

## **General Terms and Conditions of Purchase**

**Hailo-Werk Rudolf Loh GmbH & Co. KG**

**March 2020**

### **1. Scope of application**

These Conditions of Purchase shall apply exclusively in relation to purchases from a business within the meaning of § 14 of the German Civil Code as well as from public law entities or federal special funds; if the Supplier's General Conditions of Purchase conflict with or differ from same, we shall only recognize said General Conditions of Purchase if their validity has been expressly approved by us in writing. Our Conditions of Purchase shall also apply where we accept or pay for goods and services of the Supplier (hereinafter: goods) knowing that the Supplier's conditions conflict with or differ from our Conditions of Purchase. Our Conditions of Purchase shall also apply to all future deliveries and services by the Supplier.

### **2. Conclusion of Contract**

Agreements, orders and call off deliveries, as well as other modifications and additions, must be made in text form or by remote data transmission. An order shall be deemed to be accepted unless the Supplier notifies us to the contrary within 5 working days of the order date.

Orders placed orally or by telephone shall only be valid where subsequently confirmed by us in text form. The same shall apply in relation to ancillary agreements and amendments to the contract.

We reserve the right to request changes to the goods or service after the contract date insofar as it is reasonable for the Supplier. In the event of such changes appropriate adjustments shall be made to reflect the effects for both sides, particularly in terms of an increase or decrease in cost or delivery dates.

In all communication reference must be made to the correct order number.

### **3. Prices**

The prices quoted are fixed and shall be DDP delivery address (INCOTERMS 2020) including packaging, plus the sales tax applicable in each case.

Where no reference to the price is made in the order Supplier's listed prices as at the date of order shall be definitive.

Requests for quotations are without obligation however quotations requested shall be binding. There shall be no charge for any quotation submitted by the Supplier or for any visit or for the preparation of quotations and projects. The Supplier shall be bound by the terms of his quotation for a period of 4 weeks beginning upon receipt.

#### **4. Sub Contractors**

In order to fulfill its contractual obligations the Supplier shall not be entitled to use the services of sub-contractors except where we have previously consented thereto in writing. Such consent shall not be unreasonably withheld.

#### **5. Payment, Right of Set Off, Right of Retention**

Except where otherwise agreed payments shall be remitted within 60 days net without deduction. Payments remitted within 30 days shall be subject to 3% discount.

Payment deadlines shall begin to run upon receipt of a complete, correct and verifiable invoice, but not before receipt of the entire delivery or acceptance of performance (where agreed).

Separate invoices shall be submitted with all corresponding documents and data after the goods have been supplied / services performed and shall comply with statutory and accounting requirements. All invoices shall include our order number and shall state the amount of VAT separately. Only invoices properly submitted (i.e. complete, correct and verifiable) shall be deemed received.

Where payment in advance has been agreed the Supplier shall where requested provide an appropriate security in the form of an unlimited absolute guarantee drawn on a major German bank payable on demand and waiving the defence of failure to pursue remedies.

We shall be entitled to exercise rights of set off and retention to the extent provided by law. Any assignment by the Supplier of his claim to the purchase price shall be subject to our previous written consent. This shall not apply to assignments to a credit institution for securing business loans or an extended reservation of title. The Supplier may only set off undisputed counterclaims or counterclaims against which we have no further recourse to appeal. The Supplier shall only be entitled to rights of retention in so far as these are based on the same legal transaction.

#### **6. Place of Performance, Supplies, Packing**

Unless otherwise defined on a case by case basis, delivery is agreed DDP delivery address (INCOTERMS 2020). The Supplier shall be liable for the material risk until acceptance of the goods by us or our agent at the agreed place for delivery of the goods.

Partial deliveries are not permitted unless we have expressly agreed to the same. In any event any non delivered quantities shall be listed on the delivery note and on the invoice.

Quantities, weights and dimensions shall be based on the values ascertained by us during incoming goods inspection (see clause 10 below), subject to evidence to the contrary.

The Supplier undertakes to use environmentally friendly packaging that can be recycled or disposed of at low cost. Packaging must guarantee protection against damage, dirt, damp and, where applicable, against electrostatic discharge during transport and storage in order that assembly at our premises or the premises of one of our agent companies is possible at no further cost. Any important information on contents, storage and transport

must be visibly affixed to the packaging. Loaned packaging shall be returned carriage unpaid to the Supplier's address.

