

## **General Purchasing Conditions of Hitz Kran- und Industrieservice GmbH**

### **1. Scope**

(1) These general terms and conditions of purchase, hereinafter referred to as "GTP", shall apply to all business relations between Hitz Kran- und Industrieservice GmbH, hereinafter "Hitz", and their business partners, in particular vendors, hereinafter referred to as "Vendor", if the vendor is a commercial entity, a public-law entity, or special public law funds. The GTP shall apply in particular to contracts for the sale and delivery of movable goods, hereinafter referred to as "Goods", regardless of whether the Vendor manufactures the Goods himself or purchases them from suppliers.

(2) Unless agreed otherwise, these GTP in their respective current version at the time of the order shall be deemed as a framework agreement for similar future contracts without Hitz having to refer to them in each individual case again at the time of the respective future order of Hitz.

(3) These GTP apply exclusively. Any divergent, conflicting or supplementary general terms and conditions of business of the vendor shall only become a contractual part as far as Hitz has expressly consented to their applicability in writing. This requirement of consent applies in any case, in particular if Hitz unconditionally accepts the Vendor's deliveries yet having knowledge of the Vendor's General Conditions of Business.

### **2. Conclusion of a contract**

(1) Any order of Hitz is always non-binding unless the order or the circumstances indicate otherwise.

(2) The contract shall only come into effect upon acceptance of the Vendor's offer by Hitz.

### **3. Documents**

Even without a respective agreement, a specific quality feature of quality of all Goods purchased by Hitz is always the complete documentation, in particular data sheets, guarantee certificates, safety certificates, test certificates and quality certificates as well as instructions for use.

### **4. Performance, transfer of risk, delay of acceptance**

(1) Deliveries are made CPT place of business of Hitz (Incoterms 2010).

(2) The place of performance is exclusively Hitz' place of business.

(3) The Vendor shall provide Hitz with a notification of sending for each delivery in addition to, and with the same content of, the delivery note.

(4) Without the prior written consent of Hitz, the Vendor shall not be entitled to have the performance owed by the Vendor made by third parties, in particular by subcontractors.

(5) The Vendor shall bear the risk of procurement regarding the Goods as well as regarding the required supplies and services without restriction and independently of any fault.

(6) The delivery shall be accompanied by a delivery note specifying the date, content of the delivery, item number, quantity, and the order of Hitz by date and number. If the delivery note is missing or is incomplete, Hitz shall not be responsible for any delays in processing of the delivery and in payment.

(7) The risk of accidental loss, accidental destruction and accidental damaging of the Goods shall pass to Hitz upon delivery at the place of performance. If formal acceptance has been agreed upon, this shall be decisive for the transfer of risk.

(8) Statutory provisions shall apply regarding the default of acceptance of Hitz. The Vendor is obligated to explicitly offer the delivery and ancillary services to Hitz even if a specific or determinable calendar time has been agreed for a contributory action of Hitz.

### **5. Delivery time and delay of delivery**

(1) The stated delivery time is binding. If the delivery time has not been agreed, it shall be four weeks from conclusion of the contract. The Vendor is obligated to notify Hitz immediately in writing if he cannot meet agreed delivery times.

(2) If the Vendor does not perform its obligations within the agreed delivery time, the rights of Hitz, in particular the right to cancellation and damages, shall be determined in accordance with applicable statutory provisions whereas the setting of a further deadline by Hitz regarding the performance of the contract is not required.

(3) If the Vendor is in default Hitz is entitled to demand a lump sum compensation for default of 0.5% of the net price of the affected Goods per calendar week yet not more than 5% of the net price of the Goods, without prejudice to additional rights according to these GTP for delayed delivery. Hitz reserves the right to prove that a higher loss has occurred. The Vendor has the right to prove that no loss or only a significantly lower loss has occurred.

### **6. Prices and terms of payment**

(1) The price stated in the contract is binding. All prices include VAT unless VAT is stated separately.

(2) Cost estimates submitted by the Vendor to Hitz are binding for the Vendor and free of charge for Hitz.

