Hirschvogel
Automotive Components®
德西福格 汽车配件

Terms and Conditions of Purchase

Applicable to business transactions with companies, legal persons and other organizations under public law.

1. General

1.1 Our terms and conditions of purchase apply exclusively; we do not recognize conflicting general business terms and conditions of the supplier or supplier terms and conditions differing from our terms and conditions of purchase unless we expressly agree with their validity in writing. Our terms and conditions of purchase also apply if we accept or pay for deliveries of products and services of the supplier (hereinafter: object of the contract) in the knowledge of conflicting supplier terms and conditions or supplier terms and conditions differing from our terms and conditions of purchase.

1.2 Our terms and conditions of purchase also apply to all future transactions with the supplier.

2. Conclusion and Modifications of Contract

2.1 Orders, contracts and order releases as well as their modifications and amendments must be in written form. Orders and order releases can also be issued via Email hard copies through courier or telefax.

2.2 To become effective, oral agreements during the contract negotiation require a written confirmation by the purchasing department. Sub-clause 2.1, sentence 2 above remains unaffected.

2.3 To become effective, oral agreements after the conclusion of the contract, especially subsequent modifications and amendments of our terms and conditions of purchase - including this clause- requiring written form, as well as collateral agreements of any kind also require written confirmation by the purchasing department.

2.4 Cost estimates are binding and are not to be compensated unless other provisions are expressly agreed upon in writing.

2.5 We are entitled to cancellation if the supplier does not accept the order within two weeks after having received the order. Order releases become binding if the supplier does not object within five working days after receiving the order.

2.6 The QM (Quality Management) - agreements and environmental terms of Hirschvogel are an integral part of this contract and are enclosed as appendix hereto.

3. Delivery

3.1 Deliveries deviating from the specifications agreed upon in our contracts and orders require our prior written approval.

3.2 Agreed-upon deadlines and time periods are binding. The receipt of the goods by us is the determining factor for having met the date of delivery or the period of delivery. Unless "„Delivered Duty Paid" Pinghu, People's Republic of China (Incoterms 2010) is agreed upon, the supplier shall make the goods available in a timely fashion by taking into account the time for loading and shipping to be agreed upon with the forwarder.

3.3 If the supplier is responsible for setup or installation, and unless otherwise agreed upon in writing, the supplier shall complete the setup or installaion within the time designated by us and assume all required incidental costs such as travel expenses, availability of tools as well as daily allowances.

3.4 If the supplier anticipates difficulties with respect to production, the supply of required materials, meeting the delivery date or similar circumstances that might interfere with his ability to deliver in a timely fashion or delivery with the agreed upon quality, the supplier must immediately notify our ordering department.

3.5 If agreed delivery/performance times are not observed, then, without prejudice to our rights and claims for further damages whatsoever, Hirschvogel can demand for each complete week by which the deadline is overrun an amount equivalent to or higher than 5% of the total order value as a lump sum without having to furnish proof of damage or loss, unless otherwise agreed explicitly. In addition, Hirschvogel shall be entitled to withdraw from the contract in whole or in part with immediate effect and shall be entitled to claim statutory rights and damages for such delay. The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims to which we are entitled due to the delayed delivery or service; this applies to withdraw from the contract in whole or part with immediate effect, as long as the delivery or service is delayed for over 30 days.

3.6 Partial deliveries are precluded as a rule, unless we expressly agreed in writing to them.

3.7 The values determined by us during the incoming inspection shall prevail with respect to quantities, weights and dimensions, unless different values were proved by the supplier.

3.8 With respect to software included in the scope of delivery, including its documentation, in addition to the right of use to a legally permissible extent [copyright law], we have the right of use with the agreed-upon performance characteristics and to the extent necessary for the use of the product in accordance with the agreement. We have the right to make a backup copy, even without express agreement.

4. General Repair & Maintenance Services

The supplier shall have all necessary capabilities to ensure service for products supplied, and therefore offer repair and maintenance services, by either using its own personnel or by using third-party contractors approved by Hirschvogel in writing, provided these personnel and third-party contractors has demonstrated capabilities to execute the required services activities, at the entire satisfaction of the Hirschvogel.

5. Force Majeure

Acts of God, labor disputes, operational disruptions not due to our fault, unrests, government measures and other unavoidable events entitle us - notwithstanding our other rights - to withdraw from the contract in whole or in part, as long as they last for 30 days.

6. Advice of Dispatch and Invoice

The information in our orders and order releases shall apply. The invoice showing the invoice number and other references must be sent in two copies to the respective printed mailing address. Also as per schedule all items in shipments should clearly marked with our part number on it.

