

General Terms of Purchase

General Terms of Purchase of HJS Emission Technology GmbH & Co. KG, Menden/Sauerland

1.0 General Terms of Purchase

- 1.1 Our Terms of Purchase apply exclusively. We do not recognize any terms and conditions which conflict with or are contrary to our Terms of Purchase unless the application of such terms and conditions has been explicitly approved in writing. Our Terms of Purchase shall also apply even if we unreservedly accept your deliveries in full awareness of the fact that your terms and conditions contradict or conflict with our Terms of Purchase.
- 1.2 All agreements reached between you and us relating to the execution of this agreement shall be set down in writing as an addendum or supplement to this contract.
- 1.3 Our Terms of Purchase shall only apply to business persons as defined by Section 14 of the German Civil Code (BGB).
- 1.4 Our Terms of Purchase shall also apply to all future business transactions with you.

2.0 Purchase orders

- 2.1 We shall be entitled to revoke all purchase orders unless you accept our purchase order within 14 calendar days by returning the duplicate signed by you.
If you accept our purchase order with deviations, you shall clearly point out such deviations to us. A contract will only be concluded if our written consent is given to such deviations.
- 2.2 We retain our title rights to illustrations, drawings, tools, samples, models, information and any other documents. Such illustrations, drawings, tools, samples, models, information and documents shall only be disclosed to third parties with our explicit consent and shall be used exclusively for the purpose of producing for our purchase order and shall be returned to us as soon as the purchase order has been processed.
Such documents shall be kept secret from third parties.
- 2.3 Only purchase orders placed in writing shall be legally binding. Purchase orders placed orally or by telephone shall require our subsequent written confirmation for their legal validity. The same shall apply to verbal subsidiary agreements and any changes to this contract. Purchase orders, call deliveries, as well as changes and supplements to the same may also be provided by means of electronic or data communications or by machine readable data carriers. Emails which are encrypted in compliance with the German Signature Law (Signaturgesetz) shall be deemed to comply with written requirements.
- 2.4 We shall not pay for visits or for the preparation of offers and projects, etc.
- 2.5 The contracting parties agree to treat as a business secret any non-obvious commercial or technical details which become known to them in the course of the business relationship. A corresponding duty shall be imposed on subcontractors.
If one of the contracting parties detects that confidential information has come into the possession of an unauthorized third party or if a confidential document has been lost, the party shall immediately inform the other contracting party thereof.
- 2.6 You shall treat the signing of this contract confidentially and shall only refer to a business relationship with our company in all publications, e.g. in promotional material and reference lists, with our written consent.
- 2.7 Prior to delivery/acceptance you shall ensure that we are immediately informed in detail in writing about new technical developments in the field covered by the contract as well as about any new laws and planned changes in the law.
- 2.8 We shall be entitled to demand that reasonable changes be made to the delivery item even after conclusion of the contract whereby appropriate account shall be taken of the impact of such changes – including but not limited to reduced or additional costs and delivery/acceptance dates.
If such changes result in higher costs for us or if you regard a postponement of the delivery/acceptance date of longer than 10 working days as necessary, we shall be entitled – before we decide whether or not to perform such changes – to ask you to disclose your written cost estimates for additional work and/or any changes which may need to be made to your product plans

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3.0 Prices – Terms of payment

