

1 General, Scope

- 1.1 The general terms and conditions for purchasing and orders of Herhof GmbH apply exclusively; contrary or terms and conditions of the supplier which are different from these terms and conditions for purchasing and orders are not recognized, except for the simple reservation of title, unless their applicability has been consented to in writing. The general terms and conditions for purchasing and orders of Herhof GmbH also apply if the contract with the supplier is carried out while having knowledge of contrary terms and conditions or different terms and conditions of the supplier compared to the terms and conditions for purchasing and ordering of Herhof GmbH.
- 1.2 All agreements concluded between Herhof GmbH and the supplier for the performance of a contract must be set forth in writing.
- 1.3 These general terms and conditions for purchasing and orders apply in a respective version also for all future transactions with the supplier.
- 1.4 The language of the contract can be German or English.

2 Conclusion of the contract

- 2.1 Offers must be submitted in writing free of charge for Herhof GmbH. The supplier must state how long it remains bound to the offer.

Silence in response to an offer does not constitute acceptance. An order is only issued if it has been drafted in writing by Herhof GmbH and signed. Oral or telephonically issued orders are only binding for Herhof GmbH if there are subsequently confirmed in writing by Herhof GmbH without undue delay.

Acceptances of orders must be confirmed by signing a copy of the order within 8 workdays after receipt of the order. Upon expiration of this deadline, we are entitled to revoke the order.

- 2.2 Herhof GmbH can require changes to the subject of delivery even after conclusion of the contract, except for the volume ordered, if this can be reasonably expected of the supplier. In the case of such a change in the contract, the effects on both sides, especially with regard to additional or decreased costs as well as on the date for delivery must be reasonably taken into account.

Changes in the contract are only valid if Herhof GmbH has expressly confirmed them in writing.

Drawings provided to the supplier specific case, including the information on tolerances, are binding. Upon acceptance of the order, the supplier acknowledges that it has informed itself about the type of performance and scope of work by reviewing the existing plan. In the case of obvious errors, typographical errors and mathematical errors in the documents, drawings and plans provided by Herhof GmbH, there is no liability on the part of Herhof GmbH. The supplier is required to inform Herhof GmbH about such mistakes so that the order can be corrected and renewed. This also applies for missing documents or drawings.

3 Prices, setting prices, terms and conditions of payment

- 3.1 The prices shown in the order are fixed prices.
- 3.2 The deliveries must be made free at the destination unless agreed otherwise in writing.
- 3.3 The costs for packaging are contained in the agreed fixed prices unless agreed otherwise. The goods must be packed in such a manner that damaged during transport is avoided. Packaging materials can only be used the degree necessary to achieve the purpose. Only environmentally friendly packaging can be used. The obligation of the supplier to take back packaging materials is governed under by the statutory provisions.

The supplier is required to carry out its deliveries in light of environmental aspects.

- 3.4 Compensation for introductions, presentations, negotiations and/ or for preparing offers and projects will not be granted unless agreed otherwise in writing.
- 3.5 Invoices are to be issued in duplicate immediately after each delivery, but must be separate from the delivery. The invoices must contain the order number, production order number and the cost center number(s) as well as the complete agreements on payment. Value added tax must be shown separately

The supplier is responsible for all consequences of not complying with this obligation.

- 3.6 The payment of the price is due, unless agreed otherwise, upon transfer of possession of the goods and receipt of an invoice from the supplier which is capable of being checked. Herhof GmbH is granted a period of 30 days in which to make payment. In the case of payment by Herhof GmbH within 14 days after receipt of the invoice capable of being checked, but at the earliest after receipt of goods, the supplier will grant a discount for prompt payment in the amount of 2%. The payment will be by transfer. The supplier must provide corresponding bank details. In the case of partial deliveries, payment is only due with the last delivery unless agreed otherwise. This does not apply for contracts on successive deliveries.

- 3.7 To the extent that the supplier must provide materials samples, testing records, quality documents, documentation or other agreed records, the completeness of the delivery and performance also requires receipt of these records at Herhof GmbH.

- 3.8 Herhof GmbH has set-off rights and rights of retention as provided by law.

4 Delivery

- 4.1 The date for delivery stated in the order is binding. If the delivery takes place prior to the agreed delivery date, Herhof GmbH reserves the right to return the delivery at the expense and risk of the supplier. If there is no return in the case of early delivery, the goods will be stored at Herhof GmbH at the expense and risk of the supplier.

- 4.2 The supplier is required to inform Herhof GmbH in writing without undue delay if circumstances occur or become apparent to the supplier which indicate that the agreed delivery date cannot be maintained.

