

General Terms and Conditions of Purchase

1. Scope

These GENERAL TERMS AND CONDITIONS OF PURCHASE shall apply exclusively to contract formations and legal relationships between the supplier and HEWI Heinrich Wilke GmbH – hereinafter also referred to as HEWI or ordering party. The terms and conditions shall also apply to all future transactions between the parties to the contract. They shall also be regarded as included in continuing business relationships if there has been no express further reference to them in the case of individual purchase orders or when orders are placed.

The supplier's General Terms and Conditions of Business shall only apply to the extent that HEWI has expressly consented to them in writing. The receipt of deliveries and/or the payment of the purchase price shall not be regarded as the ordering party's tacit consent even if it has not expressly objected to the supplier's Terms and Conditions.

Amendments or supplementary agreements shall require the written form. They shall only become an integral part of the contract if they have become subject matter of the contract due to an individual agreement made in writing with HEWI.

2. Purchase Order/ Supply Agreement

Supply agreements (order and acceptance) and order releases, together with any amendments or supplements thereto, shall be in writing.

The written purchase order shall determine the content and scope of goods and services.

Transmission via fax or e-mail shall also be regarded as a written order. Orders placed orally or via the telephone shall require subsequent written confirmation in order to be legally valid.

The properties of the product specified in the purchase order (product specification or service description) shall define the properties of the delivery item comprehensively and definitively.

The authority of the written purchase order shall also apply to other declarations, commitments etc. made by our personnel.

If the supplier does not accept the purchase order within two weeks of sending the offer, the ordering party shall be entitled to cancel.

Order releases shall, however, become binding if the supplier does not object within two weeks of receipt, at the latest.

The ordering party may request changes to the design and execution of the delivery item if such can be reasonably expected of the supplier, whereby the impact, in particular, on additional or reduced costs and delivery dates must be regulated appropriately by mutual agreement.

The supplier shall be obliged to keep secret all drawings, models, patterns, instructions or other materials that HEWI makes available to it in connection with the order or for performance of the contract. In particular, the supplier shall, without HEWI's prior written consent, be prohibited from surrendering these materials to third parties or to grant third parties access to them or to make them available to third parties in any other way. All drawings, models and patterns, of whatever type and extent, that HEWI makes available to the supplier in order for it to execute the order shall

remain in the ownership of HEWI and shall be surrendered on request. The same shall apply to copies thereof made by the supplier or data stored in electronic form.

3. Delivery

The supplier shall be entitled to make neither partial deliveries nor overdeliveries or underdeliveries. The goods shall be transported at the risk and expense of the supplier. The risk of accidental perishing and/or loss shall pass to the ordering party when the goods are transferred at the ordering party's head office or at a destination specified by the ordering party.

The supplier shall be liable without limitation for procuring the subcontracted supplies and services required for the delivery – even in the absence of fault. The proviso of punctual availability of supplies and raw materials shall be excluded. If insolvency proceedings or in-court or out-of-court composition proceedings are instituted against the supplier, the ordering party shall be entitled to rescind the contract for the part that has not yet been fulfilled.

4. Delivery Dates and Deadlines/ Delay/ Force Majeure

The delivery dates and deadlines quoted in written purchase orders shall be binding. The receipt of the goods at the location specified by the ordering party shall determine whether the delivery date or the delivery deadline has been adhered to. If delivery "Carriage Paid To" (see Incoterms 2000 "CPT") has not been agreed, the supplier must make the goods available in a timely manner, taking into account the usual time for loading and shipping.

If the supplier does not perform within the reasonable grace period set by the ordering party, the ordering party shall be entitled to rescind the contract and, in the case of culpable negligence of duty on the part of the supplier, demand compensation for the damage caused by the delay, or damages in lieu of performance. This shall not apply to lost profit and damage arising from disruption of operations. In the case of slight negligence, damages shall be limited to additional freight costs, setup change costs and, once a grace period has lapsed without result or the ordering party's interest in the delivery has ceased, to the additional expenditure for purchases of goods in replacement.

In the event of a delay in delivery, the ordering party shall be entitled to demand flat-rate compensation in the amount of 1% of the value of the goods ordered / price of the partial delivery or performance affected by the delay per completed week but, in any case, not more than 10%; the ordering party reserves the right to assert further statutory claims (rescission and damages in lieu of performance). The supplier shall have the right to demonstrate to the ordering party that no damage or much smaller damage has arisen in consequence of the delay. Any claims for compensation concerning further damage due to delay shall remain unaffected by the acceptance of a delayed delivery.

