

General Terms and Conditions of Purchase (AEB)

Section 1 Scope

1. The following General Terms and Conditions of Purchase (“AEB”) shall apply to all business transactions of the company HOF Sonderanlagenbau GmbH with our suppliers and contractors (“Supplier”) in the area of purchasing and delivery of items, irrespective of whether the Supplier manufactures said items itself or purchases it from suppliers.
2. Our AEB shall only apply if the Supplier is a merchant (Section 14 German Civil Code (BGB)), a legal entity under public law or a special fund under public law.
3. The written form required by these AEB shall also be guaranteed through transmission by remote copy (fax) or e-mail. Individual agreements concluded with the Supplier in specific cases shall take precedence over these AEB. Written confirmation from us or a written contract shall be decisive for the content of such agreements. This shall not apply for verbal ancillary agreements.
4. We shall order exclusively on the basis of these General Terms and Conditions of Purchase. Any deviating, contradictory or supplementary terms and conditions of sale of the Supplier shall not become an integral part of the Contract unless we have expressly consented to their applicability in writing. This approval requirement shall apply in every case, even if we accept the Supplier’s delivery without reservation in knowledge of the latter’s terms and conditions of sale.
5. In accordance with these AEB, a working day shall be deemed to be the calendar weekdays Monday to Friday, as long as they are not holidays.
6. Our order number must be specified in correspondence with our company and on all delivery notes and invoices if said correspondence applies to orders.

Section 2 Offers, Conclusion of Contract

1. Offers as well as any quotes shall be submitted by the Supplier to us in writing and always free of charge. Orders shall only be deemed legally binding if they are placed in writing. We shall only be bound by verbal agreements if we have confirmed them in writing; the same shall apply for changes and additions to contracts.
2. In the case of orders without pricing, we reserve the right to withdraw if we do not consent to the price specified in the confirmation; this shall also apply unless the Supplier reserves the right to charge at the respective daily price. Price increases must be expressly acknowledged by us in writing and shall entitle us to withdraw from the Contract. A dispatch may only take place after the Supplier has received our declaration of consent to the new price. Without our prior consent, any dispatch and packaging costs for the delivered goods shall be borne by the Supplier. This shall include the return costs. If we cannot reach an agreement, we shall be entitled to withdraw from the purchase. If the Supplier generally reduces its prices during the above-mentioned agreement, then the respective price of the calculation valid on the day of delivery shall be the basis of the calculation.

3. The respective agreed specifications of the goods shall be the basis of the order. Our prior approval in particular as regards samples, patterns, descriptions or other examples of goods, as well as their specifications and product descriptions which are subject of the Contract or incorporated in an effective manner in this Contract – e.g. through designation or reference in our order – shall be deemed to be agreement to the condition. Quality features shall be deemed, for example, function, working speed and precision of the delivered goods. If the sample, the pattern or other examples of goods deviate positively from the prior specifications and we approve them in writing vis-a-vis the Supplier, this shall be deemed as agreement to the condition.
4. The Supplier undertakes to accept our order (offer) within a deadline of one week by confirming it in writing and stating the prices and delivery time.
5. Assembly and operating instructions, service handbooks, spare part catalogues as well as testing logs and reports shall also be deemed part of the delivery scope provided that they are pertinent to the goods in question. Upon written request, the Supplier shall also hand over to us all registration documents and/or certification documents for the ordered goods.
6. The Supplier undertakes to notify us of any approvals and reporting obligations required for the import, export and sale of the goods as well as other delivery items. The corresponding documentation (e.g. customs documentation) must be handed over to us together with the delivery.
7. Machines shall be provided in the latest version and must correspond to the latest findings and applicable state-of-the-art in the field of mechanical engineering and be constructed using standardised machine parts in accordance with the applicable DIN/EN.
8. All delivered goods must meet the statutory requirements and be fully marketable. Upon transfer of risk, they must be approved by the requisite competent inspection body for the expected purpose and affixed with any safety devices required by the authorities. The Supplier shall observe all safety regulations, in particular the protective provisions of the Product Safety Act, fire safety regulations and environmental safety regulations, as well as the regulations of the professional associations, e.g. accident prevention regulations.

