

General Terms and Conditions of Purchase of Hora eTec GmbH, Lange Str. 65, 32257 Bünde, Germany

1. Validity

1.1 These Terms and Conditions of Purchase shall apply exclusively to all purchase orders placed by us, orders and contracts concluded by us – hereinafter referred to as “order”– for the purchase of goods and for performance of work and service – hereinafter referred to as “delivery”. We hereby expressly object to any deviating and supplementary terms and conditions of our suppliers; they are not binding for us. Our Terms and Conditions of Purchase shall also apply exclusively if we do not object to the inclusion of our supplier’s terms and conditions in individual cases or when we do accept deliveries without reservation despite knowing of its contrary or supplementary terms and conditions of business.

1.2 These Terms and Conditions of Purchase shall also apply to all future transactions with the supplier, even if not again explicitly agreed upon.

1.3 The invalidity or unenforceability of individual provisions of these Terms and Conditions of Purchase shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by a legally permissible provision that comes closest to the economic purpose pursued by the invalid or unenforceable provision.

2. Conclusion of Contract

2.1 All agreements between the supplier and us and any orders shall only be binding if made in writing. Any changes, addition or ancillary agreements made prior to, upon or after the conclusion of the contract requires our written confirmation. The requirement of the written form can only be waived in writing. Communications by telefax or email are deemed to be the equivalent of written documents.

2.2 If the supplier does not accept our order in writing within a period of two weeks after its receipt, we are entitled to revoke the order. Call-off orders become binding if the supplier does not reject the order within three (3) working days of receipt. Any changes, additions or other deviations from our orders shall only be effective if they are expressly and separately referred to and if we expressly agree to them.

3. Prices and Payment Terms

3.1 The prices stated in the order are fixed prices. Prices include delivery “free domicile” and all other costs for packaging, transport, and insurance as well as all other shipping costs, unless otherwise expressly agreed in writing. VAT must be separately identified, otherwise it is deemed to be included in the price.

3.2 If the supplier has agreed to carry out the installation, assembly and/or commissioning and unless otherwise agreed in writing, the supplier shall bear all necessary ancillary costs such as travel expenses and provision of tools.

3.3 We can only process invoices sent to us by separate post. Each order is to be invoiced separately. The invoice must clearly state the order number indicated in our order, and, if applicable, the name of the purchaser, the order date, the supplier number as well as our article number.

3.4 Invoices must be issued in EURO, payments will be made in EURO only.

3.5 Payments are made by bank transfer after acceptance of the delivery and receipt of a verifiable invoice and transfer of all documentation relevant to the scope of the delivery. Unless otherwise expressly agreed in writing, we pay within 14 days less 3 % cash discount, within 30 days less 2 % cash discount or within 90 days net. Furthermore, we expressly object to any claims for interest on arrears.

3.6 Without our prior written consent, the supplier shall not be entitled to assign or otherwise dispose of its claims against us in whole or in part.

3.7 We shall be entitled to offset claims or retain payments to the extent provided by law.

4. Delivery Date and Terms of Delivery

4.1 The deadlines indicated or otherwise agreed in the order are binding and must be met precisely. The supplier shall inform us immediately in writing in case there will be delays in meeting delivery dates or deadlines explaining the reasons and the anticipated duration of the delay.

4.2 Partial and early deliveries shall be allowed only with our express consent. Payment claims, however, fall due no earlier than on the delivery date originally agreed upon.

4.3 Unless otherwise agreed, deliveries must be accompanied by a delivery note and a works test certificate according to EN 10204 or an equivalent internationally recognised test certificate specifying the details as agreed upon with the supplier. An initial sample test report must be enclosed with the first delivery.

4.4 Deliveries may be made only at the agreed times.

4.5 In case of delays in delivery we are entitled to impose a contractual penalty of 1 % for each commenced week of delay, but no more than a total of 10 % of the order value; the supplier shall have the right to demonstrate to us that no or only slight damage has been caused. The right to assertion regarding further damages remains reserved. We are obliged to announce the deduction of the penalty at the latest when paying the invoice following the delayed delivery.

