

HEW-KABEL GmbH

- General Terms and Conditions of Purchase -

Version: May 2022

1. Scope of Application, Written Form

- 1.1** For the current business relationship and for all future business of the same kind with HEW-KABEL GmbH ("**HEW**"), the following Terms and Conditions of purchase shall apply exclusively without HEW having to refer to these Terms and Conditions again in each individual case.
- 1.2** The Terms and Conditions shall only apply to entrepreneurs within the meaning of Sec. 14 of the German Civil Code [Bürgerliches Gesetzbuch – "**BGB**"], legal entities under public law and special funds under public law (reference hereinafter by "**You, Your**" etc.).
- 1.3** Should You use general terms and conditions of business which are contrary to, deviate from or supplement these Terms and Conditions or statutory provisions, their applicability vis-à-vis HEW is excluded, even if HEW does not expressly object to the terms and conditions, HEW accepts deliveries without reservation, makes payments to You without reservation or You indicate that You only wish to deliver on Your terms and conditions, unless HEW has expressly agreed to their validity in writing. You acknowledge the sole binding nature of these terms and conditions of purchase at the latest upon delivery of the ordered goods.
- 1.4** Insofar as these Terms and Conditions refer to a written form requirement, a notification by e-mail, fax or other text form shall be sufficient to comply with the written form requirement. A handwritten signature or a qualified electronic signature is not required.

2 Conclusion of Contract

- 2.1** HEW's orders shall only be binding if they have been issued in writing. Oral or telephone declarations made by HEW before or at the conclusion of the contract are not binding and require written confirmation to be effective and valid. This written form requirement

does not affect any oral agreements concluded after the conclusion of the contract. However, HEW remains entitled to constitute the conclusion of a contract by accepting deliveries without reservation or by making payments.

- 2.2** Insofar as Your order confirmation deviates in content from HEW's order, You shall specifically emphasize this in the order confirmation; such deviations only become part of the contract insofar as HEW accepts them in writing.
- 2.3** If You do not accept an order from HEW within a period of one (1) week after receipt of the order by means of a written order confirmation, HEW is entitled to cancel the order. A contract is also concluded if You do not object in writing within two (2) weeks after receipt of the order.
- 2.4** The preparation and elaboration of offers, technical projects, preliminary studies etc. by You is in any case free of charge for HEW and does not oblige HEW to place an order. HEW's silence does not constitute any trust in formation of contract.
- 2.5** HEW reserves all property rights, copyrights and other industrial property rights (patents, utility models, trademarks, license rights etc.) to illustrations, drawings, calculations, samples, models and other documents; they may not be disclosed or made accessible to third parties without HEW's prior written consent. They are to be used exclusively for the purpose specified in the order and are to be returned to HEW on request after completion of the order.
- 2.6** The content of the services to be provided by You results from the respective individual order. Documents, reports, ideas, drafts, models, samples, and all other results arising during the performance of the service are part of the services. They shall become part of the contract unless You expressly stipulate otherwise in the order confirmation corresponding to the order; Section 2.2 shall apply accordingly.

3. Prices / Terms of Payment

- 3.1** Unless otherwise expressly agreed, the price for the delivery stated in the order is a fixed price and applies DDP (INCOTERMS 2020) to the destination stated in the order. The fixed price includes packaging, shipping, and insurance costs. Additional costs for special shipping methods (e.g. express delivery) will only be borne by HEW if this shipping method has been expressly requested by HEW in advance.

