provided by the customer remain the property of the customer. These may only be used as intended. The processing of materials and the assembly of parts are carried out for the customer. It is understood that the customer, in proportion of the value of the supplies to the value of the entire product, is co-owner of the products manufactured using the materials and parts of the customer, which are thus kept by the contractor for the customer.

12. Drawings, design documents, tools and confidentiality

12.1 Drawings and other documents, devices, models, tools and other means of production, which are left to the contractor, remain the property of the customer. The ownership of tools and other means of production which are paid by the customer, is based on the agreements to be made in a separate tool contract.

12.2 The aforementioned items may neither be scrapped nor be made accessible to third parties - e.g. for the purpose of manufacturing. They may not be used for any other than the contractually agreed. They must be carefully stored by the contractor at his expense during the execution of the contract.

12.3 The care, maintenance and partial renewal of the aforementioned items are based on the respective agreements made between the customer and the contractor.

12.4 The customer reserves all rights to drawings and products manufactured according to his instructions as well as to procedures developed by him.

12.5 All business or technical information made available by the customer (including features that can be found in any objects, documents or software transferred, and any other knowledge or experience) are kept secret to third parties as long as they are not demonstrably publicly known, and may only be made available to the contractor's business to persons who must necessarily be consulted for their use for the purpose of delivery to the customer and who are also obliged to maintain secrecy; they remain the exclusive property of the customer. Without the prior written consent of the customer such information - except for deliveries to the customer - may not be reproduced or otherwise used. At the request of the customer, all information originating from the customer (including any copies or records made, if any) and objects lent on loan shall be returned to the customer immediately and completely, or be destroyed. The customer reserves all rights to such information (including copyrights and the right to register industrial property rights such as patents, utility models, etc.). Insofar as these have been made available to the customer by third parties, this legal reservation also applies to these third parties.

13. Payment

13.1 The customer pays up to the 25th day of the month following the delivery with a 3% discount, or the first working day following this day. If premature deliveries are accepted, the due date is based on the agreed delivery date.

13.2 Payments by the customer do not imply recognition of the billing and are subject to the invoice verification.

13.3 With the written consent of the customer, claims of the contractor under this contract may be assigned to third parties.

13.4 The customer can set off against all claims that the contractor has against him with all claims that he is entitled to against the contractor.

13.5 The customer is entitled to set off with or against due and non-due, including future claims that HÄUSSERMANN GmbH or a company, in which the latter directly or indirectly holds at least 50%, against the contractor or the contractor against one of the designated companies has. If necessary, the contractor will receive information on the status of these investments on request. The contractor agrees that all collateral provided to the customer shall also serve to secure those claims which the companies listed in the preceding paragraph 1 have against the contractor. Conversely, all securities provided by the contractor to these companies also serve to secure the claims directed against the contractor by the customer, irrespective of their legal basis.

14. Place of performance, partial invalidity, place of jurisdiction, applicable law

14.1 Place of fulfillment for deliveries is the point of use, for payments the seat of the customer.

14.2 Should a provision of these conditions and of the further agreements made be or become ineffective, this will not affect the validity of the remaining conditions. The customer and the contractor are obliged to replace the ineffective provision by a provision which is as similar as possible in terms of economic success.

14.3 Jurisdiction is the seat of the general court responsible for the customer. However, the customer may also sue the contractor at its general place of jurisdiction.

14.4 In addition to the provisions of the contract, the law of the Federal Republic of Germany governing the legal relations of domestic parties shall apply exclusively, excluding the conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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