- 3.1 The agreed prices are fixed prices and shall preclude subsequent claims of any kind. Unless otherwise agreed in written form, the price includes delivery carriage paid including packaging. All costs prior to transfer to the carrier, including the cost of loading and cartage, shall be borne by you. The form of pricing specified shall not affect the agreement regarding place of performance.
The return of packaging is subject to special agreement.
- 3.2 Statutory value-added tax shall be shown separately in addition to the net prices.
- 3.3 We are only able to process invoices – as specified in our purchase order – which quote our item and order numbers. You shall be responsible for any consequences resulting from noncompliance with this obligation.
- 3.4 Settlement shall be made in means of payment specified at our discretion on the agreed dates or in compliance with any other conditions. If acceptances or bills of exchange are offered in payment, we shall – unless otherwise agreed – remunerate the agreed discount.
- 3.5 Unless otherwise specifically agreed, we shall pay within 30 days at a prompt payment discount of 3% or within 60 with no discount. The applicable periods shall commence on the day the invoice is received, no earlier however than the day on which the goods are received.
- 3.6 We shall be entitled to exercise our statutory offsetting and retention rights. Without our prior written consent you are not entitled to cede your claims against us or have them collected by a third party. If you cede a claim against us to a third party without our consent, the cession shall nevertheless be valid. We then may satisfy the claim to you or the third party at our own choice with the effect of discharging our obligations.
- 3.7 Payments made by us shall not be construed as recognition of statements of account.
- 3.8 If certificates on materials testing are stipulated, they shall form an essential component part of and be supplied with the delivery. They must be available to us at the latest, however, 10 calendar days after receipt of the invoice. The period of payment for invoices shall commence on receipt of the agreed certificate.
- 3.9 If deliveries are faulty or incomplete, we shall be entitled to withhold payment prorated by value until due performance. If payments have already been made for faulty deliveries, we shall be entitled to withhold other due payments up to the amount of the payments.

4.0 Delivery dates, default on delivery, force majeure

- 4.1 The agreed delivery dates are binding. Decisive for compliance with the delivery date or the delivery deadline is receipt of the goods at the point of receipt or, respectively, use indicated by us, or the performance in good time of successful acceptance.
- 4.2 If it becomes apparent to you that a specified date cannot be complied with for any reason, you shall immediately notify us thereof in writing including a statement of the reasons and the probable duration of the delay.
In such cases you will nevertheless take all necessary measures to meet the agreed date or to ensure that there is only a slight delay and shall inform us in writing about the action you have taken and still plan to take in each case.
In no circumstances shall the agreed delivery date be changed as a result of notification of a possible delay in delivery.
You shall grant us the right to intervene with your suppliers if required.
You shall bear any costs arising to us as a result of nonfeasance or belated provision of information.
- 4.3 If you default on delivery, we shall be entitled to the legal claims. After the abortive expiry of a reasonable period of grace set by us we shall also be entitled, at our own discretion, to continue to demand the supplies/services, to announce withdrawal with or without compensation in damages or to procure a replacement from a third party and/or claim compensation in damages, including any additional costs incurred, in lieu of service. Our claim to the supplies/services shall only be discharged if our withdrawal is announced in writing or if we demand compensation in damages in lieu of service.
- 4.4 You shall only be entitled to plead the absence of the necessary documents which were to be supplied by us if you had reminded us in writing that the documents had not been sent and you had not received them within an acceptable period of time.

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- 4.5 Force majeure and labour disputes shall release the contracting parties from their performance obligations for the duration of the trouble and for the extent of their effect. The contracting parties shall wherever reasonably possible be required to immediately provide the required information and adjust their obligations to the changed conditions in good faith. We shall be entirely or partly released from the obligation of acceptance of the ordered supplies/services and insofar entitled to withdraw from the contract if – as a result of the delay caused by force majeure or, respectively, the labour dispute – the supplies/services are no longer usable for us, taking due consideration of economic considerations. If these hindrances continue for a period exceeding three months, each of the contracting parties shall be entitled to withdraw from the contract without any repercussions.
- 4.6 If delivery is made earlier than stipulated, we reserve the right to return it to you at your own expense. If no return shipment is made in the case of premature delivery, the goods shall be stored by us at your cost and risk until the delivery date. In case of premature delivery, we shall reserve the right to make payment only at the stipulated due date.
- 4.7 We shall only accept partial deliveries if explicitly agreed and if identified as such. Agreed partial deliveries shall specify the outstanding quantities. We reserve the right to recognise excess or short deliveries.

