Ordering and Purchasing Conditions of HWA AG

Version of 01.01.2007

A. Placement of an Order

1. We order exclusively under the ordering and purchasing conditions of HWA AG stated below, also if during ongoing business relations no express reference is made later on. Modifications of these conditions, especially deviating or supplementary general standard terms of the contractor are hereby contradicted. Keeping silent to order confirmations referring to deviating or supplementary general standard terms may not be regarded as approval. Such conditions do not achieve effectiveness for us even in case of execution of the order. To the contrary, the contractor in implementation of the order accepts our ordering and purchasing conditions. Each change of our conditions included in an order confirmation is deemed by us as rejection of our order. If delivery/performance is made anyway, then according to the statements made above this is regarded as approval of our ordering and purchasing conditions.

2. No reimbursement is granted for preparation of an offer. Deviations from our enquiry must be expressly stated in the offer. An order is only deemed placed when it has been made in writing or in case of verbal order or order by telephone, if it has been confirmed by us in writing.

3. Our orders must be confirmed immediately by the contractor. The order confirmation must state our order data (order number, order date, supplier number, item number and item designation). Express reference must be made to deviations from our order. If the order confirmation does not reach us within 8 days, then we reserve the right to cancel the order free of cost to us.

B. Prices, Scope of Delivery respectively Performance

1. The prices agreed are fixed prices and apply free location of receipt stated by us including packaging, transport insurance and all other ancillary cost (DDP according to Incoterms 2000). If nothing has been agreed, then our works is the receiving location.

2. If the order includes research, engineering, development, drafts or similar services, then the contractor is obliged to hand over all results, especially engineering or production drawings as well as documentation, user manuals, etc. When developing software, the scope of delivery will especially include delivey of the software in source and object code form and of documentation of program development and application; this also applies to later updates within the scope of a maintenance agreement.

C. Delivery Dates, Contract Penalty

1. Dates agreed are dates for receipt of delivery/dates for successful performance and must be observed bindingly. The same applies to deadlines; they begin at the order date. Partial deliveries/services performances are only admissibly with our approval.

2. If the contractor is in default, then we are entitled, irrespective of further claims for damages, and if nothing else has been agreed, to claim a contract penalty in the amount of 1 % of the order value for each beginning week of default, but at maximum 10 % of the order value. The reservation of contract penalty according to § 341 para. 3 BGB may be asserted by us until final payment for the underlying contract relationship, in case of general agreements or ongoing agreement, until the end of the delivery year, but at least within 14 days after acceptance of fulfillment.

3. If doubt in the ability or willingness of the contractor to perform exists before or after due date, especially because the contractor has announced even now that he will not be able or willing to perform in due time, and if we have an urgent interest in clarification, then we may set a grace period for the contractor before respectively after due date to declare his and possibly prove his ability or willingness to perform. After fruitless expiry of this period, or in cases of § 323 BGB para. 3 and 4 without giving a notice period, we may rescind from the contract according to § 323 BGB and/or claim damages respectively damages instead of performance according to §§ 280 ff BGB. Further claims remain untouched.

4. The acceptance of late delivery or service does not include a waiver of claims due to us from the supplier on the grounds of late delivery.

D. Delivery and Passage of Risk

1. We are not obliged to accept before the agreed date respectively before expiry of the agreed period for delivery/performance. If we accept anyway, we may charge a reasonable storage fee.

2. The delivery note must state our order date (refer above A no. 3).

3. For purchasing contracts, passage of risk is always upon delivery at the receiving location stated by us; in case of contracts for services, only after acceptance.

E. Billing, Payment Conditions

1. Invoices must be submitted separately for each shipment/service. It may not be included with the shipment in any case. The invoice must state all order data (refer above A no. 3). Partial invoices are only possible if corresponding part shipments have been ordered.

2. Payment will be performed, if nothing to the contrary has been agreed, on the 25th day of the month subsequent to delivery, at a discount of 2 %. The payment period begins upon receipt of the invoice, but at the earliest upon acceptance of delivery respectively acceptance of the service, and not before receipt of agreed collateral.

3. Interest on arrears for reimbursement claims are limited to at maximum 5 % points above the base interest rate (§ 247 BGB). If the supplier pays lower interest on loans, then this is decisive. The supplier must prove interest on loans paid by him to us when asserting damages for default.

4. Extended reservation of proprietary rights is excluded.

5. In case of deficiency claims, we are entitled to postpone payment of a reasonable amount of the invoice until final settlement, and even after this period deduct a discount according to no. 2 on the amount retained.

