

## **Conditions of purchase of Hirschmann Automation and Control GmbH**

### **1. General - scope**

- 1.1 All kinds of deliveries and services apply solely to these Conditions of Purchase and Special Conditions of which the Supplier may have been informed. General terms and conditions of business of the Supplier shall only be deemed valid if these have been expressly confirmed by us in writing. Neither a lack of contradiction nor payment or acceptance of goods shall be deemed to constitute a recognition of outside terms and conditions of business.
- 1.2 All agreements concluded between us and the Supplier for the purpose of executing this contract are to be recorded in writing.

### **2. Orders - confirmation of order, tender documents**

- 2.1 The Supplier undertakes to confirm our order in writing without delay. We reserve the right to withdraw the order if we do not receive the confirmation of order within a period of 2 weeks as from the date of invoice.
- 2.2 Orders may also be placed by way of delivery schedule call-ups. The quantities that are classified within the production clearance are deemed fixed order items. Classified quantities that extend beyond these items are non-binding. Confirmation of orders to the contrary are invalid.
- 2.3 Diagrams, technical drawings, calculations, samples, models and other documents shall remain our property and are to be kept secret. These may not be made available to third parties without our express written approval. They are to be used solely for the production and on the basis of our order. Following the order processing they are to be returned to us without request and free of charge. The Supplier may only issue sub-licenses covering the entire production scope, or considerable parts thereof, subject to our prior written approval.

### **3. Prices, terms and conditions of payment, assignment**

- 3.1 The prices agreed upon in the event that a contract is awarded shall be deemed fixed prices and shall contain all the additional services required to honour the contract. Deliveries are carried out DDP, costs for reusable packaging included.
- 3.2 Prices do not include the respective valid statutory value-added tax. This is to be stated separately in the invoice.

- 3.3 Invoices are to be submitted separate from the rendered services, and are to contain details of the following in the order: order number, order date and our material number (insofar as this is stated).
- 3.4 In the event that no separate agreements are concluded, we shall effect payments within 30 days with a 3% discount, within 60 days with a 2% discount or, alternatively, in 90 days following receipt of the invoice and following receipt of the material and once the delivery has been deemed proper.
- 3.5 Our payments do not constitute any form of recognition that the service is as per agreement or that the calculation has been carried out in a proper manner.
- 3.6 We are entitled to set off and withhold on a scale specified by law.
- 3.7 The Supplier shall not be entitled to assign, or have collected by a third party, his existing accounts receivable due from us without our prior, written approval - which may not be refused on unreasonable grounds.

#### **4. Delivery**

- 4.1 The delivery deadline stated in the order(s)/delivery call-up(s) is binding and in the event that a fixed date is not stated it shall commence on the date on which the order is placed. Receipt of the goods at our premises or at an agreed place of use shall be deemed authoritative as regards meeting the delivery deadline. In the case of deliveries with assembly and/or installation, meeting the delivery shall be subject to our acceptance.
- 4.2 Acceptance is only possible at our factories from Monday to Thursday between 7.00 a.m. and 3.45 p.m. and on Fridays between 7.00 a.m. and 12.00 midday. The goods shall be accepted on the following unloading day in the event that these unloading times are not adhered to. Costs incurred as a result of the aforementioned shall be borne by the Supplier.
- 4.3 The Supplier undertakes to inform us in writing without delay if circumstances arise, or are identified, on the basis of which the agreed delivery deadline cannot be met.
- 4.4 We shall be entitled to lodge legal claims in the case of default in delivery. In the case of default in delivery we may lodge a claim, in addition to the performance for each started week of the delay as a contractual penalty, of 1% of the order value, in all, however, 5% of the order value, for failing to meet the delivery deadline without furnishing special proof of damage. We undertake to assert the proviso regarding the contractual penalty at the latest with the final payment. In other respects the statutory provisions are deemed applicable.
- 4.5 The Supplier undertakes to perform and adhere to the scope of delivery in full. Excess or short deliveries shall only be permitted following our express approval.

- 4.6 The valid index is to be stated in the delivery note in addition to the drawing number.
- 4.7 Insofar as nothing the contrary is agreed upon, deliveries shall be carried out without assembly and installation at the Supplier's cost and risk "free to the factory" or "free to the place of use". Deliveries including assembly or installation, or the provision of services, shall be carried out in any case "free to the place of use". The risk shall pass on acceptance.

