

Conditions of Purchase for HERA Herm. Rahmer GmbH & Co. KG

Scope

1. These Conditions of Purchase apply to companies, legal entities under public law and public special assets.
2. Our orders are placed exclusively on the basis of the following conditions. The Partner's terms and conditions not expressly acknowledged by us do not apply. They also do not apply if they are included in an order confirmation subsequent to our order or commission or in any other written documents and we do not expressly object to these or if we accept delivery without reservation. Our silence signifies rejection of the Partner's conditions.
3. The Conditions of Purchase apply as well to all future orders and contractual relations between the Partner and us.

General Provisions

4. The contractual partners shall promptly confirm all oral agreements in writing as these are individually reached.
5. Should individual parts of these Conditions of Purchase be or become ineffective, this shall have no impact on the effectiveness of the remaining provisions.

Orders

6. Should the Partner fail to accept our orders within 1 week after receipt, we are entitled to cancel these.
7. Delivery call-offs become binding if the Partner has not objected to these within 5 working days after receipt.
8. Within reason, we are entitled to require the Partner to make changes in the delivery object. The effects of such action, especially those concerning higher and lower costs as well as delivery dates, shall be appropriately managed in an amicable fashion.

Long-term and Call-off Contracts, Price Adjustment

9. Open-ended contracts may be canceled upon 3 months' notice.
10. In the case of long-term contracts (those having a term greater than 12 months and open-ended contracts), should there occur a significant change in the costs of labor, materials or energy, either contractual partner is entitled to request negotiations to achieve an appropriate adjustment of the price to take such factors into consideration.

Confidentiality

11. In the absence of a separate agreement concerning confidentiality, the following provisions shall apply: Each contractual partner shall make use of all documents (including samples, models and data) and information received as a result of the business relationship solely for purposes pursued in common by both parties and shall, with respect to third parties, maintain the confidentiality of these with the same care it would exercise with respect to its own documents and information, should the other contractual partner designate these as confidential or have a clear interest in their confidentiality. This obligation shall commence upon the initial receipt of the documents or information and shall terminate 36 months following the end of the business relationship.
12. The obligation shall not apply to documents and information that are generally known or that were already known to the contractual partner on a non-confidential basis upon its receipt of these or that were subsequently divulged by a third party entitled to disclose these or which are developed by the receiving contractual partner without making use of documents or information of the other contractual partner which are to be kept secret.

Drawings and Descriptions

13. All drawings, data, software, CAD data and descriptions provided by us to the Partner shall remain our inalienable physical and intellectual property that must be returned to us unsolicited following the completion of the contract. Subject to the condition precedent, the Partner shall transfer to us the complete payment for the ownership of any drawings and descriptions created on the basis of our information.

Samples and Production Resources

14. If manufacturing costs for samples and production resources (tools, molds, patterns, etc.) were previously agreed to, these shall be invoiced to us separately from the goods to be delivered unless a different agreement is reached. This shall also apply to production resources having to be replaced due to wear and tear. The Partner shall bear the costs of manufacturing and replacement unless an express agreement to the contrary has been reached.
15. The costs of maintenance, commissioning and proper storage as well as the risk of damage or destruction of the production resources shall be borne by the Partner.
16. The Partner shall store the production resources at its own cost for three years following the final delivery to us. Thereafter, the Partner shall ask us in writing to comment on the further use of the resources within three (3) months. The obligation to store such shall terminate if no response is provided or no new order has been placed within this three-month period.
The Partner may use customer-related production resources only following our prior written consent to deliveries to third parties. Without our written consent, these resources may not be scrapped nor accessed by third parties, nor may they be used for purposes other than those contractually agreed to, and the Partner must take care to keep them safe.

Prices

17. Unless agreement to the contrary has been reached, the prices that have been agreed to shall be regarded as fixed prices, and all manner of additional demands shall be excluded. The costs of packaging and transport to the shipping address or place of use identified by us are included in the prices, as are all customs duties and formalities.

