

# General Terms and Conditions of Purchase

**1. Scope**

- 1.1 The purchase of goods and services shall be governed by these General Terms And Conditions Of Purchase as well as the German Contracting Terms for Supplies and Services Part B (Allgemeine Vertragsbedingungen für die Ausführung von Leistungen, "VOL/B"). In case of any discrepancies between the provisions, the provisions of these General Terms and Conditions of Purchase shall take precedence. Any construction work as defined by the German Construction Contract Procedure Regulations Part B (Vergabe- und Vertragsordnung für Bauleistungen Teil B, "VOB/B") shall be governed by HMC's Additional Terms And Conditions Regarding VOB/B.
- 1.2 The parties to this Contract are Hamburg Messe und Congress GmbH ("HMC") and its Contractor and/or other third party (e.g. an agency), if not one and the same ("Contractor").
- 1.3 These General Terms and Conditions of Purchase shall apply to the exclusion of any others; HMC does not recognise, and hereby contradicts any differing or conflicting conditions of the Contractor's unless HMC has explicitly (by way of exception) agreed to them in writing. This express approval requirement shall also apply if HMC accepts the Contractor's services unreservedly while being aware of the Contractor's differing or supplementary general terms and conditions.
- 1.4 The HMC Technical Conditions Of Delivery and/or any other terms and conditions of delivery agreed with HMC, as well as the HMC House Rules shall apply in addition to these General Terms and Conditions of Purchase, ranking in priority to VOL/B and VOL/L. The Contractor shall ensure that its employees, vicarious or auxiliary agents, sub-contractors, authorised representatives or any other third parties it engages will comply with and are bound without limitation by the General Terms And Conditions Of Purchase, Technical Conditions Of Delivery and/or other conditions of delivery agreed between the parties, as well as the House Rules.
- 1.5 These General Terms and Conditions of Purchase shall exclusively apply to companies, legal entities under public law, or special funds under public law as defined in the German Civil Code ("BGB"), Sec. 310 (1).

**2. Conclusion of contract / Contractor obligations / minimum wage**

- 2.1 HMC orders, or supplements, extensions, amendments, variances, etc. thereof, (hereinafter referred to as "orders") which HMC may request at any time must be made or confirmed in text format at the very least (letter, fax or e-mail) via HMC's purchasing department. Otherwise they will not be legally binding.
- 2.2 If the Contractor fails to confirm an order within five days, HMC may still accept the Contractor's performance but shall not be obliged to do so.
- 2.3 If the Contractor instructs third parties (e.g. subcontractors, agencies or free-lance providers) in connection with the execution of the order, and/or permits third parties to prepare, execute and/or process the order, the Contractor hereby undertakes to fulfil the obligations incumbent on the third party or third parties

towards HMC on the first request of HMC. The Contractor shall be obliged to accept the actions and declarations of the third party as its own against itself. The Contractor may transfer its contractual obligations to others with prior written approval from HMC only.

- 2.4 The parties are aware that within the framework of the German Minimum Wage Act (MiLoG), HMC ("Principal") may be liable regarding payment of the minimum wage in accordance with MiLoG to employees of the Contractor and of subcontractors commissioned by the Contractor for the provision of services.

The Contractor is fully aware of the provisions of MiLoG. The Contractor shall take all necessary measures to comply with the provisions of MiLoG, and to do so without restriction. To the extent that the Contractor uses subcontractors (such as providers of rental equipment) for the provision of services, the Contractor shall take all necessary measures to ensure that the subcontractors likewise comply with the provisions of MiLoG. In compliance with all statutory provisions, the Contractor shall grant HMC the right to monitor compliance with the provisions of MiLoG. Upon request the Contractor must therefore submit suitable evidence of its compliance with MiLoG. For each culpable violation of the above obligations, the Contractor shall pay to the Principal an appropriate contractual penalty, the amount of which shall be set by the Principal in text form, and the fairness of which shall be examined by the competent court of law, including its amount. All other claims shall remain unaffected. However, half of any contractual penalty imposed shall be counted towards any corresponding claim for damages.