Section 3 Delivery, Delay, Contractual Penalty

1. Agreed delivery periods and deadlines shall be binding for the Supplier. If the delivery time is not specified in the order and has not been otherwise agreed, it shall be 10 working days from conclusion of contract. The date upon which we receive the goods shall be decisive for the observation of delivery periods or deadlines. If the Supplier does not render its service within the agreed delivery time or is default, we shall be entitled to statutory claims, in particular to withdraw from the Contract and to claims for damages. The regulations in Section 3 (6) and (7) shall remain unaffected.
2. The Supplier undertakes to provide compensation for indirect and direct damages due to delay. If the agreed deadlines cannot be observed due to circumstances attributable to the Supplier, we shall be entitled, upon expiry of an appropriate grace period set by us, and at our own discretion, without prejudice to any additional claims under statutory law, to demand compensation on the grounds of non-fulfilment, to obtain an alternative from a third party and/or to withdraw from the Contract.
3. The unconditional acceptance of a delayed delivery or service shall not be deemed to be a waiver of the claims due to us as result the delay.

4. The Supplier shall only be entitled to part deliveries from us after obtaining our prior written consent.
5. The Supplier undertakes to immediately inform us in writing if circumstances arise which indicate or it notices that it cannot observe the agreed delivery periods and deadlines; the Supplier shall also inform us in writing of the expected duration of the delay. The Supplier shall also inform us immediately in writing of any possible supply bottlenecks in the case of force majeure, specifying the expected duration of the delay. A delivery bottleneck shall be deemed to be when the ordered goods cannot be delivered for a period of more than 5 working days. Force majeure and labour disputes shall release the Supplier and us for the duration of the disruption of the performance obligations. The contractual partners shall be mutually obliged to immediately inform the respective other party of the particular impacts and to adjust their obligations to the changed circumstances. We shall be released from the obligation to accept or to partly or fully accept the delivery and entitled to withdraw from the Contract to that extent if we can no longer use the delivery for economic reasons attributable to the delay caused. If the execution period is exceeded as a result of force majeure, we may request the delivery/service from the Supplier at a later time to the originally agreed conditions or after the expiry of a reasonable grace period, or fully or partly withdraw from the Contract or terminate it.
6. The Supplier can only invoke the lack of delivery of documentation, data, free-issue and the like by us if the Supplier has requested these in writing and does not receive them within a reasonable period.
7. If the Supplier is in default, we shall be entitled to demand a contractual penalty in the amount of 0.25% of the agreed gross order value per working day. The contractual penalty shall amount in total to a minimum of EUR 50.00; however to a maximum of 5% of the agreed gross order value, unless otherwise agreed to in writing.

We shall be entitled to request a contractual penalty, in addition to performance and as a minimum sum, the damages owed by the Supplier in accordance with the statutory regulations. The assertion of further damages shall remain unaffected by this. The Supplier shall retain the right to prove that we have suffered absolutely no damage or a much lower level of damage.

8. If the delivery arrives earlier than agreed, we reserve the right not to accept it and to return it at the Supplier's cost. If there is no return of an early delivery, the goods shall be stored on our premises until the delivery date at the Supplier's cost and risk. Early delivery shall have no impact on the agreed due date for payment.

Section 4 Inspection and Information Requirements

1. The Supplier shall be independently obligated to take our advice in regard to the selection and specification of the goods to be supplied; in particular, the Supplier shall be obligated to point out in writing any concerns over the suitability of the goods we have selected or our specifications for the intended purpose, provided that it has the requisite knowledge to do so. The Supplier shall also immediately and fully inform us in writing about new technical developments and regulations within the scope of the business relationship on the basis of orders that we have placed in the past.
2. In the case of an existing business relationship, the Supplier shall inform us of changes in its operating procedures, such as changes to production standards, the production location, or spare part availability, etc. so that the corresponding scheduling can be made.

Section 5 Transport, Transfer of Risk, Third Parties

1. Unless otherwise agreed in writing, the delivery shall be carried out to us free of charge, including packaging. We and any recipients specified by us shall be notified of every delivery on the day of dispatch.
2. A delivery note specifying the date, the content of the delivery as well as our order reference must be included in the delivery. If the delivery note is missing or is incomplete, we shall not be responsible for any resulting delays in processing and payment. Approved partial deliveries shall be designated as such.
3. The goods must be packaged by the Supplies to prevent damage occurring in transit. At our request, the Supplier shall collect packaging material at its own cost.
4. The risk of accidental loss and deterioration of the goods shall transfer to us only upon delivery at the place of performance (Section 14 (1)) or upon acceptance, insofar as this has been agreed. The Customer shall cover the transport insurance. We hereby declare ourselves to be an SVS/RVS waiver customer.
5. The Supplier shall not be entitled to have the service owed by it rendered by third parties (e.g. subcontractors) without obtaining our prior written consent to do so.
6. We may request written changes within reasonable bounds to our ordered delivery in the amount, type and design of the delivery from the Supplier. The Supplier shall implement the changes within a reasonable period. Mutually reasonable regulations must be met, in particular with regard to the delivery deadline as well as increased or reduced costs.

