

**Terms and Conditions of Purchase**

The Terms and Conditions of Purchase apply to transactions for goods and service within the scope of business dealings with organisations contracted by

Sickert & Hafner GmbH

Last Updated: 01/2019

**1. General**

**1.1** The Terms and Conditions of Purchase apply exclusively; we only recognise divergent or conflicting general terms and conditions of the Supplier/ Contractor insofar as we have expressly agreed to them in writing. Acceptance of goods or services from the Supplier (hereinafter referred to as "Object of the Contract/Contractual Object") or their payment does not constitute approval, even if acceptance or payment takes place with the knowledge of conflicting or supplementary terms and conditions of the Supplier. Likewise, any previously agreed terms of contract of the Supplier that conflict with these Terms and Conditions of Purchase or supplement them are no longer accepted.

**2. Contract Conclusion and Adjustments**

- 2.1** Orders, statements and delivery schedules as well as changes and additions to them require the written form.
- 2.2** Verbal agreements of any kind – including subsequent changes and additions to our Terms and Conditions of Purchase – require our written confirmation to be valid.
- 2.3** The written form is also fulfilled by email, fax or (electronic) remote data transmission.
- 2.4** Cost estimates are binding and free of charge, unless expressly agreed otherwise.
- 2.5** We are entitled to cancel the order if the Supplier does not accept it within five (5) working days of receipt.
- 2.6** Delivery call-offs as a part of order and call-off planning become binding if the Supplier does not object within three (3) working days of receipt.

**3. Delivery, Shipment and Packaging**

- 3.1** Agreed dates and deadlines are binding. Decisive for compliance with the delivery date or delivery deadline is our receipt of the goods. If delivery "free ex-works" (DAP or DDP according to Incoterms® 2010) has not been agreed, the Supplier shall supply the goods in good time, taking into account the time to be agreed with the carrier for loading and dispatch.
- 3.2** If the Supplier has taken over responsibility for erection or assembly, he shall bear all requisite expenses, such as travel expenses, tool provision and accommodation allowances.
- 3.3** The statutory provisions apply if agreed deadlines are not met. The Supplier is to immediately inform our Purchasing department if he foresees difficulties regarding production, input material supply, adherence to the delivery deadline or similar circumstances that may prevent him from making the delivery on time or delivering in the agreed quality or quantity.
- 3.4** Irrespective of the fault of the Contractor and the evidence of actual loss, we are entitled to charge a penalty equal to 1% of the total value of the Contract per calendar day commenced in the event of a delay in delivery or performance. The total amount of the contractual penalty is limited to 15% of the total Contract value.
- 3.5** The unconditional acceptance of the delayed delivery or service does not constitute a waiver of

claims for compensation due to us for said delayed delivery or service; this remains valid until full payment has been made of the compensation we owe for the delivery or service concerned.

- 3.6** Partial deliveries are generally not permissible, unless we have expressly agreed to them or we deem them reasonable.
- 3.7** We are entitled to refuse to accept goods delivered prior to the delivery date specified on the order and return said goods at the cost and risk of the Supplier.
- 3.8** Unless otherwise stated, the values we determine during incoming goods inspection are decisive with regard to quantities, weights and dimensions.
- 3.9** All shipments are to be accompanied by shipping documents and a delivery note in duplicate. The delivery note also needs to contain information about our material and order number, the order date, the quantities delivered, the type of packaging and the weight (gross, net and tare). The remaining quantity still to be delivered needs to be stated for partial deliveries.
- 3.10** All packaging materials can be returned to the Supplier at his expense. All packaging used in the delivery is to comply with the applicable environmental protection and recycling regulations, the provisions that result from the German Federal Waste Management Act (KrWG), the Packaging Ordinance, the Hazardous Substances Ordinance and the Hazardous Goods Ordinance and must be labelled accordingly.

**4. Force Majeure**

- 4.1** Force majeure, operational disruptions for which we are not at fault, riots, official measures and other unavoidable events release us from our duty to accept deliveries in a timely manner for the duration of their existence. During said events, and in the two (2) weeks after their culmination, we are entitled – without prejudice to our other rights – to wholly or partially withdraw from the Contract, provided that said events are not insignificant and our requirement is significantly reduced due to the need that resulted to procure elsewhere.
- 4.2** The provisions of 4.1 also apply in the case of industrial disputes.

**5. Shipping Notice and Invoice**

- 5.1** The information provided in our orders and delivery call - offs applies. A single copy of the invoice is to be sent stating the invoice number and other characteristics to the respective printed address on this invoice; the invoice is not to be enclosed with the shipments.
- 5.2** The assignment of claims including delivery and payment terms is only effective with our written consent.

