

# GENERAL PURCHASING CONDITIONS OF HOFTEX GROUP AG

Issued July 2020

## 1. Scope

These General Purchasing Conditions shall apply to all legal relationships between the Supplier and Hoftex Group AG and its affiliates in application of § 15 et seq. of the German Companies Act (Aktiengesetz).

These provisions shall apply to all orders by us pertaining, among other things, to the delivery of goods or the provision of services by a third party on the basis of purchase, project or service agreements (hereinafter collectively referred to as 'service' or 'goods').

These General Purchasing Conditions in their respective versions shall also apply to future orders, without our having to reference them separately in each individual case. The latest, valid version of these Conditions can be found on our homepage at [www.hoftexgroupag.com](http://www.hoftexgroupag.com).

## 2. Ordering

Acceptance of an order shall render these General Purchasing Conditions part of the content of the agreement. Supplier conditions at variance herewith, and any agreements to the contrary, shall be valid only if they have been approved by us in writing. Silence or unconditional acceptance of the service or its payment shall not be deemed to constitute consent to conditions to the contrary. Once granted, consent shall be valid only for the individual case, and not for previous or future contracts.

While we expect immediate confirmation of orders, this expectation shall not extend to forecast delivery schedules. The supplier shall bring any obvious errors (e.g. typographical or computational errors), and any orders or forecast delivery schedules that may be incomplete, to our attention prior to acceptance, for purposes of correction or completion, granting us the opportunity to make the appropriate changes.

Forecast scheduled deliveries of the service shall become binding if left unchallenged in writing by the Supplier for 48 hours from receipt, at the latest. Specifically agreed delivery dates shall always take precedence. We shall have the right to withdraw our order if it has not been accepted by fax or e-mail within 14 days' time.

### **3. Excess or short deliveries**

Excess or short deliveries by the Supplier shall be subject to our prior written consent.

### **4. Pricing and payment terms**

Unless otherwise agreed in writing, the prices stated in the order shall be fixed prices. All prices include statutory value-added tax, if this tax is not listed separately. Unilateral price changes on the part of the Supplier shall not be permitted under any circumstances.

Unless otherwise agreed in writing in the individual case, the pricing stated in the order shall be deemed to comprise all services and ancillary services on the part of the Supplier (e.g. installation) as well as all incidental costs (e.g. proper packaging, transport costs including transport and liability insurance).

Unless otherwise agreed in writing, our payments shall be made within 30 calendar days and, in the case of payment within 14 calendar days, subject to a 3% cash discount on the net amount invoiced. The payment period shall commence upon receipt of the contractual and complete performance of the service (including any agreed acceptance) and receipt of a proper invoice stating the order number, the supplier number, and the number, quantity and unit price. In the event of acceptance of premature deliveries, the due date shall be based on the agreed delivery date.

The Supplier hereby declares its willingness, if requested by us to do so, to participate in a credit memo procedure. If the delivery is faulty, we shall be entitled to withhold payment in proportion to the value at stake, pending proper fulfilment.

In the absence of our prior, written consent, which may not be unreasonably withheld, the Supplier shall not be entitled to assign its claims against us, or to have these collected by third parties.

We reserve all statutory rights to offset and retain payment and to assert claims for breach of contract. In particular, we shall have the right to withhold due payments as long as we have claims against the Supplier from services that have not yet been executed in full, or that are defective. The Supplier shall have rights of offset or retention only for legally established or undisputed counterclaims.

For any down payments to be made on delivery items, we shall be entitled to demand suitable collateral, such as, but not limited to, bank guarantees or group guarantees.

### **5. Delivery dates and deadlines, delays**

The service time specified by us in the order or in the forecast delivery schedule shall be binding.

Any delays shall be notified in writing by the Supplier immediately, stating the reasons and expected duration of the delays.

In the event of delayed delivery, we shall be entitled to demand a contractual penalty that is equal to 1% of the order value as lump-sum damages for each commenced week of delay, but that shall not exceed a total of 5% of the order value. This penalty for delays shall be set off against any further claims for damages.

