

## **General Terms and Conditions of Purchase and Order of HÖHN Display + Verpackung GmbH (Status: 04. September 2017)**

### **1. General - Scope of Application**

**1.1** 1.1 Our General Terms and Conditions of Purchase and Order set forth below shall apply to all contracts concluded by us with entrepreneurs, legal entities under public law and special funds under public law (hereinafter collectively referred to as the „Supplier“) under which the contractual partner provides deliveries or services. Our General Terms and Conditions of Purchase and Order shall apply exclusively. The Supplier's terms and conditions of business shall generally not apply unless we have expressly agreed to their application in writing. This shall also apply to clauses in the supplier's terms and conditions of business which do not conflict with our general terms and conditions of purchase and orders. Our General Terms and Conditions of Purchase and Order shall also apply exclusively if we accept the supplier's delivery or service without reservation in the knowledge of deviating clauses of the supplier.

**1.2** Our General Terms and Conditions of Purchase and Order shall also apply to all future transactions with the Supplier.

**1.3** Rights to which we are entitled under statutory provisions beyond these General Terms and Conditions of Purchase and Order shall remain unaffected.

**1.4** We operate an energy management system in accordance with ISO 50001 with the aim of working in a sustainable, economical and energy-efficient manner. We expect you to take this into account, where relevant, in your deliveries. For machinery and parts, we request a life cycle assessment.

### **2. Offers, Order, Changes, Procurement Risk**

**2.1** Offers submitted to us shall be binding and free of charge. The Supplier shall treat them confidentially.

**2.2** The Supplier shall be bound by its offer for a period of 12 weeks from receipt of the offer by us.

**2.3** A contract shall only be concluded with us if we place the order in writing (digital form or fax shall suffice). If we remain silent in response to an offer from a supplier, this shall not be deemed to be consent or acceptance of the offer.

**2.4** We may also request changes to the delivery item or service after conclusion of the contract, provided that this is reasonable for the supplier. In the case of such changes, the effects, in particular with regard to any additional or reduced costs as well as the delivery or performance dates, shall be reasonably taken into account by both contracting parties.

**2.5** The Supplier shall assume the procurement risk with regard to deliveries by its suppliers.

### **3. Time of Delivery or Performance, Delivery or Performance**

**3.1** The agreed delivery/performance dates and periods shall be binding. The goods must be received at the place of performance within the period of time or by the deadline. We shall not be ob-

liged to accept delivery before the date or time specified. In the event of expected delays, the supplier must notify us in writing immediately, stating the reasons, and provide a new delivery/performance date. We shall be entitled to withdraw from the contract if we cannot consent to the new date offered and the supplier refuses to provide delivery/performance within a reasonable period of grace proposed by us. If we agree to a new date offered by the supplier or if the supplier accepts a grace period set by us, this shall not constitute an extension of the contractually agreed delivery/performance date or the delivery/performance period. Claims for damages due to delayed delivery shall remain unaffected

**3.2** If the supplier is in default with a delivery/performance in whole or in part, we shall be entitled to the full extent of the statutory claims ( compensation/withdrawal). In particular, we shall be entitled to claim damages instead of delivery or performance after the expiry of a reasonable grace period. In addition, we shall be entitled to demand a contractual penalty of 0.25 % of the order value per working day, but not more than 5 % of the order value, from the supplier as of the occurrence of the delay.

**3.3** If the supplier is in default with a partial delivery/performance in the case of successive delivery contracts and similar contracts, we shall also be entitled to withdraw from the contract with respect to all outstanding partial deliveries/performances or to demand damages instead of performance after the expiry of a grace period set by us for this partial delivery without result.

**3.4** Force majeure such as strikes, riots, civil commotion, etc. shall release us from our obligation to accept the ordered delivery/performance for the duration of the disruption and to the extent of its effect. In this case, we shall provide the supplier with the necessary information without delay within the bounds of what is reasonable. The delivery shall be made without delay after we have notified the supplier that the event has ceased. If the delivery/performance is no longer usable for us due to the delay caused by the force majeure, taking into account economic aspects, we shall be entitled to withdraw from the contract.

**3.5** The delivery/performance of partial quantities, excess or short deliveries shall not be permitted unless we have expressly agreed to this in writing.