6. Advance payments and payments on account require separate agreement and must be secured by the contractor in advance by a directly liable bank guarantee unlimited in time. The bank guarantee must be subject to German law and show Stuttgart as sole place of jurisdiction. Furthermore, § 239 BGB applies.

F. Quality/Documentation/Deficiencies

1. For his deliveries and services, the contractor must comply with the recognized rules of technology, existing safety regulations and the agreed specifications, dimensions and weights and other properties. Items manufactured based on drawings or approved samples must comply with the preconditions. Insofar as the order does not make any further requirements, deliveries and services must especially conform to usual commercial quality and, to the extent as DIN, VDE, VDI or equal national or international standards exist, made to conform to these. They must especially be made or performed in such a manner that they conform to the statutory regulations at the receiving location stated by us for the delivery/service, respectively at the final destination of our delivery/service to the customer stated by us, especially for technical work implements, accident prevention, workplace protection, hazardous materials, protection against emissions, protection of water bodies and law concerning waste materials. Freeness from legal imperfection in title also extends to the final destination stated by us.

2. The contractor must check our plans, drawings and other information for performance of the service or materials and components or services of other suppliers supplied by us, to the extent as they concern him, for completeness, correctness and suitability for the envisioned purpose. If there are doubts in this respect, then the contractor must immediately notify us of these. If he does not, then he is subject to warranty also in this respect.

3. The period for examination and giving notice of defects (§§ 377, 381 para. 2 HGB) amounts to two weeks from delivery to the delivery location, for defects not detectable during the examination two weeks from discovery of the defect. If in individual cases a longer period is reasonable, then it applies.

4. Parts relevant for quality or safety must be tested according to statutory regulations, agreements or according to customary procedures and must undergo quality tests. The testing documentation must be kept for 15 years and presented to us in case of need. If the supplier closes down his business operation before expiry of the 15 year period, then he must surrender the documentation to us at this time free of cost. The supplier must oblige his suppliers to the same extent within the scope of legal possibilities. The supplier is entitled to shorten the period for keeping documentation if he is able to exclude hazards to life and health during use of his products.

5. In case of supply of larger quantities or amounts, a check of samples is sufficient for proper inspection. If a sample test leads to a result that more than 5 % of samples is faulty, then we are entitled, by our choice, to check the whole shipment at cost of the contractor or to assert our rights from defects for the whole shipment. Any existing further rights in our favor remain untouched.

6. If we require subsequent fulfillment, then we are also entitled to chose the type of subsequent fulfillment in case of service contracts. We also have the right to self-execution in case of purchasing contracts. In urgent cases, we do not have to grant a period of notice before self-execution.

7. Our warranty claims are limited in time to two years, if the law does not provide for a longer period of limitations. Our written notification of defects suspends the limitation in time of our warranty claims until one or the other party declines negotiations respectively continuation of negotiations.

8. If we request initial samples, then mass production may only begin after written notification of approval of the samples.

G. Liability

1. The materials and parts to be supplied to us are – if nothing to the contrary has been determined – envisioned for installation in motor vehicles respectively special purpose vehicles. These products may be sold worldwide.

2. If we are subject to product or manufacturer liability claims due to domestic or international law, then the contractor is obliged to indemnify us from and against claims for damages of third parties to the extent he is responsible for the fault triggering liability. Within this scope, the contractor is also obliged to reimburse such expense resulting from or in connection with a recall performed by us or other damage repairing or preventing corrective actions. The contractor to this extent waives any plea for lapse of time, unless we ourselves are able to plea for lapse of time with respect to the claimant.

H. Infringement of Industrial Property Rights

1. The contractor is responsible for the fact that in connection with his delivery or service, its sale, processing or other intended further use, no rihgts of third parties are violated. We supply worldwide.

2. If we are held liable by third parties in contrary to para. 1, then the contractor must reimburse us for all expenses and damages we incur because of being held liable.

I. Assignment of Receivables

Receivables for goods and services may only be assigned to third parties with our approval. To the extent as the receivables do not come from a reciprocal trade transaction anyway and the effects of sentence 1 are therefore determined by § 354 a HGB, the following applies: we oblige to grant our approval if the contractor grants rights to extended reservation of proprietary rights or assigns receivables to his principal banker by way of collateral and the new creditor obliges to indemnify us from and against claims of the contractor (respectively his administrator) and in case of payment of the receivable to provide us with a directly liable bank guarantee of a large German bank or savings association (Sparkasse).

