

GENERAL TERMS AND CONDITIONS OF PURCHASE HIMA Paul Hildebrandt GmbH

§ 1 Scope

1) HIMA Paul Hildebrandt GmbH (hereinafter referred to as the Buyer) concludes a contract with the Seller based on the purchase order and on these General Terms and Conditions of Purchase. Any of the Seller's terms and conditions deviating from these conditions and not corresponding to these Conditions shall not be accepted by HIMA and shall only become part of the contract upon express agreement.

2) Should the Seller not agree with these Terms and Conditions of Purchase, he shall notify HIMA immediately. Should the parties fail to reach an agreement, the regulations provided by law shall apply.

3) These Terms and Conditions of Purchase shall also apply to work and services provided under a work contract unless otherwise provided.

§ 2 Delivery dates

1) The Seller acknowledges and agrees that the Seller's compliance with the agreed delivery dates constitutes one of the Seller's substantive obligations under the contract. The Seller shall not send any delivery items by express or air freight unless specifically agreed if the Seller does not assume the costs for such freight.

Should the Seller become aware that it is unable to fulfil its obligations under the contract completely or in part or in due time, the Seller shall notify the Buyer immediately in writing of such delay, specifying the reasons and the expected duration of such delay.

Should the Seller fail to deliver in due time, the Buyer shall be entitled to charge a contractual penalty of 1 % (one per cent) but not more than 5 % (five per cent) of the total contractual amount for each week of the delay or part thereof.

Should the Seller fail to deliver the items within a reasonable extension granted to the Seller by the Buyer, the Buyer shall further be entitled to withdraw from the contract or to claim damages for non-performance; the granting of an extension is not required if the delivery is no longer of interest to the Buyer as a result of the delay.

2) In the event of unforeseen obstacles beyond the Buyer's control and considerably affecting the Buyer's need of the goods or that of its customers, the Buyer shall be discharged from its obligation to take delivery or purchase as long as the obstacle persists. This shall also apply in the event of industrial disputes, in particular in the event of strikes, lockouts as well as the obstruction of railway lines or access roads. Sentence 1 shall also apply if these obstacles occur at the suppliers' or customers' sites.

3) If a contract affected by the circumstances described under 2) above cannot be adjusted in the manner described therein, the Buyer shall be entitled to withdraw from the contract after the occurrence of such obstacle.

§ 3 Prices and payment

Unless otherwise agreed, the Seller shall deliver the goods CIP (ICC Incoterms 2010).

The prices agreed upon are net prices plus any statutory value added tax. Prices shall always be fixed prices and including packaging.

2) If index-linked prices have been expressly agreed upon, only such price shall have to be paid by the Buyer in the event of delays as the Buyer would have had to pay upon on-time delivery. Furthermore, payment of the purchase price shall be deemed to be initiated as it is covered by a down payment.

3) Unless otherwise agreed, payment shall be made either within 14 days less 3% discount or 30 days net, taken from the day of the Buyer's receiving a correct and verifiable invoice and upon delivery of the goods or provision of the services ordered.

4) Upon the Buyer's request, the Seller shall pick up the entire packaging material or parts thereof on site or at the forwarding address free of charge for the Buyer.

§ 4 Passing of risk

The risk of accidental loss and accidental damage of the goods and in particular the risk of loss or damage of the goods in transit shall not pass to the Buyer until the goods are delivered to the Buyer's goods receipt at the agreed forwarding address, irrespective of who shall bear the carriage charges according to the contract.

§ 5 Design, environmental protection, safety, health protection and quality

1) The goods delivered shall meet the agreed specifications and comply with the generally accepted technical rules and the applicable legal and governmental regulations and observe the Buyer's operational regulations and provisions.

In particular, the Seller shall comply with the Accident Prevention Regulations, the regulations issued by the Trade Associations, especially BGVA1 (Accident Prevention), as well as the generally accepted safety and occupational medicine regulations. Machines and technical equipment shall be supplied together with an operation manual and an EC Declaration of Conformity in compliance with the General Product Safety Directive. In addition, the machines and equipment supplied shall comply with the standards laid down in Indices A and B of the "General Administrative Provisions on the Technical Equipment Act" and with all other rules and regulations referring to safety as well as with the Accident Prevention Regulations. Preferably the Seller shall supply equipment bearing the CE identification. In case of equipment not bearing the CE sign, the Seller shall furnish proof of its compliance with the above regulations upon the Buyer's request.

2) To the extent applicable, the Seller shall have a quality assurance system in place, e.g. according to DIN EN ISO 9001. The Buyer shall be entitled to verify the Seller's system upon arrangement.

