

Purchasing conditions of HSB-Vertriebs GmbH

Stand 11/2023

1. Scope of application

1.1 The Terms and Conditions of Purchase of HSB-Vertriebs-GmbH (hereinafter referred to as HSB) shall apply exclusively; any general terms and conditions of the supplier that conflict with or deviate from these Terms and Conditions of Purchase shall not be recognized unless HSB expressly agrees to their validity in writing. HSB's Terms and Conditions of Purchase shall also apply if deliveries of products and services of the supplier (hereinafter referred to as the subject matter of the contract) are accepted or paid for in the knowledge that the supplier's terms and conditions conflict with or deviate from HSB's Terms and Conditions of Purchase.

1.2 HSB's Terms and Conditions of Purchase shall also apply to all future deliveries and services of the supplier to us.

2. Conclusion of contract and contract amendments

2.1 Orders, contracts and call-offs as well as their amendment and supplementation must be made in writing. Orders and delivery call-offs can also be made by remote data transmission, fax or e-mail.

2.2 Verbal agreements prior to or upon conclusion of the contract must be confirmed in writing by the Purchasing Department in order to be valid. Clause 2.1 sentence 2 remains unaffected.

2.3 Verbal agreements after conclusion of the contract, in particular subsequent amendments and supplements to HSB's Terms and Conditions of Purchase, including a written form clause, as well as collateral agreements of any kind, also require the written confirmation of HSB's Purchasing Department to be effective.

2.4 Cost estimates are binding and shall not be remunerated unless expressly agreed otherwise.

2.5 If the supplier does not accept the order within three working days of receipt, HSB shall be entitled to cancel the order. Delivery call-offs shall become binding if the supplier does not object within three working days of receipt.

3. Delivery

3.1 Deviations from HSB's contracts and orders are only permitted with prior written consent.

3.2 Agreed dates and deadlines are binding. Receipt of the goods by HSB is decisive for compliance with the delivery date or delivery period. Delivery shall be made „free works“ (DAP, DDP, in accordance with Incoterms 2011) to the address specified by HSB, unless special agreements have been made. However, HSB reserves the right to instruct the supplier to make the goods available in good time, taking into account the time to be agreed with the carrier for loading and dispatch.

3.3 If the supplier is responsible for installation or assembly and unless otherwise agreed, the supplier shall bear all necessary ancillary costs such as travel expenses, provision of tools and allowances, unless otherwise agreed.

3.4 If agreed deadlines are not met, the statutory provisions shall apply. If the supplier anticipates difficulties with regard to production, the supply of primary materials, compliance with the delivery date or similar circumstances which could prevent him from delivering on time or in the agreed quality, the supplier must inform HSB's purchasing department immediately.

3.5 The unconditional acceptance of the delayed delivery or service does not constitute a waiver of HSB's claims for compensation due to the delayed delivery or service; this applies until full payment of the remuneration owed by HSB for the delivery or service concerned.

3.6 Partial deliveries are generally not permitted unless they are reasonable or HSB has expressly agreed to them.

3.7 For quantities, dimensions and weights, the values determined by HSB during the incoming goods inspection shall be decisive, subject to proof to the contrary.

3.8 In addition to the right of use to the extent permitted by law (Sections 69a et seq. UrhG [German Copyright Act]), HSB has the right to use software that is part of the scope of delivery of the product, including its documentation, with the agreed performance features and to the extent necessary for the contractual use of the product. HSB may also make a backup copy without express permission.

3.9 All deliveries of work equipment and materials must comply with the „Safety-related purchasing conditions“ in accordance with GPSG and/or REACH.

4. Force majeure

Force majeure, labor disputes, operational disruptions for which HSB is not responsible, unrest, official measures and other preventable events entitle HSB, without prejudice to its other rights, to withdraw from the contract in whole or in part, insofar as they are of not insignificant duration and result in a significant reduction in demand.

5. Dispatch note and invoice

The information in HSB's orders and delivery call-offs shall apply. The invoice must be sent in duplicate, stating the order number and other allocation features, to the address printed on the invoice; it must not be enclosed with the consignments.

6. Pricing and transfer of risk

If no special agreement has been made, the prices are „free works duty paid“ (DDP according to Incoterms 2011) including packaging. Statutory value added tax is not included. The supplier shall bear the material risk until acceptance of the goods by HSB or its authorized representative at the place to which the goods are to be delivered in accordance with the order.

7. Terms of payment

Unless otherwise agreed, the invoice shall be paid within 14 days with a 3% discount or within 30 days without discount from the due date of the payment claim and receipt of both the invoice and the goods or provision of the service. All payments are subject to invoice verification.

8. Claims for defects and recourse

8.1 Acceptance is subject to inspection for freedom from defects, in particular also for correctness, completeness and suitability. HSB is entitled to inspect the subject matter of the contract to the extent and as soon as this is feasible in the ordinary course of business; HSB shall give notice of any defects discovered immediately upon discovery. In this respect, the supplier waives the objection of delayed notification of defects.

