

General Terms and Conditions of Purchase
for sales contracts and contracts for work and services
("Kauf- und Werkverträge")
of Hotset GmbH
as of September 2006

§ 1 General provisions – Scope of application

- (1) Any supplies and performances required by us are exclusively governed by the present Terms and Conditions of Purchase, regardless of the respective underlying legal relationship; we do not accept, without our express written consent, any conflicting or diverging terms and conditions of supplier. Our Terms and Conditions of Purchase also apply in the case that we take or accept, without any reservations, delivery from supplier although we are well aware of such conflicting or diverging terms and conditions of supplier.
- (2) Any agreement entered into by and between us and the contractor – the latter being hereinafter referred to as "supplier", regardless of the respective underlying legal relationship – for performing the contract must be made in text form ("Textform") at least.
- (3) Our Terms and Conditions of Purchase solely apply towards businessmen in terms of § 13 BGB (Bürgerliches Gesetzbuch – *German Civil Code*).
- (4) Any quotes, technical projects, preliminary studies etc. will be prepared by supplier at no expense to us and do not involve any commitment on our part to place the respective order with supplier.

**§ 2 Verification and acceptance of the order,
effects of acceptance, bidding documents**

- (1) Supplier is obliged to accept our purchase order within a period of one week by confirming any order details as specified in § 3 para. (3). Such acceptance is preferably to be made by signing our purchase order. With acceptance of our order, supplier confirms to have inspected any available documentation, records, drawings and plans for making himself familiar with the nature and scope of the requested performance.
- (2) We retain title and copyright with regard to any illustrations, drawings, calculations, samples, models, trademarks, designs and any other documents whatsoever; such illustrations, drawings, calculations, samples, models, trademarks, designs and any other documents whatsoever must not be made available to any third party without our express written consent and may only be used for the purpose of producing the requirements specified in our order and must be returned to us without request after completion of performance of such order. Further, they must be kept secret towards any third parties; § 9 para (4) applies in addition hereto.

- (3) In the case of any obvious errors, mistakes, clerical or calculation errors in the documents, drawings and plans made available by us, we will not be committed or liable in any way. Supplier is obliged to notify us of any such errors or mistakes so as to enable us to correct and replace our order. The same applies in the case of any lacking documents or drawings.
- (4) Supplier undertakes to comply with the following specifications, standards and requirements under the respective scope of application:
 - (a) our performance specification and/or specification sheet (“Pflichtenheft”), if available
 - (b) restrictions of the use of certain hazardous substances under Directive 2002/95 and the “Elektrogerätegesetz” (*German Act on Electrical Equipment*)
 - (c) “Geräte- und Produktsicherheitsgesetz” (*German Act on Technical Equipment and Product Safety*)
 - (d) DIN standards
 - (e) VDE standards
 - (f) TÜV standards

If and to the extent any discrepancies should occur between the aforementioned specifications, standards and requirements, the performance specification/specification sheet (“Pflichtenheft”) will always prevail. In case of doubt, supplier will be obliged to enquire, prior to performance, how to resolve any discrepancies or questions of doubt.

§ 3 Prices – Terms of payment – Prohibition of assignment

- (1) The price shown in the purchase order is binding. Unless otherwise agreed in text form (“Textform”), the price is inclusive of free delivery and packaging. The right to return any packaging is subject to explicit agreement, unless such right is already provided for in the “Verpackungs-VO” (*German Packaging Regulations*).
- (2) Supplier must issue and provide us with a separate invoice for each order; each invoice must be provided in duplicate. The invoices must not be enclosed with the consignment. We may only handle the invoices if they show the purchase order number indicated in the purchase order; supplier will be responsible for any consequences arising from the non-compliance with the aforesaid requirements, save in the case that supplier is able to prove that such consequences are not attributable to him.
- (3) Payment will be effected 14 days after receipt of the invoice, less 3 % discount or, respectively, within 60 days net. As to any invoices relating to construction work, the period for payment/discount period will not run from receipt of the invoice but from the date of inspection/acceptance by the architect or our specialist department.
- (4) We are entitled to set-off and retention if and to the extent that this is permitted by law.
- (5) Supplier must not, without our consent, assign any accounts receivable from us to a third party. This applies except for any assignment on the occasion of a business-usual extended reservation of title or, respectively, on the occasion of a factoring agreement.

