

STANDARD TERMS AND CONDITIONS FOR PURCHASE

HUECK FOLIEN Gesellschaft m.b.H. (FN 80720g)



1. Scope of application and general information

- 1.1 Each Purchase Order and contract for the delivery of Goods and performance of Services ("**Goods and/or Services**") between HUECK FOLIEN Gesellschaft m.b.H. ("**HUECK**") and the business partner ("**Supplier/BP**") is subject to these Terms and Conditions ("**TCP**"). The TCP apply in full, unless otherwise expressly provided. BP's terms and conditions deviating from these TCP shall not apply without the prior express consent of HUECK. Any follow-up order with Supplier shall also be subject to these TCP in their current version, even if not explicit reference is made to this condition.
- 1.2 No oral agreement, variation of or addition to these Terms and Conditions or any contract shall be valid, unless agreed to in writing between the parties. The same shall apply to the waiver of the requirement of written form.
- 1.3 Supplier's offers (all-inclusive offers or partial offers) shall contain all necessary part deliveries and components. Supplier shall provide any missing part and/or component without extra charge. The Goods delivered and Services performed shall be state-of-the-art at the time of Acceptance.
- 1.4 The TCP are on display in the premises of HUECK and can be downloaded at www.hueck-folien.at.

2. Contract closing

- 2.1 All offers submitted to HUECK shall be binding on Supplier for a minimum of four weeks from the date of receipt by HUECK. Supplier's documents and correspondence must contain HUECK's order number, otherwise they will be deemed to have not been received. HUECK shall have the right to correct obvious mistakes such as spelling and calculation errors etc. in Purchase Orders, order confirmations and similar documents at any time.
- 2.2 Purchase Orders and call-offs and any variation of and addition to them will only be binding on HUECK if issued on HUECK's order forms or sent by fax or email. In any case they shall not be valid, unless confirmed in writing by HUECK.
- 2.3 Supplier shall give written notice of acceptance of an order to HUECK without delay. HUECK may revoke the order if it has not received the order confirmation within a reasonable period of time, but not later than two weeks after placing the order.
- 2.4 HUECK may revoke the Purchase Order within seven work days if it does not agree to the content of the order confirmation.
- 2.5 HUECK employees or third parties engaged by HUECK shall not have the right to modify the main contractual conditions. HUECK may, within the limits of reasonableness for Supplier, request order changes, particularly with regard to workmanship, design, etc., taking into account any potential consequences, particularly an increase or decrease in the cost or time required for the performance of the contract.
- 2.6 Before making changes to specifications for Goods and/or Services or production methods, Supplier must obtain HUECK's written approval.

3. Prices

- 3.1 Prices are fixed all-inclusive prices, unless otherwise provided. Prices cover Supplier's expenses and all fees, taxes and charges incurred. Prices are quoted "DDP" according to Incoterms (as amended) to the address for shipments specified by HUECK.
- 3.2 Where other prices are expressly provided, such other prices shall be deemed to cover also any preliminary work and additional services provided by Supplier and third parties engaged by Supplier, including, but not limited to, all applicable fees, taxes and charges.
- 3.3 Price reductions on the market shall be fully passed on to HUECK. If a third party is granted more favorable terms for similar Purchase Orders, the contractual terms shall be adjusted by reducing the price or crediting the difference to HUECK's account accordingly.

4. Delivery dates, delivery period, place of delivery

- 4.1 Delivery dates and/or periods shall be binding. The usual delivery time shall be 14 days from the ordering date. Partial shipments are allowed if agreed to in writing.
- 4.2 Receipt of the shipment or Acceptance of the installation/assembly at the destination specified by HUECK within the set time limit shall be authoritative for setting the due date. The destination shall also be the place of performance. Goods shall not be delivered and Services shall not be performed before the applicable date without the express consent of HUECK. Supplier shall be liable for all additional cost arising therefrom (e.g. storage costs). The period allowed for payment shall start on the applicable delivery date.
- 4.3 HUECK will only accept the quantities or number of units ordered or will, at its option, refuse to accept the shipment or return the shipment at Supplier's risk and expense or invoice Supplier for the cost of storage at its risk. The applicable delivery date will be authoritative for the payment.

