



Standard Terms and Conditions for Purchases and Contracts of Julius Hoesch GmbH & Co.KG

1. Scope of application

- 1.1 The following terms and conditions are an integral part of all contracts concluded between the JULIUS HOESCH GmbH & Co.KG (hereinafter "JULIUS HOESCH") and suppliers and contractors (hereinafter "Suppliers"), including current or future business relations.
- 1.2 Supplier's standard terms and conditions that deviate or supplement these Standard Terms and Conditions for Purchases and Contracts are not binding on JULIUS HOESCH even if JULIUS HOESCH has not expressly objected thereto or the Supplier declares that it will deliver goods only at its own standard terms & conditions or has attached same to its acceptance of order or the delivery or order slip.

2. Purchase orders

- 2.1 All orders of JULIUS HOESCH and any amendments of or supplements to these orders must be made in writing in order to be effective. This shall also apply to the cancellation and/or amendment of this written form clause.
- 2.2 JULIUS HOESCH has the right to cancel its order without charge if the Supplier fails to confirm the order without changes to JULIUS HOESCH in writing within two weeks of receipt thereof.
- 2.3 The acknowledgement of acceptance of the order must include all essential order data, including, but not limited to, the exact designation of the ordered goods or services, the order number and the order- and delivery dates. Supplier shall be responsible for any delays resulting from its violation of this provision.
- 2.4 Should the acknowledgment of order deviate from the order, JULIUS HOESCH shall be bound to the order only if JULIUS HOESCH has agreed in writing to such deviation.
- 2.5 Release orders on the basis of a contract entered into between JULIUS HOESCH and the Supplier shall become binding at the latest two weeks after receipt of the release order unless the Supplier opposes any such order within said period.

3. Prices, terms of payment

- 3.1 The prices agreed upon are fixed prices before VAT and exclude back charges and price increases of any kind.
- 3.2 Unless agreed otherwise, deliveries are based on DDUP according to INCOTERMS 2010.
- 3.3 Unless agreed otherwise, payments are made within 30 days with 3% discount or within 45 days without discount, in each case from receipt of an auditable invoice by JULIUS HOESCH.
- 3.4 Supplier's invoices must be issued in duplicate and itemize for each delivery the information requested in the order. The value added tax must be shown separately on the invoice.
- 3.5 The Supplier agrees to include in all invoices not only the VAT identification number, but also - clearly visible - the taxpayer identification number allocated to it by its competent local tax office.
- 3.6 In the event the information pursuant to Subsection 3.5 above is missing, incorrect or incomplete, or the invoice cannot be audited for any other reason, Supplier's claim does not fall due.
- 3.7 Payments made by JULIUS HOESCH do not imply JULIUS HOESCH's acknowledgement that the goods delivered or services provided are in conformity with the contract. In the event of defective or incomplete delivery of goods or services, JULIUS HOESCH shall be entitled, without prejudice to any further claims and rights it may have, to withhold to a reasonable extent payments and claims resulting from this business relationship pending proper performance.

4. Delivery, place of performance

- 4.1 The agreed-upon delivery- and performance dates are binding. If no dates for the delivery of goods and/or performance of services have been agreed upon with the Supplier, the latter must deliver the goods or perform the services within the customary and reasonable period of time without delay. Any delivery of goods or performance of services in advance or after the agreed date are subject to JULIUS HOESCH's consent. In the event of force majeure, both JULIUS HOESCH and the Supplier shall be released from their respective duties of taking delivery/acceptance and delivery of goods/performance of services, provided that the party affected by the event of force majeure notifies the other party thereof immediately after its occurrence and provides the expected duration of the event preventing such party from fulfilling its obligations or duties.
- 4.2 Each delivery must be accompanied by a delivery slip stating JULIUS HOESCH's order number and the description of the contents specifying type and quantity.
- 4.3 The place of performance for the delivery of goods or performance of services by the Supplier is the destination specified in the order. If no such destination is provided, then the corporate seat of JULIUS HOESCH stated in the order shall be the place of performance.

5. Contractual penalty

- 5.1 If the Supplier is in default with the delivery of goods or the performance of services, JULIUS HOESCH shall be entitled to a contractual penalty of 0.1% of the agreed-upon net price per calendar day of default; this amount, however, is limited to 5% of the agreed-upon net price. The limitation of the contractual penalty to 5% of the agreed upon net price shall apply even if the Supplier is culpably in default with several agreed-upon delivery dates under one contract.
- 5.2 The assertion of a contractual penalty may be reserved until final payment.
- 5.3 Payment of the contractual penalty by the Supplier does not release the Supplier from fulfilling its contractual obligations and from any further (damage) claims against it. The contractual penalty, however, shall be set off against claims JULIUS HOESCH is entitled to due to default.
- 5.4 If contractual dates are changed by mutual consent, the clause on contractual penalty shall also apply to these new dates.

