

Terms and Conditions of Purchase of HUMMEL AG

Sec. 1 General and scope of application

1. Our Terms and Conditions of Purchase apply exclusively; we do not recognise conflicting or deviating terms and conditions of the supplier unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Purchase also apply if we accept the delivery by the supplier unconditionally in knowledge of terms and conditions of the supplier that conflict with or deviate from our Terms and Conditions of Purchase. This does not apply to individual agreements made on an individual basis.
2. All agreements between us and the supplier must be made in writing. The written form provision also applies expressly to ancillary agreements. This also applies to waivers of the written-form provision.
3. The Terms and Conditions of Purchase only apply to contractors within the meaning of Sec. 14 German Civil Code (BGB), legal entities under public law or special funds under public law within the meaning of Sec. 310 (1) German Civil Code (BGB).
4. These Terms and Conditions also apply to all future transactions relating to this current business relationships, unless otherwise expressly agreed.

Sec. 2 Offers, Acceptance

1. We retain title and copyright to drawings, drafts, models, matrices, samples, etc., that we have provided to the supplier for the purpose of submitting a proposal or for carrying out an order. Without our written consent, the supplier expressly undertakes to not make these available to third parties for examination, use or otherwise, nor to deliver the goods produced in this way to third parties in a raw condition, or to deliver semi-finished or finished goods without our written consent. They are to be returned to us without request on completion of the order.
2. Proposals and cost estimates submitted by the supplier are made free of charge and do not form any obligation for us, but require our explicit acceptance in writing. In their proposal, the supplier must adhere strictly to the specifications and wording of our request, expressly point out possible deviations from our request and propose alternatives to us that are technically or economically more favourable compared to the request. The obligation to give notice does not apply to deviating delivery dates. If the supplier does deviate from the specifications and/or the exact wording of our proposal in their order confirmation, they must point this out explicitly. Sec. 150 (2) German Civil Code (BGB) applies. A contract is only valid if we expressly agree to these deviations in writing. Unconditional acceptance of the delivery that deviates from our proposal does not constitute consent. Sec. 8 remains unaffected.
3. All documents submitted by the supplier must indicate the order number and the order/commissioning data as well as the material designation and number which we have assigned or notified the supplier of.
4. The supplier is to provide us with safety data sheets and documents of all kinds which we need to use, assemble, process, store, operate, service, inspect, maintain and repair the delivery item, in particular owing to statutory provisions, promptly and, at the latest, together with the order confirmation, free of charge.
5. We are entitled to cancel the order free of charge if the order confirmation is not received within two weeks of receiving the order.

Sec. 3 Assignments, offsetting

1. All payments are to be made to the supplier only. The assignment of payments to third parties is excluded. Sec. 354a German Commercial Code (HGB) remains unaffected.
2. The supplier is not entitled to pass on the order or essential parts of the order to third parties without our prior written consent.
3. The supplier is only allowed to offset claims which are uncontested or legally binding.

Sec. 4 Prices

1. The prices listed are fixed prices and include VAT. These apply freely to the place of receipt we designate. We must explicitly accept price changes in writing. No claims can be made against us for obvious mistakes, typing errors and miscalculations in our orders.
2. Packaging costs will only be paid for separately if this is expressly agreed upon in writing. These are then to be credited to us along with the carriage-paid return of the packaging.

Sec. 5 Delivery terms, delivery times, packaging, risk transfer

1. Agreed dates and deadlines are binding. Premature deliveries that are made earlier than 5 working days before the agreed dates are only permitted with our consent. Compliance with the delivery date or deadline shall be determined by the receipt of the good at the place of receipt we designate. If delivery "free ex-works" (Not 2010) has not been agreed, the supplier shall supply the goods in good time, taking into account the time to be agreed with the carrier for loading and dispatch.
2. All consignments must be accompanied by a delivery note in duplicate indicating our complete order number. The delivery note is to be attached to the consignment note in the case of open consignments.
3. The supplier is obliged to notify us immediately in writing if circumstances arise or become apparent to them that indicate that the agreed delivery time cannot be met.
4. If the supplier exceeds the agreed delivery date culpably, they shall pay us a contractual penalty of 1% of the net value of the respective order per week commenced after exceeding the deadline, but no more than 10% of the net value of the goods if the supplier proves lesser or the absence of damage. The contractual penalty will be credited against a claim for damages owing to default. The right to assert any further damages remains unaffected by this. We continue to be entitled to make legal claims in particular.
5. The supplier is obliged to comply with the relevant statutory provisions with regard to the packaging, and in particular, the Packaging Ordinance in the respectively valid version. The supplier is obliged to package the goods at their own expense in such a way that damage during transport is avoided. Dangerous goods are to be packed, labelled and dispatched in accordance with the requirements of the legal provisions applicable at the time of delivery.
6. Unless otherwise agreed, the supplier must ensure that they select the solution that most favours us with regard to the mode of transport and delivery time. Notification of larger shipments of 5 or more pallets is to be provided in good time.
7. Shipment takes place at the risk of the supplier. The risk of any deterioration, including accidental loss, therefore remains the responsibility of the supplier until delivery is made to the shipping address or point of use we specify.

