

General Conditions of Purchase

I. Contract conclusion

1. For orders awarded by Hiller GmbH (buyer) only the following conditions of purchase are valid. They also apply for future business made with the contractor. The contractor's terms of delivery will only be valid if they have been confirmed expressly and in written form by the buyer. The execution of this order means that the contractor accepts these conditions of purchase.
2. Orders, agreements or changes are only binding if confirmed by the buyer in written form. The written correspondence has to take place with the buyer's purchase department. Should any agreements, which have an effect on the regulations under this contract, be made with other departments, this has to be confirmed expressly and in written form in form of a contract addendum by the buyer's purchase department. Materials which deviate from the order texts, drawings or packing notes of the buyer may only be applied if this has been allowed by the buyer in written form.
3. The contractor has to confirm the acceptance of the order within 10 days
4. The contractor has to keep the contract in confidence. He only may name the buyer as a reference with his prior written consent.
5. Invoices, shipping notes, notifications of dispatch and test certificates have to bear order number, item number and part number of the buyer. The buyer reserves the right to decline invoices without this information.
6. Missing or incorrect prices in the order document are to be submitted to the buyer for acceptance and have to be expressly confirmed by him in writing.
7. When the delivered goods are machines under the EU machinery directive (89/392/EWG), the corresponding manufacturer's declaration and the declaration of conformity have to be supplied with delivery without extra request. The same also applies for the delivery of products for which further EU directives will be valid in future.

II. Prices

1. The agreed prices are fixed prices and are to be understood – plus the corresponding VAT – free application site, inclusive costs for packing and freight. If the price is agreed to be "ex Works" or "ex stock" the buyer will only bear the most favourable freight costs. All costs occurring to the carrier until transfer of the goods, inclusive loading and freight charge are to be borne by the contractor. The pricing has no effect on the agreed place of execution.
2. The buyer reserves the right to accept excess delivery, short deliveries are not allowed.

III. Documentary evidence of origin

1. Evidence of origin required by the buyer (for example manufacturer's declaration) has to be marked by the contractor with all necessary information, signed properly and made available without delay.
2. As far as products from third party countries are delivered the contractor has to make this evident in the delivery documents. If no such notification will be made the buyer assumes, that the available manufacturer's declaration is valid.

IV. Deadlines

1. If the contractor discovers that any agreed deadlines cannot be kept for any reason whatsoever he has to inform the buyer correspondingly and without any delay in oral and written form.
2. Should the contractor be in default of delivery and should he be not able to deliver the goods even after a reasonable extension of time granted by the buyer the buyer has the right to have the delivery / performance be carried out by a third party and at the contractor's expense.
3. All costs occurring out of this default / delayed deliveries and performances have to be borne by the contractor.
4. Penalty: Should the buyer's sales orders be penalised the contractor has to pay the agreed penalty at default. The contractor will be informed on such penalty in the order document.

V. Warranty

1. The quality of the goods has to correspond to the purpose as well as to the regulations of the corresponding institutions and trade unions. The contractor is obligated to deliver only goods which are exactly controlled. The contractor has to care that a state-of-the-art quality control has to take place which is suitable for the kind and quantity of the goods.
2. As far as not otherwise agreed upon the warranty period will last 24 months from installation of the buyer's end product at the end customer, into which the goods of the contractor are integrated. This period will be prolonged by all downtimes of the end product if those are caused by subsequent improvement works by the contractor. For parts replaced or repaired during such subsequent improvements there will be warranty period of 12 months, however this period will not expire before the warranty period of sentence 1. (Warranty/1).

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3. All motors, devices and machines have to be designed for continuous operation (24 hours/day). The contractor has to care that the construction and quality of his product are always state-of-the-art and he has to inform the buyer of possible improvements and technical changes.
4. The contractor is obligated to hold on stock for a period of 10 years after delivery and for reasonable prices all necessary spare parts for the goods delivered to the buyer.
5. The buyer will examine the goods after receipt according to kind and purpose as far as this is usual for proper business development. Within 8 days after receipt of the goods the contractor waives the right of objection of delayed claim. If there are any insufficiencies payment will only be effected after their elimination. The payment date will be set according to the duration of the rectification process. Agreed cash discounts remain unaffected.
6. The contractor has to eliminate all insufficiencies of the delivered goods claimed during the warranty period immediately and free of charge, inclusive all extra costs. If warranted characteristics are missing this has to be understood as an insufficiency. If it is not possible or if it is not reasonable for the buyer to accept such repaired parts the contractor has to replace the insufficient parts free of charge with faultless ones. In case that the contractor has made delivery directly to the buyer's end customer the rectification process has to take place at this final customer.
7. In urgent cases or if the contractor does not fulfil his duties under the warranty in time the buyer may carry out himself all necessary measures at the contractor's expense; the warranty deed remains thereof unaffected. Except of very urgent cases the contractor will be informed prior to such measures.
8. Should subsequent improvements be impossible or unreasonable the right of rescission or reduction remains unaffected.
9. The claim will be time-barred in any case within one year of the date of punctual claim, however, not before expiration of the above described warranty claim.
10. The contractor is obligated to take out sufficient product liability insurance.