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§ 4 Time of delivery

- (1) The time of delivery required in the purchase order is binding. The goods must have arrived at the required destination within the period of delivery or, respectively, on the date of delivery.
- (2) Supplier is obliged to immediately, i.e. without undue delay (“unverzüglich”), notify us in writing in the case that any situation should occur or become apparent to supplier which suggests that the agreed time of delivery cannot be complied with.
- (3) In the case of default in delivery, we will be entitled to exercise the statutory rights. We will, in particular, be entitled to claim damages instead of delivery (“Schadensersatz statt der Leistung”) under the conditions set forth in the relevant statutory provisions.
- (4) In the case of default in delivery, we will be entitled – without prejudice to our statutory rights (as referred to in para. (3) hereinbefore) – after a corresponding request for delivery, to demand payment of a contractual penalty amounting to 0.5 % of the net value of the purchase order for each week or part of a week of default, but in no case more than 5 % of the net value of the purchase order and/or the delivery, and/or to rescind the contract. Any due penalty paid by supplier is also deemed paid on account of a possible claim for damages.
- (5) We are not obliged to take delivery prior to the delivery date.

§ 5 Passing of risk - documents

- (1) Unless otherwise agreed in text form (“Textform”), delivery will be free destination. Any risk of accidental loss or perishing or accidental deterioration will be borne by supplier until arrival of the goods at the destination.
- (2) Supplier is obliged to indicate our exact purchase order number on all shipping documents and delivery notes; if supplier fails to do so, we will not be liable for any delay in processing.
- (3) Hotset hereby foregoes and forbids any SVS (Speditionsversicherungsschein – *forwarding agent’s insurance certificate*) and/or RVS (Rollfuhrversicherungsschein – *cartage insurance certificate*) insurances to be taken out by the forwarder.

§ 6 Inspection for defects – Liability for defects – Limitation period

- (1) Unless individual quality management is agreed, supplier is obliged to inspect the goods, prior to delivery, as to whether they comply with the contractually agreed qualities and, if individually agreed, to document the condition of the outgoing goods in a works-leaving certificate (“Werksausgangszeugnis”). We, on our part, will only inspect any incoming goods as to their identity, quantity, any damages occurred in transit and any obvious defects. Further inspections of the delivered goods will only be made on

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the occasion of production-accompanying quality controls under our quality management system. Due to such procedure, supplier hereby waives the defence of non-sufficient or delayed inspection of incoming goods in terms of § 377 HGB (Handelsgesetzbuch – *German Commercial Code*) on our part. Any notice of defect is deemed given in time if it is received by supplier within a period of 10 working days from receipt of the goods or respectively, in the case of non-obvious defects, from detection of such defects.

- (2) In the case of defects and/or any other performance of supplier which is not in conformity with the contract, we will be entitled to have unlimited recourse to the statutory remedies.
- (3) In exceptional cases of imminent danger or high urgency which - when balancing the mutual interests of the parties - do not allow for any additional period to be granted for subsequent performance or remedy, we are entitled, following prior notification of supplier, to carry out such subsequent performance or remedy on our own at supplier's expense.
- (4) If and to the extent that our products relate to a construction in terms of § 438 para. 1 no. 2 BGB (Bürgerliches Gesetzbuch – *German Civil Code*) and provided that we point out such product quality in the purchase order, any supplies provided by us to our customers will be subject to a mandatory limitation period for warranty claims of 5 years. In such case, the said limitation period for warranty claims with respect to the products delivered by supplier or, respectively, the order performed by him expires 63 months after delivery to or acceptance by us, unless the statutory provisions provide for a longer period of limitation or suspension of the running of the limitation period. If and to the extent that we do not point out the said construction product quality in our purchase order, the statutory periods of limitation will apply.
- (5) Hotset is entitled to verify the quality of the goods as well as the procedures and processes applied by supplier on the occasion of product audits. In addition, any employees of our customers must also be granted the right to attend at such product audits, if required.

§ 7 Product liability – Indemnity – Liability insurance

- (1) Supplier is fully responsible and liable for the products delivered by him under the “Geräte- und Produktsicherheitsgesetz” (GPSG - *German Act on Technical Equipment and Product Safety*). If any measures under the GSPG should be required or, respectively, imposed by the competent authority, supplier is obliged to indemnify us against any and all costs related hereto, if and to the extent that the cause for such requirement is to be found in the product delivered by supplier.
- (2) If and to the extent that supplier is responsible for a damage caused by the product, he is obliged to indemnify us, on first demand on our part, against any and all claims for damages of any third party; such indemnity must be granted if and to the extent that the cause for such damage lies within the sphere of control and organisational responsibility of supplier and to the same extent as if supplier was directly liable towards the respective third party.

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- (3) Supplier's liability for damages as described in para. (1) and (2) hereinbefore also includes the obligation to reimburse any expenses under § 683 and § 670 BGB (Bürgerliches Gesetzbuch – *German Civil Code*) and/or under § 830, § 840 and § 426 BGB arising from or in connection with a product recall initiated by us or upon requirement of the authorities. As far as this is possible and reasonable, we will inform supplier of the purpose and scope of the intended product recall and investigation or identification measures and grant him the opportunity to respond. This applies without prejudice to any other statutory rights.
- (4) Supplier undertakes to maintain a product liability insurance ensuring reasonable coverage of personal injury/damage to property; if we should be entitled to claim any further damages, such claims will remain unaffected.

