

# Procurement conditions of Hectronic GmbH (Doc-Nr. H0.05. Rev. 4/ as of 01/10)

## 1. Contract conclusion and general contractual content

For all contracts only the written order from the buyer is binding in connection with these procurement conditions. Verbal or orders by phone are only binding once the buyer confirmed the order in writing. Differences in written communication or confirmation from the supplier or supplier's general terms and condition are not binding the buyer even without expressing any objection. The supplier agrees to these procurement conditions and other underlying order conditions the very latest when carrying out the order. Cancellation, changes or sub-agreements to the contract require a written confirmation from the buyer. The rights of the supplier as per the contract are only transferable - except such rights as per extended title reservation of his suppliers - after prior consent from the buyer. The invalidity of single contractual aspects have no effect on the legal effect of the contract as a whole. Contractual language is in German.

## 2. Offer

Offers are free of charge and the buyer does not enter into any obligation towards the supplier. The supplier has to comply with the inquiry when supplying his offer, if the supplier has a technically more adequate or more economical solution which is different from the inquiry then he can offer this solution as a separate quotation.

## 3. Prices

The agreed prices are fixed prices which are not subject to change not even due to fluctuations in material and salary costs. Prices are the remuneration for completed and entirely fulfilled contractual services including all required ancillary services. Additional services, which were not ordered in writing, will not be remunerated. For services, except when otherwise stipulated, the work carried out is settled according to expenses. The work volume has to be proved according to time sheets which have to be countersigned by the responsible person as nominated by the buyer.

## 4. Delivery date, penalty

The supplier is obliged to adhere to deadlines. Force majeure and circumstances beyond the supplier's control disencumber him only if he notifies the buyer without delay.

If the supplier neglects to inform the buyer or in the case the delayed delivery is the supplier's fault, then the buyer, subject to his other legal rights after expiration of an appropriately set period of grace, is entitled to withdraw from the contract and to claim compensation due to non-performance.

If the exactly set delivery deadlines are not met (firm deals) then the buyer is entitled without granting a period of grace to withdraw from the contract and to claim compensation due to non-performance.

If the agreed deadline cannot be met due to the supplier's fault, then supplier is liable to pay a penalty in the amount of 0.5% (max. up to 5%) of the total order value for each overrun started week. The buyer is obliged to claim the retention of the penalty within ten working days at the latest, calculated from the day of the missed delivery date. A cumulation of penalty and compensation does not occur.

## 5. Transfer of risk

Place of delivery for all deliveries is the location as stated by the buyer. Transport risk for all deliveries lies with the supplier.

## 6. Business disruption and force majeure

The purchase commitment by the buyer does not apply if the buyer is subject to business disruption at no fault of his own and force majeure as e.g. fire, explosion, storm, war, lack of raw materials, strike, lockouts or other similar events which are beyond the control of the buyer.

## 7. Liability and guarantees by the supplier

The supplier is liable that all goods supplied and services rendered by him comply with the buyer's order and requirements - especially that the goods and services are free of faults and that the quality and quantity matches the procurement specifications.

The guarantee period is, if not otherwise stated, 2 years. The period starts with goods receipt or rendering of services at the location as specified by the buyer.

In the case of a claim, the buyer is entitled to request from the supplier either immediate delivery of faultless goods or services as per the contract or repair/remedy or reduction or withdrawal from the contract and compensation as well as reimbursement of expenses. The buyer is especially entitled to replace the goods or services by covering purchases from third parties. The supplier is obliged to reimburse the buyer all direct and indirect damages and follow-up costs resulting from the processing of faulty goods or services, especially as to loss of profits.

## 8. Liability according to the Product Liability Act

If the buyer is subject to a claim from a third party according to the Product Liability Act, then the supplier is obliged to indemnify the buyer from such claims, if the supplier cannot prove that the faulty goods do not contain any goods supplied by him or that the supplied goods are not the cause for claim.

## 9. Passage of title

If the buyer makes a down payment or a part payment, then the supplier is obliged to use this payment for the objects required for the production of the order subject. He transfers already the title rights to these objects to the buyer, hence the buyer receives ownership of these objects, the moment when these objects are received by the supplier and the latest once the supplier pays third parties for these objects. The supplier surrenders his expectant right or his right for acquisition of ownership to the buyer unless the ownership has not already been transferred to the buyer. A possible processing or manufacturing is carried out by the supplier for the buyer, without creating any obligation for the buyer. If the processing or manufacturing, joining, mixing or blending of supplied goods with other goods creates a co-ownership or sole ownership for the supplier, so the supplier immediately transfers such an ownership to the buyer. The supplier carries out the duty as custodian for the goods owned by the buyer with good business diligence also in the case of paragraph 1.

## 10. Provisions

Articles from the buyer, especially tools and appliances as well as all documentation and other data carriers and their contents, especially software which was given to the supplier for the purpose of creating an offer, design or for manufacturing purposes, as well as the articles manufactured by the supplier according to instructions by the buyer are owned by the buyer and may not be used by the supplier for any other purposes as intended, may not be copied or made accessible to third parties.