(3) Unless agreed otherwise in each individual case, the price includes all ancillary services of the Vendor, in particular assembly and installation, as well as all ancillary costs, in particular proper packaging, transport costs and a transport and liability insurance.

(4) The agreed price is due for payment within 60 calendar days from full delivery and performance or acceptance and receipt of a proper invoice. If Hitz makes payment within 14 calendar days, the Vendor grants 3% cash discount to the net amount of the invoice. In the event of a bank transfer, the payment shall be deemed to be made in due time if the transfer order of Hitz is received by Hitz' Bank before the end of the payment period.

(5) Hitz does not owe maturity interest. Statutory provisions shall apply regarding the default of payment.

(6) Hitz has the rights of set-off and of retention as well as the objection of the unfulfilled contract in the scope provided by statutory provisions. Hitz is particularly entitled to withhold due payments to the extent Hitz has claims against the Vendor regarding defective deliveries.

(7) The Vendor has a right to set-off or a retention right only on the basis of counterclaims which are formally acknowledged in a legally binding way or which are uncontested by Hitz.

(8) Payments by Hitz shall not constitute any acknowledgment by Hitz regarding the contractual compliance of the delivered Goods

## **7. Assignment and pledge**

The assignment or pledging of contractual claims against Hitz shall subject to the prior written consent of Hitz.

## **8. Spare parts**

(1) The Vendor is obliged to keep spare parts available on reasonable conditions for the period of foreseeable use of the Goods but at least 10 years after the last delivery.

(2) If the Vendor or its respective supplier ceases the production of the spare parts he is obligated to inform Hitz thereof and to give Hitz the opportunity to stock up with spare parts in an amount as determined in Hitz' free discretion without any change of the purchase conditions.

## **9. Confidentiality**

Hitz reserves ownership rights and copyrights in any information, in particular in illustrations, plans, drawings, calculations, execution instructions, product descriptions, software, finished and semi-finished products, tools, templates, samples and other objects and documents which Hitz makes available to the Vendor. Such information shall be used exclusively for the contractual performance towards Hitz and returned to Hitz after the performance of the contract including any copies or storage media free of charge for Hitz. The information must be kept confidential with regard to third parties at all times. The obligation of confidentiality shall not apply to the extent the information provided has legally become part of the public domain.

## **10. Retention of title**

(1) Hitz shall become the owner of the Goods upon their delivery or acceptance. The transfer of title in the Goods to Hitz must be carried out unconditionally and without regard of the payment of the price.

(2) If in individual cases Hitz accepts an offer by the Vendor according to which the full payment is a prerequisite of the transfer of title any such retention of title of the Vendor shall expire at the time of payment of the purchase price of the respective delivered Goods. Hitz is entitled to sell the Goods under retention of title in the normal course of business before payment of the purchase price and by advance assignment of the resulting payment claim to Vendor.

(3) All other forms of retention of title, in particular transferred, subsequent or extended reservation of title, current account reservation or extended corporate reservation of title are excluded.

(4) Any processing, mixing or combination of objects supplied by Hitz to the Vendor shall be made for Hitz. Unless processed such objects shall be kept separately at the expense of the Vendor and insured to an adequate extent against destruction and loss.

## **11. Warranty**

The Vendor warrants that the Goods and any parts or materials used in the manufacture or performance of any work related to the Goods

- a) conform to the specifications and to all applicable international and local laws and regulations relating to the design, manufacture, sale, packaging, labelling, safety standards and use of the Goods;
- b) are, unless agreed otherwise, new and unused, of sound materials and workmanship and free from any defects, in particular regarding quality; and
- c) are accompanied by all instructions, warnings and documentation relevant for their use, storage, operation, transportation and disposal
- d) are fit for the purpose as proposed by the Vendor defined or as defined by Hitz and accepted by the Vendor; and
- e) conform to the representations and warranties in the Vendor's literature and advertising materials.

## **12. Remedies in case of defects**

(1) The rights of Hitz in case of material defects, in particular deviances from quality specifications, and legal defects of the Good and their components including incorrect and short delivery as well as defective assembly instructions or defective operating instructions, and in the case of the Vendor's breaches of contract or warranty shall be governed by statutory provisions unless set forth otherwise hereinafter.

