

## General Terms and Conditions

### HPP GmbH

as at 11/2014

#### General Conditions for Purchase, Works and Service Contracts

##### 1. Scope, exclusivity, defence clause

- 1.1 Our General Terms and Conditions only apply in transactions with companies as defined in Section 14 BGB.
- 1.2 The following conditions exclusively form the basis of our quotes and all agreements with us. They are considered to be accepted as a result of the placing of an order or upon acceptance of the delivery, works or services at the latest.
- 1.3 We herewith expressly and definitively reject different conditions from the customer, unless we have expressly accepted them in writing.
- 1.4 Our conditions shall also apply to all future business.

##### 2. Quote, conclusion of contract, order confirmation, side agreements, cost estimates, details, data transmission

- 2.1 Our quotes are non-binding, unless expressly agreed otherwise.
- 2.2 The order is accepted by our written order confirmation or by the actual delivery.
- 2.3. Amendments and side agreements require the written form.
- 2.4 Cost estimates without express declaration are non-binding. If a binding price is not agreed in the contract, cost savings or overruns of up to 10% are permitted without prior notification. Larger deviations shall be announced immediately.
- 2.5 The information, such as representations, drawings, dimensions and weight information, included in or attached to a brochure, catalogue, cost estimate, quote or our internet presence, is only binding if expressly labelled as such. This also applies to information about suitability for use, error tolerance or performance. Information provided by us about the delivered object, the intended use, etc. merely represents descriptions or designations and not quality guarantees in the legal sense.
- 2.6 If a declaration or intent or knowledge is sent by the customer by data communication – in particular by e-mail, including file attachments – the data received or called by us is binding.

##### 3 Protected rights: Drawings, documents, models, samples

- 3.1 Design documents, which we provide in the form of correspondence, drawings or samples, are our property and are copyright protected. They may not be forwarded to

third parties without our consent and must be returned to us at any time upon request. This also applies to data, which we have sent or provided electronically or on data carriers to the customer.

- 3.2 Drawings, models or samples developed by us as part of the order or provided by us remain or become our property.
- 3.3 The customer expressly agrees not to reproduce or forward the information, documents and objects provided to it or developed by us to third parties without our prior written consent, to make them accessible or otherwise use them for a purpose outside the order. Unlawful use shall result in claims for compensation.
- 3.4 Upon request at any time, the customer shall send back to all other documents and objects provided with a cost estimate or quote, as well as reproductions of same, at its own cost. This also applies without separate request if the order is not placed. Rights of retention of all kinds are excluded to this extent.

#### **4. Deadlines, dates, delay**

- 4.1 Deadlines or dates specified by us are only legally binding if they have been expressly agreed as binding. If an express fixed date is not agreed, late delivery shall only occur after reminder.
- 4.2 The customer can only withdraw from the contract after expiration of a reasonable period. Even after expiration of the deadline the customer is required to accept the delivery unless the declaration of withdrawal is received by us before we send the notification of readiness for despatch.
- 4.3 If we, our statutory representatives or our vicarious agents are responsible for culpable or gross negligence in respect of the delay, or if the interests of the customer have demonstrably lapsed as a result of the delay, we are liable according to the statutory provisions. Moreover, the liability for damages resulting from delays is limited to a maximum of 5 % of the net order value of the late part of the delivery or service.
- 4.4 Each period shall only start upon receipt of all documents required for performance of the order and after receipt of payment, if prepayment has been agreed.

#### **5 Cooperation of the customer, subsequent change requests, impact on price and performance time**

- 5.1 Compliance with the delivery time or performance time requires all commercial and technical matters to be clarified between the contractual partners and all the customer's duties of cooperation to be fulfilled.
- 5.2 If the customer is required to cooperate or if the customer has a material duty to cooperate in the fulfilment of the contract, we request this, stating the necessary time. The agreed delivery time or performance time shall be extended according to Section 5.4 unless we are responsible for the delay.
- 5.3 The agreed delivery time or performance time shall also be extended if and as long as the customer has not fulfilled its agreed contractual duties, duties and obligations of cooperation when the contract is concluded.  
This applies, in particular, if the customer culpably delays
  - the delivery of drawings, plans or data

- required instructions or training
- provision of materials or accessories
- provision of machinery, tools or test equipment
- provision of the required certificates or authorisations
- or the payment of an agreed prepayment or discount payment.

- 5.4 If the manufacture or delivery or our service is temporarily hindered or delayed for reasons for which the customer is responsible, the delivery or performance time shall be extended correspondingly by the demonstrable duration of the hindrance. When calculating the extension to the deadline, a reasonable start-up time shall be taken into account for the restart of the work and services. Claims by the customer for performance or claims instead of performance during the period of the hindrance are excluded.
- 5.5 As a result of subsequent change or additional requests by the customer, the delivery or performance time shall be extended correspondingly to a reasonable extent.
- 5.6 If the manufacture or delivery or our service is delayed because of this or at the request of the customer, resulting additional costs shall be billed by us and reimbursed by the customer.
- 5.7 If we have performed the procurement of parts to be provided on behalf of the customer, the delivery time or performance time shall be extended by the period necessary for the procurement, unless we are responsible for the delay to the procured delivery.
- 5.8 If there is a material deterioration in the customer's asset situation, in particular if payments are suspended or insolvency has been applied for, our obligation of further performance or delivery shall lapse.

