

General Terms and Conditions of Purchase Orders No. 4

of HUBER Packaging Group GmbH



§ 1 Scope of Application; Writing Requirement

- (1) Our General Terms and Conditions of Purchase Orders (TPO) shall apply to all sales contracts and contracts for work and materials¹ and other orders and to all comparable exchange agreements entered into by any of the legal entities and companies of our group. They shall particularly apply to agreements entered into by Huber Packaging Group GmbH.
- (2) All transactions shall exclusively be governed by our TPO. We repudiate any terms and conditions used by the other contracting party which are inconsistent with or which differ from our TPO unless we explicitly agree to their applicability in writing. Our TPO shall even apply if we unconditionally place orders or accept deliveries in awareness of terms used by the other contracting party which are inconsistent with or which differ from our TPO.
- (3) Our TPO shall only apply to transactions with entrepreneurs, public legal entities, and public separate estates in terms of BGB² section 310.
- (4) As far as continuous business relations are concerned, our TPO shall also apply to future transactions even if they are not explicitly agreed upon again.
- (5) All stipulations, including all ancillary agreements, entered into by us and the other contracting party with regard to the performance of this contract are laid down in writing in this contract. No verbal stipulations are made when this agreement is entered into. Any modification or amendment of any agreement including these terms and conditions shall be made in writing. Any modification of this writing requirement is on its part required to be made in writing.
- (6) Our Technical General Terms and Conditions of Purchase Orders as amended from time to time shall additionally apply if and to the extent to which they cover the subject matter of any respective contract (purchase of machinery, equipment, and tools, including general overhauls, modifications, etc.).
- (7) Any delivery made to us shall be deemed to include an acknowledgment of our TPO.

§ 2 Orders

- (1) Orders shall only be binding if made in writing or in text form. Statements and agreements made verbally or by telephone shall not be binding unless confirmed by us in writing.
- (2) The acceptance of orders (acknowledgment of order) shall be expressed in writing.
- (3) Our orders shall always be freely revocable until they have been accepted or confirmed by the other contracting party.
- (4) We reserve all rights, including without limitation all ownership rights and copyrights, to pictures, drawings, films, data carriers, calculations or other records, items and other documents. They shall in no manner be made accessible or passed on to any third party without our explicit written approval. They shall only be used for processing our orders, afterwards they shall be automatically returned. They shall not be duplicated without our written permission unless a duplication is unavoidable for completing our order. Any existing copies shall just as well be returned after the respective contract has ended.

§ 3 Prices and Payment Terms

- (1) The agreed upon prices are fixed prices which include all incidental costs. The prices shall be understood to be net prices including delivery "to our door" and packaging. Even if the costs for packaging are agreed to be borne by us we shall not bear more than the cost price. Any packaging materials returned by us shall be reimbursed to us in the amount charged to us unless the packaging materials are no longer fit to be used.
- (2) We can only process invoices, order acknowledgments and delivery notices if the order number itemized in our order is shown on them as specified in our order. The other contracting party shall be

¹ Comment by the Translator: A contract under which the contractor undertakes to make the piece of work contracted for from materials it has to supply itself.

² Bürgerliches Gesetzbuch = German Civil Code

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liable for all consequences resulting from non-compliance with that obligation unless it proves that it is not responsible therefor.

- (3) Delivery notices shall be attached to deliveries in a manner making them immediately available.
- (4) Unless otherwise agreed in writing, we pay invoices within 14 days following delivery and receipt of the invoice with a 3% cash deduction or within 30 days after receipt of the invoice without any deduction.
- (5) We have the right to raise the defenses of set-off, of withholding performance, and of non-performed contract to the extent provided by statutory law. These defenses including the defense of non-performed contract shall only be available to the other contracting party if the claims against us are either acknowledged by us as meritorious, or undisputed, or declared to be meritorious by a final and unappealable judicial decision.
- (6) The other contracting party shall not assign any of its rights or claims against us to any third party.
- (7) The place of any payment shall be at the domicile of the user of these General Terms and Conditions of Purchase Orders (hereinafter called "user").

