

GENERAL PURCHASE TERMS

I. General information, scope

1. These General Purchase Terms [Allgemeine Einkaufsbedingungen (AEB)] apply to any and all agreements of Hofmann Maschinen- und Anlagenbau GmbH (hereinafter referred to as: „Hofmann“ or „We“) with our business partners and suppliers (hereinafter referred to as: “Vendor(s)”). The AEB shall only apply if the Vendor is an entrepreneur (§ 14 BGB), a body corporate organised under public law or a special fund under public law.
2. The AEB shall apply in particular with regard to agreements on the sale and/or delivery of goods (hereinafter also referred to as: „goods“) and with regard to agreements concerning the provision of work performance and services, regardless of whether the Vendor manufactures the goods itself or purchases the goods from subcontractors. The AEB shall be deemed to apply in their respectively valid version as framework agreement also for future agreements on the sale and/or delivery of goods with the same Vendor without us having to refer thereto in each individual case.
3. Our AEB shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Vendor shall only be deemed to be a constituent part of the agreement in so far as we have expressly agreed in writing that such shall apply.
This approval requirement shall in any case apply, for example, even if we accept the Vendor's delivery without any reservation, being fully aware of the Vendor's general terms and conditions.
4. Individual agreements made with the Vendor in the individual case (including ancillary agreements, supplements and amendments) shall in any case be deemed to have overriding priority vis-à-vis these AEB. With regard to the contents of such agreements a written agreement/and our written confirmation shall be decisive.

II. Conclusion of the agreement

1. Our order shall be deemed to be binding at the earliest with the written submission or confirmation. The Vendor shall inform us of any evident errors (e.g. typos and calculation errors) and incompleteness of the order including the order documents for the purpose of correcting and/or amending the agreement prior to acceptance; otherwise the agreement shall be deemed to not be concluded.
2. The Vendor is obliged to confirm our order in writing within a deadline of 5 working days or in particular to execute our order without any reservation by sending the goods (acceptance). A belated acceptance shall be deemed to be a new quote which shall require acceptance on our part.

III. Delivery period and default in delivery

1. The delivery schedules stated in the order are binding and have to be complied with by the Vendor.
2. If the Vendor fails to render its services or does not render such within the agreed delivery period or defaults in delivery, Hofmann shall be entitled to withdraw from the agreement after expiry of an appropriate additional period of grace granted to the Vendor and to claim damages.
3. If the Vendor is in default, we shall be entitled to demand – in addition to further statutory claims – a flat-rate damage compensation for default in the amount of 0.5 % of the net price of the goods to be delivered per calendar week, at most, however, 5 % of the net price of the goods delivered late.

IV. Performance, delivery, transfer of risk

1. Without our written approval in advance the Vendor shall not be entitled to have the services owed by it performed by a third party (e.g. subcontractor). The Vendor bears the procurement risk for its services. Hofmann shall have the right to nominate a forwarding agent at the point of placing the order.

2. The delivery shall be performed by CIP (Incoterms® 2010) to the location specified in the order, unless the parties agree to the contrary in the order. If no destination is specified and nothing to the contrary has been agreed upon, the goods shall be delivered to the company address at Worms. The respective destination shall be the place of fulfilment.
3. The delivery shall be furnished with a delivery note specifying the date (date of issue and shipment), contents of the delivery (article number and number of units) as well as our order identification (date and order number). If the delivery note is lacking or incomplete, we shall not have to justify any resulting delays in processing and payment.
4. If Hofmann is prevented as a result of force majeure in full or in part from accepting the Vendor's performance, such shall be deemed to lie beyond our control. During the period of hindrance Hofmann shall be exempt from a possible obligation or duty to accept delivery and shall not warrant for any damage resulting therefrom. Force majeure shall apply to any and all events the onset and effect of which Hofmann is not able to prevent with regard to fulfilment of the agreement by reasonable measures. This shall cover events lying beyond the scope of influence of Hofmann, in particular, but not finally warlike disputes, putsch, blockade, embargo, industry-wide labour disputes, epidemics or natural disasters.

V. Prices and payment terms

1. The price stated in the order shall be deemed to be binding. All prices are understood including statutory Value Added Tax (VAT) unless VAT is shown separately.
2. Unless nothing to the contrary is agreed upon in the individual case the price shall include all services and incidental services of the Vendor (e.g. assembly, installation) as well as all ancillary costs (e.g. due and proper packaging, transport costs plus possible transport and third-party liability insurance. The Vendor must take back the packaging material upon our demand.
3. The agreed price shall be due and payable within 30 working days as of the complete delivery and performance and receipt of a due and proper invoice, in the case of payments within 6 days a discount of 3 % shall be granted, within 20 working days a discount of 2 % shall be granted. Delays as a result of incorrect or incomplete invoices shall not impair the discount deadline.
4. We shall not owe any interest amounting from the due date. We shall be entitled to set-off rights and rights of retention, as well as the objection of a non-fulfilled agreement in the statutorily agreed scope.
5. We shall be in particular authorised to withhold due payments vis-à-vis the Vendor as long as we are entitled to claims from incomplete or faulty deliveries.

VI. Secrecy and retention of title

1. We reserve the rights of ownership and copyrights in figures, plans, drawings, calculations, operating procedures, product descriptions and other documents. Such documents shall be used exclusively for the contractual performance and shall be returned to us after fulfilment of the agreement.
The documents shall be kept secret vis-à-vis third parties, even after a termination of the agreement.
The obligation to secrecy shall only expire once the know-how contained in the documents surrendered has become publicly known.
2. The afore-mentioned term shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other objects we provide the Vendor with for the purpose of manufacturing.