**3.6** If we ask the supplier to postpone a delivery, the supplier must insure the properly packaged and labeled goods at its own expense and store them in such a way that no loss of quality occurs; however, this shall not be for longer than three months.

#### **4. Packaging, Shipping**

**4.1** Unless otherwise agreed, shipment shall be made at the Supplier's expense and risk to the address specified in our order.

**4.2** The supplier guarantees that it will comply with all relevant shipping and declaration regulations as well as any export and import modalities. The supplier shall be liable for any damage resulting from non-compliance with these regulations and modalitiesentstehen.

**4.3** The supplier shall ensure at its own expense that the goods are packaged in a commercially standard, proper and clean manner and guarantees that the goods are protected by the packaging against typical transport damage, corrosion and penetration of impurities or moisture. The supplier shall be liable for any damage resulting from non-compliance with this requirement.

**4.4** For each delivery, a specified dispatch note stating our order number, our order date, the production factory, the delivery address, the contents, the type of packaging, the package number and the weight shall be sent to us upon dispatch.

**4.5** Each delivery shall be accompanied by a delivery bill stating our order number, our order date and the contents.

**4.6** Unless otherwise agreed, the risk of shipment shall not pass to us until delivery has taken place.

**4.7** The supplier shall be obliged to collect packaging material and transport aids from us again at its own expense upon our request

#### **5. Insurances**

**5.1** Costs for insurance shall only be borne by us if this has been agreed with us in writing in advance.

**5.2** The supplier shall be obligated to maintain liability insurance, also for product liability damages including the recall risk, with sufficient coverage for personal injury, property damage and financial loss (at least 2 million per personal injury or per property damage and per financial loss) at its own expense during the entire delivery or contractual relationship, i.e. until the expiration of the statute of limitations for all claims that may arise from the contractual relationship, and to submit evidence thereof to us upon request. If the supplier does not have such insurance coverage or if he refuses to provide such evidence even after having been granted a reasonable grace period, we shall be entitled to rescind the contract and to claim compensation from the supplier for the damage incurred by us.

**5.3** Our claims are not limited to the sums insured.

#### **6. Prices, Terms of Payment, Assignment, Offsetting; Transfer of Order, Changes to Company, Changes to Production; Contract Processing**

**6.1** The price shall be in Euro unless another currency is agreed in writing..

**6.2** The price stated in our order shall be binding. It includes delivery „free domicile“ as well as packaging.

**6.3** Invoices shall be sent to us separately by mail directly upon dispatch of the goods, stating the order number and order date for each order, and shall state whether the order has been completed or which quantities or pieces are still to be delivered. Value added tax must be shown separately. The invoice must in particular indicate the type and scope of the delivery or performance.

**6.4** Invoices will be paid within 30 days minus 3 % discount or after 60 days net. The period shall commence upon receipt of the invoice by us, but no earlier than the day on which the delivery arrives at the address specified by us.

**6.5** In the event of defective delivery or performance or if an incorrect invoice is sent, we shall be entitled to withhold payment until proper performance/invoice is sent without loss of discounts.

**6.6** Assignments are excluded without our written consent. § Section 354a of the German Commercial Code (HGB) shall remain unaffected. The supplier shall only be entitled to offset and retention rights for such claims that are undisputed, recognized by us or have been legally established.

**6.7** The supplier is not authorized to have the order or parts of the order executed by third parties without our prior written consent. If we grant such consent, the supplier shall nevertheless remain responsible for its contractual obligations and shall be liable for the third party as for its own actions.

**6.8** The supplier shall notify us immediately in writing about any changes in the group of shareholders and any changes in the company name.

**6.9** If the supplier intends to discontinue its production as a whole or to change or discontinue the production of the contractual goods, it shall notify us thereof in writing without undue delay, provided that our last order for the goods was not placed more than 6 months ago. He shall ensure that the goods which are the subject matter of the contract are still available for delivery to us at least 12 months after the notification.

**6.10** If the supplier acts for us as a contract processor, he shall carry out an incoming goods inspection of the goods delivered to him for contract processing and inform us of any defects in the goods before the start of the contract processing and coordinate the further procedure with us. If he fails to do so, he shall be obliged to compensate us. Our right to assert further legal claims remains unaffected.