## **6 Force majeure, hindrances and impossibility not attributable to either contractual partner**

- 6.1 If we are prevented from delivery/performance by force majeure, the delivery time or performance time shall be extended without further notice by the demonstrable duration plus a reasonable start-up time.
- 6.2 Circumstances not foreseeable when concluding the contract or for which we are not responsible, which make delivery/performance unreasonably difficult or temporarily impossible, are equivalent to force majeure. Examples of this are labour dispute, official measures, unavoidable raw material or energy shortage, significant disruption in the company as a result of destruction of the company in full or of important departments or as a result of the loss of essential production plants or significant parts of the workforce due to pandemics, also serious transport disruptions, etc. e.g. road blockades, labour disputes in the transport industry, general travel and flight bans. This shall also apply if such circumstances occur for sub-contractors.
- 6.3 The described circumstances also relieve us if they occur during a pre-existing delay.
- 6.4 We shall inform the customer of these circumstances as soon as possible. Notification can be omitted if the customer is already aware of the circumstances.
- 6.5 If these circumstances last more than 3 months, we also reserve the right to withdraw from the contract. Upon request from the customer, we shall explain whether we will

withdraw or deliver within a reasonable period determined by us. In these cases, claims for compensation by the customer are excluded.

- 6.6 Both contractual partners can withdraw from the contract without obligation to pay compensation if it is found that contractual fulfilment has become impossible as a result of these circumstances.
- 6.7 If the manufacture or delivery or our service is temporarily hindered or delayed for reasons, for which the customer is responsible, the delivery (or performance) time shall be extended correspondingly by the demonstrable duration of the hindrance. When calculating the extension to the deadline, a reasonable start-up time shall be taken into account for the restart of the work and services. Claims by the customer for performance or claims instead of performance during the period of the hindrance are excluded.

## **7. Pricing rules, price changes, supplemental orders, foreign currencies**

- 7.1 If prices have not been bindingly agreed in writing, the prices in our order confirmation shall apply, plus the statutory VAT, otherwise the prices according to our respectively valid price list shall apply.
- 7.2 Unless agreed otherwise (e.g. fixed prices), both contractual partners reserve the right to adjust the prices if there are more than four months between the price agreement and delivery or performance and commodity prices, prices of suppliers, wages, transport costs, tax rates or other cost factors have changed by more than 5% and the actual change was not foreseeable when concluding the contract.
- 7.3 External logistics costs, which become necessary at the place of performance for the correct provision of work and services (e.g. for outsourcing, delivery and return of the parts to be checked or revised of their return to the production process of the customer's client), shall be assumed by the customer or reimbursed to us at our discretion – insofar as they have been incurred by us.
- 7.4 If production difficulties arise for us, which were not foreseeable when concluding the contract and as a result of which the suitability for use, qualities or tolerances specified by the customer can only be complied with through considerable additional costs, we reserve the right to raise the price correspondingly after consultation or to withdraw from the contract unless a new price agreement can be concluded within a reasonable period.
- 7.5 This also applies in favour of the customer if there are considerably lower costs as a result of changes to the order.
- 7.6 If additional work and services are necessary due to circumstances, for which we are not responsible, or if the agreed content of the work and services has to be amended or expanded under the same circumstances, the additional costs exceeding the agreed price shall be paid according to Section 7.7. If the additional or amended work and services require additional time, Section 5.4 shall apply.
- 7.7 In all cases of Section 7.6, both contractual partners have the right to demand adjustment to the originally agreed prices. If a new price agreement is not concluded and the customer nevertheless demands performance of the work and services or delivery, we reserve the right to bill the changed remuneration offered by us in writing. Insofar as a written price quote has not been provided, the additional costs for material, components or purchased parts shall form the basis of the original contractual

calculation and the additional costs for work and services shall be charged according to the agreed hourly rate. If an hourly rate is not agreed, our general hourly rate applicable at the time of performance shall be charged.

- 7.8 Insofar as foreign currencies are defined in the quotes, the quotes shall only apply for the time of creation. If the EURO exchange rate changes, we reserve the right to adjust the amount of the quote correspondingly.

## **8. Payment conditions, power to collect, default, deterioration in assets and insolvency of the customer, rights of offset and withholding**

- 8.1 Unless agreed otherwise in writing, we grant a payment deadline of 10 days from the invoice date for the immediate demand of remuneration for net payments, without deduction.
- 8.2 Deduction of discounts is only permitted if expressly agreed. If a discount is agreed in an individual case, the right to deduct the discount does not apply if the customer is already in default in respect of another invoice. Payments are offset against any interest demands and against the oldest arrears first. Invoices for services or works and basic commissioned work are not discountable.
- 8.3 Part-payments received or payments without payment determination are offset against any interest demands first and then against the oldest arrears.
- 8.4 If an order is carried out in multiple sections, we reserve the right to charge for the individual sections separately. In the case of arrears, we can suspend delivery or performance until payment.
- 8.5 Payments shall be made directly to us. Our employees are only authorised to accept payments if we have authorised them in writing. Payments made to them despite this shall be deemed to be fulfilment only after receipt of the payment by us.

If the customer is in arrears with due payments or if we become aware of circumstances that justify substantiated doubt in the customer's solvency or creditworthiness, we reserve the right either to demand a reasonable prepayment or a security payment, irrespective of previously agreed payment conditions. In case of doubt, payments shall be considered reasonable if they are accepted as cash transactions in insolvency proceedings or are deemed to be indisputable. If this demand is not met, we are entitled to assert a right of retention and to reject fulfilment of the contract after an appropriate additional period and to demand compensation instead of performance.

