



Harz Oxid GmbH | Hüttenstrasse 6 | 38642 Goslar | Germany

GENERAL TERMS AND CONDITIONS FOR PURCHASES OF HARZ OXID GMBH

Status: 14 December 2020

1. GENERAL INFORMATION

- 1.1 These general terms and conditions for purchases shall apply to all offers, orders, agreements, services and deliveries to Harz Oxid GmbH ("**HOG**"). These general terms and conditions for purchases shall form part of all contracts that HOG concludes with its contractual partners ("**Supplier**") on all services and goods delivered to HOG. These general terms and conditions for purchases shall also apply to all future deliveries and services by the Supplier to HOG, even if they are not separately agreed upon again.
- 1.2 Deviating, conflicting or supplementary terms and conditions of the Supplier or a third party shall not apply to the contractual relationship. This shall apply also if HOG had knowledge of such general terms and condition or did not expressly object to them. Even if HOG refers to a letter which includes or refers to terms and conditions of the Supplier or a third party, such reference shall not imply any approval of the validity of these terms and conditions. In this case the general terms and conditions for purchases of HOG shall be agreed between the parties.

2. CONTRACT CONCLUSION

- 2.1 Offers, advice, demonstrations, technical documents or sample deliveries by the Supplier are free of charge. The Supplier's offer shall be made in writing or in text form (by e-mail).
- 2.2 The order placed by HOG shall be deemed binding at the earliest when the order is expressly placed in writing or when it is confirmed in writing. The Supplier shall notify HOG of obvious errors (e.g. typing and calculation errors) and incompleteness of its order including the order documents for the purpose of correction or completion before acceptance; otherwise the agreement shall be deemed not to have been concluded.
- 2.3 The Supplier shall be obliged to confirm the order of HOG in writing without undue delay or in particular to execute it without reservation by dispatching the goods (acceptance). A delayed acceptance shall be deemed to be a new offer by the Supplier and requires acceptance by HOG.
- 2.4 Oral agreements do not exist. The amendment, supplementation, cancellation and termination of the agreement, the general terms and conditions for purchases, as well as any other unilateral legal declaration of intent possible under the contract and these general terms and conditions for purchases shall be made in writing in order to be effective, unless a different intention of the parties has been clearly expressed. The same shall apply for amendments, supplements, cancellation and termination of this written form requirement.
- 2.5 HOG shall be entitled to amend the product specifications with binding effect for the Supplier within a reasonable notice period at any time, provided that these can be implemented within the normal production process of the Supplier without unreasonable expenditure of time. HOG shall reimburse the Supplier for any proven and reasonable

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additional costs incurred as a result of this amendment. If such amendments result in delays of delivery which cannot be avoided in the regular production and business operations of the Supplier with reasonable efforts, the originally agreed delivery date shall be prolonged accordingly by this period.

3. PRICING AND PAYMENT CONDITIONS

- 3.1 The price stated in the order shall be binding. All prices shall be fixed prices, unless otherwise agreed. Unless otherwise expressly agreed between the parties, the price shall include all services and ancillary services of the Supplier (e.g. assembly, installation), as well as all incidental costs (e.g. proper packaging, transport costs, expenses, licence fees, transport insurance, and all public fees, charges and taxes) incurred.
- 3.2 If the prices are determined by weight, the official weighing (*amtliche Verwiegung*) and, in the absence thereof, the weighing by HOG on its calibrated scales shall be decisive.
- 3.3 Unless otherwise expressly agreed between the parties, the price agreed between the parties shall be due for payment within 30 calendar days from the completion of the performance (including ancillary contractual obligations) by the Supplier and after receipt of a proper and detailed invoice. Unless expressly otherwise agreed, if HOG (i) pays within 10 days from the date of the invoice, the Supplier shall grant a 3% discount or (ii) if HOG pays within 20 days, the Supplier shall grant a 2% discount. HOG shall pay at its discretion by bank transfer or cheque. For payment to be made on time, it is sufficient that the transfer order is received by the account-holding bank of HOG before the due date.
- 3.4 Invoices and requests for payment from the Supplier shall contain the order number and order date of HOG.
- 3.5 HOG reserves the right to review the invoice up to 60 days after receipt. If an invoice is incorrect, the supplier shall provide a credit note and a corrected invoice. In the event that HOG has already paid the invoice, the Supplier shall refund the amounts paid.
- 3.6 If HOG is in default of payment, the statutory provisions shall apply.
- 3.7 HOG shall be entitled to set-off, the right of retention and the defence of non-performance of the contract to the extent permitted by law. HOG is in particular entitled to withhold due payments as long as HOG is still entitled to claims against the Supplier due to incomplete or defective performance.
- 3.8 The Supplier shall not be entitled to set-off the payment claim of HOG against its own claims against HOG or to assert a right of retention, unless the counterclaims of the Supplier are undisputed, legally established or acknowledged by HOG.
- 3.9 The Supplier may not transfer the rights and obligations arising from an order to third parties without the consent of HOG. This shall not apply to the advance assignment of the purchase price claim within the framework of an extended reservation of title as agreed under these terms and conditions.