#### **7. Warranty, Statute of Limitations**

**7.1** The Supplier warrants that the goods or performance are free from material defects and defects of title, comply with the state of the art, the relevant national and European legal provisions (including, but not limited to, food and consumer goods law), the regulations and directives of authorities, professional associations and trade associations as well as the specification handed over by us, the agreed quality and the information in the order/contract as well as the declaration of conformity.

**7.2** If, in individual cases, deviations from the specification, the agreed quality or the information in the order are necessary or expedient, or if there should be concerns about the type of performance desired by us, the supplier must notify us immediately. We will then inform the supplier as soon as possible whether and which of the changes are to be implemented. The supplier's liability shall not be limited by this consent. If the costs incurred by the supplier due to the execution of the contract change as a result of the modification, both we and the supplier shall be entitled to demand a corresponding adjustment of the payment owed to the supplier

**7.3** The Supplier further guarantees that the goods or performance are suitable for the agreed use or the intended use resulting from the nature of the goods or performance and that they do not contain any prohibited or unrated substances. In the case of goods used for packaging food or toys, the supplier guarantees that the goods are also suitable for contact with food or toys and that such contact will not have any negative effects on the food or toy.

**7.4** The supplier guarantees that the goods are properly marked.

**7.5** The supplier guarantees to execute the order/contract in such a way that the law on technical work equipment, the machine protection law, the accident prevention regulations of the relevant professional associations, the fire protection regulations and the latest versions of the DIN and VDE regulations as well as the specifications for CE marks are followed

**7.6** If the delivered goods/performance are recognizably intended by us or our customers for use in countries outside the European Union, the supplier shall also grant the guarantees in accordance with Sections 7.1 to 7.5 for such countries which were recognizable to him as a customer under the contract

**7.7** We shall be entitled to the statutory warranty claims in full. In particular, we shall be entitled to demand, at our discretion, rectification of defects or delivery of a defect-free item/performance of a defect-free performance. If the supplier fails to meet his obligation to remedy the defect within a reasonable period of time set by us, we may carry out the necessary measures ourselves or have them carried out by third parties at the supplier's expense and risk. In urgent cases, we shall be entitled to carry out the work ourselves even before the expiry of a grace period if the supplier does not confirm in writing and bindingly within 24 hours of being requested to do so that he is willing and able to carry out the supplementary performance without delay. In the event of self-performance, we shall be entitled to invoice our own work at market prices customary for third parties. Furthermore, our statutory rights shall remain unaffected

**7.8** In the event of defects, the Supplier shall bear, irrespective of any fault, all expenses incurred in connection with the determination of the defect and the elimination of the defect, also insofar as they are incurred by us, in particular inspection costs, installation, removal and reinstallation costs of defective parts, labor and ma-

terial costs as well as transport and other costs for the replacement of defective parts.

**7.9** Insofar as we are entitled to withdraw from the contract, such withdrawal may be limited to the part of the performance which is insufficient, provided that the default or defective performance is limited to a separable part of the performance and the remainder of the contract is maintained.

**7.10** Our right to assert claims for damages shall remain unaffected by the withdrawal or a reduction.

**7.11** Warranty claims due to material defects and defects of title shall be subject to a limitation period of 36 months, unless a longer statutory limitation period applies and the expiry of the limitation period is not suspended. The limitation period begins with the arrival of the goods at our premises or with the acceptance of the performance. If acceptance is delayed at no fault of the supplier, the warranty period shall be 36 months after the goods/performance have been made available for acceptance..

**7.12** If the goods are procured for resale or for use in the manufacturing of products, this period shall commence at the time when the warranty period for the product equipped with the delivered goods begins to run, but no later than 6 months after delivery of the goods to us.

**7.13** If the supplier delivers a replacement within the scope of subsequent performance, the limitation period for the goods delivered as a replacement shall recommence upon their delivery to us. In the case of a repaired part, the limitation period shall recommence upon completion/acceptance of the repair as a whole.

## **8. Obligation to give notice of defects**

Complaints received by the Supplier within a period of two weeks, in the case of obvious defects reckoned from receipt of the goods and in the case of hidden defects reckoned from discovery, shall always be deemed to have been made without delay within the meaning of § 377 of the German Commercial Code (HGB). The time limit shall also be deemed to have been complied with if the complaint is made verbally or by telephone.

