

GENERAL TERMS OF PURCHASE
of hcm packaging&solutions GmbH

1. General

For hcm packaging&solutions GmbH the abbreviation "HCM" shall hereinafter be used; the contractual partner of HCM shall hereinafter be referred to as "Supplier". The present general terms of purchase shall be referred to as "TOP".

2. Application of the TOP

The TOP shall apply to the extent that no deviations have been expressly agreed upon in individual cases, not just with regard to the individual business transaction that has been expressly agreed on, but also with regard to all further business transactions with the Supplier.

HCM reserves the right to modify the TOP. The modified TOP shall apply from the moment of their first use vis-à-vis the Supplier.

Any conflicting conditions of the Supplier are not accepted and shall not form part of any contract; they shall be considered contradicted by HCM, even if this is not expressly stated in individual cases.

3. Offers

Offers must correspond with the preceding request as presented by HCM. Any deviations must be marked as such, any and all sub-suppliers must be expressly indicated.

Offers are always to be presented free of charge and are – in the absence of any other indication, for at least 10 workdays – binding upon the Supplier.

4. Conclusion of contracts

Contracts between HCM and its Suppliers first enter into existence following a written order by HCM.

If the Supplier in individual cases (insofar as it is not bound by its offer) wishes to not accept an order by HCM in full or with regard to specific provisions, HCM is to be informed of this circumstance without delay.

If such notification is given, HCM is entitled to modify the original order accordingly or retract it completely.

5. Printing and layout templates

In the event that HCM provides the Supplier with printing and/or layout templates, the Supplier must examine their suitability and practicability without delay; in absence of any statement to the contrary within 3 workdays, the suitability and practicability shall be considered to have been confirmed by the Supplier. Any statements with regard the printing and/or layout templates must be made in writing.

6. Prices

The specific price calculated in concrete cases shall be announced by HCM in its written response to the corresponding request.

7. Delivery times

All delivery times are binding; the Supplier is only exempted from its obligations in this regard in the event of force majeure. All damages resulting from a delay in delivery must be compensated by the Supplier to HCM.

8. Delivery notes and pallet exchange

Every delivery is to be carried out by using a standard delivery note as provided by HCM and on which the delivery is to be confirmed.

In the event of deliveries loaded on pallets, the Supplier must ensure that pallets are exchanged immediately upon delivery; the Supplier cannot make any subsequent claims relating to any pallet exchanges not performed towards HCM.

As a general rule, pallets must always be exchanged. If pallets cannot be exchanged, the reason for this circumstance must be indicated on the delivery note. If the acceptor of the Supplier (i.e. the person to which the Supplier of HCM is delivering) cannot perform an exchange, the Supplier is entitled to invoice the pallets to HCM. HCM shall invoice its customer accordingly.

If the Supplier cannot or does not wish to perform an exchange, the reason for the inability to perform an exchange must be indicated on the delivery note. The Supplier is in this event not entitled to invoice the costs relating to the pallets and is free to retrieve the pallets at a later point in time.

The pallets to be exchanged must be of a quality ranging from used to new.

HCM shall not have to bear any costs relating to the pallet exchange under any circumstance.

9. Tools and other aids

Any tools and other aids necessary for individual orders (cutting tools, printing plates, lithographic plates, etc.) not provided by HCM are to be made available by the Supplier; the resulting costs are, insofar as nothing else is expressly agreed upon, to be included in the agreed prices.

The Supplier is to store such tools for any subsequent orders in such fashion that the further use for a minimum duration of 2 years is ensured. The Supplier cannot assert special storage costs for this.

All tools and aids are exclusively owned by HCM, which is to receive these whenever it so requests.

Without the express permission of HCM, tools and aids of HCM cannot be destroyed or disposed of. Any disposition of tools and aids of HCM is to be discussed with HCM and requires its express permission.

If no subsequent order occurs, the tools and aids are to be returned to a location in Austria as determined by HCM within 7 days at the expense and risk of the Supplier, in a usable condition as well as in their same version.

