

Standard Terms and Conditions of Purchase

These Standard Terms and Conditions shall apply only vis-à-vis entrepreneurs, legal entities under public law or special funds under public law.

1. General

- 1.1 These Standard Terms and Conditions („Conditions“) shall apply to all deliveries between MICHAEL HÖRAUF MASCHINENFABRIK GmbH + Co KG („Hörauf“) and the supplier („Supplier“); this includes the supply of spare parts, format parts and conversion parts, even in case that these conditions are not mentioned in subsequent contracts. These conditions shall apply exclusively. Differing terms and conditions of the Supplier shall not become part of a contract even if an offer referring to such terms and conditions has been accepted.
- 1.2 Supplementary or differing agreements to these Conditions that are concluded between Hörauf and the Supplier in order to execute a contract shall be stipulated in writing in the respective contract. This also applies to a waiver of the requirement for written form. The statutory precedence of individual agreements shall remain unaffected.
- 1.3 These Conditions shall be without prejudice to any additional rights to which Hörauf may be entitled in accordance with statutory provisions.

2. Order and delivery item

- 2.1 Orders are only binding if made in written or text form by a person that is authorized to sign for Hörauf. Any orders placed orally or by telephone shall only become binding for Hörauf once made in accordance with the aforementioned written or text form.
- 2.2 The acceptance of any order shall be promptly confirmed by the Supplier, in any case not later than within five business days. If Hörauf is not provided with a confirmation within eight business days after the order is made. Hörauf shall be entitled to cancel the order.
- 2.3 Within the bounds of what is reasonable, Hörauf is entitled to demand changes from the Supplier with respect to the construction and finish of the delivery item. In such case, the finishing, in particular with respect to additional charges or cost reductions as well as the date of delivery, shall be adequately taken into account.
- 2.4 Offers and cost estimates by the Supplier shall be made free of charge, except if otherwise agreed in writing.
- 2.5 The Supplier may not subcontract all or part of its performance owed without the prior written approval by Hörauf.

3. Prices and payment

- 3.1 The price indicated in the order is binding. Unless otherwise agreed in writing, all prices shall be understood as “delivered duty paid” (DDP pursuant to Incoterms® 2010), including all and any ancillary services (e.g. assembly and installation) as well as ancillary costs (e.g. proper packaging, including potential transport and third-party liability insurance and packing free site of use). All prices shall be exclusively net; statutory VAT will be stated in the invoice separately and at the applicable rate.
- 3.2 The invoice shall be delivered to the Hörauf postal address and shall not be attached to the delivery. The invoice must include all of the following information required by Hörauf: Date of the invoice, date of performance, order number, Hörauf Ident-Number, quantity delivered, unit price, total price, price surcharges and deductions, terms of delivery and payment. Invoice copies are to be designated as duplicates.
- 3.3 Subsequent price increases, for whatever reason, are excluded.

4. Terms of payment

- 4.1 Except if otherwise agreed upon in writing, payment is made net cash within thirty (30) days from receipt of a proper invoice. If payment is made within fourteen (14) days Hörauf is entitled to a cash discount of 3% of the net price.

- 4.2 Payment will be made subject to inspection of the invoice. In case of non-conformity of the delivery, Hörauf is entitled to withhold any payment due without loss of any rebates, discounts or similar price reductions until proper performance. In case the Supplier has to provide material tests, test reports, quality documentation or any other documentation on the basis of an individual contractual agreement, the acceptance of delivery is also subject to receipt of such documents. The payment period begins after the complete remedy of any defects. In the event of premature delivery, the payment period does only begin with the agreed date of delivery.
- 4.3 Hörauf objects to any intended agreement stipulating any interest on maturity or any default interest higher than interest owed under statutory law, which may e.g. be set forth in terms and conditions of the Supplier.
- 4.4 Hörauf shall be in default according to the statutory provisions. In any case, a written reminder by the Supplier is necessary.
- 4.5 Title to the goods shall transfer to Hörauf free of any encumbrances upon payment of the goods at the latest. Payments will only be made to the Supplier.
- 4.6 Intended retention of title of the Supplier is not permitted. This also applies to extended or expanded retention of title of the Supplier, to which Hörauf hereby expressly objects.

