



General Terms and Conditions of Purchase

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Germany
- hereinafter referred to as HAM -

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§ 1 Scope of application

1.1

These Terms and Conditions below apply to all our orders to our suppliers and other contractors. The General Terms and Conditions of suppliers are not recognized unless this has been explicitly confirmed in writing by us. Also the supply and/ or acceptance of samples and prototypes do not constitute an implied recognition of the General Terms and Conditions of our suppliers.

Our staff members, also our senior executives, are not entitled to make contractual or otherwise legally relevant agreements or other representations regarding contractual goods and/or contractual services.

1.2

Our Terms and Conditions do also apply exclusively if we accept without reservations the delivery from the supplier despite our knowledge of contradictory terms and conditions or such deviating from his terms and conditions.

Our General Terms and Conditions of Purchase can be downloaded from https://ham-tools.com/ham_downloads

§ 2 Subject matter of the contract

2.1

Our offers for the conclusion of a supplier contract are principally subject to change.

2.2

The scope of the order is defined by the order confirmation, provided this is not issued after our written order. Another part of the contract, without being explicitly referred to, is also the HAM quality requirements in their currently applicable version. Apart from that, the applicable international standards apply.

There are no ancillary verbal agreements. Conclusions of contracts, changes or amendments of the order have to be confirmed by us in writing to be valid. Also changes of this written form requirement have to be in writing.

2.3

The supplier has to immediately confirm our order in writing. The confirmation or performance of the service constitutes the recognition of these Terms and Conditions of Purchase.

2.4

Offers submitted to us are always free of charge. This also applies to the extent the supplier prepares and submits prototypes, samples, draft specimens, sketches, and drawings. This also applies to any type of development activity.

2.5

The supplier is obliged to verify our order and raise concerns over ambiguities, violations of technical rules, violations of DIN standards, changes of technical regulations and other inconsistencies, contradictions and other conspicuous features. In case deviations are unavoidable, the supplier has to present suggestions for changes and improvements.

2.6

The supplier principally has to perform himself. The transfer of our orders to any third party is only permitted with our explicit writing approval.

§ 3 Delivery and acceptance

3.1

Delivery deadlines and dates indicated by HAM are strictly binding and to be observed under all circumstances. Upon the missed deadline, the supplier is in default without reminder. HAM has the right to charge 0.5% of the gross order value per started week of the exceeding of the delivery deadline or missed deadline as a contractual penalty without us having to prove any concrete incurred damage. HAM is entitled to charge higher damage to the extent this is proven, this also applies to the proof of smaller damage by the supplier.

3.2

The supplier is not allowed to supply partial deliveries unless this is explicitly required by us.

3.3

The supplier principally assumes all additional costs of the service, in particular freight costs, transportation, packaging, possibly insurance costs and other additional costs unless something else has been explicitly agreed in writing. The transfer of risk is principally only upon the handing over of the goods to HAM. We are not subject to the obligation of immediate inspection and reapproval.

To the extent that HAM supplies prototypes or test samples, HAM remains owner of all property rights to the delivered items. Transfer to any third party is excluded. Any use is only permitted for testing purposes, warranties are excluded. HAM remains also owner of the items. Should no serial delivery contract be concluded, the delivered items have to be returned.

The supplier is obliged to assure complete documentation for each product. This documentation must include traceability by batch, lot or serial numbers. For all products the product development history has to be recorded in a traceable way and completely. The documentation shall include also all carried out validation and verification checks with test specifications, results and approvals. All documents have to be kept up-to-date and checked for quality at reasonable intervals.

Any documentation has to be made available to HAM in digital form.

§ 4 Price and payment

4.1

The agreed prices are always fixed prices, including all additional costs. We do not recognize nonbinding prices. In cases of doubt our purchase order or the order confirmation shall be binding.

4.2

Unless otherwise agreed, prices shall be understood to be net prices plus value added tax at the current legal rate. Our purchase order number must be stated on all supplier invoices.

4.3

Payment shall be within 14 days after receipt of the invoice with 3 % discount or within 30 working days net. If we do not take delivery until after receipt of the invoice then the discount term begins with the reception of the delivery.

4.4

As a rule, our payments are made by bank transfer. We reserve the right, however, to pay by check, three months' acceptance, or by setting off payment against counter claims. Payment discounts remain unaffected by the deduction of effected penalties, a reasonable retention sum due to deficiencies or if we set off payment against counter claims.