Proof of Origin, Proof of VAT and Export Limitations

18. The Partner shall promptly furnish us with any properly signed proof of origin we request together with all required information. The Partner shall inform us in writing promptly and without our solicitation if the information in the proof of origin with respect to the delivered goods is no longer accurate.
19. This stipulation also applies to proof of value-added tax payments involving deliveries both within and outside the EU.
20. The Partner shall inform us in a timely manner whenever a delivery is either fully or partially subject to export restrictions under German or other law.

Conditions of Payment, Assignment of Claim

21. Unless a different agreement has been reached, our payments are subject to the regulation in Clause 23 providing for 3 percent discount up to 14 days following delivery and receipt of the properly constituted invoice or at the net rate within 30 days. The authoritative date for the start of the payment period is the respectively later date.
22. In the event of early delivery, the due date shall be determined according to the agreed-upon delivery date.
23. In the event of defective or late delivery, we are entitled to withhold payment in the appropriate proportion until proper fulfillment of the delivery.
24. Without our written consent, which may not be unreasonably refused, the Partner is not entitled to assign its claims against us or to allow these to be collected by third parties. Where extended retention of title exists, consent shall be deemed given.
If, contrary to Sentence 1, the Partner assigns its claims against us to a third party without our consent, the assignment is nonetheless effective. At our option, however, we can engage the Partner or third party with the effect of discharging the claim.
25. Should it become apparent following the conclusion of a contract that our delivery claim is at risk due to the Partner's insufficient performance capacity – for reasons such as worsening of its financial situation – we may decline to pay any already due obligations and set a reasonable deadline for the Partner to make deliveries step by step against payment or to provide evidence of its performance capacity. If the Partner refuses to comply or does not comply in due time, we are entitled to withdraw from the contract or terminate it and to claim compensation. Legal rights to withdrawal and termination as well as claims for compensation remain unaffected.

Delivery and Transfer of Risk

26. Unless a different agreement has been reached, the Partner's deliveries shall be included in the price. In such situations, risk shall transfer to us once the Partner has deposited the goods at our warehouse.
27. Agreed-upon delivery terms begin with the transmission of the order confirmation and can be reasonably extended in the event of force majeure.
28. Partial deliveries are permissible only through special agreement. Delivery excesses or shortfalls of up to 10% are permissible. The extent of these shall affect the corresponding total price.

Activity on Our Premises

29. Those persons engaged in carrying out the Partner's obligations within our premises shall be subject to the provisions of our work rules and our arrangements with respect to our applicable regulations regarding accident prevention, work safety, environment, etc. Hazardous materials may be used within our premises only in coordination with our specialists and must be properly labeled.

Late Delivery

30. Agreed-upon dates and deadlines are binding. Relevant for compliance with the delivery date or the delivery deadline is receipt of the goods at our premises or those of the recipient we specify. The delivery partner shall promptly notify us in writing concerning any apparent delay in performance and shall communicate the estimated duration of the delay. The Partner may make reference to any causes of delay not attributable to the Partner only if it has fulfilled its duty to notify us. In the event of delay, we are entitled to demand that the Partner pay a contractual penalty. This shall amount to 0.5% for each week of delay or part thereof but no more than 5% of the total value of the order. Our legal entitlement to assert claims due to delay shall not be affected by this agreement on the contractual penalty. Any contractual penalty payments shall be added to claims for compensation. The contractual penalty can be claimed up to the point of payment for the delayed goods.

