

General Terms and Conditions of Purchase for hubergroup Deutschland GmbH

As of February 2015

1. General statements, area of application

1.1. These General Terms and Conditions of Purchase (GTCP) apply to all business relations with our business partners and suppliers ("vendor" below). The GTCP apply particularly to contracts for the sale and/or the delivery of movable items (also "Goods" below), regardless of whether the vendor produces the Goods himself or buys them from suppliers (sections 433, 651 of the German Civil Code (BGB)). The particular version of the GTCP is also regarded as a framework agreement for future contracts for the sale and/or the delivery of movable items with the same vendor without it being necessary for us to refer to the GTCP in each individual case; in this case, we will inform the vendor about any changes to our GTCP without delay.

1.2. These GTCP shall apply exclusively. Divergent, conflicting or additional general terms and conditions of the vendor shall only be part of the contract if and to the extent that we have expressly accepted them in writing. This requirement for us to accept terms shall apply in any case even if, for example, we accept the vendor's deliveries without reservation, while being aware of the vendor's general terms and conditions.

1.3. Individual agreements concluded with the vendor for particular cases (including ancillary agreements, additions and amendments) always take priority over these GTCPs. The content of such agreements is subject to a written contract and/or our written confirmation.

1.4. Any material statements and notifications that the vendor must deliver to us after conclusion of the contract (e.g. deadlines, reminders, cancellations) must be made in writing in order to become effective.

1.5. Reference to the applicability of legal provisions is for clarification purposes only. Even without such clarification, the legal provisions shall apply unless they are directly amended or explicitly excluded in these GTCP.

2. Conclusion of contract

2.1. Our order shall be binding at the earliest when issued or confirmed in writing. Prior to accepting the order, the vendor shall advise us of obvious errors (e.g. spelling or calculation mistakes) and incomplete orders, including incomplete order documents, for the purpose of correction and/or completion; otherwise the contract shall be regarded as not concluded.

2.2. The vendor is obliged to confirm our order in writing within one working day or in particular to carry out the order by sending the Goods without reservation (acceptance). Late acceptance is considered to be a new offer and requires acceptance by us.

3. Delivery time and delayed delivery

3.1. The delivery date that we stated in the order shall be binding. If the delivery date is not stated in the order and had not been agreed otherwise, it shall be one week from the conclusion of contract. The vendor is required to notify us in writing, without delay, if he does not expect to comply with agreed delivery dates, for whatever reason.

3.2. If the vendor does not effect performance or does not do so within the agreed delivery period, or if he is delayed, our rights (in particular to cancellation and compensation) shall be determined by statutory provisions. The provisions in para. 3 remain unaffected.

3.3. If the vendor is in default, we shall be entitled – in addition to further legal claims – to claim a lump-sum indemnification of our loss caused by default in the amount of 1% of the net price for each calendar week completed, although in total not more than 5% of the net price of the delayed Goods. We reserve the right to provide evidence that higher losses occurred. The vendor is entitled to prove that we sustained no loss at all or only a substantially lower loss.

4. Performance, delivery, transfer of risk, delay in acceptance

4.1. In the absence of our prior written consent, the vendor is not entitled to have third parties (e.g. sub-contractors) effect the performance owed by him. The vendor bears the procurement risk for his contractual obligations unless agreed otherwise in a particular case (e.g. sale of Goods in stock).

4.2. Unless agreed otherwise, delivery shall be made within Germany "carriage paid" to the place stated in the order. If the destination is not stated and no other agreement was made, the supplier must consult the company before shipment. The destination shall also be the place of performance (obligation to deliver).

4.3. Delivery must be accompanied by a delivery note indicating the date (issue and shipment), content of the delivery (item numbers and quantity) and our order code (date and number). If the delivery note is missing or is incomplete, we do not accept responsibility for any resulting delays in handling and payment.

4.4. The risk of accidental loss or accidental deterioration in the Goods is transferred to us when they are delivered at the place of performance. If an acceptance inspection is agreed, it shall constitute the basis for the transfer of risk. In all other respects, the statutory provisions of work contract law shall also apply accordingly if an acceptance inspection is carried out. If we are delayed in accepting the Goods, this will be considered as delivery or acceptance.

4.5. Statutory provisions shall apply to the occurrence of our delay in acceptance. The vendor must nevertheless expressly offer us his performance if a specific or specifiable calendar date is agreed for an action or participation on our part. If we delay in accepting the Goods, the vendor may demand compensation for his additional expenses in accordance with statutory provisions (Section 304 BGB). If the contract involves a unique item manufactured by the vendor (custom-made item), the vendor shall only be entitled to more extensive rights if we have undertaken to participate and are responsible for failure to participate.