J. Provision of Materials

1. Materials/parts provided remain in our property and must be stored separately, especially marked and only to be used for our order by the contractor. The contractor is liable for damage or loss even without fault.

2. Processing or transformation by the contractor is performed for us. If the objects provided by us are processed with other objects not belonging to us, then we acquire co-ownership in the new object in relation of the value of our objects to the other processed objects at the time of processing.

3. If the objects provided by us are merged with other objects not belonging to us, then we acquire co-ownership in the new object in relation of the value of the objects provided by us to the other merged objects at the time of the merger. If the merger is performed in a manner that the object of the contractor must be regarded as the main object, then it is deemed agreed that the contractor assigns to us proportionate co-ownership; the contractor will safekeep co-ownership for us. The above regulations apply accordingly if the contractor mixes or blends the objects provided by us with other objects.

4. The contractor will insure the object in which we are entitled to sole or co-ownership, including the new object created by processing, against all risks like fire, property damage, loss, etc..

K. Title, Right of Use, Confidentiality

1. The contractor is obliged to treat information confidentially he has been granted access to as well as knowledge gained on occasion of execution of the order, even beyond settlement of the order, and not to exploit it for himself.

2. All objects, especially vehicles, models, tools, samples, drawings, plans and documentation of any kind supplied to the contractor remain our property. The contractor must surrender such objects to us at any time upon request free of cost. The contractor must keep such objects confidential, if required, camouflage them, and may neither hand them over to third parties for inspection nor otherwise make them accessible, no reproduce them, nor use them for his own purposes. Sentence 3 applies accordingly to the subject matter of the agreement, unless this concerns an object in which there is evidently no interest in confidentiality, like for instance office or work materials, etc.

3. Para. 2 applies accordingly to molds, tools, or similar equipment or supplementary means for the manufacture of the subject matter of the agreement, which is manufactured according to such models, samples, drawings, plans, etc. stated in para. 2 or which are manufactured wholly or partially at our cost. Modifications to these may only be made with our approval. It is deemed agreed that title to the objects stated above passes to us (if reimbursement has been agreed, upon its payment) and that these objects must be safekept for us free of cost and in proper manner. If we have paid for the objects stated before their completion, then we even then acquire title to the semi-finished goods according to the regulation above.

4. The contractor obliges to insure the objects stated in paras. 2 and 3 and in which we hold title against all risks like fire, property damage, loss, etc.

5. In the cases of B no. 2, we hold the exclusive right, unlimited in time and space, to make use of the results in any manner. If relevant, we are entitled to register industrial property rights.

6. If, in connection with the order, improvements are created for the contractor, then we have a free, non-exclusive right of use for commercial exploitation of the improvement and possible industrial property rights in it.

7. To the extent the supplier has sub-suppliers, he must ensure that these are also obliged to confidentiality to the scope stated above.

L. Advertising

The contractor is prohibited from advertising directly or indirectly concerning the business relation existing with us without our approval. This applies independently of the fact whether the advertisement expressly refers to us or only to the subject matter of the agreement.

M. Place of Fulfillment, Place of Jurisdiction and Applicable Law

1. Place of fulfillment is the location in which the subject matter of the agreement must be supplied according to the order or in which the service must be performed according to the order. If nothing has been agreed, then the place of fulfillment is our domicile D-71563 Affalterbach.

2. To the extent as our contractors are merchants or do not have a place of general jurisdiction within the Federal Republic of Germany, the courts responsible for our domicile D-71563 Affalterbach are agreed as place of jurisdiction. But we are also entitled to assert claims at any other statutory place of jurisdiction.

3. The contract relationship is subject to the laws of the Federal Republic of Germany. Application of the treaty of the United Nations dated 11.04.1980 for agreemetns of international purchase of goods (UN purchasing law) is excluded.

N. Closing Regulations

1. If a contract party ceases payments or if insolvency proceedings are opened for their assets or if judicial or extrajudicial settlement proceedings are applied for, then the other contract party is entitled to cancel the part of the agreement not performed. Further claims remain untouched.

2. Should individual parts of these order and purchasing conditions should be omitted by law or individual agreement, then the effectiveness of the remaining regulations remains untouched. A faulty or invalid regulation must be replaced by a regulation coming as close as possible to the economic purpose of the faulty or invalid regulations in legally effective manner.