



General Terms and Conditions of Purchase | Hermes Schleifmittel Ges.m.b.H.

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§ 1 General Provisions

1. These General Terms and Conditions of Purchase, as amended and in force at the time of conclusion of the contract, shall apply to all contracts entered into between us, Hermes Schleifmittel Ges.m.b.H., as purchaser or principal, and our suppliers or contractors (hereinafter referred to as the "Supplier").
2. Orders, agreements and other declarations shall be legally effective only if issued or confirmed by us in writing. The Supplier shall ensure that, in the ordering and order-processing procedure, duly authorised persons are involved who are entitled to make legally binding declarations.
3. These General Terms and Conditions of Purchase shall apply exclusively. We do not accept, and hereby object to, any terms and conditions of the Supplier that conflict with or deviate from these General Terms and Conditions of Purchase, unless we have expressly consented to their application in writing.
4. By accepting or performing our order, the Supplier unconditionally agrees to the applicability of these General Terms and Conditions of Purchase; they shall form an integral part of the contract.
5. These General Terms and Conditions of Purchase, as amended and in force at the relevant time of conclusion of the contract, shall also apply to all subsequent legal transactions concluded with a Supplier after the first legal transaction.

§ 2 Delivery and Performance Dates

1. The Supplier shall comply with the agreed periods, dates and delivery quantities.
2. Force majeure and other circumstances for which the Supplier is not responsible shall release the Supplier from liability only if the Supplier notifies us thereof in writing without undue delay. The Supplier shall also notify us in writing without undue delay of any other delivery delays that are apparent to the Supplier.
3. If the Supplier is in default with a due delivery, we shall be entitled, at our option, either to insist on performance and, where the Supplier is at fault, claim damages for the delay, or to set the Supplier a reasonable grace period for performance and, upon expiry thereof without result, rescind the contract in whole or, where the performance is divisible, with respect to the affected and outstanding partial performances. In the event of an effective rescission, our claim for compensation for the damage caused by culpable non-performance shall remain unaffected; this includes, in particular, the additional costs of any necessary substitute procurement or substitute performance. In the event of default in delivery, we shall be entitled to claim liquidated damages for delay in the amount of 1% of the delivery value for each completed week. The Supplier shall remain entitled to prove that no damage or only substantially lower damage has been incurred by us as a result of the delay. The assertion of any further proven damage shall remain unaffected.

§ 3 Prices

1. The price stated in our order shall be binding.
2. Higher prices deviating from the order or subsequent price increases shall be binding only if expressly agreed in writing in the individual case. If, in an individual case, the admissibility of price increases due to changes in wage or material costs during the period of performance has been agreed, the Supplier shall notify us in writing of the request for price increases no later than within two weeks after becoming aware of the basis therefor; otherwise, the agreed prices shall remain valid. The Supplier shall bear the burden of proof for the timeliness of such notification. If prices for comparable goods or services are generally reduced on the market, we shall be entitled to request a new price agreement. If no agreement is reached, we shall be entitled to determine the scope of any remaining purchase obligations ourselves.
3. Unless otherwise agreed in writing, the price shall include delivery free to the named place of destination. If, by way of exception, we are to bear the freight costs, the Supplier shall select the mode of transport prescribed by us; otherwise, the mode of transport and delivery most favourable to us shall apply.
4. Packaging shall be included in the price. If expressly agreed otherwise, packaging shall be charged at cost. The Supplier shall use the packaging specified by us and shall ensure that the goods are protected against damage by the packaging. At our request, packaging materials shall be taken back by the Supplier after delivery or disposed of at the Supplier's expense. Reusable packaging may also be returned by us to the Supplier carriage forward. In such case, the invoice value of the packaging material shall be credited in full. Other packaging or filling material, such as wood wool, paper, etc., may not be charged.



§ 4 Payment

1. Payment shall be made by such means of payment as we may choose, on the agreed dates and otherwise on the agreed terms, to the payment office specified by the Supplier. Payment shall be made subject to correct quality and quantity. Payment shall be deemed effected on the day on which we issue the payment order to the bank.
2. In the event of complete or partial return of the delivery item, the Supplier shall, without prejudice to other agreements, refund any remuneration already paid for the returned item and pay interest thereon from the date of our payment at a rate of five (5) percentage points above the base interest rate of the Austrian National Bank.
3. Unless otherwise agreed in writing, we shall pay the purchase price within 30 days, calculated from delivery and receipt of invoice, with a 3% cash discount, or within 45 days after receipt of invoice.
4. Invoices shall be issued on the dispatch date and must be demonstrably submitted to us by e-mail to **HOEFfinanz@hermes-schleifmittel.com**. If the invoice is received later than the goods, the date of receipt of the invoice shall be decisive for calculating the cash discount period. If the goods are received later than the invoice, the date of receipt of the goods shall be decisive for calculating the cash discount period. Invoices not duly submitted shall be deemed received by us only from the time of their correction.
5. We shall be entitled to rights of set-off and retention to the statutory extent. The Supplier waives the right to challenge the contract on the grounds of *laesio enormis* (reduction by more than half) or mistake (in particular any error in calculation or pricing) and expressly accepts such waiver.