In the case of a transaction to be performed at a

fixed point in time, as specified in Section 376 of the German Commercial Code, no grace period shall be required for exercise of the right to rescission and assertion of a claim for damages. If the supplier invokes "release from performance", particularly events of force majeure, it shall be obliged, in as far as can be reasonably expected, to advise the ordering party of this immediately in writing. The contractual obligations shall then be adapted in good faith to the changed circumstances. If the supplier contravenes its duty to inform, it shall forfeit the right to invoke the "special circumstances".

5. Prices/Terms of Payment

Unless otherwise agreed in writing, the ordering party shall make payments within 14 days less 3% discount or net within 30 days.

The date on which the goods are received at the destination shall determine how the payment date is calculated. If the invoice is received later than the goods shipment, the date on which the ordering party receives the invoice shall be regarded as the basis for determining the payment date. If an early delivery is accepted, the payment due date shall be based on the agreed delivery date. Invoices shall be sent in duplicate to the ordering party. They must not be attached to the shipment. The supplier shall only have the right to offset if its counterclaims have been legally established, acknowledged by the ordering party or not disputed by the ordering party when requested to give a statement of position, and confirmed in writing. The supplier shall only be authorized to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

If certificates in respect of material tests have been agreed, they shall constitute a substantive part of the delivery and shall be sent to the ordering party together with the invoice, but no later than 10 days after the invoice date. Invoices shall become due at the earliest upon receipt of the agreed certification.

In the event of incorrect delivery, the ordering party shall be entitled to withhold payment in proportion to value until proper delivery is made.

6. Shipping/Packaging/Notification of Defects

The supplier shall comply with the accepted rules of technology and safety in terms of its shipments and secure the goods sufficiently against transport damage. The supplier shall be liable for damage due to deficient packaging. The ordering party shall comply with its commercial duty of inspection by means of industry-standard random examination of the goods sent to it. The ordering party shall notify the supplier in writing of any defects in the delivery as soon as they are identified in the ordinary course of business. The notification of defects shall still be timely if the ordering party sends the notification to the supplier within three days of discovering the defect; in the case of obvious defects, written notification must be made within ten days of receipt of the goods. In this respect, the supplier shall waive the defence of out-of-time notification of defects.

7. Liability for Defects/ Statute of Limitations

In the event of delivery of defective goods, the ordering party may, if the respective statutory prerequisites listed below exist and insofar as no other arrangement has been made in writing in an individual case, demand the following:

In the case of legitimate notification of defects, the ordering party shall, at its option, be entitled either to remedy (removal of the defects) or subsequent delivery (replacement delivery). Subsequent performance of the entire delivery may also be demanded if only a part of the delivery has defects and the ordering party has no interest in accepting the other part. The supplier shall bear expenditure incurred during subsequent performance, including additional transport or freight costs.

If the supplier is unable to carry out the subsequent delivery within a reasonable deadline, if it does not comply with the request within the deadline given to it, if the subsequent performance is unsuccessful or if a deadline is dispensable, the ordering party shall be entitled to reduce the purchase price, rescind the contract and, if the supplier is responsible for the defect, demand compensation. Said compensation shall also include the costs of any replacement procurement or the costs of remedy by a third party. The compensation shall also include all damage that stands in an appropriate causal relationship to the defective item.

If a defect cannot be detected in advance by means of appropriate material tests and if the defectiveness of the supplied item can therefore only be identified during production, processing or fitting, the supplier shall, providing it is responsible for the defectiveness of the item, be liable for all damage caused by stopping and delaying production, as well as for the wasted expenditure already provided, in addition to its obligation for subsequent performance.

The compensation shall also include the damage that arises from the defective item resulting in a faulty product due to fitting or mixing. The compensation shall therefore also include, in individual cases, the damages and reimbursement of expenses, to which the ordering party is bound under the statutory warranty obligation and recourse liability (Section 478 ff. of the German Civil Code).