- 8.7 If the net payment date (10 days after invoicing) is exceeded, we reserve the right, irrespective of other claims, to charge interest at 8 % above the ECB base rate. Upon occurrence of default, we reserve the right to charge interest at 8 % above the respective ECB base rate, but at least 12 %. Proof of lower or higher damages due to delay is permitted.
- 8.8 If the customer suspends payments or moves for insolvency proceedings, all discounts granted by us on our outstanding claims, including bonuses and other discounts, shall be deemed not to have been granted.
- 8.9 If the customer suspends payments or moves for insolvency proceedings, we reserve the right to terminate without notice all contracts not yet completely fulfilled by us or contracts with long-term obligations. The right of termination shall lapse if we do not

declare termination within two weeks, despite knowledge of the circumstances, or if insolvency proceedings are opened before declaration of termination. In the latter case, the administrator shall make the decision according to Section 103 German Insolvency Ordinance (InsO).

8.10 The customer can only offset with counter-claims if these are undisputed or legally upheld or if a pending legal dispute is not delayed as a result of the offsetting. This also applies to the assertion of the customer's rights of retention. The customer is only entitled to exercise a right of retention, however, if this is based on the same contractual relationship.

## **9 Retention of title, (extended, expanded), duties of safeguarding, factoring, use, commercial right of retention**

9.1 Until full payment of all our claims from deliveries, work and services, to which we are entitled from the customer now or in the future, the following securities are granted to us, which we shall release upon request at our discretion if their value exceeds our total demands by more than 10 %:

9.2 The delivered objects shall remain our property. This also applies to objects, possession of which has transferred to the customer within the framework of services or work or which have been procured for such work and services.

9.3 The retention of title shall also remain if individual debts are included in a current invoice and the balance is collected and or has been acknowledged (current account reservation). If there are multiple transactions, the retention of title shall also apply if a delivery or performance has been paid but there is an outstanding balance from other deliveries or performance (expanded retention of title).

9.4 Processing or reshaping is always performed for us as manufacturer, but without obligation towards us. If the objects according to Section 9.2 are processed with objects, materials or other third-party values not belonging to us, also for a third party as manufacturer, we shall acquire joint ownership of the new object in relation to the value of our objects compared to the foreign values at the time of processing.

9.5 The customer reserves the right to sell and/or use the conditional goods in ordinary business as long as it is not in default.

9.6 If the objects are processed, mixed or combined with objects, materials or other third-party values belonging to the customer, we shall acquire joint ownership of the new object in relation to the value of our objects compared to the foreign values at the time of processing, mixing or combining.

9.7 If our (joint) ownership lapses as a result of combining or processing, it is herewith agreed that the customer's (joint) ownership of the new item shall transfer to the Supplier rateably (invoice amount).

9.8 Objects, which are our (joint) property, are described below as conditional goods. The customer shall store the conditional goods free of charge. The customer as safe-keeper is required, in particular, to properly secure and look after the objects and to ensure that no danger is possible from persons or objects. The possible risks must be properly covered by insurance. The customer shall treat the goods subject to retention of title with due care and attention, in particular it shall insure them at its own cost against fire and water damage and theft sufficiently at new value. If maintenance and inspection work is required, the ordering party must carry this out promptly and at its own costs.

- 9.9 The customer reserves the right to sell the conditional goods in ordinary business as long as it is not in default. Pledges or assignments as security are not permitted.
- 9.10 The receivables deriving from the resale or otherwise (balance demands from current account, installation, insurance, illegal action), from deliveries and work and services, insurance contracts or compensation in respect of the conditional goods, including securities received, are assigned by the customer herewith to us in full as a precaution. Without affecting the assignment, the fact remains as to whether the installation is performed by us, the customer or by vicarious agents of one or the other contractual partner or by third parties. The customer is authorised by us, revocable at any time, to collect the claims assigned to us for its account and in its own name. This authorisation to collect can be cancelled by us if the customer does not fulfil its payment obligations correctly. It lapses without requiring a declaration of cancellation if there are arrears in respect of an invoice or if an application for insolvency is made by the customer (own application) or against the customer (third-party application).
- 9.11 The customer is only authorised to sell the claim resulting from ordinary business against its customers to a factor within the framework of genuine factoring with our consent. The claim resulting from the sale of claims is herewith assigned to us now. Upon payment of the purchase price for the claim by the factor, our claim against the customer from the respective contractual relationship becomes due immediately.
- 9.12 In the event of claims by third parties to the conditional goods, the customer shall refer to our ownership and shall immediately inform us. The customer shall bear the costs and damages caused from the intervention, insofar as they cannot be demanded from third parties.
- 9.13 In the event of non-contractual conduct by the customer – in particular late payment – we reserve the right to take back the conditional goods. If the conditional goods are held by a third party, the customer now herewith assigns its claims to return against the third party to us. Insofar as the third party has justified claims to the conditional goods, these shall be taken into account. As direct owner of the conditional goods, we are entitled to enter the customer's premises.
- 9.14 There is no right to withdraw from the contract in the collection or distraint of conditional goods or in the disclosure of the assignment of security.
- 9.15 Upon our request, the customer shall provide information about all assigned claims, in particular a list of the debtors with their name, address, amount of the claim, invoice date and number, and upon request shall provide the information and documentation required to assert the claims.
- 9.16 We reserve the right to use the customer's values, which are subject to our actual influence, as security and to sell same privately after unsuccessful offer of a reasonable redemption amount.
- 9.17 If a decision by the administrator regarding contract entry (Section 103 InsO) or a right of sale by the administrator prevents the sale of the securities in this Section, our rights are limited to the statutorily envisaged claims of sequestration, selection or replacement selection.
- 9.18 The realisable value (security value) applies to the valuation of all securities. If this cannot be determined reasonably within a reasonable period, we can apply the delivery price to the valuation of the good as securities without taking into account additional

services, VAT, discounts, rebates and freight and other ancillary costs, the nominal value of which applies to the valuation.

