

Terms and Conditions of Purchase for machines and equipment



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1.0 Terms of Delivery

1.1 Any and all orders by Hella KGaA Hueck & Co, Rixbecker Str. 75, D-59552 Lippstadt, and/or by its subsidiaries (hereinafter "the Orderer") for machines and equipment shall exclusively be subject to the following Terms of Purchasing, unless otherwise expressly agreed in writing. The Contractor's General Standard Terms and Conditions shall not be applicable even if in a particular case the Orderer does not contradict them. Changes or supplements as well as other additional agreements shall only be valid if made in writing.

1.2 The specifications, drawings, descriptions and other documents agreed between the Orderer and the Contractor shall apply to the execution of the services by the Contractor.

1.3 The Contractor shall not be reimbursed for any quotations or concepts prepared by the Contractor due to a request by the Orderer, unless otherwise expressly agreed in writing.

2.0 Scope of Delivery

2.1 The Orderer's order shall be decisive with regard to the scope of delivery. Any deviating acknowledgements by the Contractor shall be regarded as a new quotation and require written confirmation by the Orderer. Changes or additional agreements shall only be valid if made in writing.

3.0 Prices and Payment

3.1 Prices shall be free domicile including loading and packaging unless specifically stated. Value-added tax at the statutory rate is to be added to the prices.

3.2 Unless otherwise agreed, payments shall be made cash without deduction 60 days after delivery or acceptance of the service and receipt of invoice.

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4.0 Delivery Time

4.1 Delivery times agreed shall be binding and essential to the rendering of the service. Unless otherwise agreed, delivery times shall refer to the receipt of the delivery items at the delivery address agreed or, if this is part of the obligation, to the erection at the location agreed.

4.2 The delivery time shall be appropriately extended in the case of measures in connection with industrial action, in particular strike and lock-out, and in the event of unforeseen events occurring which are outside the influence of the Contractor, provided such impediments are proved to have a considerable negative effect on the completion or delivery of the delivery items. The Contractor shall inform the Orderer of the beginning and end of such impediments in important cases as soon as possible.

4.3 Should the Orderer suffer a loss due to a delay for which the Contractor is responsible, then the Orderer shall be entitled to demand delay compensation. Such compensation shall be 0.5% of the order value for each full week of delay but in no way exceed 5% of the order value. The Contractor shall be entitled to prove that no or only minor loss has resulted from the delay. The Orderer reserves the right to assert additional damages.

4.4 Keeping to the delivery time shall be conditional on the fulfilment of any applicable duties to cooperate on the part of the Orderer. The Contractor shall only be entitled to allege non-fulfilment of such duties if he has notified the Orderer without delay and in writing of the delay or non-fulfilment of a duty to cooperate.

5.0 Passage of Risk and Taking Delivery

5.1 The risk shall pass to the Orderer upon the delivery of the delivery items to the Orderer. The Contractor shall insure the shipment against theft, breakage, transport, fire and water damage at his own cost.

5.2 The Orderer shall take delivery even if the goods show minor defects, without prejudice to his rights in accordance with Section 7.

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6.0 Retention of Title

6.1 The Contractor retains the title to the delivery items until all payments have been made as set forth in the contract for delivery.

6.2 The Orderer must not pledge the delivery items or assign them as security. In the event of attachment, confiscation or other disposal by a third party, the Orderer shall inform the Contractor without delay.

6.3 Assertion of the retention of title and attachment of the delivery item by the Contractor shall not be regarded as cancellation of the contract.

7.0 Liability for Defective Delivery

7.1 The Contractor shall be liable for defects of the delivery, which includes the absence of warranted qualities, as set out below:

7.2 The Contractor shall at his reasonable discretion repair or re-deliver free of charge all parts which due to circumstances that occurred prior to the passage of the risk, in particular defective workmanship, poor materials or imperfect construction, are found to be unusable or usable only with considerable restrictions within a period of 24 months from commissioning or within any longer statutory period of limitation applicable to defects. The Orderer may object to the warranty type selected by the Contractor if the type is unacceptable to him. The Contractor shall be notified in writing without delay of such defects. Replacement parts shall become the Contractor's property.

