

General Terms and Conditions of Purchase (Issued by HMS Infra GmbH February 2022)



1) General, scope of application

- 1.1 The Terms and Conditions of Purchase of HMS Infra GmbH, (hereinafter referred to as CL) in respect of the contractor (hereinafter referred to as CN) apply exclusively to all transactions between the CL and the CN. Terms and conditions of the CN which contradict or deviate from these Terms and Conditions of Purchase shall not be recognised unless the CL expressly agrees in writing to their application. The Terms and Conditions of Purchase of the CL shall also apply even if the contract with the CN is executed without reservation in the knowledge of terms of the CN which contradict or deviate from the Terms and Conditions of Purchase of the CL.
- 1.2 All agreements reached between the CL and the CN for the purpose of executing this contract shall be recorded in writing.
- 1.3 These Terms and Conditions of Purchase shall also apply for all future transactions with the CN.
- 1.4 Any correspondence concerning the contract must be conducted exclusively with the purchase department of the CL stating the order number. If agreements are made with other departments which modify points set down in the contract, such arrangements require the express written confirmation of the purchase department in the form of an addendum to the contract.
- 1.5 The CN must keep the conclusion of the contract confidential. It may only name the CL as a reference to third parties with the CL's express consent.
- 1.6 If framework agreements / fixed price agreements are concluded between the CL and CN, these take precedence. Insofar as necessary they shall be supplemented by these Terms and Conditions of Purchase.

2) Prices

- 2.1 The agreed prices are fixed prices, free to the place of use and including packaging and freight costs, but excluding the respective valid VAT. All costs up to the handover by the CN to the haulier, including loading and excluding freight charges, shall be borne by the CN. The agreement on the place of performance shall not be affected by the type of pricing.
- 2.2 No remunerations are granted for visits or for the elaboration of bids and projects.
- 2.3 Invoices can only be processed by the CL when they contain the order number stated in the CL's order, the cost centre or name of the person placing the order; the CN shall be responsible for all consequences arising from non-compliance with these obligations.
- 2.4 Unless anything is agreed otherwise in writing, the CL shall pay the purchase price within 21 days with 3% discount or within 45 days without discount. Payment takes place by bank transfer, for which the supplier must provide corresponding bank details. In the event of partial deliveries, the payment period shall only commence with the last delivery. This does not apply to contracts for successive deliveries.
- 2.5 Insofar as the supplier has to provide material samples, test certificates (in German), quality-related documents or other documents, both the completeness of the supply or performance and the commencement of the payment period presuppose that the CL has received these documents.
- 2.6 In the event of faulty supplies, the CL is entitled to withhold the corresponding proportion of the payment until proper fulfilment.
- 2.7 In the event of advance payment, on request the CN must furnish appropriate security, e.g. a bank guarantee.

3) Delivery, delivery period

- 3.1 The delivery period stated in the order is binding. If the delivery takes place before the agreed delivery date without the written consent of the CL's purchase department, the CL reserves the right to return the delivered articles at the CN's expense and risk. If in the event of premature delivery the articles are not sent back, the goods shall be stored by the CL at the CN's expense and risk.
- 3.2 The CN is obliged to inform the CL immediately in writing if circumstances occur or become apparent to the CN which indicate that the agreed delivery period cannot be met.

- 3.3 In the event of delayed delivery, the CL shall be entitled to request penalties in the amount of 1% of the delivery value for each completed week, however no more than 10%; the CL reserves the right to assert further damages.

4) Release from the obligation to provide performance, withdrawal from the contract

- 4.1 Force majeure shall release the contractual partner from its performance obligations for the duration of the disruption and to the extent of its effect. The contracting parties shall be obliged as far as reasonable to immediately provide the necessary information and to adjust their obligations to the changed circumstances in good faith.
- 4.2 The CL shall fully or partly be released from the obligation to accept the ordered goods and shall be entitled to withdraw from the contract, insofar as due to the delay in delivery caused by the force majeure the delivery is no longer usable, taking account of the economic aspects.
- 4.3 The CL can withdraw from the contract insofar as insolvency proceedings have been opened against the CN's assets, or if the CL obtains knowledge of individual enforcement actions.
- 4.4 The CL can furthermore withdraw from the contract if the CN promises, offers or grants advantages, irrespective of what kind, to an employee or agent of the CL involved in the preparation, conclusion or implementation of the contract, or to a third party in the interest of such persons.