In the event of a change of supplier by HCM, the original Supplier is to return the tools and aids to a location in Austria as determined by HCM within 7 days at the expense and risk of the original Supplier, in a usable condition as well as in their same version.

In the event of a breach of the rules laid down in section 9, the Supplier shall indemnify HCM with an amount corresponding to the original value of the tools and aids and shall be liable vis-à-vis HCM for all damages and expenses incurred by HCM as a result of the production of new tools and aids.

10. Industrial property rights

With regard to all requirements that HCM wishes to be met for the placement of an order, HCM is liable for the circumstance that, in the performance of the order concerned, no industrial property rights of third parties (in particular trademark rights, design rights and patents) are infringed upon. If the industrial property rights however originate of a customer of HCM, this liability is limited to the provision of an appropriate statement according to which the performance of the order concerned shall not result in the violation of any third-party industrial property rights (in particular trademark rights, design rights and patents) and that HCM is not aware of any circumstances demonstrating that the statement made by the customer is false.

With regard to such tools and other aids not created by the Supplier upon express request of HCM, the Supplier is liable for the circumstance that their creation does not in any way infringe upon third-party industrial property rights (in particular trademark rights, design rights and patents).

11. Defects

The Supplier is aware of the fact that the products supplied are as a general rule forwarded in packaged form and as such without the possibility of inspecting these for defects.

The obligation to give notice of any defects and the time period available for this is therefore extended up until delivery to the final recipient and until said recipient's subsequent period to give notice of defects has expired.

HCM is, in the event of a defect, entitled to opt for rectification, exchange (additional delivery), a price reduction or conversion.

12. Customer protection

12.1. Because the Supplier may, in the performance of its orders, learn of customer relations of HCM, the Supplier is obligated to not contact or supply to any such customers of HCM for the duration of the business relationship with HCM and the following 2 years.

12.2. Suppliers and producers are expressly forbidden by HCM to list products of HCM on e.g. websites etc. of the Supplier or producer; HCM moreover forbids any electronic registration or use of data pertaining to HCM or the listing of products created by HCM in reference directories and similar documents.

12.3. Violations against the customer protection provisions of sections 12.1 and 12.2 shall obligate the Supplier to pay a contractual penalty as follows:

12.3.1. for the first violation, a penalty in the amount of the annual turnover of HCM pertaining to the customer concerned, whereby an annual average shall be calculated on basis of the last 24 turnover months

12.3.2. for the second and every further violation, a penalty in the amount of the annual turnover of HCM pertaining to the Supplier, whereby an annual average shall be calculated on basis of the last 24 turnover months

This penalty clause does in its sections 12.3.1 and 12.3.2 not include any resolution mechanism to the benefit of the Supplier. HCM reserves the right to claim damages exceeding these penalties in any event and without special declaration.

13. Storage

Insofar as successive deliveries occur in the course of orders, the Supplier shall up until actual delivery store the products to be supplied at its own expense, in proper fashion and ensure that the products shall remain undamaged for the duration of their storage.

14. Telephone recordings

Telephone calls may, on a random basis, be registered or recorded with the purpose of the continuous improvement of HCM's services. The Supplier herewith expressly consents to this registration and recording of telephone calls.

15. Applicable law, jurisdiction

All business of HCM shall exclusively be governed by Austrian law, in the absence of any agreement to the contrary under the express exclusion of the provisions of the UN Sales Convention.

The court competent in rem for Vienna – Inner City shall have exclusive jurisdiction for all disputes arising from or in connection with legal acts of HCM.

16. Closing provisions

Modifications of or supplements to contracts between HCM and Suppliers must be in writing, whereby the written confirmation of HCM shall suffice insofar as it is not contradicted by the Supplier without delay. Both parties herewith in advance waive the possibility to deviate from this requirement in any other manner than by written agreement.

Any statements that must be made in writing can also be made by means of e-mail.

If a provision of these TOP is or becomes invalid, the validity of other provisions shall remain unaffected. Both parties are obligated to use a valid replacement which meets the commercial purposes of the invalid provision as much as is possible.