Sec. 6 Defects, Warranty

1. The supplier is to transfer the goods free of material and legal defects. In the case of goods, the supplier specifically warrants that they are free from defects in material and workmanship that reduce their value or suitability for the contractually required use or customary use. The goods must comply with the agreed requirements and all applicable laws, regulations, DIN, EN and ISO standards and the recognised rules of technology for both us and the supplier.
2. If the performance provided does not fulfil one or all of the aforementioned requirements, we are entitled to make statutory warranty claims without restriction. The cost for rectifying defects, including any ancillary costs, specifically transport, travel, labour, installation, removal and material costs, shall be borne by the supplier. This also applies to the costs for our customers, insofar as we have to bear these costs vis-à-vis our customers.
3. In the event of exigent circumstances, we are entitled to rectify the defect at the expense of the supplier after notifying the supplier.
4. The limitation period for our claims and rights owing to defects in deliveries and performance – for whatever legal reason – is 3 years from the transfer of risk. In the case of supplementary performance, the limitation period restarts on completion of the supplementary performance measure. Longer statutory limitation periods remain unaffected, as do more extensive statutory provisions concerning the suspension of proceedings, inhibition and restarting deadlines.
5. The supplier remains liable according to the legal provisions without prejudice to these provisions here.

Sec. 7 Liability

1. The supplier is liable for intent and negligence as well as for the fault of his subcontractors and vicarious agents as well as his own fault.
2. Insofar as the supplier is responsible for loss or damage caused by the product, he is obliged to indemnify us on demand in respect of claims for damages by third parties. In this case, the supplier is also obliged to pay any expenses in acc. with Sec. 683, 670 German Civil Code (BGB) arising from or in connection with a recall we conduct. Insofar as possible and reasonable, we shall inform the supplier of the content and extent of the recall measures to be carried out and shall provide with him the opportunity to comment. The right to assert any further damages remains unaffected by this. We continue to be entitled to make legal claims in particular.
3. The supplier undertakes to maintain liability insurance for personal injury, property damage and pecuniary loss, which also includes damages that may arise from the provision of the services, including product liability. The cover provided must amount to at least to 5.0 million Euros per insured event. If we are entitled to make further claims for damages, these remain unaffected. The supplier will maintain this insurance cover at least until the end of all relationships arising from this contract.

Sec. 8 Investigation of defects

1. We are obliged to inspect the goods for any deviations in quality or quantity within a reasonable period of time; Complaints according to Sec. 377 GCC (HGB) are deemed timely if sent within 10 days of discovery of a defect.
2. If no such notice is provided within this deadline, the performance in question shall be deemed to have been approved, unless defects are discovered later on which were not identifiable at the time of receipt.
3. Defects that could not be identified during the incoming inspection will be reported to the supplier as soon as they are discovered during the ordinary course of business. Notification of a defect discovered later shall be deemed timely if made within 10 working days of the date of discovery. Payments do not constitute a waiver of claims for defects. The date the notification is sent is decisive for the timely transfer of the notification of defects.

Sec. 9 Force Majeure

War, civil war, export restrictions and/or trade restrictions owing to a change in political conditions as well as strikes, lockouts, interruptions to business, operational restrictions and similar events, which make fulfilment impossible or unreasonable for us, are regarded as force majeure and exempt us from the obligation to accept in a timely manner for the duration of their existence. After we have informed them, the supplier is obliged to adapt his obligations in good faith to the changed contractual conditions. Insofar as the instance of force majeure is not insignificant, i.e. it lasts for at least 2 weeks without interruption, we are entitled to withdraw from the contract if the interruption results in a considerable reduction in our requirements. This is the case in particular when our requirements are reduced by more than 30%.

Sec. 10 Invoicing

The invoice is to be sent to us immediately after the goods are shipped. It has to contain our full order number, order date, delivery note number, number of items, box crates or barrels and quantity of the calculated goods in each grade, listed separately. The invoice is only allowed to make reference to one delivery note.

Sec. 11 Payment

Payment is to be made within 14 days with a 3% cash discount, within 30 days with a 2% cash discount or within 60 days net. The requirement for the beginning of the payment period is delivery of the goods and receipt of a duly raised invoice. We shall only be in default if we fail to make payment following a legitimate reminder from the supplier.

Sec. 12 Place of fulfilment, choice of law and jurisdiction

1. The place of performance is the place of receipt we designate.
2. German law applies under exclusion of the referral rules for international private law and the United Nations Convention on Contracts for the International Sale of Goods.
3. If the purchaser is a merchant, a legal entity under public law or a special fund under public law, the action must be brought before the competent court for our domicile located in Denzlingen for all disputes arising directly or indirectly from the contractual relationship. However, we are entitled to assert our claims at any other permissible place of jurisdiction.

Sec. 13 Terms and Conditions of Purchase for Tools

Our tools are subject to the following "Terms and Conditions of Purchase for Tools" when we order parts for which the supplier uses tools for which we pay:

1. The following Terms and Conditions apply if the supplier uses tools to produce parts which we pay the agreed manufacturing costs for in our current or future orders for the supply of parts. Tools in the sense of these Terms and Conditions are tools of all kinds, such as punching and cutting tools, injection moulds, casting moulds, compression moulds, moulds, models, dies and similar.
2. The tools become our property when the supplier acquires or manufactures them. The transfer will be replaced by the supplier retaining the tools on our behalf free of charge. Sec. 690 German Civil Code (BGB) does not apply here. Ownership also gives us the right to outsource the tools to third parties for manufacturing parts on our behalf, or for repairing, refurbishing or remodelling the tools for our own use or for use by third parties. However, we are entitled to deduct the tools if the parts are not delivered on time, both duly or at market prices.
3. The supplier is obliged to maintain the tools at its own expense, and repair them and, if necessary, refurbish them during the agreed service life (technical period of use). This also applies accordingly to the refurbished tools.
4. The supplier is not allowed to transfer the tools to third parties or use them for their own purposes or the purposes of third parties without our written consent.
5. The "Terms and Conditions of Purchase of HUMMEL AG" stated above also apply in addition.