Section 6 Prices, Default, Offset, Retention, Assignment

1. The price specified in the order shall be deemed to be the fixed price, plus the respective applicable VAT unless the Supplier lowers its prices. In the latter case, the Supplier shall immediately inform us in writing of the lowered prices and offer them to us for the order in question.
2. The price shall include all services and ancillary services of the supplier (e.g. assembly/installation). All other costs (e.g. proper packaging, transport costs including possible transport and liability insurance, postage, customs duties) shall be agreed separately and also separately noted on the invoice.
3. Invoices shall be submitted to us within 14 days of delivery. The payment period shall run on the proviso that the goods are received or the service is rendered, and that incoming goods inspection is defect-free taking into account the receipt of the invoice. Unless otherwise agreed, the following payment condition shall apply:

Payable within 14 days with 2% discount, or within 30 days nett.

In the event of delayed deliveries, the duration of the aforementioned payment condition shall begin from successful incoming goods inspection with the addition of the delay.

4. We shall not owe any interest on maturity. The default interest shall be 5 percentage points above the base interest rate. The statutory regulations shall apply for the occurrence of default, whereby the Supplier must be sent a written reminder in every case.

5. We shall be entitled to offsetting and retention rights as well as the right to raise the objection of non-performance of the contract in the legally permissible scope. The Supplier shall only have offsetting and retention rights against us in the event of legally binding or undisputed claims.
6. Payments to the Supplier shall not be deemed acceptance or approval with regard to the contractual conformity of the service rendered by the Supplier.
7. The Supplier shall not be entitled to assign claims against us to third parties without our prior written consent.

Section 7 Warranty/Liability

1. Unless otherwise agreed below, the statutory regulations shall apply for our rights in the case of material and legal defects in the delivered goods, including false and shortfall in delivery, improper installation, inadequate installation or operating instructions as well as in the case of other breaches of duty by the Supplier. Unless otherwise regulated below, the warranty shall be at least 12 months.
2. The Supplier shall be liable in accordance with the statutory regulations, in particular for ensuring that the delivered goods are appropriate for the application provided for in the Contract, and comply with the latest state of the art as well as the official and statutory regulations. The Supplier shall also be liable for ensuring that the delivered goods have the guaranteed or agreed quality, in particular, comply with the agreed specifications. If deviations from these regulations are necessary in individual cases, the Supplier must obtain our written consent in this regard. The guarantee or warranty obligation of the Supplier shall be unaffected by this provision. If the Supplier has concerns about the type of execution requested by us, it must immediately inform us of this in writing.
3. The following shall apply within the scope of the statutory obligations to inspect and give notice of defects in accordance with Sections 377 and 381 HGB: Our inspection obligation shall be limited to defects which are recognisable during our incoming goods checks, during external appraisal or during random quality control. If acceptance has been agreed, there shall be no obligation to inspect. Our right to give notice of defects for defects discovered at a later date shall remain unaffected. Our notification of defects shall be deemed immediate and timely if it is sent within 3 working days of us becoming aware of said defects.

4. All inspection or repair costs incurred by the Supplier (including any dismantling and assembly costs for the transport of disputed goods) shall be borne by the Supplier.
5. If the Supplier does not fulfil its obligation to render supplementary performance, at our choice, by rectifying the defect or by supplying defect-free goods (along with recall of the defective goods) within a reasonable period set by us, or has refused supplementary performance outright and without authorisation, we shall immediately and irrespective of our warranty claims be entitled to remedy the defect ourselves or to have it rectified by a third party in our contract and request compensation for the required expenses in this regard, or a reasonable advanced payment from the Supplier. In urgent cases and after consulting the Supplier, we can undertake the repair work ourselves or have it carried out by a third party without affecting the guarantee or warranty obligation of the Supplier. The same shall apply if there is a threat of unusually high damages.
6. If subsequent performance by the Supplier is unsuccessful or unreasonable for us, e.g. on the grounds that it may endanger operational safety, or there is a risk of impending disproportionate damage or another particular urgency, there shall be no need to set a deadline. Where possible, we shall immediately inform the Suppliers of such circumstances as well as the type of the required urgent measures or the urgent measures taken. In special cases, we may request that the Supplier immediately take provisional measures provided that the expenses for said measures are not completely disproportionate to our interests in a provisional improvement. The obligation to fully rectify defects shall remain unaffected thereby.