4. DELIVERY, SERVICE, CONTRACTUAL PENALTY AND TRANSFER OF RISK

- 4.1 The place of performance for both parties shall be the registered office of HOG, unless expressly agreed otherwise between the parties.

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- 4.2 The delivery time stated in the order or contract shall be binding. Early deliveries, deliveries outside the acceptance times stated by HOG or partial deliveries are only possible with the express prior consent of HOG.
- 4.3 The Supplier shall be obliged to inform HOG immediately in text form if circumstances arise or become apparent which indicate that the delivery deadline cannot be met. The Supplier shall immediately initiate measures to avoid or reduce the delay.
- 4.4 In the event of a default in delivery by the Supplier, HOG may withdraw from the contract after the fruitless expiry of a reasonable notice period or demand damages from the Supplier instead of fulfilment.
- 4.5 In the event of a delay of the Supplier, HOG shall be entitled to a contractual penalty in the amount of 0.2% per calendar day and a maximum total of 5% of the respective net order amount, after prior written notice to the Supplier. The contractual penalty shall to be deducted from the damages to be compensated by the Supplier in relation to the delay.
- 4.6 The contractual penalty pursuant to Section 4.5 shall also apply in the event of new delivery dates deviating from Section 4.2. In this case, a new agreement on the contractual penalty shall not required.
- 4.7 HOG may reserve the right to assert the contractual penalty until the final invoice is due.
- 4.8 Even if shipping/dispatch has been agreed between the parties, the risk shall not pass to HOG until complete handover at the place of performance. Where a formal acceptance (*Abnahme*) has been agreed or is required by law, the risk shall pass to HOG upon the formal acceptance (*Abnahme*) by HOG. This shall apply even if shipping/dispatch of the goods has been agreed to be performed by the Supplier.
- 4.9 All shipments shall be accompanied by a packing note or a delivery note stating a description of the goods, order number, order date, quantities and weights as well as the type of packaging. In addition to the delivery note, the Supplier shall send a shipping note with the same content to the procurement department of HOG in text form (by e-mail). Partial or residual deliveries have to be marked as such. If the delivery note is missing or incomplete, HOG shall not responsible for the resulting delay in processing and payment.

5. OWNERSHIP PROTECTION

- 5.1 HOG reserves title and copyright to drawings, drafts, samples, depictions, calculations, descriptions and other documents and information provided to the Supplier by HOG for the purpose of submitting an offer or otherwise for the execution of an order. The Supplier may not use or reproduce them without the express consent of HOG nor may it make them accessible to third parties or have them used or reproduced by third parties. At the request of HOG, the Supplier shall return these documents in full to HOG if they are no longer required by him or if the negotiations do not lead to the conclusion of a contract. This shall also apply to copies made by the Supplier. Upon request of HOG, the Supplier may fulfil its obligation to return the documents by duly destroying or deleting the documents and confirming this to HOG in writing and providing evidence of destruction by suitable means. Documents which are subject to statutory storage obligations and copies of data which are created as part of the usual data backup are excluded from such obligation.