Such objects shall – as long as they have not been processed – stored separately at the Vendor's expense and shall be insured in the customary scope against destruction and loss.

3. The transfer of the goods shall take place unconditionally and regardless of whether the price has been paid. Any and all forms of expanded and extended retention of title shall furthermore be excluded, so that any retention of title which has been possibly declared to be effected by the Vendor shall only apply up to the point of payment of the goods delivered to us and shall only apply for such payment.
4. The Vendor shall be obliged to treat any and all documents, data and information as well as any business and trade secrets as well as any affairs and procedures of Hofmann, and any companies associated with Hofmann in addition to Hofmann's customers as confidential. The Vendor shall further obligate its staff as well as any subcontractors commissioned by it to maintain secrecy.

VII. Faulty delivery

1. In the event of defects in the goods delivered the statutory regulations shall apply unless nothing to the contrary has been agreed upon in the following. In deviation hereof the warranty period shall amount to 3 years. In the case of goods delivered which have been used for a building according to their usual utilisation and which have led to defects in the building, a period of limitation of 5 years shall apply. Our notice of defect shall have been lodged in due time if it is received by the supplier within 6 working days as of the date of delivery of the goods. Complaints regarding concealed defects shall be made within 6 working days after their discovery.
2. According to the statutory regulations the Vendor shall in particular warrant that the goods possess the agreed quality at the point at which the risk passes on to us. The product descriptions – which are in particular by description or reference in our order – the subject matter of the respective agreement or in the same way are included in the agreement as these AEB shall be deemed to be an agreement upon the properties. It is irrelevant whether the product description originates from us, from the Vendor or from the manufacturer.
3. If the Vendor fails to comply with its obligation regarding subsequent performance – at our discretion by either remedying the defect (remediation of the defect) or by delivering an article which is free of defects (substitute delivery) – within an appropriate deadline defined by us, we shall be entitled to either remedy the defect ourselves or to commission a third party to eliminate the defect and to demand compensation of the necessary expenses incurred from the Vendor. For the rest we shall be entitled in the case of a material or legal defect pursuant to the statutory regulations to abate the purchase price or to withdraw from the agreement. In addition to hereto we shall be entitled to claim damages pursuant to the statutory regulations.
4. The deadline for a notification of defects which can only be identified in the case of an investigation which goes beyond a mere entrance control shall be two weeks and shall begin to run with the delivery.

VIII. Product liability

If the Vendor is responsible for a product damage, it shall release us in so far from third-party claims if the cause lies within the sphere of its control and organisation and if it is liable in the external relationship.

1. Within the scope of its obligation of indemnification the Vendor shall refund any and all expenses pursuant to §§ 683, 670 BGB resulting from or in connection with any third-party claims including any product recall campaigns performed by us.
2. We shall inform the Vendor in so far as possible and deemed reasonable in connection with the scope of product recall measures and shall give it the opportunity to render its statement. Further statutory claims shall remain unaffected.

IX. Purchase of Work and Services

The following regulations shall apply if the subject of the contract involves the performance of work or services on behalf of Hofmann:

1. The seller shall perform work or supply services under his sole entrepreneurial responsibility.
2. The seller shall not be obliged to perform the work or supply the services in person. The seller may use employees or other contractors to fulfil his contractual obligations provided they have the necessary technical expertise and expert knowledge.
3. When performing work or supplying services, the seller or the employees or the subcontractors of the seller shall not be obliged to comply with technical instructions issued by Hofmann.
4. Unless the services have to be furnished at the business premises of Hofmann, the seller shall be free to choose where the work is to be performed or the services are to be supplied. If the services have to be supplied at Hofmann's business premises, the seller shall observe normal business hours and comply with safety regulations.
5. The seller shall be obliged to pay the minimum wage to his employees in accordance with the provisions of the Minimum Wage Act (MiLoG). If the seller has commissioned subcontractors, he shall ensure that the subcontractor or a manpower agency commissioned by the subcontractor pays the deployed personnel the minimum wage in accordance with the Minimum Wage Act. After corresponding notification, Hofmann shall be entitled to examine anonymised wage and salary lists at the seller. If claims are made against Hofmann under § 13 of the Minimum Wage Act in conjunction with § 14 of the Employee Secondment Act (AEntG), the seller shall release Hofmann from having to pay minimum wages, administrative fines and any necessary related prosecution costs.
6. The seller's employees may apply for job openings at Hofmann. If an employment relationship comes about between Hofmann and an employee of the seller as a result of a job application, this shall not lead to any claims by the seller against Hofmann. Hofmann shall give an undertaking not to actively hire any employees of the seller or invite them to apply for a vacant job at Hofmann.
7. Unless otherwise agreed in this clause, the legal regulations relating to the performance of work and services shall apply.

X. Escape clause, applicable law and place of jurisdiction

1. If any of the afore-mentioned terms are or become invalid, this shall not affect the validity of the remaining terms. In such a case, Hofmann and the Vendor shall endeavour to agree upon an effective term which approximates the economic intention of the invalid term in the best possible way.
2. For these General Purchase Terms [AEB; Allgemeine Einkaufsbedingungen] and any and all legal relations between us and the Vendor the law of the Federal Republic of Germany excluding all international and supranational (contractual) legal systems, in particular the United Nations Convention on the International Sale of Goods [CISG].

The place of jurisdiction for any and all disputes resulting from the contractual relationship shall be Worms. We are also entitled to file suit at the place of fulfilment of the delivery obligation.