Payment shall not constitute any waiver of our contractual or legal rights. Payment in the case of justified defects notified to the supplier shall be reserved until such are rectified by the supplier.

4.5

The legal rights of off-setting and retention shall be at our disposal to the full extent. The right of offsetting and retention shall apply without limitation to all counter claims of ours arising from the complete business relationship with the supplier.

The supplier is not entitled to assign to any third parties any claims arising from the contractual relationship without our prior written consent.

It is the basis for the business of the supply contracts between HAM and the supplier that the supplier is and remains competitive concerning price, quality, innovation skills and safety.

The contractual partner of HAM is obliged to carry out regular value analyses and to identify savings potential. If there is any saving potential, the contractual partner is obliged to adjust the price for serial parts.

§ 5 Warranty

5.1

The supplied goods must be state-of-the-art and comply with our order documentation and must have all assured characteristics.

5.2

The warranty obligation is 3 years and begins with the transfer of risk. The warranty period, however, will not expire until HAM's warranty towards the final customer expires.

5.3

If defects become apparent before or upon the transfer of risk, or occur during the warranty obligation, then the supplier agrees to either rectify the defects or to supply a replacement, according to our choice, at his own expense. These conditions also apply to any replacements. If we demand rectification of the defect or replacement of the goods and the supplier fails to provide either of these within the set time period, then we shall be entitled to withdraw wholly or partially from the contract without setting a period of grace and without payment of damages or to demand a price reduction or to carry out the necessary rectification or reproduction ourselves or to commission such at the expense of the supplier or to claim damages for non-fulfillment.

The same applies if the supplier ultimately refuses to rectify defects or to provide a replacement or if he declares himself unable to provide such within a reasonable period of time. The supplier shall be liable for assembly and disassembly costs as well as product recall costs, even if only a part of the item delivered is deficient. This also applies when only a part of the total delivery amount is deficient.

5.4

In urgent cases, in which we are under obligation to our own customer and in which we are otherwise under threat of incurring disadvantages by not reacting immediately, we shall be entitled, in deviation from item 5.3. to carry out rectification measures at the expense of the supplier without the supplier being in default of rectification and without the setting of a rectification period. The supplier is under obligation to reimburse us for all rectification expenses, despite his not being in default with delivery or rectification and despite the lack of a rectification period.

Alternatively, we shall be entitled to claim the corresponding price reduction without setting a rectification period, if our customer demands this from us as well.

5.5

Returned defective goods shall be to the account of the supplier. Return delivery shall be at the cost and risk of the supplier.

5.6

Should facts come to our knowledge indicating that the creditworthiness of the supplier is in jeopardy, we are entitled to retain a guarantee sum to the amount of 10 % of the total value of goods and services delivered by the supplier for the duration of the warranty period. The supplier may avoid the retention of a guarantee sum by placing other security.

§ 6 Samples and drafts

6.1

Tools, molds and similar made available by us or made by the supplier at our expense shall be maintained and, if necessary, replaced by the supplier.

6.2

Samples, models, tools, molds, drafts and drawings etc. must be returned to us at the latest with the last contractual delivery. Neither these nor any goods manufactured in accordance with them may be forwarded to any third parties without our written approval.

6.3

Drawings, plans and other documentation pertaining to the purchase order remain our property and we reserve all copyrights to these documents. If the supplier does not accept our offers, then these documents must be returned to us without delay.

6.4

To the extent tools, molds, models, drafts and drawings etc. have been manufactured by the supplier according to specifications provided by HAM, HAM retains all exclusive rights to use these molds and the copyright to them.

§ 7 Confidentiality

The supplier is obliged to keep all sensitive know-how and other sensitive corporate and product information which he obtained strictly confidential.

Our supplier agree to treat as strictly confidential the protected documents, objects and other information and to neither copy them nor reproduce them, forward them, distribute them or to otherwise make them available to any third parties and/ or to provide knowledge of them to any third parties in any other way.

Any use whatsoever of the protected documents, objects or other information without contractual basis and without the consent of HAM is also prohibited. The protected items may only be made available to those persons for whom access to the said documents is absolutely necessary for the purpose of fulfilling the contract and in the framework of the cooperation.

The supplier is also obliged to treat as confidential any other information marked as confidential or of an obviously confidential nature and to use such information only within the framework of the contractual purpose. This obligation continues to apply also after termination of the business connection. All samples, drawings and other documentation of HAM, the transfer of which bears no direct relation to the purpose of the contract, shall also remain the physical property of HAM.