## **7. Delivery Dates**

Agreed delivery dates are binding. Where the delivery date is a calendar week the Friday of that week shall be the last delivery date.

Where the Supplier fails to deliver on time the statutory provisions shall apply. If the Supplier realises that delivery as specified in the contract is or will be impossible owing to problems with production, supply of primary material, compliance with the delivery date or similar circumstances, the Supplier must notify us accordingly without delay.

The surrender of the goods at the delivery address specified shall be definitive in terms of determining compliance with the delivery date or the declaration of acceptance, where this has been agreed.

The Supplier shall only be permitted to rely on the absence of requisite information or our failure to supply documents where he has failed to receive the same despite having set a reasonable deadline in text form.

In the event of late delivery or supply we shall be entitled to impose liquidated damages of 0.2% of the net value of the goods delivered late per working day, up to a maximum of 5% of the value of the goods. We reserve the right to claim additional damages.

Unconditional acceptance of a late delivery or service does not constitute a waiver of the claims to which we are entitled as a result of late delivery or service; this shall apply until we have remitted the sums owing in full.

Where the Supplier delivers earlier than the agreed delivery date we shall be entitled at our option to store or return the goods at the expense and risk of the Supplier.

## **8. Force Majeure**

In the event of a default in delivery which is caused by Force Majeure the agreed delivery term shall be extended by the period of prevention. Force Majeure shall mean all circumstances beyond the control of the parties to include, without limitation, natural disasters, strikes, war, riots, governmental decrees, general shortages of energy and raw materials and unforeseen blockades of transport routes.

Notwithstanding the aforesaid the Supplier is obliged to inform us without any undue delay of any difficulties or delays in delivery apparent to him in order that appropriate damage limitation measures can be undertaken, in good time and by mutual agreement.

Force majeure and events beyond our control shall entitle us, without prejudice to our other rights, to withdraw from the contract either fully or in part, where we have no further commercial interest in performance as a result.

## **9. Non Disclosure / Data Protection**

During the term and after termination of this contract the parties shall not disclose to third parties or use for their own business aims without authorisation any confidential information (to include without limitation documents, samples, sketches, business intentions, personal data, problems, data and/or problem solutions, or any other know-how of any kind as well as information visually gained by the inspection of plants or facilities) received from the other party or of which the parties became aware by reason of their collaboration. The aforesaid non disclosure obligation shall also apply in relation to the existence and content of this contract. The parties shall also impose this obligation upon their employees. We retain exclusive title to all information and all legal rights in relation thereto;

The Supplier shall not be entitled to use goods manufactured to our drawings, models or such like for its own purposes or to offer or supply the same to third parties either itself or through a third party.

The Supplier shall also impose this obligation upon its employees and other third parties, who have access to the confidential information and shall provide evidence of the same where requested.

The duty of non-disclosure shall not apply to information which was previously known to the other party outside the contractual relationship, was lawfully acquired from a third party, is generally known or is or becomes the state of technology or has been released by us.

The non-disclosure obligation shall remain in force for a period of 5 years after the expiration of this agreement.

Upon the expiration of this agreement the parties shall return all confidential documents and information unrequested or destroy the same where requested to do so by the disclosing party and provide evidence thereof.

The parties shall comply with all data protection requirements, including where access is given to the other party's plant, or to its hard and software. They shall ensure that their vicarious agents shall also comply with these provisions and that they are bound not to disclose any data prior to the commencement of their work. The parties do not intend to process or use personal data on behalf of the other party. Any transfer of personal data shall occur only in exceptional circumstances as a side effect of performance of the parties contractual obligations. All personal data shall be treated by the parties in accordance with data protection laws.

## **10. Quality Assurance, Incoming Goods Inspection**

The Supplier undertakes to maintain a system of quality management which corresponds to the most recent technical standards. The Supplier shall carry out tests during manufacture in accordance with the requirements of his system of quality management. The Supplier shall carry out final testing of the products which shall ensure that only non faulty goods are supplied.

Acceptance of the goods or service is subject to an examination thereof as to the absence of faults insofar as and as soon as such an examination is feasible in the ordinary and proper course of business. Such examination shall include the type and

quantity of the products supplied as well as any external damage thereto. Furthermore any incoming goods inspection is replaced by the quality assurance measures undertaken by the Supplier in accordance with the provisions aforesaid. The Supplier waives the defence of late notification of defects provided for in § 377 of the German Commercial Code (HGB)

## **11. Defective Goods**

The statutory regulations on material defects and deficiencies in title shall apply without restriction, unless otherwise provided below.