## **5. Quality and environment**

- 5.1 With regard to his services the Supplier is to abide by our specifications, recognised engineering standards, safety regulations, DIN norms that may apply, agreed technical data and agreements pertaining to the QM system as well as EM-System. When required and following prior consultation our customer is to be granted the opportunity to verify the adherence at our suppliers' premises. The Supplier undertakes to abide by all statutory and technical safety conditions in the manufacturer's and the customer's country, and also to take into consideration the prevailing conditions regarding the environment, electricity and electro-magnetic fields.
- 5.2 Alterations to the subject matter of delivery shall be subject to our prior, written approval.
- 5.3 Work can only commence on the shipping of the initial series delivery (which also applies to product alterations) if the written release of the Hirschmann review has been submitted following the initial shipment of samples in accordance with our Guideline for Suppliers.

## **6. Acceptance, material defects**

- 6.1. The acceptance shall be subject to an express declaration on our part. With regard to the manufactured subject matter of contract and the materials procured in this respect, the obligation to accept goods resulting from our delivery plans is based on the release periods specified in the delivery call-ups. The manufacturer's release and the right to dispose of materials shall each be postponed in accordance with the period of time if we do not provide notification of an alteration. Force majeure, industrial disputes, unrest, decrees, transport disruptions and other disruptions suffered by us or by our suppliers and customers that result in a restriction or discontinuation of our products shall release us from accepting or from a liability to pay damages for the duration and extent of their effects unless we cannot ward off such disruptions by way of reasonable means. This shall apply accordingly to obligations on the part of the Supplier.

- 6.2 The acceptance of a delayed delivery shall not constitute any relinquishment of further-reaching rights and claims. In other respects the statutory regulation is deemed applicable.
- 6.3 Notification of defects shall be deemed made in good time if it is provided within two weeks, in the case of obvious defects as from the hand-over, in the case of hidden defects as from the time at which such defects are detected.
- 6.4 In the case of a complaint we shall be entitled to withhold payments that reasonably correspond with the defects for which a complaint has been lodged.
- 6.5 The statute of limitations for warranty claims is 30 months as from the passing of risk. In the case of deliveries to locations in which we carry out our orders outside our factories or workshops, the limitation period for buyers in actions for breach of warranty shall commence as from the acceptance by our Principal. In any case it shall end 36 months following the passing of risk. This also applies to reworked or newly delivered parts. If the Supplier inspects the goods with our approval to ascertain whether or not the goods are faulty, or if he rectifies a defect, the statute of limitations for warranty claims shall be suspended, starting with the day of receipt of the notification of a defect by the supplier, until the Supplier subsequently informs us of the outcome of the inspection, or the Supplier declares that the defect has been rectified or he refuses to continue rectification measures. This shall not affect the regulation in Section 8.3.
- 6.6 We are entitled to make use of the warranty claims without restrictions. We are, in particular, entitled to demand at our discretion that the Supplier remedies defects or provides a replacement delivery. In such a case the Supplier shall be under obligation to carry all expenses required for the purpose of a subsequent performance. In urgent cases - in particular to fend off imminent danger or to avoid considerable damage - if the supplier has defaulted as regards honouring his obligations or if the subsequent performance has failed, we may have defects rectified at his cost or procure goods elsewhere that are free of defects so as to cover our requirements.
- 6.7 Should we incur costs as a result of defective deliveries of the contractual goods, in particular transport costs, labour and material costs or costs for incoming goods inspections that exceed the normal range, the supplier must bear these costs.

## **7. Liability, release, insurance coverage**

- 7.1 The Supplier shall be liable for all (direct and indirect) damage suffered by us or by a third party in the case of using the goods unless the Supplier is not culpable with regard to causing the error. This shall not affect the liability in accordance with the German Product Liability Act.