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- 5.2 If HOG provides the Supplier with items and the Supplier processes, intermixes or combines (further processing) these items within the framework of its performance or delivery, this processing, intermixing or combination (further processing) shall be carried out on behalf of HOG. The same applies to the processing, intermixing or combining (further processing) of the delivered products by HOG so that HOG shall be deemed to be the manufacturer and acquires ownership of the product in accordance with statutory regulations at the latest with the processing, intermixing or combining (further processing).
- 5.3 HOG shall remain entitled to resell the goods within the ordinary course of business even before full payment of the purchase price with advance assignment of the claims arising therefrom to the Supplier (alternatively, only in this case the simple retention of title extended to resale shall apply).

6. **FORCE MAJEURE**

- 6.1 "**Force Majeure**" is defined as extraordinary and unforeseeable events coming from outside which cannot be prevented even by the utmost care of the person affected. These are in particular fires, pandemics, earthquakes, war, unrest, mobilisation, natural disasters, strikes, lock-outs or fundamental disruptions in the supply of energy and raw materials for which the parties are not responsible.
- 6.2 If a Force Majeure event occurs, the affected party shall notify the other party without delay, but at the latest within fifteen (15) calendar days after becoming aware of the event. In doing so, the affected party shall specify the event that has occurred and indicate which obligations under the contract it cannot fulfil or can only fulfil with delay as a result.
- 6.3 No party may derive any claims from a Force Majeure within the meaning of the contractual definition, unless these are expressly agreed between the parties or expressly mentioned in these general terms and conditions for purchases. The contractual service dates are extended in accordance with the duration of the impossibility of performance due to Force Majeure. During this period the Supplier shall have no rights or claims against HOG due to default. This shall also apply if such obstacles occur at a sub-contractor. If HOG is in default at the time of the occurrence of the event, this alone shall not be deemed to constitute a duty of responsibility.
- 6.4 If the provision of services is continuously impossible for more than ninety (90) calendar days due to Force Majeure, either party may terminate the contract by written notice to the other party.

7. **WARRANTY, COMPLAINT, LIABILITY**

- 7.1 Unless expressly agreed otherwise between the parties, HOG shall be entitled to the statutory rights in respect of defects of quality and defects of title in the performance (including incorrect or short delivery, improper installation by the Supplier and defective installation, operating or user instructions).
- 7.2 The non-defective fulfilment of the contract by the Supplier shall require that all items to be delivered or all services to be rendered correspond to the state of the art, the relevant legal provisions and the regulations and guidelines of authorities, trade associations and professional organisations. In particular, the deliveries and services shall comply exactly with the respectively applicable provisions of the law on technical work equipment



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(*Gerätesicherheitsgesetz*) as well as the law on protection against hazardous substances (*Chemikaliengesetz*), the DIN regulations and the workplace regulation (*Arbeitsstättenverordnung*), the required approvals as well as the specifications, drawings and other information stated in the order and shall be reviewed by the Supplier in this regard. The safety instructions given by HOG employees shall be followed at any time. Furthermore, the agreed quality shall be deemed to be all product descriptions which are named by HOG in its order or which HOG has referred to and which have thus become the subject matter of the contract or have been included in the contract.

7.3 By accepting or approving samples or specimens, HOG shall not waive the warranty claims to which HOG is entitled.

7.4 For the commercial duty of examination and notification of defects, the statutory provisions (sections 377, 381 of German Commercial Code (*Handelsgesetzbuch* - "**HGB**")) shall apply with the following proviso: HOG's duty to inspect shall be limited to defects which become apparent during the incoming goods inspection carried out by HOG under a visual inspection including the delivery documents (e.g. damages during transport, incorrect and short delivery) or which are recognisable during a quality control carried out by HOG in a random sampling procedure. If a formal acceptance (*Abnahme*) has been agreed, there is no inspection obligation. In all other respects it depends on the extent to which an examination is feasible in the ordinary course of business, taking into account the circumstances of the individual case. HOG's obligation to give notification of defects discovered later shall remain unaffected. Regardless of HOG's duty to inspect, the complaint (notification of defects) shall in any event be deemed to be immediate and in due time if it is sent within five (5) working days after discovery or, in the case of obvious defects, after delivery.