5.0 Passage of risk, documents, packaging

- 5.1 Unless otherwise agreed in writing, delivery shall be made carriage paid. Shipment shall be at your risk. The risk of any deterioration, including accidental loss shall be yours until delivery to the agreed delivery address or point of use.
- 5.2 You shall enter our exact item and order number on all shipping documents and delivery notes. If you fail to do so, this will inevitably lead to processing delays for which we accept no responsibility. You shall ensure compliance with the legal and customs regulations – including but not limited to those of the European Community - applying to deliveries arriving from abroad. You shall be liable for all damages incurred as a result of a breach of such regulations.
- 5.3 Your obligation to take back the packaging shall depend on the legal requirements. The goods shall be packaged to prevent damage during transport. Packaging materials shall only be used to the extent required to achieve this objective. Only environment-friendly packaging materials may be used. The place of performance for your obligation to take back packaging shall be the place at which goods are delivered. We shall be entitled to reject deliveries of goods that are not packed in reusable transport containers (originating from the supplier or customer). We shall be entitled to demand repayment of costs incurred for the disposal of transport packaging that is delivered in breach of contract. Transport packaging shall be as follows:
- a) Load carriers: Euro skeleton boxes or Euro pallets
 - b) Shipping packaging: pure corrugated, unwaxed cardboard boxes
 - c) Load securing: pure corrugated cardboard material, paper stickers

The transport packaging used must be identified in such a way that it can be easily assigned to the respective supplier. We shall be entitled to demand the return transport or disposal of transport packaging that is delivered in breach of contract. Our Packaging Regulations C4-TS-01 and C4-FB-09 shall also apply concomitantly.
(http://www.hjs.com/en/152/0/seite_1/Company/Purchasing/Work_instructions/work_instructions.html)

6.0 Warranty

- 6.1 All supplies/services provided shall comply with the latest state of the art, the relevant legal requirements and the provisions and directives of authorities, workers compensation associations (Berufsgenossenschaften) and professional associations. All goods shall meet current safety regulations and shall have been assessed by the competent test centres and approved for the intended utilization purpose at handover. You shall submit the safety data sheets applicable for your respective supplies on delivery. You shall hold us harmless against any demands for recourse asserted by a third party should you not supply the security data sheets at all, on time or without fault. The same shall apply to any changes at a later point in time. You shall only deviate from these provisions as necessary in specific cases with our written consent. Your liability for defects shall not be limited by said consent. If you have reservations regarding the type of execution requested by us, you shall immediately inform us in writing thereof.