5. Date of delivery and delay in delivery

- 5.1 Dates and periods stated in the order are binding. Material for compliance with the delivery date is delivery of the goods at the location specified in the order. Premature delivery is not permitted.
- 5.2 If there is a delay in the delivery, Hörauf is entitled to claim a contractual penalty after prior written warning to the Supplier for each completed week of delay in delivery at the rate of 0.5%, but not more than 5% of the net price in aggregate. The contractual penalty shall be set-off against the damages for delay in delivery to be paid by the Supplier. Hörauf is entitled to claim the contractual penalty in addition to fulfillment and as a minimum amount of damages owed by the Supplier under statutory law; the right to claim further damages shall remain unaffected. In case Hörauf accepts the delayed delivery, Hörauf must claim the contractual penalty at the time of the final payment at the latest.
- 5.3 As soon as the Supplier anticipates any difficulties in the procurement of materials, the production etc. which could prevent him from timely delivery as agreed, the Supplier shall inform Hörauf promptly of such delay. This shall not affect the obligation of the Supplier to fulfill its obligation in a timely manner.
- 5.4 Acceptance of delayed delivery or performance does not imply any waiver of any compensation claims.
- 5.5 If the Supplier repeatedly fails to meet delivery dates, Hörauf has the right of rescission even if the Supplier is not responsible for the delay.

6. Dispatch

- 6.1 All deliveries shall be made to the place specified in the order. In case no place of delivery is stated and nothing else has been agreed upon, the delivery shall take place to the place of business of Hörauf in Donzdorf, Germany, “delivered duty paid” (DDP pursuant to Incoterms® 2010). The goods have to be accompanied by a delivery note. All delivery notes shall state the order number, the Hörauf Ident-Number and the quantity delivered.
- 6.2 The Supplier shall take out transport insurance for the delivery item at its expense.
- 6.3 A premature delivery is only permitted upon prior written approval of Hörauf. Hörauf is entitled to return prematurely delivered goods or to store the goods until the date of delivery at Supplier’s expense.
- 6.4 Unless otherwise agreed, partial deliveries and surplus or short deliveries are not permitted. Hörauf reserves the right to accept such deliveries in individual cases.

7. Passing of risk, risk of transport

- 7.1 The Supplier shall bear the risk of accidental loss or of accidental degradation of the goods until acceptance of the goods by Hörauf (delivered duty paid resp. DDP pursuant to Incoterms® 2010). If the Supplier is obliged to erect or assemble the goods within the premises of Hörauf, the risk shall only pass to Hörauf with commissioning of the goods. As for the rest of acceptance of the works the statutory provisions applicable to contracts for work shall apply accordingly.
- 7.2 The Supplier shall observe any instructions given by Hörauf with regard to the dispatch of the goods. The Supplier shall principally pack the goods in a way that transportation damages are avoided. Packaging materials are only to be used to the extent necessary for this purpose. Only eco-friendly, recyclable packaging material shall be used.

8. Quality and documentation

- 8.1 The Supplier warrants that its deliveries comply with recognized rules of engineering and with applicable safety and environmental regulations.
- 8.2 Insofar as the Supplier has received items, data und documents, e.g. drawings, samples, models, tools, templates, factory standards or other provisions from Hörauf, the Supplier warrants that it will comply with these items, data and documents in relation to the nature, condition and design of the delivery item without limitation. Hörauf reserves all property rights and copyrights to any and all aforementioned items and documents.
- 8.3 If Hörauf requested initial samples, series production must not begin until written confirmation has been given that these samples have been approved as good.
- 8.4 If the Supplier has any concerns with regard to Hörauf's specifications, it shall inform Hörauf promptly in writing prior to the start of serial production.
- 8.5 Test documentation shall be kept safely by the Supplier for a period of six years and shall be presented to Hörauf upon request. The Supplier shall place its own suppliers under an obligation to the same extent.

9. Notice of defects

- 9.1 Unless otherwise agreed in writing, notice of defects shall be deemed timely given within the meaning of Sec. 377 German Commercial Code if visible defects are notified to the Supplier within three weeks after delivery of the goods, if statutory law does not provide for a longer notice period. In addition, Hörauf notifies the Supplier of any concealed defects as soon as such defects are identified in the ordinary course of business. In this respect, the Supplier waives its defense of late notification of defects.
- 9.2 Hörauf objects to any provisions set forth in contractual terms and conditions of the Supplier stipulating that notices of defects shall be made in a specific form or within a specific period determined by days.
- 9.3 The receipt of written notice of a defect by the Supplier inhibits the statutory limitation of warranty claims.

10. Warranty and defect claims

- 10.1 Unless otherwise agreed, the statutory provisions on warranty rights apply for the Supplier.
- 10.2 In case the Supplier does not comply with its obligation for supplementary performance – at Hörauf's choice either by remedying the defect (subsequent improvement) or by delivery of an item free of defects (replacement delivery) – within a reasonable time set by Hörauf, Hörauf is entitled to remedy the defect itself and to demand compensation resp. an appropriate advanced payment from the Supplier. If the supplementary performance by the Supplier has failed or is not reasonable for Hörauf (e.g. because of particular urgency, threat to the operational safety or imminent occurrence of a disproportionate damage), there shall be no need to set a deadline; the Supplier shall be informed in this case promptly, if possible in advance.
- 10.3 If Hörauf chooses replacement delivery or subsequent improvement in case of a warranty claim, the warranty period

for the part which is replaced or subsequently improved shall begin on the day of replacement or improvement, unless Hörauf must assume from the conduct of the Supplier that it does not consider itself to be obliged to this measure and is only undertaking the replacement or improvement as a gesture of good will, to avoid disputes or in the interest of the continuation of the supply relationship.