5. Schedule change, force majeure, cancellation

- 5.1 HUECK shall have the right to re-schedule at any time the delivery date without any liability, and postpone it for up to three months without Supplier being entitled to claim additional costs.
- 5.2 The contracting party invoking an event of force majeure shall promptly notify the other party and prove the event in writing. If such proof is provided, the contracting party affected by the event shall be released from the contractual obligations that can be no longer performed as long as the effects of the event continue. The other contracting party shall be notified thereof in writing, specifying the reasons. If a force majeure event prevents performance of contract as scheduled or if it continues for more than three months, HUECK may terminate the contract in writing without giving notice. The termination will be effective upon receipt by Supplier.
- 5.3 HUECK reserves the right to withdraw from a contract in whole or in part regardless of culpability on the part of Supplier. In such case, Supplier will only be entitled to invoice the Goods delivered and the Services performed up to the date of rescission, but not any loss of profit. Any benefits that were or may be gained by Supplier shall be taken into account. When rescission of contract has been declared, Supplier will be obligated to minimize costs.

6. Delivery delay, penalty, rescission of contract

- 6.1 If a delivery delay is foreseeable, Supplier shall promptly notify HUECK in writing, specifying the reason for the delay. HUECK will have the right to take any measures, at Supplier's expense and risk, to prevent late shipment. HUECK's other rights shall remain unaffected.
- 6.2 Notwithstanding the aforesaid, HUECK shall be entitled to charge a penalty equal to 0.5 % of the total order value for each started calendar day from the missed delivery date, but no more than 10 % of the total order value. The penalty is not subject to mitigation.
- 6.3 In the event of late delivery HUECK may, at its option, rescind the contract granting a reasonable respite or insist on contract performance. The same shall apply to parts of the Goods (not) delivered and Services (not) performed. In the case of a firm deal, granting of a respite and declaration of rescission shall not apply. HUECK may also engage a third party for making the delivery that was not made by Supplier at Supplier's expense.
- 6.4 Acceptance of a late (partial) delivery shall not be construed as a waiver of HUECK's rights to assert claims due to late delivery.

7. Warning obligation

- 7.1 Supplier shall examine in detail the order documents and any documentation and/or material provided (hereinafter "**order data**"). If Supplier holds the view that such documents contain errors or ambiguities, Supplier shall promptly, but no later than one week after delivery, provide a written warning including suitable proposals for a solution. HUECK's approval of and cooperation in the preparation of drawings, calculations, documents, etc. shall not limit Supplier's warning obligation and sole responsibility for the subject matter of the contract. No separate compensation will be paid for any efforts made in connection with the warning obligation.
- 7.2 If Supplier fails to provide a warning, Supplier will be liable for any potential warranty claims and claims for damages. Adjustment of the contract on grounds of error on Supplier's part is excluded. By submitting its offer Supplier conclusively represents that it is capable of providing flawless goods and services according to the order documents and that all requirements for providing the Goods and/or Services are met.

8. Shipment, delivery and packaging

- 8.1 Unless otherwise provided, the Goods shall be delivered DDP according to INCOTERMS (as amended) to the place designated for shipment by HUECK in the Order at the time specified for receipt of the Goods in the Order or, if no time was specified, Monday to Thursday 07:00 to 18:00 and Friday 07:00 to 12:00. For the determination of delivered quantity, the quantities established by HUECK upon receipt of the Goods shall be authoritative. All items shipped shall be clearly labeled for easy identification and determination of quantity. The Goods must be suitably packed for shipment and all transport risks and insurance aspects must be taken into account.
- 8.2 At HUECK's request Supplier shall take the packaging material back at its own expense. Where HUECK has separately agreed to pay for the packaging, it shall be charged at cost price only; the cost price must be listed separately on the invoice. In such case HUECK may request that reusable packaging material be taken back and have the appropriate amount credited to its account.
- 8.3 The method of transportation, the forwarding agent and the shipping instructions will be specified by HUECK. Otherwise the most economical method of transportation shall be used, failing which Supplier shall accept responsibility for any negative consequences and increase in cost. Every shipment shall be advised without delay; Supplier shall send an advice note specifying type, quantity, weight, installation and forwarding agent as well as the expected date of arrival. All shipping documents (advice notes, carriage notes, invoices) must contain the Purchase Order number, the order date, the quantity, technical description and any other necessary information.
- 8.4 Supplier shall secure and maintain in effect, at its own expense, adequate insurance coverage for the shipment.
- 8.5 Any advice note and/or delivery note initialed by HUECK shall be considered acknowledgement of receipt and shall not be construed as a recognition of absence of defects, completeness of the shipment or fulfillment of the Order.
- 8.6 Supplier shall take responsibility for any damage arising from false information in binding statements or non-compliance with existing handling requirements (packaging, shipping, storage etc.).

