

## **1 Validity**

- 1.1. The following general purchase terms (hereinafter "general terms") are valid for all contracts between HORN and its suppliers regarding all goods, services and deliveries to be supplied (hereinafter "supplies"). Any differing conditions of a supplier not explicitly confirmed by HORN in writing do not apply and will not become part of the contract. For suppliers, not being merchants according to clause 1 of the German Commercial Code (Handelsgesetzbuch - HGB) the following general terms are not valid, so the German Civil Code (Bürgerliches Gesetzbuch - BGB) shall be applicable.
- 1.2. Submission of offers by the supplier shall be free of charge and not binding for HORN. The supplier's quotation shall be binding for the supplier for a period of six months. To be firm, the order must be placed in writing.
- 1.3. Orders placed by HORN constitute a contractual agreement (hereinafter "contract") between HORN and supplier and shall immediately be confirmed in writing by the supplier. HORN reserves the right to cancel the order, if the order confirmation has not been sent within 14 days after order placement. An order confirmation is also required for immediate delivery.

## **2 Prices**

- 2.1. The prices agreed upon are to be understood as free delivery to HORN's company address including freight and packing cost as well as additional charges.
- 2.2. In case of unfree delivery HORN shall only bear the cheapest freight cost, unless HORN has prescribed a special kind of delivery.
- 2.3. The prices in the orders are fixed prices; price reductions between order date and invoice date are in favor of HORN and will be considered in the contract price.
- 2.4. In case of repeating orders, the prices of the first order are valid; in case of price increases, the adjusted price must be agreed between the parties in written form.
- 2.5. Agreed price lists are valid as long as a new one is agreed between HORN and the supplier in written form. The supplier must prove eventual actions to avoid a respective price increases.

## **3 Payments**

- 3.1. Unless agreed otherwise in writing, the following terms of payment regarding all supplies shall be valid:
  - payment within 14 days with a 4 % discount
  - payment within 30 days with a 2 % discount
  - payment within 60 days netupon receipt of the invoice, however, not before acceptance of the supplies (incl. technical documentation, software, software codes and other) in conformity with the contract.
- 3.2. For on-time payment the date of remittance proven by HORN is determining. If a down payment has been agreed, HORN has the right to demand an approved bank guarantee in amount of the down payment at minimum.
- 3.3. Contrary to par. 286 subpar. 3 German Civil Code (Bürgerliches Gesetzbuch - BGB) a delay in payment does not occur without respective written reminder by supplier containing amount and due date of respective payment. In case of undue delay in payment, the supplier shall be entitled to surcharge an interest rate of 5 % per annum above the national base interest rate ("Basiszinssatz") regarding the respective invoice amount.

