

## **1. General**

- 1.1 These General Terms and Conditions of Purchase (hereinafter the "Terms") shall apply to all purchase contracts for goods, services or work (hereinafter "Contract" or "Purchase Order") between HAVER & BOECKER OHG or HAVER & BOECKER Holding GmbH and the contractor (hereinafter "Supplier"). The terms and conditions of us shall apply exclusively. We do not accept any other terms and conditions of the Supplier, even if they have not been expressly objected to or the delivery has not been accepted, unless we have expressly accepted their validity in writing.
- 1.2 With the acceptance of the purchase orders placed by us the Supplier warrants and represents that he shall be responsible for that he observes respectively will observe any relevant and respectively valid national and international provisions, laws, decrees and regulations.
- 1.3 In order to comply with the export control regulations we have to be provided by the Supplier with all necessary information whether the products to be supplied are listed in one of the export control respectively embargoed countries lists. If this is the case the corresponding passages in the relevant regulations including details of the technical parameters of the products have to be stated to us.

## **2. Purchase Orders**

- 2.1 Purchase orders, Contracts or other declarations are only binding if they are placed, signed or confirmed by us in writing.
- 2.2 We may demand changes to the scope of delivery and performance within the scope of reasonableness for the Supplier. Any effects arising from this, in particular with regard to additional and reduced costs as well as delivery dates, are to be settled by mutual agreement in an appropriate manner.

## **3. Prices**

- 3.1 The prices stated in our order and confirmed by the Supplier are fixed prices and are exclusive of value added tax. The prices include all expenses connected with the execution of the Contract and include everything that the Supplier has to effect at the agreed place of performance in order to fulfill his obligation to perform.
- 3.2 Unless otherwise agreed, the fixed price shall include delivery DAP (INCOTERMS 2020) including documentation, packaging, appropriate transport insurance to be arranged by the Supplier and all other costs of delivery, unless otherwise expressly agreed in the Contract.

## **4. Delivery time**

- 4.1 The agreed dates and times shall be binding and must be adhered to under all circumstances. The agreed dates and times shall be deemed complied with when the object of delivery arrives at its place of destination stated by us or respectively - in case an official acceptance is to be carried out - when the object of delivery is accepted by us. In the event the delivery time cannot be adhered to, then we shall be informed thereof without delay.
- 4.2 The Supplier must inform us immediately in writing if it is foreseeable that a delay or exceeding of the agreed dates and times will occur, stating the reasons and the expected duration in writing without delay.
- 4.3 If the Supplier does not fulfil his performance in due time due to reasons the Supplier is responsible for, the statutory provisions shall apply.

## **5. Dispatch, packaging, transfer of risk**

- 5.1 The shipment of the goods shall be accompanied by a delivery note that states the quantities and dimensions.
- 5.2 The Supplier shall be responsible for appropriate and suitable packaging and loading.
- 5.3 Unless otherwise agreed, packaging material shall remain the property of the Supplier. The proper disposal of the packaging material shall be the responsibility of the Supplier and shall be at his expense.
- 5.4 The risk of accidental loss or accidental damage shall pass to us upon delivery in accordance with the agreed INCOTERM. As far as an acceptance has to take place, this shall apply for the transfer of risk.

## **6. Invoice and Payment**

- 6.1 Invoices shall be sent to us in duplicate immediately after delivery. Payment terms and cash discount provisions shall become effective beginning on the day the invoice is received, but at no time before arrival of the goods. Unless otherwise agreed upon, payment shall be effected 14 days after receipt of the invoice with a 3% cash discount or 30 days after receipt of invoice with a 2% cash discount, or 60 days net after receipt of invoice.
- 6.2 We expressly reserve the right to the offset of due counter-claims and to the exercise of the right of retention.
- 6.3 Unless otherwise agreed, invoices shall be issued in EUR and payments shall be made exclusively in EUR.
- 6.4 In case of defective or untimely delivery, we are entitled to withhold payment until proper performance.

6.5 Without our prior written consent, which shall not be unreasonably withheld, the Supplier shall not be entitled to assign its claims against us or to have them collected by third parties.

6.6 If we make down payments or advance payments, we shall be entitled to demand a corresponding bank guarantee.

#### **7. Retention of title**

Delivered goods shall become our exclusive property upon payment at the latest, any extended form of retention of title by the Supplier or by third parties is void and shall not be accepted by us.