- 4.3 In the case of delay in delivery, Herhof GmbH is entitled to demand liquidated default damages in the amount of 0.2% of the value of delivery per workday, but no more than 5% in total of the value of the delivery; further going claims under the law are reserved. A reservation on the assertion of liquidated default damages upon acceptance of a delayed delivery is not required. This also applies in the case of accepting an incorrect delivery. The supplier has the right to prove to Herhof GmbH that no damages or materially lower damages were incurred as a result of the delay.

- 4.4 If Herhof GmbH is in default with acceptance or as an obligor for longer than 14 days, the default damages for the supplier are limited to 0.2% of the value of the delivery per completed week, but to a total of no more than 5% of the order value unless the default is a result of intentional misconduct or gross negligence or, in the case of personal injury, simple negligence. Herhof GmbH has the right to prove to the supplier that no damages or materially lower damages were incurred as a result of the default.

5 Release from the duty to perform, withdrawal from the contract

- 5.1 Force majeure releases the contracting parties from their duties to perform for the duration of the disturbance and in the scope of its effect. The contracting parties are required to transmit the necessary information to the extent this can be reasonably done without undue delay and to adjust their obligations to the changed circumstances in accordance with good faith.
- 5.2 Herhof GmbH is completely or partially released from the obligation to accept the ordered delivery and is entitled to withdraw in this regard from the contract if the delivery can no longer be used by Herhof GmbH, taking into account economic aspects, as a result of the delay caused by the *force majeure*.
- 5.3 Herhof GmbH can withdraw from the contract if the supplier requests the commencement of insolvency proceedings, if insolvency proceedings are commenced on the basis of a request of Herhof GmbH or another obligor or if the commencement is rejected due to lack of sufficient assets to cover the costs of the proceedings [*mangels Masse*].
- 5.4 Herhof GmbH can also withdraw from the contract if the supplier promises, offers or grants benefits of any kind whatsoever to an employee or representative of Herhof GmbH involved in the preparation, conclusion or implementation of the contract.
- 5.5 The statutory rules on withdrawal remain unaffected.

6 Acceptance

- 6.1 Performance for which this has been expressly agreed in the contract as well as works are subject to acceptance. Acceptance will take place formally and a record will be prepared.
- 6.2 As soon as the supplier has concluded performing the contractual work, the supplier will declare to Herhof GmbH that the work is ready for acceptance. Unless regulated otherwise in the contract, Herhof will carry out the acceptance examination at the latest within two weeks after receipt of the declaration. If the work has been performed in accordance with the contract, Herhof GmbH will declare the acceptance by signing the record of the acceptance without undue delay after completion of the acceptance examination.
- 6.3 If the work has not been performed in accordance with the contract, Herhof GmbH will set a reasonable deadline for the supplier to follow-up on performing the work in accordance with the contract. After the end of the deadline, there will be a new acceptance. If the work has not been performed in accordance with the contract at that time, Herhof GmbH can refuse acceptance and withdraw from the contract.
- 6.4 Acceptance cannot be refused if differences exist which have only an immaterial adverse effect on the total functionality when measured against the description of the work. In this event, acceptance will be under a reservation. Such discrepancies will be recorded in the record on acceptance and must be corrected by the supplier without undue delay under the warranty. Herhof GmbH has the right to a reasonable retention amount from the agreed compensation.
- 6.5 If the work is performed in installments which are suitable for partial acceptance, an agreement can be reached that a partial acceptance will take place after completion of a part of the work in accordance with the above provisions.

7 Passing of risk, documents

- 7.1 The passing of risk occurs upon formal acceptance, acceptance of the work or receipt of the delivery by Herhof GmbH.
- 7.2 The supplier is required to state the order number of Herhof GmbH as well as the volume, the dimensions of the package and the weight on all shipping papers and delivery receipts; if the supplier does not do so, delays in processing are unavoidable. Herhof GmbH is not responsible for this.