## **4 Terms of Delivery**

- 4.1. The statements in HORN's delivery orders, dispatch order and command orders must be observed, all cost occurring out of non-observances have to be borne by the supplier. The invoice shall be sent twofold with notice to HORN's order number to the address announced by HORN and may not be sent together with the supplies themselves. Conclusion of additional transport insurances have to be agreed between HORN and the supplier in written form, otherwise supplier is responsible for covering these additional costs solely.
- 4.2. Unless agreed otherwise, supplies shall be delivered according to Delivered Duty Paid (DDP) – Incoterms 2020.
- 4.3. In case HORN was exceptionally charged packaging by separate agreement, HORN shall return reusable packing unfree and has the right to deduct the charged cost from the contract value.
- 4.4. In case of delivery by a forwarder, the supplier has the right to claim the freight cost accordingly to the current railway fees ("German Railways Tariff") excluding any exceeding cost.
- 4.5. Partial consignments must be approved by HORN. Increased delivery or partial delivery is permitted upon the explicit approval by HORN only.
- 4.6. The supplier shall contact HORN in advance as soon as possible for the purpose of customs clearance and importation formalities. Expressly, the supplier is obliged to inform HORN in writing and in detail of any requirements of official permission for (re-)export of the supplies in conformity with German, European, US export and customs regulations concerning the country of origin of the supplies. In particular, the supplier shall provide the following information, records and documents:
  - the export lists according to enclosure AL with regard to the German External Economic Relations Act or comparable list items of pertinent export lists
  - the EECN (Export Control Classification Number) according to the US Export Administration Regulations (EAR) for all US parts of the supplies
  - the origin of the supplies with regard to trade policy, including technology and software
  - explanation, if the supplies were transported through the USA, were produced or stored in the USA or whether they were produced with the aid of US technology
  - the statistical trade code (HS code) of the supplies
  - a contact person at the supplier's company whom HORN may contact in case of any queries.Upon request by HORN the supplier shall engage to give HORN all further foreign trade details with regards to the supplies in writing and to inform HORN immediately (before delivery) of all modifications of the afore-mentioned details in writing.
- 4.7. In case of deliveries effected by a EU country outside Germany, the EU turnover tax identification number of such deliveries shall be indicated. Imported supplies shall be supplied customs-cleared. The supplier shall be obliged within the framework of the executive order (EG) no. 1207/2001 to make requested declarations and give requested information at the supplier's expense, to allow examinations by the customs authority and to deliver the required official certificates.
- 4.8. A delivery note shall be enclosed with each delivery, stating HORN's order number/project number as well as the designation of the contents according to their nature and quantity.
- 4.9. Delivery of supplies shall usually be made in non-returnable packing customary in trade. If returnable packing is used, the supplier shall make the packing available by way of lending. Return shall be made at the supplier's cost and risk.
- 4.10. Technical devices shall include a technical description, operating instructions and a list of spare parts in the ordered languages free of charge. Software products shall include the complete documentation for system engineering and for the user; software products specially designed for HORN shall additionally be delivered in source format.
- 4.11. Insofar as electrical, mechanical assembly and/or commissioning of the supplies is included in the scope of supply, these obligations shall be realized completely by the supplier at the place of installation.
- 4.12. The installation and assembly work shall be executed by observing all site rules and local working regulations, safety precautions in conformity with the regulations of the mutual indemnity associations, the trade inspection, the regulations for prevention of accidents, EU regulations, machinery safety regulations, VDE regulations, noise protection and air protection regulations (TA Lärm and TA Luft, Federal Pollution Control Act machinery safety regulations and the regulations for fire prevention and protection). The supplier shall instruct its personnel that these regulations are to be observed imperatively at the respective site of execution. The supplier shall take care that its staff will not enter the factory installations outside the working area without authorization.
- 4.13. The supplier shall provide and bear the cost for the legal insurances for his staff, this especially applies for an all-risk-insurance for installation and assembly, insurance for tools etc.
- 4.14. Delivery dates and milestones agreed upon are binding.
- 4.15. The supplier shall immediately inform HORN in writing of any impending delays of delivery, stating the reasons and the expected duration of such delays. The unreserved acceptance of a delayed delivery shall not be deemed as waiver of claims HORN is entitled to due to such delays. Upon request the supplier shall prove executed actions for mitigation.
- 4.16. During manufacturing process, HORN shall be entitled to examine the supplies within the regular business hours with regard to material, manufacturing procedure and other work upon previous notification. Furthermore, HORN shall be entitled to request a report concerning the supplies at any time, especially with regard to the status of manufacturing process.

## **5 Acceptance**

For acceptance of supplier's scope of supply a written acceptance report by HORN is mandatorily required. This acceptance report effects a transfer of title from the supplier to HORN and starts the warranty period. In case of delivery of plants or machinery this report contains a test run of sustained operation for 72 hours at least under production conditions by proving all contractual agreed technical and other parameters. In case one or several parts of the scope of supply have been marked as defective in this report, the acceptance in general has not been effected, until these defects have been eliminated. The acceptance report is valid only with signature by a HORN representative having full power of attorney. Any kind of implied acceptance (e.g. by start of production, delay in acceptance, transfer of final payment by HORN and/or end-customer) is excluded.

## **6 Force majeure**

In case of industrial dispute in the company, disturbance, force majeure and other unforeseeable and inevitable incidents the party concerned is not responsible for, this party shall be exempted from his obligation of delivery respectively acceptance for the period the disturbance persists and to the extent of its impact. If the disturbance persists for more than one month after the term of delivery originally agreed has expired, each party shall be entitled excluding all other claims to terminate the contract with regard to the quantity concerned by the disturbance of delivery or acceptance. If partial performance has been supplied to HORN, HORN shall be exempted fully or partially from the obligation to accept the partial delivery/performance and HORN shall be entitled to terminate the contract insofar as the delivery or performance is not utilizable anymore because of the delay and taking into consideration economic aspects. In such case assertion of claims for damages shall be excluded.

