

Purchase Conditions of phg Peter Hengstler GmbH + Co. KG

1. Validity

These General Purchase Conditions apply to all - also future - orders of goods and services including their processing between phg Peter Hengstler GmbH + Co. KG (customer) and its contract partners (suppliers).

2. Order

a) The order is only placed under the following Purchase Conditions, even if no explicit reference is made later in permanent business relationships. Deviations from these Purchase Conditions, in particular deviating or supplementing terms and conditions of the supplier, are herewith rejected. Failure by the customer to react to order confirmations that refer to deviating or supplementing terms and conditions shall not be considered as consent. Such conditions shall not become valid even in case of execution of the contract towards the customer. By executing this contract the supplier accepts these Purchase Conditions.

b) Every modification of these Purchase Conditions included in an order confirmation is considered as a rejection of the order by the customer. If nevertheless the delivery is made this is considered as consent to these Purchase Conditions.

c) The orders by the customer shall immediately be confirmed by the supplier, at the latest within 2 working days, in writing or by e-mail.

3. Delivery and Performance

a) The prices agreed are, unless explicitly agreed otherwise, fixed prices and valid ex works of the customer or the destination specified in the respective order, including packaging and all ancillary costs. An increase in price after conclusion of the contract shall be ineffective.

b) All services required for a flawless delivery resp. service are included in the scope of delivery / services if they are not explicitly specified in the respective order.

c) Partial deliveries / services are only permitted with prior written consent of the customer.

4. Retention of Title

The ownership of the object of performance is transferred to the customer with the handover. A retention of title of the supplier is ineffective. With the transfer the supplier may use, pledge, collateralise, sell, install and/or process the object of performance

5. Prices, Payment, Assignment and Offset

a) The invoice including all order data shall be sent to the customer upon delivery/performed service. Partial invoices are only possible insofar as partial deliveries were agreed on.

b) Unless otherwise agreed, payment shall be made within 30 days with 3% discount. Unless otherwise agreed, the payment period begins upon receipt of the invoice, at the earliest, however, upon acceptance of the delivery resp. service.

c) In case of complaints the customer is entitled to make an adequate retention until the matter is fully settled and, even after this settlement, entitled to deduct a discount for the amount retained acc. no. 3) b).

d) Claims of the supplier against the customer can only be transferred to third parties with consent of the customer.

e) Only on the basis of legally established or undisputed counterclaims the contractual parties have a right to offset or retain.

6. Rights of Ownership

a) Objects, models, moulds, tools, samples, drawings, plans and documents (subsequently "production items") of any kind remain in the ownership of the customer. The supplier has to store the production items for the customer free of charge and return them to the customer at request of the latter at any time and free of charge. The same applies to moulds, tools or similar equipment or devices for the manufacturing of products that are produced according to the production items or manufactured fully or partially at the cost of the customer (subsequently also "production items"). Modifications of the production items may only be made with prior written consent of the customer.

b) With the payment the production items are transferred to the ownership of the customer. The supplier has to store these items for the customer properly and free of charge. If the customer has paid for the production items before

completion the customer acquires ownership of the respective item before completion, too. If the customer makes partial payments for the items produced or to be produced the ownership is transferred to the customer in the ratio of the partial payments to the total amount owed.

c) The customer has the right to acquire ownership of the items produced or to be produced for the customer at any time by payment of the outstanding amount.

d) The customer can demand the return of items in his ownership at any time. The supplier cannot claim a right of retention to the items owned by the customer.

7. Materials Provided

a) Material / parts provided remain the property of the customer, have to be marked by the supplier as property of the customer and must be stored separately by the supplier. The supplier is liable for damages or loss unless it is not responsible.

b) If the item provided is connected or inseparably mixed with other items not belonging to the customer the customer acquires co-ownership of the new item in the ratio of the value of the items provided to the other connected or mixed goods at the time of the connection of mixing. If the connection or mixing is made in such a way that an item of the supplier is to be considered as main item it is considered as agreed that the supplier herewith transfers the customer co-ownership of the new item in the ratio of the value of the item provided to the other connected or combined items at the time of connection or mixing. The customer accepts the transfer of ownership.

c) The processing or conversion of the item provided by the supplier is always made for the customer. If the item provided is processed with other items not belonging to the supplier the customer acquires co-ownership of the new item in the ratio of the value of the item provided to the other items processed at the time of processing.

d) The supplier will store the item to which the customer has an exclusive or partial right for the customer free of charge and will adequately insure it at its cost against damages, loss, etc.

e) Unless otherwise agreed in writing the supplier is obliged towards the customer to return the items provided or other items in the sole or co-ownership of the customer.

