

General Terms and Conditions for Purchases



I. Controlling Conditions.

The legal relationships between HOBAS and Seller shall be governed by the following terms and conditions for purchases which shall apply to all orders to the extent that different terms are not agreed upon in writing in individual cases. Through acceptance of this order, all contrary terms contained in the Seller's acceptance, including all terms of sale for fulfillment of this order become without force. HOBAS is not required to make a special objection to these terms of sale.

II. Offer and Acceptance.

All supplier contracts (including both offer and acceptance) and release orders as well as any changes or supplementation thereto must be in writing. Discrepancies between offer and its acceptance or between order and its confirmation must be approved by HOBAS. Supplier releases can also be effected by electronic data interchange which shall be deemed to constitute a „written“ release. The parties agree to refrain from ever alleging that a contract has been modified except by written agreement. If the Seller does not accept the order within two weeks of receipt, then HOBAS is entitled to cancel the order. Release orders are binding at the latest, when the Seller does not object within one week of receipt.

III. Delivery.

1. Time is of the essence. Delivery shall be effected within the time specified on the face of the purchase order. If Seller fails to make deliveries or perform services at the agreed time, all damages suffered by HOBAS and any premium transportation or other costs required to meet the specified delivery schedule will be at the expense of Seller. Other remedies shall remain unaffected thereby.
2. Delivery shall be effected DDP to the place of business of HOBAS (production facilities) indicated in the purchase order, unless the purchase order states another delivery address or another delivery term. The Seller shall procure the export and import licenses and any other official approvals or consents, and shall perform any customs clearance required for the export and import of the goods and, where applicable, for their transit through a third country.
3. Seller is not allowed to delay delivery until payment of the purchase price or until satisfaction of any other claim against HOBAS, unless such claims have been approved by HOBAS or awarded by final judgement rendered by a court of competent jurisdiction.

IV. Packing, Marking and Shipment.

Seller will pack and mark goods in accordance with HOBAS's instructions, secure the lowest transportation rates, meet carrier requirements and assure delivery free of damage and deterioration. Seller is responsible for the goods until delivery at the designated point. Prices specified include all charges and expenses for containers, packing and crating, and transportation according to the respective last drafting of the Incoterms agreed upon in the specific order. All containers, packing and crating material will become the property of HOBAS on delivery unless otherwise agreed upon in the specific order. HOBAS may specify the carrier and/or method of transportation and Seller will process shipping documents and route shipment of the goods from the FOB point accordingly.

V. Release Authorization.

When deliveries are specified to be in accordance with HOBAS's written releases, Seller will not fabricate or assemble any goods, nor procure required materials, nor ship any supplies, except to the extent authorized by such written releases or provisions of this order specifying minimum fabrication or delivery quantities.

VI. Inspection and Rejection/Notice of Defect.

HOBAS may inspect and evaluate all goods (including all tooling and material used in their manufacture) and all services at times and places designated by HOBAS. Seller will perform its inspections as designated by HOBAS and Seller will make inspection systems, procedures and records available to HOBAS upon request. Notwithstanding payment or any prior inspection, HOBAS may reject, require correction or replacement, or return to the Seller (at Seller's expense and risk of loss) any goods delivered or services rendered that do not conform to applicable requirements. HOBAS must notify the Seller of defects or non-conformities as they are actually discovered in the orderly conduct of business. If the defect is first recognized after the beginning of production, HOBAS can nevertheless take advantage of the warranty. The Seller waives any objection of delayed notice of defect. Without limiting its remedies, after notice to Seller, HOBAS may either (i) replace or correct any non conforming goods or services and charge Seller the cost of such replacement or correction, or (ii) cancel the order for default under Article X hereof.

VII. Payment

1. The invoice is to be sent in duplicate to the factory to which delivery is made. It must contain the number and date of the order, the release order, any supplemental information of HOBAS (for example, accounting information), place of delivery, number and date of the delivery note and quantity of the goods covered by the invoice.
4. HOBAS shall not be deprived of any right it may have to claim

2. HOBAS shall arrange for payment within 90 - ninety - days from receipt of a properly issued invoice, unless provided otherwise on the purchase order. HOBAS is allowed to take a cash discount of 3 - three - per cent of the purchase price if payment is effected within 30 - thirty - days. HOBAS is allowed to effect payment in EURO currency applying the official exchange rate at its place of business on the day of payment notwithstanding whether the price is expressed in the purchase order in any other currency.
3. In case of defective delivery, HOBAS shall be entitled to withhold an appropriate portion of the payment to cover its claims until proper fulfillment of the contract by the Seller. Other remedies shall remain unaffected thereby.
4. Seller may not transfer or assign its rights of payment to third parties for collection without the prior written consent of HOBAS.