3) In the event the Seller supplies substances which are dangerous substances pursuant to the Dangerous Chemicals Ordinance, the Seller shall be obliged to automatically supply the EC Material Safety Data Sheet (§4 Dangerous Chemicals Ordinance) prior to the delivery of the goods.

4) Supplier undertakes to observe banned substances and restrictions as well as herewith connected notification (e.g. acc. Art. 33 REACH) and takeback obligations in accordance with all applicable international, European and national statutory provisions, guidelines and directives. Supplier shall be liable for any violation of this agreement and indemnify Customer upon initial request against any claims as well as compensate any damages that are generated directly or indirectly from the violation of this agreement.

5) The use of carcinogenic materials or substances by the Seller shall be prohibited.

6) For the products to be supplied to the Buyer the Seller shall constantly observe the state of the art of technology and the Seller shall notify the Buyer of possibilities of improvement and technical changes.

7) Should the Seller, in the performance of the contract, supply its goods to or provide its services partly or entirely on the Buyer's site, the Seller shall comply with the applicable Safety Bulletin and Environmental Protection Bulletin. Should the Seller not have such bulletins at his disposal, the Seller undertakes to obtain such bulletins from the Buyer's reception or purchasing department prior to the beginning of its works.

§ 6 Samples, drawings, models and operation manual

1) Parts manufactured to the Buyer's specifications and drawings shall exclusively be supplied to the Buyer. This shall also apply in case

- a) the Seller procured tools, models and other objects at its own expense;
- b) parts are not accepted because of defects;
- c) no further purchase or other orders are placed.

The Buyer reserves all property and protective rights for samples and drawings and the Seller shall not make these documents available to third parties. The Seller shall return such documents to the Buyer immediately upon the Seller's processing of enquiries and purchase orders.

2) The Seller of sub-contracted components shall be obliged to supply, jointly with the goods, an operation manual for such goods in several languages according to the legal provisions applicable in all member states of the European Union. The Buyer shall be entitled to incorporate the Seller's manual into its own manual for the overall system with or without referring to the Seller. With respect to other deliveries of goods the Seller shall supply, jointly with the goods, an operation manual in the German language in compliance with German law. The Seller shall not be entitled to receive additional compensation for such manuals.

§ 7 Industrial property rights

The Seller shall be liable for ensuring that the Seller's delivery items and/or services and the Buyer's use thereof according to the contract do not infringe any patents, copyrights or any other property rights. Irrespective of any other legal claim, the Seller shall indemnify the Buyer in such a way that the Seller shall support the Buyer in case of in- and out-of-court disputes with the holder of a patent or the holder of a property right, reimburse any costs incurred to the Buyer and indemnify the Seller against any damage claims awarded to the holder of the property right.

The Seller shall grant the Buyer for an indefinite period of time the non-exclusive, transferable, world-wide right to make use of the delivery items and/or services including the associated documentation, to integrate them into other products and to sell them world-wide.

§ 8 Confidentiality

The seller shall be obliged to maintain strict confidentiality with respect to all drawings, calculations, illustrations and other documents and records received, as well as to all oral or written information. They may only be made available to third parties with the explicit written consent of the buyer. The obligation to maintain confidentiality shall apply beyond the execution of the individual contract. It shall cease to apply only if and to the extent that the information and documents made available have become generally known. The obligation to maintain confidentiality under this paragraph shall also be imposed on any performing and vicarious agents as well as on sub-suppliers or sub-contractors by the seller.

§ 9 Warranty

1) The Seller shall warrant for the period stated in Section 2 below that the goods delivered by the Seller have the guaranteed quality and shall be free of any defects affecting their use or the Buyer's operations. Should the goods supplied not meet the requirements stated under § 5 above upon passing of the risk, this shall also be deemed such defect. The same conditions shall apply for the performance of construction and assembly works.

2) Unless otherwise agreed, the warranty period shall be 24 months from putting the equipment into operation or first use of the goods supplied and maximum 30 months following the passing of risk.

3) The Buyer may, at its discretion, request removal of the defect or supply of a replacement free of defects. In case the Seller supplies a replacement, the full warranty period as stated under Section 2 above shall be renewed for the goods replaced. In all other respects, the legal provisions for warranty claims shall apply.

4) The Seller shall waive objection to a notice of defects not made in due time up to the date the goods delivered are put into operation or used for the first time. The Buyer shall not be obliged to submit a notice of defects in due time before such date.