- 3.2** Unless otherwise expressly agreed, all payment obligations of HEW shall be deemed to be agreed in EURO. HEW will therefore fulfil payment obligations in EURO in the absence of any express agreement to the contrary. Any bank charges incurred for payments to be made abroad shall be borne by You.
- 3.3** Your invoices must be issued in duplicate and must contain the full HEW order number, the name of the customer and the date of the order. Invoices which do not comply with these requirements may be returned by HEW. You shall bear the costs caused by the omission of this data unless You are not culpable for the omission.
- 3.4** Payment of the invoice amounts shall be made within the periods specified in the order. If no periods are specified there, payment shall be made within 14 days less 3 % discount or within 30 days net. Payment periods begin on the day of receipt of a verifiable invoice by HEW, but not before receipt of the goods by HEW.
- 3.5** HEW shall have unrestricted rights of set-off and retention to the extent permitted by law.
- 3.6** An assignment of Your claims from this contract is only permitted with HEW's prior express written consent. This does not apply insofar as monetary claims are concerned.

4 Delivery / Transfer of Risk / Shipping / Packaging

- 4.1** Your deliveries shall be performed DDP (INCOTERMS 2020) to the destination specified in the order, unless expressly agreed otherwise.
- 4.2** A separately packaged delivery must be made for each order. HEW can determine the packaging and shipping methods. Otherwise, You are obliged to choose the customary type of packaging and shipping. The packaging must be appropriate for the means of transport used and the delivery item to be transported and must avoid any kind of damage which could affect the delivery item during transport and handling.
- 4.3** Unless expressly agreed otherwise, the costs of shipment shall be borne by You, as shall the costs of transport insurance. In the event of any invoicing of packaging material which is subject to return at Your request, a full credit note shall be issued; in this case, the return shall be carriage forward at Your expense.

- 4.4** The place of performance is the respective shipping address stated in the order. Therefore, the risk of accidental loss or deterioration of the goods is only transferred to HEW upon delivery to the shipping address.
- 4.5** Each delivery must be accompanied by delivery papers with order date and order number, name of the orderer, type, nature and quantity of the goods. The delivery papers must be given to the carrier or parcel service or attached to the delivery in a clearly visible and easily accessible manner. You shall bear the costs caused by the missing provision of this information, unless You are not culpable for the missing information. In addition, the payment deadline for HEW will be extended by the period of the delay. Deliveries must be made during HEW's normal business hours.
- 4.6** Partial deliveries are only permitted with HEW's express prior written consent. If partial deliveries or partial services are agreed, the note "Partial delivery or partial service" must be indicated on the delivery note and the invoice. In the case of unauthorized partial deliveries, HEW's payment obligation shall initially lapse in accordance with the partial quantity delivered [*Einrede des nicht erfüllten Vertrages*].
- 4.7** Agreed delivery dates and periods are binding. They are only complied with if the goods have arrived at the shipping address stated in the order on the agreed delivery date. If the order does not contain a delivery date, the delivery period is two (2) weeks, calculated from the date of HEW's order, unless otherwise agreed. After conclusion of the contract, delivery periods can only be extended by You and delivery dates can only be postponed if HEW expressly agrees to an extension or postponement.
- 4.8** You must inform HEW in writing without delay, stating the reasons and the probable duration, if circumstances become apparent which indicate that You will not be able to meet the agreed delivery date. Your obligation to meet the agreed delivery dates remains unaffected by this.
- 4.9** If the agreed delivery date is not met, HEW is entitled to the statutory rights without restriction. If You are in default of delivery, HEW is entitled - without prejudice to other rights due to default - to claim a contractual penalty of 0.5 % of the price agreed with You (excl. VAT) for each commenced week of default, up to a maximum of 5 % of this price (excl. VAT), unless You are not culpable for the circumstances leading to the default of delivery. HEW expressly reserves the right to assert any further claims for

damages due to the delay in delivery. However, contractual penalties already paid are to be offset against claims for damages due to the delay in delivery. HEW can also claim the contractual penalty if a reservation is not made when the delivery is accepted, but beyond the final payment for the delivery only if HEW reserves the right to do so when making the final payment.

5. Transfer of Title

5.1 Title of the goods delivered by You is transferred to HEW at the latest when Your purchase price claim has been paid in full. Even in the case of an ordinary retention of title, HEW is permitted to process and sell the goods in the ordinary course of business. Any extended or expanded retention of title is excluded.

