

# Terms and Conditions of Purchase Hermann Paus Maschinenfabrik GmbH

## § 1 General – Scope

(1) Solely our terms and conditions of purchase shall apply; other terms of the supplier that deviate from our terms and conditions will not be accepted unless we have given our explicit consent in written form regarding their applicability. Our terms and conditions of purchase shall also apply, if we accept the supplier's delivery without reservation in knowledge of contrary or deviant terms of the supplier.

(2) All orders placed by us have to be acknowledged by the supplier in written form.

(3) All agreements reached between ourselves and the supplier for the purpose of performing this contract have to be set out in writing in this contract.

(4) Our terms and conditions of purchase shall only apply vis-à-vis entrepreneurs pursuant to § 310 I BGB (German Civil Code).

## § 2 Offer, Offer Documents

(1) The supplier is obliged to accept our order within a period of two weeks.

(2) We shall retain the right of property and copyright to images, drawings, calculations and other documents; they may not be made accessible to third parties without our explicit consent in writing. They are to be used exclusively for production on the basis of our order; they have to be returned to us unrequested after completion of the order. They have to be concealed from third parties; to this extend, the provision of § 9 (4) applies.

(3) The supplier agrees not to produce for own purposes the products manufactured for us and / or to offer those to third parties.

## § 3 Prices, Terms of Payment

(1) The price shown in the order shall be binding. In the absence of any other written agreement, the price shall include delivery to our works in Emsbüren, postage and packaging included. Returning the packaging shall be subject to special agreement.

(2) The legal value-added tax will be indicated separately.

(3) Invoices can only be processed, if they contain – in accordance with the specifications of our order – the order number shown on our order form; the supplier is responsible for any consequences resulting from the non-compliance with this obligation unless he is able to prove that he is not responsible for these consequences.

(4) Payment shall be made after having received all the goods or after full performance of service(s) and upon receipt of invoice, in each case as agreed upon. For payment within 14 days we are entitled to take a cash discount of 3 %.

(5) We are entitled to the right of set-off and detention to the legal extend.

## § 4 Delivery Period

(1) The delivery period and/or the date(s) of delivery indicated in the order shall be binding.

(2) The supplier is obliged to send us without delay a written notification on circumstances arising or becoming recognisable to him from which is evident that the delivery period / date(s) of delivery requested cannot be met.

(3) Partial deliveries are only permissible after having received our prior consent, otherwise any extra costs resulting from this partial delivery will be at the expense of the supplier.

(4) In the event of delay in delivery we shall be entitled to statutory claims. After expiry of a reasonable period we are in particular entitled to claim damages instead of making delivery / performing service(s) and to claim for cancellation of the contract. If we claim damages, the supplier shall be entitled to provide evidence to us that he is not responsible for the infringement in question.

(5) The goods receiving department is opened as follows:  
Monday – Thursday: 7.00 h - 15.00 h  
Friday: 7.00 h - 12.00 h

## § 5 Transfer of Risks – Documents

(1) If no other agreement has been made in writing, delivery shall be effected carriage paid to our works in Emsbüren or to any other address of delivery agreed upon.

(2) The risk of accidental loss and any deterioration of the goods will only be transferred to us with the handover of the goods.

(3) The supplier is obliged to make sure that all shipping documents and delivery notes contain exactly our order numbers; if he fails to do so, any delays in processing are not our responsibility.

## § 6 Inspection for Defects – Liability for Defects

(1) We shall be obliged to check the goods within an appropriate period for possible deviation in quality and quantity; the complaint shall be considered on time, if it is received by the supplier within a period of 5 working days from the date of receipt of goods or in case of hidden defects from the date of detection.

(2) By acceptance or approval of drawings submitted we do not agree to waive the right of defect claims.

(3) We shall be entitled to the statutory defect claims without restriction; in any case we shall be entitled to ask the supplier for repair of the defect or for delivery of new goods as we so choose. The right to claim for damages – particularly to claim for damages instead of making delivery / performing service(s) – remains explicitly reserved.

