

# PURCHASING CONDITIONS of häuselmann metall GmbH in respect of suppliers

**1.1** All orders are to be conducted exclusively in accordance with these purchasing conditions. Our general purchasing conditions (PC) apply to all present and future business relationships with our sub-contractors and suppliers, i.e. individuals or legal entities or partnerships with legal capacity with which we enter into business relationships and which practise a commercial activity or undertake autonomous professional business.

**1.2** Sales conditions of the suppliers which deviate from, contradict or supplement these, are, even if known, not a component of the contract unless we expressly consent in writing to their validity. Amendments and supplements of the supplier as well as Terms and Conditions of the supplier that deviate from these purchasing conditions are only valid and considered to be accepted if we confirm in writing that they are an addendum to the purchasing conditions.

The same applies if the order confirmation differs from the order.

**1.3** We hereby expressly revoke – also in advance in respect of all future transactions – the vendor's sales conditions. Our purchasing conditions apply exclusively. Conditions of the supplier that contradict or deviate from our conditions are not recognised.

**1.4** These agreements are also to apply if we accept and pay for supplies of goods from the vendor and if the vendor has contradictory sales conditions that are however not the basis of the contract. The fundamental principles regarding secrecy about commercial confirmation documents are to this extent altered by mutual agreement. Nor does the acceptance of supplies or services as well as payment for same also signify consent to the Terms and Conditions of the supplier.

**1.5** With regard to the implementation of orders for goods and services, the specifications, drawings, descriptions and other documents agreed upon between us and the supplier are valid.

**1.5.1** With regard to weighing, the net weight applies. There must be absolute compliance with the number of items. For tonnes, kg, m, m<sup>2</sup>, reduced quantities are not permissible. Customary deviations in quantity may only move within the range –0/+5%. Additional payments for excess quantities are only permissible after prior written agreement.

**1.6** In particular the "häuselmann metall – Quality Assurance Guidelines for Suppliers" apply in their respective current form and they can be examined, called up or downloaded from our website at any time by the supplier. The same applies to these PC that can also be sent to the supplier if it makes a request to us at any time by e-mail or fax etc.

## **2. Offer / concluding the contract**

**2.1** The contract is concluded by means of an order from us (quote) and a confirmation (acceptance) by the supplier which must always be in writing. Individual orders or recurrent order arrangements by us, i.e. by häuselmann metall GmbH are possible.

**2.1.1** Individual orders must be confirmed by the supplier immediately after receipt. Order schedules do not need to be confirmed by the supplier. Delivery schedules within the separately agreed, binding time for acceptance of the order schedules are considered to be accepted unless the supplier cancels immediately after receipt (within 3 days).

**2.2** If the supplier does not accept the order (quote) within 2 weeks of receipt (acceptance), häuselmann metall GmbH is no longer bound by the order (quote).

**2.3** Measurement and weight details, quantities, prices, other descriptions and other details that are contained in catalogues, circulars, notices or price lists are only approximate figures and so are not binding for us (purchaser) unless they have been expressly included in the contract. These details, of which the vendor was informed prior to the conclusion of the contract, remain our exclusive property and may not be made accessible to third parties.

**2.3.1** häuselmann metall GmbH can request amendments to subjects of the contract in construction and implementation to the extent that these are reasonable for the supplier. In this instance, the effect, particularly with regard to excess and reduced costs as well as supply deadlines must be regulated appropriately and by mutual consent.

**2.4** Amendments or supplements to the order on the part of the supplier are only effective if they have been confirmed in writing by häuselmann metall GmbH.

## **3. Prices – Payment conditions**

**3.1** The price shown in the order is binding and is based on the agreement "Delivered Duty Paid". The agreed purchase price includes "delivery free of charge to the address of the buyer" including packaging, transportation insurance and statutory value-added tax.

**3.2** Payment and delivery are to be in the manner and at the time agreed upon by the parties for the individual case. If no other agreement has been made, häuselmann metall GmbH shall pay the account on the 15th day of the month following the date of invoicing/the completion of the service less a 3 % discount or 60 days net. The payment period begins as soon as the delivery or service has been provided in full and the properly issued invoice has been received.

**3.3** For the calculation and payment of supplies, the weights or quantities determined at the place of unloading are decisive. In the case of faulty deliveries, we are entitled to withhold payment, at least of a proportional value, until the proper fulfilment of the order. Drafts, drawings and samples are only paid for if a written agreement has previously been made in this regard.