(2) Hitz' claims for defects shall remain unrestricted even if Hitz had no knowledge of the defect at the time of conclusion of the contract due to gross negligence.

(3) The statutory provisions on Hitz' obligations to inspect the Goods and to notify the Vendor of defects shall apply yet subject to the following conditions: Hitz' obligation to inspect is restricted to variations of identity and quantity and obvious transport damage. As far as a formal acceptance is agreed, there is no obligation to inspect. There are no further obligations to inspect. The obligation to notify defects for later detected defects remains unaffected. The notification of a defect by Hitz is timely in any case if it is sent within 10 working days from discovery or, in case of obvious defects, from delivery or acceptance.

(4) If the Vendor is an intermediary seller, the Vendor is obligated to examine the Goods for defects prior to the delivery to Hitz.

(5) In the event of a defect or in case of a breach of warranty, Hitz is entitled, at Hitz' option, choose one or several of the following remedies

- a) refuse to take delivery; or
- b) require the SUPPLIER to provide supplementary performance by repairing or replacing the defective Good at the Vendor's sole cost or, respectively, cure a breach of warranty within any period reasonably specified by HITZ, however at the latest within 21 days of receipt of LINDE's request. Part of any supplementary performance is also the de-installation, disassembly and reassembly of the defective Good and, to the extent the Good – according to its purpose – was processed, built in or otherwise combined with another good, the de-installation, expansion of the defective Good and its re-installation; or
- c) in case of refusal of the Vendor, imminent danger or urgency, carry out the repair instead of the Vendor or may have it carried out by a third party at the Vendor's sole cost; or
- d) require the Vendor to compensate Hitz for all costs and expenses associated with the repair or replacement, including, without limitation, costs for investigation and analysis of the defect, costs for its de-installation, disassembly and reassembly, costs of expansion and re-installation, costs for the use of its own or external personnel, costs for parts, attorneys' fees, accommodation, travel or transportation costs; or
- e) claim compensation from the Vendor for all costs, expenses, damages and other losses incurred by Hitz due to the defective Goods.

(6) The costs incurred by the Vendor for the purpose of the Vendor's verification and supplementary performance including disassembly, reassembly, expansion- and re-installation costs shall be borne by the Vendor even if it is found that there was no defect. Liability of Hitz for damages in case of unjustified claims of defect remains unaffected; to this extent, Hitz is only liable however if Hitz was aware or grossly negligently was unaware that there was no defect.

(7) The place of performance of the claims for supplementary claims of Hitz is the place of business of Hitz.

(8) The supplementary performance is deemed to have failed after the first unsuccessful attempt.

(9) If the Vendor fails to repair or replace the defective Good or to cure a breach of warranty within the period according to section 12.5b), then Hitz may, at its option, for each defective Good:

- a) cancel the contract and request a refund of the purchase price, if already paid, even if there is only an insignificant deviation from the agreed quality or if the usability is affected insignificantly only, in which case Hitz shall return the defective Goods to the Vendor at the Vendor's sole cost and expense; or
- b) claim a reduction or refund (as the case may be) of the purchase price in the amount of the reduced value of the defective Goods; or
- c) return the defective Goods to the Vendor at the Vendor's risk and expense and obtain identical or similar goods from an alternative supplier and claim compensation from the Vendor for any additional costs and expenses reasonably incurred by Hitz; or
- d) carry out the repair instead of the Vendor, or may have it carried out by a third party at the Vendor's cost;

**and**

claim damages from the Vendor for all costs, expenses, and financial loss incurred by Hitz due to the defective Goods if the Vendor is not merely an intermediary reseller.

(10) If the Vendor is an intermediary reseller the Vendor shall be liable for damages in accordance with these provisions as far as Hitz or the customer of Hitz incurs any damage because the Vendor does not examine the Goods for defects before delivery to Hitz and the damage is based on this defect.

### **13. Indemnification in case of advertising statements**

The Vendor indemnifies Hitz against all claims which a customer of Hitz asserts on the basis of the performance promises in advertising statements made by Vendor, by the manufacturer in the meaning of the Product Liability Act, or by an assistant of one of these, and which would not exist at all or in the incurred amount without the advertising statement. This provision shall apply irrespective of whether the advertisement statement is issued before or after the conclusion of the contract in which these GTP are included.