7.3 The Contractor cannot be held liable for damage resulting from the following reasons: unsuitable or inexperienced usage, faulty installation or commissioning by the Orderer or any third party, wear and tear, faulty or negligent handling, unsuitable operating equipment, substitute materials, faulty construction work, unsuitable subsoil, chemical, electrochemical or electrical influences, unless they are the Contractor's fault.

7.4 By arrangement with the Contractor, the Orderer shall allow the Contractor time and opportunity to carry out repairs and substitute deliveries which the

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Contractor at his reasonable discretion deems necessary. Only in urgent cases when operating safety is threatened or to avert disproportionately large damage (in which case the Contractor must be informed without delay), or if the Contractor is in default of removing a defect, the Orderer shall be entitled to remedy the fault himself or have it remedied by third parties and demand reimbursement of necessary costs from the Contractor.

7.5 The Contractor shall bear the cost of repair or substitute delivery.

7.6 The warranty period for substitute parts and repairs shall end at the end of the original warranty period applicable to the delivery item but shall not be less than 12 months. The period for liability for defects in the delivery item shall be extended by the time business was interrupted by the subsequent improvement activity.

7.7 Additional claims by the Orderer, in particular claims for damages which did not occur in the delivery item itself and claims for damages on the basis of a violation of contractual subsidiary duties shall be governed by legal regulations.

8.0 Orderer's Right to Cancellation, Repudiation and Other Liabilities of the Contractor

8.1 The Orderer shall be entitled to cancel the contract if the entire service should become impossible for the Contractor to perform prior to the passage of the risk. The same shall apply in the case of incapacity of the Contractor. The Orderer shall also be entitled to cancel the contract if part of the shipment of an order for objects of the same kind cannot be delivered and the Orderer has a justified interest in declining part delivery. If this is not the case, the Orderer shall be entitled to reduce the consideration accordingly.

8.2 If the Contractor is in default of his service and if the Orderer grants the Contractor a reasonable period of grace expressly stating that he will decline acceptance of the delivery after expiry of that period, and if the period of grace is not kept to, then the Orderer shall be entitled to cancel the contract.

8.3 The Orderer shall be entitled to rescind the contract if the Contractor through his own fault fails to repair or provide substitute delivery for a defect within the

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meaning of the Terms of Delivery. The Orderer's right to cancel the contract shall also apply to other cases of unsuccessful repair of substitute deliveries by the Contractor.

8.4 In cases in accordance with Section 8, Paras 1 to 3, the Orderer reserves the right claim damages, provided the necessary legal prerequisites exist.

8.5 The Orderer's right to terminate the contract in accordance with §649, BGB, shall be reserved.

9.0 General

9.1 Any provision herein stipulating that notifications or statements by the parties hereto shall require the written form shall also be complied with if such notification or statement is sent by fax.

9.2 In the event of any of the provisions herein being or becoming invalid, this shall not affect the legal validity of the remaining provisions. The parties hereto undertake to replace by mutual agreement such an invalid provision by a valid provision coming as close as possible to the commercial purpose of the invalid provision.

9.3 Place of delivery shall be Hella's registered offices or any receiving location indicated by Hella.

9.4 The law of the Federal Republic of Germany shall exclusively be applicable with the exception of the choice-of-law rules. Application of the UN Purchasing Law (United Nations Convention Regarding International Goods Purchasing Contracts of 11 April 1980) shall be excluded.

9.5 Any suit with regard to disputes arising out of the contractual relationship shall be brought before the court having jurisdiction for the registered offices of the Orderer's branch or subsidiary indicated in the order. The Orderer shall also be entitled to take legal action at the place where his registered offices.