In urgent cases, especially in order to counter acute risks or prevent major damage, we shall be entitled to rectify defects ourselves or arrange for such to be rectified by third parties, at the Supplier's expense, insofar as it would be unreasonable to request the Supplier to carry out the same in view of the urgency. We undertake to inform the Supplier of any such warranty claim together with the nature and scope of urgent action undertaken without delay.

Claims for material defects and deficiencies in title shall be time barred after 36 months. The statutory limitation period for the surrender of the goods to third parties (§438 (1), No. 1 of the German Civil Code) shall not be affected by the aforesaid. The warranty period shall begin to run from the date of delivery of the goods. Any goods repaired or replaced during the warranty period shall benefit from a new full warranty period upon the terms set out aforesaid and such new warranty period shall commence upon complete performance by the Supplier of our warranty claim.

The Supplier shall be liable for all costs accruing to us as a result of defective delivery of the contractual goods, in particular transport, travel, work, material costs and investigation costs in excess of those normally incurred.

In the event of recourse we shall be entitled to demand compensation from the Supplier for the expenditure accruing to us in relation to our customers on account of the defective service.

The Supplier undertakes to take back and dispose of packaging in accordance with statutory requirements. Insofar as legally and commercially possible he shall use environmentally friendly products and processes for supplies including for the supplies of third parties. The Supplier shall be liable for the environmental compatibility of the goods supplied and packing materials and for all losses incurred by reason of a breach of his statutory disposal obligations. In addition the Supplier shall provide us with a certificate of inspection for the goods delivered where requested.

Notwithstanding §442 (1) of the German Civil Code our claims under warranty shall apply without restriction where we have no knowledge of the defect due to gross negligence on our part at the time of contracting.

The cost incurred by the Supplier for testing and supplementary performance (including disassembly and reassembly costs) shall be borne by the Supplier including where it subsequently emerges that there is no defect. Our duty to compensate the Supplier for damages incurred due to a false warranty claim request shall remain unaffected.

However we shall only be liable where we were aware that there was no defect or were unaware of the same due to gross negligence.

Where the Supplier fails to perform his duties under supplementary performance within a reasonable deadline set by us or where he finally refuses to rectify the defect prior to the expiration of the deadline set, we reserve the right to rectify the defect ourselves and request reimbursement of the expenditure incurred thereby, except where the Supplier's refusal was justified. We are entitled to request a reasonable advance payment. Where the supplementary performance undertaken by the Supplier is unsuccessful or unreasonable for ourselves (e.g. due to reasons of urgency, risk to industrial safety or the threat of disproportionate damage) no notice is required. We shall inform the Supplier of such circumstances without delay.

## **12. Retention of Title and other Security Rights**

Transfer of title to the goods shall pass to us unconditionally and without consideration of payment of the purchase price. Where in an individual case we accept an offer of the Supplier that title be passed upon payment, Supplier's retention of title shall cease to take effect upon payment of the goods supplied. We remain entitled to resell the goods in the ordinary course of our business prior to the remittance of payment subject to our assignment of the claim arising therefrom in advance to the Supplier. All other forms of retention of title are excluded to include without limitation an extended retention of title, an assignment in advance of claims under retention of title or retention of title of processed goods.

Processing, mixing or incorporation of materials supplied by us are undertaken by the Supplier on our behalf. The same shall apply where we further process goods supplied by the Supplier in order that we are deemed manufacturer and acquire title to the goods in accordance with statutory provisions on processing.

## **13. Product Liability**

In the event that a claim is asserted against us on the basis of product liability, the Supplier shall be required to indemnify us for such claims upon first demand where and insofar as the loss was caused by a defect in the contractual goods delivered by the Supplier and, in cases of liability with fault, if the fault is attributable to the Supplier. If the Supplier is responsible for the cause of the loss, the burden of proof shall rest with the Supplier.

In such cases the Supplier shall be liable for all costs and expenses, including the costs of any legal prosecution or recall action. Otherwise the statutory regulations shall apply.

## **14. Tools/Drawings**

We retain exclusive rights to all molds, tools, reproductions, plans, samples, drawings, and such like (hereinafter referred to as tools), which are produced at our expense or

which we place at the Supplier's disposal. Title thereto shall pass to us no later than on payment. The Supplier shall store, maintain and repair the tools without charge and shall insure and protect the same against unauthorized access, damage and destruction with the same degree of care as he would his own tools. The Supplier shall have no right to withhold surrender of the tools.