VIII. Warranties

Seller warrants for a period of 2 – two – years from delivery that the goods or services will (i) comply with all specifications, drawings, descriptions or samples furnished and/or specified by HOBAS, (ii) be merchantable, (iii) be free from defects in material and workmanship, (iv) for goods not designed by HOBAS, be fit and sufficient for the purposes intended, (v) that on delivery HOBAS will receive good title to the goods and services, free and clear of all liens and encumbrances and (vi) that all goods and services will be free from any actual or claimed patent, copyright, trademark or other intellectual property right infringement. These warranties are in addition to any warranties implied by law or otherwise made by Seller and will survive acceptance and payment by HOBAS.

IX. Quality and Documentation

1. Supplier shall satisfy the quality assurance requirements specified in his ISO 9000/9001 certificate. HOBAS may undertake an evaluation of Seller's quality system. The evaluation shall be limited to those goods and services which are covered by the order.
2. Products shall be supplied in accordance with the specifications agreed between Seller and HOBAS. Seller shall also be responsible for compliance of the goods with regulatory requirements applying in the country of destination.
3. Certificates of analysis and of origin shall accompany all deliveries.

X. Cancellation for Default

If Seller (i) fails to deliver goods or perform services at the time specified herein, or (ii) fails to perform any other provisions hereof and does not cure such failure within a period of 10 – ten – days or any other period agreed upon after receipt of written notice from HOBAS specifying such failure, or (iii) becomes insolvent, makes an assignment in favor of creditors, or enters bankruptcy or dissolution procedures, or (iv) is merged into another company and/or is expropriated or nationalized, HOBAS may cancel the whole or any part of this order without any liability, except for payment due for goods and services delivered and accepted. Upon such termination HOBAS will have the right, on notice to Seller, to take title to and possession of all or any part of such work performed by Seller under this order.

XI. Assignment

This order will not be assigned or delegated, in whole or in part, without HOBAS's prior written consent.

XII. Termination at HOBAS's Option.

HOBAS may terminate this order at any time without cause in whole or in part by written notice, whereupon Seller will stop work on the date and to the extent specified in such notice and terminated order. Within 30 – thirty – days after receipt of the termination notice, Seller will submit all claims resulting from such termination. HOBAS will have the right to verify such claims by auditing the relevant records, facilities, work or materials of Seller and/or its subcontractors. HOBAS will pay Seller for finished work accepted by HOBAS as well as for the documented cost to Seller of work in process and raw material allocable to the terminated work which is not in excess of any prior authorization by HOBAS. Payment made under this Clause XII will constitute HOBAS's only liability for termination hereunder. Title and right of possession free of charge to all delivered goods and services will vest in HOBAS immediately upon HOBAS's tender of such payment. Title and right of property to all delivered goods and services will vest in HOBAS immediately upon receipt of payment by the seller. The provisions of this Clause XII will not apply to any cancellation by HOBAS for default by Seller or for any other cause recognized by law or specified by any other clause of these terms and conditions or by this order.

XIV. Labor Disputes

Seller will immediately notify HOBAS of any actual or potential labor dispute delaying or threatening to delay timely performance of this order, and will include all relevant information to HOBAS.

XV. Replacement of Damage and Product Liability

1. Seller shall compensate HOBAS for damages, which HOBAS suffers directly or indirectly as a result of Seller's breach of warranty, any other breach of contract, violation of official safety requirements or from any other basis for which the Seller may be legally responsible. No limitation, exclusion or restriction shall apply to the right of HOBAS to claim damages.
2. Seller shall adequately insure himself against the risks described above and to provide HOBAS proof of insurance (including appropriate self insurance) upon request.
3. Any liability of HOBAS shall be excluded unless it results from a fundamental breach of contract, caused by HOBAS' acting with gross negligence.

General Terms and Conditions for Purchases

damages by exercising its right to other remedies and vice versa.

XVI. Property and Special Tooling

Property of every description including all tools, equipment, material, drawings, manufacturing aids and replacements of the foregoing furnished by HOBAS, either directly or indirectly, or as acquired or manufactured by Seller for use in the performance of this order, for which Seller has been reimbursed by HOBAS, will be (i) the property of HOBAS, (ii) plainly marked or otherwise adequately identified by Seller as the property of HOBAS, and (iii) safely stored separate and apart from Seller's property. Seller will retain and not use or rework tooling or property of HOBAS except for performance of work hereunder or as authorized in writing by HOBAS. Seller will keep such tooling or property in its possession and/or control in good condition, fully covered by insurance, free of liens and encumbrances and will replace such tooling or property when lost, damaged or destroyed. The duplication of such property is only allowed within the parameters of the requirements of the business and the agreement regarding intellectual property. The Seller must obligate any subcontractors to meet the same requirements. All HOBAS tooling or property will be transferred as HOBAS may direct at any time.