9. Passage of risk and retention of title

- 9.1 In the case of delivery and erection/installation, risk of loss and damage shall pass to HUECK only when it has accepted the Goods and/or Services free from defects and in accordance with all specifications, and in the case of other shipments, when HUECK has taken delivery of the shipment free from defects and in accordance with all specifications (DDP). Unloading and loading – even if carried out by HUECK – will be at Supplier's risk (DDP).
- 9.2 Supplier shall supply only Goods that are under its sole and unrestricted ownership. Retention of title is expressly excluded. Taking delivery of such Goods does not constitute Acceptance. Supplier shall in no case retain ownership of the Goods delivered.

10. Invoices

- 10.1 Invoices shall be submitted to HUECK immediately after delivery. Such invoices shall contain all ordering data, the list of invoiced and itemized Goods delivered and Services performed and their description according to offer/contract. For Goods subject to approval, the invoice shall contain the required labeling. Invoices for labor or installation Services shall include time statements confirmed by HUECK. Copies of invoices shall be marked as duplicates. Any invoice submitted to HUECK that does not contain the itemized Goods delivered and Services performed, labeling, time statements or ordering data may be considered invalid, and HUECK shall not be obligated to pay such an invoice.
- 10.2 All prices are quoted in Euro without tax. Invoices must include any tax amounts, duties and charges as well as reductions (discount, rebate).

11. Payment, offsetting, assignment, right of retention

- 11.1 The period allowed for payment shall commence after receipt of a correct invoice or Acceptance of Goods delivered and Services performed or the date of service completion, whichever occurs later. Where Supplier is required to provide material tests, inspection records, quality documents or any other documentation, a delivery shall not be fulfilled until receipt of such documentation.
- 11.2 Unless otherwise provided, invoices will be paid by HUECK, at its option, 3%/30 or net 60. Payments shall be deemed to have been made on time if sent from the registered office of HUECK or if transfer instruction is given to the bank by HUECK on the final day of the period allowed for payment. Payment methods include bank transfer, check or bill of exchange. Supplier shall be liable for exchange rate and currency fluctuations as well as charges for payment transactions.
- 11.3 Payment of an invoice by HUECK shall not be construed as an acknowledgement of proper performance by Supplier and waiver of any potential claims.
- 11.4 No right to receive moneys hereunder shall be assigned by Supplier without the prior written consent of HUECK. Supplier's rights of retention are excluded.
- 11.5 HUECK may offset against any payment hereunder any amount owed to HUECK by Supplier. Supplier shall have no right of setoff.
- 11.6 In the event of late payment by HUECK, the interest rate is capped at 3 % (three percent) above the base rate, even if the proven damage is higher.
- 11.7 In the event that HUECK disputes the accuracy of the amount invoiced, Supplier will not be entitled to cease or suspend in whole or in part delivery of the Goods and performance of Services.

