



## General Terms and Conditions of Purchase

Per: June 2008

### 1. General – scope of application

1.1 These General Terms and Conditions of Purchase (hereinafter referred to as Terms and Conditions of Purchase) of Hottinger Baldwin Messtechnik GmbH (hereinafter referred to as HBM) shall apply exclusively; HBM will not acknowledge any contractor's terms and conditions, which conflict with or derogate from HBM's Terms and Conditions of Purchase, unless HBM expressly agreed to their application in writing.

1.2 These Terms and Conditions of Purchase will also govern all future transactions with the contractor under the current business relationship.

1.3 Any agreements reached between HBM and the contractor concerning the performance of a contract must be set down in writing in the contract in order to be of legal effect. Modifications and supplements to the contract must be made in writing. This shall also apply to the waiver of the written form requirement.

1.4 The HBM Quality and Environment Management Guideline for Suppliers shall be an integral part of the contract and basis for order implementation.

### 2. Contract conclusion, contract amendments and rescission

2.1 Purchase orders and material call-offs may be made in writing, by remote data transmission (also e-mail) or by facsimile.

2.2 Written correspondence must be conducted with the ordering Purchasing Department. Any agreements made with other departments shall be confirmed in writing by the ordering Purchasing Department to be effective.

2.3 Any verbal agreements made after conclusion of the contract and ancillary agreements of any kind shall also be confirmed in writing by the ordering Purchasing Departments to be effective.

2.4 The ordering Purchasing Department may revoke the purchase order if the contractor fails to confirm the purchase order within two weeks.

### 3. Delivery date, delay in delivery, spare parts supply

3.1 The agreed dates and deadlines for delivery shall be binding. Purchase orders or material call-offs shall be performed at the prescribed date at the place of delivery. HBM shall be informed immediately of any anticipated delay in delivery. The contractor shall take into consideration delivery dates when he chooses the means of transportation and bear any additional expenses thereby arising.

3.2 If the contractor is in default of delivery, HBM may set a reasonable grace period. After expiration of the grace period, HBM shall be entitled to assert its statutory rights. HBM reserves the right to assert any further rights.

3.3 If the contractor defaults on its duty to perform, HBM may demand lump-sum damages in the amount of 0.5% at the beginning of each calendar week, however up to a maximum of 5% of the entire remuneration. HBM may assert its right to demand liquidated damages until the final payment. HBM reserves the right to claim more extensive damages.

3.4 If the delay in delivery is justified by force majeure, the following shall not be accepted by HBM: strikes, lockouts, plant disruptions the contractor is responsible for as well as delivery delays of the contractor's subcontractor.

3.5 In case of delivery/performance ahead of schedule, HBM may, instead of rejecting the goods, also put the goods in storage until the delivery date at the contractor's risk and expense.

3.6 The contractor guarantees that he will supply HBM with spare parts at reasonable conditions for at least 3 years after delivery/performance. If the contractor discontinues production of the spare parts, he shall give HBM the opportunity to make a last time buy. If the contractor does not meet this obligation, he shall compensate the damage resulting to HBM therefrom.

### 4. Place of performance

Unless the purchase order provides otherwise, HBM's place of corporate domicile shall be the place of performance.

### 5. Delivery, packaging and transfer of risk

5.1 Delivery terms for the contractor's delivery and performance shall be DDU agreed place of delivery (Incoterms 2000). The agreed place of delivery shall be the place of delivery indicated in the purchase order, alternatively the place of business of the Purchasing Department. In case of deliveries with installation or assembly and in case of provision of services, risk shall be transferred upon acceptance; in case of deliveries without installation or assembly, risk shall be transferred with receipt at the agreed place of delivery.

5.2 Partial deliveries shall only be permissible with HBM's consent.

5.3 Each delivery shall be accompanied by packing slips and delivery notes indicating the content and providing full order identification.

5.4 The contractor shall take back the packing at its own expense at HBM's request at the place of delivery.

### 6. Delivery of title and possession

6.1 The contractor shall be obligated to hand over the goods to be supplied and the work results to HBM and to transfer unconditional ownership in the same to HBM.

6.2 The contracting parties irrevocably agree that ownership in the goods to be delivered shall be transferred to HBM upon payment. Whenever HBM pays the agreed remuneration prior to taking over the goods, the transfer normally performed at the date of payment shall be made as follows: if the contractor is already in possession of the goods or gains possession of said goods later, the goods shall be earmarked for HBM and held in safe custody on behalf of HBM with the diligence of a prudent businessman. If the contractor is merely in possession of the necessary primary materials or gains possession later, the preceding sentence shall apply accordingly. If a third party is still in possession of the goods or the primary materials required for such goods, the transfer between HBM and the contractor shall be replaced by the assignment to HBM of the contractor's right to claim possession against the owner. HBM accepts such assignment.

6.3 If HBM has not paid the full remuneration prior to handing over of the goods but only a partial amount, the aforementioned shall only apply with the proviso that HBM then only acquires a co-ownership share in the goods or their primary materials. The extent of the co-ownership share shall be in accordance with the proportion of the partial payment to the agreed price of the goods.