The Contractor shall, on HMC's first request, full indemnify HMC against all third-party claims are asserted against HMC due to or in connection with violations of MiLoG by the Contractor and/or vicarious agents of the Contractor's. This applies in particular to claims against HMC pursuant to MiLoG, Sec. 13 in conjunction with the German Act on the Posting of Workers ("AEntG"), Sec. 14, and to any retroactive payments of social security contributions and resulting fines.

**3. Prices**

- 3.1 The agreed prices are fixed prices. They include insurance costs, freight charges, customs duty, packaging costs and other charges or ancillary services at place of fulfilment/delivery point HMC. General discounts on list prices or on the prices of serial brands shall be granted to HMC, as well. For packaging which is returned carriage paid, the full amount invoiced shall be credited to HMC.
- 3.2 Upon payment of the agreed price all deliveries and services to be provided by the Contractor in accordance with the order shall be deemed satisfied. This also comprises all statutory requirements and documentation as well as those necessary for operation, use, set-up, assembly, working, processing, storage, maintenance and repair. Any official permits needed from the authorities must be obtained by the Contractor at the latter's expense and risk.

**4. Deadlines**

- 4.1 All agreed delivery and performance deadlines are binding. They shall apply to the time of arrival at the

destination point. In the event that compliance with these deadlines is or appears to be jeopardised, HMC must be notified immediately.

4.2 In the event of non-compliance with delivery and performance deadlines with no subsequent deadline being set, HMC may, at its option, either continue to demand delivery/ performance and compensation for the delay, or compensation for non-fulfilment, and withdraw from the contract. Any additional costs arising from this shall be borne by the contractor.

4.3 In the event of a delay in delivery, HMC may, after having submitted a written warning, determine at its own discretion an appropriate contractual penalty payable by the Contractor and notify the Contractor in written form accordingly. In case of a legal dispute, the amount and fairness of the contractual penalty shall be examined by the competent court of law. If performance is delayed more than one week after a penalty has been determined and communicated, HMC may set a new penalty, and continue to do so week after week. All other claims of HMC shall remain unaffected. However, the contractual penalty imposed shall be counted towards any corresponding claim for damages resulting from the delay as per Clause 4.2.

**5. Deliveries, services, storage and acceptance**

5.1 Each delivery shall include a packing slip or bills of delivery bearing the HMC order number. Packing slips and bills of delivery must contain correct information on all related goods and packaging, as well as specifications and a description of the goods. The consignments must be free of freight charges for HMC. Freight charges to be paid in advance by HMC will be invoiced to the Contractor. HMC explicitly reserves the right to accept or decline excess or under-deliveries.

5.2 HMC will inspect deliveries to ensure that the agreed quantities and product types have been delivered and/or there are no defects. This shall be limited to an inspection of incoming goods by external appraisal. HMC must only give notice of defects which become apparent at the external inspection (transport damage, obviously incorrect deliveries or under-deliveries, etc.) within two weeks of delivery. The obligation to give notice of defects discovered subsequently remains unaffected.

5.3 The risk of deliveries or services suffering accidental loss or accidental deterioration shall be borne by the contractor up to the physical delivery of the goods and acceptance of performance. BGB, Sec. 447 shall not be applied. Storage of deliveries and services on HMC premises shall be at the sole risk of the Contractor. The provision of storage space does not include a contract of safe keeping. HMC shall be entitled to have stored objects removed at the expense, cost and risk of the Contractor.