**6. Pricing and Risk Transfer**

- 6.1** Unless otherwise agreed, prices are quoted for delivery to the named delivery location (DAP/DDP according to Incoterms® 2010) including packaging. VAT is not included in the prices. The Supplier bears the material risk until we or our agent accepts the goods at the delivery location stated on the order.
- 6.2** The prices quoted on our purchase order are fixed prices, are not allowed to be changed to our detriment even when price increases take place after the Contract has been concluded. The same

- applies if we place an order based on the Supplier's current price list in our possession.
- 6.3** Packaging costs will only be paid for separately if this is expressly agreed. They are to be credited to us along with the carriage-paid return of the packaging.
- 7. Terms of Payment, Payment and Offsetting**
- 7.1** Unless otherwise agreed, the invoice is either to be settled within 30 days (with the deduction of a 3% cash discount) or 60 days (without a deduction) from the due date of the payment claim and receipt of both the invoice and the goods or the provision of the service.
- 7.2** Payment is made subject to proper and correct delivery, as well correctness in terms of price and price calculation. Deduction of a cash discount is also permissible for purposes of offsetting or for retaining a reasonable amount of the payment owing to defects. The cash discount is deducted from the invoice amount including VAT.
- 7.3** The payment period commences as soon as the delivery or service has been rendered in full and we have received it along with a duly issued invoice, but never before the agreed date for receipt for the goods. Insofar as the Supplier is to supply test reports, material tests, quality documents and other documents, the completeness of the delivery and service also presupposes the receipt of these documents.
- 7.4** We are entitled to offset against all claims we have against the Supplier for whatever legal reason.
- 7.5** Payments do not imply recognition that the deliveries or services are in accordance with the Contract.
- 8. Notice of Defects**
- 8.1** Unless otherwise agreed in a Quality Assurance Agreement, we only inspect goods on receipt for obvious damages, specifically transport damage and differences in the identity and quantity of the delivery.
- 8.2** We report defects in good time following their discovery.
- 8.3** With regard to our duty to inspect and give notice of defects, it is considered timely when we inspect the incoming goods within ten (10) working days of delivery and report obvious defects to the Supplier during this period.
- 8.4** We are entitled to take samples in order to carryout the inspection and reject the goods in full or inspect all of them (100%) in the event of defects, at the expense and risk of the Supplier and to demand replacement of the actually defective parts.
- 8.5** We are entitled to charge a flat-rate handling fee of €100,- for every claim.
- 9. Claims for Defects**
- 9.1** The statutory provisions on defects in quality and title apply unless otherwise provided for below.
- 9.2** We reserve the right to choose the type of supplementary performance. The Supplier is entitled to refuse the type of supplementary performance we choose if disproportionate costs make it infeasible.
- 9.3** If the Supplier does not start to immediately remedy the defect after we request it, then in urgent cases, and, specifically to avert acute risks or major losses, we are entitled to remedy it ourselves or have it remedied by third parties.
- 9.4** In the event of defects of title, the Supplier also indemnifies us against any claims by third parties, unless he is not responsible for the legal defect.
- 9.5** Except in cases of malice, claims for defects become statute-barred after three (3) years unless the contractual object has been used in a building in accordance to its customary use and this has caused a defect in the building.
- 9.6** The limitation period begins with the delivery of the contractual object (risk transfer).
- 9.7** If the Supplier fulfils his obligation to provide supplementary performance by making a replacement delivery, the limitation period for the replacement goods delivered commences again following delivery, unless for supplementary performance, the Supplier has expressly and concurrently made the replacement delivery a matter of goodwill alone in order to avoid disputes, or in the interest of continuing the supply relationship.
- 9.8** If costs result for us as a consequence of the defective delivery of the contractual object, and, specifically, transport, travel, labor, installation, removal and material costs, or costs for an incoming inspection that exceed the usual scope, then they are to be borne by the Supplier.
- 9.9** The Supplier is responsible for the faults of its subcontractors as if they were their own.
- 10. Product Liability, Warranty and Recall**
- 10.1** In the event that claims are made against us for product liability, the Supplier is obliged to indemnify us against such claims, if and insofar as the loss was caused by a defect in the contractual object delivered by the Supplier. In cases of fault-based liability, this only applies if the Supplier is at fault. If the Supplier is responsible for the cause of the loss, he must prove that he is not at fault.
- 10.2** In cases pertaining to 10.1 here, the Supplier bears all costs and expenses, including the costs of any legal action.
- 10.3** The Supplier is responsible for deliveries from his Suppliers as they were his own.
- 10.4** The Supplier provides a warranty of three (3) years unless otherwise agreed in the individual Contract and the Supplier does not offer an extended warranty period for his products.
- 10.5** The Supplier warrants that the goods comply with our specifications and other information such as standards and documents. He undertakes to check the goods for these features and characteristics prior to shipping. In any case, the goods are to comply with the generally accepted rules of technology, as well as the occupational safety and accident prevention regulations as specifically defined in DIN standards, VDE regulations and other recognised technical rules and regulations.
- 10.6** The products the Supplier supplies must comply with current national and European regulations on electrical and electronic components with regard to environmental compatibility and labelling, specifically the RoHS Directive, the REACH Regulation and customer-specific requirements and regulations for their implementation, amendment and modification. The list can be viewed under [www.sickert-hafner.de](http://www.sickert-hafner.de) and is entitled "Liste verbotener Stoffe S&H GmbH.pdf" (only available in German).
- 10.7** The statutory provisions apply in all other cases.
- 10.8** Prior to a recall action that is wholly or partially the result of a defect in the contractual object delivered by the Supplier, we shall inform the