**3.4** Payments do not signify recognition that the supplies or services were in accordance with the contract.

**3.5** The supplier is not entitled without the prior written consent of häuselmann metall GmbH - which may not be refused unreasonably – to transfer his accounts receivable or to have them collected by third parties. If extended reservation of ownership exists, consent is considered to have been given. If the supplier, contrary to clause 1, transfers his accounts receivable from häuselmann metall GmbH - without the consent of häuselmann metall GmbH - to a third party, the transfer is nonetheless effective. We can however make payment to the supplier or the third party if we choose to do so and this has the effect of an exemption.

**3.6** If the contracting party is not a consumer, the reimbursement of expense under § 439 III BGB in particular excludes the costs of removal, installation or attaching.

## **4. Delivery period – delay in delivery**

**4.1** The delivery deadlines agreed upon are binding and refer, if no other agreement is made, to arrival at the receiving office mentioned in the order. The delivery must be made on the delivery date set down in the purchasing contract or order. In cases of doubt, this means that the dates are always fixed. The vendor is obligated to inform the purchaser in writing in good time and immediately (if applicable by fax) if it is considered that the delivery will be delayed and to consult with us regarding further procedures.

**4.2** In the case of a delay in the delivery, we are entitled to request lump sum default damages amounting to 5 % of the value of the delivery per complete week, but no more than 10% of the entire contract value. However we do expressly reserve the right to make more extensive legal claims. The supplier has the right to prove to us that the delay has not caused any damage or, at the most, relatively insignificant damage. The lump sum is in this case reduced correspondingly.

**4.2.1** In addition the supplier must indemnify us, upon request, against any claims for compensation for damages made by our customer. Upon request the supplier must pay liquid security collateral (where applicable in the form of an appropriate directly enforceable bank guarantee upon the first demand by a German bank or insurance company).

**4.3** In the case of non-compliance with agreed delivery dates owing to a circumstance for which the supplier is answerable, häuselmann metall GmbH is, notwithstanding more extensive legal regulations or stipulations agreed upon, entitled - after allowing the deadline to pass and threatening rejection - to repudiate the contract, to obtain compensation from a third party and / or to demand compensation for damages due to non-fulfilment. Acceptance of a late delivery or service does not signify any waiver of claims to compensation.

**4.4** In the case of repeated delays in delivery, häuselmann metall GmbH is entitled, after prior warning, to cancel with immediate effect all orders not yet completed at that point in time.

#### **5. Transportation, packaging, passage of risk**

**5.1** The risk is in principle not transferred until the delivery has been made, i.e. until the goods have been unloaded and have been placed in our stockroom or a delivery place determined by us. It is considered that passage of risk has not occurred - in each case - until after the delivery of the goods at the receiving centre agreed upon. This also applies if, on the basis of a special agreement, the freight costs are to be paid by häuselmann metall GmbH. If transportation is carried out at our cost, the dispatch provisions of häuselmann metall GmbH must be heeded and dispatch must be performed at the respective lowest cost. The dispatch provisions can be examined at any time or can be requested by fax or e-mail.

**5.2** If no other agreement is reached, the delivery is ex-works incl. all incidental costs and packaging. Any waste disposal costs for the packaging are to be paid by the supplier.

**5.3** The staff of häuselmann metall GmbH or their authorised representatives act - at the surrender of the ordered goods to häuselmann metall GmbH - only as vicarious agents of the supplier.

**5.4** A delivery note in duplicate must be attached to each order in the designated place. In all correspondence, the details to which particular reference is made on the order form must be given.

#### **6. Inspection of defects and warranty**

##### **6.1. Warranty (guarantee) in the case of material defects:**

Acceptance of the deliveries/ services takes place with the proviso that there will be an inspection for correctness and suitability. häuselmann metall GmbH will immediately give notice of defects in the goods delivered, as soon as they are established in accordance with the conditions of proper business routines. To this extent the supplier waives his right to object on the basis of late notification of defects.

**6.1.1** The vendor promises expressly and gives an absolute guarantee that the goods supplied by him are free of faults, have the guaranteed properties and comply with the requirements of the purchaser and the recognised technological regulations and the technical safety regulations applicable at the time of the delivery or service. The vendor guarantees that the goods comply with the contractual agreements, its manufacturing specifications and advertising.

**6.2** The vendor's defects' warranty or its guarantee is in principle for two years, calculated from the time of purchase - unless in an individual case a longer warranty period was agreed upon or German law compulsorily requires a longer guarantee.