5.4 The legal duty to maintain safety shall be incumbent on the Contractor up to the consignment of the delivery and acceptance of the service. In executing the services, the contractor shall comply with all applicable statutory provisions, in particular those regarding occupational safety and accident prevention, at its own responsibility. When working on HMC premises, it is imperative that the Contractor comply with the House Rules and safety

provisions as well as the HMC "Technical Guidelines for Trade Fairs and Exhibitions" and the HMC "Safety Guidelines for Conventions, Conferences and Events". Otherwise, HMC shall be entitled to refuse performance of a delivery or service. The same shall apply if deliveries and services are executed by third parties on HMC premises. HMC must be given timely notification of the employment of such third parties on premises.

5.5 After the full provision of all agreed deliveries and services, HMC will perform an acceptance check and draw up a written record.

**6. Payments / Securities**

6.1 Payment shall be made, at the option of HMC, either within 14 days at a 3% discount, within 21 days at a 2% discount, or within 30 days without any deduction. These periods shall begin at the time of full delivery and performance upon proper receipt of an invoice by HMC. The payment owed by HMC shall be deemed to be timely if HMC's payment order is received by HMC's bank within the relevant time period.

6.2 An invoice shall be deemed to have been properly received as stated in Art. 6.1 at the time an auditable invoice conforming to applicable tax law has been received by the office specified below. Invoices must contain the order number and be sent to: HMC Rechnungswesen (Rechnungseingang), Messeplatz 1, D-20357 Hamburg. Invoices may be sent by post or e-mail in PDF format to the following address: [accounting@hamburg-messe.de](mailto:accounting@hamburg-messe.de)

6.3 A payment made by HMC does not imply recognition of proper delivery, provision of services and accounting.

6.4 For any delayed payment, HMC shall owe default interest at a rate of five per cent above base interest pursuant to BGB, Sec. 247 BGB.

**7. Rights of use**

7.1 The deliveries and services must be free of third-party rights of use and property rights which may rule out or restrict their use by HMC. The contractor shall indemnify HMC on HMC's first request from all claims resulting from the violation of such rights. The Contractor shall bear any fees owed for third-party property rights.

7.2 The Contractor shall grant HMC the necessary rights of use in any deliveries and services protected by third-party property rights without delay and at its own expense, whether before or after the fact. This shall include the Contractor granting HMC exclusive, unrestricted and transferable rights with regard to location, space and time for all types of use.

7.3 The rights of use granted shall, in particular, include the authorisation to grant further rights of use to third parties, the rights to process and modify, the rights of tangible and intangible reproduction, the rights to disseminate, present and demonstrate such deliveries and services as well as the right to make them publicly accessible.

7.4 In the case of software solutions, provided that they are developed individually for HMC, the granted rights of use shall in particular include the object and source codes of the software, its descriptions and

documentation as well as other materials required for exercising the rights of use. The software must be made available with due regard to the principles of proper data processing.

**8. Rules regarding technical items / ownership / vacating of premises**

- 8.1 Technical deliveries must include the correct declaration of conformity or CE marking and shall conform to good engineering practices.
- 8.2 Results, records, documentation, drawings, templates, components, materials, accessories, etc. produced or procured by the Contractor on behalf of HMC and all rights therein shall become the property of HMC and be due and owed to HMC. They must be surrendered to HMC upon request and without delay. Otherwise the Contractor shall be liable for any costs which are incurred as a result. The Contractor may use HMC documentation only for the manufacture of products for HMC. The Contractor is prohibited from otherwise marketing such products, making any use of them or making them available to third parties.
- 8.3 The Contractor shall store any materials, objects, documents, data, drawings, etc. owned by HMC and handed over to the Contractor by HMC carefully and insure them against fire, theft and other damage at its own expense. These items remain the property of HMC even after being incorporated into deliveries and services or combined with other materials, objects, documents, data, drawings, etc. Any use of HMC's materials, objects, documents, data, drawings, etc. in connection with third parties requires HMC's prior written approval.
- 8.4 All objects, materials, structures and decorations brought in by the Contractor to fulfil HMC orders must be removed completely by the Contractor by the agreed end of their use on HMC premises, and the original condition and a cleaned state shall be restored. The Contractor shall bear the costs of so doing as well as all costs of waste disposal as appropriate. The Contractor shall ensure that no waste is left behind on HMC premises. Any remaining waste shall be disposed of by the Contractor completely and properly. Otherwise HMC shall be entitled to have the waste removed at the Contractor's expense and to invoice the Contractor for the ensuing costs.
- 9. Assignment / Offsetting and retention**
- 9.1 The contractor shall not be entitled to assign its rights and obligations arising from this contract or transfer them to third parties. German Commercial Code ("HGB"), Sec. 354(a) shall remain unaffected.
- 9.2 The Contractor shall have a right of retention only in case of undisputed claims or claims established as final and absolute by judicial ruling. The same shall apply to any offsetting by the Contractor. The Contractor may not assert any rights of retention arising from other contractual relationships with HMC. Neither may the Contractor assert any right of retention of materials, objects, documents, data, drawings, etc. of any kind that have been made available to the Contractor by HMC or surrendered to it in any other way.

