



## **General Terms and Conditions of Purchase HOCHWALD Group**

### **Clause 1 General - Scope**

1. Our orders and contracts are exclusively subject to our General Terms and Conditions of Purchase. This also applies to ongoing purchase relationships without the need for repeated express agreements.
2. The validity of the Supplier's General Terms and Conditions of Sale in any document, such as but not limited to order confirmations are hereby expressly rejected. The unconditional acceptance of order confirmations, delivery or payment shall not constitute the acceptance of the Supplier's differing or conflicting terms and conditions. Deviating or conflicting conditions provided by the Supplier shall not be recognised unless the acceptance of said conditions has been expressly agreed in writing.
3. Our Terms and Conditions of Purchase shall apply exclusively towards entrepreneurs pursuant to Clause 14 of the German Civil Code (*Bürgerliches Gesetzbuch* [BGB]), legal entities under public law and special assets under public law within the meaning of Clause 310, Para. 1 of the BGB.
4. Framework agreements, fixed price agreements or negotiated agreements concluded between the Supplier and us shall only supersede the General Terms of Purchase to the extent that these agreements contravene the General Terms of Purchase. Furthermore, the same shall be supplemented by the General Terms and Conditions of Purchase.

### **Clause 2 Conclusion of Contract - Contractual changes - Content of Contract**

1. The validity of contracts, purchase orders, transactions and delivery schedules shall be subject to written orders or orders in text form by us.
2. Verbal agreements between the Supplier and us shall only enter into effect upon our written confirmation.
3. Once confirmed, our contracts or purchase orders are binding unless immediately and expressly rejected by the Supplier. We are entitled to revoke a contract or purchase order at no charge in case the Supplier does not confirm the acceptance of the same in writing within the aforementioned time limit.
4. Estimates by the Supplier are binding and shall be free of charge unless expressly otherwise agreed by the Supplier and ourselves.
5. In the event the Supplier intends to employ third parties in the performance of its contracts or orders, our express written consent is required.
6. In the event the Supplier is responsible for assembly or installation of the goods, the Supplier shall bear all additional costs necessary hereof such as but not limited to the wages and travel expenses of engineers, the hiring of machines and tools, etc unless otherwise agreed between the Supplier and us.
7. The Supplier itself shall carry out the contractual services.

### **Clause 3 Delivery - Delivery period - Default**

1. All deadlines specified in our contracts, purchase orders or other delivery agreements are binding. Deliveries are made on DDP (Incoterm® 2010), the agreed place of delivery, unless otherwise determined between the Supplier and us. Regarding the delivery date the time of arrival at the specified delivery address is decisive.
2. In case the Supplier becomes aware of a instance that the agreed delivery date cannot be met, it shall inform us hereof in writing immediately by stating the reasons for and the anticipated duration of the delay. The foregoing shall not affect the occurrence of a default of delivery.
3. In the event of a default in delivery, we shall be entitled to demand a contractual penalty of 0.2% of the order or contract value for each day late the goods are received, however not more than 5% in total of the order or contract value. The foregoing shall not affect any additional compensation for damages.
4. In the event of a default in delivery, we shall be entitled to charge the correct and timely cover purchases to the Supplier. The unconditional acceptance of a delayed delivery does not constitute a waiver of the compensation owed to us due to delay of delivery. Sub-section 3 above shall be observed in this case.
5. The Supplier shall state our exact order number on all shipping documents and delivery slips. The Supplier is responsible for any processing expenses incurred by us due to incorrect or missing numbering and any resulting delays in processing.
6. Without our express consent the Supplier shall not be entitled to make partial deliveries unless such a delivery is reasonable for us. Otherwise, we may refuse the delivery and return it at the Supplier's expense. Any further claims made by us, especially for damages, shall not be affected.