## **7 Liability**

- 7.1. The supplier is obliged to deliver the supplies to HORN free of defects. A defect is given in case of any variance between actual conditions and contract conditions in terms of quality, amounts, texture, technical specifications and performance parameters of the scope of supply. Product descriptions are legally binding and shall be deemed as agreement on the legal and factual nature. If such agreement is missing, a defect is given in case of missing capability of the scope of supply for the intended usage or in case the supplies differ from the typically expected quality.
- 7.2. Moreover, the supplier guarantees with reference to its scope of supply the fulfilment of all contractual determined technical specifications and performance parameters observance of all technical regulations during manufacturing of the supplies and correspondence with actual state-of-the-art.
- 7.3. Upon arrival, the supplies shall be inspected for quality and completeness to the extent acceptable for and technically feasible by HORN. Notification period of apparent defects shall be 14 working days after arrival of respective supply at HORN, Plossberg, Germany, at the agreed delivery place or at the place of HORN's appointed contract-partner in case of chain-of-delivery business. For hidden defects, the time limit for notification shall be extended to 14 working days upon ascertainment of the defect.
- 7.4. In case a defect pursuant to clause 7.1 or a violation of guarantee according to clause 7.2 occurs, HORN is entitled to its discretion to claim the following warranty rights being simultaneously valid:
  - right of subsequent improvement or subsequent delivery against the supplier
  - right to terminate the contract
  - right to claim for compensation (indemnification) right to reduce the contract price in amount of the reduced part of the scope of supply
  - right to claim for compensation of futile expenditures
  - right of removal of defects on the supplier's account; the same applies in cases of imminent danger (such as - but not limited to - imminent danger to life and health, stop of production, mitigation of loss, avoidance of safety hazards etc.) or the supplier denies improvement. The execution of such substitution rights will not limit or affect the warranty rights mentioned above in any kind.
- 7.5. In case HORN returns defective supplies pursuant to clause 7.1, HORN shall be entitled to claim all resulting returning cost plus 5 % of the value of the defected supplies as standard administration fee to the supplier. HORN reserves the proof of higher expenses to be claimed, whereas the supplier is entitled to proof lower expenses.
- 7.6. The warranty period for all rights in this clause 7 shall be 24 months, for buildings it shall be five years, starting from orderly acceptance according to clause 5 unless longer warranty periods exist according to legal regulations. The same applies for subsequent deliveries.
- 7.7. If the acceptance pursuant to clause 5 is delayed due to the supplier's responsibility, HORN has the right to claim for penalty in amount of 0,2% of the contract value for each calendar day of delay, but 5% of the contract value at maximum, notwithstanding the claims mentioned in clause 7.4. HORN is entitled to reserve this penalty claim until the final payment. Any offset with other claims is excluded.
- 7.8. Moreover, the laws of Germany shall be applicable regarding other contract violations by the supplier.

## **8 Product liability**

- 8.1. If HORN is held liable with regard to product liability according to German or another law, the supplier shall keep HORN indemnified against any third party or authority. The supplier's liability in conformity with the contract remains unaffected.
- 8.2. The supplier shall be liable for measures for advertising of damage, e.g. recall operations etc. as far as he is legally obliged.
- 8.3. Upon request the supplier shall prove to HORN the existence of liability insurance in amount of EUR 5.000.000,00 at minimum for property damage, physical injury and property loss.

## **9 Supplier's statements**

- 9.1. The obligation to make supplier declarations according to VO/EG 1207/01 as well as to provide proof of origin, such as certificate of origin and other supplier declarations according to regulations of local Chamber of Industry and Commerce shall be an integral part of any contract materialized in conformity with the present general terms. In case long-term supplier declarations are used, any modifications of the qualities of origin shall be notified to HORN immediately with the respective order confirmation without request.
- 9.2. In case supplier's declarations prove to irrelevant or faulty and HORN is therefore or for other reasons placed under the obligation to present an information sheet INF4 by customs authorities, the supplier shall be obliged upon request to make immediately available to HORN faultless and complete information sheets INF4 officially certified by the customs authorities on the origin of the goods.
- 9.3. In case HORN or HORN's customer is charged subsequently by a customs authority because of faulty certificates of origin or in case HORN or HORN's customer incur other pecuniary loss for reasons attributable to the supplier due to an incorrect indication of origin by the supplier, the supplier shall be liable therefore in full.

