

General Purchasing Conditions of NOON GmbH

1. Scope

1.1 These General Purchasing Conditions are valid exclusively for any of our assignments, orders, batch orders or other contracts with companies according to § 14 BGB (German Civil Code) or legal entity of public law. We hereby expressly object to any supplier regulations, which alter or amend these conditions. Those regulations are not binding. Our purchasing conditions are valid exclusively, notwithstanding any particular express objection against the supplier's regulations or our unreserved acceptance of a delivery with knowledge of opposing or amending supplier regulations.

1.2 The purchasing conditions are valid for all future transactions with the supplier without any repeated express agreement.

2. Offers, Orders, Contracts

2.1 Supplier's quotations and offers are free of charge and without obligation to purchase. This is also valid for visits and sampling for cost estimates.

2.2 Orders are placed in writing and require supplier's written and congruent confirmation unless we congruently confirm an existing valid offer. Oral agreements and supplements to a contract require written confirmation.

2.3 Orders must be confirmed within the term of acceptance given in the order or, if none is given, within two (2) weeks, else we are not bound to our order.

2.4 Any alterations of or amendments to the order from the supplier's side are only valid after our confirmation.

2.5 If the supplier undertakes a commitment to produce, subcontracting of third parties for the production of substantial parts of the order is only allowed after our written agreement.

3. Reservation of Proprietary Rights

3.1 We expressly object to any extended reservation of proprietary rights of the supplier beyond the standard reservation of proprietary rights. Any other regulations must be agreed upon with the supplier and require the written form

3.2 We reserve the rights of property for goods provided by us (e.g. parts, components, half-finished products). The supplier carries out the processing or transformation work for us. In case our reserved goods are modified with other items, which do not belong to us, we gain joint ownership for the new item in the following ratio: value of our item (purchasing price plus VAT) to the value of other processed items at the time of processing.

3.3 If goods provided by us are inseparably mixed with other items, which do not belong to us, we gain joint ownership for the new item in the following ratio: value of our item (purchasing price plus VAT) to the value of other mixed items at the time of mixing. In case the mixing is carried out in a way that the supplier's item can be considered the main part of the product, it is agreed that the supplier transfers partial ownership to us. The supplier stores the sole and joint property for us.

3.4 Insofar as our rightful security interests out of points 4.2 and/or 4.3 exceed the purchasing price of all yet unpaid reserved goods by more than 10%, we are obliged to release selected security interests at the suppliers demand.

4. Prices, Shipping and Payment Conditions

4.1 Prices and compensations listed in the order are binding. For lack of different agreements, the conditions "DDP Place of Fulfilment" according to Incoterms 2010 apply.

4.2 Prices are considered to include shipping to the recipient and packaging. The obligation to take back the packaging is ruled by applicable packaging regulations in force at the time of delivery. If shipping is at our expense, the supplier has to comply with the shipping instructions and has to find economical transport conditions.

4.3 A comprehensible invoice is to be submitted in due form including all related documents and data, such as our order number and parts number, after correct contractual delivery, service or approval. The supplier is responsible for any delay of payments due to failure to comply with this requirement

4.4 The invoice is to be issued in EURO currency.

4.5 Payments are transferred at our discretion after complete, fault-free delivery, service or approval, if legally required or agreed upon. If not otherwise agreed upon in writing, payments are made within 30 days (with 2% cash discount) or within 60 days strictly net.

4.6 Payments made do not imply the approval of the delivery or service as contractual. We are entitled to all rights for setoff or retention as regulated by law. The supplier cannot assign a claim to third parties or have claims settled by third parties without prior written consent.

5. Shipping, Packaging

5.1 Shipping to the recipient shall be free of charge, without packaging costs or additional fees. Shipping shall be announced in advance in an advice of dispatch.

5.2 Deliveries shall be packed in a way to avoid transport damages. The advice of dispatch as well as waybills, delivery bills and invoices shall contain the address of the recipient next to our order number including item number.

6. Terms and deadlines, Reservation of Damages

6.1 Agreed dates of delivery and delivery terms are binding. Decisive factor for keeping delivery dates or terms is the arrival date of the delivery at the recipient or, in case of services, the agreed upon starting or finishing date. If an approval is legally required or agreed upon, the date of the approval is applicable.

6.2 Deliveries are only possible at the agreed times.

6.3 Part-deliveries and early deliveries are only possible after our express consent. Pecuniary claims, however, remain undue until the originally agreed date of delivery. Any additional transport costs are at the supplier's expense.

6.4 The supplier is obliged to immediately inform us about any threatening or present failure to keep agreed dates or delivery times, as well as any reasons for and the estimated duration of the delay. However, this does not release the supplier from legal consequences in case of default.