7. Pricing and Passing of Risk

7.1 Unless otherwise agreed upon in writing, the prices are "Delivered Duty Paid" Pinghu, People' Republic of China (Incoterms 2010) including packaging. The specified price does not include statutory value-added tax, central sales tax, etc. The supplier is responsible for the safety of the goods until the goods are accepted by us or our local representative to whom the goods must be delivered in accordance with the contract. The mutual set-off of payment from these terms & conditions of Purchase is permitted and agreed unless we contest the existence of a specific claim. Such set-off can only be done pursuant to the relevant taxation laws and regulations. Comment Germany: If HAC does not accept this, then please provide the proposal for a wording and finalise it.

8. Payment Terms

Unless otherwise agreed upon in writing, the invoice of the supplier shall be paid within 60 days against the VAT invoice, from check and acceptance of the goods or services at our plant, after making all necesssary deductions. The payment is subject to invoice verification. Invoices shall indicate our purchase order number on every invoice. Each of our orders shall be invoiced seperately. In case the invoice amount is under dispute, the amount shall be determined according to the products accepted by us.

9. After-Sales Service

9.1 All after-sales services shall be performed promptly and shall conform to the 'state-of-the-art ' technology.

9.2 The supplier shall keep and maintain written records of all after-sales services, including returning, replacing or repairing the relevant products, performed throughout the effective period of these Terms & Conditions of Purchase. These records have to be handed over to us within 7 days whenever we request for the same. After the expiration of this Agreement, the supplier shall give these records to us.

9.3 The supplier shall maintain a 'state-of-the-art' repair workshop and shall employ a sufficient number of trained technicians with relevant technique qualification.

9.4 Within the quality guarantee period, i.e. two years after the inspection of products, the supplier shall perform after-sales services for free. After the expiration of the quality guarantee,the supplier shall perform after-sales services at the cost prices.

9.5 The supplier may engage third parties to execute after-sales services after taking prior written approval from us.

9.6 The supplier shall provide the after-sales service within 5 days after receipt of our written request. In case the supplier fails to complete the after-sales service within the specified time, we are entitled to entrust a third party to provide such service at the expense of the supplier.

10. Claims based on Defects (Warranty) and Recourse

10.1 The acceptance is subject to an examination for faultlessness, especially also for correctness, completeness and fitness. We have the right to inspect the object of the contract to the extent and as soon as it is advisable in the ordinary course of business; we will give notice of any defects found immediately after their discovery. To this extent the supplier waives the objection to a delayed notification of defects. The inspection by us will not relieve the quality guarantee obligation of Supplier.

10.2 The legal stipulations and industrial standards regarding warranty shall be applied, unless other provisions are provided below. Any products or items delivered to us shall be fully in accordance with all applicable rules, regulations, ordinances etc.

10.3 We have the right to select the type of fulfilment measure. We can either demand for the replacement of the defective product or repair of the defective product. In case of replacement, the supplier is entitled to keep the defective product with him. In case of repair, the supplier shall bear all the expenses involved such as (including but not limited to) transportation, labour, material costs or costs for incoming inspection in excess of the customary extent. The supplier shall replace or repair the defective product within the time specified by us and deliver to us for reinspection. If the defective product fails to satisfy us after replacement or repair, then we are entitled to return the goods to the Supplier and require the supplier to pay the liquidated damage, equivalent to 30% of the amount of the order, and compensate for our actual losses.

10.4 In the event the supplier does not begin with the correction of the defect after our request to correct the defect within the time specified by us, we are entitled to undertake such correction ourselves or have it undertaken by a third party at the expense of the supplier. Warranty period shall be two years, unless the delivered products were not used in a structure in accordance with its customary use and caused the structure's deficiency.

The warranty period starts with the acceptance of the supplies and services (Transfer of Risk).

In case the supplier does not transfer title free of third parties rights, the supplier also holds us harmless against any alleged third party claims. Warranty period to this respect shall be 10 years after check an acceptance of products.

10.5 With respect to the parts of the delivery that were reconditioned or repaired within warranty, the warranty period starts anew at the moment the supplier has completely satisfied our claims for performing a fulfilment measure.

10.6 The supplier shall assume the costs if as a result of defective supplies or services we incur costs, especially transportation, labour, material costs or costs for incoming inspection in excess of the customary extent.

If we take back products built and/or sold by us as a result of the defectiveness of supplies or services, or if therefore our customers reduced the purchase price or claims of whatever nature are made against us on that account, we reserve the right to request reimbursement from the supplier, whereby an otherwise required notice is not needed to assert our warranty claims.To the extent that the supplier is responsible for product-related damage or loss, it is obliged to indemnify us on first request against third-party claims for compensation in as far as the cause lies within its area of control and organization and it bears liability itself in external relationships.