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6. Passing of risk, transportation, title

- 6.1 The Supplier must properly pack, ship and provide sufficient insurance coverage for the items to be delivered and comply with all relevant packing and shipping rules and regulations. The Supplier is liable for any damage suffered by JULIUS HOESCH due to improper or insufficient packing, shipping or insurance coverage.
- 6.2 Shipping documents, such as delivery and packing slips must be attached to the delivered items. The order numbers and the description of the items requested in JULIUS HOESCH's order must be provided on all documents.
- 6.3 Any additional costs that are incurred by JULIUS HOESCH due to the nonobservance of the rules stipulated above shall be at the Supplier's expense.
- 6.4 Irrespective of the agreed-upon pricing terms, the risk for items without installation or assembly shall pass to JULIUS HOESCH upon receipt at the delivery address specified by JULIUS HOESCH, and the risk for items with installation or assembly shall pass to upon successful conclusion of acceptance.
- 6.5 The title to the goods delivered shall pass upon JULIUS HOESCH upon payment. Any prolonged or expanded retention of title is excluded.

7. Warranty (defects liability)

- 7.1 The Supplier warrants that the delivery item/service has the contractually agreed-upon quality, corresponds to the state of the art at the time of passing of risk, and does not have any defects which cancel or reduce its value or suitability for its usual purpose or that specified in the contract. The Supplier is liable for the fact that neither the delivery nor the use of the delivered item/service infringe third party rights, including, but not limited to, patents or other industrial property rights.
- 7.2 The period of limitation for defects under a purchase agreement or a contract for work and services shall be 36 months starting to run upon passing of risk.
- 7.3 JULIUS HOESCH will notify the Supplier of any defect as soon as it has been detected in the ordinary course of business.
- 7.4 JULIUS HOESCH is entitled without limitation to any and all statutory warranty claims and rights. JULIUS HOESCH, at its own discretion, is entitled to claim from the Supplier either the rectification of performance, elimination of the defect or delivery of an item free from defects, or the creation of a new deliverable, as the case may be. In the event of rectification of performance, JULIUS HOESCH is in particular entitled to claim transportation costs as well as the costs of installation and dismantling incurred due to such rectification. The right to claim damages, including, but not limited to damages in lieu of performance, is expressly reserved.
- 7.5 Further claims and rights of JULIUS HOESCH shall remain unaffected.

8. Liability of JULIUS HOESCH

- 8.1 Claims for damages and for compensation of expenses (hereinafter referred to as "Damages") by the Supplier against JULIUS HOESCH – regardless of the legal basis thereof – are excluded unless such Damages arise from deliberate or grossly negligent breach of duty by JULIUS HOESCH, from the Product Liability Act, or injury to health and bodily injury of the Supplier or its staff due to a breach of duty for which JULIUS HOESCH is responsible, the non-compliance with a warranty for a specific quality or the violation of essential contractual obligations by JULIUS HOESCH. In the event of violation of essential contractual obligations by JULIUS HOESCH, the Supplier's claim against JULIUS HOESCH for damages shall be limited to the compensation for damage that is foreseeable and typical of this type of contract, if and insofar as none of the instances of liability set forth in the first sentence of this subsection are present. Damage that JULIUS HOESCH must typically expect when any specific obligation has been violated is deemed foreseeable and typical of this type of contract. A violation of obligations by JULIUS HOESCH's legal representative or person employed in performing its obligation is deemed a violation of obligations by JULIUS HOESCH. The foregoing provisions shall not be associated with a reversal of the burden of proof at the expense of the Supplier.

9. Provision of material

- 9.1 Material provided by JULIUS HOESCH shall remain JULIUS HOESCH's property and must be stored by the Supplier free of charge and with the diligence of a prudent businessman separate from its other items, and marked as JULIUS HOESCH's property. This material may be used exclusively for the performance of work ordered by JULIUS HOESCH. The Supplier has a no-fault liability for damage to and impairment of the material provided.
- 9.2 If and to the extent that items provided by JULIUS HOESCH are processed or remodeled by the Supplier to become a new movable object, JULIUS HOESCH shall be deemed the manufacturer thereof. In the event of combination or inseparable blending with other objects, JULIUS HOESCH shall acquire the co-ownership of such new item on a pro-rata basis of the value the items had at the time of combining or blending. If the Supplier's item is to be considered the main item due to the manner of combination or blending, it shall be agreed that the Supplier assigns co-ownership of such item to JULIUS HOESCH on a pro-rata basis and stores the co-owned product free of charge for JULIUS HOESCH.
- 9.3 Any models, matrixes, templates, samples, tools, other means, documents and data made available by JULIUS HOESCH to the Supplier, or in the production of which JULIUS HOESCH has a major share with a cost contribution of at least 50%, may be used by the Supplier exclusively for processing the proposal concerned or the execution of the order for goods or services. The Supplier must keep them in safe custody and protect them against third party access; any use of these items for the Supplier's own purposes or for goods and/or services destined for third parties shall be subject to JULIUS HOESCH's written consent. All items provided and specified in this section must be returned to JULIUS HOESCH together with any transcripts or copies thereof – without delay and without further request after handling of the inquiry or after delivery of the item ordered.