The receipt of the goods or the provision of the service at our premises shall be deemed dispositive of compliance with the time of service. If the delivery or service is not rendered at all, or is not rendered on time, or if the Supplier is in arrears for other reasons, we shall be entitled to assert the legal claims to which this circumstance gives rise, without prejudice to the further provisions in these Purchasing Conditions.

Force-majeure events, specifically, but not limited to, war, strike, lockout, regulatory measures, natural disasters, epidemics, pandemics, embargoes or delays in the provision of deliveries and services by subcontractors owing to such circumstance as set forth in this clause and to other unforeseeable, unavoidable and serious events beyond our control, shall release us from our service obligations for the duration of the disruption and in a manner that is commensurate to the extent of its impacts. We shall notify the Supplier of the circumstances in question. If the disruption should last longer than six (6) months, we shall be entitled, but not under any obligation, to enter into new negotiations on contractual performance, or to terminate this contract through service of written notice to the Supplier. There shall be no obligation to compensate the Supplier for this, however.

## **6. Terms of delivery and packaging**

In the absence of written agreement at variation herewith, delivery by the Supplier shall be performed DDP (Incoterms 2010) incl. packaging.

## **7. Audit rights**

During production and continuing through to delivery at the premises of the Supplier, we shall be entitled – including in tandem with our customers, if need be – to inspect material, manufacturing processes and all other work necessary for the provision of the service during normal business hours. We are also entitled to commission the service of inspection and/or review by an independent company, which we may freely choose for the purpose of such an inspection. If permission for this inspection is not forthcoming, and no substantial grounds exist for such refusal, we shall be authorised to withdraw from the contract, without giving rise to a claim on the part of the Supplier for damages, or for payment for services rendered to date. This arrangement shall also apply if defects or deviations from the contractually stipulated points already come to light during the inspection. Alternatively, we shall be entitled to demand immediate subsequent performance. We shall be entitled at all times to request reports on the items ordered by us, and in particular with regard to the status of production. Full responsibility for the performance of service shall rest with the Supplier.

## 8. Subcontractors

In the absence of our prior, written consent, the Supplier shall not be entitled to have the service owed by it carried out by third parties (e.g. subcontractors). Unless otherwise agreed in writing in the individual case, the Supplier shall bear the procurement risk for its service.

Where it is within the scope of reasonableness for the Supplier, we may require changes in the way its service is designed and carried out. The Supplier shall implement such changes within a reasonable period of time. In this case, the effects – particularly with regard to added or reduced costs as well as delivery dates – shall be reasonable, laid down in writing and agreed by the Parties. If no agreement is reached within a reasonable period of time, we shall be authorised to refrain from placing further orders.

## 9. Documentation

The Supplier shall be obliged to constantly monitor the quality of service at its own expense. In particular, it shall keep records indicating when, in what way and by whom the service has been reviewed. These audit documents shall be retained for at least fifteen years and presented to us if necessary. For documentation and archiving, reference is made to the VDA document: 'Band 1, Dokumentation und Archivierung – Leitfaden zur Dokumentation und Archivierung von Qualitätsanforderungen [Volume 1, Documentation and Archiving – Guide to the Documentation and Archiving of Quality Requirements]', and to the VDA document: 'Prozessbeschreibung besonderer Merkmale (BM) [Process Description of Special Features (BM)]', each in its latest edition.

## 10. Quality and protective regulations

The Supplier hereby warrants that its deliveries and the processes, goods and services it provides are reflective of the current state of scientific and technical knowledge and satisfy the applicable legal and regulatory requirements of the exporting country, the importing country and the country of destination as specified by the Customer – where this has been communicated to the Supplier.

At all times throughout the term of the Agreement, the Supplier shall, to the best of its ability, maintain a level of technology, quality, service and price with regard to the manufacture and sale of its goods or services that is at least as competitive as that of other manufacturers of similar goods/services for the intended application.