### 7. Remuneration and payment, invoices

7.1 The pricing shall be based on the agreed terms of delivery according to clause 5.1 and shall include all obligations of the contractor under the terms of delivery. An additional charge shall be excluded. Price increase reservations shall require express written consent.

7.2 Separate invoices shall be issued for each purchase order/delivery, indicating the HBM order number and any other order identification and directed to the address of HBM, unless another invoice address has been indicated in the purchase order. The contractor shall be responsible for any consequences of the failure to fulfill this obligation. Duplicate invoices must be marked as such. The contractor shall ensure that its invoices are issued in accordance with the relevant value-added tax regulations.

7.3 Payments shall be made according to the conditions indicated in the purchase order after receipt of the proper invoices and receipt of all ordered goods, provided that the goods are without defects. Payment periods shall commence at this point in time. Payments shall not be deemed as acknowledgment of prices, conditions or contract conformity of the delivered goods. Payments may be withheld to a reasonable extent until full and adequate contract performance. Invoices shall generally be paid 20 days after delivery and receipt of the invoice with a 3% discount on the gross invoice amount or after 60 days without any deductions. The discount period shall begin in accordance with clause 7.3. Discount deduction shall also be permitted if HBM sets off its justified counterclaims against the contractor's claim within 14 days.

7.4 HBM shall be entitled to exercise the statutory set-off and retention rights.



## 8. Assignment of receivables

If the contractor assigns its receivables against HBM to a third party without HBM's previous written consent, the assignment shall be valid nevertheless. However, HBM may render performance, at its option, either to the contractor or to the third party with discharging effect.

## 9. Receiving and defect inspections

9.1 Inspection of incoming goods shall be performed by HBM in accordance with the ISO 2859 sampling procedures, unless a full inspection is required due to special conditions.

9.2 Deliveries and services will be examined by HBM for quality and quantity deviations within a reasonable period of time. In case of obvious defects or apparent quantity deviations, the complaint is deemed to be made in due time if it is received by the contractor within a period of 10 working days. In the case of hidden defects, the complaint is deemed to be made in due time, if it is received by the contractor within 10 days after discovery of the defect.

9.3 HBM shall only be obligated to give notice of defects for partial deliveries, if this has been expressly agreed with the contractor. With regard to the proper timing for giving notice of defects, the preceding clause 9.2 shall apply.

## 10. Warranty, damages

10.1 The contractor's warranty obligation shall be in accordance with the statutory provisions, unless otherwise agreed hereunder.

10.2 Even in cases of insignificant deviations of quality or of insignificant impairment of the usefulness, HBM shall have the right to rescind the contract and demand damages instead of performance.

10.3 The contractor guarantees that the delivery or service is in accordance with the state of the art, unless otherwise provided for herein. The relevant certificates, test certificates and documentation shall be delivered along free of charge.

10.4 If the contractor is a manufacturer of electrical and electronic equipment subject to the German Electrical and Electronic Equipment Act (ElektroG), it agrees to comply with its obligations thereunder.

10.5 HBM shall be entitled to eliminate a defect itself and to demand reimbursement of any expenses thereby arising in cases of imminent danger or if the immediate repair prevents considerable damage. However, HBM will attempt to inform the contractor beforehand.

10.6 The limitation period for defects of quality and defects in title related to the delivery of goods shall be 3 years from delivery or acceptance, if acceptance is provided for. Where parts cannot remain in operation during the investigation and/or elimination of a defect, the period of limitation for claims based on defects of quality shall be suspended for the period of time required for the investigation and/or elimination of the defect. Any longer and other periods of limitation shall remain thereby unaffected.

10.7 Any performance data specified in the purchase order or any performance specifications made in quotations and data sheets shall be complied with, and shall be guaranteed by the contractor.

10.8 If the contractor or a third party has given a warranty declaration (quality or durability guarantee), HBM's claims arising from a full-extent guarantee shall remain unaffected.

10.9 HBM's approval of drawings, calculations and other technical documents shall not affect the contractor's warranty with regard to the delivered item. The same shall apply in the event that HBM has made suggestions and recommendations to the contractor concerning the implementation of the contract.

10.10 HBM shall be entitled to claims for damages to the full legal extent. In cases where the contractor is responsible for product damage, it shall indemnify HBM against third party claims for damages at first request of the third party insofar as the cause lies within the contractor's domain and organizational area.

10.11 The contractor shall also have the obligation to reimburse any expenditure in accordance with Sections 683, 670 of the German Civil Code (BGB) to HBM arising from or in connection with a recall action carried out by HBM. HBM will – as far as possible and reasonable – inform the contractor about content and extent of the recall measures and give it opportunity to comment.

10.12 The contractor shall maintain a product liability insurance with a sum insured of EUR 2.5 million lump-sum per personal injury/damage to property. If HBM is entitled to more extensive claims for damages,

these shall remain unaffected. Unless otherwise agreed upon, claims based on US product liability will be agreed separately.