6.5 In case of default we are entitled legal claims. In particular, we are entitled to assert legal claims against the supplier, such as damages for the delay or compensation, instead of the service. We may also cancel the contract or parts thereof, if an additional respite was unsuccessful or unnecessary. The claim for damages instead of services also comprises any additional expenditure due to covering purchases or the deployment third parties. If we claim damages, the supplier has the right to prove that he is not responsible for the breach of duty.

6.6 In addition to any other due claims, we have the right to cancel the contract with immediate effect in repeated cases of delay with carrying out orders, calling off batch orders or contractual orders. A warning shall be submitted first.

6.7 In case of a penalty according to a penalty clause for noncompliance with dates and terms, we have the right to set this penalty off against the final payment without further explanation of the retention.

6.8 In cases of force majeure and related obstacles that temporarily prevent the fulfilment of contractual obligations any party to this contract has the right to postpone dates and terms until the obstacles are cleared. If the difficulties last for more than three months, any party can cancel this contract.

7. Place of Fulfilment, Passing of Risk, Acquisition of Property

7.1 Place of fulfilment is the place to which the ordered goods are to be delivered or at which the services or assignments are to be carried out. Place of fulfilment for payments is our business location.

7.2 The delivery shall be made at the supplier's risk and expense, with proper transport packaging, and to the address specified. The risk of accidental perishing or degradation of the goods is transferred to us only at receipt by us or our contract forwarder at the specified place of fulfilment or after the final acceptance, whichever the later date, even if we agreed to take over the shipping costs.

7.3 With the transfer of perils at the place of fulfilment or with the handover to our contract forwarder the ownership of the goods is transferred to us without reservation of any rights for the supplier.

7.4. In case of a delivery of machines and appliances, the transfer of perils takes place after final acceptance at the place of fulfilment.

8. Liability for Defects

8.1 Delivered goods will be checked for identity and quantity according to the shipping papers and for any visible external transport damage or other visible defects. Obvious defects will be announced within five working days (Monday to Friday) after receipt of the delivery or service. Latent defects will be announced immediately after discovery.

8.2 Unless otherwise agreed upon under this paragraph, the supplier is liable to the extent of the law, particularly for delivery faults. This liability is not limited nor is there liability exclusion. It indemnifies us from third party claims.

8.3 The supplier will have to bear the costs for any additional receiving inspections beyond standard due to faulty delivery.

8.4 In case of a fault, we have the legal right to: a) remediation of the defect free of charge; b) replacement delivery of a faultless item or new production, respectively; c) claim damages for defects if the legal requirements are met.

8.5 If the supplier refuses a due remediation or if the remediation is without success despite reasonable additional respite, or if such additional respite was not legally required, we have the right to abatement. Insofar as legal requirements are met we have the right to cancel the contract or parts thereof, or we may claim compensation instead of the service.

8.6 In order to avoid inappropriate costs, we may in urgent cases remedy defects as needed or have them remedied by third parties, if necessary and if the supplier cannot be contacted. The supplier shall reimburse costs for such remediation.

8.7 The liability period is 24 months if law requires no longer period. The period starts at the time of delivery to the final customer or commissioning of the finished product manufactured using the items delivered, or twelve months after transfer of perils to us. We have the full legal right of recourse for defects occurring in the sale of consumer goods. The term starts at delivery, date of service or at the date of approve, if legally required or agreed upon. For parts replaced in a remediation the legal period of limitation starts at the finishing time of the installation.

9. Rights of Use, Proprietary Rights of Third Parties, Use of Brand Name

9.1 The supplier guarantees that deliveries and services can be used for the purposes agreed upon or indicated by the supplier or by the producer, and that no copyrights, patent rights or any other industrial property rights are violated by such use.

9.2 The supplier indemnifies us from all claims made against us for violation of national property rights, if these claims are made due to a neglect of duty of the supplier or its vicarious agents. Furthermore, the supplier must undertake reasonable efforts to ensure our contractual use without infringement of third parties' rights. The supplier is obliged to immediately inform us of complaints or claims against him. He shall make available all documents in the matter in order for us to defend any claims.

9.3 If goods with the helsa brand name or the helsa logo are sent back or are not accepted, these goods may not be sold to third parties. Any case of noncompliance with this regulation will be punished with a contractual penalty in the amount of double the value of the goods.

10. Rights of Withdrawal and Cancellation

10.1 Beyond the legal rights of withdrawal, we have the right to withdraw from the contract or cancel the contract with immediate effect, if the supplier has ceased to deliver to his customers, if a substantial deterioration of the supplier's financial situation is to be expected, which threatens the delivery obligation towards us, if the supplier is insolvent or is overindebted, or if the supplier suspends payments.

10.2 We also have the right to withdraw or to cancel the contract, if the supplier files for insolvency or takes comparable legal action for debt settlement.

10.3 We also have the right to withdraw or to cancel the contract, if the supplier can no longer keep the contractual conditions, such as price, quality, origin of the goods and delivery dates.