#### **8. Liability for defects**

8.1 The Supplier shall be responsible that all deliveries/performances correspond to the newest state-of-the-art and comply with all safety and environmental regulations.

8.2 In the event of defects in quality or defects of title of the deliveries or services we shall be entitled to enforce the rights and remedies under the applicable law.

8.3 The warranty period for defects is 36 months starting with the transfer of risk. Any defects of the delivery respectively performances notified during the warranty period shall be remedied by the Supplier at our discretion by repair or replacement of the defective parts without delay and free of charge, including all ancillary costs. We shall be entitled to set a reasonable deadline for remedial works; the reasonableness shall also be measured according to our operational concerns. A mutually agreed period for remedial works shall have the same legal effect as a deadline set by us. We reserve the right to demand a new delivery of a defect-free item or a defect-free work. The Supplier shall bear all expenses necessary for the remedial work, in particular transport, travel, labor and material costs as well as dismantling and assembly costs.

8.4 Any liability for defects of the Supplier shall not be limited neither by the fact that we checked or approved calculations, drawings, executions etc. of the Supplier nor that we made suggestions or conducted quality controls.

8.5 Any further claims for defects, in particular the right of termination and our right to claim compensation for any losses or damages remain unaffected.

8.6 Should the Supplier fail to fulfil his obligation to remedial work within a reasonable time set by us we shall be entitled to carry out the necessary measures ourselves or by third parties at the expense and risk of the Supplier.

8.7 In urgent cases, in particular to avoid extraordinarily large damage or if operational safety is at risk, we may, after prior consultation with the Supplier, carry out the necessary remedial work ourselves in the form of remedying the defect or have it remedied by a third party.

#### **9. Liability**

9.1 The Supplier's liability is subject to the legal provisions. Any exclusions of liability or limitations shall not be accepted by us.

This provision shall also apply to the breach of a non-essential contractual obligation or liability for assistants as well as in case of a limitation of liability to a maximum amount or specific damages or limiting liability by shortening the legal limitation period.

9.2 For defects in the goods the Supplier is responsible for, the Supplier shall indemnify and hold harmless us against any claims that arise from the product or manufacturer's liability to the extent the Supplier himself would be liable.

#### **10. Notification of defects**

10.1 In the case of the delivery of goods which we are obliged to inspect in accordance with § 377 of the German Commercial Code (HGB), the time period for inspection and notification of visible defects shall be 5 working days from the time of acceptance of the delivery at the place of their use. The notification period for latent defects shall be 5 days after their discovery

10.2 Upon the notification of defects, the limitation period shall be suspended.

#### **11. Documentation and Quality**

11.1 The scope of delivery and services of the Supplier shall include delivery of the documents specified under the Contract, which are included in the price agreed under the Contract. The documentation shall be provided in the language agreed under the Contract. Unless otherwise agreed, the following documents shall be delivered: Operating and maintenance instructions, assembly instructions, loose part list, preference certificate, certificate of origin, packing list, inspection documentation, spare parts lists, photo documentation, material certificates, customs tariff number, functional descriptions for incomplete machines.

11.2 The Supplier is obligated to submit documentation, drawings and plans to be prepared by him to us in due time at the agreed times. Should we provide the Supplier with a technical platform for the purpose of uploading the

- documentation, the Supplier undertakes to use this. The Supplier shall notify us separately of any changes/additions to its drawings and plans. Insofar as the Supplier submits or has to submit documents, drawings or plans to us, this shall not release the Supplier from the sole responsibility for the correctness of the content of these documents, drawings and plans, even in the event of a release by us.
- 11.3 Drawings shall be submitted as .pdf, .dwg (2D) or step file (3D) with load schedule, weights, dust collection information, compressed air information and power requirements.
- 11.4 In the case of deliveries of technical work equipment, machines and systems, the Supplier is obliged to execute the scope of delivery and services in accordance with the applicable European and German legal regulations. In particular, the Product Safety Act and the related ordinances shall be observed. In this case, the Supplier is obliged to provide the scope of supply and services with a CE marking, provided that this is prescribed by the EC Machinery Directive in accordance with EC Regulation No. 2006/42/EC. Otherwise, the Supplier shall be obliged to hand over a declaration of incorporation in accordance with the EC Machinery Directive. If claims are asserted against us by third parties due to non-compliance with the regulations by the Supplier, the Supplier shall indemnify us against all claims.
- 11.5 Unless otherwise agreed in a Contract, the Supplier shall provide us with a UK Declaration of Conformity in case of installation site in the United Kingdom.
- 11.6 The Supplier guarantees that all materials, compounds and articles delivered to us are in compliance with Regulation (EC) No. 1907/2006 (REACH).
- 11.7 For Suppliers from the European Union the following shall apply: The Supplier shall confirm by submitting a supplier's declaration that the products are manufactured in the European Union and correspond to the rules concerning provisions of the term "certificate of origin" which apply in the trade of goods on preference terms. Manufacture in other countries is subject to our explicit and written approval and has to be designated properly and in accordance with the valid legal regulations. The Supplier's declaration can be issued as long-term declaration at a maximum for one year or as individual declaration on every invoice. The Supplier shall be obligated, if necessary, to prove correctness of the supplier's declaration by providing an information sheet and to compensate the damage which may occur as a result of an incorrect supplier's declaration.
- 11.8 The Supplier has a claim for payment of an invoice only if there is a supplier's declaration for the delivery or if the Contract does not provide for a supplier's declaration.
- 11.9 The Supplier allows us to use the Supplier's documentation and to insert and use it in the documentation of us in any form, number and in any language.