5. Prices and payment terms

5.1. The price cited in the order is binding. All prices include VAT unless this is itemised separately.

5.2. Unless agreed otherwise in a particular case, prices include all performance and ancillary services of the vendor as well as all additional costs (e.g. proper packaging, transportation costs including any insurance for transportation or liability). Upon request, the vendor is obliged to take back the packaging material.

5.3. The agreed price shall be due within 30 calendar days as from the date of complete delivery and performance (including any acceptance inspection that is agreed) as well as the receipt of a proper invoice. If we make payment within 14 calendar days, the vendor shall grant us a 3% discount on the net invoice amount. Payment by bank transfer is made in good time if our transfer instruction is received by our bank before the end of the payment period; we do not accept responsibility for delays caused by the banks involved in the payment procedure.

5.4. We do not owe due date interest. Default interest is 5 percentage points above the base interest rate per year. Statutory provisions shall apply to the occurrence of our default. A derogation from these provisions may apply insofar as the vendor is at all events required to send a written reminder.

5.5. We are entitled to set-off and retention within the scope permitted by law as well as the objection of non-performance of the contract. In particular, we are entitled to withhold due payments as long as we have claims based on incomplete or inadequate performance against the vendor.

5.6. The vendor is only entitled to set-off or retention if the counterclaims are undisputed and legally binding.

6. Confidentiality and retention of title

6.1. Pictures, plans, drawings, calculations, implementation instructions, product descriptions and other documents are the sole property of our company with all rights reserved. Such documents are to be used exclusively for performance under the contract. They must be returned to us upon completion of the contract. The documents must be kept secret from third parties, even upon termination of the contract. The obligation to maintain secrecy only expires if and when the information in the relevant documents has entered the public domain.

6.2. The above provision applies accordingly to items and materials (e.g. software, finished products and semi-finished products) and to tools, drafts, samples and other items which we put at the vendor's disposal for producing the items. Such items shall be stored separately by the vendor at his expense unless used for production. They shall be insured against damage and loss to a reasonable extent.

6.3. The items provided are processed, blended or combined (further processing) by the vendor on our behalf. The same shall apply when the supplied Goods are processed by us, such that we are considered to be the manufacturer and acquire title to the product no later than the date of processing, subject to statutory provisions.

6.4. Ownership of the Goods must be transferred to us unconditionally, irrespective of payment of the price. If, in a particular case, we nevertheless accept an offer from the vendor in which transfer of ownership is conditional on payment of the purchase price, the vendor's retention of title shall lapse no later than the date on which the purchase price is paid for the supplied Goods. In the normal course of business, we remain entitled to re-sell the Goods even before payment of the purchase price by assigning the resulting claim in advance (alternatively, validity of simple retention of title extended to re-selling). All other forms of retention of title are thus excluded, in particular extended retention of title, transferred retention of title and that which is extended to further processing.

7. Defective delivery

7.1. Statutory provisions shall apply to our rights in the event of material defects and defects of title in the Goods and in the event of other breaches of duty by the vendor, unless stipulated otherwise below.

7.2. Statutory provisions stipulate that the vendor is liable in particular for ensuring that the Goods have the agreed standard of quality when the risk is transferred to us. An agreement on the standard of quality is considered to be those product descriptions which – in particular through description or reference in our order – are the object of the respective contract or were included in the contract in the same way as these GTCP. In this respect it does not matter whether the product description originates from us, from the vendor or from the manufacturer.

7.3. In derogation of Section 442 para. 1 sentence 2 BGB, we are also entitled to claim damages for defects without restriction if the defect remained unknown to us on conclusion of the contract as a result of gross negligence.

7.4. As far as the commercial obligation to inspect the Goods and notify defects is concerned, the statutory provisions (Sections 377, 381 German Commercial Code (HGB)) shall apply, subject to the following: our obligation to inspect the Goods is restricted to defects which are externally visible either at our delivery controls, including examination of the delivery documents, or at our quality control through sampling procedures (e.g. damage in transport, incorrect deliveries or shortfalls in deliveries). There is no obligation to inspect the Goods if an acceptance inspection had been agreed. In all other respects, it depends on whether an inspection which takes into account the circumstances of the individual case will be possible in the normal course of business. Our obligation to notify defects which are discovered at a later date remains unaffected. In all cases our complaint (notice of defect) shall be considered prompt and in due time if it is received by the vendor within 2 weeks.