### **14. Producer's liability, serial defect**

(1) In the event that Hitz is subject to a customer's or a third party's product liability claim, the Vendor shall be obligated to indemnify Hitz from such claims at first request if and to the extent the damage is attributable to a defective Good delivered by the Vendor. In such cases, the Vendor shall bear all costs and expenses, including the costs of legal defence.

(2) Within the scope of its obligation to indemnify, the Vendor shall reimburse Hitz for all costs and expenses arising from or in connection with the claim of third parties, in particular product recalls carried out by Hitz. Recall means all measures which prevent any damage or any increase of an already incurred damage, in particular product warnings, repairs, replacements, redemption of Goods, scrapping or the non-delivery of the affected Goods. The obligation to reimburse includes all related employee costs (hourly rate EUR 60.00) and third-party recourse claims. Hitz shall inform the Vendor of the content and

scope of recalls as far as possible and reasonable and give him the opportunity to comment. Any further statutory claims of Hitz shall remain unaffected.

(3) The Vendor is obligated to conclude and maintain a product liability insurance with a coverage amount of at least EUR 5 million per person's or property's damage.

(4) In the event of a serial defect, Hitz shall be entitled, at its sole discretion, to recall the Goods delivered to the customers of Hitz at the Vendor's sole expense. A serial defect exists if at least three pieces of a specific type show an identical or a similar defect or identical or similar defect symptoms. The provisions in clause 14 paragraphs (1), (2) and (3) shall apply accordingly to serial defects.

#### **15. Limitation, suspension of limitation**

(1) Claims of the parties shall be statute-barred according to statutory provisions, unless otherwise specified in the following.

(2) The general limitation period for claims of Hitz in case of defects shall be three years from the transfer of risk ("limitation period"), irrespective of the legal grounds and legal nature of the claim. If formal acceptance is agreed, the limitation begins with the formal acceptance.

(3) In case of supplementary performance of a defect, the limitation period begins anew upon the completion of the respective supplementary performance measure.

(4) However, limitation of Hitz' claims against the Vendor in case of a defect of a newly manufactured Good which Hitz sold to its customer shall occur at the earliest two (2) months after the date on which Hitz fulfilled the respective claims for defects of its customer. The suspension of limitation shall end at the latest five (5) years after the date on which the Vendor delivered the Goods to Hitz.

(5) The 3-year limitation period applies accordingly for claims arising from legal defects whereas the statutory period of limitation for third-party replevin claims remains unaffected. In any event, claims arising from legal defects shall not become statute-barred as long as the third party is still entitled to exercise its rights for such legal defects against Hitz, in particular in lack of of limitations.

(6) To the extent Hitz is also entitled to non-contractual damages claims for a defect, the statutory limitation period shall apply if the application of the limitation periods of the statutory provisions on the sale of goods do not lead to a longer period of limitation. The provisions of clause 14 para. (4) on the suspension of limitation apply accordingly.

(7) Claims of Hitz which are not connected with a defect shall become statute-barred after three years upon respective knowledge.

#### **16. Import and export licenses**

The Vendor is obligated to comply with relevant import and export regulations and to procure the necessary permits for the import as well as export of the Goods at his own expense in time before delivery of the Goods to Hitz. ☒

#### **17. Form**

Legal declarations and announcements, in particular setting of a deadline, reminder or cancellation of contract, shall be made in written or text form, in particular by letter, e-mail or fax. Statutory form requirements and proof requirements, in particular in case of doubts about the identity and scope of authorization of the declaring person, remain unaffected.

#### **18. Choice of law and jurisdiction**

(1) The laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the Sale of Goods shall apply exclusively to these GTP and the contractual relationship between Hitz and the Vendor.

(2) If the Vendor is a merchant, exclusive international and local place of jurisdiction for all disputes related to the business relationship, irrespective of its legal basis, including the effectiveness and interpretation of this jurisdiction clause, is the place of business of Hitz.