We leave such quality guarantee and compensation terms in the purchase order.

The supplier is also obliged to reimburse any expenses, which are incurred in connection with a recall carried out by us and our clients. As far as reasonably possible we will inform the supplier about the content and scope of recalls to be made.

10.7 We are entitled to demand a reimbursement for expenses from the supplier for expenses incurred because our customer may claim against us the reimbursement of expenses incurred for the purpose of fulfilment measures, especially transportation, labour and material costs.

10.8 Not withstanding the provision in sub-clause 10.5, the period of limitation as to warranty-issues ends at the earliest two months after the date at which we satisfied the claims asserted against us by our customer, however it ends five years after the receipt of the supplies and services at the latest.

10.9 If a material defect becomes evident within six months after the transfer of risk, it is alleged that the defect was already present at the time of the transfer of risk, unless this is in contradiction to the nature of the product or defect concerned.

10.10 If the parts were provided by us either during the manufacture of products or repair of defect, then we remain the owner of the parts delivered by us and/or the co-owner of any product manufactured or repaired with our materials and/or parts, which will be kept safe for us by the supplier.

11. Product Liabiliy and Recall

11.1. In the event a product liability claim is asserted against us, the supplier agrees to hold us harmless from such claims if and to the extent the damage was caused by a defect of the supplies or services. If the cause of the damage falls within the area of responsibility of the supplier, the supplier shall have the burden of proof to that extent. In the above cases the supplier assumes all costs and expenses, including the costs for any legal action or a recall campaign. In addition the legal stipulations shall apply.

11.2. The supplier will and does indemnify Hirschvogel from and against any claim against or loss, cost or expense incurred by Hirschvogel arising out of any failure by the supplier to comply with the provisions of this Contract or liability under any applicable law.

12. Conducting Work

Persons who carry out work on our premises in fulfilment of the contract must observe the respective plant regulations. The liability for accidents suffered by these persons on our premises is excluded unless caused by wilful or gross negligent acts of our legal representatives or employees.

13. Provision Materials, parts, Containers and special packaging provided by us remain our property. The property may only be used as agreed in writing. The materials are processed and parts are assembled for us. It is agreed that in relation of value, we are co-owners of the material and parts of the produced goods and materials, even if they are in the consignment of the supplier.

The supplier must ensure that no intellectual property rights or copyright of third parties are infringed in connection with its deliveries.

The supplier is not aware of any Intellectual Property Rights of any third party in the People's Republic of China that would render the sale of the Products or the use of any of the Intellectual Property Right on or in relation to the Products unlawful

If claims are pursued against us by a third party in this regard, the supplier is obliged to indemnify us on first request against such claims.

The indemnity obligation of the supplier also extends to all expenses which arise for us in connection with the third-party claim against us and which we may consider to be necessary.

13. Documentation and Confidentiality

14.1 The supplier shall keep confidential all business or technical information made accessible by us (including features which might be learned from objects, documents or software submitted and any other information or experiences) towards third parties, as long as and to the extent they are not public knowledge, and may only be made available in the supplier's premises to persons who need to make use of the information for the purpose of supplying to us and who must also be required to maintain confidentiality; the information remains our exclusive property. Without our prior written approval, such information – except for deliveries to us - may not be duplicated or exploited commercially. At our request, all information originating from us (including any copies or recordings made, if applicable) and loaned items must be returned to us completely or proved to be destroyed within 3 days.

We reserve all rights to such information (including Copyrights and the right to file for industrial property rights such as patents, Utility models, semiconductor protection, etc.). In the event these are provided to us by third parties, this reservation of rights also applies to these third parties.

14.2 Products built on the basis of documentation such as drawings, models and the like prepared by us or based on our confidential information or our tools or tools modelled on our tools may neither be used by the supplier himself nor be offered or supplied to third parties. This also applies to our print orders correspondingly.

14.3 If the supplier fails to comply with the obligation in Article 14, we are entitled to require the supplier to pay the liquidated damage, amounting to RMB 3 million. In case the actual loss incurred by us exceeds such liquidated damage, the supplier shall compensate for the excess.

