



A Member of the STOCKMEIER Group

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General Purchasing and Contracting Terms and Conditions of HDS-Chemie Handels Ges.m.b.H.

1. Scope of application

- 1.1 For the purpose of these General Purchasing and Contracting Terms and Conditions (“Terms and Conditions”), HDS-Chemie means the company that refers to these Terms and Conditions vis-à-vis its suppliers and/or contractors (hereinafter collectively referred to as “Suppliers”). These Terms and Conditions shall also apply to any current and future business relationships, even if not expressly referred to again by HDS-Chemie.
- 1.2 Any terms of the Supplier differing from or additional to these Terms and Conditions shall not be binding on HDS-Chemie, even if not expressly objected to by HDS-Chemie, and even if the Supplier declares that any deliveries made by Supplier shall be based on its own terms and conditions, or if such Supplier’s terms and conditions are enclosed with Supplier’s declaration of acceptance or with the delivery note or order form.

2. Purchase orders

- 2.1 Any alteration or modification of a purchase order placed by HDS-Chemie shall be made in writing and duly signed in order to be valid.
- 2.2 As long as no contract has been entered into, HDS-Chemie may cancel its purchase order free of charge.
- 2.3 The order confirmation shall contain all significant order specifications, including without limitation the exact designation of the goods and services ordered, the purchase order number and the order date and delivery date. The Supplier shall be accountable for any delay caused by its non-compliance with this provision.
- 2.4 If the order confirmation differs from the purchase order, HDS-Chemie shall only be bound by the purchase order if HDS-Chemie has previously agreed to such difference.
- 2.5 A delivery call-off based on a contract entered into between HDS-Chemie and the Supplier shall become binding if not objected to by the Supplier within two weeks from the date the call-off was received.

3. Prices, terms of payment

- 3.1 The prices agreed are fixed prices not including value-added tax, and all subsequent demands for higher payment or price increases of any kind whatsoever shall be excluded.
- 3.2 Unless otherwise agreed, any payments or other performances by HDS-Chemie shall be effected within 30 days at a cash discount of 3%, or within 45 days without any deduction, such respective delay starting to count from the date when HDS-Chemie receives an auditable and verifiable invoice. Payments made shall always be subject to auditing of the invoice.
- 3.3 If HDS-Chemie is in default of payment, it shall have to pay due date interest only at the statutory interest rate. HDS-Chemie and the Supplier shall be at liberty to prove that the damage incurred was higher or lower.
- 3.4 Supplier shall issue its invoices in two copies which shall contain, for each delivery, all specifications required in the purchase order. Value-added tax shall be indicated separately on the invoice.
- 3.5 Along with the Supplier's VAT ID number, the Supplier shall also indicate on all invoices in a clearly visible manner the tax payer's ID attributed to Supplier by its competent tax authority.
- 3.6 Where the specifications required under the foregoing clause 3.5 are missing, incorrect or incomplete, or where the invoice is not auditable or verifiable for other reasons, the Supplier's claim shall be deemed not to be due.
- 3.7 By making a payment, HDS-Chemie does neither acknowledge the conformity of any deliveries or services nor waive any (compensation) claims. If the deliveries or services rendered are non-conforming or incomplete, HDS-Chemie may, to a reasonable extent, withhold payments and receivables accrued from the business relationship until proper fulfilment of the contract; such withholding right shall be without prejudice to any other rights or claims that HDS-Chemie may have.

4. Delivery, place of performance or subsequent performance

- 4.1 The date or period of time agreed for supplying deliveries or services is of the essence, and compliance therewith is an essential contractual duty of the Supplier. As soon as the delivery date/delivery period has expired, the Supplier shall be automatically in default.
- 4.2 Where no dates for supplying deliveries and/or services have been agreed with the Supplier, Supplier shall perform its delivery/service promptly (based on a usual and reasonable time schedule). Deliveries or services supplied prior to or after the agreed date shall require the consent of HDS-Chemie.
- 4.3 In the event of force majeure, both HDS-Chemie and the Supplier shall be released from their obligation to perform (i.e., to accept and purchase the goods delivered or to perform the delivery/service, respectively) for the duration of the circumstances on which such event of force majeure is based; however, this shall only apply if the party on whose part such event of force majeure occurs informs the other party accordingly promptly upon the occurrence of the event and states the expected duration of the specific event due to which the performance of the parties' duties/obligations is impaired.
- 4.4 Each delivery shall be accompanied by a delivery note specifying the purchase order number of HDS-Chemie and identifying the contents in terms of type and quantity.