## **9. Retention of title**

The supplier's retention of title of the goods is excluded. The supplier guarantees that the delivered goods are free of property rights of third parties. In this respect, the supplier shall indemnify us against any claims of third parties upon first request and shall also bear all costs incurred by us in this context. This shall also apply to lawyers' fees and court costs.

## **10. Property Rights**

**10.1** The Supplier warrants that the goods or services are free from third party industrial property and intellectual property rights and that in particular no patents, licenses, utility models, design patents, trademarks, copyrights or other industrial property rights

of third parties are infringed by the delivery and use of the delivered goods or services.

**10.2** The Supplier shall indemnify us against all claims of third parties arising from any infringements of the rights of third parties referred to in Clause 10.1 upon first request and shall also bear all costs incurred by us in this connection. This shall also apply to attorney's fees and court costs.

**10.3** We shall be entitled to obtain permits from the authorized third party at the supplier's expense which are necessary for the use of the goods or performance.

**10.4** Any additional statutory claims, e.g. from liability for defects in title, shall remain unaffected.

**10.5** The supplier shall not be entitled to use our trade names, logos, trademarks or other industrial property rights for his own benefit or for the benefit of third parties.

**10.6** Goods or services which are not part of the supplier's standard range and which the supplier has manufactured on the basis of our instructions or in accordance with our drawings or technical specifications may not be offered, sold, delivered or made known to third parties without our prior written consent.

**10.7** The supplier may not offer, sell, deliver or otherwise market goods from its standard range to third parties if our trade name, our logo, our trademark or any other industrial property right of ours are recognizable thereon.

## **11. Work Materials**

**11.1** We retain ownership and intellectual property rights to all work materials provided to the supplier for the preparation of the offer or for the execution of the order/contract or work materials produced according to our specifications, e.g. drafts, templates, sketches, cutting dies, printing plates, digital data, tools, samples, patterns, printing documents, calculations, etc. The supplier shall be obliged to return all work materials to us immediately upon our first request. He shall also not retain any copies or other duplicates.

**11.2** The Supplier may not use working materials within the meaning of Clause 11.1 for purposes other than the fulfillment of the order/contract. Furthermore, the Supplier may neither bring them to the attention of third parties nor make them accessible to them. In the event of infringement, the supplier shall be obliged to compensate us for damages.

**11.3** In the event of loss of the working materials within the meaning of Clause 11.1, the Supplier shall be obliged to procure replacements and to pay damages at its own expense.

## **12. Product Liability**

**12.1** If a claim is made against us for violation of official safety regulations or on the basis of domestic or foreign product liability regulations or laws due to a defectiveness of our product which is attributable to the goods delivered by the supplier, the supplier shall compensate us for the damage insofar as it is caused by the

goods delivered by him. If the damage is caused by the goods delivered by several suppliers, they shall be liable to us as joint and several debtors. If damage has occurred which is a typical consequence of a defect in the goods delivered by the supplier, it shall be presumed that the damage is due to such defect. The supplier shall be free to prove that the defect was not the cause of the damage.

**12.2** Within the scope of its liability for cases of damage within the meaning of Section 12.1, the Supplier shall also be obliged to reimburse expenses pursuant to Sections 683, 670 of the German Civil Code (BGB) and Sections 830, 840, 426 of the German Civil Code (BGB) arising from or in connection with a recall action carried out by us. We shall inform the supplier in advance of the content and scope of the recall measures to be carried out - insofar as this is possible and reasonable - and give him the opportunity to comment. Other statutory claims shall remain unaffected.

## **13. Quality Assurance**

The supplier guarantees that he maintains and implements a quality assurance system which is suitable in terms of type and scope and which corresponds to the latest state of science and technology, and that he documents this.

The supplier is obliged to keep records of the tests, measurements and inspections carried out and to archive all test, measurement and inspection results for 10 years and to ensure traceability. We shall be entitled, without prior notice, to review the entire quality assurance system with regard to the goods delivered to us on site by means of an audit during normal business hours. With regard to the goods delivered to us, the supplier shall also allow us to inspect the entire documentation of the quality assurance system upon request and shall provide us with copies to the extent required.