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- 6.2 With your supplies/services and also with supplies or supplementary services by third parties, you shall agree to use environmentally friendly or environmentally compatible products and processes within the limits of business and technical feasibility. You shall be liable for the environmental compatibility of products supplied by as well as for any consequential damages which may arise as a result of an infringement of your legal disposal duties.
- 6.3 We shall immediately advise you in writing of obvious defects in the supplies/services as soon as they are detected in the due course of business, at the latest, however, within 5 working days after our receipt of the supplies/services. The time limit for the notification of hidden defects shall be 3 working days after discovery.
- 6.4 On request, you shall remedy immediately and without charge, including any additional costs – at our discretion either by reworking or by subsequent improvement or re-delivery of defective parts – any defects in the supplies/services notified during the warranty period, including failure to comply with guaranteed data and lack of warranted characteristics. You shall, in particular, bear all the costs of determining and rectifying defects including where such costs are incurred by us, including but not limited to examination costs, installation, work and material costs as well as transport and other costs relating to the sending in of defective parts and the return delivery of faultless parts. This shall also apply if higher expenses are incurred owing to the delivery item being transferred to a location other than the place of performance. After the abortive expiry of a period of grace specified by us for reworking or re-delivery, we shall also be entitled to the legal rights of withdrawal and reduction. We reserve the right to assert claims for compensation in all instances. If similar defects are discovered in more than 5% of the supplied parts (serial defects), we shall be entitled to reject the entire existing delivery volume as defective and to assert our statutory defect liability claims for the same.
- 6.5 If you culpably fail to fulfil your defect liability obligations within an appropriate period set by us, we shall be entitled to take the necessary measures ourselves or to arrange for such measures to be taken by a third party at your cost and risk. In urgent cases and in consultation and agreement with you, we shall be entitled to rework parts ourselves or to arrange for such work to be performed by third parties. We shall be entitled to remedy minor deficiencies – in performance of our duty to minimize damages – without prior consultation and agreement without thereby limiting your liability obligations in any way. In such cases we shall charge necessary expenditures to you. This also applies if unusually high losses are impending.
- 6.6 Unless otherwise explicitly agreed, the warranty period is two years. The warranty period shall begin shall upon transfer of the delivery item to us or to third parties named by us at the point of receipt or use specified by us. For devices, machines and plant, the warranty period shall begin on the date of acceptance which is indicated in our written declaration of acceptance. If acceptance is delayed for reasons for which you are not responsible, the warranty period shall be two years after providing the delivery item for acceptance. The warranty period for construction work and materials shall be based on the statutory provisions; the warranty period for replacement parts is two years following installation / commissioning and terminates four years after delivery at the latest. During the first six months of the passage of risk the assumption shall be made that a defect existed at the time the risk passed.
- 6.7 As long as the validity of our complaint is a matter of dispute the warranty period for the affected plant/parts shall be suspended when the operating failure is notified until negotiations relating to the dispute are ended. The warranty period for subsequently improved or re-delivered parts or services shall begin when negotiations come to an end or, if acceptance is agreed, upon acceptance. You may be required to request our acceptance in writing. The period shall not, however, end prior to expiry of the limitation periods for claims for defects for the original supplies or services.
- 6.8 If claims are asserted against us owing to defects in our product which are attributable to your goods, our rights of recourse against you shall be subject to sections 478, 479 of the German Civil Code (BGB) accordingly.
- 6.9 Documents submitted by you in connection with the purchase order and accepted by us, as well as illustrations, drawings, measurement, weight and performance data, shall constitute part of the contract. You shall warrant compliance with the figures stipulated in the same as well as any other specifications stipulated by us. In cases of noncompliance you shall be liable for any damages incurred as a result. Our extended statutory claims for liability for material defects shall remain unaffected. Our acceptance or approval of submitted drawings shall not imply a waiver of our claims in cases of liability for defects. You shall notify any defects in material provided by us without delay. You shall only process such defective material in accordance with our instructions.

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If customer-supplied material becomes unusable due to fault on your part, you shall replace the resulting scrap on presentation of an invoice. We shall be entitled to claim compensation for consequential damages and lost profits.

Any scrap which arises from customer-supplied materials shall be notified to us by you and remunerated at current scrap values. Quantities of scrap shall be delivered to us at no charge on request.

7.0 Quality assurance, product liability

- 7.1. If claims are lodged against us – due to the breach of official safety regulations or due to domestic or foreign product liability provisions or laws – because of a defect in our product which is attributable to your goods, we shall be entitled to demand restitution of such damages from you to the extent that it is caused by the products supplied by you and to the extent that you yourself are liable to third parties. Such damages shall also comprise the costs of a precautionary recall action.
- 7.2. You shall operate a state-of-the-art quality assurance system that is suitable in terms of type and scope and shall demonstrate the application of such a quality assurance system on request. Our Quality Assurance Guideline C5-TS-02 shall also apply concomitantly.
(http://www.hjs.com/en/229/0/seite_1/Company/Purchasing/Quality_assurance_guidelines/quality_assurance_guidelines.html)
- 7.3. Unless otherwise agreed, you shall identify the delivery items in such a way which ensures that they are permanently identifiable.
- 7.4. You shall take out product liability insurance providing minimum flat-rate cover of 5 million euros per case of personal injuries or damage to property. We shall be entitled to assert unlimited further claims to compensation.

