

General Terms and Conditions of Purchase

Issued: December 2005

Applicable to business transactions with companies or with a public corporation

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) apply exclusively; any of the Supplier's General Standard Terms and Conditions that are contrary to or differ from these Terms and Conditions of Purchase will not be recognized, unless HBM has explicitly consented to their validity in writing. These Terms and Conditions of Purchase also apply even if HBM are aware of the contrary Terms and Conditions of the Supplier and accept unreservedly the products or services provided by the Supplier or for them.
- 1.2 These Terms and Conditions of Purchase also apply to future transactions between the parties resulting from the ongoing business relationship.
- 1.3 The HBM Quality Assurance Guideline for Suppliers is a component of this contract and the basis for the implementation of the order.

2. Conclusion of contract and modification of contract

- 2.1 Purchase orders and requests for delivery may be made in writing, by remote data transmission or by fax.
- 2.2 Written correspondence must be with the ordering Purchasing Department. Agreements with other departments require explicit formal acknowledgement from the ordering Purchasing Department to become binding.
- 2.3 Verbal agreements after the conclusion of the Contract and ancillary agreements of any kind whatsoever also require written acknowledgement from the ordering Purchasing Department before they can come into force.
- 2.4 The ordering Purchasing Department can revoke the purchase order if the Contractor does not provide a written acknowledgement within two weeks.

3. Time of performance, delay in delivery, parts supply

- 3.1 The agreed dates and deadlines for delivery are binding. The goods or services ordered must be delivered or performed on the prescribed date at the specified place of receipt (place of delivery or performance). HBM must be informed immediately of any anticipated delay in delivery.
- 3.2 Should the Contractor default, HBM may set a reasonable time extension. Once this period is over HBM is entitled to assert their legal rights. HBM's right to exercise additional rights is reserved.
- 3.3 Should the Contractor default on their obligation to perform, HBM may demand a contract penalty amounting to 0.5% for each started calendar week, but to a maximum total of 5% of the total remuneration. HBM may exercise their right to reserve the contract penalty until the final payment. The right to claim more extensive damages is retained.
- 3.4 Where delivery/performance is ahead of schedule, instead of rejecting the goods, HBM may also put the goods into storage until the delivery date at the Contractor's risk and cost.
- 3.5 For at least 3 years after delivery/performance, the Contractor guarantees to supply HBM with replacement parts under reasonable terms and conditions. Should the Contractor discontinue production of the replacement parts, they are obliged to give HBM the opportunity to make a final order. Should the Contractor not comply with this obligation, they are obliged to compensate HBM for any damages arising.

4. Place of performance

Provided there is nothing to the contrary in the purchase order, the place of performance is the place of business of HBM.

5. Delivery, packaging and passage of risk

- 5.1 In the case of deliveries with installation or assembly and in the case of services, risk is transferred on acceptance; in the case of deliveries without installation or assembly, it is transferred on arrival at the agreed place of delivery.

- 5.2 Partial deliveries are only permissible with the agreement of HBM.
- 5.3 Unless otherwise agreed, the costs of shipping and packaging are charged to the Contractor. In the case of pricing ex the Contractor's works, the lowest priced shipment must always be used, unless HBM has prescribed a specific mode of transport. Extra costs arising as a result of not keeping to the shipping instructions are charged to the Contractor. In the case of free consignee pricing, HBM may also define the mode of transport. Extra costs for accelerated forwarding, necessary, for example, to meet a delivery date, are to be borne by the Contractor.
- 5.4 Each delivery must be accompanied by packing slips or delivery notes, detailing the content and providing full order identification.
- 5.5 The Contractor must take back the packaging if requested by HBM. The place of performance for the obligation to take back the packaging is HBM headquarters, provided there is nothing to the contrary in the order confirmation. The cost of taking back and/or return transportation for the packaging to their place of business is borne by the Contractor.
- 5.6 The risk of accidental loss and incidental deterioration only passes to HBM on delivery to HBM. The Contractor must pay the cost of insuring the goods against loss in transit. HBM is a SVS-RVS (Forwarders and Carriers Risk Insurance Policy) waiver customer.