**10. Disturbance of contractual basis / Force Majeure**

HMC is a company which specialises in organising and implementing events, in particular trade fairs, exhibitions and congresses.

- 10.1 To the extent that it is obvious to the Contractor that a particular order is intended for a specific HMC event, the implementation of that event shall be considered as the basis of the contract concluded between HMC and the Contractor pursuant to BGB, Sec. 313.
- 10.2 The basis of the contract shall be deemed as disturbed or no longer in existence if compelling reasons (such as Force Majeure) are present and HMC therefore closes ("shuts down") and/or cancels, relocates and/or postpones ("reschedules") the relevant event (trade fair, exhibition etc.) entirely or in part, and/or changes the duration or any other aspects of the event.

In particular, Force Majeure shall be deemed to have occurred if such compelling circumstances are outside the reasonable influence of the parties to this contract. For example, events such as war, civil war, armed conflict, acts of terrorism, political unrest and/or the use of chemical, biological, or biochemical substances or nuclear energy shall be deemed to constitute Force Majeure. Furthermore, Force Majeure shall include pandemics, epidemics, rampant infectious diseases or similar public health threats and/or violent acts of nature (storms, cyclones, earthquakes, floods etc.) and the consequences thereof. Furthermore, Force Majeure shall include prevention of the execution of any event by acts of government that are outside of the contractual parties' reasonable influence, such as intervention by any federal, state, local or other public authority, including but not limited to decrees, directives, general orders etc.

Compelling circumstances, and in particular, Force Majeure shall be deemed to exist not only upon the occurrence of any such event but also whenever such an event can be expected to occur with reasonable probability at the time of the event. The decision whether any such event has occurred or is imminent shall be made according to the reasonably exercised discretion of HMC with due consideration of the Contractor's interests.

- 10.3 Provided that the event is cancelled or shut down as described in Art. 10.2, HMC shall have the right to withdraw from or rescind the Contract pursuant to BGB, Sec. 313.
- 10.4 If the event is modified otherwise than by cancellation (e.g. by postponement or relocation) pursuant to Section 10.2 above, the Contract shall be deemed as concluded for the modified event. All relevant terms, deadlines and other dates shall be postponed accordingly.

**11. Withdrawal by HMC**

In the event that the Contractor breaches fundamental contractual obligations, HMC shall be entitled, having set a time limit and given warning of refusal to no avail, to withdraw from or cancel the contract, in particular in the following cases:

- a) The services to be provided by the Contractor have not been provided at all or not on time,

- b) The official permits or licences necessary for the fulfilment of the respective order have not been provided,
- c) The Contractor has violated statutory provisions or official obligations and directives,
- d) Insolvency proceedings are opened against the assets of the Contractor or the petition to open insolvency proceedings is dismissed for lack of assets.