8. Delivery and Performance Dates, Delay

a) The dates specified in the order are dates of successful performance (reception of faultless order in the works of the customer or the place of receipt agreed) and must be bindingly kept.

b) The supplier shall fall behind without reminder. In case the supplier falls behind the customer has the right to demand the payment of a penalty fee at the height of 0.2% of the value of the order the supplier has fallen behind, per working day of the delay, at most, however, 5% of this order value. The reservation of contractual penalty can be claimed by the customer with respect to the underlying contractual relationship until the final payment has been made, at least, however, within 14 days upon reception of fulfilment. The customer remains entitled to make further claims. The contractual penalty is to be taken into account with a claim for damages.

c) If before the due date the supplier gives reason to doubt the latter's capacity or willingness to perform, in particular because the supplier announces before the due date that it cannot or does not want to perform in time, the customer can set the supplier a deadline and request it to explain and prove its capacity and willingness to perform. Upon fruitless expiration of the deadline the customer may threaten to reject the reception of the performance.

9. Place of Fulfilment, Delivery and Passage of Risks

a) Place of fulfilment is the place to which the goods/services are to be delivered according to the order. If nothing is agreed place of fulfilment is the headquarters of the customer in Deißlingen. Place of fulfilment of the subsequent performance is the place to which the product of the customer that includes the performance of the supplier is delivered resp. transferred.

b) The delivery must include a delivery note with all details of the order (in particular order number, order references and parts number of the customer). The order details listed above must be included in all documents coming with the delivery. If the goods are sent to a place other than the headquarters of the customer (Deißlingen) the customer must receive a dispatch note signed by the carrier for the purpose of invoice control.

c) In case of purchase agreements, the risk only passes with transfer of the

goods to the customer, in case of contracts for work only with the acceptance.

10. Warranty

a) The supplier guarantees a faultless provision of performance, in particular compliance of the products with the requirements (e.g. plans, drawings, images, weight, dimensions), the relevant national and international safety, environmental and conformity regulations, the current state of technology and that they are suitable and faultless for the designs and uses for which they shall be applied. The liability of the supplier and its agents is not limited to intent and gross negligence.

b) The supplier keeps paying attention to an environmentally friendly provision of performance. This includes the selection of environmentally friendly and recyclable materials, designs that are low-emission, low in harmful substances, easy to dismantle and easily reversible as well as solutions that save energy and resources.

c) Both in purchase contracts and in contracts for work the customer can demand remedy of defects or the replacement delivery of a faultless item according to its choice. If this happens the supplier is obliged to bear all expenses arising in connection with the remedy of defects or replacement delivery, irrespective of further claims by the customer. In urgent cases and upon a respective notification of the supplier the customer is entitled to remedy the defects on its own or to have the defect remedied by third parties or to procure replacement elsewhere at the supplier's costs.

d) The warranty period is 24 months from the time of the passage of risks insofar as no longer periods are relevant due to the law or an individual agreement. If the supplier obliged to do so remedies or procures replacement the warranty period for the part affected by the remedy / new delivery begins again insofar as it is the same defect or the consequences of a remedy / new delivery.

e) The supplier carries out an outgoing goods inspection. If the order is a purchase agreement or a contract for work and materials the customer is obliged to check the contractual object for deviations of identity and amount as well as clearly apparent transportation damages and obvious defects and to complain with the supplier within 14 calendar days upon reception of the contractual object. In case of hidden defects the complaint is considered in time if made within 5 working days upon detection of the fault. The customer has no further duty of complaint.

f) If the customer is claimed by third parties due to a material defect or an infringement of rights the supplier is responsible for, the supplier shall reimburse all expenses that arise to the customer from this claim and shall exempt the customer from all claims for defects from the claim at first request.

g) Otherwise, the rights of the customer are determined by the legal regulations.