8.2 The statutory provisions on material defects and defects of title shall apply unless otherwise stipulated below.

8.3 HSB is generally entitled to choose the type of subsequent performance. The supplier has the right to refuse the type of subsequent performance chosen by HSB under the conditions of § 439 (3) BGB.

8.4 If the supplier does not begin to remedy the defect immediately after HSB's request to do so, HSB is entitled in urgent cases, in particular to avert acute danger or avoid major damage, to remedy the defect itself or have it remedied by a third party at the supplier's expense. Claims for material defects shall become time-barred after two years, unless the item has been used for a building in accordance with its normal use and has caused its defectiveness. The limitation period for claims for material defects begins with the delivery of the subject matter of the contract (transfer of risk).

8.5 In the event of defects of title, the supplier shall also indemnify HSB against any existing third-party claims. A limitation period of 10 years applies to defects of title.

8.6 For parts of the delivery that have been repaired or overhauled within the limitation period for HSB's claims for defects, the limitation period begins anew from the time at which the supplier has completely fulfilled HSB's claims for subsequent performance.

8.7 If HSB incurs costs as a result of the defective delivery of the subject matter of the contract, in particular transport, travel, labor, material costs or costs for an incoming goods inspection exceeding the usual scope, the supplier shall bear these costs.

8.8 If HSB takes back products manufactured and/or sold by it as a result of the defectiveness of the subject matter of the contract delivered by the supplier or if the purchase price was reduced vis-à-vis HSB for this reason or if claims were asserted against HSB in any other way for this reason, HSB reserves the right of recourse against the supplier, whereby HSB's rights in respect of defects do not require the setting of an otherwise necessary deadline.

8.9 HSB is entitled to demand compensation from the supplier for the expenses which it has borne in relation to the customer because the latter has asserted a claim against HSB for reimbursement of the expenses necessary for the purpose of subsequent performance, in particular transport, travel, labor and material costs.

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8.10 Notwithstanding the provisions of Section 8.4, the limitation period in the cases of Sections 8.8. and 8.9. shall commence at the earliest two months after the date on which HSB has fulfilled the claims asserted against it by its customer, but no later than five years after delivery by the supplier.

8.11 If a material defect becomes apparent within six months of the transfer of risk, it shall be assumed that the defect was already present at the time of the transfer of risk, unless this assumption is incompatible with the nature of the item or the defect.

9. Product liability and recall

In the event that claims are asserted against HSB on the basis of product liability, the supplier is obliged to indemnify HSB against such claims if and to the extent that the damage was caused by a defect in the contractual item delivered by the supplier. In cases of fault-based liability, however, this shall only apply if the supplier is at fault. If the cause of the damage lies within the supplier's area of responsibility, the supplier shall bear the burden of proof in this respect. In the above cases, the supplier shall bear all costs and expenses, including the costs of any legal action or recall action. In all other respects, the statutory provisions shall apply.

10. Execution of work

Persons who carry out work on HSB's premises in fulfillment of the contract must observe the provisions of the respective company regulations. Liability for accidents occurring to these persons on HSB's premises is excluded unless caused by intentional or grossly negligent breach of duty by HSB and its legal representatives or vicarious agents.

11. Documents and confidentiality

11.1 All business or technical information made accessible by HSB (including trademarks, which may be taken from objects, documents or software handed over, as well as knowledge and experience) must be kept secret from third parties as long as and insofar as they are not demonstrably public knowledge and may only be made available in the supplier's own company to those persons who must necessarily be involved for their use for the purpose of delivery to HSB and who are also obliged to maintain secrecy; they remain the exclusive property of HSB. Such information may not be reproduced or used commercially without HSB's prior written consent, except for deliveries to HSB itself. At HSB's request, all information originating from HSB (including any copies or records made) and items provided on loan must be returned to HSB immediately and in full or verifiably destroyed. HSB 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 accessible to HSB by third parties, this reservation of rights also applies in favor of third parties.

11.2 Products manufactured according to documents, drawings, models and the like designed by HSB, or according to confidential information or with its tools or copied tools, may neither be used by the supplier itself nor offered or supplied to third parties. This also applies mutatis mutandis to printed products and print orders.

12. Place of fulfillment and general provisions

12.1 The place of performance is the place to which the goods are to be delivered according to HSB's instructions.

12.2 Should a provision of these terms and conditions and the other agreements made be or become invalid, this shall not affect the validity of the remaining provisions. The contracting parties are obliged to replace the invalid provision with a provision that comes as close as possible to the economic purpose of the invalid provision.

12.3 The place of jurisdiction for all legal disputes arising directly or indirectly from contractual relationships based on these Terms and Conditions of Purchase is Öhringen. HSB is further entitled to sue the supplier, at its discretion, at the court of the supplier's registered office or branch office or at the court of the place of performance.

12.4 The contractual relationship shall be governed exclusively by German law, excluding the conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).