§ 8 Protective rights

- (1) Supplier warrants and represents - and will be liable in any case of non-compliance - that the performances/products provided by him do not infringe any third-party industrial property rights within the EEA; such representation of supplier applies subject to the provisions in para. (5).
- (2) In the event that we or, respectively, our customers, should be held liable by any third party on such grounds as described in sec. (1) hereinbefore, supplier is obliged to indemnify us against any such claims on first written demand on our part; we are not entitled to enter into any agreement, particularly any settlement agreement or compromise, with such third party without the consent of supplier.
- (3) The obligation of supplier to grant indemnity relates to any expenses necessarily incurred by us from or in connection with the assertion of claims by any third party.
- (4) The limitation period will be ten years from conclusion of the contract.
- (5) The preceding paragraphs (1) to (4) do not apply if and to the extent that supplier has produced the delivered goods on the basis of and in accordance with any drawings, models or any other corresponding specifications or instructions provided by us, provided that supplier does not or, respectively, cannot know with regard to the goods produced by him that they infringe any protective rights.

§ 9 Retention of title – Provision of material – Tools – Secrecy

- (1) We retain title to any material or semi-finished products which we may provide to supplier. Such material and products must be stored separately and may only be used for the performance of our purchase orders. Supplier will be liable for any deterioration in value or loss even if he is at no fault. Any processing or transformation on the part of supplier is deemed to be made on our behalf. In the case that our material or product to which we retain title is processed by integrating any other material or objects which do not belong to us, we will become co-owner of the new object to such a proportional

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extent which is commensurate with the ratio of the value of our material/product (purchase price plus VAT) as compared to that of the other processed material/objects at the time of processing.

- (2) In the case that the material/product provided by us is definitely and irreversibly mixed with any other material/objects which do not belong to us, we will become co-owner of the new object to such a proportional extent which is commensurate with the ratio of the value of the material/product to which we retain title (purchase price plus VAT) as compared to the value of the other mixed material/objects at the time of mixture. In the case that mixture is effected in such a way that the object of supplier is deemed to be the prevailing part (“Hauptsache”), supplier will grant proportional co-ownership to us; supplier will keep the sole or co-ownership property in custody on our behalf.
- (3) We retain title to any tools; supplier is obliged to use the tools solely for the purpose of producing the goods ordered by us. Supplier is obliged to take out an insurance covering the replacement value of any tools belonging to us at his own expense; such insurance must cover any damages caused by fire, water and theft. In addition, supplier hereby assigns to us any compensation claims resulting from such insurance and we herewith accept such assignment. Supplier is obliged to perform, in time and at his own expense, any required inspection and maintenance work as well as any repair work with respect to our tools. He will immediately notify us of any failures or disturbances; if he fails to do so by negligence or intentionally, we reserve the right to claim any damages.
- (4) Supplier is obliged to keep any illustrations, drawings, calculations and other documents and information made available to him strictly secret. Any disclosure to third parties requires our express consent. Such obligation to secrecy will remain effective even after completion of performance of the contract; it will expire if and to the extent that the production know-how contained in these illustrations, drawings, calculations and other documents has become available to the public domain.
- (5) If and to the extent that any security rights to which we are entitled under para. (1) and/or para. (2) should exceed the purchase price for all our unpaid material and products to which we retain title by more than 10 %, we will be obliged to release, on supplier’s demand, such securities to be freely selected by us.

§ 10 Work performance at our premises

- (1) Any persons entering our premises/works in performance of a supply contract are subject to our works rules and regulations.
- (2) We will only be liable for any accidents or damages in the case of intentional or grossly negligent conduct of one of our managing employees.

§ 11 Place of jurisdiction – Place of performance (“Erfüllungsort”) – Applicable law

- (1) If supplier is a merchant (“Kaufmann”), the court of pertinent and local competence for Lüdenscheid will have jurisdiction; however, we will also be entitled to sue supplier at the place of general jurisdiction (“allgemeiner Gerichtsstand”) applying to supplier.
- (2) Unless otherwise provided in the purchase order, place of performance will be Lüdenscheid.
- (3) In the case that the registered office of supplier is abroad, the business relation will be governed by German law, excluding the UN Convention on Contracts on the International Sale of Goods (CISG).

§ 12 Data protection clause

For the term of the business relationship including initiation and performance period, any data relating to supplier will be stored and processed in an automated file. We do hereby give first notice hereof to supplier. Statutory legitimation: § 28, § 33 Bundesdatenschutzgesetz (*German Federal Data Protection Act*).