



## **HELM Austria Gesellschaft m. b. H.**

### **General Terms and Conditions of Purchase**

#### **1. General; Applicability**

- 1.1. Our Terms and Conditions of Purchase shall exclusively apply to all contracts for the supply of goods entered into between the Supplier and us, HELM Austria Gesellschaft m. b .H.
- 1.2. We do not accept any terms and conditions of the Supplier which are in conflict with, deviate from or supplement our Terms and Conditions of Purchase, including but not limited to the Supplier's General Terms and Conditions of Sale, unless we have expressly accepted their applicability in writing or in text format.
- 1.3. Our Terms and Conditions of Purchase shall also apply if we unconditionally accept deliveries from the Supplier even though we are aware of terms of the Supplier which are in conflict with or deviate from our Terms and Conditions of Purchase.
- 1.4. All agreements made between us and the Supplier for the effecting of the delivery of the goods by the Supplier shall be recorded in writing or in text format.

#### **2. Delivery period; Delivery and marking of goods**

- 2.1. The delivery period or date stated in the purchase order shall be binding.
- 2.2. The Supplier shall immediately notify us in writing or in text format of any circumstances that occur or become noticeable to him which reveal that the agreed delivery period cannot be observed.

- 2.3. In the case of a delay in delivery we shall be entitled to the statutory rights. In particular, we shall be entitled to claim damages and to rescind the contract on the ground of delay in delivery upon fruitless expiry of a reasonable grace period of at least seven (7) days. The rescission shall be effected in writing or in text format and shall only refer to the part of the delivery which is delayed.
- 2.4. Unless otherwise expressly agreed in writing, delivery shall be effected in accordance with the Incoterms stated in our purchase order. The Incoterms as amended from time to time shall apply.
- 2.5. In the case of imported goods the shipping documents shall include a note as to whether the customs duty for the goods has been paid or not.
- 2.6. If we unconditionally take delivery of or pay for a late delivery, this shall imply no waiver of any claims for compensation or damages to which we are entitled due to such late delivery.

### **3. Quality assurance; Audit during performance of the contract**

- 3.1. The Supplier shall implement and maintain effective quality assurance and provide us with evidence thereof upon request.
- 3.2. We shall be entitled to carry out a reasonable audit of the said quality assurance system and of the Supplier's performance of the contract either ourselves or through third parties. Our contractual and statutory rights shall not be affected by such audits.

#### **4. Quality of the goods; Inspection for defects; Liability for defects**

- 4.1. We shall inspect the goods for any defects in quality or quantity and potential deviations and notify the same within a reasonable period of time; the notification shall be deemed timely if it is received by the Supplier within a period of two (2) weeks, calculated from receipt of the goods or, in the case of hidden defects, from the time the same were noticed.
- 4.2. Our payment shall be deemed no acknowledgement of performance by the Supplier in accordance with the contract.
- 4.3. We shall be entitled to unabridged statutory claims for defects. We shall in any case be entitled to demand repair of defects or delivery of goods that are free from defects at our discretion and at the Supplier's cost. Any additional warranty claims, such as the right to price reduction or cancellation and the right to claim damages shall remain unaffected and shall be expressly reserved.
- 4.4. Section 377(2) of the Austrian Business Code [*Unternehmensgesetzbuch/UGB*] shall be excluded.
- 4.5. We shall be entitled to repair defects ourselves at the Supplier's cost if the Supplier fails to do so despite having been granted a reasonable grace period in writing or in text format.
- 4.6. The warranty period shall be 24 months, calculated from the date the risk has passed, unless a longer statutory period applies.
- 4.7. We do not accept any exclusions of liability and/or limitations of liability by the Supplier, including without limitation those based on warranty or damages.
- 4.8. The Supplier represents that the delivered goods are in conformity with the specimens, the contractual agreements and the agreed specifications.

- 4.9. Unless specific quality criteria have been agreed, the goods must at least be of a quality that is customary in trade.
- 4.10. In particular, the Supplier warrants authenticity and accuracy of his shipping papers and of the enclosed certificates and documents.
- 4.11. With respect to the goods the Supplier warrants proper and complete controls in the course of the manufacturing process.
- 4.12. If necessary (due to complaints from public authorities or customers, etc.), the Supplier shall immediately upon request provide us with the necessary information regarding certain goods enquired about. The right to assert further claims vis-à-vis the Supplier shall remain unaffected.
- 4.13. If the subject matter of the Supplier's delivery is packaging material which we will use, the Supplier warrants in particular that such packaging material will have no detrimental effects on the wrapped product. In addition, the Supplier warrants that the packaging material is suitable for the specific use.
- 4.14. The Supplier shall pack the goods with care, mark and dispatch them so as to exclude any damage during transport and to allow efficient reloading, unloading, dispatch/clearance and storage of the goods.

## **5. Product liability; Indemnification; Third-party liability insurance cover**

- 5.1. To the extent that the Supplier is liable for damage caused by the products he shall indemnify us against third-party claims for damages upon first demand to the extent that the cause is attributable to his sphere of control and organisation. The Supplier shall be liable vis-à-vis us for any and all costs and expenses incurred by us in connection with defending such a claim for damages, provided they are reasonable and necessary to defend the claim.

5.2. In connection with his liability for claims as defined in Clause 5.1 the Supplier shall also reimburse us the expenses resulting from a recall campaign carried out by us. We shall inform the Supplier about the content and the scope of recall measures to be carried out to the extent that this is possible and reasonable and give him an opportunity to comment. Any other claims to which we are entitled shall remain unaffected.

## **6. Rights of third parties**

6.1. The Supplier warrants that in connection with his delivery no rights of third parties, including but not limited to industrial property rights, will be infringed in the country of destination advised to the Supplier.

6.2. If we are held liable by a third party for an infringement of rights as defined in Clause 6.1, the Supplier shall indemnify us against such claims upon first written demand; we shall not be entitled to enter into any agreements with the third party, especially a settlement agreement, without the Supplier's written consent

6.3. The Supplier's duty to indemnify us shall also refer to any and all costs incurred by us in connection with appropriate legal defence against claims of a third party.

## **7. Retention of title**

7.1. We do not accept any rights of the Supplier with regard to retention of title.

## **8. Applicable law; Place of jurisdiction; Place of performance; Severability clause**

8.1. The contract shall exclusively be subject to Austrian law; its conflict of laws rules shall be excluded. The UN Convention on Contracts for the International Sale of Goods (CISG) shall apply.

8.2. The place of jurisdiction shall be Vienna, Innere Stadt [first district], Austria; we shall, however, be entitled, at our option, to sue the Supplier in the court having jurisdiction over his registered office.

8.3. Unless otherwise stated in the purchase order, Vienna shall be the place of performance.

8.4. If any provision of these General Terms and Conditions of Purchase is or becomes ineffective, incomplete, unenforceable or void in whole or in part, the effectiveness of the remaining provisions shall not be affected. The ineffective, incomplete, unenforceable or void provision shall be replaced by a legally valid provision which comes as close as possible to its financial effects. In the event that certain clauses of these GTC are not in line with mandatory statutory provisions, the validity of the remaining provisions shall not be effected either.

### **HELM Austria Gesellschaft m. b. H.**

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