- 4.5 Unless otherwise agreed, deliveries are made on a DDP basis according to INCOTERMS 2010 (to the place of receipt stated by HDS-Chemie in the purchase order).
- 4.6 The place of performance for any deliveries or services of the Supplier shall be the place of receipt specified in the order.

If no such place of receipt has been indicated, the place of performance shall be HDS-Chemie's registered office as specified in the purchase order. The same shall apply to the place of subsequent performance.

5. Contractual penalty

- 5.1 If the Supplier culpably defaults on supplying a delivery or service, HDS-Chemie is entitled to a contractual penalty in the amount of 0.1% of the agreed net price for each calendar day of default (however, such penalty not to exceed 5% of the agreed net price). The contractual penalty shall be limited to 5% of the agreed net price even in the event that the Supplier culpably fails to comply with more than one deadline agreed in the respective contract.
- 5.2 HDS-Chemie shall have the right to claim such contractual penalty until payment of the amount owed is made in full.
- 5.3 Payment of the contractual penalty does not release the Supplier from its obligation to fulfil its contractual liabilities or any further (damage) claims that may exist; however, such penalty payment shall be deducted from the damages HDS-Chemie may claim on grounds of default.
- 5.4 If the dates contractually agreed are altered by mutual consent, the provisions on the contractual penalty shall also apply to these newly fixed dates.

6. Passage of risk, transportation, legal title

- 6.1 The Supplier shall ensure that the goods to be delivered are properly packed, shipped and sufficiently insured, and that all packing and shipping regulations applicable in this respect are complied with. The Supplier shall be liable for any damages incurred by HDS-Chemie due to the improper or insufficient packing, shipment or insurance of the goods.
- 6.2 Shipping documents, e.g., delivery notes and packing slips, shall be added to the deliveries. All documents shall specify the order numbers and the identifications of HDS-Chemie as required in the respective purchase order.
- 6.3 Supplier shall be responsible for any additional costs incurred by HDS-Chemie due to non-compliance with the foregoing stipulations.
- 6.4 Regardless of the pricing process agreed, the risk shall pass to HDS-Chemie upon delivery of the goods at the delivery address stated by HDS-Chemie (if no erection or assembly works have been agreed), or upon successful completion of the acceptance process (if erection or assembly of the goods has been agreed).
- 6.5 Without prejudice to any statutory acquisition of title, the title to the goods delivered shall pass to HDS-Chemie no later than upon payment of the goods. Any prolonged or extended retention of title shall be excluded. The Supplier shall grant HDS-Chemie the right to further process and use the goods and services delivered, even if the consideration owed in this respect has not yet been paid by HDS-Chemie.

7. Statutory warranty (liability for defects) and Supplier's liability; limitation of actions

7.1 HDS-Chemie shall be entitled to claim the statutory warranty and liability rights without any restrictions.

The obligations of the Supplier to effect performance faultlessly and in due time are essential contractual duties.

7.2 Among other things, the Supplier warrants that:

- the nature and condition of the goods/services to be delivered are as agreed, that, at the moment of passage of risk for the goods/services, these are in keeping with the state of the art in science and technology, and that there are no circumstances inherent to the goods/services by which their value, or their fitness for the customary use or the use intended under the contract, is nullified or diminished; and
- that the delivery or use of the goods/services does not infringe any third-party rights, including without limitation any patent rights or other industrial property rights.

7.3 Unless the law allows for longer limitation periods, the limitation period for defects as to quality or title under a purchase contract or a contract for work shall be 36 months, starting from the moment of passage of risk.

7.4 When detecting any defect in the course of its ordinary business, HDS-Chemie shall promptly report such defect to the Supplier. This shall also apply to any defects detected during an incoming goods inspection under sale of goods law. In any event, for the purposes of section 377 of the Austrian Commercial Code (UGB), a complaint by HDS-Chemie shall be deemed made in due time if made within 10 working days from the statutory starting point of the period for making a complaint. With respect to the foregoing stipulations, the Supplier shall waive the plea of late complaint.

7.5 HDS-Chemie may demand, at its option, that the Supplier either provides subsequent performance (i.e., remedy of the defect), or delivers an item free of defects and/or produces a new work. In the event of subsequent performance, HDS-Chemie may, among other things, demand reimbursement of the transportation expenses required for the purpose of subsequent performance, and also of any expenses required for installation and removal. The right to claim damages – and, notably, the right to claim damages in lieu of performance – is expressly reserved.