6. Delivery of title and possession

- 6.1 The Contractor is obliged to hand over the goods to be supplied and the results of their work to HBM and to transfer the unconditional ownership of such to HBM.
- 6.2 The Contracting Parties are irrevocably agreed that the ownership of the goods to be handed over is transferred to HBM upon payment by. In those cases where HBM pays the agreed remuneration before taking delivery of the goods, the transfer due at the time of payment is replaced as follows. If the Contractor is already in possession of the goods or if they gain possession later, the goods are earmarked for HBM and are held in safe custody for HBM with the due care and diligence of a prudent businessman. If the Contractor is merely in possession of the requisite feedstock or if they gain possession later, the above remarks apply accordingly. If a third party is still in possession of the goods or the requisite feedstock for the same, the transfer between HBM and the Contractor is replaced by the Contractor already assigning HBM their right to recover possession against the owner. HBM will accept this assignment.
- 6.3 If, before the goods are transferred, HBM has paid only a partial amount rather than the full remuneration, the above remarks apply, with the proviso that HBM then only acquires a co-ownership share of the goods or the feedstock. The extent of the co-ownership share is determined by the value ratio of the partial payment to the agreed price of the goods.

7. Remuneration and payment, invoicing

- 7.1 The prices, especially those mentioned in HBM purchase orders, are fixed prices, free of the place of receipt nominated by HBM including all incidental costs arising. They include in particular the shipping and packaging costs, taxes, customs duties, the cost of commissioning, charges and other levies. An additional charge is excluded, unless there is something explicitly agreed to the contrary in writing. Price increase reservations require explicit written agreement.
- 7.2 Invoices must be submitted separately for each purchase order/delivery, stating the HBM Order Number and any other order identification to the HBM address, provided no alternative invoicing address is stated in the purchase order. The Contractor is responsible for all consequences arising from the non-fulfillment of this obligation. Duplicate invoices must be identified as such. The Supplier must ensure that their invoice is made out in accordance with the pertinent statutory sales tax regulations.
- 7.3 Payments are made under the terms and conditions stated in the purchase order, upon receipt of the proper invoices and the delivery of all the goods ordered, provided these are without defect or nothing to the contrary is explicitly agreed. Payment periods start at this time. Payments do not constitute acknowledgement of prices, terms and conditions or conformance to the contract of the goods supplied. Payment may be withheld to a commensurate extent until the full and proper discharge of the contract. Invoices are generally settled 20 days after delivery and receipt of invoice at a 3% discount

of the gross invoice amount or after 90 days net. Discount periods start from the receipt of the goods at HBM. However, should a proper invoice only be received by HBM after the particular goods are delivered, the discount period begins in contrast only once this invoice is received. A discount deduction is also permitted if HBM, within 14 days, offsets the Contractor's demand with justified counterclaims.

7.4 HBM is entitled to offset and retention rights as provided by the law.

8. Assignment of claim

8.1 Assignment of HBM's existing claim arising from the contract is only permissible with written agreement. § 354 a of the HGB (German Commercial Code) is not affected by this.

8.2 Claims arising against HBM, of whatever type, cannot be assigned without written approval from HBM.

9. Receiving inspections and defect inspection/commercial business

9.1 Incoming goods are inspected by HBM – unless special terms and conditions require a full inspection – by means of sampling plans in accordance with ISO 2859.

9.2 Where § 377 HGB applies, HBM will examine goods and work supply for quality or quantity variance within a reasonable period. With obvious defects or apparent quantity variance, the complaint is deemed to be made in good time in each case provided it is received by the Contractor within 10 working days of access. If the case of latent defects, the complaint is deemed to be timely if it is received by the Contractor within 10 working days of the discovery of the defect.

9.3 HBM is only obliged to give notice of defects for partial deliveries if this has been explicitly agreed with the Contractor. The preceding item 9.2 is applicable with regard to the proper timing for lodging a formal complaint.

