

General Terms and Conditions of Purchase

For the use of business transactions with suppliers (Effective: 01.03.2021)

HSM Stahl- u. Metallhandel GmbH



§ 1 Scope of applicability

- (1) For the legal relationship between the supplier and HSM, the following Terms and Conditions apply exclusively. The Terms and Conditions of the supplier and deviating agreements do only apply after acknowledged by HSM in writing. Neither silence on part of HSM nor the acceptance or payment of services is to be considered as approval. This also applies if the supplier refers to their General Terms and Conditions in one of their letters and if HSM makes reference to such a letter that refers to their Terms and Conditions. Other conditions only apply if HSM grants express written approval towards the supplier with respect to any deviation from the following Terms and Conditions. With the execution of the order, the supplier shall expressly acknowledge these Terms and Conditions of purchase. These Terms and Conditions shall only apply if the supplier is an entrepreneur (§ 14 BGB [German Civil Code]), a body corporate organised under public law, or a special governmental estate.
- (2) These Terms and Conditions also apply for future supplies, services or offers to the supplier, even if they are not subject of a further separate agreement. The authoritative version of the Terms and Conditions shall be the version that is accessible via <http://www.hsm-stahl.de/agb> at the time of the conclusion of the contract.
- (3) References to the application of statutory provisions are for the purpose of clarification only. Therefore, even without any such clarification, the statutory provisions shall apply as far as they are not immediately changed or expressly excluded by these Terms and Conditions.

§ 2 Conclusion of the Contract; Extent of Obligation to Perform

- (1) The contract language is German.
- (2) HSM shall be bound to its purchase order for a period of one week after mailing to the supplier unless the order is cancelled before that date by mutual agreement. After expiry of this time limit HSM reserves the right to revoke the order.
- (3) The supplier shall ensure that they are aware in time of all the data, conditions and circumstances that are essential for the fulfilling of contractual obligations as well as the purpose of the supplies. If these data, conditions and circumstances as well as the purpose of use are only known to HSM, HSM undertakes to immediately pass on this information upon request of the supplier. This also applies for the above mentioned information that is provided to HSM by its customer. The supplier warrants that their supplies include all the services that are necessary for a proper and safe use, that their supplies are suitable for the intended use and that they incorporate the latest available technological advances. The same applies to economic use. When supplying goods or services, the supplier shall observe all relevant norms, legislation and regulations, particularly the relevant environmental legislation, the regulations on hazardous substances, the regulations on dangerous goods and accident prevention regulations as well as the generally accepted safety and occupational health rules and the factory standards, the drawings and other provided specifications. The supplier shall inform HSM about the required official authorisation and reporting obligations, especially with respect to the import of ordered goods.
- (4) Within reasonable limits and in agreement with the supplier, HSM shall be entitled to demand changes in construction and design of the delivery item. We will set the appropriate provisions with respect to the consequences, notably with respect to additional and reduced costs and delivery deadlines. Such provisions shall be confirmed in writing.

§ 3 Prices; Terms of Payment

- (1) The agreed prices are fixed prices. All prices include VAT, unless the VAT is stated separately. Unless agreed otherwise, prices include all charges and price components (additional services and costs), e.g. shipping, packaging, preservation and temporary storage until shipping, cargo and liability insurance, montage, and installation.
- (2) Unless agreed otherwise, payments shall be made within 14 days with a 3% discount, within 20 days with a 2% discount or within 30 days without discount. Payments shall be regarded as on time when received by the supplier taking into account the usual time for bank transfers.
- (3) If HSM is in default of payment, the supplier shall be entitled to request an annual default interest of 5 percentage points above the relevant base interest rate. The period shall begin with the receipt of services and of the invoice complying with the requirements and with the receipt of the requested inspection certificate. In the case of acceptance of early delivered supplies, the period starts, however, with the agreed delivery date at the earliest.
- (4) Payments shall be made subject to invoice verification. HSM shall make payments non-cash by bank transfer. In the case of defective delivery, we are entitled to withhold payment proportionally until proper fulfillment. Invoices must be provided with HSM's order number, item number, delivery note number and supplier number and shall be sent together with the inspection certificate in written form.
- (5) Without HSM's prior written approval, the supplier is not entitled to assign receivables that they are entitled to claim from HSM and that are not intended for the payment of an amount of money or to have these collected by third parties. The provisions of Article 354 a of the German Commercial Code (HGB) shall not be affected thereby.

§ 4 Transfer of Title

Upon receipt of goods on HSM's premises or with the recipient specified by HSM, the title to the goods is transferred to HSM. HSM expressly opposes to the retention of title by the supplier which goes beyond the simple legal retention of title. The title can only – if at all – be reserved for the relevant delivered goods within the scope of a simple legal retention of title (einfacher Eigentumsvorbehalt).