**12. Contractor's guarantee / Contractual penalty**

12.1 The contractor shall guarantee that the performance and/or delivery does not exhibit any defects compromising its value or capabilities, has the agreed or guaranteed quality, is suitable for the use specified in the order, is consistent with good engineering practices, complies with applicable statutory provisions, technical guidelines and specifications, safety requirements and occupational health and accident-prevention provisions, and is free of third-party rights. The Contractor shall indemnify HMC against any third-party rights. This obligation of indemnification shall additionally include any costs of formal cease-and-desist warnings, court costs, and costs of legal proceedings.

12.2 If the Contractor fails to comply with an obligation to provide supplementary performance within an appropriate time limit set by HMC, HMC may rectify the defect itself or demand compensation from the Contractor for the necessary expenses incurred, including an appropriate advance payment. If supplementary performance by the contractor fails or HMC finds it to be unacceptable, in particular due to special urgency, danger to operational safety, or the imminent risk of disproportionate damage, no time limit will need to be set. The contractor shall be given prior notification of any self-rectification where possible.

12.3 In the event of the Contractor's failure to render performance according to this Contract, HMC may determine at its own discretion, and submit to the Contractor in written form, an appropriate contractual penalty payable by the Contractor, the amount and fairness of which shall be examined by the competent court of law in case of a legal dispute, unless such failed performance is beyond the Contractor's control. The assertion of additional claims by HMC, in particular claims for further damages, shall not be affected. However, any contractual penalty imposed shall be counted towards a corresponding claim for damages. If HMC accepts the delivery or service, the contractual penalty may be asserted provided that HMC reserves its right to do so towards the Contractor within 10 calendar days, counted from the date of acceptance. In the case of partial deliveries / performance HMC reserves the right to assert the contractual penalty until final payment has been made.

**13. Liability**

13.1 The Contractor shall be liable for all damages suffered by HMC that have been caused by the Contractor, its vicarious agents and suppliers or any other third parties in connection with the fulfilment of the contract or order. The liability shall apply even if the contractor cannot be held responsible for culpable behaviour when selecting its vicarious agents. Any damage must be reported promptly to HMC and, where applicable, to the police.

13.2 The Contractor shall be liable for returning all surfaces, spaces and objects (including devices, keys and systems) provided by HMC in perfect condition and in the correct quantity.

13.3 The Contractor shall not be entitled to make any claims for damages against HMC, other than claims for injury to life, limb or health or for damages arising from breach of fundamental contractual obligations ("cardinal obligations"), as well as liability for any other damage caused by HMC's intentional violation or gross negligence of its duties. Cardinal Obligations are obligations which must be fulfilled to achieve the objective of the Contract. To the extent that HMC violates material contractual obligations, HMC's liability shall be limited to foreseeable damage that can typically be expected to occur under this Contract, provided such damage was caused by simple negligence, unless the Contractor's claims for damages arise from injury to life, limb or health.

13.4 To the extent that HMC has acted fraudulently or has given a guarantee of the condition of one of its deliverables, the limitations of liability specified in Art. 13.3 shall not apply. The same shall apply if HMC and the Contractor have entered into an agreement about the condition of one of HMC's deliverables. The relevant requirements of the German Product Liability Act shall remain unaffected.

13.5 To the extent that HMC's liability is excluded or limited under the provisions of these General Terms And Conditions Of Purchase, the same shall also apply for the vicarious agents of HMC.

**14. Statute of limitations**

The statutes of limitation shall apply unless anything to the contrary has been explicitly agreed in the order. If a delivery item is completely replaced or delivered at a later stage, the statute of limitations shall begin again. If a delivery item is partially replaced or delivered at a later stage, the above shall apply to the replaced or subsequently delivered parts. The statute of limitations shall not restart if the Contractor discernibly acts without recognising its obligation to rectify defects.

**15. Obligation to maintain confidentiality**

15.1 The Contractor shall treat any information to which it becomes privy through and in relation to the cooperation between the parties, as confidential and undertakes not to disclose such information to third parties, even after termination of the contract. This shall not apply to any information that is publicly accessible and/or must be disclosed under a statutory obligation. HMC may set an appropriate contractual penalty for each violation of any of the obligations specified in this Art. 15.1; to this extent the obligations pursuant to Art. 12.3, sentence 1 to 3 shall apply mutatis mutandis.