5.2 If You retain title in breach of contract, HEW retains the right to unconditional transfer of title, even if HEW accepts the delivery.

6 Warranty / Liability / Obligations to Examine and Notice of Defects

6.1 You warrant that Your deliveries and services comply in every respect with the subjective, objective and assembly requirements, in particular the contractually agreed features and the recognized rules of technology and the relevant safety regulations (e.g. equipment safety regulations, product liability regulations, accident prevention regulations, regulations on chemicals and on hazardous substances), in particular also foreign ones or those of the EU, insofar as these could be of recognizable importance to You according to the content of the contract. You shall perform Your services with the utmost care, in particular also in compliance with DIN and ISO certification regulations, insofar as they relate to Your service or parts thereof, and taking into account Your own knowledge and experience or that gained during the performance of the service. All descriptions of features, in particular the type, quantity, quality, functionality, compatibility and intercompatibility, shall be deemed to be the agreed features.

6.2 You warrant compliance with specifications, drawings, material compositions etc. given or agreed by HEW and vouch for this compliance irrespective of culpability.

- 6.3** HEW will only accept as contractual fulfilment those deliveries which, in terms of type, quality and execution, correspond to the delivery specifications, samples, drawings and instructions provided by HEW for the order.
- 6.4** Only the delivery quantity actually determined and proven by HEW is decisive. A confirmation of receipt on Your delivery documents does not imply any acknowledgement on the part of HEW with regard to the delivery quantity and/or quality of the delivered goods.
- 6.5** If outturn and release samples (initial samples) or specimens have been submitted by You on or before conclusion of the delivery contract, a series delivery in accordance with HEW's QM-manual may only begin after HEW has approved the sample in writing. In this case You are obliged to deliver all deliveries and partial deliveries in the same quality and composition. You expressly warrant that all deliveries from You have the properties of the sample.
- 6.6** HEW's legal obligation to inspect and give notice of defects (Sec. 377 German Commercial Code – *Handelsgesetzbuch* ["HGB"]) is limited to inspecting the deliveries with regard to quantity, type, externally visible defects (e.g. transport damage) and other obvious defects immediately after delivery. The notification of obvious defects is in any case timely if the notification is sent within five (5) days after receipt of the goods by HEW and is subsequently received by You. The notification of hidden defects is in any case timely if the notification is sent by HEW within ten (10) days after the discovery of the hidden defects and is subsequently received by You. HEW does not have any obligations to inspect and give notice of defects that go beyond the above.
- 6.7** Insofar as goods are delivered on the basis of quality assurance agreements concluded with You, the inspection and complaint obligations regulated therein shall apply with priority.
- 6.8** The above provisions shall apply mutatis mutandis to excess or short deliveries as well as the delivery of other but approvable goods within the meaning of Sec. 377 HGB. A tolerance of +/- 5% is permissible for goods determined in quantity.

- 6.9** HEW is entitled to check the quality of Your products and processes within the framework of product and system audits. Employees of HEW's customers may also participate in these audits if appropriate.
- 6.10** In urgent cases, such as e.g. the endangerment of operational safety or the prevention of disproportionately high damage, HEW is entitled, after notifying You, to rectify the defect itself or have it rectified by third parties and HEW is entitled to the statutory rights, in particular the right to demand compensation from You.
- 6.11** The limitation period for claims by HEW due to defects is three (3) years from the transfer of risk or, insofar as You are obliged to assemble the goods or materials supplied by You at our premises, from the acceptance of the work. For building materials and components the limitation period is five (5) years.
- 6.12** The limitation period for HEW's claims due to defects is suspended for the duration of the measures to remedy the defects. For goods delivered as replacements, an independent, new limitation period begins to run in accordance with Section **6.11** when they are delivered to HEW.
- 6.13** Notwithstanding the above provisions, HEW is entitled to all claims for damages to the extent provided by law.