12. Warranty

- 12.1 Supplier warrants that all Goods delivered and Services performed will have the features that are guaranteed and normally expected and conform to the prototypes, samples, descriptions, user instructions, data sheets, and information media, whether public or accessible to HUECK or similar media according to § 922 ABGB (Austrian General Civil Code). Supplier warrants that in the performance of the order Supplier will comply with all applicable standards, the state of the art and all statutory and regulatory requirements and standards applicable to HUECK. Supplier shall also be liable for the completeness and accuracy of information in quality certificates and inspection records. Moreover, Supplier

- warrants that the Goods delivered and Services performed will conform to the latest standards of science and technology in terms of workmanship, design, fitness for their particular purpose and production technology, and that only first-class, high-quality material suitable for the purpose intended will be used.
- 122 Supplier guarantees that it will transfer unrestricted and unencumbered ownership in the products delivered and will be liable and hold HUECK harmless in this respect. Moreover, Supplier will be liable and hold HUECK harmless from any intellectual property disputes arising out of Austrian and foreign patent rights, copyrights, trademark and pattern and design rights etc., whether fault-based or not, and warrants unrestricted right to use the delivered product. HUECK shall have the right to obtain, at Supplier's expense, any permits required for use of the products.
- 123 Supplier shall on its own initiative include storage and operating instructions in the shipment and point out any specific measures that may be necessary in handling the delivered products.
- 124 The warranty period is the period set out in § 933 Austrian Civil Code. Supplier waives its right to object to late notice of defects according to § 377 Austrian Commercial Code (UGB). In the case of engineering, consulting, software or documentation services, Supplier warrants that the information and instructions provided are accurate and complete for two years after providing the services.
- 125 The warranty period shall start from the date the Goods have been accepted without defects and/or delivered to the destination. This does not apply to partial shipments, whether such shipments were provided for in the contract or not. In the event of latent defects or defects of title, the warranty period shall start on the date the defect appeared. For products that will undergo processing or machining, the warranty period shall start on the date the product is used at that stage. Where delivered parts are removed from operation for inspection or remedy of defects, the warranty period shall be extended for the duration of the operational interruption.
- 126 Defects must be corrected promptly in any case, using the primary and secondary remedies defined by § 932 Austrian Civil Code (ABGB) and the option of engaging a third party to correct the defect at Supplier's expense. In cases of emergency or if Supplier is unable to correct the defect within the time period set by the contract, HUECK shall be entitled to arrange for substitute performance to be made at Supplier's expense without granting a respite and without prior notice to Supplier. Supplier must pay all costs of improvement, subsequent delivery or return of defective Goods and bear the associated risk. The rights to claim damages or rescind or cancel the contract remain unaffected.
- 127 Where defects appear during the warranty period, the Goods delivered and Services performed will refutably be presumed to have been defective upon delivery or performance. The burden of proving that defects were absent or only of a minor nature lies on Supplier.
- 128 Upon request, Supplier shall assign to HUECK any warranty claim that was raised against any predecessor, where defects are attributable to defective preliminary work. The warranty claims against Supplier remain unaffected.
- 129 Supplier guarantees it will provide training, maintenance, repair and overhaul services in relation to the Goods delivered and Services performed in return for a market-based remuneration and make subsequent and replacement deliveries and deliver wearing parts for 10 years from the date the contract has been fully performed by the parties.
- 13. Supplier's liability**
- 131 Supplier shall be liable for any damage – also in the event of slight negligence – caused by Supplier, also by omission, improper performance or other breach of contract. Where Supplier is at fault, Supplier shall indemnify and hold HUECK harmless from any third-party claims.
- 132 At HUECK's request Supplier shall furnish evidence of adequate third-party liability insurance to cover the scope and potential consequences of liability (also for product liability claims, including recall costs and pecuniary damage in connection with products) when accepting the order. If Supplier fails to provide evidence of such insurance, HUECK may rescind the contract in whole or in part without granting a respite.
- 14. Product liability**
- 141 Supplier shall promptly inform HUECK in an intelligible form about any potential risks arising from the delivered products and, prior to an event of damage, also about new findings and changes in production, design and instructions relating to the delivered products. When a claim is brought under the Product Liability Act, Supplier shall name the importer, manufacturer or other liable parties within one week.