7.6 In the event that the Supplier fails to commence subsequent performance promptly upon HDS-Chemie's request for subsequent performance, HDS-Chemie shall be entitled – in urgent cases, and, notably, for averting acute dangers or preventing greater damage – to carry out such subsequent performance by itself or through third parties at the Supplier's expense.

7.7 For any parts of the delivery that have been restored or repaired, as well as for any replacement deliveries, the limitation period shall begin to run anew as soon as HDS-Chemie's claim for subsequent performance has been fully met by the Supplier.

7.8 Any further claims and rights of HDS-Chemie shall remain unaffected.

8. Liability of HDS-Chemie

8.1 Unless provided otherwise herein below, and provided that the relevant legal requirements have been met,

HDS-Chemie shall be liable for damages if a material contractual obligation (so-called "cardinal obligation") has been culpably breached; however, in such case, HDS-Chemie's liability shall be limited, in terms of amount, to the foreseeable, typically occurring damage. Cardinal obligations are those obligations the fulfilment of which is of the essence for the contract and the performance of which the contract parties may rely on in the due course of business; and cardinal obligations also include those obligations the breach of which would endanger the purpose of the contract.

- 8.2 The contract partner shall have an unrestricted right to claim damages from HDS-Chemie, as provided for by law and in the amount specified therein, provided that such claims for damages have been caused by HDS-Chemie or its legal representatives or performing agents, and are based on:
- culpable injury to life, body or health; or
 - intentional or grossly negligent breach of duty; or
 - the Austrian Product Liability Act (Produkthaftungsgesetz); or
 - breach of an obligation arising from a procurement risk assumed or a guarantee given.
- 8.3 The assertion of any further damage claims against HDS-Chemie or its legal representatives, performing agents (contractual liability) or vicarious agents (tortious liability) – on whatever legal grounds – shall be excluded.
- 8.4 The legal provisions regarding the burden of proof shall remain effective.

9. Customer-provided materials

- 9.1 Any materials provided by HDS-Chemie shall remain the property of HDS-Chemie, and the Supplier shall store such materials separately from its other items, acting with the diligence of a prudent businessman, and shall mark such materials as property of HDS-Chemie (such storage and marking to be made free of charge). The said materials may only be used for carrying out the purchase orders placed by HDS-Chemie. The Supplier shall be liable for any damage or impairment to the customer-provided materials.
- 9.2 If and to the extent to which any items provided by HDS-Chemie are processed or transformed by the Supplier in creating a new object, HDS-Chemie shall maintain ownership of the item and of such new object at any stage of production.
- If such items provided by HDS-Chemie are combined or inseparably mixed with other items, HDS-Chemie shall acquire co-ownership of the new resulting object in proportion of the value the customer-provided items had when they were being combined or mixed. If the combining or mixing is made in such way that the items of the Supplier are to be regarded as the primary item, the Supplier shall grant HDS-Chemie proportional co-ownership rights and shall safekeep such co-owned property on behalf of HDS-Chemie free of charge.
- 9.3 Any models, stencils, patterns, samples, tools, other resources, files and data which HDS-Chemie makes available to the Supplier, or the creation or manufacturing of which is, to a significant extent, paid for by HDS-Chemie (provided that such cost contribution by HDS-Chemie is at least 50%), may be used by the Supplier only for processing the respective proposal and for performing the deliveries/services ordered. The Supplier shall keep them carefully and protect them from access by third parties, and using such customer-provided materials for the Supplier's own purposes, or for goods and/or services provided by third parties, shall require HDS-Chemie's written consent. All customer-provided materials named in this Section – along with any copies or reproductions – shall be returned to HDS-Chemie, without prior request, as soon as the inquiry has been dealt with, or the purchase order has been executed.

9.4 The Supplier shall:

- examine all customer-provided materials delivered by HDS-Chemie for their identity as well as for differences in quantity and visible defects, such inspection to be carried out promptly upon receipt of the materials and also while using such materials, to the extent this is feasible in the ordinary course of business; and shall
- promptly, and prior to the processing of the materials, report to HDS-Chemie any deviations found during such inspection or at a later time, and shall
- in such case, wait for instructions given by HDS-Chemie.

Each notice of defects shall be in writing, if possible.