(4) We shall be entitled to eliminate or to arrange for repair of defects ourselves at the supplier's expense, if the supplier is in default or if urgent cases absolutely require an immediate elimination of defects.

## Terms and Conditions of Purchase Hermann Paus Maschinenfabrik GmbH

(5) Statutory period of limitation is 36 months from the day of transfer of risks.

### § 7

#### **Product Liability – Indemnification - Liability Insurance Protection**

(1) Insofar as the supplier is responsible for damage to any product, he shall be obliged to indemnify us upon first request from all damage claims of third parties; this applies to that extent that the cause is to be found in his area of management and organisation and he himself is responsible in external relationships.

(2) Within the framework of his liability for cases of damage within the meaning of paragraph (1), the supplier shall also be obliged to reimburse any expenses pursuant to §§ 683, 670 BGB (German Civil Code) as well as pursuant to §§ 830, 840, 426 BGB (German Civil Code) arising from, or in connection with, a recall campaign of ours. We shall notify the supplier insofar as possible and reasonable about the content and extent of the recall measures to be performed and shall give him an opportunity to comment. Other statutory claims shall not be affected by this.

(3) The supplier undertakes to take out products liability insurance for an amount of coverage of 10 Mio EUROS per personal injury / material damage – all-in – and to submit proof to us accordingly; any additional claims to which we are entitled shall not be affected.

### § 8

#### **Property Rights**

(1) The supplier ensures that in connection with his delivery no rights at all of third parties within the Federal Republic of Germany will be violated.

(2) If claims are asserted against us by a third party due to such infringement, the supplier shall be obliged to indemnify us from these claims upon first request; we are not entitled to conclude any agreements with the third party – in particular to make a compromise - without the consent of the supplier.

(3) The duty of the supplier to indemnify shall refer to all expenses we sustain arising from, or in connection with, the assertion of third party rights, unless the supplier provides evidence that he is not responsible for the breach of duty on which the infringement of property rights is based.

(4) Statutory period of limitation for these claims is 3 years, starting from the day of transfer of risks.

### § 9

#### **Reservation of Ownership – Provision - Confidentiality**

(1) Insofar as we provide parts to the supplier, we shall retain ownership to said parts. Any processing or conversion by the supplier shall be made on our behalf. If our reserved goods are processed together with other objects that do not belong to us, we shall acquire the co-ownership to the new object in relation of the value of our object to the other processed objects at the time of processing.

(2) If the object we provide is inseparably mixed with other objects not belonging to us, we shall acquire the co-ownership to the new object in relation of the value of the

reserved property to the other mixed objects at the time of mixing.

(3) Insofar as the collateral rights attributable to us pursuant to paragraph (1) and / or paragraph (2) exceed the purchase price of all our reserved property not yet paid for by more than 10 %, we shall be obliged on request of the supplier to release collateral rights as we so choose.

(4) The supplier shall be obliged to keep all images, drawings, calculations and other documents and information strictly confidential. They may only be disclosed to third parties with our explicit consent. The duty to maintain confidentiality shall also apply after the end of this contract; it shall expire, if and to the extent that the production know-how in the images, drawings, calculations and other documents become generally known.

### § 10

#### **Venue – Place of Performance**

(1) All contracts for delivery shall be governed exclusively by the substantive civil law of the Federal Republic of Germany.

(2) All disputes arising from contracts for delivery and being submitted to court shall be governed exclusively by the civil procedure law of the Federal Republic of Germany, supplemented by the relevant international provisions.

(3) Insofar as the supplier is a merchant, our registered office is the venue; however, we are entitled to bring action against the supplier also at the court of his place of residence.

(4) Insofar as nothing else to the contract has been explicitly agreed, the place of performance for delivery obligations and services is our registered office in D-48488 Emsbüren.