- 142 With regard to the delivered products, Supplier shall fully indemnify and hold HUECK harmless from any (foreign) third-party product liability claims and costs and expenses incurred due to the use or provision of substitute performance and recalls. HUECK's other rights shall remain unaffected. The same shall apply where product defects are attributable to preliminary work carried out by previous contractors or subcontractors of Supplier.
- 15. Liability for environmental damage**
- 151 Supplier undertakes to use, within the economic and technological possibilities, environmentally friendly products and processes in its shipments, supplies and ancillary services procured from third parties.
- 152 Supplier shall be liable for any damage arising from infringements of environmental protection regulations (e.g. anti-pollution laws, waste disposal laws, etc.) in connection with the Goods delivered and Services performed. Supplier shall indemnify and hold HUECK harmless from any third-party claims on first written demand. Supplier shall take responsibility for any damage and operational failure suffered by HUECK.
- 16. Quality management**
- 161 In terms of quality and safety, the goods to be delivered and the services to be performed shall conform to the applicable regulations, recognized professional rules and the state of the art of science and technology. Supplier shall set up an adequate quality management system. HUECK may at any time enter the premises to inspect the quality management system, performing QM system audits or process audits.
- 162 HUECK shall inform Supplier about the type and scope of error in defective delivered Goods. Supplier shall promptly provide a report specifying the causes of error with regard to the product, the process and quality management system and/or the remedial actions instituted by Supplier. The same shall apply where complaint and rework evaluations, other reports on product faults, customer complaints and relevant feedback from the market have been provided.
- 163 HUECK and third parties designated by HUECK shall have reasonable access, during normal business hours, to Supplier's and its subcontractors' production facilities to inspect the production status, the use of suitable materials and qualified personnel and the proper execution of the ordered Goods and the products. Such inspection shall not render Acceptance redundant or reduce Supplier's sole responsibility for its Goods delivered and Services performed and does not give rise to the defense of contributory fault of HUECK.
- 164 At HUECK's request HUECK shall be given access to all documents relating to the ordered product, e.g. construction plans and calculations. HUECK undertakes to treat such material as confidential.
- 165 Supplier undertakes to use only qualified personnel who hold valid residence and work permits for installation services rendered to HUECK and takes full responsibility for compliance with the applicable safety regulations. HUECK may at any time reject personnel who does not meet the requirements. Any cost incurred by HUECK therefrom shall be invoiced to Supplier. Supplier undertakes to pay the employed personnel in accordance with the labor regulations and to duly calculate, withhold and transfer all taxes, fees, dues and other payments. Supplier shall fully indemnify and hold HUECK harmless in this respect.
- 166 Supplier agrees to the processing of personal data for processing the order and the contract and shall obtain the consent of its employees and subcontractors for such data processing.
- 17. Free issue materials and information provided by HUECK**
- 171 Where HUECK, for the performance of the contract, agrees to issue materials and provide information at no charge, such materials and information shall be used solely for the delivery of Goods and performance of Services as specified in a Purchase Order. Supplier shall promptly return to HUECK any material and information that is no longer used and destroy such material provably. Free issue materials and information and related rights shall remain the property of HUECK.
- 172 If HUECK fails to provide such materials and information in time, Supplier shall notify HUECK in writing of potential delivery delays. Supplier will not be entitled to a raise in payment because of a delay that is attributable to HUECK. Claiming damages for late delivery due to slight negligence is excluded.
- 18. Engineering aids**
- 181 HUECK-supplied conceptual models, mock-ups, plans, templates, drawings, information and other documents for the performance of the contract (hereinafter "**engineering aids**") shall remain the property of HUECK. The engineering aids as well as any items manufactured on the basis of engineering aids shall be used solely for the performance of the contract and shall not be made available to third parties or exploited in any other way (e.g. through applications for industrial property or patent rights, etc.) without the written consent of HUECK. Engineering aids produced at HUECK's expense shall pass into the ownership of HUECK on the date of payment.
- 182 The engineering aids shall be properly marked as HUECK's property and secured against unauthorized access or use. Upon delivery and/or cancellation of the Purchase Order the engineering aids shall be promptly returned at no charge or destroyed with the consent of HUECK. In the event of a breach of contract or manufacturing problems, HUECK may ask Supplier to return the engineering aids. This shall not affect any other rights HUECK may have against Supplier. Any right of retention on the part of Supplier is excluded.
