

HERZOG GmbH

GENERAL TERMS AND CONDITIONS OF PURCHASE

- As of July 2020

1. General / Scope

- 1.1. Unless otherwise agreed in writing, the following terms and conditions of purchase apply exclusively to all our contracts with suppliers.
- 1.2. Contradictory and supplementary general terms and conditions of the contractual partner shall not apply unless we give our express written consent. In particular, any silence regarding any terms of sale and/or delivery that deviate from our terms of purchase does not mean that we agree.

2. Field of application

Our products are used worldwide. The suitability of all delivery items in this respect is of central importance for every contract conclusion according to these conditions.

3. Conclusion and fulfillment of contract

- 3.1. Orders and subsequent changes and additions must be made in writing. Verbal agreements are only legally valid for us if they have been confirmed by us in writing. Correspondence - no matter what kind - must be carried out separately for each order, always stating our order number.
- 3.2. Unless expressly agreed otherwise, the supplier will send us an order confirmation with binding prices and delivery times immediately after receipt of the order, but no later than within 10 days.
- 3.3. Delivery periods and delivery dates are binding. Delivery periods run from the date of issue of the order and can only be changed with our written consent.
- 3.4. The supplier must report any delays in delivery as soon as they become known, before the end of the delivery time, stating the reasons and the expected duration of the delay. An acknowledgment of the new delivery date is given neither by the notification nor by silence on this notification.
- 3.5. In the event of non-compliance with the agreed dates and delivery times, we shall be entitled to the legal rights and claims without restriction, including the right of withdrawal and the right to compensation in lieu of performance after a reasonable period of grace has expired without result.
- 3.6. All costs and damage that we incur as a result of late deliveries must be borne by the supplier in accordance with the statutory regulations, without a reminder being required for the occurrence of the delay.
- 3.7. Partial, advance or multiple deliveries can only be made with a corresponding agreement.

4. Prices

All prices stated in the order are fixed and will not be changed in any way, even if changes are provided for in the delivery conditions (see also No. 1).

5. Invoicing

Invoices must comply with the requirements of § 14 UStG and must be submitted in a single copy immediately after the goods have been shipped, giving precise details of the order data for each individual item. If the electronic dispatch of invoices is approved in a separate procedure, invoices can be sent to the following e-mail address: ek-rechnung@herzog-online.com.

6. Payment terms

- 6.1. Payment is made by bank transfer within
- 14 days with a 3 % early payment discount
 - 30 days with a 2 % early payment discount
 - 60 days net
- 6.2. The due date begins at the earliest on the day we receive the delivery. Payments that have been made do not mean that the delivery has been accepted as in accordance with the contract. Insofar as costs and interest are incurred, payments are to be offset against the main service first, then against interest and finally against the costs.
- 6.3. An assignment of the claim against us is expressly objected.

7. Shipping and risk of loss

- 7.1. All deliveries must be accompanied by a detailed packing slip or delivery note stating our order and item number as well as the material number and designation.
- 7.2. Failure to comply with the requirements specified in paragraph 1 entitles us to refuse acceptance of the goods at the expense and risk of the supplier.
- 7.3. Unless otherwise agreed in the order letter, all deliveries are to be made exclusively to the specified delivery address at the supplier's expense and risk, free of all expenses. Even if shipment has been agreed, the risk only passes to us when the goods are handed over to us at the agreed destination.

8. Packing

- 8.1. The supplier is obliged to pack the delivery items properly or have them packed.
- 8.2. If a delivery contains different delivery items, this must be specifically pointed out. The various delivery items must each be packed individually and marked in such a way that they can be clearly distinguished from one another.
- 8.3. Deliveries must be packed separately according to storage type and storage area and marked accordingly.

9. Spare parts

- 9.1. If the supplier intends to discontinue the production of spare parts for the products delivered to us, he will notify us in writing immediately after the decision to discontinue. This notification must be given at least 6 months before the end of production. This enables us to order spare parts in sufficient quantities for the products delivered to us before production is stopped (last-order option).

10. Change of technical design

- 10.1. Changes in the type or composition of the processed material or in the structural design compared to previous similar deliveries and services must be reported to us before the start of production. These changes require our approval. We are not obliged to check deliveries and services for similarity after receipt.

11. Information obligations, quality and scope of the delivery

- 11.1. The supplier must obtain knowledge of our application and operating conditions. The supplier is responsible for checking information provided by us, approved drawings, specifications and specification books for factual errors
- 11.2. If the supplier finds that his delivery is incompatible with our conditions of use and operation or a factual error according to paragraph 1 sentence 2, he must inform us immediately.
- 11.3. The scope of delivery also includes operating instructions and spare parts catalogues.

12. Compliance and observance of recognized rules of technology

- 12.1. The supplier undertakes to provide the deliveries and services ordered by us in compliance with the applicable laws and the recognized rules of technology. As soon as the delivery item no longer corresponds to the latest state of science and technology, the supplier must propose a corresponding adjustment.
- 12.2. In particular, the supplier undertakes to comply with

- 12.2.1. the legal requirements of environmental law and industrial safety legislation,
 - 12.2.2. the Product Safety Act, all relevant ISO and EN standards and all standards required for the CE marking as well as for the corresponding CE marking of its delivery items
 - 12.2.3. the regulations on dangerous working materials, the law on protection against dangerous substances (Chemicals Law) and other relevant safety and accident prevention regulations - it is essential to comply with these standards,
 - 12.2.4. all relevant regulations and rules, in particular those of the VDI, VDE, TÜV and the professional association (UVV) as well as the trade supervisory board.
- 12.3. The supplier assures that he has not made or will not make any (corrupt) benefits to our employees in connection with our order, including its initiation and the resulting business relationship.
- 12.4. The supplier undertakes not to use any companies as sub-suppliers that use child labor to manufacture products or that tolerate forced labor.