7. Product Liability / Documentation

- 7.1** Insofar as damage is caused by the product/goods supplied by You and You are liable for the damage caused by the defect, You shall indemnify HEW against any claims for damages by third parties upon first request.
- 7.2** You are obliged to keep careful documentation on the materials and production processes used by You which is comprehensible in terms of technology and content, to keep this documentation for at least ten (10) years and to make it available to HEW in the event of a claim being made on the basis of manufacturer's liability. Unless expressly agreed otherwise in writing, the documentation will be kept in German.

8. Property Rights

- 8.1** You warrant that no industrial property rights, copyrights or applications for industrial property rights of third parties (hereinafter referred to as “**Property Rights**”) are infringed when the goods are used in accordance with the contract in the Federal Republic of Germany and in the countries to which HEW sends the goods as intended.
- 8.2** If deliveries infringe the Property Rights of third parties, You must, at the discretion of HEW and at Your own expense, immediately either obtain a right of use in favor of HEW which enables HEW to use the respective delivery to the contractually agreed extent without infringing the Property Rights, modify Your delivery in such a way that the Property Right is not infringed or exchange Your delivery for a new, equivalent delivery. A delivery is only deemed to be equivalent if it does not or only insignificantly restrict the agreed usability of the deliveries by HEW.
- 8.3** You will indemnify HEW on written request against all claims of third parties arising from the infringement of such Property Rights as well as all expenses necessarily arising in connection with the claims of third parties. Likewise, You will provide HEW with compensation for costs incurred by HEW due to the defense against claims by third parties in relation to the deliveries to the extent necessary. If HEW is obliged to carry out a product recall due to a defective delivery by You, You must reimburse HEW for the costs of the product recall insofar as You are responsible for the defective delivery. HEW will inform You about the content and scope of the recall measures - insofar as this is possible and reasonable. HEW’s further statutory rights remain unaffected.
- 8.4** Sections **8.1** to **8.3** do not apply if You have manufactured the goods according to drawings, models or other descriptions or information equivalent to these which were handed over to You by HEW and You were unable to recognize that the products manufactured by You would infringe Property Rights.
- 8.5** The contracting parties undertake to inform each other immediately after becoming aware of infringement risks and alleged infringements of Property Rights in order to counteract corresponding liability claims.

9. Supplies / Ownership of Tools

- 9.1** Goods, tools, devices, measuring equipment, test specifications and similar documents ("**Supplies**") made available by HEW remain the property of HEW.
- 9.2** You assume the risks of accidental destruction, loss, deterioration, or damage of the Supplies. If Supplies are sent directly to You by a third party on behalf of HEW, You must carry out the quantity-based incoming inspection and quality control. Any complaints must be reported immediately to the third party and to HEW. The Supplies may only be used for their intended purpose and must be stored, labelled, and kept separately free of charge.
- 9.3** The Supplies must be adequately insured against fire, water, theft, breakage and other damage at Your expense, and You must provide evidence of this at HEW's request. You already hereby authorize HEW to pursue any and all claims from these insurances in relation to HEW's property against the insurer.
- 9.4** If property belonging to HEW is seized, stolen or damaged or if HEW's property is interfered with in any other way, HEW must be notified of this in writing without delay.
- 9.5** If tools, devices or measuring equipment are produced in whole or in part for our account or if goods, materials or semi-finished parts provided by us are processed by You, the production/processing is carried out on behalf of HEW as manufacturer within the meaning of Sec. 950 BGB with the consequence that HEW acquires (co-)ownership of the newly produced item without obligating HEW. The extent of this co-ownership results from the ratio of the value of the materials provided to the value of the remaining goods. The handover is replaced by the fact that You are entitled to possession and safekeeping of the item for HEW on loan and free of charge for the duration of the business relationship. If HEW's ownership expires as a result of combining or mixing, You hereby transfer to HEW the ownership rights to the new item to which You are entitled to the extent of the value of the materials provided and You will keep these in safe custody for HEW free of charge. The co-ownership rights are deemed to be provisions in accordance with clause 9.1.