VI. Drawings and other documents

1. For orders in accordance with DIN and/or other specifications always the latest DIN/EN version, valid at order date, applies.
2. The buyer's consent to drawings, calculations and other technical documents do not affect the contractor's sole liability regarding the goods delivered. This is – if not disagreed by the contractor in written form – also valid for suggestions and recommendations by the buyer as well as for changes agreed upon between the contractor and the buyer.
3. The drawings and manufacturing documents handed the contractor are only entrusted to him for order execution and remain the buyer's property – all intellectual property rights remain with the buyer. The documents are to be returned to the buyer as soon as the order has been finished. The contractor has no right whatsoever to use these documents directly or indirectly for deliveries made to third parties. The contractor is only allowed to transfer these documents in original or copy to third parties if this is necessary for order execution. If these documents are used by the contractor or any third party without authorization the contractor will have to pay a fee to the amount of the purchase price of the items produced with help of this documents – except as higher claims for damages are made. This obligation has to be imposed by the contractor on all sub suppliers involved in this order.
- 4- All manufacturing documents, devices, tools, models, etc. which have been given to the contractor remain the buyer's property and may only be used for the purposes agreed upon in the contract. Should any tools, devices or castings be lost or damaged the contractor has to assume full liability.
5. The buyer reserves all titles and rights to all drawings and processes developed by him.
6. Drawings and parts lists have to be returned to the buyer with delivery.
7. In case that the drawings and parts lists are not returned together with the ordered goods the invoice will not be paid until the buyer receives the documents.
8. Company certificates – for the case that company certificates are required they will be integral part of the order. Payment of the goods will only be effected after complete delivery – therefore also after delivery of the company certificates. Should these certificates be missing the invoices will be suspended until subsequent delivery has been made. Agreed cash discounts remain unaffected.
9. Commissioning of third parties: the contractor is not allowed to commission any sub supplier for the execution of the complete or parts of the order without the buyer's prior written consent. If the buyer agrees with this commissioning the contractor and the sub supplier have joint liability as co debtors. Should the contractor commission any third party without prior written consent of the buyer the buyer has the right to resign from the contract without special notice.

VII. Hazardous materials

Should delivery contain any hazardous materials the corresponding DIN/EN safety data sheets have to be delivered with the goods.

VIII. Shipping instructions

1. The instructions for delivery and shipping have to be complied with.
2. For conclusion of transport insurance the buyer's agreement is necessary.

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3. To every consignment or delivery a shipment note has to be enclosed on which the exact order data, dimensions, gross and net weights are to be stated.
4. For deliveries made on behalf of the buyer to another address there has to be a notification of dispatch sent to the buyer.
5. The contractor has to comply with the valid version of the packaging ordinance. Reshipment will take place to the contractor's expense and risk.
6. The buyer's incoming goods department may decline any delivery packed in a non-recyclable transport packing (see packaging ordinance dated December 6th, 1991) to the contractor's expense.

IX. Payment

1. The payment may be effected either within 14 days after receipt of a proper invoice and the goods with a cash discount of 2% OR within 30 days, net, as far as no other agreements have been made. Payments do not confirm the proper delivery of the goods.
2. The buyer has the right to deduct all outstanding amounts in favour of the contractor with all those outstanding amounts entitled to the buyer by the contractor and also to make use of the legal withholding rights. The contractor has no right to assign any claims under the contract to any third party without the buyer's prior consent.

X. Nondisclosure and data protection

The contractor is obligated to keep all technical and commercial documents entrusted to him strictly in confidence and also to impose this obligation on his sub suppliers. This obligation of non disclosure will last on after termination of the cooperation. The contractor declares his revocable consent to the fact that order related data will be processed and stored in accordance with the legal regulations.

XI. Industrial property rights of third parties

The contractor declares that the goods under this contract are free from any national and international industrial property rights of third parties. The contractor will assume liability that no such industrial property rights of any third party will be violated by execution of this order or by delivery and/or use of the goods under this order, particularly if those rights are based on patents, utility models or design patents, intellectual property rights or competition regulations. The contractor is obligated to indemnify the buyer and the buyer's customers from all such claims of any third party and also to assist the buyer and his customers as an intervener in case of any legal actions. Should the case be lost for the buyer the contractor will have to refund all payments received plus statutory interest.

XII. Place of execution, jurisdiction, applicable law

1. Place of execution for deliveries and performances is application site, for payments it is the buyer's address.
2. Any litigation shall be submitted to the court having jurisdiction over the place of business of the buyer. However, the buyer shall also be entitled to sue the contractor before the court having jurisdiction over the contractor's place of business. Both parties are also entitled to have disputes settled by arbitration, in accordance with the Arbitration Rules of the Passau Chamber of Commerce without recourse to the ordinary courts of law.
3. For the relation between both parties under the contract German law is valid except of the Uniform Law on the International Sale of Goods (CISG)

XIII. Receipt of goods, opening hours, visits

1. Business hours: Monday – Friday from 07:30 to 11:45 am and 01:00 to 03:30 pm.
2. It is not allowed to load the goods in front of the premises without having them accepted by a representative of the buyer. Visits have to be arranged by telephone beforehand.

XIV. Severability clause

If any provision of this contract shall be deemed invalid or impracticable entirely or in part this shall not affect the validity of the remaining provisions. Instead of the invalid or impracticable provision an appropriate provision shall apply which is nearest to the intent of the contracting parties or to what would have been their intention in keeping with the meaning and purpose of the contract if they had considered the issue at the conclusion of the contract or at a later addition of a provision. The same shall be valid for any unintended omission of this contract.