13. Ownership protection

- 13.1. We reserve the right of ownership and any copyright rights of use to orders and orders placed by us and to drawings, illustrations, calculations, descriptions and other documents made available to the supplier. The supplier may not make them accessible to third parties or use or reproduce them himself or through third parties without our express consent. At our request, he must return these documents to us in full if he no longer needs them in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. In this case, copies made by the supplier must be destroyed; The only exceptions to this are storage within the framework of statutory storage obligations and the storage of data for backup purposes within the framework of normal data backup.
- 13.2. Manufacturing equipment, tools, devices and models that we make available to the supplier or that are manufactured for contractual purposes and are charged solely to us by the supplier remain our property or become our property. The supplier must identify them as our property and only use them for the purposes of the contract concluded with us.
- 13.3. The supplier must carefully store and maintain the items mentioned in paragraph 2 and protect them against damage of any kind. This includes the obligation to insure the named items in a suitable manner, to keep them in a usable condition, and in particular to treat them appropriately and professionally, to maintain and look after them. This must be carried out immediately and, if possible, in such a way that the items mentioned are always ready for use without restrictions.
- 13.4. Before measures according to paragraph 3 are taken and cause costs, the supplier must consult us immediately. The costs of the measures required under paragraph 3 and confirmed after consultation are borne equally by both contracting parties - unless otherwise agreed. However, insofar as these costs are due to defects in such items manufactured by the supplier or to improper use or other fault on the part of the supplier, his employees or other vicarious agents, they are to be borne solely by the supplier.
- 13.5. The supplier shall notify us immediately of any not insignificant damage to the items specified in paragraph 2. This also applies in the event that these items have become completely or partially unusable, for example due to normal wear and tear, or major repairs are pending. The contractual partners will then bring about a mutual solution on how to proceed.
- 13.6. Upon request, the supplier is obliged to return the items specified in paragraph 2 to us in proper condition if they are no longer required to fulfill the contracts concluded with us.

14. Warranty

- 14.1. In the event of defects, we are entitled to the statutory claims without restriction.
- 14.2. In addition, we can
- 14.2.1. rectify the defect ourselves or have it rectified by a third party
 - 14.2.2. return the goods that are the subject of the complaint and obtain a replacement for this from a third party.
- In addition, we can demand a corresponding advance payment if the supplier does not fulfill his obligation to remedy the defect - at our discretion by remedying the defect or by delivering a defect-free item - within a reasonable period set by us. If the supplementary performance by the supplier has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline is required. We will inform the supplier of such circumstances immediately, if possible before we take action ourselves.
- 14.3. Deviating from § 438 No. 3 BGB, the limitation period for claims for defects is thirty-six months.

- 14.4. With the receipt of our written notification of defects by the supplier, the limitation period for warranty claims is suspended until the supplier rejects our claims or declares the defect has been remedied or otherwise refuses to continue negotiations on our claims.
- 14.5. In the case of a replacement delivery and the elimination of defects, the limitation period for claims for defects of replaced and repaired parts begins again, unless the suppliers behaviour made us assume that he did not feel obliged to take the measure, but rather undertake the replacement delivery or the elimination of defects only as a gesture of goodwill or similar reasons.
- 14.6. For delivery items that are to be assembled by the supplier at the place of receipt, the statute of limitations for claims for defects begins when assembly is complete.
- 14.7. In the case of perishable goods, the supplier is obliged to clearly mark the expiry date on the delivery container and in all delivery documents. If the expiry date of perishable goods occurs within 28 days or less of the agreed delivery date, they may no longer be delivered to us. If the expiry date occurs within 29 days to 2 months after the agreed delivery date, the delivery must be agreed with us beforehand.

15. Notice of defects

- 15.1. We can assert complaints regarding the type, quantity and quality of the delivered goods within two weeks of receipt after the goods. Material defects or hidden defects, which only become apparent when the delivered goods are processed or used, can be complained by us within two weeks after their discovery.

16. Liability for property rights of third parties

- 16.1. In accordance with paragraph 2, the supplier is responsible for ensuring that the products it supplies do not infringe any property rights of third parties in countries of the European Union, in China or in any other country in which it manufactures the products or has them manufactured .
- 16.2. The supplier is obliged to indemnify us against all claims that third parties raise against us due to the violation of industrial property rights mentioned in paragraph 1, and to reimburse us for all necessary expenses in connection with this claim. This claim does not exist if the supplier proves that he is neither responsible for the infringement of property rights nor should he have known it at the time of delivery if he had exercised commercial care.

17. Right of withdrawal

- 17.1. We have the right to withdraw from individual deliveries in cases where (i) force majeure, (ii) industrial action for which we are not responsible, such as strikes or lockouts, or (iii) unavoidable operational disruptions for which we are not responsible, not just temporarily cause performance obstacles for us.

18. Termination

- 18.1. We are entitled to terminate the contract at any time by means of a written declaration stating the reason, if we can no longer use the ordered products in our business operations due to circumstances which have arisen after the conclusion of the contract and for which we are not responsible. In this case, we will reimburse the supplier for the partial service rendered.

19. Place of fulfilment, place of jurisdiction and choice of law

- 19.1. Place of fulfilment for payment and delivery and exclusive place of jurisdiction is Oldenburg (Oldbg.).
- 19.2. In any case, only the law of the Federal Republic of Germany applies. Foreign law is excluded. The Convention on the International Sale of Goods (UN Convention on Contracts for the International Sale of Goods) is not applicable.

Oldenburg, July 2020