

General Purchasing Conditions of HÜPPE GmbH

Industriestrasse 3, 26160 Bad Zwischenahn, Germany

1. General matters

Our purchasing conditions apply to all orders, also to future orders, without us making any separate reference to them again. General terms and conditions of the supplier do not apply.

Additional or deviating agreements and general terms and conditions of the supplier are only binding for us if we have acknowledged them in writing.

Subject to deviating regulations, the supplier shall be bound to its offer for a minimum of three months. Any refusal of our order must be made in writing within seven days of receipt, otherwise the order will be deemed to have been accepted.

2. Delivery item

The ordered goods are intended to be used for the production of shower systems (inter alia, shower enclosures, shower trays, shower heads and accessories) and therefore will be used for installation in the structures.

We reserve the right to demand a change to the delivery item if this is or appears necessary for production or safety reasons and if the change is reasonable for the supplier. In such a case, the effects caused by the change to the performance subject matter for both parties, particularly regarding the additional costs or lower costs, as well as the delivery dates, must be adequately taken into consideration. Any other changes, e.g. regarding the material specification or design, which we request, shall be reviewed by the supplier with regard to their feasibility (including timing) and shall negotiate with us in good faith the options and modalities of such changes with the aim of achieving an effective and economical implementation.

In the absence of a consultation with us, the supplier shall not be authorised to make changes to design, implementation, production methods or other characteristics of the goods compared to previous services of the same type, even if these characteristics are not defined by service descriptions.

We only accept partial deliveries subject to explicit agreement. For arranged partial shipments, the remaining quantity must be shown on the delivery note or accompanying documents.

We will only accept the quantities or numbers of units that we have ordered. Deviations from the agreed delivery quantity are only possible after prior agreement with us.

Insofar as it has been agreed to present certificates regarding inspections of materials, these form an integral part of the delivery and shall be sent to us together with the invoices.

Delivery notes, invoices and all correspondence must contain our order number, order position and our material number.

The supplier undertakes to maintain the possibility of supplying spare parts for a period of ten years after delivery. In the event that the supplier intends to discontinue the production of the goods or spare parts delivered to us, the supplier shall notify us of this in writing at least 12 months in advance. The supplier will provide us with the opportunity to place a last order.

3. Prices, shipping, packaging

The agreed prices are fixed prices and are understood to be delivered to the place specified in the order within the Federal Republic of Germany and unloaded ('DPU' within the meaning of Incoterms 2020).

The supplier's obligation to take back the packaging is based on the statutory provisions. If packaging is invoiced separately in an exceptional case, we are authorised to send packaging that is in good condition back to the supplier in return for remuneration of 2/3 of the value shown in the invoice.

4. Payment

Invoices must be submitted to us in the correct form with all associated documents and data after delivery; sending them as PDF documents is sufficient. The payment shall take place by means of a transfer or another customary commercial manner within 60 days net with a 3% cash discount (payment in the subsequent week is sufficient for meeting the deadline) or up to 90 days net, calculated from receipt of the invoice and completed delivery/performance. With premature delivery/performance, the cash discount period shall begin to run from receipt of the invoice and upon reaching the agreed delivery date.

5. Delivery period

The agreed delivery periods and delivery deadlines are binding. Prior to expiry of the delivery date, we shall not be obligated to accept. Identifiable delivery delays must be notified to us immediately, specifying the reason and the anticipated duration. The supplier shall be liable for notifications that are omitted or late. In the case of delivery default, we are entitled to the statutory claims. A liability exclusion or a liability limitation for the supplier is excluded. In the event of withdrawal, we can keep partial deliveries in return for a credit. In the case of recurring or long-term missed deadlines by the supplier, a cancellation right exists for us if the missed deadline is significant and it is required due to the urgency of the delivery because of a deadline commitment.

If the supplier enters into default, after issuing a warning, we have the right to demand a contractual penalty of 0.5% of the net order amount per started week, a maximum of 5% of the net order value and/or delivery and/or withdraw from the contract. A paid contractual penalty shall be offset from a compensation claim.

In the case of acceptance delays due to force majeure or other unusual circumstances outside our sphere of responsibility or influence which have a significant impact on our requirements or those of our customers, furthermore in the event of the occurrence of unforeseeable operational disruptions which make acceptance of the delivery considerably difficult or impossible, we are exempted from our acceptance duty for the duration of the hindrance; this also applies within the context of labour disputes, particularly strikes or lockouts, as well as with disruptions of railway routes or access roads. The provisions of this paragraph shall also apply if the hindrances occur to our buyers, to whom the agreement stipulates that delivery is to be made directly on a case-by-case basis.

6. Technical rules, safety regulations, REACH

The delivery item must conform to the state of the art, unless agreed otherwise in an individual case.

The supplier undertakes to comply with and observe the European REACH Regulation (EC No. 1907/2006) and other regulations applicable to its products and their manufacture and to provide us with all relevant information.