7.5 HOG may choose the type of rectification (replacement delivery or rectification of defects). Irrespective of HOG's statutory rights regarding defects, HOG may, insofar as the Supplier shall not comply with the type of rectification chosen by HOG, remedy the defect itself and demand the reimbursement of the necessary expenditure from the Supplier or a corresponding advance payment, following the unsuccessful expiry of a period of respite set by HOG. If the rectification by the Supplier has failed or is unreasonable for HOG, no deadline is necessary; in this case HOG shall inform the Supplier immediately of the existence of such circumstances.

7.6 In the event of replacement delivery or rectification of defects, the warranty period for replaced and repaired parts shall commence anew unless HOG had to conclude from the conduct of the Supplier that the Supplier was offering the replacement delivery or rectification of defects only for the purpose of courtesy or similar reasons.

7.7 The Supplier shall be liable for sub-contractors as for its own performance.

8. SUPPLIER REGRESS AND MANUFACTURER LIABILITY

8.1 HOG shall be entitled to the statutory rights of recourse within the supply chain in addition to its own warranty claims against the Supplier (in particular sections 445a, 445b of German Civil Code (*Bürgerliches Gesetzbuch* – "**BGB**")). In particular, HOG shall be entitled to elect the type of rectification by the Supplier which HOG itself owes to its customers. This shall not however restrict HOG's statutory right of choice.



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8.2 HOG's recourse claims against the Supplier shall also exist if the defective goods have been further processed by HOG or another company.

8.3 The Supplier shall be responsible for all claims asserted by third parties against HOG for personal injury and damage to property which are attributable to a defective product delivered by the Supplier. If HOG is obliged to carry out a recall campaign against third parties due to a defect in a product delivered by the Supplier, the Supplier shall bear all costs associated with this recall. HOG shall inform the Supplier of the content and scope of any recall action - insofar as this is possible and reasonable - and give the Supplier the opportunity to state its position.

9. **PROPERTY RIGHTS**

9.1 The Supplier guarantees that no rights of third parties are infringed in connection with the provision of the contractual services.

9.2 In the event of infringements of third party rights, in particular patent rights, copyrights or other industrial property rights of third parties, the Supplier shall indemnify HOG on first demand against any existing third party claims if these are based on a culpable breach of an obligation of the Supplier. HOG is not entitled to enter into any agreement with the third party - without the consent of the Supplier - in particular to conclude a settlement in this respect.

9.3 The Supplier's obligation to indemnify shall also include all damages, expenses and costs incurred by HOG in connection with the claim made by a third party.

10. **DATA PROTECTION**

10.1 Within the framework of execution of the contract, HOG shall process personal data of the Supplier and its auxiliary persons or employees. This processing is necessary for the execution of the contract with the Supplier (Art. 6 para. 1, cl. 1 lit. b General Data Protection Regulation ("**GDPR**"). This data is also transferred to third parties, which may also be located abroad, for the purpose of processing (Art. 6 para. 1, cl. 1 lit. b GDPR) and based on the legitimate interest in maintaining the business relationship (Art. 6, para 1, cl. 1 lit. f GDPR). Insofar as a third party receives such personal data through HOG and/or processes it on its behalf, HOG shall ensure data processing in accordance with the applicable data protection laws and, if necessary, concludes corresponding contracts for this data processing in accordance with GDPR. Transfers to states outside the EU/EEA are carried out in accordance with the general principles of data transfer (Art. 44 ff. GDPR).

10.2 The Supplier shall be responsible for informing its auxiliary persons and employees about the processing of their data within the aforementioned framework.

10.3 Further details are set out in the data protection declaration available on the HOG website.

11. **SEVERABILITY CLAUSE**

11.1 Should any provision of this contract be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions of this contract shall not be affected thereby. The same shall apply if this general terms and conditions for purchases should contain a gap.



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11.2 In place of the invalid or impracticable or unenforceable provision or to fill the gap, a provision shall be deemed agreed which - as far as legally possible - achieves the purpose which the parties have pursued with the invalid or impracticable or unenforceable provision or - in the event of a gap - with the contract as a whole.

12. **APPLICABLE LAW**

The law of the Federal Republic of Germany shall apply exclusively. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded, even insofar as it has become national law.

13. **PLACE OF JURISDICTION**

The courts in Braunschweig, Germany shall have exclusive jurisdiction for all disputes arising from or in connection with an offer, an order, a contract or a delivery to HOG.