## **10 Third-party rights, confidentiality**

- 10.1 Insofar as we have to perform or deliver according to CAD data, drawings, models, samples or other requirements provided to us by the customer, the customer shall be solely responsible for the consequences of its requirements. In particular, it guarantees to us that third-party property rights are not breached by the manufacture, delivery or processing and working of the delivered objects. We are not required by the customer to check whether any third-party property rights are breached by our processing of the requirements.
- 10.2 Insofar as we are prohibited by third parties on the basis of property rights from manufacturing, supplying or processing and working delivered objects, which are to be produced or processed according to the customer's requirements, without having to check the legal situation we reserve the right to immediately suspend performance, to the exclusion of any claims by the customer, and to cease the manufacture, delivery or processing and working; the costs already incurred by us as a result of the contractual fulfilment shall be reimbursed to us by the customer. In each case as described above, the customer shall indemnify us from third-party claims for costs and compensation and shall reimburse us in full for damages and costs we incur because of the breach or assertion of any third-party property rights.
- 10.3 The customer shall maintain absolute confidentiality towards external parties and uninvolved third parties in respect of all our not generally known matters. This relates to all disclosed data, the work results from the business relationship, as well as the legal and economic sales targets of the work results, insofar as these are not already published facts. The agreed duty of confidentiality refers, in particular, to the know-how transferred by us within the framework of the business relationship as well. The customer shall impose a corresponding duty of confidentiality on all management bodies, employees, vicarious agents and other third parties necessarily dealing with our business secrets and shall require the handling of our business secrets according to the agreement and shall also monitor compliance with this requirement.

## **11. Changes in technology**

We can make technical changes, which serve to improve the delivered object or result of the performance, without prior consent from the customer insofar as the changes are reasonable for the customer.

## **12. Liability, expiration period**

- 12.1 The essential provisions of the Product Liability Act shall be unaffected hereby.
- 12.2 Based on the statutory provisions, we are liable in the event of breaches of guarantee, personal injury and for culpable or gross negligence attributable to us, our statutory representatives or our vicarious agents.
- 12.3 Insofar as we negligently breach a material contractual duty, non-compliance with which threatens the intended purpose of the contract, our duty of compensation for material damages is limited to replacing the usually occurring, foreseeable damages.



12.4 Pure pecuniary damages, in particular business interruption and closure damages are not reimbursed.

12.5 Additional claims are excluded.

12.6 For material provided by the customer for processing or working or combining, or material which we procure on behalf of the customer, we are liable with due care and attention in our own matters only if a usual rejection rate is culpably exceeded (cf. Section 20.2). Liability is limited to replacement of the damaged or destroyed materials.

12.7 Insofar as our liability is excluded or restricted, this shall also apply to the personal liability of our employees, temps, representatives and vicarious agents.

12.8 The unrestricted liability shall expire on the statutory basis. Insofar as the liability – also for damages due to late performance – is granted restrictedly (Sections 4.3, 12.3 to 12.7), all claims shall expire six months after the customer learns of the loss event, but not later than 12 months after delivery, acceptance or acknowledgement of the service.

### **13. Data processing**

Please note that data concerning business transactions is processed within our company and we reserve the right to transmit the necessary data to the insurance provider in order to obtain credit insurance.

### **14. International business**

The law of the Federal Republic of Germany shall apply to these terms and conditions between us and the customer, with the express exclusion of the UN Convention on the International Sale of Goods.

### **15. Applicable contractual language, interpretation rules**

15.1 Unless agreed otherwise, the contractual language is German. If there is a version of the order confirmation in the customer's language or another language in addition to the German version, the German version alone shall apply to the interpretation of the contract. If there is only a foreign-language order confirmation, its translation into German shall apply to the interpretation.

15.2 If the contractual partners are unable to agree the wording of a translation according to paragraph 1 above, a publicly certified translator shall be engaged jointly at both parties' cost, whose translation shall apply to the interpretation of the contract.

15.3 If the contractual partners are unable to agree a translation according to paragraph 2, the translation shall be appointed by the President of the Heilbronn Regional Court or by the Director of the Heilbronn Chamber of Trade and Industry. Both contractual partners reserve the right to request the appointment.

15.4 If the matter of contract interpretation or applicable version cannot be clarified by mutual consent, the respective court shall independently decide the basis of the interpretation.

## 16. Place of performance

If the customer is a merchant as defined in the German Commercial Code (Handelsgesetzbuch - HGB), juridical person under public law or a public-law special fund, for ex works deliveries the place of performance for our delivery obligation is the respective manufacturing plant, and for deliveries ex warehouse the respective place of storage. For service or works contract, place of performance is the location of the main performance. Place of performance for the customer's obligations, in particular the place of payment, is D-74177 Bad Friedrichshall.