7. Investigation and complaint duties

We will notify the supplier about outstanding defects in the delivery/service no later than within two weeks after receipt of the ordered goods to the specified receiving point. If it involves hidden defects, these shall be notified within the same time limit, starting with their ascertainment.

We shall not be obligated to the supplier for any notification and inspection duties beyond those mentioned above. This particularly applies to the obligation to inspect and give notice of defects under Section 377 HGB [German Commercial Code], the validity of which is attached herewith insofar as it goes beyond the provisions contained in these terms and conditions.

8. Liability for material defects

The supplier shall be liable for material defects, the delivery of different items or the delivery of a shortfall quantity as well as all consequential damages, in accordance with the statutory provisions.

Regarding the limitation of action for these claims, the following is agreed:

As the goods are intended for installation in structure, the warranty period is five years, unless a shorter limitation of action period is prescribed by law or the product in question is not to be considered as part of a structure even after commissioning.

If we were required to take back the goods from a consumer as a result of a defect to the project that has been sourced from you, or the consumer has reduced the purchase price as a consequence of this, the limitation of action for specific claims against the supplier in §§ 478, 437 BGB [German Civil Code] shall occur no earlier than six months after delivery of the product to us.

For parts of the delivery that are serviced or repaired within the limitation period of our defect claims, the limitation period shall begin to run again at the time when the supplier has completely fulfilled our claims for supplemental performance.

If we take back products that we have manufactured and/or sold as a result of the defectiveness of the contractual item delivered by the supplier or if the purchase price paid to us has been reduced for this reason or if we have been claimed upon in another manner for this reason, we reserve the right to take recourse to the supplier, whereby the setting of a time limit that is otherwise necessary for our defect rights is not required. We are authorised to demand compensation for costs from the supplier, which we were required to bear vis-a-vis our customer, because the customer has a claim against us for compensation of the costs required for the purpose of supplementary performance, particularly transport, travel, labour and material costs.

If the same types of faults occur within or outside of the warranty period on a project with more than 5% of the respective products delivered in a six-month period, all products from this production shall be deemed as being affected by this fault (series fault). The supplier shall bear all costs associated with the rectification of this series fault in accordance with the statutory provisions.

9. Product liability, insurance

If we are claimed upon by third parties due to domestic or foreign product liability regulations or laws, the supplier undertakes to exempt us from the producer's liability, insofar as the cause of the liability was found in the product delivered by it.

Unless we are designated as the manufacturer or our company and/or brand are indicated on the product in individual cases on the basis of a contractual agreement, the supplier shall mark the delivery items in such a way that they are permanently recognisable as its products. For components that flow into our products, prior consultation about the marking is necessary.

The supplier must perform appropriate quality assurance based on the type and scope and the state of the art and provide evidence of this upon request. Where we deem it necessary, it shall conclude a relevant quality agreement with us.

The supplier shall arrange the co-insurance of this exemption within the context of its public liability insurance with its insurer. The supplier shall exempt us from the responsibility for product damage with regard to third-party claims, if the cause lies within its field of control and organisation. The supplier undertakes to compensate costs for a recall campaign that is carried out to avoid personal injury and property damage, which has become necessary due to product defects caused by the supplier, and is therefore obligated to maintain product recall insurance with a minimum cover sum of €2 million. Furthermore, the supplier undertakes to maintain public liability insurance and product liability insurance with a minimum cover sum of €2 million all-in for personal injury and property damage.

Contrary to § 4 (1) Clause 3 AHB [General Terms and Conditions of Liability Insurance], the cover must also extend to damages abroad. The supplier must notify us of exclusions for USA/Canada cover. The scope of this insurance must extend to the cover forms of so-called extended product liability insurance (ProdHV), including the insurance of personal injury and property damage due to the lack of guaranteed characteristics of the delivery item, Clause 4.1 ProdHV; connecting, combining and processing of the delivery products, Clause 4.2 ProdHV; further machining and processing pursuant to Clause 4.3 ProdHV; removal and installation costs pursuant to Clause 4.4 ProdHV; defective production by machines pursuant to Clause 4.5 ProdHV, as well as a clause regarding inspection and sorting costs pursuant to Clause 4.6 ProdHV. The cover sum for damages pursuant to Clause 4.1–4.6 ProdHV must also amount to a minimum of €2 million. Upon request, the supplier shall provide us with a relevant confirmation from the insurer (certificate of insurance).

10. Information duty

The supplier shall immediately inform us of all safety or liability problems regarding its products immediately after becoming aware of them.

11. Industrial property rights

The delivered goods shall be free from third-party intellectual property rights. The supplier exempts us and our customers from third-party claims from any breaches of intellectual property rights. If it fails to fulfil a relevant request from us, we are authorised to obtain the approval for delivery, commissioning, use, onward sale, etc. of the relevant delivery items and services from the authorised party at its expense.

