

Terms and conditions of purchase of HPC Produktions GmbH (HELLMERICH)

1 General:

Legal relationships with our contractual partners are governed solely by these terms and conditions of purchase. Any terms of the contractual partner which differ from these do not apply when implementing orders even if we have not expressly objected to them.

Orders are only legally binding in nature for us when they have been issued by our purchasing department. This also applies to all changes and additions.

Our order is considered accepted either if it is not objected to in writing within 5 days at the latest of being sent, or if a start is made on implementing it. We are entitled to cancel the order up until the time of acceptance.

Our order number must be shown on all documents concerning our order.

2 Prices:

Prices are fixed prices and include costs of functional and quality testing, painting, corrosion protection, packaging, factory and acceptance certificates and documentation. Where necessary transport authorizations are also included in the price.

Price reductions due to changes in the market must be fully passed on to us.

3 Delivery:

The delivery date stated in the order is binding. If a delivery period is stated, then this period begins with the date of ordering.

Deliveries before the established date are only permissible with our express consent and do not justify any change to the agreed payment terms.

Part supplies, over-supplies and under-supplies of an order item are only allowed with our express agreement.

The timeliness of a supply or performance is decided according to the complete fulfilment of the contract, in other words including the implementation of assembly, provision of the documentation, training, instruction, etc.

4 Delay in delivery, penalties:

The contractual partner is obliged to inform us in detail in writing as soon as the risk of a delay in delivery becomes apparent, including in respect of any damages which might occur for the end customer, or otherwise must pay compensation.

In the event of delay we are entitled to set an appropriate period for the contractual partner to effect his performance, with a statement that we will decline to accept the performance if the period expires without success. If the fulfilment of the contract does not take place before the expiry of this period, then we are entitled at our own choice to withdraw from the contract and request reimbursement for all damages, including lost profits, which we or the end customer have incurred.

In the event of a delay in the delivery date, we are in all events entitled to withhold a penalty per week of delay started and per order item of 2.5%, up to a maximum of 15% of the total order value, subject to the assertion of further compensation. We can reserve the right to enforce these penalties until the final payment.

5 Packaging:

Packaging must be that which is normally used in the trade, fit for purpose and in perfect condition, and must be sufficient to protect the goods as far as our works or the specified place of destination of assembly. We are entitled, but not obliged, to return packaging at the expense and risk of the contractual partner.

6 Shipment:

The terms and conditions of supply specified in the order apply on the basis of INCOTERMS 2010. For deliveries within Austria the contractual partner bears the risk up to the unloading point at the place of destination.

If components are supplied by us or third parties, then the contractual partner bears the risk for these components from the respective time of delivery or handover to it. The transport risk herein always lies with the instructing or implementing party. This applies analogously for return delivery to us or for the forwarding of the goods.

For shipment purposes and for unobstructed receipt of the goods, the contractual partner must include a delivery note with every shipment showing our order details, such as the order number, order item number, our parts number, order number and a precise description of the contents. If these details, which are necessary for acceptance of the delivery, are not shown in the delivery note or if this is not available, we are entitled to reject the delivery at the cost and risk of the contractual partner. A combined delivery of several items from different orders and a joint delivery note is only permitted where clear reference is made to the allocations to the different orders and order items.

For foreign deliveries from within the EU, a customs invoice (3 copies) and a valid proof of origin (declaration of origin, movement certificate, etc.) must be attached to the delivery note free of charge for preferential customs clearance. Export clearance will be provided by the contractual partner at his own expense and risk. For deliveries of goods manufactured in Austria and for duty paid goods a pre-supplier's declaration stating our parts numbers must be attached to the goods.

An advice of dispatch must be sent to us by fax on dispatch with precise details of the delivery note, means of transport and the name of the carrier.

Rail packages must be sent to A-9800 Spittal/Drau, and post packages must be sent to the post office in A-9871 Seeboden. Payment on delivery shipments are not permitted.