## 17. Place of jurisdiction

If the customer is a merchant, juridical person under public law or a public-law special fund, or does not maintain a domicile in the Federal Republic of Germany, exclusive place of jurisdiction for all disputes deriving directly or indirectly from the contractual relationship and the business relationship is D-74072 Heilbronn/Neckar. This shall also apply to the cheque and bill processes

## II Additional conditions for purchase contracts

### 18. Purchase price

Unless agreed otherwise, our prices are ex warehouse or ex works plus the applicable VAT at the time of delivery, freight and packaging and only apply to the respective individual contract. They also apply only to the stated specifications; supplemental, additional or special work and services shall be charged separately.

### 19. Despatch clause, delivery, transport, insurance, transfer of risk

19.1 If a different despatch clause is not agreed, for deliveries by one of our manufacturing plants located in the Federal Republic of Germany, ex works, delivery is ex works from this plant; in other cases ex works D-74177 Bad Friedrichshall the respective EXW Incoterms® 2010. For deliveries by a third party we have engaged to perform manufacturing, the delivery shall be made with the same despatch clause from their respective production site as named in our order confirmation or as required by both contractual partners as the place of despatch when concluding the contract.

19.2 Despatch shall occur in any case at the customer's risk irrespective of the agreed despatch clause, for example also for FOB and CIF transactions.

19.3 If the customer wants delivery by us, packaging, loading and despatch shall be at our discretion and always for the customer's account of and at the customer's risk. If no express agreement has been concluded in respect of packaging, transport route and means of transport, we shall select same for the customer with due care and attention. Insofar as our employees or agents assist with the packing, loading and unloading or with transport, they act at the customer's risk as its vicarious agents.

19.4 Deliveries "delivered free" or "carriage paid" (deliveries, for which we pay the freight and any ancillary costs), the despatch clause EXW Incoterms® 2010 and the conditions of this section based on shall not otherwise change.

- 19.5 Transport and similar insurance is a matter for the customer. Unless instructed otherwise, we despatch without insurance.
- 19.6 Delivered objects, which the customer has agreed to collect, can be stored at the customer's cost and risk if collection by the customer is delayed. This shall also apply to permitted partial deliveries and also in the event that in addition to providing delivered objects, we have to provide other work and services (e.g. assistance with commissioning, optimisation, advice, etc). Our right from Section 20.8 and 20.9 shall remain unaffected.
- 19.7 When deliveries are made, the customer must ensure that unloading can take place immediately. We reserve the right to charge for waiting time and return charges imposed by the haulier.
- 19.8 Claims for compensation because of non-compliance with one or more shipping instruction or due to defective packaging of the delivered object are excluded unless we, our statutory representatives, or our vicarious agents are responsible for culpable or gross negligence.
- 19.9 If the damaged object is lost or damaged during transport, the customer shall immediately instruct the haulier to carry out an investigation.

## **20. Delivery time, provision of materials, partial deliveries, call orders, delayed acceptance**

- 20.1 Delivery information in brochures, cost estimates and quotes is provided subject to our delivery plants and suppliers being able to fulfil all obligations entered into for us, in every other case we reserve the right to deliver.
- 20.2 Delivery periods or deadlines stated in the order or order confirmation are only binding contractual dates if they have been expressly confirmed by us.
- 20.3 If the customer has provided accessories, the delivery period shall not start before full receipt, unless agreed otherwise. The material shall be provided free or charge and post-paid. A surplus of up to 10% of the order quantity must be provided to cover fabrication rejects. Specific parts for pouring must be dimensionally accurate and ready for pouring.
- 20.4 Notification of readiness for despatch shall exclusively apply in respect of compliance with the delivery deadline.
- 20.5 Reasonable partial deliveries are permitted.
- 20.6 Unless agreed otherwise, call orders (master delivery contracts with agreed delivery quantities for call) must be scheduled at least 14 days before the desired delivery date. If the customer only accepts some of the order quantities, we reserve the right to charge a minimum quantity surcharge irrespective of our other claims. We reserve the right to deliver and bill all the quantity ordered 6 months after the order confirmation if a call order has not been placed by then.
- 20.7 For master agreements without agreement of term, production batch sizes and acceptance deadlines, we can demand these be agreed no later than three months after order confirmation, unless agreed otherwise. If the customer does not fulfil this request within three weeks of receipt of our demand, we reserve the right to set a two-week deadline and thereafter to withdraw from the contract and to demand compensation.

20.8 We reserve the right to set a reasonable deadline for acceptance and after futile expiration of this period either to dispose of the delivery goods otherwise or to demand storage costs of 1% of the net price for each started month. Both contractual partners reserve the right to prove actual higher or lower storage costs.

20.9 If the customer delayed acceptance, which led to cancellation of the contract according to the statutory conditions, we can bill for compensation instead of payment of 30 % of the net order value, unless the purchaser proves that no damage or only lower damages were incurred. We reserve the right to demonstrate higher damages. If the customer does not accept a quantity bindingly ordered, we reserve the right, subject to our other claims, to charge minimum order surcharges.

## **21. Quality deviations (agreed tolerance), special test requirements**

21.1 For manufacturing-related reasons, slight deviations from a sample, a drawing or a template are possible. A sample produced by us defines the average quality. An above-average quality does not entitle the customer to complain due to defects.

21.2 If the customer wants specific tests for specified quality requirements or properties of the delivered objects, the type and extent of the testing, as well as the quality aim of the testing, must be agreed. If this is not done by the time the contract is concluded at the latest, the costs and lost time shall be charged to the customer.

## **22. Duty of inspection and complaint, complaints**

22.1 The goods must be inspected immediately upon arrival at the destination, even if samples were sent in advance. The delivery is deemed to have been approved if obvious defects or defects identifiable from a proper inspection are not reported to us in writing before installation or further processing of the goods or within an expiration period of 8 days after arrival of the goods at the destination. Defects not identifiable upon delivery must be reported in writing immediately after identification under the same conditions - not later than within 6 months of receipt.