11. Product Liability

a) If the supplier is responsible for a damage caused by a product of the customer it is obliged to exempt the customer insofar from compensation claims of third parties as the supplier itself is liable to the third party. This applies in particular to claims from product and manufacturer liability and to claims due to corrective measures such as recall and preventive customer service measures and other corrective and preventive measures.

b) The supplier commits itself to take out insurance during the duration of the contracts and the subsequent warranty periods with adequate coverage for injuries to persons and damages to materials and to keep the insurance up during the whole duration of the business relationship.

The supplier has to prove the existence of the insurance on request of the customer by presenting the insurance police.

12. Rights of Third Parties

a) The supplier guarantees that the contractual object is free from defects of title, in particular from rights of third parties such as property rights incl. copyrights.

b) The supplier has to exempt the customer of potential claims of third parties due to existing property rights on first request and to substitute the customer all costs arising by the defence of such claim, including the costs of legal representation, unless the supplier was not aware of the conflicting property rights and the supplier would not have been obliged to know them when applying the due diligence of a prudent businessman.

13. Other Obligations of the Supplier

a) The supplier is obliged to comply with the law regulating a general minimum wage (MiLoG) and the law on mandatory working conditions for employees posted abroad and for employees regularly employed in Germany (AEntG) as amended and in particular to pay the statutory minimum wage to its employees.

b) If claims are asserted against the customer under the provisions of §§ 13 MiLoG, 14 AEntG by employees of the supplier or of a subcontractor or a lender commissioned by the supplier, the supplier shall indemnify the customer from liability under §§ 13 MiLoG, 14 AEntG and reimburse any costs

incurred by the customer as a result of the claims asserted by these employees, unless the supplier is not responsible for this. The customer is entitled to set off any payments made by him under §§ 13 MiLoG, 14 AEntG against all payment claims of the supplier and to offset the claims against each other.

c) In the event that the supplier subcontracts the contractual services or parts thereof to a subcontractor or engages a lender with the prior consent of the customer, the supplier undertakes to contractually ensure that the subcontractor or lender employed complies with the obligations set out in this section.

d) In order to secure its claims, the customer reserves the right to require the supplier to provide a security, e.g. a bank guarantee, at any time.

e) The customer is entitled to extraordinary termination or withdrawal from the contract if the supplier or a subcontractor or lender commissioned by the supplier does not pay his employees the minimum wage according to § 1 MiLoG or violates the regulations of the AEntG.

14. Final Provisions

a) The contracts between the contracting parties are subject to the law of the Federal Republic of Germany excluding the convention of the United Nations on Contracts for the International Sale of Goods (CISG).

b) Exclusive legal domicile for all disputes in connection with the agreements between the contracting partners and with respect to the effectiveness of these agreements is the headquarters of the customer (Deißlingen, Federal Republic of Germany). The customer is entitled to assert claims against the contractor at any other legal domicile, in particular at the place of the general legal domicile of the customer.

c) The General Terms and Conditions of the customer as amended are also valid in addition to these Purchase Conditions.

d) The parties commit themselves to treat all information of a technical or commercial nature from the realm of the respective other party in oral, written or any other form to which it gains access within the framework of cooperation with the customer, in particular know-how, information on company and operational secrets (e.g. inventions, technical processes, product designs, costs and prices) with strict confidentiality and to take all necessary measures to prevent their perusal and exploitation by third parties, in particular by current or potential competitors. In doing so the parties shall apply the customary due diligence, at least the due diligence of a prudent businessperson.

e) Modifications and amendments of this contract require written form to be effective. This also applies to an alteration of this requirement of the written form.

f) If individual stipulations of this contract are or become wholly or partially void the effectiveness of the other stipulations shall not be affected. The contractual partners commit themselves to replace the void or ineffective provision by adopting a valid and effective regulation that comes legally and economically closest to this provision.

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