§ 5 Time of Delivery and Default of Delivery

- (1) For all delivery clauses the Incoterms valid at the time of contract conclusion apply (currently: Incoterms 2020).
- (2) Agreed delivery dates and periods are binding and as fixed dates and fixed periods the deadlines must be observed. If the date of delivery can be determined on a calendar basis, this date shall be regarded as a fixed date including the rights arising hereby for HSM. If a calendar week is determined as delivery date, the delivery shall be on time if it is completed until the last working day of this week. In particular, in this case, no further notice of default is required.
- (3) Decisive for the adherence to the delivery date or the delivery deadline is the receipt of goods on HSM's premises or by the recipient specified by HSM. The supplier must immediately give notice of any apparent delay of their performance providing reasons and the expected duration of delay in written form to HSM. The supplier can only rely on reasons of delay that are beyond their control if they have given notification.
- (4) In case of delay, HSM is entitled to demand a contractual penalty amounting to 2% of the total expenditure for each commenced week, amounting to a maximum of 5% of the total expenditure. The supplier retains the right to prove that there was no damage or that the damage occurred was substantially lower. The agreement on or execution of the contractual penalty shall not affect any justified legal claims of HSM for a delay in delivery. Damages shall be set off against any paid contractual penalties. The contractual penalty can be enforced until the full payment of the goods delivered late.

- (5) Industrial disputes, unrest, regulatory action or other unforeseen events or unavoidable events free the supplier and HSM from obligations to perform for the duration of disturbance and to the extent of their effect. This also applies if events occur at a time when the party concerned is in default. This shall also apply if any such event falls within a period where the party concerned is in default. The party concerned shall immediately and in detail inform their contracting partner and shall do everything to limit the consequences of such events within reasonable limits.

§ 6 Obligation to Confidentiality; Documents

- (1) The supplier shall keep confidential all the information provided to them by HSM or become known to them in any other way, such as drawings, documents, insights, samples, means of production, models, data mediums etc., they shall not make any information accessible for third parties (also sub-contractors and sub-suppliers) without express approval of HSM in writing and they shall not use them for purposes other than those determined by HSM, including any time after the contract has ended. The obligation to confidentiality shall expire only if and to the extent to which the knowledge contained within the information becomes public. The same applies to reproduction. This obligation does not apply to information which was already legally known to the supplier without obligation to confidentiality upon receipt of the goods or which subsequently becomes known to them without obligation to confidentiality or which is/will be generally known - without violation of the contract by one of the parties - and/or which incorporates the latest available technological advances or for which HSM has given express permission for other use. The supplier shall not be allowed to use their business relationship for advertising purposes without express approval of HSM in written form.
- (2) If HSM provides the supplier with documents and means of production, e.g. tools or measuring equipment, the ownership shall not be transferred to the supplier. Reproductions are only allowed after prior written consent by HSM. All reproduction shall pass into ownership of HSM at the time of production. The supplier hereby agrees with HSM that they shall keep the copies on our behalf. The supplier shall diligently and at their own expense store, maintain and insure against all the usual risks (e.g. theft, loss, water, fire) and return upon our request at any time the documents and means of production provided to them for reproduction as well as all reproduction made thereof. They are not entitled to claim retention – for whatever reason. They are not allowed to make accessible provided documents and means of production or reproductions thereof to third parties and shall not use them for purposes other than those contractually agreed upon, particularly those for the fulfilment of the order. If and when they have to be made accessible to sub-suppliers for the performance of services, these sub-suppliers shall be obliged in writing. The drawings made by HSM and all other documents shall remain property of HSM and shall only be passed on for manufacturing reasons and after our prior express permission in written form.
- (3) For any case of violation of the obligations of § 6 (1) and (2), a contractual penalty of an amount of up to 25.000,00 EUR will immediately become due for the supplier. The supplier remains free to let a court decide about the adequacy of the contractual penalty. Damages shall be set off against any paid contractual penalties.