As part of its quality support for its services, the Supplier shall perform an investigation of any possible errors or complaints as quickly as possible and submit a duly completed 8D report. The Supplier shall make the details of the analysis and the results of its investigation available and take remedial steps as appropriate. Within the scope of the legal possibilities, the Supplier shall place its upstream suppliers under the same obligation where compliance with quality requirements is concerned.

Any hazardous substances shall be packaged and labelled in accordance with the applicable laws; the respective safety data sheets shall be supplied as well. The classification of the dangerous goods, or the words 'no dangerous goods', shall be indicated on the delivery note.

In addition, the Supplier shall notify us in writing, without prompting on our part, of the use of any SVHC (substances of very high concern), in accordance with the REACH Regulation.

Protective regulations applied during the delivery or performance of work (including but not limited to technical regulations, occupational-safety and accident-prevention regulations, environmental regulations) shall be strictly applied. This shall apply in particular to EU regulations, laws based on EU directives, accident-prevention and occupational-safety regulations, the German Equipment Safety Act (Gerätesicherheitsgesetz) and the state of the art in matters of safety and occupational health.

In circumstances in which applicable and in which no other written agreement has been entered into, the CE label must be clearly visible; the Declaration of Conformity and the hazard analysis shall be provided as well. Packaging materials should be produced without CFCs and should be chlorine-free, chemically inert, groundwater-neutral and non-toxic when combusted. All packaging should be reusable and should also be made of environmentally-friendly materials. The Supplier shall retrieve packaging material at our request.

The Supplier shall, by 31 January at the latest, furnish for the current calendar year a supplier's declaration with certificate of origin for all items in series. Should new or additional items are to be delivered in a current calendar year, a supplier's declaration shall be submitted without prompting. The Supplier hereby covenants to comply with the regulations of the United States Securities and Exchange Commission (SEC) and of the Dodd-Frank Act, and not to use conflict minerals (tin, tantalum [coltan], tungsten or gold) in the manufacture and functionality of its goods. The Supplier hereby covenants to use and select such minerals as will ensure sufficient due diligence (OECD Due Diligence Guidelines) and shall see to it that only such minerals as have been certified by an independent third party as conflict-free are used.

## **11. Scope of liability and warranty**

In the event of material and legal defects (including incorrect and short deliveries as well as improper installation and defective instructions for assembly, operation or use), and in the event of other breaches of obligation, unless otherwise specified below, the provisions of statute shall apply. By way of derogation from § 442 (1) Sentence 2 of the German Civil Code (BGB), when making purchases, we shall be entitled to warranty claims without limitation, even if, as a result of gross negligence, we did not become aware of the defect upon conclusion of the contract.

Our inspection obligation in accordance with § 377 of the German Commercial Code (HGB) shall be limited to such as defects as become obvious during our external inspection of incoming goods, including the shipping documents, and during our quality control conducted by means of sampling (e.g. damage during transport, wrong or short deliveries). If such an acceptance has been agreed, there is no inspection obligation. In all other respects, this shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking the circumstances of the individual case into account. Our obligation to report defects that are subsequently discovered shall remain unaffected hereby. In all cases, our complaint (notification of defects) shall be deemed free from delay and timely if it is received by the Supplier within 10 working days.

We shall be entitled, at our own discretion, to demand rectification or replacement of the defective service with flawless service. If we cannot reasonably be expected to proceed with the process of subsequent performance with regard to disruption-free production, we shall be entitled to remedy the defect ourselves, or to have it remedied by a third party. The Supplier shall bear the costs in which this results. The costs to be borne by the Supplier within the framework of subsequent performance shall also include the incidental costs incurred by our customers for the detection of defects and the warranty, and in particular the transport, travel, labour and material costs required to rectify the defect. The claim for rectification of defects shall also extend to such defects in the goods delivered by the Supplier as were only caused by the original defect, as well as for goods which must necessarily be destroyed or damaged in the course of replacing/repair of the defective goods. Particularly for the case of delivery of a replacement by the Supplier and procurement of a replacement by ourselves, this shall also extend to the costs of removal and installation. This shall be without prejudice to the right to damages, particularly to damages for non-performance.