- 10.4 The right to assert further damages incurred by Hörauf in connection with a defective delivery is expressly reserved. Hörauf does not agree to any restrictions to its statutory compensation claims, in particular deriving from tort, breach of contract, culpa in contrahendo, including consequential damages, with regard to the scale of fault, extent of damage or amount of damages.
- 10.5 Notwithstanding Sec. 438 Para. 1 No. 3 German Civil Code, the general period of limitation for claims from defects is three (3) years from transfer of risk, unless a longer period is provided by statutory law. Insofar as an acceptance has been agreed the period of limitation shall begin with the acceptance. The respective period of limitation of three (3) years shall apply also to claims arising out of legal deficiencies, whereby the statutory period of limitation for the right to reclaim possession by third parties (Sec. 438 Para. 1 No. 1 German Civil Code) remains unaffected; claims arising out of legal deficiencies shall in no case be time-barred as long as a third party can still assert such right – particularly because it is not yet time-barred – against Hörauf.
- 10.6 The warranty period for delivery items installed, processed, or resold by Hörauf shall begin only from the time at which the delivery item or the item in which said items were installed or used are delivered to the customer of Hörauf. In addition, the statutory provisions apply with regard to the period of limitation and its passing.
- 10.7 Notwithstanding Sec. 442 Para. 1 Sent. 2 German Civil Code, Hörauf shall be entitled to unrestricted warranty claims even if the defect remained unknown to Hörauf upon conclusion of contract as a result of gross negligence.
- 10.8 For legal deficiencies clause 12 of these Conditions shall apply as well.

11. Damages and product liability

- 11.1 Unless otherwise stipulated in these Conditions, the Supplier shall be liable to Hörauf for damages of any kind, including reimbursement of expenses and indirect damages, such as e.g. a loss of production caused by a delivery item. This applies in particular to claims for any breach of obligations under the law of obligations and claims resulting from tort, including culpa in contrahendo (cf. Sec. 311 German Civil Code). Liability exists within the limits stipulated by statutory law. In particular, the Supplier shall be liable if it has used performing or vicarious agents. Hörauf objects to any limitation in amount of liability.
- 11.2 The Supplier shall carry out all controls on the goods manufactured or delivered by it – notwithstanding any receiving inspection carried out by Hörauf – and is responsible for the defect-free quality of the delivered items. Any receiving inspection carried out by Hörauf does not relieve the Supplier from its duties.
- 11.3 The Supplier shall exempt Hörauf from third party claims under domestic or foreign product liability, which are due to a default in the product supplied by it, if and to the extent that the Supplier is responsible for the product defect and damage incurred under the principles of product liability law. All other claims shall remain unaffected.
- 11.4 In cases covered by clause 11.3, the Supplier shall bear all costs and expenses, including the costs of any legal action. In particular, the Supplier shall reimburse Hörauf for such expenses that are a result of or in connection with precautionary measures against claims from product liability, in particular such as warning campaigns, exchange or recall operations. Hörauf will inform the Supplier of the content and scope of the measures to be taken to the extent possible and reasonable and give the Supplier the opportunity for comments.

- 11.5 The Supplier shall conclude and maintain a product liability insurance policy also covering the risk of any recall measures in an adequate amount and provide Hörauf with proof of such insurance upon request.
- 11.6 The Supplier is aware that the goods delivered by it will be part of an overall facility which will be used worldwide, in particular within the United States of America. Therefore, the Supplier undertakes to structure its product liability insurance to the effect that it covers product liability damages within the United States of America as well.

12. Property rights of third parties

If there is a legal deficiency in the form of a violation of patent rights and patent right applications (trademarks, patents, patent application, utility models and registered designs) the following special rules shall apply in addition:

- The Supplier shall indemnify Hörauf and its customers from these claims for violation of such property rights on first demand.
- The Supplier shall inform Hörauf of any risks of infringement and alleged infringements promptly after the Supplier became aware thereof and – upon Hörauf's request – shall provide Hörauf with the necessary information and shall jointly counteract against those claims. The liability of the Supplier shall remain unaffected hereby.
- Upon request of Hörauf, the Supplier shall notify Hörauf of the use of its own and licensed, published and unpublished, property rights and property right applications with regard to the delivery item.