10. Liability of HEW

- 10.1** HEW shall not be liable to You for damages and reimbursement of expenses, irrespective of the legal grounds (contract, tort, breach of duties arising from the contractual obligation, indemnification, etc.).
- 10.2** The above exclusion of liability shall not apply in the case of liability under the Product Liability Act [*Produkthaftungsgesetz*], in cases of intent or gross negligence, in case of culpable injury to life, limb or health, in case of claims for reimbursement of expenses pursuant to Sec. 445a (1) BGB and in case of breach of material contractual obligations, i.e. obligations the fulfilment of which is a prerequisite for the proper performance of the contract and compliance with which the supplier regularly relies on and may rely on.
- 10.3** However, liability for breach of material contractual obligations is limited to compensation for the foreseeable damage typical for the contract, unless HEW is liable due to intent or gross negligence, injury to life, limb or health or under the Product Liability Act.
- 10.4** Insofar as HEW's liability is excluded or limited in accordance with the above clauses, this also applies to the corresponding personal liability of HEW's vicarious agents, representatives or employees.

11. Force Majeure

- 11.1** Force majeure shall only release the affected party from its contractual obligations insofar and for as long as it is prevented from fulfilling its contractual obligations. Each party shall bear all expenses for which it is responsible, and which arise from the event of force majeure. The party affected by force majeure shall immediately notify the other party in writing of the situation and provide all necessary evidence. The party claiming force majeure must use its best endeavors to mitigate as far as possible any negative effects arising from this situation.
- 11.2** If the event or circumstance giving rise to the force majeure continues for more than fifteen (15) consecutive days, the party to whom force majeure has been invoked may withdraw from the contract.

11. Data Protection

11.1 Your data and the delivered items will be stored for the duration of the business relationship and subsequently for the duration of retention periods under commercial and/or tax law.

11.2 Insofar as You obtain access to personal data in connection with and for the purposes of the contract concluded with HEW, You will comply with the applicable data protection regulations (in particular General Data Protection Regulation [GDPR] and *Bundesdatenschutzgesetz* [BDSG]). You will ensure that in this respect only persons have access to personal data whose access is necessary for this purpose and who have been obliged to maintain confidentiality, which You will prove to us on request. In the event that You process personal data on behalf of HEW, at least one contract on commissioned processing (Art. 28 (3) GDPR) must be concluded before You access personal data for the first time. You warrant that any processing of personal data will take place exclusively in the territory of the European Economic Area (EEA), unless otherwise expressly agreed in writing.

12. Final Provisions

12.1 You are not entitled to have services carried out by subcontractors without HEW's prior written consent. Subcontractors do not include transport persons.

12.2 You shall keep HEW's records and all information obtained by HEW concerning HEW's business or operations ("**Information**") confidential. The confidentiality obligation shall continue to apply for a period of five (5) years after termination or settlement of the contract. It does not apply insofar as Information (i) was already known to You at the time of the conclusion of the contract or becomes known to You later without this being based on a breach of a confidentiality obligation or (ii) was already known to the public at the time of the conclusion of the contract or becomes known to the public later.

12.3 The invalidity of individual provisions of these Terms and Conditions of Purchase shall not affect the validity of the remaining provisions.

12.4 Amendments and supplements to the contract and/or these Terms and Conditions of Purchase as well as collateral agreements must be made in writing in order to be effective.

12.5 All disputes arising out of or in connection with these Terms and Conditions of Purchase or contracts concluded on the basis of these Terms and Conditions of Purchase shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The arbitration tribunal shall be comprised of a sole arbitrator. The seat of the arbitration is Wipperfürth. The language of the arbitration shall be German.

12.6 The substantive law of the Federal Republic of Germany shall apply exclusively to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

HEW-KABEL GmbH