- 183 Supplier shall on its own initiative provide HUECK with all evidence and documents that are required to evidence ownership of the engineering aids to third parties. In the case of insolvency, Supplier shall promptly notify HUECK and take all necessary and useful measures to assist HUECK in asserting its rights to separate satisfaction.
- 19. Confidentiality**
- 191 Supplier shall treat all of the information and documents provided by HUECK (or by third parties acting on HUECK's behalf) or relating to the performance of the contract as strictly confidential and use them solely for the performance of the contract. Any disclosure or other use (e.g. application for industrial property or patent rights, etc.) is excluded. Where a disclosure to third parties is necessary and inevitable for the performance of the contract, Supplier shall impose the confidentiality obligation on such third parties before making the disclosure. Supplier shall be liable and hold HUECK harmless with respect to any breach of this confidentiality obligation (also by persons employed by Supplier).
- 192 No details of the existence, the terms and the progress of the contract and its performance shall be disclosed without the express written consent of HUECK.
- 193 Supplier shall not include HUECK in its reference list (particularly on its website or in any advertising material) without the express written consent of HUECK. Supplier shall not have the right to use protected trademarks and logos of HUECK or its affiliates.
- 194 In all other respects, the statutory confidentiality and secrecy obligations shall apply.
- 20. Termination**
- Without prejudice to its other rights HUECK may terminate the contract with immediate effect if Supplier seriously defaults in the performance of any of its obligations under the contract or if insolvency proceedings against Supplier have been instituted or if circumstances arise that obviously render the continued performance of the contract impossible. In the case of justified termination HUECK may either keep the Goods provided and pay the amounts due or return, at Supplier's expense, the Goods provided. Supplier shall reimburse HUECK for any loss and disadvantage suffered as a result of premature termination of the contract.
- 21. Assignment of contractual rights and third-party involvement**
- 211 Supplier shall not assign any of its rights or obligations under the contract to a third party without the written consent of HUECK. HUECK may, at its option, engage third parties for the performance of its obligations under the contract or assign any of its rights and obligations under the contract in whole or in part to third parties. Supplier agrees to and will be notified of such transfer of rights.
- 212 By mutual agreement, HUECK also acts as representative of HUECK FOLIEN Vertrieb & Service GmbH with its registered office at D-92637 Weiden. The legal relationship and all matters of representation between HUECK, the represented company and Supplier shall be submitted to and governed by the jurisdiction and laws set forth in the clauses 23.2 and 23.3.
- 22. Miscellaneous**
- 221 Written notices shall be deemed given when delivered to the address the BP last notified to HUECK. An email shall be deemed delivered when it is retrievable by Supplier.
- 222 Should any individual provision of the contract or these TCP be or become unenforceable, invalid and/or void during the term of validity of the contract or these TCP, the validity of the remaining provisions will in no way be affected. In such case the unenforceable, invalid and/or void provision shall be replaced by a legally effective and valid provision coming as close as possible to the economic purpose of the original provision to the extent permitted by applicable law.
- 223 Unless otherwise expressly provided, the commercial terms used herein shall be interpreted in accordance with the INCOTERMS of the International Chamber of Commerce in Paris as amended from time to time. In the event of discrepancy or conflict between a German and a foreign-language version of these TCP, the normative content of the German version shall be exclusively applicable. The German version shall be the sole basis for interpretation for the legal relationships of the contracting parties.
- 23. Place of performance, governing law and place of jurisdiction**
- 231 The place of performance is A-4342 Baumgartenberg, even if Supplier's Goods are delivered to and Services are performed at a different specified destination.
- 232 These TCP shall be governed by and interpreted in accordance with the laws of Austria, giving no effect to the conflict of laws rules of international private law (e.g. IPRG (Federal Act on Private International Law), Rome I Regulation) and the UN Convention on Contracts for the International Sale of Goods.
- 233 Any dispute arising out of or in connection with this business relationship shall be finally settled under the Rules of Arbitration of the Vienna International Arbitral Center of the Austrian Federal Economic Chamber ("Vienna Rules") by three arbitrators appointed in accordance with the said Rules. The place of arbitration is Vienna. The language to be used in arbitral proceedings is German. HUECK may however invoke the court that has subject-matter and local jurisdiction for the registered office of HUECK to settle any dispute arising out of the contract with the BP.