15.2 The information, tools, data-processing systems and other devices made available may only be used for the execution of the order. Any other use, for example for the Contractor's own purposes, shall be prohibited.

15.3 Disclosure of the existing business relationship with HMC shall be prohibited unless HMC has given its prior written approval. The same shall apply to the publication

of any data related to this contractual relationship. Art. 15.1, last sentence shall apply mutatis mutandis.

#### 16. Data privacy

16.1 The Contractor shall comply with all data privacy provisions as amended from time to time. The contractor must instruct all of its employees on the applicable data privacy provisions and place them under obligation to maintain data secrecy and confidentiality. These declarations of consent shall be submitted to HMC or its data protection officers upon request.

16.2 The Contractor's data shall be processed by HMC for conducting the business relationship according to the provisions of the current versions of the EU General Data Protection Regulation (GDPR), the German Federal Data Protection Act (BDSG) and the German Telecommunications Act (TKG) as amended. The data shall under no circumstances be passed on to a third party.

16.3 To the extent that the Contractor's personally identifiable data are concerned, the contractor shall have a right to access, rectify, cancel and block its personal data. If the Contractor wishes to erase its personally identifiable data stored by HMC, this request shall be complied with immediately, provided that the data is not required for contract performance and/or erasure of the data does not conflict with any documentation or retention requirements.

The Contractor shall be entitled to object at any time to its data being used for the purposes indicated above, or to revoke any consent previously given, by sending an appropriate e-mail to: [datenschutz@hamburg-messe.de](mailto:datenschutz@hamburg-messe.de). The Contractor may find further information on data privacy in the HMC Data Privacy Policy at <http://hamburg-messe.de/datenschutz>. HMC's Operations Data Protection Officer may be reached through the same channel.

16.4 Provided that the Contractor processes personally identifiable data on behalf of HMC pursuant to GDPR, Art. 28, HMC's Annex "Data Processing Agreement According To GDPR, Art. 28" as amended shall apply. In cases of doubt, the HMC Operations Data Protection Officer shall be contacted.

#### 17. Final provisions

17.1 Should any provision in these "General Terms And Conditions Of Purchase" or the relevant Contract be or become invalid or impracticable, this shall not affect the validity of the other provisions in these "General Terms And Conditions Of Purchase". In any such case, the contractual parties undertake to agree a valid and practicable provision which comes as close as possible to the legal and business purpose of the provision to be replaced; the same shall apply to any omissions in the General Terms And Conditions Of Purchase or the Contract. The stipulations of this Art. 17.1 do not simply shift the burden of proof; rather, they exclude application of German Civil Code (BGB) Art. 139.

17.2 The place of performance and jurisdiction for both contractual parties for all mutual obligations, including all payment obligations, shall be Hamburg, provided that the Contractor has the status of a merchant, body corporate under public law, or of special assets under public law, or has no general place of jurisdiction within

Germany. HMC reserves the right, however, to take legal action at the Contractor's place of general jurisdiction.

17.3 These General Terms and Conditions of Purchase and the relevant Contract shall be governed exclusively by German law, excluding private international law, the United Nations Convention on Contracts for the International Sale of Goods, and the German conflict of laws provisions.

17.4 There are no oral side agreements to these General Terms and Conditions of Purchase. Any amendments or additions to this Contract, or its rescission, whether entirely or in part, shall be invalid unless made in writing as a minimum requirement.

17.5 These General Terms And Conditions Of Purchase may be accessed and downloaded from [www.hamburg-messe.de/downloads/](http://www.hamburg-messe.de/downloads/) or [www.das-neue-cch.de/veranstalter/downloads/](http://www.das-neue-cch.de/veranstalter/downloads/).

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