§ 5 Assignment

Without our express written consent, the Supplier may neither have the ordered delivery or service performed by third parties nor assign, in whole or in part, its claims against us arising from the purchase order contract to third parties. We shall not refuse consent to an assignment without good cause.

§ 6 Retention of Title

1. We retain title to any material provided by us for the performance of the contract. Processing or transformation by the Supplier shall be carried out on our behalf. If our reserved goods are processed together with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of our item to the other processed items at the time of processing.
2. If our reserved goods are inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the reserved item to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the Supplier's item is to be regarded as the principal item, it shall be deemed agreed that the Supplier transfers co-ownership to us on a pro rata basis; the Supplier shall hold sole ownership or co-ownership in custody for us.
3. If we make an advance payment or partial payment, the Supplier shall be obliged to use it to pay for the items, services or third-party rights required for the manufacture of the contract item.
4. To the extent title to such items has not yet passed to us, the Supplier hereby assigns to us its claim for transfer of title.
5. In the event of attachment of goods owned by us or claims assigned to us, the Supplier shall notify us in writing without undue delay.
6. To the extent the security rights to which we are entitled pursuant to § 6 exceed the purchase price of all our reserved goods not yet paid for by more than 10%, we shall, at the Supplier's request, be obliged to release security rights at our discretion.

§ 7 Statutory Warranty

1. The Supplier warrants that, at the time of handover, the delivery is free from material defects and defects of title, conforms to the contractually agreed characteristics and is made in accordance with the recognised rules of technology and in compliance with the applicable standards, safety, occupational health and safety, accident prevention and other regulations. The statutory warranty shall cover all defects existing at the time of handover and becoming apparent within the warranty period.
2. We shall be entitled to the statutory warranty rights without restriction. We shall be entitled, at our option, to demand improvement or replacement, unless the chosen remedy is impossible or would involve disproportionate expense for



- the Supplier compared with the other remedy. Improvement or replacement shall be carried out within a reasonable period and with the least possible inconvenience to us; the costs thereof shall be borne by the Supplier.
3. If improvement and replacement are impossible or would involve disproportionate expense for the Supplier, if the Supplier refuses improvement or replacement, fails to provide them within a reasonable period, or if such remedies would cause us considerable inconvenience or are unreasonable for valid reasons relating to the Supplier, we shall be entitled to demand a price reduction or, unless the defect is minor, to terminate the contract.
 4. If the Supplier refuses improvement, fails to carry it out within a reasonable period, or if immediate action is required due to imminent danger, we shall be entitled to remedy the defect ourselves or have it remedied by third parties at the Supplier's expense.
 5. Claims for damages due to defects shall remain unaffected and shall be governed by the statutory provisions.
 6. The warranty period for material defects shall be 24 months from handover. By way of derogation from § 933 para. 3 of the Austrian Civil Code (ABGB), the warranty rights and claims for price reduction or termination of the contract in respect of material defects shall become time-barred only 12 months after expiry of the warranty period. The statutory provisions shall apply to defects of title.

§ 8 Damages and Product Liability

1. The Supplier shall be liable in accordance with the statutory provisions for damage caused by the Supplier or by persons attributable to the Supplier. Liability shall also extend to subcontractors, upstream suppliers and other third parties engaged for performance of the contract, to the extent their conduct is legally attributable to the Supplier. No limitations of liability are agreed.
2. The Supplier's liability under the Austrian Product Liability Act shall remain unaffected; any limitation or exclusion of the obligation to compensate under the Product Liability Act shall be invalid. To the extent we are held liable by third parties under national or international product liability laws due to defects in deliveries, the Supplier shall fully indemnify and hold us harmless upon first demand, to the extent the cause of the claim falls within the Supplier's sphere of responsibility. The Supplier shall in particular also be obliged to reimburse all reasonable and necessary costs incurred by us in examining and defending against such claims.

§ 9 Data Protection

We shall be entitled to process and store the data relating to the Supplier received in connection with the business relationship, including data originating from third parties, within the meaning of applicable data protection law, and to have such data processed and stored by third parties commissioned by us, provided this is necessary for performance of the contract.