XVII. Use of Design Aids and Confidential Information

1. The specifications, drawings, designs, manufacturing data and other information transmitted to Seller by HOBAS in connection with the performance of this order are the property of HOBAS or its affiliated companies and may be covered by one or more patents, patent applications, copyrights or other intellectual property rights. Seller shall keep secret and confidential all such information, and shall not disclose it to any third party, and will handle all of this information in such a manner to ensure that it is not used for any purpose detrimental to the interests of HOBAS or its affiliated companies. Seller shall return upon written request all the information which he holds in hard copy form and return or destroy all copies or other records of the information and all notes and memoranda prepared and any copies thereof relating to any of such information.
2. Seller shall not use, utilize, commercialize or exploit in any way other than under a contract with HOBAS the inventions, innovations and developments made, and the results and improvements achieved through or in the course of the cooperation with HOBAS, or with the help or experience of HOBAS, and shall not sell or provide a product derived from that cooperation to any third party.

XVIII. Patents and Protection of Intellectual Property

1. No rights are granted to Seller under any patents of HOBAS or its affiliates except as may be necessary to fulfill Seller's obligations under this order. Seller agrees to defend all suits, actions or proceedings which may be brought against HOBAS, any of its affiliated companies or its customers for alleged infringement of any proprietary interest resulting from the use or sale of the goods or services provided hereunder and to pay all fees and expenses of counsel which may be incurred in defending, and all costs, damages or other recoveries in every such suit.
2. The Seller is liable for claims of infringement of intellectual property rights and patent, trademark and copyright registrations which result from the use of the product consistent with the terms of this contract.
3. The Seller will hold HOBAS and its customers harmless from any damages, and claims, and will compensate them for all damages, which result from a third parties vindication of its rights under the patent, trademark, copyright and other intellectual property laws.
4. The foregoing will not apply to the extent the Seller produced the product according to drawings, models, or specifications provided by HOBAS, and the Seller does not know, or in conjunction with products developed by it, was not required to know, that the intellectual property rights of others would thereby be infringed.
5. The contracting parties will notify each other of any risks of infringement and alleged infringements of which they become aware and give the other the opportunity to participate in the defense of the corresponding claims.
6. The Seller will notify HOBAS upon request of the published or non-published proprietary rights and licensed patents and patent registrations concerning the object to be supplied.

XIX. Insurance and Indemnification/Product Liability

Seller will furnish evidence acceptable to HOBAS of adequate worker's compensation, comprehensive general liability, automobile and other public liability and property damage insurance coverage in amounts and coverages to cover all claims hereunder. Seller will defend, indemnify and hold HOBAS harmless against all claims, liabilities, losses, damages and settlement expenses for injury or death of any person and damage or loss of any property allegedly or

actually resulting from or arising out of any act or omission, negligent work of Seller or its employees, agents or subcontractors in connection with performing this order, either on HOBAS's property or in the course of their employment.

XX. Required Compliance

In providing goods or services hereunder, Seller will comply with any and all applicable laws (including any applicable foreign laws), and regulations promulgated thereunder. Seller will defend, indemnify and hold HOBAS harmless from and against any and all claims, losses, damages, costs, and expenses resulting from or arising out of any failure of Seller or Seller's employees, agents and subcontractors to comply with any applicable governmental regulation and/or statutes.

XXI. Governing Law, Disputes

1. Unless otherwise provided in the order or a supplier contract, all orders and contracts for the sale of goods or the performance of services shall be governed by and construed in accordance with the laws of the Republic of Austria, or, if a HOBAS affiliate is the contracting party, the laws of this party's principal place of business.
2. Language of all contracts and in case of disputes will be English.
3. Place of jurisdiction for all disputes arising directly or indirectly from this order, or any other order, or a contract for the sale of goods or the performance of services shall be the relevant competent court in the city of Klagenfurt, Austria, or, if a HOBAS affiliate is the contracting party, the relevant court with competences for this party's principal place of business. HOBAS may, however, also resort to the court with jurisdiction for the Seller.

XXII. General Stipulations

1. Should any provision of these conditions and/or other agreements be or become invalid, the validity of the remaining portions of the contract will not be affected thereby. The contracting parties are obligated to replace the invalid provisions with a new one which achieves as nearly as possible the same economic result.
2. HOBAS will recognize no retention of title by the Seller.
3. The Seller expressly agrees that HOBAS may transfer information concerning its business relationship to HOBAS's affiliated companies.
4. No failure to exercise, nor any delay in exercising on the part of either Party, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.