**Clause 4**  
**Quality specifications**

1. The goods supplied shall conform to the specifications or features contained in our purchase order or contract (information on the condition of goods). The same shall apply in the event that these quality specifications have been agreed between the Supplier and us. In the event a sample was provided to us by the Supplier this sample shall form the basis of the purchase order or contract, so that the goods shall display the characteristics of the sample. Deviations from the agreed quality specifications shall require our express written consent. In the event no specific quality specifications have been agreed, the goods shall correspond to the standard product specific quality specifications and shall be suitable for use in accordance with the contract.
2. The Supplier shall guarantee that the goods are manufactured and delivered in accordance with the applicable statutory provisions. In particular, food shall comply with the applicable food regulations as regards their composition, quality, packaging and declaration.
3. Upon request, the Supplier shall provide the quality specifications for the goods and submit the appropriate evidence of the origin of the goods to us, as well as evidence that the goods comply with the statutory requirements.

**Clause 5**  
**Notice of defects**

1. The acceptance of goods shall be subject to an examination for defects, such as but not limited to accuracy and completeness, within as short a period as is practicable in the circumstances. Any detected defects shall be reported by us immediately. Hidden defects shall be reported immediately upon their discovery.
2. Payments made shall not constitute acceptance of the service or delivery of goods as being in accordance with the contract.

**Clause 6**  
**Warranty claims**

1. We shall be entitled to claim for warranties and or damages as stated by law.
2. In the event of any supplementary performance, the Supplier shall bear all costs associated with removing of the defective goods as well as the assembly of the non-defective goods unless the Supplier cannot be held liable due to fault or negligence.
3. In the event the goods are not in our custody in the course of the supplementary performance, the Supplier shall bear the risk of any accidental loss or deterioration.
4. We shall be entitled to take all necessary measures to rectify the defect and any damages caused by the defect ourselves at the Supplier's expense, or to have these taken by third parties, in cases it is not feasible for us to set the Supplier a final deadline due to urgency; in such case, we will inform the Supplier accordingly prior to the elimination of such defect.

**Clause 7**  
**Product liability - Indemnity - Product liability insurance**

1. The Supplier shall be liable for product defects in accordance with the statutory provisions.
2. In the event the Supplier is responsible for a product defect, it shall indemnify us for damages of third parties upon our first request.
3. The Supplier shall maintain product liability insurance with a minimum all-inclusive coverage amount of 10 million euros per physical injury/property damage as a lump sum. Proof of coverage must be provided to us by the Supplier upon request.

**Clause 8**  
**Recall**

1. As part of its statutory liability for defects of goods and/or product defects, the Supplier shall be liable for any damages that may arise on our side as part of a public or silent recall to be taken; the Supplier shall provide in particular but not limited to reimbursement for any expenditures pursuant to Clauses 683 and 670 of the BGB and Clauses 830, 840 and 426 of the BGB. We will – as far as possible and reasonable - inform the Supplier of the content and scope of the recall measures to be taken and give the Supplier the opportunity to respond.
2. Further and/or other statutory claims shall remain unaffected.

**Clause 9**  
**Transfer of ownership**

Ownership of the goods shall be transferred to us upon delivery. Agreements on the retention of title, such as but not limited to the so-called current account and/or group retention, shall not apply. Clause 449, Para. 2 of the BGB shall not be subject to contrary agreement.

**Clause 10**  
**Pricing**

1. Unless otherwise agreed, the agreed prices shall be considered fixed prices, i.e. specifically including VAT, fitting, installation, packaging, insurance, freight and customs clearance. Other provisions may be agreed in individual cases.
2. For calculated packaging material, the Supplier shall take back the packaging upon our request. The return of packaging shall be free of transportation charges and at the Supplier's own risk.

**Clause 11**  
**Invoicing – Payment terms**

1. Invoices shall be sent to us with all necessary tax criteria. In addition, invoices shall contain the order number and date of order, as well as the supplier number corresponding to our order. Otherwise it is not possible for invoices to be processed.
2. For damages caused by a violation of the aforementioned obligations regarding invoicing and remittance, the Supplier shall be liable to the extent that it is responsible for the violation.
3. Unless otherwise agreed in writing, we shall carry out payments with a 3% reduction if made within 8 days, a 2% reduction if made within 14 days or net if made within 30 days of the invoice being received. The payment and discount periods shall begin with the receipt of the invoice and due date, but not before the delivery of the goods and transfer of their corresponding documentation (way-bills, specifications, declarations, etc.) to us at the specified place of delivery.
4. In the event of complaints, such as but not limited to notices of defects or incorrect invoicing, the payment period shall begin only after clarification of the reasons for objection.