## **14. REACH, Hazardous Substances**

**14.1** The Supplier warrants that its delivery complies with the requirements of Regulation (EC) No. 1907/2006 (REACH Regulation) in its current version. The supplier shall also provide us with safety data sheets in accordance with the provisions of the REACH Regulation with the corresponding purpose of use or the information required in accordance with the REACH Regulation.

**14.2** Compliance with the provisions of the REACH Regulation does not relieve the supplier of the general obligation to inform us immediately and in a qualified manner about all changes to the goods and the contents by handing over a data sheet.

**14.3** For materials (substances/preparations) and objects (e.g. goods, parts, technical equipment, uncleaned stored goods) which, due to their nature, properties or condition, may pose a risk to life, limb or health of persons, to the environment or to property and which therefore require special treatment with regard to packaging, transport, storage, handling or waste disposal, the Supplier shall

provide us with a fully completed safety data sheet pursuant to § 14 of the Ordinance on Hazardous Substances and an accident leaflet (transport) together with the offer, but no later than prior to dispatch.

## **15. Safety**

If employees or agents of the supplier work on our premises, the supplier shall ensure that they comply with the applicable safety and accident prevention regulations as well as the fire protection regulations and observe the factory regulations. The supplier shall continuously draw the attention of its employees or agents to these regulations.

If the supplier does not remedy a violation of these regulations immediately, at the latest within three days, after a written warning, or if there are repeated serious violations of these regulations, we shall be entitled to terminate the contract immediately and without notice. Damages and costs incurred by us due to non-compliance with these regulations shall be reimbursed to us by the supplier.

## **16. Deterioration of Assets**

**16.1** If, after the conclusion of the contract, a significant deterioration in the assets of the supplier or its affiliated companies (e.g. payment difficulties or suspension of payments, application for creditor protection, application for the opening of insolvency proceedings) or other indications become known which make our claim to counter-performance appear to be at risk due to the supplier's inability to perform, we shall be entitled to withhold our performance until the supplier has performed the counter-performance or provided security. If the supplier fails to provide either the full counter-performance or a suitable security within one week of being requested to do so, we shall be entitled to withdraw from the contract. § Section 323 BGB shall apply accordingly. Our right to claim damages under the statutory conditions shall remain unaffected.

**16.2** In the event of other factually justified indications which make the continuation of a reliable business relationship appear to be seriously endangered, we shall also be entitled to withdraw from the entire contract.

## **17. Confidentiality**

**17.1** The supplier is obliged to keep all confidential information from the pre-contractual correspondence and from the cooperation strictly secret and to use it exclusively for the fulfillment of the contractual relationship, unless it is known to all in the public domain or has been lawfully obtained from third parties. Confidential information shall include, in particular, inquiries and offers, technical data, purchase quantities, prices, information on products and product developments, on research and development projects, all company data and all working materials within the meaning of Section 11.1.

**17.2** Employees who are involved by the supplier in the preparation of the offer and/or the execution of our order/contract must be obligated to maintain appropriate confidentiality.

**17.3** If the supplier discovers that information to be kept secret has come into the unauthorized possession of a third party or that a document to be kept secret has been lost, the supplier shall inform us thereof without delay.

**3.4** If the supplier breaches its obligations under Sections 17.1 to 17.3, it shall be liable for all costs and damages incurred by us as a result of such breach.

**17.4** The supplier may only refer to the business relationship with us in publications with our prior written consent.

**17.5** The obligations under Sections 17.1 to 17.5 shall continue to apply for an unlimited period after termination of the contractual relationship.

## **18. Place of performance, Place of jurisdiction, Applicable law**

**18.1** The place of performance for the delivery or service shall be the agreed place of delivery Ulm. The place of payment for our payment obligations shall be our registered office.

**18.2** In the case of transactions with entrepreneurs, legal entities under public law and special funds under public law, the place of jurisdiction shall be our place of business or, at our option, the place of business of the supplier.

**18.3** The law of the Federal Republic of Germany shall apply without exception, excluding private international law and the uniform international UN Convention on Contracts for the International Sale of Goods (CISG). This shall also apply in the case of cross-border deliveries/services to us.

**18.4** If a non-German version of the General Terms and Conditions of Purchase and Order exists, in case of doubt and in the event of contradictions, the German version shall prevail exclusively.