- 7.2 We are entitled to demand that the Supplier provides compensation for expenses which we are to carry as regards dealings with our customers because these customers are entitled to compensation from us for the expenses required for the purpose of a subsequent performance, in particular costs incurred for transport, labour and materials.
- 7.3 If the Supplier is aware that delivered goods shall be resold by us and if the Supplier is aware of the country in which the goods are to be delivered, the Supplier shall release us from all claims which our customers may lodge against us as a result of the delivery of faulty goods or other services that are not as agreed upon whether this be on the basis of statutory provisions of substantive German law or on the basis of statutory provisions of the substantive law of the country in which the goods were delivered. The release shall not apply if the claim of our customer is based on a breach of obligation on our part.
- 7.4 The statute of limitations shall apply in the cases of 7.2 and 7.3 at the earliest two months following the time at which we have met the claims of our customers that are lodged against us, at the latest, however, five years following delivery on the part of the Supplier.
- 7.5 The Supplier undertakes to maintain a product liability insurance with an appropriate insured sum and on request to furnish proof of such insurance. This shall not affect further-reaching claims for compensation if we are entitled to such claims.
- 7.6 If the supplier is responsible for product damage, the supplier shall indemnify us at our first request from any compensation claims by third parties resulting there from, if the cause of the product damage lies within the supplier's control and organisational area and the supplier is itself liable to third parties. If we or our customers implement measures to ward off danger (e.g. call-back campaigns), the Supplier shall be liable insofar as he is legally under obligation in this respect, and he shall release us insofar as at the first request.

## **8. Third-party rights, industrial proprietary rights, defects in title**

- 8.1 The Supplier shall be liable in the event that the use or resale of the ordered goods/service is not permissible without violation of third-party rights, including the industrial proprietary rights and copyrights.
- 8.2 In the case of a violation of third-party rights he shall, on the first request, release us from all claims which third parties lodge against us as a result of statutory provisions. This shall only apply to claims based on foreign statutory provisions if the Supplier is aware that we resell goods delivered by the Supplier, and he is familiar with the country

to which the goods are delivered or the country in which we use the services rendered by the Supplier.

8.3 A statute of limitations of ten years applies to defects in title as from the passing of risk.

## **9. Reservation of title, provision, compensation**

9.1 We only recognise the basic reservation of title of the Supplier.

9.2 Insofar as we provide the Supplier with parts, we reserve the right to ownership of these parts. Processing or transforming shall be carried out on our behalf. If our reserved goods are processed with other goods that are not our property, we shall acquire part-ownership of the new goods resulting from this in the proportion of the value of our goods to that of the otherwise processed materials at the time of processing.

9.3 If the material provided by us is unseparably mixed with materials that are not our property, we shall acquire part-ownership of the new material resulting from this in proportion of the value of the reserved goods to that of the otherwise mixed goods at the time of mixing. If the mixing is carried out such that the Supplier's goods are to be regarded as the major item, then it shall be deemed agreed upon that the Supplier shall assign to us a proportionate part-ownership. The Supplier shall store the sole property or the partly owned goods on our behalf.

9.4 Insofar as security rights to which we are entitled in accordance with 9.2 and/or 9.3 exceed by more than 20% the purchase price of all our reserved goods that have not yet been paid for, we shall, at the Supplier's request, be under obligation to release appropriate security rights at our discretion.

## **10. Means of production and direct materials**

The conditions of the Hirschmann tool contract / tool hire contract, which shall be separately agreed upon, are deemed applicable.

## **11. Delivery parameters**

Our separate regulation (delivery regulations for suppliers), which we forward per newsletter to our suppliers or when required, is deemed applicable regarding the delivery.

## **12. Long-term delivery declarations**

Separate long-term delivery declarations in accordance with the Directive (EC) no. 1207/2001, or details pertaining to the country of origin, are required for all delivered goods. Revocations therefore must be sent with separate letter to our customs department. The supplier is obligated to advise us about export authorisations for all commodities. This

notification must be occur on the long-term-suppliers-declaration directly to our customs department. All adversarial consequences of an incomplete or not effected notification bears to the supplier. The indication on other commercial papers is not permitted.

**13. Place of performance, place of jurisdiction, applicable law, severability clause**

- 13.1 The registered office of Hirschmann is deemed the place of jurisdiction. However, we are also entitled to bring an action against the Supplier at his place of general jurisdiction.
- 13.2 Insofar as nothing to the contrary arises from the order, our principal place of business or the place of use requested by us shall be deemed the place of performance.
- 13.3 Solely the substantive law of the Federal Republic of Germany applies to the legal relations between the Supplier and us. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not be applied. INCOTERMS 2000 are deemed applicable as regards interpreting delivery clauses.
- 13.4 In the event that one of the provisions should, for whatever reason, be void, this shall not affect the validity of the other provisions. The contracting parties undertake to replace the invalid regulation with a valid one which comes closest to the economic intent of the invalid regulation.