Supplier and give him the opportunity to cooperate and discuss the efficient implementation of the recall action with him, unless the special urgency of the situation precludes informing the Supplier or his participation. Insofar as the recall action is the result of a deficiency in the contractual object supplied by Supplier, the Supplier shall bear the costs of the recall action.

#### **11. Withdrawal and Termination Rights**

**11.1** In addition to the statutory rights of withdrawal, we are entitled to withdraw from the Contract if a material deterioration in the financial circumstances of the Supplier occurs or threatens to occur and fulfilment of a delivery obligation to us is placed in jeopardy as a result.

**11.2** We are further entitled to withdraw from the Contract if:

- The Supplier becomes insolvent,
- The Supplier discontinues his payments,
- The threat of looming insolvency pursuant to Sec 18 German Insolvency Code (InsO) occurs at the Supplier or it becomes apparent that the Supplier is over-indebted,
- The Supplier has requested the opening of insolvency proceedings, or a comparable debt settlement procedure concerning the Supplier's assets or operation has been applied for, or
- The opening of insolvency proceedings concerning the Supplier's assets is rejected owing to lack of assets.

**11.3** Subsections 11.1 and 11.2 here apply analogously in the case of a permanent debt, with the proviso that an extraordinary right of termination without notice applies instead of the right of withdrawal.

**11.4** If the Supplier has affected partial performance, we are only entitled to withdraw from the overall Contract if we have no interest in partial performance.

**11.5** Insofar as we decide to withdraw from the Contractor terminate it based on the aforementioned contractual right of withdrawal or termination, the Supplier shall compensate us for any losses that result from this, unless he is not responsible for cause of the right of withdrawal or termination.

**11.6** Legal rights and claims are not restricted by the provisions of Section 11 here.

#### **12. Product and Process Changes**

**12.1** If the Supplier intends to change the product to be delivered according to the order, or product features or manufacturing processes/locations, he must inform our Purchasing department in writing at least six (6) months prior to the change being made, so that the product can be delivered in good time or we can review the process.

**12.2** The Supplier is only entitled to deliver the modified product or produce it according to modified production processes if we have approved it in writing.

#### **13. Execution of Works**

**13.1** Persons who perform work on Sickert & Hafner GmbH business premises in order to fulfil the Contract shall observe the rules laid down in the respective company regulations. Liability for accidents suffered by the aforementioned persons on the aforementioned business

premises is excluded unless caused by intentional or grossly negligent breach of duty by our legal representatives or vicarious agents.

#### **14. Transfer of Orders to Third Parties**

The transfer of orders to third parties without our written consent is not permitted and entitles us to wholly or partially withdraw from the Contract and demand compensation.

#### **15. Material Supply**

**15.1** The materials, parts, containers and special packaging ("supplies") we furnish free of charge or against payment remain our property.

**15.2** Material supplies are to be separated free of charge and stored, labelled and managed on our behalf. The Supplier is to provide compensation if an impairment or loss of the aforementioned material supplies occurs. This also applies to the calculated transfer of order-based materials.

**15.3** Supplies are only be used for the purpose for which they are intended.

**15.4** The processing and assembly of the supplies takes place on our behalf. In proportion to the value of the supplies and the value of the entire product, it is understood that we remain co-owners of the products manufactured using our materials and parts, which the Supplier stores in this respect on our behalf. The Supplier undertakes to store the new object free of charge on our behalf with the due diligence of a prudent businessman.