10.13 Prior to implementation of an order placed with the contractor, the contractor shall inform itself that the parts to be delivered do not infringe any national or, if applicable, international regulations, in particular import and export regulations. Any consequences resulting from the failure to comply with these regulations shall be the contractor's responsibility.

## 11. Industrial property rights

11.1 With acceptance of the order, the contractor assumes the obligation to indemnify HBM against legal claims asserted by third parties with regard to the goods to be delivered, in the event of industrial property right infringements the contractor is responsible for.

11.2 Any items bearing HBM trademarks must not be supplied to third parties without HBM's previous written consent.

## 12. Passing on orders to third parties

Passing on orders to third parties shall not be permitted without HBM's written consent and shall entitle HBM to partly or completely withdraw from the contract and demand damages.

## 13. Provision of material/documentation and tools - confidentiality

13.1 Documentation and/or manufacturing equipment of any kind, such as samples, drawings, models, tools, technical specifications, etc. which HBM makes available to the contractor or which HBM pays for the contractor may only be used for deliveries to HBM, unless HBM gives its previous written consent. HBM shall retain ownership in the tools. The copyright and any other industrial property rights in HBM documentation made available to the contractor shall also remain with HBM. In case of contraventions, the contractor shall be liable for all damages.

13.2 The documentation and/or manufacturing equipment mentioned in 13.1 above as well as the goods produced therefrom or therewith shall be returned upon request in faultless condition as soon as the order has been completed or as soon as it is established that no order will be placed. Single items and copies may not be retained. At HBM's request, the contractor shall destroy any documents and/or manufacturing equipment paid by HBM and, if applicable, provide the respective proof to HBM.

13.3 The contractor shall be obligated, at its own cost, to insure any tools and items belonging to HBM against damages arising from fire, water and theft providing cover up to the reinstatement value. It shall conduct any necessary maintenance and service work at its own cost and in a timely manner. HBM shall be notified immediately of any failures. If the contractor fails to do so, HBM shall be entitled to claim any damages arising therefrom.

13.4 The contractor shall keep all images, drawings, calculations and any other documentation and information it has received strictly confidential. Subcontractors shall be required to give a written undertaking to this effect. These may only be disclosed to third parties with previous written consent. The duty to maintain confidentiality shall continue to be effective even after completion of the present contract.

13.5 If the parts delivered by HBM are processed or intermingled, HBM shall acquire the co-ownership in the items thus created in proportion of the value of the parts and materials supplied by HBM to the processed items at the time of processing.

## 14. Software/rights of use

14.1 The contractor's software will be made available to HBM on customary data carriers in machine-readable code in addition to the user documentation.

14.2 If software that HBM acquired from the contractor is no longer supported by the contractor and if permanent support cannot be obtained in any other manner under reasonable conditions, the contractor shall be obligated to make the software, including source codes and documentation, available to HBM at reasonable conditions for its own purposes, to allow a third party with expertise in the programming language to support the software and, if required, to make necessary modifications, in order to maintain the operation.

14.3 In case of software developed specifically for HBM, the source code together with manufacturer documentation shall be provided to



HBM in addition. Copies of source code and manufacturer documentation shall be given to HBM upon acceptance, and shall correspond with the program version at completion of the test phase.

14.4 Any modification made to the software in conjunction with elimination of software defects shall be integrated into the source code and manufacturer documentation without delay; a copy of the respective updated version shall be provided to HBM immediately.

14.5 All rights with regard to software commissioned specifically by HBM shall remain with HBM, unless otherwise agreed. The contractor undertakes not to make such program available to third parties and not to use the program or program components to implement orders placed by third parties.

## **15. Jeopardizing performance**

If the contractor's economic situation deteriorates during the term of the contract so that contract performance is seriously at risk, if the contractor stops its payments (also temporarily) or if insolvency proceedings or judicial or extrajudicial settlement proceedings have been initiated, HBM shall be entitled to rescind the non-performed part of the contract. HBM shall be entitled to rescind the entire contract, if the partial performance is not of essence to HBM.

## **16. Applicable law, place of jurisdiction, miscellaneous**

16.1 The legal relationship between the parties shall be governed exclusively by the laws of the Federal Republic of Germany, under exclusion of the conflict of law rules and the UN Convention on the International Sale of Goods (CISG) of April 11, 1981.

16.2 The exclusive place of jurisdiction for any claims arising from and in connection with the respective contract shall be Darmstadt.

16.3 Contractual security interests of the contractor shall require a written agreement.

16.4 Should individual provisions of the contract or these Terms and Conditions of Purchase be invalid, the validity of the remaining provisions hereof or thereof will not be affected thereby. An invalid or ambiguous provision shall be replaced by such provision or interpreted in a manner coming closest to the intended commercial purpose.

16.5 The data provided to HBM will be processed and stored in an electronic data processing system in accordance with the statutory provisions, in particular the German Federal Data Protection Act (BDSG). Personal data shall be protected against improper use in accordance with the legal regulations.

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