A warranty period of three years shall apply to the products manufactured by the supplier or the order executed by it, unless the statutory warranty period results in a longer period. In this case, the statutory warranty periods including the regulations in respect of recourse liability (Sections 438 and 479 of the German Civil Code) and the statutory suspension of the expiration of the statute of limitations pursuant to Section 479 (2) of the German Civil Code shall apply. In the case of subsequent delivery, a new warranty period shall begin when the new goods are delivered in place of the defective goods. The subsequent delivery shall demonstrate that the supplier acknowledges the defect to which an objection has been raised. In the event that the supplier maliciously conceals a defect, the warranty period shall be extended to five years.

8. Product Liability/Product Observation/- Recall

If the goods have defects that are attributable to a fault of the supplier, the supplier shall, when first requested so to do, indemnify the ordering party and, if necessary, the latter's customers from the resulting product liability to the extent that it would also be directly liable itself.

The supplier shall be obliged, on the ordering party's instruction, to carry out all required product observation measures, including warning and recall actions in individual cases. The supplier shall reimburse the ordering party for the costs that the ordering party incurs as a result of recall actions.

The supplier must insure itself against the risks that arise from product liability. Corresponding proof of insurance shall be provided on request.

9. Liability/Damages

Claims for damages by the supplier, on whatever legal grounds, particularly due to breach of duties arising from the contractual obligation and from tort shall be excluded with the exception of liability for wilful or grossly negligent behaviour, injury to life, limb or health, or due to breach of material contractual obligations.

Claims for damages for breach of material contractual obligations shall, however, be limited to the typical foreseeable damage, providing a limitation is not excluded on other grounds due to wilful or grossly negligent acts or due to injury to life, limb or health.

If liability irrespective of fault gives rise to a third-party claim against the ordering party in accordance with mandatory law, the supplier shall be liable vis-à-vis the ordering party to the extent that he would also be directly liable. The principles of Section 254 of the German Civil Code shall apply accordingly to compensation for damage between ordering party and supplier. This shall also apply to the case of direct recourse against the supplier. The obligation to pay damages shall be excluded to the extent that the ordering party has effectively limited its liability vis-à-vis its customer. The ordering party shall, in this respect, endeavour, to the extent permitted by law, to agree limitations of liability to the benefit of the supplier.

The supplier shall be liable for measures taken by the ordering party to avert damage (e.g. recall actions) to the extent that it is legally responsible for the defect or circumstance that has caused the damage. The ordering party shall, if it intends to claim against the supplier in accordance with the aforementioned provisions, inform the supplier immediately and comprehensively, giving it, where possible, an opportunity to inspect the damage event.

10. Property Rights

The supplier shall warrant that the goods supplied by it do not infringe national or international property rights. The supplier shall indemnify the ordering party from all claims made against the ordering party on the grounds of infringement of a property right and shall bear the costs of protecting the rights (including any legal disputes and concili-

ation proceedings) if these claims are based on the supplier's culpable negligence of duty. The ordering party shall inform the supplier immediately in the event of assertion of a claim and shall afford the supplier an opportunity to participate in the corresponding proceedings.

11. Contractual Adaptation

If unforeseeable events pursuant to Section 313 of the German Civil Code significantly change the economic importance or the contents of the delivery or significantly impact the ordering party's operations, the contract shall be adapted commensurately, in accordance with the principle of good faith.

If compliance with the contract is not reasonable in economic terms, the ordering party shall have the right to rescind the contract, even if an extension of the delivery period has initially been agreed with the supplier and the unreasonableness occurs subsequently. If the ordering party intends to avail itself of the right to rescission, it shall inform the supplier immediately of this subsequent knowledge of the consequences of the event.

12. Choice of Law/Place of Jurisdiction/ Other Provisions

German law shall apply exclusively to the legal relationship relating to this contract to the exclusion of the UN Convention on the International Sale of Goods.

The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the ordering party's registered office. This shall also apply in respect of any legal issues in connection with the General Terms and Conditions of Purchase.

The supplier shall only be allowed, with the ordering party's prior written consent, to make reference to the business relationship existing with the ordering party in information and/or promotional material.

If a provision in these Terms and Conditions of Business or a provision within other agreements is or becomes invalid, the validity of the other provisions or agreements shall not be affected by this. A legally valid provision shall then take the place of the invalid provision.

Bad Arolsen, status: 01/01/2008 www.hewi.de