**15.5** We reserve the right to co-ownership of the products manufactured using our supplies until all claims arising from furnishing them are fully satisfied. The Supplier is entitled to resell the products made using our supplies in the ordinary course of business and under retention of title.

**15.6** The Supplier hereby assigns to us in full all claims including ancillary rights to which he is entitled from the resale of said products. The claims assigned serve to secure our claims that arise from furnishing the supply. The Supplier is entitled to collect the claims assigned. We can revoke the rights of the Supplier pursuant to Sec. 15 here if the Supplier fails to fulfil his obligations to us duly, is in default with payment, ceases to make payment, or if the Supplier applies for insolvency proceedings to be opened or the opening of similar debt resolution procedures concerning his assets. We can also revoke the rights of the Supplier pursuant to 15 here, if a material deterioration in the financial circumstances of the Supplier occurs or threatens to occur, or the Supplier is at risk of insolvency or becoming over-indebted. If the value of the collateral pledged to us exceeds the value of our claims by more than ten percent (10%), we will release the collateral of our choice at the request of the Supplier.

**15.7** The Supplier is obliged to perform a free stock-take at any time at our request.

**15.8** The Supplier is to provide compensation if an impairment or loss of the aforementioned material supplies occurs. This also applies to the calculated transfer of order-based materials.

#### **16. Tools, Forms, Patterns, Drawings**

**16.1** Standard specification sheets, lithographs and templates, etc. that we have furnish the Supplier with in order to fulfil the contractual object (e.g. for submitting quotations or executing a Contract), remain our property and are not allowed to be passed on to third parties without

our written consent or be used for other contractual purposes. These must be secured against unauthorised examination or use. Subject to further rights, we may require their surrender if the Supplier violates these obligations.

**16.2** In cases where the Supplier is to produce special constructions or drawings, the documents for these are to be submitted to us for examination and approval before the start of production. Our acceptance or approval of the drawings and samples submitted to us does not waive our right to make warranty claims.

**16.3** Our originals are to be returned to us immediately after the Supplier has prepared his documents.

### **17. Documents and Confidentiality**

**17.1** All information that a Party to the Contract has designated as confidential in written or verbal form, and, specifically, documents, drawings, knowledge and other business and trade secrets, is to be treated confidentially by the other Party to the Contract and only used for the purpose of fulfilling the order. This confidentiality agreement does not apply to information:

- That has become accessible to the general public without the intervention of the receiving Party, or
- Was demonstrably known to the recipient when the information was supplied, or
- The recipient received from an authorised third Party or the disclosure of which is legitimately required by an authority, or
- That is based on knowledge acquired independently of the information supplied by the other Party to the Contract.

**17.2** If the Contractor has been supplied with documents, information or other aids, these remain the exclusive property of Sickert & Hafner GmbH and may only be used for performing the underlying order. The Contractor is neither entitled to reproduce these objects without the prior consent of Sickert & Hafner GmbH, nor pass them on to third parties nor inform unauthorised parties of their contents. The documents, information and other aids provided by Sickert & Hafner GmbH and furnished by the Contractor including duplicates, are to be returned to Sickert & Hafner GmbH without request after completion of the works. Sickert & Hafner GmbH can request a corresponding declaration of completeness.

**17.3** The confidentiality obligation continues to apply for a period of three (3) years following termination after the Contract has been completed.

**17.4** From its knowledge of the information and documents, etc., the Contractor will not derive any rights, and, specifically, any rights of prior use, with regard to patent applications, inventions or other proprietary knowledge of Sickert & Hafner GmbH, irrespective of any periods provided for in patent laws.

### **18. Third-Party Industrial Property Rights and Manufacturer's Liability**

**18.1** The Supplier is responsible for ensuring that patents and other proprietary rights of third parties are not violated for the goods he delivers. In the event of any claims by third parties, he is obliged to indemnify us and our customers (if applicable).

**18.2** The Supplier is further obliged to indemnify us against any claim for manufacturer's liability insofar as he is responsible for the defects that trigger said liability.

### **19. Export Controls and Customs**

**19.1** The Supplier is obliged to inform us in his business documents of any approval requirements or restrictions on the (re-) export of his goods in accordance with German, European and US export and customs regulations, and export and customs regulations in the country of origin of his goods and submit the following information on the goods subject to approval in good time prior to initial delivery:

- Sickert & Hafner GmbH material number,
- Goods description,
- All applicable export list numbers, including the Export Control Classification Number as per the US Commerce Control List (ECCN),
- Commercial origin of the goods,
- Statistical product number (HS Code),
- A contact person at his company to clarify any queries.