Unless agreed otherwise, the supplier is only authorised to use our brands, commercial designations (including product presentation, packaging design or similar), copyright-protected or otherwise protected drawings to the extent that this is absolutely necessary to fulfil its obligations towards us.

12. Provision of documentation

We reserve all ownership rights, copyrights and other proprietary rights to illustrations, drawings, models, samples and other documents that we have made available to the supplier. They are only permitted to be used for processing the offer and for performing the ordered delivery. They are not permitted to be disclosed to third parties without our explicit consent. They must be returned to us on request at any time, in particular after our enquiry has been dealt with or after the ordered delivery has been carried out, provided that the purpose of the contract is not jeopardised or hindered by this to the detriment of the manufacturer. The non-disclosure duty shall also apply after processing each order; it shall lapse if and insofar as the production expertise in the provided illustrations, drawings, calculations and other documentation has become public knowledge. The supplier must check the drawings, descriptions, etc. that belong to the order for any discrepancies and immediately notify us about discovered or suspected faults.

Changes to our documentation provided to the supplier may only be made with our consent.

13. Provision of material, reservation of ownership

Parts and materials provided by us shall remain our property. Processing or transformation by the

supplier shall be carried out on our behalf.

If parts or materials that have been provided by us are processed or combined with items that do not belong to us, we shall acquire the co-ownership of the new item in the proportion of the value of the respective parts/materials to the other processed or combined items at the time of processing or combining.

However, if the item produced by the supplier is regarded as a main item, it shall transfer the proportional co-ownership to us.

The supplier is not authorised to use parts and materials provided by us for purposes other than those specified by us. In particular, the supplier is not authorised to use the parts or materials or transfer them to third parties or to grant third parties ownership, title or security rights in them or in the products manufactured therefrom.

We do not recognise any expansion or extension of the reservation of ownership that goes beyond the simple reservation of ownership declared by the supplier to the unprocessed supplier product that is stored with us, particularly after processing, connecting or combining with other goods, as well as after selling the supplier product.

14. Tools

The assumption of tool costs by us shall be agreed separately. The one-off tool price contains all of the production costs, including any corrective measures and sampling. The price covers all costs of maintenance, care and insurance of the tool against the usual risks of damage and loss, as long as the relevant finished part is required by us.

The tool shall transfer into our ownership with the payment. The tool shall remain in the safekeeping supplier. It undertakes to permanently mark the tool as our property and handle it accordingly. Third-party access (especially seizures) must be reported to us without delay and objected to with reference to our property rights. The tools are only permitted to be used for our orders.

We are authorised at any time to take possession of our tool, unless the tool continues to be urgently needed for the implementation of the order placed with you.

15. Offsetting, retention

The supplier may only offset against claims on our part with undisputed or legally established claims. The supplier's rights of retention are excluded.

16. Assignment

The supplier is only permitted to assign rights and claims under this contract to third parties with our consent. This does not apply to assignment of claims in the ordinary course of business, e.g. in favour of the supplier's banks.

17. Business secrets

The supplier undertakes to treat our orders and all related commercial and technical details as business secrets. The supplier is obligated to maintain non-disclosure regarding the documentation and information, even after processing this contract.

Disclosure to third parties may only take place with our written consent or due to mandatory statutory provisions. If the supplier considers itself obliged to comply with an official or court request for surrender or a corresponding order, it must inform us without delay and obtain and comply with our instructions with regard to such measures; we will indemnify the supplier from any resulting legal defence costs, insofar as these are reasonable and the supplier has not culpably caused the official or court action itself.

18. Place of performance

Unless explicitly agreed otherwise, the place of performance for the delivery obligation is our requested shipping address/place of use, for all other obligations of both parts Bad Zwischenahn.

19. Applicable law, legal jurisdiction

The legal relations between us and the supplier, even if its registered office is abroad, the law of the Federal Republic of Germany exclusively applies, to the exclusion of conflict of laws.

For contracts with suppliers that have their registered office in Member States of the European Union, Westerstede (Germany) is agreed as the exclusive legal jurisdiction. For contracts with suppliers that have their registered office outside of the European Union, all disputes that cannot be amicably settled, shall be finally decided by a sole arbitrator in accordance with the Arbitration Code of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V. Bonn, DIS), to the exclusion of ordinary legal proceedings. The language of the proceedings shall be German; the place of arbitration shall be Bremen. The arbitration court can also decide on the validity of this arbitration court agreement.

20. Final provisions

Should one or more provisions of these terms and conditions be or become invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions and these terms and conditions as a whole. In such a case, the relevant provisions are to be replaced by effective and enforceable provisions that come as close as possible to what the parties intended to achieve with the invalid or unenforceable provisions from an economic and legal point of view. The same applies in the event that the terms and conditions contain a loophole.

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