8 Examination for defects - liability for defects

- 8.1 The contractual quality includes also the performance and consumption data as well as the down-times.
- 8.2 If defective goods are delivered, the supplier is required to correct the defect or deliver an item which is free of defects (follow-up performance).
- 8.3 If the supplier does not comply with the obligation to make follow-up performance within a reasonable period set for the supplier, or if the supplier refuses follow-up performance or if this is not possible for the supplier, Herhof GmbH can assert the statutory claims for defects in an item without setting a further deadline.
- 8.4 Herhof GmbH is required to check the goods within a period of 2 weeks for any discrepancies in quality of quantity; the complaint is on time if it is made within a further period of 5 workdays.
- 8.5 The statutory claims for liability for defects belong to Herhof GmbH without any restrictions; Herhof GmbH is entitled to require follow-up performance from the supplier (at the election of Herhof GmbH, by correcting the defect or by substitute delivery or by new manufacturing). In this event, the supplier is required to bear all expenses for the purpose of correcting the defect, making a substitute delivery or for the new manufacturing. Herhof GmbH is entitled to itself carry out the correction of the defect at the expense of the supplier if an urgent situation exists. This also applies if the supplier is in default with correcting the defect. The right to damages, especially the right to claim damages instead of performance, the right to reduce the purchase price or the right to withdraw from the contract as well as the right to demand compensation for expenditures are expressly reserved.
- 8.6 Claims for defects are time barred in accordance with the statutory regulations, calculated as of the date of passing of risk. If the notice of defects is received by the supplier within the period of liability for defects, the time bar period commences as of that date.
- 8.7 To the extent that the supplier is responsible for damage to the product, the supplier is required to indemnify Herhof GmbH against claims for damages of third parties to the extent that the cause lies in the supplier's area of influence or organization and to the extent that the supplier is itself liable in the external relationship.
- 8.8 Herhof GmbH is entitled to require that the supplier maintain an extended product liability insurance policy having coverage of at least € 3 million per person and per insured event; further going claims for damages by Herhof GmbH remain unaffected by this.

9 Liability

The supplier is liable in accordance with the statutory provisions.

10 Title, assistance, tools

- 10.1 The simple reservation of title on the part of the supplier is acknowledged.
- 10.2 If Herhof GmbH delivers substances and materials and/or provides them, these substances and materials remain the property of Herhof GmbH. Processing or rebuilding by the supplier is carried out for Herhof GmbH. If the substances and materials of Herhof GmbH are processed together with items which do not belong to Herhof GmbH, Herhof GmbH acquires co-ownership to the new physical object proportionately in accordance to the value of its items to the other processed items at the time of the processing.
- 10.3 If the items provided by Herhof GmbH are combined in an inseparable manner with other items which do not belong to Herhof GmbH, Herhof GmbH acquires the co-ownership to the new items proportionately according to the value of the item under reservation to the other combined items at the time of the combining. If the combining occurs in such a manner that the item of the supplier is considered to be the main object, an agreement is deemed to have been made that the supplier transfers proportionate ownership to Herhof GmbH and that the

supplier retains the sole ownership or the co-ownership for Herhof GmbH.

- 10.4 Tools provided by Herhof GmbH remain the property of Herhof GmbH; the supplier is required to use the tools exclusively for manufacturing the goods ordered by Herhof GmbH. The supplier is required to ensure the tools belong to Herhof GmbH at replacement value at the supplier's own costs against fire, water damage, theft and vandalism. The supplier is required to carry out any required maintenance and inspection work at the supplier's own costs. The supplier must immediately notify Herhof GmbH about any disturbances; if the supplier fails to do so as a result of culpable conduct, Herhof GmbH retains the right to claim damages. The supplier is also liable for damage to the tools.

11 Intellectual property rights, confidentiality

- 11.1 The supplier is required to maintain strict confidentiality about all illustrations, drawings, calculations and other documents and information. Such information can only be disclosed to third parties with the express consent of Herhof GmbH. The duty to maintain confidentiality extends also to personal data. The obligation to maintain confidentiality also applies after the unwinding or failure of the contract; the obligation expires if and to the extent that the production knowledge contained in the provided illustrations, drawings, calculations and other documents has become generally known. Corresponding obligations must be imposed on sub-suppliers.
- 11.2 The conclusion of the contract must be treated confidentially. The conclusion of the transaction with Herhof GmbH can only be referred to in advertising materials of the supplier after written consent from Herhof GmbH. Herhof GmbH and the supplier undertake to treat all commercial or technical details of which they become aware during the business relationship as a

business secret if they have not become public knowledge. Corresponding obligations must be imposed on sub-suppliers.

- 11.3 The supplier assumes responsibility that no rights of third parties are violated in connection with the delivery from the supplier
- 11.4 If a third party asserts claims against Herhof GmbH in this regard, the supplier is required to indemnify Herhof GmbH against these claims; Herhof GmbH is not entitled to reach any agreements with third parties without the consent of the supplier.
- 11.5 The duty of the supplier to indemnify relates to all expenditures which Herhof GmbH necessarily incurs under or in connection with the assertion of the claim by a third party.

12 Jurisdiction, place of performance, applicable law

- 12.1 If the supplier is a commercial party, jurisdiction is at the registered office of Herhof GmbH.
- 12.2 German law applies, subject to exclusion of the UN Convention on the International Sale of Goods (CISG).

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