The Supplier shall check any information supplied by us as to its completeness and accuracy and shall inform us of any errors without delay. Where there are errors in the documentation (e.g. drawings) any correction undertaken by the Supplier for which a charge shall be incurred shall be subject to our prior written consent.

Any machines and tools produced on the basis of documentation provided by us shall be used for the manufacture of our orders only or for supplies to us except where we have expressly consented in writing to their use for supplies to third parties.

## **15. Export Control**

The Supplier shall be obliged to inform us about any applicable (re-) export licence requirements or restrictions for the goods under German, European or US export control law and customs regulations as well as the export control law and customs regulations of the country of origin of the goods in its business documents and to send us the following information on goods subject to licence requirements in good time prior to the first delivery:

- Goods description
- All applicable export numbers including the Export Control Classification Number pursuant to the U.S. Commerce Control List (ECCN)
- Country of origin of the goods under commercial policy
- HS code of the goods
- A contact person in its organization to resolve any enquiries.

The Supplier shall be obliged to inform us without undue delay of any changes to the licence requirements applying to the goods it supplied to us, as a result of technical changes, changes to the law or governmental determinations.

## **16. Compliance**

During the term of our business relations the Supplier undertakes not to offer or grant, promote or accept any advantages, either in its business dealings or when dealing with governmental officials, which are in breach of applicable anti-corruption regulations.

The Supplier undertakes not to make any agreements with other companies or to agree on concerted practices with other companies aiming to or bringing about a prevention, restriction or distortion of competition under applicable antitrust regulations.

The Supplier guarantees that it will comply with the applicable laws governing the general minimum wage and commit sub-Suppliers engaged by it to the same extent. On request, the Supplier shall evidence compliance with the foregoing guarantee. In the

event of a breach of the foregoing guarantee, the Supplier shall hold us harmless from all third party claims and is obliged to reimburse any fines imposed on us in this regard.

The Supplier shall comply with the respective statutory provisions governing the treatment of employees, environmental protection and health and safety at work and to work on reducing the adverse effects of its activities on human beings and the environment. To this end the Supplier shall install and continue to develop a management system pursuant to ISO 14001 to the extent possible. The Supplier shall further comply with the principles of the UN Global Compact Initiative for the protection of international human rights, the abolition of forced and child labour, the elimination of discrimination when engaging or employing personnel and the responsibility for the environment ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

In the event of a suspected violation of the obligations set out aforesaid in this section 16, the Supplier shall investigate the same without any undue delay and inform us of all investigation measures it has undertaken. If the suspicion proves to be justified, the Supplier must inform us within a reasonable period of time of the measures that it has taken internally within its organization in order to prevent violations in future. Failure to comply with this obligation within a reasonable period of time, shall entitle us to withdraw from the contracts with the Supplier or to terminate them with immediate effect.

In the event of severe violations of the law by the Supplier and in the event of violations of this section 16 we reserve the right to withdraw from existing contracts or to terminate them without notice.

### **17. Third Party Property Rights**

The Supplier guarantees that the goods and services provided do not infringe any third party property rights (to include without limitation patents, samples, copyright etc).

In the event that we or our customer violates any third party rights when using the goods as provided for under the contract the Supplier shall immediately procure at its expense all requisite licenses for use of such third party rights from the owner.

The Supplier shall indemnify us and our customers against all third party claims based on violation of third party rights upon first demand. He shall reimburse us or our customers any expenditure incurred as a result of any such third party claim.

### **18. Place of Performance, Jurisdiction and Applicable Law**

Unless otherwise agreed the place of performance for the Supplier's delivery obligation shall be the location specified by us; for all other obligations the place of performance shall be our registered office.

These terms and conditions shall be governed by the laws of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

For Suppliers whose principal place of business is situated in the European Union: All disputes arising in connection with these terms and conditions of purchase or their validity shall be finally settled before the courts of jurisdiction in Haiger.

For Suppliers whose principal place of business is situated outside the European Union: All disputes arising in connection with these terms and conditions of purchase or their validity shall be finally settled according to the Arbitration rules of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law. The number of arbitrators shall be three (Tribunal). One arbitrator will be appointed by each of the parties. The two so appointed will choose the third arbitrator who will act as the Chairman of the Tribunal. The seat of arbitration shall be in Frankfurt, Germany. The language to be used in the arbitral proceedings shall be English