10. Warranty, damages

10.1 HBM is entitled to the full extent of statutory warranty rights (warranty claims). The Contractor warrants that, provided no special provisions have been agreed, the delivery or the service provided will be state-of-the-art and will conform to prevailing environmental, accident prevention and other industrial safety regulations, as well as the generally recognized safety and occupational health regulations applicable in Germany.

10.2 a) If the Contractor produces electrical and electronic equipment governed by the Electrical and Electronic Equipment Act, or ElektroG, the Contractor is obliged to fulfil the obligations assumed under the ElektroG. This means in particular: registration with the German federal government's clearing house (Elektro-Altgeräte-Register), and labeling of the equipment according to Section 7 ElektroG to make the producer and the date of market entry easily identifiable. Furthermore, the equipment has to be marked with the special sign of the crossed out wheeled bin (Annex II to ElektroG). In addition, Section 6 ElektroG stipulates that each producer shall provide to the Competent Authority an annual guarantee for the event of insolvency to guarantee financing of the take-back and disposal of waste electrical and electronic equipment suited to use in private households. A producer within the meaning of this Act is any person or legal entity importing for the first time electrical or electronic equipment into the territory covered by this Act.

b) The Contractor is obliged to comply with the requirements of Section 5 ElektroG (lead, mercury, hexavalent chromium, PBB, PBDE and cadmium are prohibited – except for use with medical and monitoring or control equipment).

c) If the Contractor is not the producer within the meaning of Section 3 (11) ElektroG, the Contractor has to make sure of the producer fulfilling the obligations assumed under ElektroG.

d) If the delivered electrical and electronic equipment does not comply with the technical specifications and labeling obligations, it is considered defective. The Contractor assumes the obligation to indemnify the purchaser concerned from any legal claims of third parties, especially of authorities, and to indemnify HBM for any damage caused by breach of the duties assumed under ElektroG or of the obligations assumed under Section 10 (c) for which the Contractor has to take responsibility.

10.3 HBM is entitled to eliminate a defect by their own action and to claim the expenses connected with taking action themselves, if to delay would be dangerous or an immediate repair would avoid considerable damage. HBM shall however try to inform the Contractor beforehand.

10.4 The statutory limitation for claims for material defects in goods supplied is three years from delivery or acceptance, provided such is scheduled. For parts that cannot remain in operation during the investigation of a defect and/or while the defect is being eliminated, the statutory limitation for claims for material defects is suspended for the period of the investigation and/or repair. Longer statutory and other limitation periods are unaffected. In cases of defects of title, the statutory limitation is 3 years from this becoming known or its imputed knowledge by HBM, although this must be no longer than 10 years after delivery or from acceptance, if such is scheduled.

10.5 If the Contractor or a third party has made a declaration of warranty (guarantee of quality or guarantee of endurance), HBM's claims arising from a full extent guarantee are unaffected.

10.6 HBM approval for drawings, assessments and other technical documents, does not affect the Contractor's warranty with regard to the delivery item. The same applies if HBM has made suggestions and recommendations to the Contractor for the execution of the contract.

10.7 HBM is entitled to all claims for damages to the full legal extent. Provided the Contractor is responsible for product damage, they are obliged to indemnify HBM for claims for damages from third parties at the first claim of a third party, insofar as the cause lies in their domain and organizational area.

10.8 The Contractor is also obliged to reimburse HBM for all expenditure in accordance with §§ 683, 670 BGB (German Civil Code), that arise from or in connection with a recall action carried out by HBM. As far as possible and reasonable, HBM will inform the Contractor of the content and the extent of the recall measures to be carried out and give them the opportunity to comment.

10.9 The Contractor is obliged to maintain product liability insurance with a sum insured of EUR 2.5 million per personal injury/property damage, at a flat rate. If HBM is entitled to more extensive claims for damages, these are not affected. Provided there is no other agreement, claims arising from US product liability will be agreed separately.

11. Industrial property rights

11.1 By accepting the order, the Contractor assumes the obligation to indemnify HBM for the legal claims of third parties regarding the goods to be supplied in the event of infringements of industrial property rights for which the Contractor has to take responsibility.