Our rights in accordance with the statutory provisions, in particular our right to reduction of the sale price or to withdraw from the Contract, as well as to compensation for damages and expenditure shall remain unaffected by the aforementioned.

7. Liability shall only be assumed for intent and gross negligence for sample pieces handed over to us by the Supplier.
8. Returns due to incorrect or defective deliveries shall be effected at the Supplier's expense.
9. The Supplier shall be liable to us in accordance with the statutory provisions; primarily without limitation in cases of simple negligence as well.

Section 8 Limitation period

1. The reciprocal claims of the contractual parties shall become time-barred in accordance with the statutory provisions unless otherwise agreed below.
2. Notwithstanding Section 438 Para. 1 (3) BGB, the general limitation period for material defects and defects of title shall be 3 years. The statutory limitation period for material surrender claims of third parties in accordance with Section 438 Para. 1 (1) BGB shall remain unaffected; furthermore, claims resulting from defects of title shall not become time-barred in any case as long as the third party can still assert the right against us – in particular in the absence of limitation. In addition, the limitation period in the case of raw materials that are further processed by us to end products which are used for a building in accordance with their usual purpose shall be six years.

3. Notwithstanding Section 438 Para. 1 (2) BGB, the general limitation period deadline for material defects and defects of title in the event of buildings and items which are used for a building in accordance with their usual purpose and have caused its defectiveness, shall be six years.
4. If acceptance has been agreed, the limitation period shall begin with the acceptance. If there is no acceptance of delivery, the limitation period shall begin with the occurrence of the claim.
5. The limitation periods governing the sale of goods and Sections 2 and 3 above shall apply only as minimum periods for our extra contractual claims for damages which are connected with a defect in the goods; otherwise the regular statutory limitation period shall apply (Sections 195, 199 BGB). The same shall apply if no sold right exists, the Supplier assumes a guarantee or maliciously conceals a defect.
6. The limitation period for defect claims shall also be suspended if the Supplier inspects the goods itself to determine whether a defect exists. The suspension of the limitation period shall only end if the Supplier informs us in writing that the negotiation has ended or has sent us the results of the inspection, or the Supplier refuses in writing to continue to rectify the defect. The resumption of negotiations, inspection or rectification of the defects shall result once more in suspension of the limitation period.

Section 9 Industrial Property Rights, Software

1. Unless agreed otherwise in individual contracts, the Supplier shall grant us at the very least a non-exclusive, untransferrable and unlimited in time right to use the software and hardware products and the related documentation (“Software”).
2. We shall be entitled to make copies of the Software for backup purposes. We shall also be entitled, with reference to a possible copyright notice from the copyright holder, to pass on the software – in total or in partly – to our customers in connection with the contractual processing.
3. The Supplier shall accept responsibility for ensuring that the software and its data structure are free of error, and shall ensure proper duplication.
4. In the case of delivered software which was specially developed or adapted for us or software which we are entitled to process or amend, we may request deposit of the software source code in addition to information on the author(s) at a notary of our choice at our cost and on the basis of a fiduciary agreement which entitles the notary to hand over the deposited documentation to us in the case of liquidation or insolvency of the Supplier. In the event of a justified handover, the Supplier shall already grant us a non-exclusive, unlimited in time right to alter the source code and to its altered or unaltered use to the extent that we are entitled to use the delivered software.
5. The Supplier shall give assurance that no third-party rights are violated with its delivery. If a third party makes a claim against us for violating such a protection right, the Supplier undertakes to release us from such third-party claims. The Supplier's duty to indemnify shall extend to all required expenses which we incur from or in connection with the claims asserted by a third party.