5) Transfer of risk / documents

- 5.1 Unless anything is agreed otherwise in writing, the goods must be delivered free domicile including packaging and freight insurance.
- 5.2 The risk shall only be transferred on the provision of the goods by the CN to the shipping address or place of use desired by the CL.
- 5.3 The CN must attach a delivery note to each individual shipment which is itemised by type, quantity and weight. Delivery notes, bills of lading and all correspondence must contain the CL's order number, the cost centre or the name of the person placing the order. If the CN omits to do so, delays in processing are inevitable and the CN shall be liable for these.

6) Export procedure

- 6.1 For deliveries FCA in accordance with INCOTERMS in the version valid on conclusion of the contract, the CL must be provided with the documents necessary for preparing the export papers – delivery notes with the CL's order number – at least 3 working days before the delivery date.

7) Commercial terms

- 7.1 The INCOTERMS in the version valid on conclusion of the contract shall apply to the interpretation of the commercial terms.

8) Certificates of origin, VAT verifications, export restrictions

- 8.1 If the CL requests certificates of origin, the CN shall complete these with all the necessary details and provide them to the CL immediately properly signed. The same applies to VAT verifications for foreign and intra-community supplies.
- 8.2 The CN shall inform the CL immediately if a delivery is fully or partly subject to export restrictions under Austrian or other law.

9) Notification of defects, warranty

- 9.1 The CN guarantees and warrants that all deliveries / services possess the agreed characteristics or those warranted otherwise, unless greater requirements are agreed in the individual contract, and furthermore that they comply with the state of the art, the relevant ÖNORM standards, legal provisions and regulations, and guidelines of authorities, trade associations and professional associations. The CN undertakes to fulfil the statutory requirements in terms of the environment and safety in the countries of manufacture and distribution.
- 9.2 If departures from these regulations are necessary on an individual case basis, the supplier must obtain the CL's written consent to this.

- 9.3 If during the warranty period the CN is notified of defects in the supply / service, including the non-achievement of guaranteed data and the absence of warranted characteristics and quality certificates, on request the CN must immediately rectify the defective goods free of charge including all ancillary costs at the CL's choice by means of repair or replacement.

- 9.4 In addition the CL shall be entitled to the statutory claims, including but not limited to rescission of the contract, a reduction in the price and replacement delivery. The CN shall also be obliged to reimburse the CL for all direct and indirect damages caused by the defective supply / service, including lost profits.

- 9.5 If the CN does not comply with its warranty undertaking within an appropriate period set by the CL, the CL can take the necessary measures itself at the CN's expense and risk – without prejudice to its warranty obligation – or arrange for third parties to take such measures.

- 9.6 The warranty period is two years and commences with the handover of the delivery item to the CL. For devices, machinery and equipment the warranty period starts on the day of successful acceptance.

10) Product liability

- 10.1 If the CN is responsible for damage caused by the product, it shall be obliged on first request to indemnify the CL against third-party claims for damages insofar as the cause is rooted in the CN's sphere of control and organisation and the CN itself is liable to third parties.

11) Property rights

- 11.1 The CN guarantees and warrants that all supplies are free from third-party property rights, and in particular that the supply and use of the delivery items does not infringe any patents, licences or other third-party rights.

12) Confidentiality

- 12.1 The contracting parties undertake to treat all commercial and technical details which come to their knowledge through the business relationship and are not publicly known as business secrets.
- 12.2 The CN must treat the conclusion of contract as confidential and may only refer to business connections in advertising materials after the CL has issued its consent in writing.
- 12.3 Drawings, models, patterns, samples and similar articles must not be handed over or otherwise made accessible to unauthorised third parties. The reproduction of such articles is only permitted within the framework of business requirements and in accordance with the copyright regulations.
- 12.4 Subcontractors must be similarly obligated.

13) Miscellaneous

- 13.1 The place of performance is the registered office of the CL unless anything is stated otherwise in the order.
- 13.2 If the CN is a merchant within the meaning of the Commercial Code, the place of business of the CL shall be the exclusive place of jurisdiction, unless a different place of jurisdiction is mandatory. However the CL is also entitled to file suit against the CN at the court with competence for the latter's place of business.
- 13.3 Exclusively Austrian law applies to these Terms and Conditions of Purchase and the entire legal relations between the CL and the CN. The application of the standard UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.