## **12. Supply of spare parts**

The Supplier shall guarantee the supply of spare and wear parts for a period of minimum 10 years after the delivery.

## **13. Confidentiality, data protection**

- 13.1 We reserve the property rights and copyrights to illustrations, drawings, calculations and other documents delivered by us. They shall be used only for their agreed purpose and not for any other purpose. Copies or other types of duplication, including electronic storage, processing or transmission using electronic systems shall only be made for the agreed purpose. Neither originals nor copies of any type may be handed or supplied to third parties
- 13.2 Referring to our business relationship in any way for the purpose of advertising or promotion shall not be permitted without our prior written approval.
- 13.3 The Supplier shall be obligated to compensate for all damages incurred by us through a breach of any of the above mentioned obligations.
- 13.4 Within the scope of the business relationship between us and the Supplier, personal data will be exchanged and processed to the extent necessary. The Data Protection Regulation (DSGVO) and other legal data protection regulations shall be mandatory in this respect.

## **14. Intellectual property rights**

The Supplier shall assure that the rights of third parties do not conflict with the intended use of the purchased goods especially industrial property rights of third parties are not violated or infringed. If claims are made against us due to a possible infringement of third party rights, e.g. copyrights, patents and other industrial property rights, the supplier shall indemnify us against such claims and against any performance in connection therewith, without prejudice to the statutory claims.

**15. Further provisions**

- 15.1 The Supplier shall observe the German Posting Workers Act (AEntG) and the German Minimum Wage Law (MiLoG). In particular, the Supplier shall pay its employees the minimum wages prescribed by these laws in each case. Furthermore, the Supplier undertakes to also impose the aforementioned obligations on its sub-suppliers and to monitor their compliance. The Supplier shall indemnify us against all claims asserted against us by third parties, in particular employees of the Supplier or a subcontractor, arising from alleged violations of the above-mentioned laws by the Supplier or a subcontractor.
- 15.2 The Supplier undertakes to take all necessary measures to avoid corruption and bribery. In particular, the Supplier shall ensure through organizational measures and instruction of its employees that it or its employees do not commit any criminal acts in the business relations with us and that employees are not offered any benefits or other advantages by us. The Supplier's obligation also relates to corresponding compliance with the regulations from our Code of Conduct, which can be viewed and downloaded under <https://www.haverboecker.com/de/ueber-uns/nachhaltigkeit/>
- 15.3 A breach of this clause constitutes a material breach of contractual duty and entitles us to terminate a Contract without notice.

**16. Severability clause**

If one clause of these Terms should be void or become invalid, this shall have no effect on the validity of the remaining content of the terms and conditions. The void or invalid clause(s) shall be replaced by valid ones, through which the economic purpose aimed at is reached as far as possible.

**17. Place of fulfilment, court of legal jurisdiction and choice of law**

- 17.1 Unless otherwise agreed in a Contract, the place of fulfilment shall be the place where the goods are to be installed. In the case of work or services, the place of fulfilment shall always be the place where the service is to be rendered. The place of fulfilment for our payments is our place of business.
- 17.2 Unless otherwise agreed, the place of jurisdiction shall be the local court or district court competent at our registered office. We are also entitled to take legal action at the Supplier's registered office.
- 17.3 The law of the Federal Republic of Germany shall apply to all legal relationships between us and the Supplier to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).