8.0 Reservation of title, customer-supplied materials, tools, confidentiality

- 8.1. We retain title to any parts provided to you by us. The processing or transforming of such parts by you shall be undertaken on our behalf.
If goods to which we retain title are processed with objects which do not belong to us, we shall acquire co-title to the new object based on the ratio of the value of our goods to the other processed objects at the time of such processing.
- 8.2. If materials provided by us are inseparably mixed with other objects which we do not own, we shall acquire co-title to the new object based on the ratio of the value of the goods to which we retain title to the other objects thus mixed at the time of such mixing. If objects are joined in such a way that your property is regarded as the principal good, it shall be agreed that you shall transfer proportionate co-title to us. You shall hold sole or co-title on our behalf.
- 8.3. We retain title to tools. You shall only use the tools for the purpose of manufacturing the goods provided by us. You shall provide value as new insurance cover and insurance against fire, water, and theft for tools which are owned by us
You shall undertake the requisite maintenance and inspection work at your own cost in good time. Any incidents shall be notified to us immediately. If you fail to make such notification, this shall not affect any claims for damages.
- 8.4. You shall treat all illustrations, drawings, calculations and other documents and information obtained from us with absolute confidentiality. Third parties shall only be granted access to such information with our explicit approval. This duty to maintain secrecy shall also continue in effect subsequent to performance of this contract. This duty shall only expire if and to the extent that the production know-how incorporated in the transferred illustrations, drawings, calculations and other documents has become public knowledge.

9.0 Liability

All claims for damages against us for slight negligence are excluded, regardless of their legal standing. This disclaimer of liability shall not apply to claims for damages arising as a result of breach of contract by us. Neither shall this limitation apply to injuries to life, limb and health.

In cases of breach of major terms of the contract as a result of slight negligence or in cases of gross negligence on the part of simple agents in performance, compensation for damages shall be limited to the typical damages foreseeable at the time the contract was concluded.

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10.0 Certificates of origin and intellectual property rights

- 10.1 You shall properly sign and provide any required information we request about the origin of items (such as suppliers' declarations, movement licenses as referred to in EU provisions on the origin of goods) without delay.
- 10.2 You shall warrant to us and our customers that neither the goods and services provided by you nor their use infringe the intellectual property rights of third parties. If third party claims are asserted against us or our customers as a result of an infringement of intellectual property rights, you shall indemnify us or our customers against such claims on first request.
- 10.3 We shall be entitled to obtain the necessary permission to use the relevant delivery items and services from the entitled holder of such rights at your cost.

11.0 Severability

If any provisions of these General Terms of Purchase are legally ineffective, this shall not affect the validity of the remaining provisions.

12.0 Passing on of order only after approval

You shall only transfer the purchase order or essential parts of the same to third parties with our prior written consent.

13.0 Suspension of payments, insolvency

If you suspend your payments, if a receiver in bankruptcy is appointed, bankruptcy proceedings are instituted against your assets, or draft or cheque protests are submitted against you, we shall be entitled to withdraw from the contract or to terminate the contract fully or in parts without prior notice without any claims being asserted against us as a result.

If the contract is terminated by us, the supplies and services provided prior to such termination shall only be accounted for at contract prices to the extent that we are able to use such services as agreed. The damages arising to us shall be taken into account for billing purposes.

14.0 Contract language / Correspondence

The contract language is German. All correspondence and all other records and documents shall be written in the German language. This shall also apply to all of the remaining documentation, e.g. for advance payment guarantees and warranty bonds.

If the contractual parties additionally use another language, the German wording shall take precedence.

15.0 Place of performance

Unless explicitly agreed otherwise, the place of performance for deliveries shall be the shipping address or location of use as stated by us. Menden shall be the place of performance for all other obligations due from both parties.