4.6 Events resulting from force majeure which render impossible or considerably more difficult delivery by our supplier or acceptance or utilization in our or our customer's business, shall postpone our obligation to accept delivery as is appropriate with respect to our actual demand. In events of force majeure concerning us or our supplier we shall also have the choice to wholly or partly withdraw from the contract.

5. Place of Performance, Transfer of Risks, Acquisition of Ownership

5.1 The place of performance is the place where the goods are to be delivered in accordance with the order or where the work or service is to be performed. The place of performance for our payments is our registered office.

5.2 Goods shall be delivered at the supplier's risk and costs, properly packed for shipment and free of charge to the address indicated by us. Even if we agreed to bear the freight costs, the risk of accidental loss or accidental deterioration of the delivery shall be transferred to us only upon acceptance by us or the freight forwarder appointed by us at the agreed place of performance or after final acceptance of the delivery, whichever is later.

5.3 Upon transfer of risk at the place of performance or upon passing the goods to a freight forwarder instructed by us, we acquire ownership of the goods without reservation of any rights for the supplier.

6. Liability for Defects and other Liability

6.1 We inspect the delivered goods only for identity and quantity based on the shipping papers and for externally visible damage due to transportation. We shall notify the supplier of defects in the delivery as soon as they have been detected according to our ordinary course of business within a reasonable period of at least 5 working days after the defect has been detected. To this extent the supplier waives the objection to delayed notification of defects according to § 377 German Commercial Code (HGB).

6.2 Unless otherwise stipulated in this clause, the supplier shall be liable in accordance with the statutory provisions, in particular for defects in the delivery and any resulting follow-up costs, without this liability being limited or excluded in terms of reasons or amount, and in this respect shall indemnify us against claims by third parties.

6.3 As a matter of principle, we shall have the right to choose the kind of subsequent performance. The supplier may refuse the kind of subsequent performance chosen by us subject to the provisions of § 439 section 3 German Civil Code (BGB).

6.4 If the supplier does not begin to remedy the defect immediately after our request to do so, we shall, in urgent cases and in particular to avoid any acute danger or larger damage, be entitled to remedy the identified defects ourselves or have them remedied by a third party at the supplier's expense without the need to set a prior period of grace.

6.5 Unless otherwise agreed or the statutory provisions provide for longer periods, claims for material defects shall become time-barred 24 months after the sale of the final product to the consumer, but no longer than 30 months after delivery to us. In case of work performance, the limitation period shall be 30 months following the written final acceptance. If the delivery has been used for a building in accordance with its customary use and has caused its defectiveness, the limitation period shall not commence until after 5 years. Our rights from §§ 478, 479 German Civil Code (BGB) shall remain unaffected by this provision.

6.6 In the case of defects of title, the supplier shall also indemnify us against any existing claims of third parties. The period of limitation with regard to legal defects shall be 3 years.

6.7 If an incoming goods inspection beyond the usual scope becomes necessary due to a defective delivery, the supplier shall bear the costs thereof.

7. Product Liability

7.1 The supplier shall indemnify us against any claims by third parties arising from and in connection with personal injury and material damage if and to the extent that the cause lies in the supplier's control and organisation. In this context, the supplier shall also be obligated to reimburse us for any costs pursuant to §§ 683, 670 German Civil Code (BGB) that we incur in connection with a product recall or other measures carried out by us.

7.2 The supplier undertakes to maintain an extended product liability and product recall insurance with a sum insured of at least EUR 5,000,000.00 (five million euros) per personal injury/material damage – lump sum – in each case; our claims are, however, not limited to the sum insured.

8. Observance of Industrial Property Rights and Regulations

8.1 The supplier assures that its delivery and its use does not infringe upon industrial property rights or other rights of third parties nor violate any statutory or official regulations of any kind. The supplier also assures that the goods delivered by them do not contain any CFCs, PCBs or asbestos. The supplier undertakes to provide all relevant IMDS system data free of charge at our request.

8.2 The supplier is obliged to indemnify us against all claims made against us by third parties arising from or in connection with the delivery or its use, insofar as the supplier is responsible for the infringement. Clause 6.6 sentence 2 shall apply.

8.3 The supplier's obligation of indemnification shall also cover all expenses incurred by us from or in connection with a claim by a third party.