10. Special obligations of the Supplier

- 10.1 At HDS-Chemie's request, the Supplier shall prove compliance with the quality standards set out in the order and agreed upon in the respective contract by submitting documents that are useful in this respect (i.e., certificates, description of the manufacturing process etc.).
- 10.2 Any alteration of the respective item of delivery, and/or of the production cycle/manufacturing process agreed upon with HDS-Chemie, shall in each individual case require the prior written consent of HDS-Chemie.

11. Provisions on export control data and foreign trade data

- 11.1 The Supplier shall comply, under Supplier's own responsibility, with all requirements applicable under the respective national and international customs law and foreign trade law. The Supplier shall communicate to HDS-Chemie all information and data which HDS-Chemie requires for compliance with the provisions of foreign trade law when exporting, importing or re-exporting goods; such information and data shall be communicated in writing and no later than two weeks from the date the order was made, or promptly after any alteration thereof.
- 11.2 If the Supplier breaches its obligations under 11.1 herein, Supplier shall reimburse to HDS-Chemie all expenses and damages incurred by HDS-Chemie due to such breach; however, this shall not apply if the Supplier is not responsible for the breach.

12. Spare parts; readiness to deliver

- 12.1 For a period equal to the normal physical life of the delivery item but at least for ten years from the last delivery/purchase, the Supplier shall supply HDS-Chemie with spare parts at reasonable conditions.
- 12.2 If the Supplier discontinues delivery of the goods during the aforesaid term or after expiry thereof, Supplier shall offer HDS-Chemie the opportunity to place one last order at reasonable conditions.

13. Product liability

- 13.1 If, based on a product defect, any claims for damages are asserted against HDS-Chemie by any third party,

the Supplier shall release HDS-Chemie from such claims if the product defect is based on a faulty delivery or service of the Supplier.

13.2 In all other respects, the Supplier's liability shall be as provided for by law.

14. Confidentiality; data protection

14.1 The Supplier shall keep confidential all pictures, models, drawings, calculations and other files and information received from HDS-Chemie in the context of the performance of the contract. Such information shall not be disclosed to any third party unless with the expressly consent of HDS-Chemie.

14.2 Manufacturing on behalf of third parties, exhibiting any products specifically manufactured for HDS-Chemie (and, notably, if such manufacturing was made according to HDS-Chemie's plans, drawings or other specifications), publications regarding the purchase orders and contractual performance, and referring to these orders vis-à-vis any third parties shall require HDS-Chemie's explicit written consent.

14.3 In connection with Supplier's advertising materials, and in providing credentials or making other publications, the Supplier may mention, show or otherwise use HDS-Chemie's company name or trademark only if HDS-Chemie has given its prior written consent to that effect.

14.4 HDS-Chemie shall be entitled to store the personal data of the Supplier and Supplier's employees, as well as the personal data of any sub-contractors or sub-suppliers hired by the Supplier – provided that such personal data are related to the business relationship maintained with the Supplier – and shall be entitled to use such data within the HDS-Chemie Group. If and to the extent required, the Supplier shall enter into similar agreements with Supplier's employees, sub-contractors or sub-suppliers.

15. Licences and industrial property rights

15.1 HDS-Chemie shall have an unrestricted right to use and modify the contractual item and to transfer such item to third parties (including any industrial property rights and proprietary rights the Supplier may have with respect to the specific contractual item).

15.2 If a third party asserts any claims based on the infringement of any licences or industrial property rights against HDS-Chemie, the Supplier shall release HDS-Chemie from such claims upon first written demand.

16. Set-off

16.1 The Supplier is not entitled to offset any counterclaims or to assert a right of retention unless such offsetting or retention is based on the same legal relationship or on section 1052 of the Austrian Civil Code (ABGB) or unless said claims are undisputed or have been finally decided by a competent court of law.

17. Miscellaneous

17.1 All legal relationships between the Supplier and HDS-Chemie shall be governed by Austrian law, without giving effect to the Convention on Contracts for the International Sale of Goods (CISG) or any legal norms

referring to other legal systems.

- 17.2 Vienna shall be the exclusive place of jurisdiction for any disputes arising from, and/or in connection with, any contract entered into with HDS-Chemie in which these Terms and Conditions are incorporated.
- 17.3 Text form (including, without limitation, telefax and e-mail) and data telecommunication shall be deemed equivalent to written form.
- 17.4 If any provision of this Terms and Conditions is invalid by law all other provisions and the contract shall nevertheless remain in full force and effect. In the case of invalidity by law the respective statutory provisions shall apply.

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