

General Terms of Purchase

General Terms of Purchase of HJS Emission Technology GmbH & Co. KG, Menden/Sauerland, Germany, August 2017

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 Our Terms of Purchase shall only apply to business persons as defined by Section 14 of the German Civil Code (BGB).
- 1.3 By making a first delivery under these Terms of Purchase, you acknowledge their exclusive validity for all future business conducted 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. 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 and call deliveries placed in writing (i.e. "Textform" as defined in German law) shall be legally binding. Purchase orders and call deliveries placed verbally 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.
- 2.4 We shall not pay for visits or for the preparation of offers and projects, etc.
- 2.5 You shall agree to treat as a business secret any non-obvious commercial or technical details which become known to you in the course of the business relationship. A corresponding duty shall be imposed on subcontractors. If you detect that confidential information has come into the possession of an unauthorized third party or if a confidential document has been lost, you shall immediately inform us thereof.
- 2.6 You shall treat the signing of this contract confidentially and shall only refer to a business relationship with our company in any publication, e.g. in promotional material and reference lists, with our written consent.
- 2.7 Prior to delivery/acceptance, you shall ensure – within for you reasonable bounds – that we are immediately informed in detail and in writing about any new technical developments in the field covered by the contract as well as about any new laws and planned changes to 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 as necessary, we shall be entitled – before we decide whether or not to execute such changes – to request 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 with no discount. The applicable periods shall commence on the day the invoice is received, but no earlier than on the day on which the goods are received and – if agreed – certified in accordance with section 3.8.
- 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 constitute recognition of the invoice or of the faultlessness of the delivery item.
- 3.8 If certificates on materials testing have been agreed, they shall form an essential part of and be sent to us together with the delivery. They must be available to us at the latest, however, 10 calendar days after receipt of the invoice.
- 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. We shall have unrestricted statutory rights of offsetting and retention.
- 3.10 The values determined during the incoming goods inspection shall be binding with respect to the dimensions, weights and quantities of a delivery.

4.0 Delivery dates, default on delivery

- 4.1 The agreed delivery dates are binding. Decisive for compliance with the delivery date or delivery period is receipt of the goods at the place of receipt or use indicated by us and, in the case of agreed acceptance, additionally the acceptability of the goods.
- 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 you shall inform us in writing about the action you have taken and still plan to take in each case. Under 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.

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- 4.3 In the event of a delay in delivery, we shall be entitled to demand a contractual penalty of 0.2% of the net order value per working day, up to a maximum of 5% of the net order value. We shall be entitled to reserve application of the contractual penalty until payment of the goods affected. Other claims due to delayed delivery, in particular, statutory rights of cancellation and withdrawal and claims for damages, shall remain unaffected. Your obligation to pay damages shall also extend to any lump-sum damages and contractual penalties that we owe to our customer on account of your delay in delivery, provided that we have informed you of the lump-sum damages or contractual penalty agreed with the customer.
- 4.4 You shall only be entitled to plead the absence of necessary documents that were to be supplied by us if you have reminded us in writing that the documents had not been sent and you had not received them within an acceptable period of time.
- 4.5 If delivery is made earlier than stipulated, we reserve the right to return it to you at your expense. If no return shipment is made in the case of premature delivery, we shall store the goods at your cost and risk until the delivery date. In the case of early delivery, payment shall be made in line with the agreed delivery date.
- 4.6 We shall only accept partial deliveries if explicitly agreed and if identified as such. In the case of agreed partial deliveries, the outstanding quantities shall be listed. We reserve the right to accept 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 place 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 – applicable 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 for achieving 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 where the goods are handed over. We shall be entitled to reject goods that are not packed in re-usable transport containers (originating from the supplier or customer). We shall be entitled to demand repayment of the costs incurred for the disposal of transport packaging that is delivered in breach of the contract. Transport packaging shall be as follows:

- a) Load carriers: Euro skeleton boxes or Euro pallets
- b) Shipping packaging: pure corrugated, unwaxed cardboard box
- c) Load securing: pure corrugated cardboard material, paper stickers

The transport packaging used must be labelled in such a way that it can be clearly assigned to the respective supplier. We are entitled to demand the return transport or disposal of transport packaging delivered in breach of the contract. At the same time, our Packaging Regulations C4-T5-01 and C4-FB-09 shall also apply: The valid version of both of these documents can be found on our website.

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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 are obliged to hand over the respective material safety data sheets valid for your supplies/services together with the delivery. You shall indemnify us from all claims for recourse by third parties in the event that you fail to provide us with the material safety data sheets, or if you deliver them late or they contain inaccurate information. The same shall apply to all subsequent changes. If deviations from these regulations are necessary in individual cases, you must obtain our written consent. Your liability for defects shall not be limited by this consent. If you have any reservations regarding the type of execution requested by us, you must inform us immediately in writing.
- 6.2 Within the scope of economic and technical possibilities, you shall undertake to use environment-friendly products and processes for your deliveries/services and also for supplies or ancillary services of third parties. You shall be liable for the environmental compatibility of the products supplied and for any consequential damages that may result from violation of your statutory disposal obligations.
- 6.3 We will inspect the goods immediately upon receipt for obvious and visible deviations in quantity and identity and for transport damage. Any defects discovered later on will be given notice of following their detection. For any type of defect, the time limit for making a complaint is 5 working days from the date of discovery; sending notification within this period is sufficient. In this respect, you waive the right to object to late notification of defects.
- 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 of a single batch (serial defects), the entire batch shall be deemed defective.