Material Defects

31. The goods must meet agreed-upon specifications and those of the intended purpose that may be assumed to be known by the Partner, but minimally the mandatory legal requirements and must represent the state of the technology. The relevant date for the contractual condition of the goods is the time when the risk is transferred.
In its deliveries, the Partner shall comply with applicable legal regulations of the European Union and the Federal Republic of Germany as amended - for example, the REACH Regulation (Regulation (EC) no. 1907/2006), the Electrical and Electronic Equipment Act in Germany (ElektroG) as the national implementation of Directive 2002/95/EC (RoHS) and Directive 2002/96/EC (WEEE) and the End-of-life Vehicle Law as the national implementation of Directive 2000/52/EC.
The Partner shall inform us in a timely manner concerning relevant changes to the goods, their deliverability, usability or quality caused by legal regulations, especially the REACH Regulation, and shall reach an agreement with us in individual cases concerning appropriate measures. This stipulation also applies whenever and to the extent that the Partner becomes aware that such changes are imminent.
32. In the event of material defects, we are entitled to demand immediate subsequent fulfillment through additional delivery or repair. The Partner is obligated to bear all expenses connected with repair or replacement, especially the costs of testing, transport, road charges, labor and materials regardless of where the goods it has delivered are located. These also include possible costs of any required replacement or repair of products where the goods have been installed by us or our customer.
33. In urgent cases and upon prior coordination with the Partner, we are entitled to meet its delivery obligations to the extent necessary by performing a possible replacement ourselves or having it performed by third parties. The Partner shall bear the costs required for this action unless the defective performance is not attributable to it.
34. Should the Partner allow the deadline it has been given to expire without having replaced the goods or delivered goods free of defect, we are entitled to rectify the defect ourselves at the cost of the Partner or to engage a third party to perform the rectification. Legal regulations regarding the dispensability of setting a deadline as well as all rights under the law with respect to defects, including recourse claims, remain unaffected.
35. Claims concerning material defects shall expire 3 years after the transfer of risk. This shall not apply to the extent that the law calls for longer deadlines, especially for building defects and those affecting goods used for a building consistent with their normal manner of use and causing the building's defects.

Defects of Title

36. The Partner guarantees that all deliveries are unencumbered by third-party rights and in particular that the delivery and use of the goods does not violate any patents or other industrial property rights in the country agreed upon as the place of delivery in the European Union, Switzerland, Turkey and - to the extent this has been communicated to the Partner - in the countries where the use is intended.
37. To the extent that the Partner is directly liable to the third party by act of law, the Partner shall hold us harmless from third-party claims arising from any possible violation of property rights and shall bear all necessary costs arising in this context.
38. Claims concerning defects of title shall expire 3 years after the transfer of risk.

Other Claims, Partner's Liability

39. Where the Partner is responsible for product damage, it is obligated to hold us harmless from third-party compensation claims to the extent that the cause lies within its sphere of control and organization and that it is or would be liable in its own right in its external relationship. In the context of this liability, the Partner is also obligated under Secs. 683, 670, 830, 840 and 426 of the German Civil Code to bear the costs arising from or in connection with any product recall carried out by us or our customer. Regarding the content and scope of the recall measures to be carried out, we will instruct the Partner to the extent possible and reasonable and provide it with the opportunity to comment. Other claims under the law remain unaffected. The Partner is obligated to maintain product liability insurance to an extent reasonable in scope and amount and to provide evidence to us at our request. Should further compensation claims remain available to us, these remain unaffected.

Our Liability

40. We are solely liable for any compensation claims for whatever reasons under the law in the case of malice or gross negligence by our legal representatives or company executives or culpable violation of significant contractual obligations. In the case of culpable violation of significant contractual obligations, we are solely liable for reasonable, foreseeable typical contract damage. Restriction of liability shall not apply to cases in which we hold mandatory liability under the Product Liability Act for personal or material damage and loss of life or injury to limb or health.

Force Majeure

41. Force majeure, unrest, official measures and other unforeseeable, unavoidable and severe events shall release the contractual parties for the duration of the disturbance and to the extent that these affect their obligation to perform. The contractual partners are obligated to provide the necessary information without undue delay within the bounds of reason and to adjust their obligations to the changed circumstances in good faith. Work dispute measures such as strikes or lockouts do not constitute force majeure in the sense of this clause.

Place of Performance, Jurisdiction and Applicable Law

42. The place of delivery and payment is Kirchhundem. The place of jurisdiction for all disputes arising from this contract is the court with local jurisdiction over Kirchhundem. We are also entitled, however, to assert claims at the headquarters of the supplier. German law applies, excluding the United Nations Convention on Contracts for the International Sale of Goods.