

## Purchasing Conditions of HEWI G. Winker GmbH & Co. KG

As per 1.1.2005

To be applied solely to relations with companies that are carrying out their commercial or self-employed activities when concluding the contract.

### 1. Decisive relationships

The legal relationships between the Supplier and HEWI G. Winker GmbH & Co. KG, (hereinafter referred to as Hewi) shall be in accordance with these Conditions and any other agreements. Alterations and amendments must be made in writing. Other general terms and conditions shall not apply, even if there was no express objection to them in the individual case in question.

### 2. Orders

- 2.1 Supply contracts (order and acceptance) and delivery recalls and alterations and amendments to these must be made in writing. The conclusion of supply contracts (order and acceptance) and order recalls can also be effected by means of remote data transmission.
- 2.2 If the Supplier does not accept the order within three weeks of receiving it, Hewi shall be entitled to withdraw the order. Delivery recalls shall be binding when the Supplier raises no objection within two weeks of their receipt at the latest.
- 2.3 Hewi may, within the limits of reasonableness for the Supplier, demand alterations to the construction and design of the delivered article (s). The impact of such demands, particularly with regard to additional or reduced costs and the delivery dates, must be regulated in appropriately amicable fashion.

### 3. Payment, invoice and delivery note

- 3.1 Payment shall be made after 30 days net or after 14 days minus a cash discount of 3 %, or optionally by separate agreement with the supplier.
- 3.2 Payment shall be made by credit transfer or cheque.
- 3.3 Where early deliveries are accepted, the due date shall be based on the agreed delivery date.
- 3.4 If the delivery is defective, Hewi shall be entitled to withhold payment proportionally until the order is fulfilled properly.
- 3.5 The Supplier shall not be entitled to assign his receivables from Hewi or have them collected by a third party without prior written consent, which may not be refused unfairly.  
If the Supplier assigns his receivables from Hewi to a third party without its consent contrary to sentence 1, the assignment shall nevertheless be effective. Hewi may nevertheless, with exonerating effect, pay the Supplier or the third party as it chooses.
- 3.6 The invoice must be sent in duplicate to Hewi. It must contain the supplier number, the number and date of the order (or the conclusion of the purchase and the delivery recall), VAT identification number in the event of cross-border deliveries within the European Community, the place of discharge, number and date of the delivery note and the quantity of the goods invoiced. The invoice may refer to only one delivery note. Standard delivery notes (DIN 4991) must be used for all deliveries.

### 4. Notice of defect

Hewi must provide the Supplier with immediate written notification of defects as soon as they have been ascertained in accordance with the conditions of a proper course of business. In this respect, the Supplier shall waive the plea of late notice of defects.

### 5. Secrecy

- 5.1 The contracting parties undertake to treat all commercial and technical details outside the realms of common knowledge that become known to them as a result of the business relationships as business secrets.

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- 5.2 Drawings, models, templates, patterns and similar items may not be handed over to unauthorised third parties or otherwise made accessible to them. The reproduction of such items shall be permissible only within the scope of operational requirements and the copyright provisions.
- 5.3 Subcontractors must be obliged as appropriate.
- 5.4 The contracting parties may not use their business relationship for advertising purposes without prior written consent.

## 6. Delivery dates and periods

Agreed dates and periods shall be binding. The receipt of the goods on the premises of Hewi shall be definitive for adherence to the delivery date or the delivery period. If "free works" delivery is not agreed the Supplier must make the goods available in good time, taking account of the usual loading and shipment times.

## 7. Default in delivery

- 7.1 The Supplier shall be obliged to compensate Hewi for loss or damage caused by default. This shall not apply to lost profits and loss or damage caused by interruption of operations.
- 7.2 In cases of slight negligence, the compensation shall be restricted to additional freight costs, refitting costs and, if a reasonable extension that was granted lapses or there is no longer any interest in the delivery, the purchase of replacement goods.

## 8. Force majeure

Force majeure, labour disputes, action by public authorities and other unforeseeable, inevitable and serious events shall exempt the contracting parties from their performance obligations for the duration of the disturbance and the scope of its effects. This shall also apply if the events occur at a time when the contracting party in question is in default. The contracting parties shall be obliged, within the bounds of reasonableness, to provide the necessary information without delay and to adapt their obligations to the changed conditions in good faith.