9. Reservation of Title, Tools

9.1 We reserve title to goods provided by us (e.g., parts, components, semi-finished products).

9.2 The reservation of title shall also apply to goods resulting from the processing, mixing, or combining of our goods at their full value, whereby these processes are carried out for us, so that we are deemed to be their manufacturer. If during the processing, mixing, or combining with items of third parties their ownership rights remain, we shall acquire co-ownership in the proportion to the objective values of these goods.

9.3 Tools made available to the supplier and tools made by the supplier on our behalf or tools ordered from third parties where we contributed to the costs, shall remain our property or shall become our property upon manufacture and purchase by the supplier and shall be marked clearly as our property.

9.4 The supplier is obliged to store the tools for us free of charge, to insure them adequately and to provide us with evidence of this insurance, if requested. Unless otherwise agreed, the supplier is obliged to use the tools exclusively for the manufacture of parts intended for us. Such consent for the manufacture of parts based on orders placed by other companies of Hora eTec GmbH is hereby granted.

9.5 The supplier shall maintain, and service tools provided at its own expense. Upon termination of the contract, the supplier shall return the tools to us without delay at our request without being entitled to a right of retention. Upon returning the goods they must be in apparent good order and condition corresponding to their previous use. Repair costs shall be borne by the supplier. Under no circumstance may the supplier scrap the tools without our written consent.

10. Quality Assurance

10.1 The supplier undertakes to maintain a DIN EN ISO 9000 ff. quality management system to ensure flawless quality of the deliveries to us during the entire business relationship, to monitor it in regular intervals by internal audits and to initiate the required measures without delay in case of detected deviations. We have the right to inspect the supplier's quality assurance at any time after prior notice. Upon request, the supplier allows us to view certification and audit reports as well as test procedures carried out, including all test records and documents relating to the delivery.

10.2 Our "Quality Standards" in their respective applicable version are part of all orders and agreements between the suppliers and us; they will be sent to our suppliers on request.

11. Secrecy, Documents

11.1 Any information, formulations, drawings, models, tools, technical records, procedural methods, software and other technical and commercial know-how made available by us or acquired by the supplier through us as well as work results achieved in connection therewith (hereinafter referred to as "confidential information") must not be disclosed to third parties and may only be used in the supplier's own company for the execution of deliveries to us and may only be made available to those persons who must have knowledge of the confidential information within the scope of the business relationship and who are likewise bound to secrecy in accordance with this provision. This provision also extends beyond the duration of the business relationship as long as and insofar the supplier cannot prove that the confidential information had already been in the public domain at the time it was obtained, or it had been evident, or it was made public later without his fault.

11.2 All documents (e.g., drawings, illustrations, test specifications), samples and models etc. which we make available to the supplier within the scope of the business relationship shall remain our property and shall be returned to us at our request at any time, at the latest upon termination of the business relationship (including any copies, transcripts, extracts and replicas) or destroyed at the supplier's expense at our discretion. The supplier shall not be entitled to a right of retention in this respect.

11.3 The disclosure of confidential information and the delivery, if any, of documents, samples or models do not grant the supplier any commercial protection rights, know-how or copyrights and does not constitute any prior publication or right of prior use pursuant to the Patent Act and the Utility Model Act.

12. Applicable Law and Place of Jurisdiction

12.1 The laws of the Federal Republic of Germany shall apply exclusively to the exclusion of its international private law insofar as it refers to the validity of another legal system. The application of the uniform UN Convention on Contracts for the International Sale of Goods (C.I.S.G.) and other bilateral and multilateral agreements serving the standardisation of international sales is excluded.

12.2 The place of jurisdiction for all claims arising from business relations with suppliers mainly from contracts or concerning their validity is either the place of performance (clause 5.1) or Bünde. We are, however, also entitled at our discretion, to file suit against the supplier at any other general or special court.

12.3 If the supplier has its registered office outside the Federal Republic of Germany, we are also entitled, at our discretion, to have all claims, disputes or disagreements arising from business relations with suppliers settled by one or three arbitrators appointed in accordance with the arbitration rules of the Chamber of Commerce in Zurich under exclusion of ordinary legal proceedings. The Board of Arbitration is located in Zurich, Switzerland. The arbitration proceedings shall be conducted in the English language. The arbitral award shall be final and binding upon the parties involved.