22.2 Complaints regarding obvious damage, incorrect deliveries and the incompleteness of the delivery must be reported in writing immediately after delivery. Upon request from us, the complaint must be substantiated by sending the reported delivered object, a reported sample part and an informative test report.

22.3 Upon request from us, we shall be granted the opportunity to inspect and, insofar as this is reasonable for the customer, to examine the reported defect on site. If the customer has the necessary test equipment, these shall be provided in return for reimbursement of costs.

22.4 If the inspection shows that the complaint is not substantiated, we reserve the right to charge the usual market remuneration for the inspection and to demand reimbursement of necessary travel costs, expenses for food and accommodation and for expenses (e.g. freight, testing equipment, expert costs, etc.).

### 23. Warranties, claims due to defects, guarantee period

23.1 Warranty declarations must be expressly labelled as such in the order confirmation or must be agreed subsequently in writing.

23.2 Information about properties of the delivery object, its processing and application, about specific dimensional accuracy, specific testing criteria or testing procedures, as well as about compliance with EN or DIN provisions, are only part of the contract if they have been expressly agreed in the respective case. In principle, we do not guarantee the suitability of the delivery object for a specific purpose, unless we have expressly assured this.

23.3 For production according to drawings or other templates from the customer, we are liable only for the execution according to the drawings or templates – irrespective of other guarantee and liability restrictions.

23.4 If we assume the contractual obligation to inspect our products for specific qualities and properties (according to testing provisions from the customer), we are only liable if the damage is due to the fact that we did not comply with the customer's testing provisions.

23.5 Defects, which have only been reported after the delivery object has been processed or worked or reformed are excluded from the guarantee.

23.6 No guarantee is assumed for differences in quality, size, thickness, weight, surface quality, etc. if these differences are unavoidable as a result of the manufacturing (e.g. pouring-related additional or short weights) or do not exceed usual industry or material deviations, in particular if they are within the tolerance range of quality guidelines or standards. Particular requirements for a precise accuracy or specific testing criteria must be stated by the customer expressly when placing the order and must be expressly confirmed by us.

23.7 We do not assume any guarantee for defects or damage due to the following causes:

- omitted or defective cooperation
- incorrect or negligent use and handling
- incorrect storage
- defective assembly, processing or working by the customer or third parties
- omitted test operation
- natural usage
- natural wear and tear
- omitted or defective maintenance
- use of inappropriate equipment
- unsuitable ambient conditions
- chemical, electronic or electrical influences
- omitted, insufficient or defective goods-in inspection

insofar as the causes are not attributable to us.

23.8 If we have developed the delivery object for the customer, we only guarantee the suitability of the delivery object of the contractual purpose and suitability of the delivery object have been expressly guaranteed. We reserve the right, even for development services assumed with this guarantee, to withdraw from the contract if circumstances are identified during the development, which were not foreseeable when concluding the contract, that show that the contractual purpose and suitability of the delivery object

cannot be realised or cannot be realised at an economically reasonable cost. If the customer changes the predefined development results, we are no longer reasonable for its suitability for the stated contractual purpose, unless the change made by the customer is not the cause of the lack of suitability for the stated contractual purpose.

23.9 If there are justified, timely complaints, we shall grant supplemental performance or replacement.

23.10 We have a reasonable period to make replacement deliveries, in particular as required for the manufacture of the replacement goods.

23.11 In the case of corrections, we shall bear the necessary costs, insofar as these do not increase because the delivery object is at a location other than the place of performance. Additional costs resulting from the fact we did not know when concluding the contract that the defects have to be corrected outside the Federal Republic of Germany, shall be borne by the customer. We reserve the right to demand a reasonable advance to cover the estimated additional costs. Insofar as remuneration is paid for the customer's work or for work by a third party engaged by it, only the specified standard times for our saved work and services at the wage costs usual in the respective country are accepted.

23.12 If the defect does not affect the suitability for use and there are no material defects, we reserve the right to grant reduction rather than supplementary performance.

23.13 Additional claims by the customer for compensation or the customer's right to withdraw from the contract require material defects not to be corrected by us within a reasonable period or for two attempted corrections of the same defect to fail, provided that additional attempted corrections are not reasonable and acceptable for the customer.

23.14 Even after expiration of the additional period we reserve the right of supplementary performance until we receive a clear declaration from the customer, in which the additional work and services from us are expressly rejected.

23.15 Instead of withdrawal and compensation in lieu of performance, the customer can demand the costs for its own or third-party work, insofar as these do not exceed the net order value of the defective part of the delivery.

23.16 The guarantee period for all deliveries and services is 1 year from delivery of the object to the customer. Warranty claims are also granted for a period of 1 year from delivery.

23.17 The expiration period is neither interrupted nor delayed by the claim due to defect, the subsequent correspondence, measures to check and to determine the defect, as well as supplementary performance. These effects must be agreed expressly in each case.

## **24. Guarantee and liability for legal defects**

24.1 Unless agreed otherwise, we are only required to provide the delivery free from third-party rights in the country of the customer's delivery address (destination).

24.2 In the case of a breach of third-party rights by us, we can choose either to obtain sufficient rights of use at our costs for the agreed or required use and to transfer same to the customer, or to change the delivered goods such that the property rights are not breached or to replace the delivered goods, provided that this does not affect the agreed and required use of the delivered goods. If this is not possible for us, or if we refuse

supplementary performance, or if this fails, the customer reserves the statutory claims and rights.