**19.2** The Supplier is obliged to inform us immediately about any changes in the approval requirements for the goods he delivers to us owing to technical and legal changes or official findings.

**19.3** The Supplier is obliged to supply us with all other foreign trade data and documents relating to his goods and their components prior to delivery, and to immediately inform us in writing (prior to delivery of any contractual items concerned) of any changes to the aforementioned data.

**19.4** A supplier's declaration (individual declaration or long-term declaration) about the preferential origin of the goods is to be submitted to us on request.

**19.5** All packaging materials can be returned to the Supplier at his expense. All packaging used in the delivery is to comply with the applicable environmental protection and recycling regulations, the provisions that arise from the German Federal Waste Management Act (KrWG), the Packaging Ordinance, the Hazardous Substances Ordinance and the Hazardous Goods Ordinance, and must be labelled accordingly.

### **20. Compliance and Code of Conduct**

**20.1** The Supplier undertakes not to offer or grant or demand or accept any benefits that violate existing anti-corruption regulations in his business relationship with us, either during business dealings or when dealing with public officials.

**20.2** In accordance with applicable antitrust rules, the Supplier undertakes not to enter into any agreements or concerted practices with other companies within the scope of the business relationship with us that effect or have as their object the prevention, restriction or distortion of competition.

**20.3** The Supplier undertakes to comply with applicable laws governing the general minimum wage and oblige subcontractors he contracts to comply to the same extent. The Supplier shall demonstrate that he complies with aforementioned assurances upon request. In the event of a breach of the aforementioned assurances, the Supplier indemnifies us against claims by third parties and is obliged to refund any fines imposed on us in this connection.

**20.4** The Supplier shall comply with the respective legal regulations for environmental protection, safety at work and employee relations, and the Sickert & Hafner GmbH Code of Conduct for Suppliers (hereinafter: Code of Conduct), and oblige his subcontractors to do the same. Furthermore, in this activities, he will endeavour to reduce adverse effects on human beings and the environment. Within the scope of his capabilities, the Supplier shall establish and continue to develop a system of management according to ISO 14001. The Supplier shall also observe the principles of the UN Global Compact Initiative, which, in their essence, concern the protection of international human rights, the abolition of forced and child labor, the elimination of discrimination in recruitment and employment and environmental responsibility ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

**20.5** We publish the corresponding version of our Supplier Code of Conduct on our website for viewing and download ([www.sickert-hafner.de](http://www.sickert-hafner.de)). At the request of Sickert & Hafner GmbH at any time, the Contractor shall submit a written statement by its management that demonstrates compliance with all the provisions of our Code of Conduct. The Contractor acknowledges that compliance with the Code of Conduct is an essential obligation of the Contract.

**20.6** In the event of the suspicion of a breach of the obligations pursuant to 20.1 to 20.5 here, the Supplier shall to inform us immediately of potential violations and the clarification measures undertaken in relation. If the suspicion proves to be well-founded, the Supplier will inform us within a reasonable period of time about the internal company measures he has undertaken to prevent future violations. If the Supplier fails not comply with these obligations within a reasonable period of time, we reserve the right to withdraw from contracts entered into with him or terminate them with immediate effect.

**20.7** In the event of serious legal violations by the Supplier and breaches of the provisions of 20.1 to 20.5 here, we reserve the right to withdraw from existing contracts or terminate them without notice.

## **21. Place of Performance**

Place of performance is the location where the goods are to be delivered or the service is to be rendered in accordance with the order.

## **22. Personal Data**

Both we and the Supplier store personal data on the Contracting Party by processing electronic data according to the currently valid version of the General Data Protection Regulation (GDPR).

## **23. General Provisions**

**23.1** If one of the provisions of these Conditions and any further agreements made is or becomes invalid, it does not affect the validity of the remaining provisions of these Conditions. The Parties undertake to replace the invalid provision with one that comes as close as possible to the commercial intention of the invalid provision.

**23.2** The contractual relationship is governed exclusively by German law, excluding conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG). Place of jurisdiction for all disputes that directly or indirectly arise from contractual relationships on which these Terms and

Conditions of Purchase are based is Hanau. We are further entitled to sue the Supplier at our discretion at the court of his domicile or branch, or at the court of the place of performance.

### **Sickert & Hafner GmbH**

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