**6.2.1** If the order concerns materials that häuselmann metall GmbH's ultimate buyer or the customer of the customer (supplier chain etc.) is installing in a building or property or that are suitable for an appropriate use by the ultimate buyer or consumer, it is agreed that the warranty will be for five years from the purchase by our customer (reference is made to the legally mandatory regulations among others of Section 438 I No. 2 of the German Civil Code). Reference is made to the fact that the materials etc. obtained by us are also supplied to contractors who in turn produce or carry out work for ultimate buyers and so-called consumers. Reference is made to the so-called piercing of the corporate veil of the contractors, sub-contractors and manufacturers that is now regulated by law because German law has been agreed upon.

**6.2.2** In addition, the supplier must, if applicable and upon request, indemnify us - regardless of our other claims - in respect of any claims by our customer for compensation for damages. Upon request, the supplier must in this regard pay liquid security funds (where necessary, in the form of an appropriate directly enforceable bank guarantee upon the first demand by a German bank or insurance company).

**6.3** If there is a defect in the object of the purchase for which the vendor is answerable, häuselmann metall GmbH is entitled to demand as it chooses - in the case of defects in the delivery or service - replacement for the delivery or service, the elimination or rectification of defects free of charge etc. This also applies to deliveries in which testing is limited to random checks.

In this case, the supplier must bear the expense of eliminating the defect or providing a substitute delivery. The same also applies to the costs of essential legal representation incurred by us.

**6.3.1** If the supplier does not carry out the elimination of defects or the substitute delivery or service within an appropriate period that must be set by häuselmann metall GmbH, then häuselmann metall GmbH is entitled to rescind the contract in whole or in part without compensation, to have a price reduction and also to demand compensation for damages owing to non-fulfilment.

**6.3.2** In urgent cases, particularly in order to avoid excessive damage, häuselmann metall GmbH can, in order to adhere to its own supply obligations, carry out - to the necessary extent - possible rectification itself or have third parties carry this out, or if applicable, purchase defect-free objects of the contract from third parties, without this leading to an obligation on the part of häuselmann metall GmbH. The supplier shall pay the necessary costs for this.

**6.3.3** If, as a result of the defective delivery, an incoming goods inspection that exceeds the normal scope becomes necessary, the supplier is to bear the cost.

**6.3.4** The supplier is to bear the cost and risk of the return, sorting or scrapping of the defective objects of the delivery. If a fault is not discovered until after the contractual objects have been further processed, the supplier is obligated to pay all the costs connected with the exchange or rectification of the contractual objects, especially testing costs, transportation costs, tolls, work expenses and material costs. This also includes the costs of a necessary exchange and / or the repair of products into which häuselmann metall GmbH or its customers have installed - through no fault of their own - (for which the onus of proof is on the supplier) defective objects of the contract, as well as the costs for handling and the settlement of the warranty (incidental costs for materials).

**6.3.5** Claims resulting from defects that arose within the warranty period, including claims for compensation for consequential damages for defects, become statute-barred - unless an extended period is set down by law - at the earliest after the expiry of a period of three years after häuselmann metall GmbH gave notice of the defect - unless any longer legal period of limitation is in place.

**6.4** All replacement deliveries or repairs are likewise also a component of this warranty against defects as set down in the General Purchasing Conditions.

**6.5** The full range of statutory warranty claims are also due to us. We always reserve the right to demand compensation for damages and this also exists in each case in addition to the right to rescind the contract or the right to a reduction.

**6.6** If claims are made against us - owing to a fault in the good delivered by the supplier - as a result of producer liability etc., the supplier must also indemnify us in each case against the producer liability etc arising from the fault.

**6.7** The supplier must upon request pay security to the value of the purchase price in the form of an enforceable bank guarantee upon the first demand by a German financial institution or insurance company.

**6.8 No infringement of legal norms:** The vendor expressly promises and gives an absolute guarantee that the implementation of the individual purchasing contracts will not infringe the law, particularly in respect of compliance with laws, regulations or other stipulations of any official office.

**6.9 Warranty in the case of defects of title:**

The vendor promises that all objects subject to the purchasing contracts are fully owned by it and that no other rights of third parties represent an obstacle (such as liens, other creditor items arising from the transfer of accounts receivable or other securities for loans, sale of receivables, hire purchase, acquisition of goods subject to retention of title etc.).

**6.10** The exclusion of a reimbursement of expenses in particular pursuant to § 439 III BGB is not agreed.

**7. Liability**

**7.1** If häuselmann metall GmbH or a third party incurs damage because of a delivery of faulty parts or the poor performance of a service or another infringement of contractual obligations, the supplier is obligated to provide compensation for damages.