§ 7 Extent of Warranty; Exertion of Rights in Case of Defects

- (1) The supplier's warranty obligations shall be determined by the statutory provisions in as far as no other regulation arises from these Terms and Conditions.
- (2) In accordance with the statutory norms, the supplier is liable in particular for the goods having the quality agreed upon at the passing of risk to HSM. An agreement upon the quality shall be at least any such product description (including chemical and mechanical measures, and specifications from factory certifications and test certificates) that – in particular by naming or referencing them in HSM's order – are part of the contract or were made part of the contract the same way that these Terms and Conditions were made, or that were made available by the supplier prior to or after the conclusion of the contract. There shall be no distinction as to whether the product description was provided by HSM, the supplier, or the manufacturer.
- (3) The supplier guarantees that their deliveries and services do not violate any industrial property rights (e.g. patent, design or utility patents or copyrights) of the Federal Republic of Germany or of countries HSM supplies with the goods. The supplier shall be liable for any damage HSM or its customers suffer from the violation of such rights. They shall indemnify HSM and its customers upon first request from all claims of third parties relating to the violation of such industrial property rights as well as all arising expenses resulting from these claims, e.g. legal costs.
- (4) The supplier shall constantly supervise the quality of their deliveries and services. To that end they shall establish and maintain a quality assurance system according to DIN ISO 9000 to 9004 of the German standards body. The supplier grants HSM access at any time to check the compliance with the quality assurance system.
- (5) HSM shall be entitled in any case to choose the type of supplementary performance, i.e. improvement or substitute delivery free from defects. Where operational safety is at risk or in case of danger of unusual high risks, HSM shall be entitled, following the notification of the supplier, to do the mending ourselves or have it carried out by a third party, if the supplier does not comply with HSM's request of mending within a short period. The supplier shall bear any costs arising hereby. Mending and subsequent delivery shall be effected free to the place of use. The supplier shall bear all the costs arising out of mending and subsequent delivery. If, due to culpably defective delivery, a piecemeal or 100% - inspection of deliveries is necessary, the supplier shall bear the cost arising hereby, unless they refer to costs of inspection within the meaning of Article 377 of the German Commercial Code (HGB). The supplier is otherwise liable for all direct or indirect damages arising to HSM including consequential damages due to defect deliveries. If the supplier makes use of third parties for the performance of services, they shall be liable for them in the same manner as they are for vicarious agents.
- (6) As far as HSM promised its customer a contractual penalty in accordance with commercial practice and the customer has made such a justified claim to a contractual penalty, the supplier shall assume the contractual penalty within the scope of damages or shall indemnify HSM in as far as the contractual penalty was caused by an action of the supplier.
- (7) The limitation period for HSM's claims and rights against the supplier shall be governed by the legal regulations. The provisions about the start of the statute of limitation, the suspension of expiry, the suspension and the restart of periods remain unaffected. In the case of accomplished mending or subsequent delivery, the relevant legal warranty period shall restart with the successful completion of mending or subsequent delivery.
- (8) In regards to the commercial duty to examine and to notify of defects, the statutory norms shall apply with the following conditions: HSM's duty to examine is limited to defects that are evident at the point of the incoming goods inspection by external assessment including delivery documents (e.g. transport damage, wrongful or short delivery) or that are noticeable during HSM's quality control via sample checks. In as far as acceptance is agreed upon, there is no duty to examine. The duty to notify of defects that are discovered later shall remain unaffected. In as far as products are delivered that require further work or montage, the control period for defects and quality shall begin only after said works or montages are finished. The duty to examine notwithstanding, any reprimand (notice of defect) shall be considered immediate and in time, if it

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is sent within a period of 5 working days from the discovery or, in the case of evident defects, from the delivery. In the case of a justified complaint, the supplier can be charged with the costs for the examination and the replacement delivery. If the defect becomes evident at a later point in time, including installation and affixing by a subsequent customer, HSM's notice to the supplier shall be considered immediate if it occurs within 5 working days after HSM was given notice of the defect.

- (9) The supplier shall be liable for any act of negligence, also if the action of a third party (e.g. vicarious agent or organ representation) can be attributed to them.

§ 8 Applicable Law; Jurisdictional Venue

- (1) If the supplier is a businessman, a corporate body under public law or a special fund under public law, the exclusive - including international - place of jurisdiction shall be HSM's domicile. This shall also apply if the customer is an entrepreneur under Article 14 German Civil Code. HSM is always entitled to file a suit at the place of performance of the delivery obligation as determined by these Terms and Conditions, or by a prevailing individual agreement, or at the place of general jurisdiction of the supplier. Prevailing statutory norms shall remain unaffected, in particular norms regarding exclusive jurisdiction.

- (2) The law of the Federal Republic of Germany shall apply excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and conflict of laws of the international private law.

HSM Stahl- u. Metallhandel GmbH



§ 9 Miscellaneous

- (1) If a contracting party has suspended their payments or if a bankruptcy proceeding over their assets or a judicial or extra-judicial composition procedure has been filed, the other contracting partner is entitled to withdraw from the part of contract that has not been fulfilled.
- (2) All statements that are made with respect to an alteration of this contract or that are made within the scope of this contract, must be in writing if not otherwise provided hereunder.
- (3) In case any provision is or becomes invalid, the validity of the other provisions shall remain unaffected. In case of an invalid clause, the parties are obligated to negotiate a valid substitute regulation, which comes closest to the economic goal the parties intended the invalid clause to provide.
- (4) HSM points out that personal data are stored in accordance with the legal regulations and are processed in connection with business transactions.
- (5) Where applicable, the supplier has to comply with the requirements of the REACH regulations (Regulation (EC) 1907/2006). In particular, the supplier has to inform HSM whether and, if so, in what quantity substances which are on the candidate list (published on the website of the European Chemicals Agency (ECHA)) in the substances eligible for inclusion in Annex XIV of the REACH regulation the products to be delivered. In the case of products for which a safety data sheet is required, the supplier must send a current version of the safety data sheet based on the REACH regulation or the applicable legal provisions, if applicable, in German to HSM for each delivery.
- (6) The supplier has to ensure that the products delivered to HSM do not contain any so-called conflict minerals. The supplier has also to comply with the provisions of the European Union regulation on conflict minerals (Regulation (EU) 2017/821). If, despite all precautionary measures, a delivery or a suspicion of a delivery of products with conflict minerals occur, HSM must be informed immediately about this fact and the extent (deliveries, quantities, etc.).