HAM remains principally owner of all rights to development results, especially all rights of use and exploitation of development results, even if this only concerns product adjustments. HAM is in principle prepared but is not obliged to use own patent rights for development projects. The information flow from the supplier to HAM principally does not constitute a claim to joint copyright of the development results.

In the event that a supplier develops development results with the significant contribution by HAM or with the provision of indispensable information and in the event that this leads to any copyright and/ or joint copyright with that supplier, or, as the case may be, any other industrial property rights, including any in joint ownership, the supplier shall grant HAM the exclusive, transferable and sub-licensable right of use of these development results for any type of use, without restrictions in place, time, and content, to the extent this is lawful.

This regulation applies in particular to all documentation of development results, files, all kinds of drawings, algorithms, programs and other know-how.

Furthermore HAM has the sole right to register development results as patents, utility models, industrial design and trademarks in Germany and abroad.

§ 8 Protection of industrial property rights, product liability, customer protection

8.1

In case we are faced with claims from any third party owing to the fact that the delivery infringes patent rights of such a third party, then the supplier shall, at our initial request, indemnify us against any claims whatsoever, including any expenses necessarily incurred in connection with the claim and our defense against such claim.

We are not entitled to recognize the claims of any third party and/or to make agreements with the third party regarding said claims without the written consent of the vendor. The statutory period of limitation for these indemnity claims is 3 years, from the date of communication to us of such a claim by the third party, at the latest, however, 10 years from the date of delivery of the said goods.

8.2

In case we are faced with claims from any third party for product damage for which the supplier is responsible, then the supplier shall, at our initial request, indemnify us against any claims of third parties, including the costs necessarily incurred in defending ourselves against such claims, if the supplier places the cause in his domain and organization.

8.3

Our suppliers guarantee us complete customer protection. In this respect, the supplier is prohibited to supply HAM's customers directly with advertising material or products or to enter into competition with us in any other way.

§ 9 Auditing

To the extent that HAM is obliged to have auditing processes and/ or to supply information, the supplier is obliged to tolerate an auditing to the same factual degree to which this obligation affects HAM in the framework of its customer relationship.

§ 10 Liability

Liability limitations of any kind by the suppliers are not accepted.

The supplier shall be liable in the case of slight negligence, gross negligence and intent of both himself and his employees. Employees of the supplier who are engaged in the performance of work on our premises shall be subject to our operational regulations.

We accept liability for damage to these persons only in the case of gross negligence or intent. Excluded from this is any liability arising from damage to life, body or health resulting from a negligent breach of duty on our part.

§ 11 Termination of the business relationship

Upon the termination of the business relationship, the supplier is obliged to return all objects, documents and other items received from HAM within the context of the performance of a contract with HAM. This applies particularly to samples, drawings, plans and other documents made available. Upon the termination of the contract, any right of use for documents stated and any other copyrightable work, granted by HAM within the scope of the contract, shall end as well.

In case of an infringement of this obligation despite the setting of a reasonable deadline, HAM is entitled to cancel any contractual agreement with the supplier with immediate effect.

§ 12 Insurance coverage

The supplier is obliged to guarantee an adequate insurance coverage with regard to his secondary obligations. Upon request, the supplier has to prove its insurance coverage to HAM.

§ 13 Jurisdiction and place of fulfillment

13.1

This contract is governed by non-unified German law, namely the BGB and HGB [*German Commercial Code*]. The provisions of the Vienna United Nations Convention of April 11, 1980 on Contracts for the International Sale of Goods (CISG) are not applicable.

13.2

Place of jurisdiction for any legal disputes arising from the contractual relationship is Biberach. Arbitration agreements of the suppliers are in no way accepted by HAM.

13.3

Suppliers from non-German-speaking countries have to provide technical documentation, descriptions etc. in English.

13.4

If the supplier has no registered office within Germany or if he transfers it away from Germany after the conclusion of the contract or if his place of residence or the place he usually resides is not known at the time of filing a lawsuit, at the choice of HAM the place of fulfillment and jurisdiction is the place of HAM's headquarters or that of the supplier.

13.5

Should individual provisions of these Terms and Conditions of Purchase be or become invalid, then the validity of the remaining provisions shall remain unaffected.

The invalid clause will be replaced by a regulation as close as possible to the intended purpose of the invalid clause.