- 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 ourselves – in performance of our duty to minimize damages – without prior consultation and agreement and without this limiting your liability obligations in any way. In such cases, we may then charge necessary expenditures to you. This also applies if unusually high losses are impending.
- 6.6 Unless otherwise explicitly agreed, the warranty period is three years. The warranty period shall begin shall upon transfer of the delivery item to us or to third parties named by us at the place 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. 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.

It is assumed that a defect already existed at the time of the transfer of risk if no more than six months have passed since the transfer of risk.

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- 6.7 As long as the validity of our complaint is a matter of dispute, the warranty period of the affected plant/parts shall be suspended as of notification of the malfunction until conclusion of the negotiations relating to the dispute. For parts or services that have been repaired or replaced, the warranty period shall commence anew, unless the remedial action has been conducted as goodwill or in order to avoid a legal dispute. However, the warranty period shall under no circumstances end prior to expiry of the limitation periods for warranty claims agreed for the original supplies or services.
- 6.8 If claims are asserted against us owing to defects in our product that 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 undertake to comply with the information contained therein as well as the specifications stipulated by us. In the event of non-compliance, you shall be liable for any damages incurred as a result. Our further statutory claims arising from 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 must notify any defects in material provided by us without delay. You may only process such defective material in accordance with our instructions.

If the material provided becomes unusable due to fault on your part, you shall replace the resulting scrap at your expense. We shall be entitled to claim compensation for consequential damages and lost profits. Any scrap which arises from materials provided are to be reported to us by you and remunerated at the current scrap value. On request, such scrap shall be delivered to us free of charge

7.0 Quality assurance, product liability

- 7.1 If a claim is lodged against us on the grounds of a violation of official safety regulations or on the basis of domestic or foreign product liability regulations or laws due to a defect in our product that is attributable to your goods, we shall be entitled to demand compensation for these damages from you insofar as it is caused by the products supplied by you. Such damages shall also include 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 you shall demonstrate the application of such a system upon request. At the same time, our Quality Assurance Guideline C5-TS-02 shall also apply. The valid version of the document can be found on our website.
- 7.3 Unless otherwise agreed, you shall label/mark the delivery items in a way that ensures that they are permanently identifiable. Your company name may appear in this labelling/markings only in exceptional cases and requires written authorization.
- 7.4 You are obliged to take out a product liability insurance policy providing minimum flat-rate cover for 5 million euros per case of personal injury or damage to property and to provide proof of this upon request.

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8.0 Retention of title, provision of 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 materials to which we retain title are processed with other items that do not belong to us, we shall acquire co-title to the new item based on the ratio of the value of our materials to the other processed items at the time of processing.
- 8.2 If the materials provided by us are inseparably mixed with other items that do not belong to us, we shall acquire co-title to the new item based on the ratio of the value of the materials to which we retain title to the other items thus mixed at the time of mixing. If this mixing is performed in such a way that your item is to be regarded as the main item, it shall be deemed to have been agreed that you shall transfer co-title to us on pro rata basis. You shall hold sole or co-title on our behalf..
- 8.3 We retain title to tools. You shall use the tools solely for the purpose of manufacturing the goods ordered by us. You are obliged to insure all tools that belong to us for their replacement value and at your own expense. You are obliged to carry out the necessary maintenance and inspection work in good time and at your own expense. Any faults must be reported to us immediately. If you culpably fail to report such faults, claims for damages shall remain unaffected.
- 8.4 You shall keep all illustrations, drawings, calculations and other documents and information received from us strictly confidential. They may only be disclosed to third parties with our express consent. This confidentiality obligation shall also apply after execution of this contract. It shall expire if and insofar as the production know-how contained in the illustrations, drawings, calculations and other documents provided has become public knowledge, but no later than five years after execution of this contract.

9.0 Liability

All claims for damages against us for slight negligence are excluded, regardless of the legal grounds. 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 vicarious agents, compensation for damages will be limited to typical damage foreseeable at the time the contract was concluded.

The above provisions shall apply also in favour of our employees, legal representatives and vicarious agents.

10.0 Certificates of origin and intellectual property rights

- 10.1 Notes of origin requested by us (e. g. supplier's declarations, trade licences within the meaning of the EU regulations of origin) will be provided with all necessary information and duly signed and made available 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 for infringement of intellectual property rights, you shall indemnify us or our customers against such claims upon 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.

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11.0 Passing on of order only after approval

You are not entitled to pass on the purchase order or essential parts of the same to third parties with our prior written consent.

12.0 Suspension of payments, insolvency

If you suspend your payments, if a provisional insolvency administrator is appointed, if insolvency proceedings are instituted against your assets or if you are subject to protests against bills or cheques, we shall be entitled to terminate the contract in whole or in part without prior notice and without any claims being asserted against us as a result. Other statutory termination rights remain unaffected. If the contract is terminated by us, the supplies and services provided prior to such termination will only be charged at contract prices to the extent that they can be used by us as intended. The damages arising to us will be taken into account when invoicing.

13.0 Contract language / Correspondence

The language of the contract is German. All correspondence and all other documents must be written in German. This shall apply also to all remaining documentation, e.g. for advance payment guarantees and warranty bonds. Insofar as the contractual parties additionally use another language, the German wording shall take precedence.

14.0 Concluding provisions

- 14.1 Unless expressly agreed otherwise, the place of performance for deliveries shall be the shipping address or place of use as stated by us. Menden shall be the place of performance for all other obligations due from both parties. However, claims for defects must be fulfilled where the defective goods are located.
- 14.2 The exclusive place of jurisdiction is the court responsible for our place of business. However, we are also entitled to sue you before the courts responsible for your place of business.