11.2 Articles that have been given HBM trademarks must not be supplied to third parties

12. Passing on orders to third parties

It is not permitted to pass on orders to third parties without written permission from HBM and this entitles HBM to withdraw from the contract either entirely or in part and to demand damages.

13. Provision of materials/documentation and tools – maintaining secrecy

13.1 Documentation and production tooling of all kinds such as samples, drawings, models, tools, technical provisions, etc., made available to the Contractor by HBM or for which HBM has paid the Contractor, must only be used for deliveries to HBM, without explicit, written permission from HBM. HBM reserves ownership of the tools. The copyright to all HBM documentation handed over to the Contractor is also retained by HBM. Should there be any violations, the Contractor is liable for all damages.

13.2 The documentation and production tooling mentioned under 13.1, as well as the goods produced therefrom or therewith, must, on request, be returned in perfect condition as soon as the business has been transacted or as soon as it is established that no order will be placed. Odd items and copies must not be retained. At the request of HBM, the Contractor must destroy all documents and any production tooling paid for by HBM and if applicable, give evidence of this to HBM.

- 13.3 The Contractor is obliged at their own expense to insure, for their reinstatement value, all tools and corporeal things belonging to HBM against damage caused by fire, water and larceny. They are obliged to implement all the requisite maintenance and inspection work promptly and at their own expense. HBM must be notified immediately of all abnormal incidents or malfunctions. Should they prove culpable for this not happening, HBM is entitled to put forward a claim for any loss resulting therefrom.
- 13.4 The Contractor is obliged to keep all images, drawings, assessments and sundry documentation and information strictly confidential. Explicit permission is required before they can be revealed to any third parties. The obligation to maintain secrecy also applies after this contract has been executed. It expires when and insofar as the production knowledge contained in the images, drawings, assessments and sundry documents that have been handed over becomes generally known.
- 13.5 In cases where the parts provided by HBM are made up or intermingled, HBM acquires the joint ownership of the new corporeal thing in a ratio appropriate to the value of the parts and materials provided by HBM to the value of the made up objects at the time of their manufacture.

14. Software/rights of use

- 14.1 Software is handed over to HBM on commercial data media in machine-readable code, together with the user documentation.
- 14.2 If software that HBM has acquired from the Contractor is no longer supported by the Contractor and if permanent support cannot be attained in any other way under appropriate terms and conditions, the Contractor is obliged to make the software, including source codes and documentation available to HBM, to allow a third party who is expert in the programming language to support the software and if necessary make requisite modifications under appropriate terms and conditions, in order to maintain operation for HBM's own purposes.
- 14.3 For software developed specifically for HBM, the source code with manufacturer documentation must also be handed over to HBM. Copies of the source code and the manufacturer documentation must be given to HBM on acceptance and must correspond to the program version at the completion of the test phase.
- 14.4 The Contractor must immediately include any modifications made to the software during defect elimination in the source code and in the manufacturer documentation; a copy of each updated version must be made available to HBM immediately.
- 14.5 All the rights for software commissioned specifically by HBM in the order lie with HBM, unless otherwise agreed. The Contractor undertakes not to make such a program available to any third party and not to use the program or components of the program for the orders of third parties.

15. Jeopardizing performance

Should the economic situation of the Contractor worsen during the duration of the order in such a way that performance is seriously at risk, if payments stop (even temporarily) or if insolvency proceedings or court or out-of-court composition proceedings are applied for, HBM is entitled to cancel the part of the contract that has not been performed. HBM is entitled to rescind the entire contract, if the partial performance is of no interest to HBM.

16. Applicable law, place of jurisdiction, miscellaneous

- 16.1 The law of the Federal Republic of Germany shall apply to the exclusion of private international law and the UN convention on contracts for the international sale of goods (UNCITRAL/CISG).
- 16.2 The sole place of jurisdiction for all claims arising from and in connection with this particular contract is Darmstadt. However, HBM is entitled to also assert claims at any other competent court.
- 16.3 The contractual security interests of the Contractor require written agreement.
- 16.4 Should one or more of the terms and conditions of these General Standard Terms and Conditions be or become inoperative in whole or in part, the validity of the remaining provisions is not affected.

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