13. Means of production

- 13.1 Materials and parts provided by Hörauf shall remain the property of Hörauf. They may only be used in accordance with their intended purpose. Processing of materials and assembly of parts shall be carried out exclusively for Hörauf.
- 13.2 It is agreed that Hörauf shall be the joint owner of the goods manufactured from the materials and parts supplied by Hörauf at the ratio of the value of the material and parts supplied by Hörauf to the value of the manufactured final product. If materials or parts provided by Hörauf are damaged by Supplier or altered in a way that such materials or parts can no longer be used as intended, the Supplier shall compensate Hörauf for the loss in value for such materials and parts unless the Supplier is not at fault. In such cases Hörauf is entitled to a set-off against the purchase price as well. Documentation of all kinds, such as samples, drawings, models and the like, that Hörauf has made available to the Supplier shall be returned to Hörauf in a proper condition and free of charge without prior request as soon as they are no longer required for executing the order.

14. Spare parts

- 14.1 The Supplier shall keep stock of spare parts for the products delivered to Hörauf for a period of at least ten years after delivery.
- 14.2 If the Supplier intends to cease production of spare parts for the products delivered to Hörauf, it shall inform Hörauf promptly of its decision. This decision must – subject to clause 14.1 – be made at least six (6) months before production is ceased.

15. Nondisclosure

- 15.1 The Supplier shall keep Hörauf's order as a business secret, together with any commercial and technical details related thereto, which are not in the public domain.
- 15.2 Products manufactured on the basis of documents provided by Hörauf, such as drawings, models, confidential details and the like, or manufactured using tools made by Hörauf or using copies of tools made by Hörauf must not be used by Supplier itself or be reproduced or made available to third parties without prior written approval of Hörauf. The Supplier shall be liable in case of infringement.
- 15.3 Any parts developed or refined by Hörauf on the basis of its own intellectual property, its own information or together with

the Supplier may only be delivered to third parties upon prior written approval of Hörauf.

16. Export control and customs

The Supplier shall inform Hörauf of any possible approval obligations for (re)exports of its goods pursuant to German, European, US export and US customs regulations as well as to the export and customs regulations of the originating country of its goods in its business documents. For this, the Supplier shall at least provide Hörauf with the following information in its offers, order confirmations and invoices for the respective goods:

- The export list number pursuant to schedule AL of the German foreign trade regulations or a comparable list item of relevant export lists,
- For US goods the ECCN (Export Control Classification Number),
- The trade policy origin of its goods and their components, including technology and software,
- Whether the goods were transported through the US, manufactured in the US or produced on the basis of US technology,
- The statistical number of its goods (HS Code) and
- A contact person within its company for the clarification of any queries by Hörauf.

Upon request by Hörauf, the Supplier shall provide Hörauf in writing with any foreign trade information with regard to its goods and their components and to inform Hörauf promptly (prior to any delivery of the respective goods affected by this) of all and any changes to the aforementioned information.

17. Social responsibility and environmental protection

The Supplier shall comply with the respective regulations governing the interaction with employees, environmental protection and occupational safety and work on reducing the lasting effects of its activities on humans and the environment.

18. Governing law / Jurisdiction

- 18.1 German law shall apply to any legal relationships between the Supplier and Hörauf, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 18.2 Exclusive jurisdiction for all domestic (German) legal disputes in connection with this agreement or its validity vis-à-vis merchants and vis-à-vis legal entities under public law shall be Hörauf's company seat. However Hörauf shall have the right to issue proceedings before any other court of competent jurisdiction.
- 18.3 Any disputes, disagreements or claims in connection with a cross-border (international) trade arising out of or in relation to this agreement, including its validity, invalidity, breach or termination thereof, shall be submitted to arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution under exclusion of the jurisdiction of the ordinary courts. The rules in force at the date when the notice of arbitration is served shall apply. The exclusion of the jurisdiction of ordinary courts does not affect any interim relief and any proceedings with regard to the challenge and the enforcement of the arbitral award.
- 18.4 The arbitral tribunal shall comprise of three (3) arbitrators. The arbitrators shall be conversant in the language of the arbitration.
- 18.5 The language of the arbitration shall be German for agreements with Suppliers within the German-speaking area and English for any other agreements with Suppliers, unless the parties have agreed on another language.
- 18.6 The seat of the arbitration shall be STUTTGART, Germany.

19. Miscellaneous

- 19.1 The contractual language shall be German for agreements with Suppliers having their seat within the German-speaking area and English for any other agreements with Suppliers.
- 19.2 Place of performance for any performance of Supplier and of Hörauf is Hörauf's company seat.