**7.2** The supplier is liable for measures implemented by häuselmann metall GmbH to guard against damage (e.g. recall action) if the damage was caused by a fault in the product delivered by the supplier.

**7.3** The supplier agrees to take out product liability insurance for all the supplies and services provided by it for property damage and damage to persons which must be appropriate for the risks of the supplier industry, consumer protection and increased product liability, including recall costs cover and to maintain this cover for at least 30 years above and beyond the supply/ service. Reference is made to consumer protection that was increased by means of the reform of the Law of Obligation in Germany that has been applicable since 01.01.2002. Evidence of the type and extent of the insurance cover including the name of the liability insurance company must be provided to häuselmann metall GmbH in a suitable form. Deviations from this in individual cases must be examined and agreed upon.

**8. Material provided – reservation of title**

**8.1** If we make materials or parts available to the supplier, we reserve the right of ownership. These materials must be stored, labelled and properly managed without remuneration and with care. Processing or transformation are undertaken for us by the supplier – without putting us under any obligation. Their use is only permissible for orders by the ordering party.

**8.2** In the case of processing or mixing, we acquire co-ownership of the new item as a proportion of the value of our item in relation to the other processed objects at the time of processing.

**8.2.1** If the value of the material made available by us exceeds the value of processing and where applicable that of the other components of the newly produced items, the newly produced items become the property of häuselmann metall GmbH, otherwise häuselmann metall GmbH becomes the co-owner on the basis of the value of the material made available in proportion to the value of the total earnings.

**8.3** Prior to the commencement of production, the supplier must examine the materials made available for visibly discernible defects and carry out an identification check. During production the supplier must conduct further tests if these have been agreed upon in particular with häuselmann metall GmbH or are necessary according to the quality management system. If the supplier establishes that the materials provided by häuselmann metall GmbH are defective in quality, it must inform the company immediately in order to consult with it in regard to further measures to be taken.

**8.4** Tools, moulds, samples, patterns, drawings, standard sheets etc. made available by häuselmann metall GmbH as well as objects manufactured according to these, may not be passed on to third parties without the written consent of häuselmann metall GmbH, nor may they be used for purposes other than those contractually agreed upon. They may not be made accessible to third parties unless this is essential for the fulfilment of the contract. If the supplier infringes this obligation, häuselmann metall GmbH can demand their surrender with the proviso that it also has additional rights. It always reserves the right to enforce further compensation for damages. The supplier is not permitted to make any information obtained in connection with the handling of the order accessible to third parties unless it is generally known or lawful in another respect.

**9. Place of fulfilment, place of jurisdiction and law to be applied etc.**

**9.1** As our customer is a businessman or possibly also a legal entity under public law or a separate fund under public law, the place of business of our company, Forst, is the exclusive place of jurisdiction for all disputes arising from this contract. The same applies if the supplier does not have any general place of jurisdiction in Germany or its company headquarters or residential address or usual place of residence are unknown at the time of the legal proceedings. We can also choose to bring an action against the supplier at its place of jurisdiction.

**9.2** The place of fulfilment for the supplies and our payments is in principle our warehouse in Forst. In individual cases we shall designate another place of delivery for the supplies. The place of fulfilment for the supplies and services is the place to which the goods are to be delivered in accordance with the order.

**9.3** For all legal relationships between us and the vendor (sub-contractor, supplier, manufacturer) the law at the place of our headquarters that is decisive for the legal relationship between domestic parties shall apply. It is agreed that the law of the Federal Republic of Germany shall be valid and that the UN law relating to the international sale of goods shall be excluded.

**9.4** If individual conditions of the contract with the vendor including these General Purchasing Conditions are or become ineffective in whole or in part, this does not affect the validity of the other conditions. The contractual parties are mutually obligated to replace the regulation that has become ineffective with a regulation that from a legal perspective most closely resembles in meaning and purpose and in economic performance that of the ineffective condition.

**9.5** Agreements, especially oral subsidiary agreements and any promises made by our purchasing employees do not become binding until they are confirmed by us in writing. Even a waiver of the written form requires this form.

**9.6** These regulations replace all prior agreements previously made by the parties in these business fields orally or in writing. If the purchasing conditions do not contain any regulations, the legal stipulations shall apply.

[ (as at: 06 June 2018 ) häuselmann metall GmbH – Sales Company 68199 Mannheim ( Germany ) ]