**Clause 12**  
**Compensation - Rights of retention**

1. We shall be entitled to compensation and rights of retention as permitted by law.
2. The Supplier shall be entitled to compensation or right of retention only in case its counterclaim is undisputed or recognised as valid by a court of law.

**Clause 13**  
**Limitation period**

1. Reciprocal claims shall lapse in accordance with the statutory provisions unless otherwise agreed hereinafter.
2. In the event we claim for subsequent delivery or repair of goods due to defective goods the statutory limitation period shall start again for those new goods restored, or repaired, or for parts supplied on the basis of our claim for subsequent performance. This shall not apply in cases the Supplier has acted solely out of a goodwill gesture.
3. In the event of any notice of defects made by us, the limitation period for warranty claims shall be maintained until the fulfilment of our claims.

**Clause 14**  
**Property rights**

1. The Supplier shall guarantee that it is the owner of all intellectual property rights, trademarks and copyrights for the goods supplied and that the delivery of the goods constitutes no violation of third party rights by us.
2. In the event a claim is arised against us by a third party for this reason, the Supplier shall indemnify us upon our first written request. We are not authorised to make any agreements with the third party without the Supplier's consent, such as but not limited to reaching of a settlement.
3. The Supplier's indemnity obligation relates to all expenses incurred by us as a result of or in connection with the claim made by a third party, particularly but not limited to the costs of litigation.

**Clause 15**  
**Confidentiality - Non-disclosure**

1. We shall retain the right of ownership and copyright for all information made available to the Supplier within the context of implementing the contract, such as but not limited to images, plans, drawings, calculations, instructions, product descriptions and other documents in any form whatsoever. Disclosure of this information to third parties may only be undertaken on the basis of our written consent. This information may be used solely for the purpose of executing our purchase order/contract.
2. This shall not include such information already publicly known at that time said information becomes known to the Supplier, and/or information lawfully disclosed to the Supplier by a third party upon discovery and/or is readily available to any third party and in this respect is not subject to any duty of confidentiality to ourselves, and/or such information requested by any public authority, court of law or any other third party entitled to such information, and/or such information to be disclosed to the Supplier's legal or tax advisors as required for the advising purposes.
3. The burden of proof for the existence of these exemptions rests with the person relying thereupon.
4. In the event of Sub-section 2, the Supplier shall notify us immediately of such requests and confirm the release of the information with us if possible.
5. Upon completion of the purchase order/contract or termination of the contractual relationship, this confidential information shall be released to us without request.

**Clause 16**  
**Data protection**

With regard to data protection, we, as well as third parties authorised by us, are subject to an agreement and are entitled to collect, process and use personal data obtained in connection with the business relationship between us and the Supplier in accordance with the Federal Data Protection Act (*Bundesdatenschutzgesetz*).

**Clause 17**  
**Severability clause - Jurisdiction - Place of performance - Applicable law**

1. Should any provision of these Terms and Conditions of Purchase or any other contractual agreement made by us be or become void, ineffective or unenforceable, the validity of the remaining provisions and/or agreements shall not be affected.
2. In case the Supplier is a merchant and no other jurisdiction is mandatory by law, our registered seat of in Thalfang shall be the place of jurisdiction. However we shall be entitled to file an action against the Supplier at the court of its place of business.
3. The place of performance shall be - unless otherwise agreed - our place of business. The place of performance for payments shall be Thalfang. For transactions with foreign merchants, partnerships or legal entities, the law of the Federal Republic of Germany shall apply under the exclusion of the provisions of the German International Private Law and the UN Convention on the International Sale of Goods.