## 9. Quality and documentation

- 9.1 The Supplier must comply with the acknowledged rules of technology, the safety regulations and the agreed technical data when making his deliveries. Alterations to the contents of a delivery shall require the prior written consent of Hewi. For the initial pattern test, reference is made to the VDA publication "Assuring the quality of delivery and supplier selection / production process and product approval / quality performance in series", Frankfurt am Main 1998. Irrespective of this, the Supplier must continuously examine the quality of the items being supplied. The contracting parties shall inform one another about the possibility of improving quality.
- 9.2 If the nature and scope of the tests and the testing equipment are not firmly agreed between the Supplier and Hewi, Hewi shall be prepared to discuss the tests with the Supplier at the latter's request within the scope of its knowledge, experience and possibilities in order to establish the state of testing technology that is currently required. In addition, Hewi shall inform the Supplier about the relevant safety regulations.
- 9.3 For all of his products, moreover, the Supplier must enter in his quality records when, in what way and by whom the faultless production of the deliveries was assured. This evidence must be preserved for 15 years and presented to Hewi when required. The Supplier shall be entitled to shorten the preservation period for the evidence if he can exclude hazards to life and health from the use of the products. The Supplier must oblige pre-suppliers to the same extent within the scope of the legal possibilities. Reference is made to the VDA publication "Furnishing evidence – guideline for the documentation and archiving of quality requirements", Frankfurt am Main 1998, as an instruction manual.
- 9.4 If public authorities that are responsible for vehicle safety, exhaust emission regulations, etc. demand to inspect Hewi's production process and testing documents in order to check particular requirements, the Supplier shall at Hewi's request declare himself ready to grant the same rights on his own premises and provide all the support that is reasonable.

## 10. Liability for defects

- 10.1 If defective goods are delivered, Hewi may – if the legal preconditions and the preconditions set out below apply and if nothing to the contrary is agreed – demand the following:
- Before production begins (processing or installation), Hewi must first give the Supplier the opportunity to grade the goods and rectify defects or make subsequent (or replacement) deliveries, unless this is unreasonable for Hewi. If the Supplier is unable to carry this out or fails to do so without delay, Hewi may rescind the contract without granting an extension period and return the goods at the Supplier's risk. In urgent cases, Hewi may rectify the defects itself in agreement with the Supplier or have them rectified by a third party. Costs thereby incurred shall be borne by the Supplier. If the same goods are repeatedly delivered in defective form, Hewi, after giving a written warning, shall also be entitled to rescind the contract on grounds of non-fulfilled scope of delivery in the event of a further faulty delivery.
  - If the fault is not established until after production starts, despite compliance with the obligation according to section 4 (notice of defect), Hewi may, in accordance with § 439, sections 1, 3 and 4, BGB (German Civil Code) demand subsequent performance and compensation for the transport costs required for the purposes of subsequent performance, as well as dismantling and installation costs (labour costs; costs of materials if agreed) or reduce the purchase price.
  - In the event of a culpable dereliction of duty that goes beyond the delivery of defective goods (e.g. relating to an obligation to give information, advise or investigate), Hewi may demand compensation for the resultant consequential loss or damage caused by defects and for the consequential loss or damage that Hewi refunded to its customer in accordance with section 11. Consequential loss or damage is the loss or damage that Hewi has suffered itself as a result of the delivery of defective goods to other legal interests rather than from the goods themselves.
  - Hewi shall have further-reaching expenses or compensation claims on grounds of the delivery of defective goods as a result of § 437 BGB or arising directly from the provisions specified there only if this is contractually agreed. If new agreements are to be made, section 15.1 must be observed.
- 10.2 The parts to be replaced must be put at the disposal of the Supplier without delay when requested by the Supplier and at his expense.
- 10.3 Claims arising from liability for defects shall become statute-barred on expiry of 24 months after the delivery to Hewi.
- 10.4 Claims based on defects shall not arise if the fault is attributable to the infringement of operational, maintenance and installation rules, unsuitable or improper use, faulty or negligent handling, natural wear and tear or interference with the delivered articles by Hewi or third parties.
- 10.5 In the event of faulty deliveries, claims of Hewi arising from the German Product Liability Act (Produkthaftungsgesetz), unlawful acts or negotiorum gestor shall not be affected by this section 10. Quality and durability guarantees must each be expressly designated as such in writing.

## 11. Liability

Unless some other liability provision is made elsewhere in these conditions, the Supplier shall be obliged to compensate for the loss or damage incurred by Hewi as a direct or indirect result of a faulty delivery, due to the infringement of official safety regulations or for other legal grounds to be imputed to the Supplier only as follows.

- 11.1 The liability for compensation shall apply in principle if the Supplier is to blame for the loss or damage that he caused.
- 11.2 If a third-party claim is asserted against Hewi for non-fault liability under non-mandatory law, the Supplier shall assume liability vis-à-vis Hewi only to the extent that he would be directly liable.
- The principles of § 254 BGB shall apply mutatis mutandis to loss or damage compensation between Hewi and the Supplier. This shall also apply to cases of direct recourse by the Supplier.
- 11.3 Liability for compensation shall be excluded if Hewi for its part has effectively restricted its liability vis-à-vis its customer. In the process, Hewi shall strive to agree on limitations to liability of legally permissible scope, also for the benefit of the Supplier.
- 11.4 Claims by Hewi shall be excluded to the extent that the loss or damage is attributable to infringements of operational, maintenance or installation regulations, unsuitable or improper use, faulty or negligent handling, natural wear and tear or faulty repairs that can be imputed to Hewi.