On buyer's request the above mentioned articles have to be returned including all copies or duplications. If no order is placed then the supplier is obliged to return all above mentioned articles immediately and unbidden to the buyer.

## 11. Ban of assignment and exclusion of set off

The supplier is not entitled to assign claims against the buyer partly or as a whole to third parties for current or any future claims without prior consent by the buyer. The supplier is not entitled to set off claims against the buyer, unless the supplier's claims have been recognized by the buyer or were established as final and absolute.

## 12. Payment terms

Invoices have to be presented in two originals and are - subject to unreserved acceptance - payable on the 15th day of the month following the invoice date minus 3% discount or on the 15th day of the second month following the invoice date without discount. Payments are deemed completed on the day the payment order was issued to the bank or post office by the buyer.

If there are no other arrangements, then the buyer can pay with means of payment of his choice. When paying with promissory notes or customer bill of exchange with a term of up to 3 months the buyer carries the note tax and bank discount of the German Central Bank calculated according to the date of the bill of exchange issue. Down payments can only be requested if they were specifically agreed. The discount may also be applied to down payments.

If the supplier is obliged to take back the delivery item partly or as a whole, then he has to reimburse any down payments he already received for the delivery items including a 3% premium above the central interest rate of the European Central Bank; further claims remain unaffected. The buyer is entitled to retain the objectionable delivery items until the supplier reimburses the effected down payment by the buyer or returns the complete purchase price. The buyer is entitled to set off all pecuniary claims against the supplier.

## 13. Order cancellation by the buyer

If the buyer's sales situation worsens substantially, then the buyer is entitled to cancel partly or as a whole already assigned orders as well framework and call off orders

. In such a case the supplier is obliged to stop the manufacturer of already ordered goods immediately. The supplier can request from the buyer in the case of such cancellations the agreed purchase price for the finished products and the production costs for the started parts which were according to the buyer's delivery allocation due for delivery, whereby an appropriate lead time is granted. Furthermore, the supplier can request in the case of a cancellation a reimbursement of the purchase costs for raw material, as far there is no other usage possible. However, the amount of raw material and individual parts has to be adequate according to the order or call off quantity and replacement times as per common market practice.

Further requirements from the supplier as the once listed in this provision are excluded, especially also with regards to direct damages as e.g. loss in profits or business disruption.

## 14. Working in the buyer's business

The written consent of a health and safety expert prior to any work in the business of the buyer with flammable substances or preparatory work which may cause fire, sparks or heat. The same applies for work in places with electrical currents such as power current distribution and connections, transformer cabinets and for ground works. The supplier's liability remains unaffected despite any such acceptance.

The supplier's workers have to report to the buyer's named responsible person before any works starts. No other areas of the business may be entered other than the construction site. The supplier is notified of the buyer's representatives with regards to contract fulfilment as well as the business's health and safety expert are authorized to carry out any checks. There is a complete ban on alcohol and smoking on buyer's factory premises. The supplier is obliged to inform his employees about this and to ensure the adherence to this ban.

The supplier's employees have to be specifically informed about these regulations prior to the start of any work.

## 15. Checks, proof of material

The buyer has the right to carry out checks on the supplier's premises, while both buyer and supplier bear their own expenses. If defects require repeated or additional checks, then the supplier has to bear the factual and personnel costs. The buyer bears the factual and personal costs for the material proof for the semi-finished goods. These checks have no effect on the supplier's guarantee obligation. The supplier is obliged to include a material and check proof to each delivery.

## 16. Secrecy

The supplier has to treat the inquiry, order, delivery or services as well as any other information provided by the buyer in connection with contract, as far as they are not in the public domain already, as business secret and as strictly private and confidential. The supplier recognizes that such information is exclusively the know-how of the buyer.

## 17. Property rights

The supplier is liable that no third party property rights are violated by the delivery and use of the delivery item and indemnifies the buyer from all claims. License fees or costs which are incurred to avoid such property rights violations are born by the supplier.

## 18. Advertising

The supplier may only refer to the existing business relationship with buyer after prior written consent. Advertising of the supplier on the buyer's contractual items may only be placed there after prior explicit consent from the buyer.

## 19. Place of fulfilment and jurisdiction

Place for fulfilment for all obligations resulting from the contract is the buyer's business location. Place of jurisdictions is per choice of the buyer the business location of the buyer or the suppliers, for banker's drafts and cheque locations it may also be to payment location. If the supplier has his business location abroad, then the buyer may also select this country's capital as the place of jurisdiction. In the case of factual jurisdiction of the regional courts then as per the buyer's choice the local court is the agreed place of jurisdictions.

German law applies to the contractual relationship. The validity of the Uniform Commercial Code or of the Uniform Law on the International Sale of Goods is excluded.

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