## **10 Infringement of industrial property rights of third parties**

- 10.1. The supplier guarantees to transfer the supplies free of any third parties' rights. Based on his careful examination, the supplier shall explicitly confirm non-existence of any incriminatory rights of third parties at the moment of conclusion.
- 10.2. If HORN is held liable with regard to third parties' rights, the supplier shall keep HORN indemnified against any third party claims. The supplier shall immediately and to the best of his ability try to eliminate such rights by objection or nullity suit or to obtain the right of use and enjoyment of such rights transferable to and free of charge for HORN.
- 10.3. HORN is entitled to claim for indemnification against the supplier regarding all damages incurred out of each third parties' right violation.

## **11 Secrecy**

- 11.1. Tools, models, drawings and other documents made available by HORN or produced for HORN may only be used for the purpose of proper performance of respective contract.
- 11.2. The transmission of products as well as of all documents and notes established during execution to third parties respectively publication thereof requires previous written consent by HORN.
- 11.3. Establishment as well as processing and treatment by the supplier of such tools, models, drawings and other documents in execution of the contract shall be made for HORN as manufacturer with the consequence that HORN shall acquire ownership thereof.
- 11.4. The supplier is obliged to keep absolute silence and to treat as own company secret all observations, perceptions and information out of negotiations, project discussions and documents as well as information about HORN's products in general. The supplier shall impose the same obligation on all affiliated companies, sub-suppliers and persons acting in connection with respective contract.

## **12 Social responsibility and environmental protection**

The supplier shall engage to comply with the respective legal regulations for dealing with staff, for environmental protection and for safety at work and to strive for minimizing any detrimental effects on humans and the environment because of the supplier's activities. For this purpose, the supplier shall set up and advance a management system according to ISO 9001 and ISO 14001 within the supplier's bounds of possibility. Moreover, the supplier shall comply with the principles of the Global Compact Initiative of the United Nations. These mainly concern protection of the international human rights, the right to collective wage agreements, the abolition of forced labor and child labor, the elimination of discrimination with regard to hiring and employment of labor, the responsibility for the environment and the prevention of corruption.

## **13 General terms**

- 13.1. A reservation of title by the supplier shall only be an integral part of the contract, if this reservation of title will be discharged upon payment of the contract price for the reserved supplies and HORN will be entitled to resell and to process it in ordinary course of business ("extended reservation of title"). A further-reaching reservation of title with regard to HORN is void.
- 13.2. If HORN makes goods/merchandise (hereinafter "provisions") available to the supplier, these shall remain property of HORN (reserved goods) during the ongoing business relation have been completed. These provisions shall be marked as another's property and be stored free of charge separately from the supplier's property.
- 13.3. Treatment and processing of the reserved goods by HORN shall be effected for HORN as manufacturer according to par. 950 German Civil Code (Bürgerliches Gesetzbuch – BGB) on behalf of, but without legally obliging HORN.
- 13.4. If one or several supplies or the entire scope of supply is temporarily stored at the supplier, the title of ownership shall be transferred upon payment for the respective supply or the contract price. In such case the real transfer shall be replaced by a possessory agreement according to par. 930 German Civil Code (Bürgerliches Gesetzbuch – BGB) and the supplier shall provide for sufficient insurance cover against deterioration and loss of the supplies. The supplies shall be marked as possession for another and shall be stored free of charge separately from the supplier's property.

## **14 Place of delivery, applicable law and place of jurisdiction**

- 14.1. Unless agreed otherwise, the place of delivery and performance is Ploessberg, Germany as registered office of HORN.
- 14.2. Applicable law shall be German law. In addition -but not substituting- to these general purchase terms, the following regulations and laws are valid in the following ranking: German Commercial Code (Handelsgesetzbuch, HGB), German Civil Code (Bürgerliches Gesetzbuch, BGB) in their respective versions. United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.
- 14.3. Where legally permissible, place of jurisdiction for all disputes arising from the contract, shall be Weiden i. Opf., Germany notwithstanding the right of HORN to institute legal proceedings at another competent court of jurisdiction permitted by law. This also applies to proceedings restricted to documentary evidence, summary bill-enforcement procedures and cheque proceedings.

## **15 Final provisions**

- 15.1. Changes and supplements of any contract become valid in written form only, including the agreement itself to contract out the written form.
- 15.2. In case clauses of the contract become partially or entirely ineffective, residual validity shall not be affected. The contracting parties shall engage in such case to replace the ineffective clause by such agreement closest to the intended purpose of the contract. The same shall apply in case of gaps in the provisions requiring settlement.
- 15.3. Assignment of the supplier's rights arising from respective contract with HORN, including potentially existing accounts receivable, are void unless written confirmation by HORN.