Delivery of goods to our plant in Seeboden must strictly take place to the goods inward department at the applicable goods acceptance times (Mon -Thurs: 07.30 – 15.00, Fri 07.30 – 12.00).

If these requirements are not met, all damages, risks and costs are at the expense of the contractual partner.

Unless otherwise indicated in the contractual partner's offer, we assume that export permits are not required in the country of production. In the event that export permits are required, these must be obtained by the contractual partner at his own expense and risk.

7 Payment:

Payment takes place at our choice of within 21 days with 3% discount, or within 90 days net, after all the terms specified in the order have been fulfilled and after the proper receipt of invoice.

Agreed payments on account take place within 21 days with 3% discount or within 90 days net, after an invoice for payments on account has been received and an abstract irrevocable bank guarantee has been issued free of charge by a first class bank within Austria.

Payment does not signify any acknowledgement of the correctness of supplies or services and thus does not mean we in any way renounce the claims to which we are entitled of whatever kind.

8 Invoicing:

Invoices should be submitted in a single copy to the finance and accounting department.

When personnel are used for assembly, repair or maintenance works, the contractual partner's personnel must report to the member of staff responsible as named in our order before starting work. Invoices must have the original service and materials certificates signed by our member of staff responsible attached to them. Services and materials which have not been confirmed by our member of staff responsible will not be remunerated.

9 Warranty:

The contractual partner accepts a full warranty for 36 months for himself, his subcontractors or pre-suppliers for the complete implementation, in accordance with the order and free from defects, for the usual and covenanted characteristics of the supplies and / or services, and for compliance with all the relevant requirements under law and from the authorities which are in force at the place of destination. He further warrants that the implementation, design, suitability for purpose and manufacturing technology correspond to the latest state of science and technology, that only materials of first class and suitable quality have been used, and that this is suitable for the intended purpose. For immovable items, or items which are intended for installation or use with immovable items, a warranty period of 60 months applies.

In the case of engineering, consultancy, software or documentation services, and in the event that personnel are dispatched, the contractual partner accepts the unlimited guarantee of the correctness and completeness of the written and verbal information and instructions.

The contractual partner guarantees the provision of training, maintenance, repair and overhaul services in relation to the products supplied for the remuneration which is usual in the market, as well as supplies of replacement and wear parts for 15 years from the time at which the contract is fulfilled.

The warranty period runs from the takeover of the goods by the end customer or in the event that they are used in our works, from the occasion of the first use of the goods.

The contractual partner agrees that we are only obliged to inspect the item supplied and notify any defects in writing on the occasion of the handover of our end product to our end customer.

The contractual partner must remedy any defects a short notice at his expense and risk by repair, exchange and / or subsequent supply. If he does not immediately comply with his obligation, we are entitled to remedy defects or services which have not been provided ourselves or have them remedied by third parties at the expense and risk of the contractual partner. The contractual partner's further obligations remain unaffected by this.

In the event of a repair of the contractual item or also the replacement of faulty parts, the warranty period starts running again to this extent. At the same time the warranty for the entire product is also extended by the period during which the product could not be used due to the defect and its removal.

Insofar as we are entitled to compensation, irrespective of the degree of fault on the part of the contractual partner, our claim also extends to reimbursement of lost profit and the reimbursement of all damages which we have had to reimburse to the end customer.

In the event of a claim being made against us due to the faultiness of the contractual item, the contractual partner undertakes to indemnify us against all claims by third parties and to reimburse us for all services we have to provide to third parties by reason of this. In addition he undertakes to support us as best he can in any legal disputes with third parties. If the contractual partner asserts that no defect in the product delivered or the service supplied exists in the sense of the provisions on product liability, then he also has to submit the proof of this to us. These obligations of the contractual partner also apply if his product or his performance is only a part of a service we have provided to third parties. In this case the contractual partner is obliged to fully reimburse us for all expenditure by reason of this to third parties.