10. Special obligations of the Supplier

- 10.1 The Supplier must prove to JULIUS HOESCH upon request that it has complied with the quality requirements set forth in the order and agreed upon in each individual contract by providing proper documentation thereof (e.g. certificates, description of the production process, etc.).

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- 10.2 Any modification of the delivery item and/or the production/manufacturing process agreed upon with JULIUS HOESCH is subject to the written consent of JULIUS HOESCH in each and every case.
- 11. Regulations concerning export control- and foreign trade data**
- 11.1 The Supplier is responsible for complying with all applicable national and international customs and foreign trade rules and regulations. No later than two weeks after the order and immediately upon each amendment, the Supplier must provide JULIUS HOESCH in writing with any information and data that JULIUS HOESCH needs for compliance with foreign trade law upon exporting, importing and re-exporting goods.
- 11.2 In the event that the Supplier violates its obligations under 11.1 above, it shall compensate JULIUS HOESCH for any expenses and damage suffered by JULIUS HOESCH due to such violation, unless it is not the responsibility of the Supplier.
- 12. Spare parts, availability**
- 12.1 The Supplier is obligated to provide JULIUS HOESCH with spare parts at reasonable terms for the duration of the customary service life, but at least for ten years after the last delivery/acceptance.
- 12.2 If the Supplier discontinues delivery of the goods upon expiration of or during the period specified above, it must provide JULIUS HOESCH with the opportunity to place one last order at reasonable terms.
- 13. Product liability**
- 13.1 Should a claim for damages be asserted by a third party against JULIUS HOESCH as a result of a defect in the product, the Supplier shall hold JULIUS HOESCH harmless and indemnify JULIUS HOESCH against such claims insofar as the defect in the product is due to a defect in the items delivered or work performed by the Supplier. In all other respects, the Supplier is liable in accordance with the statutory provisions.
- 14. Confidentiality, data privacy**
- 14.1 The Supplier will treat as confidential all illustrations, models, drawings, calculations and other documents and information received from JULIUS HOESCH in connection with the execution of the order. This information may not be disclosed to third parties unless expressly authorized by JULIUS HOESCH.
- 14.2 Production for third parties, exhibit of products specifically made for JULIUS HOESCH, in particular those manufactured according to plans, drawings or other individual requirements of JULIUS HOESCH, publications regarding the orders and the services performed, as well as reference to such orders vis-à-vis third parties are subject to JULIUS HOESCH's express written authorization.
- 14.3 In connection with its advertising materials, when giving references, or issuing other publications, the Supplier is not allowed to provide, show or use in any other manner the name or trademark of JULIUS HOESCH unless the Supplier has obtained JULIUS HOESCH's prior written consent.
- 14.4 JULIUS HOESCH is entitled to store personal data of the Supplier and its employees as well as of subcontractors of suppliers of the Supplier who are connected to the business relationship with the Supplier, and JULIUS HOESCH may use such data within JULIUS HOESCH. If and to the extent necessary, the Supplier will enter into comparable agreements with its employees, subcontractors or suppliers.
- 15. Right of use and proprietary rights**
- 15.1 JULIUS HOESCH may use, modify and transfer the subject matter of the contract without limitation to third parties including any industrial property or proprietary rights of the Supplier.
- 15.2 Should JULIUS HOESCH be held liable by any third party for the infringement of any rights of use or proprietary rights, the Supplier shall be obligated to indemnify and hold JULIUS HOESCH harmless against such claims upon first request in writing.
- 16. Set-off**
- 16.1 Set-off with counterclaims of the Supplier is effective only insofar as these claims are not disputed and due or have been established as final and absolute.
- 17. Miscellaneous**
- 17.1 Any and all legal relationships between the Supplier and JULIUS HOESCH are subject to German law to the exclusion of the UN Sales Convention (CISG).
- 17.2 The exclusive place of jurisdiction with regard to all disputes arising from and/or in connection with any of the contracts entered into with JULIUS HOESCH, which include these terms and conditions as an integral part thereof, is Düren (courts of the City of Düren, Germany).
- 17.3 Any amendments of and/or supplements to these Standard Terms and Conditions for Purchases and Contracts and of the contracts of which they are an integral part must be made in writing in order to become effective. This shall also apply to the amendment or cancellation of this written form clause.
- 17.4 Should any of the provisions of these Standard Terms and Conditions for Purchases and Contracts or of any contract of which they are an integral part be or become ineffective or incomplete, the effectiveness of the remaining provisions shall not be affected thereby. In lieu of the ineffective provision, the parties hereto shall agree upon a provision that achieves the economic goal desired by the parties to its full extent or to the extent legally possible.