The Supplier shall be liable for all damages incurred by us or third parties in connection with the order, including for damages occurring within the premises.

The Supplier hereby indemnifies us against any claims for damages arising out of breaches of its obligations.

## **12. Product liability**

If third parties should hold us liable under product-liability rules for product defects caused by the Supplier and affecting goods that the Supplier has delivered to us, the Supplier shall have an obligation to indemnify us from these claims, and from all resulting expenses and damages, including the costs of legal proceedings and defence costs, if the product defect was also caused by the Supplier. By the same token, the Supplier shall be liable for costs incurred by us for measures taken to defend ourselves from damages claims, and for mitigation measures, such as recall actions and customer-service measures, insofar as these measures are based on the defectiveness of the service performed by the Supplier. Other contractual and legal claims by us, specifically as arising under the German Product Liability Act, shall remain unaffected by the above provisions.

A Product Safety Officer (PSO) shall be appointed for each stage along the supply chain. Changes in this regard shall be communicated to us in writing by the Supplier, without delay and without a need for prompting.

## **13. Insurance**

The Supplier shall be obliged to ensure adequate insurance cover with regard to its obligations. By way of example, but not exhaustive in scope, this obligation shall extend to the areas of public liability, product liability and recall insurance and shall be subject to cover by the Supplier. Upon request, it shall provide us with written proof of insurance cover. The

Supplier shall communicate to us, in writing and without delay, any material changes to the scope of insurance, or termination of the insurance policy.

#### **14. Recourse**

We shall be entitled, without restriction, to statutory claims of recourse within a supply chain (supplier recourse pursuant to § 478, § 479 BGB), in addition to claims for defects. Specifically, we shall be entitled to insist upon precisely the kind of subsequent performance (rectification or replacement) from the Supplier as we owe our buyer in the individual case. This shall not impinge upon our option under law (§ 439 (1) BGB).

Before we recognise or fulfil a claim for defects asserted by one of our buyers (including compensation for expenses pursuant to § 478 (3), § 439 (2) BGB), we shall notify the Supplier and request a written statement of the facts and its position with regard to the matter. If such a statement of position is not issued within a reasonable period of time and no amicable solution is reached, then the warranty claim actually granted by us shall be deemed owed to our buyer. In such case, the burden of furnishing proof to the contrary shall fall to the Supplier.

Our claims arising from recourse against suppliers shall apply even if, prior to their sale to a consumer by us or by one of our buyers, the goods were further processed, e.g. through incorporation into another product.

#### **15. Limitation period**

Unless otherwise specified below, the Parties' mutual claims shall be subject to limitation periods as set forth by statute.

At variance with § 438 (1) 3 BGB and § 634a (1) 1 BGB, the general statute of limitations for claims for defects is three (3) years from transfer of risk or acceptance. The three-year limitation period shall also apply accordingly to claims arising from defects of title; moreover, claims arising out of defects of title shall never come under the statutory period of limitations if the third party can still assert the right as against us – particularly for want of coming under the limitation period.

#### **16. Transfer of ownership**

Ownership of the goods shall transfer over to us, unconditionally and irrespective of our payment of the price. If, however, we accept an offer from the Supplier to transfer ownership upon condition of payment of the purchase price in individual cases, the Supplier's retention of title shall expire no later than upon payment of the purchase price for the delivered goods. In the ordinary course of business, we shall remain authorised to resell the goods under advance assignment of the resulting claim, including prior to payment of the purchase price (alternatively, through application of the simple retention of title as extended to resale). This shall preclude all other forms of retention of title, in particular extended, transferred, or prolonged retention to include further processing.