10 Documentation:

With the delivery, the contractual partner must provide us with proper documentation, in particular about the characteristics of the product, its use, its operation, the further processing or installation etc., such as product descriptions, storage, operation and maintenance instructions, installation instructions, lists of replacement and wear parts, in German, all in 2 written copies and 1 copy on a data medium, and guarantee their completeness and correctness, otherwise he shall be liable to us and the end customer for damages arising from non-compliance with these provisions.

11 Secrecy:

The documents issued to the contractual partner, such as specifications, drawings, computer documents etc., remain our property, must be kept secret from third parties and may neither be reproduced nor made accessible to third parties without our consent. They must be returned unasked after the order item has been delivered.

The use of the order, our logo or company logotype for advertising purposes is only permitted with our express written consent.

We are entitled to carry out checks on the state of manufacture and quality at the premises of the contractual partner or its subcontractors and pre-suppliers at any time.

With the exception of standard parts, the subcontractors and pre-suppliers involved in fulfilling the contract must be identified to us by name shortly after we have issued our order. However, no legal relationship shall thus be created between us and the subcontractors and pre-suppliers. The contractual partner is liable for the selection and fault of his subcontractors and pre-suppliers.

12 Place of performance, transfer of ownership:

The place of performance is our plant in Seeboden or the delivery address shown on the order. Tools, components or materials provided by us remain our property. The contractual partner is obliged to examine these tools, components or materials after they have been received, to immediately report any transport damages to the carrier and any discrepancies to us, and then to undertake clear identification and separate careful storage at his own risk.

Drawings, models, stereotypes, samples, manufacturing equipment, devices and other contrivances which are needed to carry out our order pass into our ownership following payment provided they were produced by the contractual partner or one of his subcontractors at our expense. They must be issued to us after the contract has been fulfilled or at our first request. Storage, maintenance and repairs take place at the expense and risk of the contractual partner. Their use by the contractual partner for its own purposes and especially for third parties is strictly not permitted.

The transfer of ownership takes place analogously to the transfer of risk.

13 Withdrawal:

In the event of serious breaches of contract, we are entitled to set an appropriate period and withdraw from the contract. Serious breaches of contract include in particular non-compliance with delivery dates and defects which could jeopardise the fulfilment of the contract with the end customer. In this case, and without prejudice to our other statutory options, we have the right to remedy or supply the defects or the services which have not been supplied at the place of use of the order item ourselves, or through third parties, at the expense and risk of the contractual partner. The contractual partner's obligations remain unaffected by this.

In the event of insolvency proceedings against the contractual partner or a change in his ownership structure, we are entitled to withdraw fully or in part from the contract without prejudice to the consequences in terms of procedural law. The contractual partner is obliged to inform us of any such circumstances immediately.

14 Other rights:

The contractual partner is liable for the fact that no third party industrial property rights (patent, brand or design rights, territorial restrictions, etc.) are infringed through use in accordance with the contract of the goods or services supplied. He indemnifies us against all claims from the infringement of such industrial property rights and undertakes to acquire the necessary entitlements (licences) for us at his own expense.

We are entitled to pass the contractual partner's technical documents on to the end customer to the necessary extent.

15 Applicable law, place of jurisdiction:

It is agreed that solely Austrian material law shall apply with the exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods.

It is agreed that the court in Klagenfurt with competence in the matter shall apply to all disputes arising from the contract which has been concluded, in respect of its effectiveness, formation and interpretation.

16 Other provisions:

Express contractual agreements with the contractual partner which differ from these terms and conditions of purchase take precedence over these terms and conditions of purchase.

Changes to the contractual agreements and changes to the terms and conditions of purchase, and any other statements to be made on the basis of or in connection with the contractual relationship, are only effective when made in writing, whereby statements made by fax or email satisfy the requirement for the written form.

If one clause of this contract should be or become ineffective or if the contract should be incomplete, then the remaining content will not be affected by this. The ineffective provision must be replaced by a provision which comes closest economically to the sense and purpose of the ineffective provision in a legally effective manner. Gaps in the contract must be filled in the same way.

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