## **25. Claims under a right of recourse**

Claims by the customer under a right of recourse (Section 478 BGB) in respect of the customer's agreement with its consumers, which exceed the statutory claims, are excluded to this extent. The customer shall inform us as promptly as possible of the claims due to defects by its consumers so that we are able at our discretion to fulfil the consumers' claims in place of of the customer. The statutorily regulated expiration period shall apply to claims for recourse.

## **26. Tools and equipment, release of samples, retention period**

26.1 The tools and equipment (also modular equipment, the use of which we decide at our discretion) manufactured or provided by us shall remain our property. We are not obliged to provide these to the customer.

26.2 The tool and equipment costs billed are only a share of the costs, unless agreed otherwise. Tool changes and general overhauling due to wear and tear are charged separately. After full payment of the tool costs stated in the invoice, we grant protection of shape and expert maintenance free of charge.

26.3 After no parts have been made from a tool for 5 years since the last delivery, we reserve the right to scrap the tool.

26.4 If third-party tools or equipment are provided by the customer, no complaints regarding the parts manufactured with same can be acknowledged by us, provided that these complaints are based on the quality of the tool or equipment.

## **27 Workpiece-related model and production equipment**

27.1 Insofar as the customer provides us with models and production equipment (e.g. casting moulds), these shall be sent free of charge. We can demand that the customer collect such equipment at any time. If it does not fulfil such a request within three months, we reserve the right to send them back at its cost. The costs for maintenance and desired changes shall be borne by the customer. The customer is liable for technically correct construction and the design of the equipment that secures the production purpose, however we reserve the right to make changes to the equipment for technical casting reasons. Without separate agreement, we are not required to check the equipment provided corresponds to the enclosed drawings and samples or other requirements from the customer.

27.2 Insofar as workpiece-related models or production equipment are made or purchased by us at the customer's request, the customer shall reimburse us for the costs incurred as a result. If the full costs are not charged, the customer shall also bear the residual costs if it does not purchase the quantities forecast when concluding the contract. The models and production equipment produced or purchased by us shall remain our property, during the term of the contract they are used exclusively for deliveries to the customer. We are not required to retain them three years after the last delivery. By contrast, if it is agreed that the customer shall become the owner of the equipment, ownership shall transfer to the customer upon full payment of the purchase price. The handover of the equipment is replaced by our duty of retention. The retention relationship can be terminated by the ordering party no earlier than two years after transfer of ownership, unless agreed otherwise.

27.3 All models and production equipment are treated by us with due care and attention, as applied in our own matters. Upon request from the customer, we shall insure its models and equipment at its cost. Claims against us for replacement of consequential damages are excluded if the customer decides not to request insurance. Moreover, Section 12 shall apply.

27.4 Section 27 shall not apply to the use of one-use models (e.g. made from polystyrene).

### **III Additional conditions for works contracts**

#### **28. Extent of performance**

If there are differences regarding the extent of performance, the text of the master agreement shall apply in case of doubt, if there is no master agreement, our order confirmation shall apply.

#### **29. Proof of performance**

29.1 Upon request from us, the customer shall certify the hours worked daily, but not later than in the activity reports (reports) after completion of the work. It shall charge and authorise an individual to do this, who is personally present at the place of performance at least once per working day.

29.2 Activity reports signed by the customer without reservation shall form the incontestable basis for billing for the customer in respect of the facts contained therein, in particular travel times, disruption and performance times. Reservations must be expressed immediately upon submission of the work report and documented in writing on the report.

#### **30. Final acceptance**

Performance is accepted, unless agreed otherwise, informally by the respective acceptance of the work results by the customer.

#### **31. Tolerances in supplementary work and examination work in series, machine and visual inspection, automatic and manual processing**

31.1 An error rate of 0% is not required for all supplementary work and examination work, which does not refer to the assessment in the individual case or to sample processing (series activities). The best possible required tolerance depends on the feasibility (probability of occurrence) resulting from the specific task set and must be expressly agreed, if required.

31.2 The agreed tolerances are stated in the order confirmation. If there is no express information, a maximum error tolerance of 5% is agreed, unless the sections below contain a more favourable rate for the customer or if the customer proves that, usually for the sector, a significantly lower error tolerance is owed at the agreed price.

31.3 For series processing and automatic processing, the agreed, or alternatively the tolerances in drawings or specified by samples shall apply. The material, processing spread and spread usual in the sector shall be considered.



31.4 For visual inspections and manual processing, the error tolerance can typically only be determined after acceptance of the problems to be processed. The customer shall provide unambiguous instructions and information regarding the task and shall approve the processing and/or test process installed by us and the resulting product quality and repeatability. If no agreement is reached, a quality situation (tolerance) acceptable with careful handling and performance and reasonable for the type of activity shall apply.

31.5 If supplementary performance is excluded, we shall grant the rateable reduction of the agreed wages (reduction). The reduction is only owed for the proportion of the performance, for which the agreed error tolerance, or that usual for the sector, has been exceeded. The percentage of tolerance exceedance calculated when assessing the reduction shall be rounded commercially to full percentages.

## **32. Expert opinions, expert reports, plans, samples**

32.1 The placed order to produce written opinions, expert reports, plans or other works (e.g. samples) is an originator's contract (commissioned work). Object of the contract is the creation of the work specified in the order and the granting of rights of use to this work. The provisions of the law governing works and contracts and copyright legislation shall apply.