14. Additional Obligations of the Supplier

The supplier undertakes the following obligations towards us:

15.1 Commit all necessary human and material resources to properly, effectively and efficiently carry out the activities listed under the Contract;

15.2 Verify order, quantity and packaging before giving possession of the products, and accept any difference in quantity or any defective products received to us, immediately;

15.3 Provide fast, efficient and professional after-sales services;

15.4 Maintain adequate stock of products and spare-part items;

15.5 Maintain adequate and suitable work-force and adequate after-sales services staff;

15.6 Forward information relating to the use of the goods, especially technical information to us;

15.7 Whenever required by us, take possession of, and/or deliver and/or replace the parts/components/assemblies the supplier must replace in fulfilment of its warranty obligations;

15.8 Keep documents, information, lists, processes, receipts, practices, methods, contracts, agreements, software, databases and plans belonging to or supplied by us regarding the products, strictly confidential,

15.9 Notify us immediately of any real or perceived violation of any patent, trademark, industrial design or copyright held by us that may be drawn to its attention;

15.10 Keep on record for at least 5 years all documents, information, lists, instructions, processes, receipts, practices, methods, contracts, agreements, and drawings related to our orders;

15.11 Keep all our records strictly confidential, unless authorized otherwise in writing by us.

16 Place of Performance

The place of performance is the place to which the goods are to be delivered in accordance with the contract.

17 Termination of Contract

17.1. Anytime without providing any reason, we may, by written notice of one month to the supplier, terminate this Contract at anytime. The supplier will have no claim against us for the damages or loss of profits arising out of or related to the termination of this Agreement.

17.2. We may at our sole discretion terminate this Agreement by giving notice effective immediately on the following grounds:

i. if the supplier fails to complete or deliver any part thereof when required,

ii. if the supplier is in breach of any term of this Agreement and fails to correct within 10 days.

iii. if the supplier is or becomes bankrupt, or goes into liquidation, or makes a composition or arrangement with creditors generally, or takes advantage of any statute for the relief of insolvent debtors.

iv. if the supplier suspends payments to the third parties or if the supplier or one of its creditors files for insolvency proceedings on the supplier's assets or similar proceedings on debt clearing,

v. if the petition for liquidation, bankrupcy or insolvency is filed against the supplier.

17.3. On termination of the Contract, Hirschvogel can, without prejudice to its other statutory and contractual rights, enter into an agreement directly with the subcontractors of the supplier.

17.4. Termination of the Agreement will not prejudice any rights or remedies already accrued to any party under, or in respect of any breach of, the Contract.

17.5. On termination of the Agreement or otherwise on demand, the supplier will return to Hirschvogel all documents and materials containing any Confidential Information or intellectual property of Hirschvogel and any other property belonging to Hirschvogel. On or prior to termination, the supplier will, within 14 days of written request by Hirschvogel, do all such things as may be necessary to ensure the smooth and orderly transfer of the Confidential Information and intellectual property and the supply of the Products and Services to Hirschvogel.

18 Miscellaneous

18.1. The supplier shall not directly or indirectly assign the order or any of its rights or obligations hereunder, without the prior written consent of Hirschvogel.

18.2. Any amendment, extension, limitation, waiver or other modification of the present Terms and Conditions of Purchase shall have no binding effect upon Hirschvogel, unless Hirschvogel has specifically accepted such amendment, extension, limitation or other modification in writing.

18.3. If one provision of these terms and conditions and of additional agreements should be or become ineffective, this will not affect the validity of the terms and conditions in other respects. The parties shall agree upon a provision to replace the ineffective provision that reflects as closely as possible the economic intent of the previous provision. If any provision of the Terms and Conditions of Purchase is susceptible to two interpretations, one of which would render the provision invalid and the other of which would cause the provision to be valid, such provision shall be deemed to have the meaning which would cause to be valid.

18.4. If any provision of the Terms and Conditions of Purchase shall be prohibited by or adjudicated by a court to be unlawful, void or unenforceable, such provision shall to the extent required be severed from the Terms and Conditions of Purchase and rendered ineffective as far as possible without modifying the remaining provisions of the Terms and Conditions of Purchase and shall not in any way affect any other circumstances or the validity or enforceability of the Terms and Conditions of Purchase.

18.5. All and any disputes or differences arising out of, in relation to or in connection with this Contract or a given order, including without limitation to disputes on its conclusion, binding effect, amendment, validity, interpretation alleged breach of any provision of and termination, shall be resolved by the People's Court at the domicile of Hirschvogel.

18.6. The contractual relationships shall be governed exclusively by the People's Republic of China law, except for the conflict of law provisions and of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

19 Conditions for Contractor Labour

The supplier is responsible for ensuring full compliance with all labour legislations and is obliged to make sure that all the employees and workmen are getting their dues as per the applicable legislation and in the prescribed manner. of final payment and a receipt of the same must be obtained.