§ 10 Order Documents, Intellectual Property Rights

1. We retain title and copyrights in illustrations, drawings, designs, calculations, moulds, samples, models and other documents provided by us or produced according to our specifications; the same shall apply to processes and recipes. They may not be made accessible to third parties without our express written consent. They shall be used exclusively for processing or manufacture on the basis of our order. After completion of the order, or at any other time upon our request, they shall be returned to us without prior request and without undue delay. They shall be kept confidential vis-à-vis third parties. The confidentiality obligation shall continue to apply after completion of the contract. It shall cease to apply if and to the extent the knowledge contained in the supplied illustrations, drawings, calculations and other documents has become generally known.
2. The Supplier shall be liable for ensuring that its performance or delivery does not infringe patents, utility models, designs, other industrial property rights, copyrights or other third-party rights. The Supplier shall indemnify us against any claims by third parties or, in the event of such claims being asserted by third parties, compensate us for the damage incurred thereby. This shall also include litigation costs. Any licence fees shall be borne by the Supplier.

§ 11 Supplier's Declaration

1. Prior to the first delivery, the Supplier shall ensure that we receive, without request, a long-term supplier's declaration with preferential origin for the current calendar year. The long-term supplier's declaration shall be sent to us without request at the beginning of each year. If changes occur during the calendar year that affect the basis of the long-term supplier's declaration, we shall be informed thereof in writing without undue delay.
2. The Supplier undertakes to enable the customs authorities to verify proofs of origin and to provide both the necessary information and any official confirmations that may be required.



3. The Supplier shall be obliged to compensate us for any damage incurred by us because the declared origin is not recognised by the competent authority as a result of an incorrect certification or lack of verifiability. Liability shall, however, arise only in the event of culpable conduct.

§ 12 Code of Conduct

1. The Supplier undertakes to comply with the code of conduct specified by us, in the version agreed from time to time, as a binding minimum standard of the contractual relationship. The Supplier shall take appropriate measures to ensure compliance with this code of conduct within its sphere of influence and shall, upon our request, provide appropriate evidence of compliance.
2. To the extent the Supplier uses vicarious agents, upstream suppliers or sub-suppliers for performance of the contract, the Supplier shall oblige them in an appropriate manner to comply with our code of conduct and shall, upon our request, provide suitable evidence of compliance.
3. If the Supplier breaches obligations under the code of conduct, the parties shall first seek to implement appropriate corrective measures. If no agreement on corrective measures is reached or if agreed corrective measures are not implemented, we shall be entitled to rescind the affected order and claim damages in accordance with the statutory provisions.

§ 13 Quality and Environmental Management

1. The Supplier shall establish, maintain and, upon our request, provide evidence of an appropriate quality management system and an appropriate environmental management system, to the extent required by the nature, scope and risk profile of the delivery or service.
2. The Supplier shall ensure that the delivered products and services comply with the contractual requirements and the applicable national and international norms and standards. Upon our request, the Supplier shall provide suitable documents, certificates or other evidence concerning the measures taken to ensure quality and the environmental management measures applied.
3. To the extent the Supplier uses subcontractors or upstream or sub-suppliers for performance of the contract, the Supplier shall oblige them in an appropriate manner to comply with corresponding quality and environmental standards and shall, upon our request, provide suitable evidence.
4. If identified deficiencies in quality or environmental management are not remedied within a reasonable period despite request, or if no agreement on appropriate corrective measures is reached, we shall be entitled to suspend acceptance of further deliveries until remedy and to proceed in respect of the affected order in accordance with the statutory provisions; warranty rights and periods shall remain unaffected.

§ 14 Partial Invalidity / Severability Clause

Should individual provisions of these General Terms and Conditions of Purchase be or become invalid in whole or in part due to mandatory statutory provisions, or should there be a regulatory gap, the contracting parties shall agree on a legally effective substitute provision that comes as close as possible to the invalid or incomplete provision in terms of its economic result. The validity of the remaining provisions shall remain unaffected.

§ 15 Place of Performance, Place of Jurisdiction, Applicable Law

1. The place of performance for deliveries and services shall be the delivery location notified by us. For all other obligations arising from the contractual relationship, our registered office shall be the place of performance.
2. For all disputes arising out of or in connection with the contractual relationship, including disputes concerning its formation, validity, interpretation, performance or termination, the court having subject-matter jurisdiction at our registered office shall have exclusive jurisdiction. We shall, however, also be entitled to bring proceedings against the Supplier at the Supplier's general place of jurisdiction.
3. Austrian law shall apply exclusively, excluding its conflict-of-law rules and excluding the United Nations Convention on Contracts for the International Sale of Goods.