5) The Buyer shall be entitled to remedy defects itself, have defects remedied by third parties or otherwise procure replacement at the Seller's expense if the Seller refuses to fulfil its warranty obligations or fails to fulfil its warranty obligations within a reasonable period of time.

6) The Seller shall indemnify the Buyer against any costs incurred by the Buyer arising from damage caused by the goods supplied due to which claims are made against the Buyer and whose cause lies in the Seller's responsibility. This shall also apply to any claims made against the Buyer pursuant to the Product Liability Act.

§ 10 Traceability

The seller shall be obliged to label the delivery items, or, if this is impossible or inexpedient, shall take other appropriate measures to ensure that, in the event of faulty delivery items, he can immediately determine which further deliveries or delivery items might be affected as well.

In the event that the seller obtains knowledge of product restrictions, he shall actively determine and inform the potentially affected buyers so that they may arrange for systematic inspections of the delivery items or products derived from them.

At the request of the buyer the seller shall confirm in writing the application of the ZVEI guideline "Identification and Traceability in the Electrical and Electronics Industry" in its current valid version.

§ 11 Code of Conduct

The Seller shall be obliged to comply with the respective applicable regulations under the laws. Within the scope of its entrepreneurial responsibility, the Seller declares in particular that, in its production of and/or commerce with the delivery items or in its provision of services, it complies with the respective legal norms, respects its employees' fundamental rights and does not tolerate and child and compulsory labour.

The Seller affirms that it does not tolerate any kind of corruption or bribery or engage in corruption and bribery in any way.

In this respect, the Seller undertakes to comply with the contents of the applicable code of conduct issued by the ZVEI (German Central Association of the Electro-Technical and Electronics Industry) or to apply a code of conduct that is similarly comprehensive.

Should the Seller culpably violate its obligations under this section, the Buyer reserves the right to withdraw from existing contracts or terminate such contracts without prior notice.

§ 12 Assignment, pledge

- 1) The Seller shall not assign and/or transfer any of its rights and obligations under this contract without the Buyer's prior written consent. Should the Buyer give its consent, the Seller shall remain jointly and severally liable.
- 2) The Seller may not assign its receivables from the Buyer.

§ 13 Subcontractors

The Seller's use of subcontractors for the performance of the contract shall be subject to the Buyer's prior written consent. The Seller shall ensure its subcontractors' compliance with all legal and contractual provisions.

§ 14 Export control and customs

The Seller shall be obliged to meet all the requirements of applicable national and international customs- and foreign trade and payment laws.

The Seller shall immediately communicate to the Buyer in writing (prior to the delivery of goods concerned under the above laws) all information and data which the Buyer requires in order to comply with the applicable customs- and foreign trade and payment laws:

- the applicable export list number;
- for US goods, the Export Control Classification Number according to the U.S. Commerce Control List (ECCN);
- information as to whether the goods will be transported through the USA, were made or stored in the USA or manufactured with the help of US technology;
- the commodity code according to the current commodity classification of the foreign trade statistics and the HS code (Harmonized System);
- the country of origin and, if requested by the Buyer, supplier's declarations of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).

Upon the Buyer's request, the Seller shall be obliged to name a contact in its company for the clarification of possible queries and to inform the Buyer in writing about all other foreign trade data concerning the Seller's goods.

The Seller shall be obliged to notify the Buyer immediately of any changes of the above mentioned information and data.

§ 15 Data protection

The Seller shall be obliged to meet all the requirements of the applicable legal data protection provisions. The Seller agrees that the Buyer may store and process the Seller's personal data according to the legal protection provisions in order to process the Seller's personal data according to the legal data protection provisions in order to process the contract and to maintain the business relationship between the Buyer and the Seller.

§ 16 Place of performance, place of jurisdiction and applicable law

- 1) For all obligations under this contract, the place of performance shall be the place of the forwarding address. If no forwarding address is stated in the Buyer's purchase order, the Buyer's postal address in Brühl, Germany, shall be the place of performance.
- 2) For contracts with merchants not included in the provisions of § 4 of the German Commercial Code (persons carrying on a trade) as well as with legal entities under public law and special assets under public law, Mannheim shall be the exclusive place of jurisdiction.
- 3) To the extent the above terms and conditions do not provide a final provision, they shall be governed by German law. The Vienna Convention on Contracts for the International Sale of Goods shall be excluded.

§ 17 Supplementary agreements, severability clause

- 1) Supplementary agreements shall not become effective unless they are confirmed in writing by the Buyer.
- 2) Should one of the provisions herein be or become invalid, this shall not affect the validity of the remaining provisions.

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