Section 10 Confidentiality

1. We shall retain ownership of and technical and industrial property rights as well as copyrights in all images, drawings, calculations, models and other information or documentation which we have handed to the Supplier for contractual fulfilment. The Supplier therefore undertakes to treat these confidentially, not to copy them and not to make them available to third parties.
2. All images, drawings, calculations, models and other information or documentation produced for us by the Supplier shall be marked with the statement: “for HOF Sonderanlagenbau GmbH”. We shall already reach an agreement with the Supplier now that ownership of as well as all usage rights in all thus labelled images, drawings, calculations, models and other information or documentation shall transfer to us and the Supplier shall accord us possession of the images, drawings, calculations, models and other information or documentation as custodian. All images, drawings, etc. made available by us shall be exclusively used for production on the basis of our order, and returned to us with all transcripts or copies, also in electronic and/or digital form, such as data carriers and CD-ROM data storage devices, immediately and at any time at our request. After processing the order, they must be returned to us without request.
3. The above-mentioned provisions shall apply correspondingly for fabrics and materials as well as for tools, templates, pattern and other items which we make available to the Supplier. Such items shall – provided that they are not processed – be stored separately and secured against destruction and loss to an adequate extent at the cost of the Supplier. Any processing, mixing or combining of goods provided shall be undertaken for us by the Supplier. Accordingly, in the event of any further processing of the delivered item by us, we shall be deemed the manufacturer and shall acquire ownership of the product in accordance with the statutory provisions.
4. The duty of confidentiality in accordance with these AEB shall also remain in force for a period of 5 years after the end of this Contract; further statutory claims (e.g. Arising from Section 17 f. German Act against Unfair Competition (UWG)) shall remain unaffected.
5. Third parties shall only be notified of existing business relationships with us with our consent.

Section 11 Retention of title

The goods shall be transferred to us unconditionally and regardless of payment of the corresponding remuneration. We shall remain entitled, in proper course of business also before payment of the requisite remuneration, to resell the goods subject to advance assignment of the resulting claim, insofar as this does not exceed the Supplier’s claim. All other forms of retention of title, in particular expanded, passed on or extended retention of title for processing, are excluded in every case so that a retention of title declared effective by the Supplier vis-a-vis us shall only have the effect of a simple retention of title. Agreements which deviate from this shall be concluded exclusively in written form.

Section 12 Producer liability

1. If the Supplier is responsible for product damage, it shall be obligated to release us insofar as there are claims from third parties, the cause is within its field of control and organisation and it is liable itself in the external relationship.

2. Within the scope of its indemnity obligation, the Supplier shall also refund us any expenses in accordance with Sections 683 and 670 BGB which result from or in connection with recall action carried out by us. We shall inform the Supplier – insofar as is possible and reasonable – and afford it the opportunity to make a statement on the content and scope of the recall measures to be carried out. Further statutory claims shall remain unaffected.

Section 13 Conclusion of contract

1. If there is good cause, we shall be entitled to terminate the contract with the Supplier with immediate effect. Good cause shall be deemed in particular the case of
 - Suspension of business activity of the Supplier;
 - Suspension of payment or inability to pay on the part of the Supplier;
 - Opening of insolvency proceedings on the assets of the Supplier or refusal to open insolvency proceedings due to a lack of assets, or
 - Repeated (at least three times in a period of 6 (six) months) incomplete, delayed or defective delivery by the Supplier and prior warning.
2. If the overall success can be attributed fully to the Supplier's performance while performing its service obligations, and thus the law on contracts for work and services is solely applicable (this is the case in particular if the Supplier renders its contractual service on an already existing item of ours (e.g. property, building, machine), we shall be entitled to terminate the Contract at any time before completion of the work in full. The legal consequences of Section 649 BGB shall apply in this case.

Section 14 Place of Performance, Choice of Law and Place of Jurisdiction

1. Insofar as nothing further arises from the order, the delivery address specified by us shall simultaneously be the place of performance.
2. If individual provisions or parts of these AEB become ineffective, the effectiveness of the other provisions and parts shall not be affected.
3. The law of the Federal Republic of Germany shall apply for these AEB and all legal relationships between the Supplier and ourselves with the exclusion of all inter and supranational regulations, in particular the UN Purchasing Law. The conditions and consequences of the retention of title shall however be subject to the law of the place where the respective article is stored if, under said law, a choice of law made in favour of German law is not permitted or is ineffective.
4. The sole place of jurisdiction for all disputes resulting indirectly and directly from the contractual relationship shall be the District/Local Court of Marburg. This shall only apply if the Supplier is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law. However, we shall also be entitled to take legal action at the place of performance of the delivery obligation or at the registered office of the Supplier.

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