§ 4 Deliveries

- (1) Any delivery, even in case of a shipment, is performed at the risk of the other contracting party.
- (2) The delivery times or delivery dates specified in the order are binding on the other contracting party. If no delivery times or delivery dates are specified in the order, then the delivery time or delivery date mentioned in the other contracting party's order acknowledgment shall be binding on it. The other contracting party shall be held to be in default of payment without the requirement of a prior dunning letter if it fails to observe delivery dates which are stipulated by reference to the calendar or which are clearly identifiable. We are entitled to rescission or damages as provided by statutory law if any respective delivery is delayed.
- (3) In the event of the seller's default, we are entitled to claim liquidated compensation of our default damages in the amount of 1% of the net price for each completed week of the seller's default; the total amount of this liquidated compensation is not to exceed 5% of the net price of the goods which have been delivered late, however. We are reserved the right to prove that we have suffered higher damages. The seller is reserved the right to prove that we have suffered no damages at all or only significantly lesser damages.
- (4) Absent any written agreement to the contrary, we have the right to call off orders in installments according to our operational requirements. We may demand modifications of the construction and design of ordered goods until they are manufactured to the extent the other contracting party can reasonably be expected to comply with such a demand.
- (5) If the goods are shipped by a freight forwarding company, the other contracting party agrees to notify the freight forwarding company of the fact that we are a customer waiving any haulage, logistics and warehousing insurance certificate, and that we explicitly forbid the freight forwarding company to buy indemnity insurance pursuant to ADSp section 29.1 and goods in transit insurance. If a freight forwarder charges us any costs for a haulage, logistics, and warehousing insurance certificate, then we have the right to deduct those costs from the other contracting party's invoice.
- (6) Deliveries shall not be made on pallets without our prior written permission unless European pool pallets or pool mesh box pallets in terms of the respective applicable German Industry Norm (DIN) provisions or International Union of Railways (UIC) provisions are used. Defective or damaged pallets will be charged to the other contracting party. Upon receipt, all pallets shall bear a clearly legible declaration slip.
- (7) The other contracting party agrees to give us immediate written notice if any circumstances jeopardizing the observance of the agreed upon delivery time occur or become identifiable for it. It shall, however, thereby not be discharged from its liability for timely delivery.
- (8) We shall not be held to be in default of acceptance of the seller's performance unless the requirements of the applicable statutory provisions are met. The seller shall, however, explicitly offer its performance to us even if a definite or definable calendar time has been agreed upon for any act or contribution by us (e.g., provision of materials). If we culpably fail to timely accept the seller's performance, the seller is entitled to claim compensation of its additional expenditure according to the provisions of statutory law.

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If the contract relates to a non-fungible product to be manufactured by the seller (made-to-order manufacture), the seller shall not be entitled to any rights in excess of the rights mentioned in the preceding clause unless we have agreed to make any contribution to the seller's performance and unless we are responsible for failing to make the contribution.

§ 5 Liability for Defects

- (1) We shall examine incoming goods within a reasonable time for quality and quantity deviations. A complaint shall be deemed to have been made in time if it is received by the other contracting party within a period of 5 business days as of the reception of the goods or, in cases of hidden defects, as of the identification of the respective defects. To the extent that special quality assurance systems have been agreed upon between us and the other contracting party, their provisions covering the type and substance of the obligations to be performed by us relative to examining the goods and complaining about defects shall take precedence.
- (2) We shall have the warranty rights provided by statutory law unless otherwise agreed in these TPO. The submission of drawings or the acceptance or payment of goods shall by no means effect a loss of warranty rights even if we are aware of the defect at that time.
- (3) Notwithstanding BGB section 442 subsection 1 clause 2, the defect-based claims we are entitled to shall not be subject to any limitation even if gross negligence on our part made us unaware of the defect when the contract was entered into.
- (4) We shall have the right to remedy any defect ourselves at the other contracting party's expense if we cannot reasonably be expected to fix an additional period for that purpose, including without limitation cases of imminent hazards, of particular urgency, and the case of the other contracting party's failure to cure the respective defect, and the other cases in which statutory law provides such a right.
- (5) The period of limitation shall be 36 months as of the passing of risk.
- (6) The seller shall bear the cost incurred by it in investigating and remedying a defect even if it turns out that no defect had actually existed. Our liability to compensate damages in the event of erroneous requests for the repair of defects remains unaffected subject to the limitation, however, that we shall only be liable to compensate such damages either if we were aware that no defect existed or if gross negligence on our part made us fail to become aware that no defect existed.