10.4 If the supplier has negotiated a partial performance, we may withdraw from the contract as whole, depending on our interest in the partial performance.

10.5 If we withdraw from or cancel the contract based on the above-mentioned contractual rights, the supplier must compensate any damages thereof, unless he is not responsible for the occurrence of the rights of withdrawal or cancellation.

10.6 Legal rights and claims are not limited by the regulations of Section 11.

11. Product Liability, Insurance

11.1 If the supplier is responsible for a product defect, he is obliged to indemnify us from third party claims, insofar as the cause lies in his domain or organisational area and as it is his individual responsibility. The supplier's product liability comprises the obligation to reimburse costs for reasonable and necessary measures to prevent product liability damages (e.g. callbacks). If possible and reasonable, we will inform the supplier about the scope of such measures and we will give him the possibility to make a statement on the matter. If a callback is necessary or ordered due to risks for life, physical condition and health of third parties, the supplier must reimburse the costs for such measures. Possible legal claims shall remain unaffected.

11.2 The supplier must have sufficient insurance for all contractual risks. As manufacturer of products or parts he must have product liability insurance that covers possible callbacks, according to the guideline on external contract liability. The supplier shall be able to give proof of such insurance on demand.

11.3 The supplier is liable for damages caused by him, by his staff or by vicarious agents through services rendered, delivered work or items. He must have sufficient liability insurance, the coverage of which has to be disclosed on demand.

12. Confidentiality, Data Protection

12.1 The supplier shall keep confidential all knowledge and experience or other information provided by us or otherwise gained, particularly documents (no matter if in electronic or other form), unless this information has become general knowledge, or law or authorities require disclosure, or we have given written consent to the circulation of the data. The supplier shall use the data only for the purpose of quotations for us, or for delivery of ordered products and services to us. This confidentiality agreement shall remain valid for three years after the termination of the business relationship.

12.2 All documents (e.g. drawings, pictures, test specifications), samples and models, which we provide during the business relationship, remain our property. On our demand at any time or at the end of the business relationship they shall be handed back to us or be destroyed at the supplier's expense (including possible copies, transcripts, excerpts or replicas). The supplier has, thus, no right of retention.

12.3 The supplier agrees to the storage of data and contracts related to the business relationship. We will use the data only for internal purposes within our group of companies.

13. Quality Management

13.1 The supplier shall maintain a proper quality management system during the contract term. He shall adhere to audit regulations. Even without implementing a quality management system, as manufacturer, he will have permanent quality control with suitable checking and testing including proper documentation, particularly in the production process.

13.2 We have the right to check the quality control of the supplier at any time after prior notification. The supplier shall disclose certification and auditing reports as well as applied test specifications including all documentation related to the delivery.

14. Compliance

14.1 The supplier undertakes to following applicable legal regulations for management of staff, of energy, of environmental issues, and of safety at work. He shall try to reduce adverse effect on humans and environment. For this purpose, the supplier shall implement or develop further specific management systems according to his possibilities.

14.2 Furthermore the supplier shall comply with the principles of the UN Global Compact Initiative, the main points of which concern the protection of international human rights, the right to collective bargaining, the elimination of forced labour and the abolition of child labour, the elimination of discrimination in respect of employment and occupation, the responsibility for the environment and prevention of corruption. For further information on the UN Global Compact Initiative go to www.unglobalcompact.org.

14.3 In case a supplier repeatedly violates laws despite according notes, and if he cannot give proof of remediation to the greatest possible extend and if he has not taken suitable measures for future prevention of such violation, we reserve the right to withdraw from existing contracts or cancel the contracts with immediate effect.

15. Force Majeure

15.1 Force majeure, operational disturbances without negligence, unrest, authoritative measures or other unavoidable events relieve us from the obligation to timely acceptance for the duration of the event. Notwithstanding any other rights, we have the right to withdraw from the contract or parts thereof during such events and until two weeks after the event, insofar as these events are not insignificant and our demand decreases dramatically due to other ways of procurement.

15.2 These regulations are also valid for labour disputes.

16. Choice of Law and Jurisdiction

16.1 Sole jurisdiction is the Federal Republic of Germany excluding its international civil law, if it refers to any other legal system. The application of the United Nations Convention for the International Sale of Goods (C.I.S.G.) and any other bilateral or multilateral agreements for the standardisation of international sales are excluded.

16.2 All conflicts arising from the business relationship with the supplier, particularly in relation with contracts, shall be settled in the jurisdiction of our business location. However, we have the right to sue the supplier at any other general or specialised court.

17. Final Clause

17.1 If any one regulation of these conditions and any further agreements become invalid or not applicable, the overall validity of these conditions remains intact. The parties to the contract must replace any invalid or un-applicable regulation with a regulation that is similar in economic success.

17.2 The same is applicable for any regulative gap.

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