7.5. The costs incurred by the vendor for checking and supplementary performance shall be borne by the vendor even if it should emerge that there was no defect in actual fact. This is without prejudice to our liability to pay compensation in the event of unjustified demands for defects to be remedied; in this respect we shall only be liable, however, if we recognised that there was no defect, or failed, through gross negligence, to recognise that there was no defect.

7.6. If the vendor does not fulfil his obligation of supplementary performance, at our option either by remedying the defect (rectification) or by delivery of goods free from defects (replacement) within an adequate period stipulated by us, we may carry out remedial actions ourselves and claim compensation for the necessary expenditure or an advance payment from the vendor. If the supplementary performance by the vendor failed or it is not a reasonable option for us (e.g. in particularly urgent cases, danger to operational security or imminent occurrence of disproportional loss), stipulation of a deadline is waived; in these circumstances the vendor shall be informed immediately, if possible in advance.

7.7. In all other respects we are entitled to a reduction in the purchase price or to cancellation of the contract in accordance with statutory provisions in the event of a defect of materials or title. We are also entitled to compensation for loss and expenses in accordance with statutory provisions.

8. Supplier's recourse

8.1. We are entitled, without restriction, to the legally defined rights of recourse within the supply chain (supplier's recourse pursuant to Sections 478, 479 BGB (German Civil Code)), in addition to the right to claim damages for defects. We are especially entitled to demand exactly the type of supplementary performance (rectification or replacement) from the vendor that we owe our customer in an individual case. Our legal right of choosing the remedy is not restricted hereby (Section 439 para. 1 BGB).

8.2. Before accepting or fulfilling a claim of defect asserted by our customer (including reimbursement of expenditure pursuant to Sections 478 para. 3, Section 439, para. 2 BGB), we will inform the vendor explaining the facts in brief and ask him for a written statement. Unless a statement is submitted within a reasonable period of time and a mutual solution is reached, the claim of defect actually granted by us is considered to be owed to our customer; in this case the vendor is obliged to produce proof of the contrary.

8.3. Our rights to supplier's recourse shall also apply if the Goods were processed by us or one of our customers, e.g. by integrating them into another product, before they are sold to a consumer.

9. Manufacturer's liability

9.1. If the vendor is responsible for a product defect, he shall exempt us from third-party claims insofar as the cause lies within his domain and organisation and he himself is liable in respect of third parties.

9.2. In the context of his indemnity obligation the vendor shall refund expenditure pursuant to Sections 683, 670 BGB arising from or in connection with claims of third parties, including product recalls carried out by us. We will inform the vendor about the content and extent of product recalls as far as this is possible and reasonable. He will be given the opportunity to make a statement. Further legal claims remain unaffected.

9.3. The vendor shall conclude and maintain a product liability insurance policy with a lump-sum amount of cover amounting to at least EUR 5 million per claim for personal injury or property damage.

10. Period of limitation

10.1. Any claim or claims by either of the contracting parties against the other shall become time-barred in accordance with statutory provisions, unless stipulated otherwise below.

10.2. In derogation of Section 438 para. 1 No. 3 BGB, the general time limit to claim damages for defects is 3 years from the date of transfer of risk. If an acceptance inspection is agreed, the time limit shall commence on acceptance. The 3-year period of limitation shall also apply accordingly for claims arising from defects of title. In these cases the statutory period of limitation for actions in rem for recovery of property by third parties (Section 438 para. 1 No. 1 BGB) remains unaffected; claims resulting from defects of title shall furthermore not become time-barred in any circumstances as long as the third party can still assert the right against us, in particular due to lack of any time limitation.

10.3. The period of limitation under sales law, including the above extension, shall apply to all contractual rights to claim damages for defects, to the extent permitted by law. If we are also entitled to non-contractual claims for compensation due to a defect, the normal statutory time limitation (Sections 195, 199 BGB) shall apply, unless application of the time limitations under sales law results in a longer limitation period in a particular case.

11. Choice of law and jurisdiction

11.1. The law of the Federal Republic of Germany shall apply to these GTCP and all other legal relations between us and the vendor. All uniform international provisions, especially the United Nations Convention on Contracts for the International Sale of Goods, shall be excluded. Requirements and effects in relation to retention of title are subject to the law at the location where the particular item is stored if, on that basis, the choice of law that was made is impermissible or ineffective in favour of German law.

11.2. If the vendor is a businessman as defined in the German Commercial Code (HGB), legal entity under public law or investment fund under public law, the exclusive (including international) place of jurisdiction for any and all disputes arising from the contractual relationship is our place of business as indicated in the order. We are nevertheless also entitled to bring action at the place of performance for the delivery obligation.