§ 6 Recourse Against the Supplier

- (1) In addition to the defect-based claims we are also entitled to our statutory recourse claims within a supply chain (recourse against the supplier according to BGB sections 478, 479). In particular, we are entitled to demand exactly the same manner of remedied performance (repair of the defect or delivery of a replacement) from the other contracting party which we owe to our customer in any individual case. Our statutory right to choose between the options provided by BGB section 439 subsection 1 is not limited thereby.
- (2) Before we acknowledge or fulfill any defect-based claim asserted by one of our customers (including reimbursement of expenses pursuant to BGB sections 478 subsection 3 and 439 subsection 2), we will notify the other contracting party of that claim by briefly explaining the facts of the case and request the other contracting party to provide a brief written statement to us. If we do not receive such a statement within ten workdays and if no amicable settlement is achieved, the defect-based claim actually satisfied by us shall be deemed to be the extent of our liability to our customer; in that event the other contracting party shall have the burden of proving the contrary.
- (3) Our rights of recourse against the supplier shall even apply if the goods have been processed by us or by one of our customers, e.g., by incorporating them into another product, before they have been sold to a consumer.

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§ 7 Product Liability – Indemnification – Liability Insurance Coverage

- (1) The other contracting party shall indemnify us upon first demand against compensation claims of third parties to the extent it is responsible for a product damage if the cause originated from its sphere of control and management and if it is itself externally liable.
- (2) As part of its liability for damages in terms of subsection 1, the other contracting party shall also compensate expenditures resulting from or accrued in connection with a product recall performed by us. We will notify the other contracting party of the content and the extent of the product recall to be performed, and, to the extent possible and reasonable, we will grant it an opportunity to provide its own analysis. Other rights under statutory law shall remain unaffected.
- (3) The other contracting party agrees to maintain product liability insurance providing single limit coverage of €10 million for each case of injury to persons / damage to property. If we have any additional damage claims, then those claims shall remain unaffected.

§ 8 Contractual Right of Rescission

We shall be entitled to rescind any respective contract if the usability of the ordered goods is not only temporarily impossible, impracticable or substantially impaired due to occurrences we are not responsible for such as industrial action, disruptions of business, accidents, acts of war, governmental interference, and in cases of force majeure. Both parties have the right to request a postponement of delivery of three months before the right to rescission is exercised.

§ 9 Intellectual Property Rights; Violations of Statutory Provisions

- (1) The other contracting party warrants that no intellectual property rights or other rights or claims of third parties are infringed upon by the delivery of the goods and services ordered by us, nor by their resale, treatment or other intended use by us. If we are insofar made liable by any third party, then the other contracting party shall indemnify us upon first demand including all of our necessary expenditures. This shall include the defense of anticipated claims against us.
- (2) The period of limitation shall be 10 years as of the execution of the respective contract.
- (3) The other contracting party shall, moreover, be solely responsible and liable to us for the compliance with all statutory provisions and governmental regulations with respect to any respective delivery and delivery item, particularly with respect to its intended use.

§ 10 Confidentiality

The other contracting party shall keep our orders and the entire contractual relationship including all pertinent data and documents confidential. It shall only make any reference to the existing business relationship with us after having beforehand obtained our written permission to do so. This obligation shall survive the expiration or termination of the respective contract as long as we have an interest of our own in such confidentiality which is worth being protected.

§ 11 Retention of Title

- (1) Title to any respective delivered goods shall immediately pass to us upon their delivery to us. We do not acknowledge any qualified types of title retention, such as the extended retention of title.
- (2) We retain our property in any tools possibly made available by us to the other contracting party. The other contracting party shall use those tools only for processing our orders, and it shall service and maintain them at its own expense, and it shall buy insurance covering damages to them caused by fire, water, and theft on the basis of their original value. The other contracting party now and hereby assigns all of its compensation claims based on this insurance coverage to us; we accept that assignment.

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§ 12 Place of Performance; Place of Litigation; Choice of Law

- (1) Unless otherwise agreed upon in writing, the place of any performance shall be at the domicile of the respective user.
- (2) The user's domicile shall be the exclusive place of jurisdiction with respect to all claims connected with the business relationship regardless of their nature and their basis. The user may, however, bring an action against the other contracting party at the other contracting party's venue. The requirements and effects of any retention of title shall be governed by the law applicable at the location where the respective item is stored if the choice of German law as applicable law is unlawful or invalid under that law.
- (3) The laws of the Federal Republic of Germany shall apply; the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall be inapplicable.

§ 13 Nullity

Should any of the above provisions be fully or partially void, then the validity of the other provisions shall remain unaffected thereby.

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