## **17. Industrial property rights**

The Supplier shall be liable for the fact that its service is free of third-party rights, and that this service and contractual use thereof do not infringe any patents or other industrial property rights of third parties, at least one of which is published in the Supplier's home country, by the European Patent Office or in one of these countries: the Federal Republic of Germany, France, Great Britain, Austria or the USA. In this respect, the Supplier shall have an obligation to conduct a search and testing for conflicting industrial property rights of third parties. Sentence 1 of this clause shall not apply if the Supplier has produced the service according to drawings, models or similar other descriptions or indications submitted by us and is unaware or not required to be aware of the fact that products that it has developed are in breach of industrial property rights. The Supplier hereby covenants to notify us without delay of any risk of infringement or alleged infringement. Without being requested to do so, the Supplier shall furnish notification of the use, in the service ordered, of published and unpublished proprietary rights and licensed property rights and industrial-property-rights applications, and of any existing restrictions thereupon. In the event of a claim by a third party for an infringement of industrial property rights, the Supplier shall, at its own expense, obtain from the owner of such industrial property rights the necessary license for the service, commissioning, use, sublicensing, resale, etc., of the service. If the Supplier proposes a change in service in the effort to avoid an infringement of industrial property rights, and the end customer has unconditionally approved this change for series delivery in compliance with its requirements for series approval, the licensing obligation shall be waived.

## **18. Confidentiality**

The Supplier hereby covenants to treat all commercial and technical details of which it becomes aware through the business relationship, and that were not already public knowledge, as trade secrets. The Supplier is aware that this information has, to date, not been known or readily accessible, whether in its entirety or in its particulars, and is therefore of economic value to us, that this information is protected by reasonable confidentiality measures on the part of the owner, and that a legitimate interest exists in keeping this information confidential. Any Information that does not meet the criteria for a trade secret set out in the German Trade Secrets Act (GeschGehG), will nevertheless be subject to non-disclosure requirements. Electronic data, drawings, models, templates, samples and other documents must not be provided, or otherwise made accessible, to unauthorised third parties. The respective Party shall retain all proprietary rights and copyrights to this information. The reproduction of such items shall be permissible only within the scope of the operational requirements and the applicable provisions of copyright law. The non-disclosure obligation shall remain in effect for five (5) years even following termination of the contractual relationship. Sub-suppliers, if commissioned by the Supplier with our consent, shall be placed under a corresponding confidentiality obligation.



## 19. General provisions

In accordance with our strategy around corporate social responsibility, we expect all suppliers and business partners, as well as their employees, to conduct themselves responsibly and to comply with the basic principles to which suppliers and business partners are subject under the terms of our Code of Conduct. This code can also be found on our homepage at [www.hoftexgroupag.com](http://www.hoftexgroupag.com).

The place of performance for deliveries shall be the place to which delivery is to be made pursuant to our instructions, or by written agreement, but in case of doubt it shall be our registered office located at Fabrikzeile 21 in Hof/Saale, Germany.

The exclusive place of jurisdiction shall be Hof/Saale, Germany, for any disputes arising in connection with the establishment, validity and assertion of claims hereunder.

These Conditions, and all legal relationships between us and the Supplier, shall be governed by the laws of the Federal Republic of Germany, to the exclusion of international and supranational (contract) law, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG).

This Agreement and any rights and obligations hereunder shall not be transferable to third parties without our prior, written consent.

Any side agreements or amendments to these provisions shall only be effective if they have been confirmed in writing by us. The same arrangement shall also apply to any waiver of this written form requirement.

For the remainder, the invalidity or impossibility of enforcing individual provisions shall not affect the validity of the remaining provisions of these Conditions. Any provisions that are invalid or impossible to enforce shall be deemed replaced by such valid/enforceable provisions as come as close as possible to fulfilling the economic purpose of the nullified provision(s). The same shall apply in the event of a loophole.

The Supplier may advertise its business relationship with us only if we have given our prior, written consent to its doing so. This shall apply in particular to the use of our name and logo.