- 11.5 The Supplier shall be liable for measures carried out by Hewi to avert loss or damage (e.g. recall) if he has such a legal obligation.
- 11.6 Hewi shall inform and consult the Supplier immediately and comprehensively if it intends to make a claim against him in accordance with these provisions. Hewi must give the Supplier the opportunity to investigate the case of loss or damage. The contracting parties shall agree on the steps to be taken, particularly in respect of settlement negotiations.
- 11.7 The principles listed in section 7.1 must be applied mutatis mutandis if the Supplier has inadequate insurance or no insurance at all.

## 12. Protected privilege

- 12.1 The Supplier shall be liable for claims that arise from the infringement of protected privilege and applications for protected privilege (industrial property rights), at least one of which from the protected privilege family is published either in the home country of the Supplier, by the European Patents Office or in one of the following: the Federal Republic of Germany, France, the United Kingdom, Austria or the USA.
- 12.2 He shall release Hewi and its customers from all claims arising from the utilisation of such industrial property rights.
- 12.3 This shall not apply if the Supplier has produced the delivered items in accordance with drawings, models or other equivalent descriptions provided by Hewi or information provided by Hewi and does not know, or does not have to know in connection with the products that he developed, that protected privilege is being infringed as a result.
- 12.4 If the Supplier is not liable under section 12.3, Hewi shall release him from all claims of third parties.
- 12.5 The contracting parties undertake to inform themselves without delay about risks of injury and alleged cases of injury that become known to them and to give themselves the opportunity to counter such claims consensually.
- 12.6 When requested by Hewi, the Supplier shall give notification of the use of its published and unpublished own and licensed industrial property rights and applications for industrial property rights to the delivered items.
- 12.7 The principles of limitation on liability in section 7 .1 must be applied mutatis mutandis.

## 13. Use of means of production and confidential information from Hewi

Models, matrices, templates, patterns, drawings, sketches, tools and other means of production, as well as confidential information and construction data that the Supplier is provided with or has had paid for in full by Hewi, may not be used for deliveries to third parties without prior written consent.

## 14. Reservation of title

- 14.1 The Supplier reserves the title to all of the goods produced by him until they have been paid for in full, with all of the deliveries being regarded as a unified delivery transaction. In the event of continuous invoicing, the reserved title shall be regarded as collateral for his receivables balance.
- 14.2 If the goods are combined by Hewi with other items to form a unified article and the other article has to be seen as the main article, Hewi shall be obliged to assign proportional co-ownership to the Supplier if the main article belongs to Hewi. If Hewi resells the delivered goods in accordance with the regulations, it hereby assigns the receivables from its customers that arise from the sale, together with all ancillary rights, to the Supplier until all of his receivables have been repaid in full.
- 14.3 For justified cause, Hewi shall be obliged at the Supplier's request to announce the assignment of the third-party buyer and to give the Supplier the information and documents that are required to assert his rights.
- 14.4 The Supplier shall release the collateral he holds only if its value exceeds the receivables to be secured by a total of more than 20 %.



**15. General provisions**

- 15.1 When the amount of the compensation claims to be satisfied by the Supplier in accordance with sections 7, 10, 11 and 12 is being determined, the commercial situation of the Supplier, the nature, scope and duration of the business relationship, any contributions to the cause or the fault by Hewi in accordance with § 254 BGB and a particularly unfavourable installation situation with regard to the supplied part in question must be taken into consideration for the benefit of the Supplier. In particular, the compensation, costs and expenses to be paid by the Supplier must be in proportion to the value of the supplied part.
- 15.2 If one contracting party discontinues his payments, or if the insolvency proceedings for his assets or an out-of-court settlement procedure are applied for, the other party shall be entitled to rescind from the unfulfilled part of the contract.
- 15.3 Should any provision in these conditions and the other agreements that have been made be or become ineffective, this shall not affect the validity of the rest of the contract. The contracting parties shall be obliged to replace the ineffective provision with a regulation that comes as close as possible to that provision in respect of its commercial outcome.
- 15.4 The law of the Federal Republic of Germany shall apply exclusively if nothing to the contrary is agreed.  
The application of the United Nations Convention on Contracts for the International Sale of Goods from 11 April 1980 shall be excluded.
- 15.5 Place of performance shall be Spaichingen. An agreement to the contrary can be made for delivery purposes.
- 15.6 Place of jurisdiction shall be Spaichingen. We are nevertheless also entitled to file an action against the Supplier at the competent court in his place of residence.
- 15.7 The laws of the Federal Republic of Germany shall apply exclusively.

HEWI G. Winker GmbH & Co. KG

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