32.2 The work is protected by the German Copyright Act (Urheberrechtsgesetz - UrhG) as personal intellectual property, the regulations of which are also deemed to be agreed if the level of inventive work required according to Section 2 UrhG is not reached.

32.3 The works may only be used to the agreed extent for the agreed type of use and the agreed purpose. Unless expressly agreed otherwise, the purpose of the contract is considered to be only the purpose stated by the customer in the order. The customer acquires the right to use the work within the agreed framework upon payment of the agreed remuneration.

32.4 The transfer of granted rights of use to third parties requires our prior consent.

32.5 We are entitled to information about the extent of the use.

32.6 Our unrestricted copyright is not affected either by the payment of the agreed price for the development, design or other attendant works subject to payment, nor by the transfer of multiple copies or the design documents. If parts hereof are registered by the customer as a patent, we shall be named as inventor. Registration with the Federal Patent Office must be notified to us in order to avoid a contractual penalty for the amount of the net order value.

32.7 Rights of use to our work are merely granted, property rights are not transferred.

## **33. Warranties, claims due to defects, expiration**

33.1 Warranty declarations must be expressly labelled as such in the order confirmation or must be agreed subsequently in writing. Unless expressly agreed otherwise, we do not guarantee the feasibility of the readiness for series production from our designs and drawings.

33.2 Claims due to defects are excluded if we have complied with the agreed tolerances according to Section 31.

- 33.3 If we assume the contractual obligation to inspect the customer's products for specific qualities and properties (based on the actual testing provisions from the customer), we are only liable if the damage is due to the fact that we did not comply with the customer's testing provisions.
- 33.4 Furthermore, claims due to defects are excluded for differences in quality, size, thickness, weight, etc. if these differences do not exceed usual industry or material deviations, in particular if they are within the tolerance range of quality guidelines or standards.
- 33.5 Obvious defects or defects identifiable from a proper inspection must be reported no later than upon acceptance and certainly before processing or working or other contractual use of the work. Defects identified subsequently must be reported in writing within an expiration period of 8 days. If the complaint is not made or is not made on time, the works and services are deemed to have been approved. This is not the case if we identified the defect ourselves and did not point out the defect during acceptance.
- 33.6 If there are justified, timely complaints, we shall grant supplemental performance or replacement.
- 33.7 We have a reasonable period to make replacement deliveries, in particular as required for the manufacture of the replacement goods.
- 33.8 In the case of corrections, we shall bear the necessary costs, insofar as these do not increase because the delivery object is at a location other than the place of performance. Additional costs resulting from the fact we did not know when concluding the contract that the defects have to be corrected outside the Federal Republic of Germany, shall be borne by the customer. We reserve the right to demand a reasonable advance to cover the estimated additional costs. Insofar as remuneration is paid for the customer's work or for work by a third party engaged by it, only the specified standard times for our saved work and services at the wage costs usual in the respective country are accepted.
- 33.9 If the defect does not affect the suitability for use and there are no material defects, we reserve the right to grant reduction rather than supplementary performance.
- 33.10 Additional claims by the customer for compensation or the customer's right to withdraw from the contract require material defects not to be corrected by us within a reasonable period or for two attempted corrections of the same defect to fail, provided that additional attempted corrections are not reasonable and acceptable for the customer.
- 33.11 Even after expiration of the additional period we reserve the right of supplementary performance until we receive a clear declaration from the customer, in which the additional work and services from us are expressly rejected.
- 33.12 Instead of withdrawal and compensation in lieu of performance, the customer can demand the costs for its own or third-party work, insofar as these do not exceed the net order value of the defective part of the works and services.
- 33.13 The guarantee period for all works and services is 1 year from acceptance. Warranty claims are also granted for a period of 1 year from acceptance.

- 33.14 The expiration period is neither interrupted nor delayed by the claim due to defect, the subsequent correspondence, measures to check and to determine the defect, as well as supplementary performance. These effects must be agreed expressly in each case.
- 33.15 If during the inspection it is found that the claim due to defect is incorrect, we reserve the right to charge a usual market fee for the inspection of the reported works.

**34. Manufacture of prototypes.  
Exclusion of liability and guarantee**

Insofar as we have to supply prototypes, we expressly state that – unless agreed otherwise in writing – these are solely for illustration and testing purposes and, because of their designation as prototypes, are not suitable for series operation or for forwarding to third parties. In these, liability and guarantee is expressly excluded for prototypes.

**35. Other service agreements,  
project management, development services**

- 35.1 Customer care during production of an object until series maturity is only provided on the basis of a separate agreement. If such an agreement exists, we are authorised to make required decisions and to issue instructions.
- 35.2 No concrete development success is owed unless expressly agreed. In particular, we do not guarantee that the development will reach series maturity.
- 35.3 If a success is achieved and acceptance is declared by the customer without complaints or if series maturity is determined for the object, other claims from the service relationship are excluded. In particular, we are not liable for consequential damages.
- 35.4 The customer can only claim on the basis of defective planning, development, design or execution within the framework of the started series production if it proves that the defect was necessarily only identifiable within the framework of series production. Our liability for damages arising only as a result of the products manufactured with the object is excluded. The customer shall indemnify us from claims by third parties.
- 35.5 Section 31.4 shall apply correspondingly to incorrect decisions or instructions within the framework of project management (Section 31.1 sent. 2).

**HPP GmbH**  
**Bad Friedrichshall as at 11/2014**