

General Terms and Conditions of Purchase

HIRSCH Servo Gruppe Glanegg



applicable for HIRSCH Servo AG, Besitz- und Vermietungs GmbH, HIRSCH Porozell GmbH, Thermo-Entwicklungs- und Vertriebs GmbH, HIRSCH Maschinenbau GmbH | effective from May 11, 2021

1. General

Our orders are placed exclusively on the basis of the following terms and conditions of purchase. Agreements deviating from these terms and conditions shall only apply if they are made in writing and signed by a person authorised to represent us. Any conflicting terms and conditions of the contractual partner shall therefore not apply even if the contract is executed, even if we have not expressly objected to them.

Amendments to contractual agreements and amendments to the terms and conditions of purchase as well as other declarations to be made on the basis of or in connection with the contractual relationship shall only be effective if they are made in writing, whereby declarations made by fax or e-mail shall be deemed to have been made in writing. Our orders as well as any amendments or supplements thereto shall therefore only be deemed binding on us if they are made in writing.

Our order shall be deemed to have been accepted if either we do not object in writing within 3 working days at the latest, calculated from the date of submission, or if execution is commenced. Up to the time of acceptance, we are entitled to revoke the order without further consequences.

Our order number must be quoted in all documents relating to our orders.

2. Prices

Prices are fixed prices and in any case include costs for functional and quality tests as well as required packaging and documentation.

3. Delivery

The delivery date specified in the order is binding. The contracting party shall send a written, binding order confirmation within three working days of receipt of an order.

If a delivery period is specified, it shall commence on the date of transmission of the order, unless otherwise agreed.

Deliveries before the specified date are only permitted with our express approval and do not justify any change in the agreed payment terms.

Partial/excess/short deliveries of an order item are only permitted if expressly agreed.

Decisive for the timeliness of a delivery and/or service is the complete fulfilment of the contract, i.e. including provision of documentation, execution of assembly, handover of test protocols, training/instruction, etc.

The contractual partner undertakes to state the customs tariff number, weights and country of origin for each order item at the latest with the transmission of the invoice belonging to an order. Alternatively, a long-term supplier's declaration may be provided.

The delivery of goods to our plant in 9555 Glanegg 58 must be made exclusively to the goods receiving department during the hours of goods acceptance (MON-THU 7:30 a.m. to 4:00 p.m., FRI 7:30 a.m. - 11:30 a.m.).

4. Pre suppliers/Subcontractors

With the exception of standard parts, subcontractors and preliminary suppliers who are connected with the fulfilment of the contract shall be notified to us by name in the offer. However, this does not create a legal relationship between us and the subcontractors and upstream suppliers. The contractual partner shall be liable for the performance of its subcontractors and preliminary suppliers as for its own conduct.

5. Documentation

The contractual partner shall provide us with proper documentation, in particular on the properties of the product, its use, operation, further processing or installation, etc., such as product descriptions, storage, operating and maintenance instructions, installation instructions, spare parts and wear parts lists in German, or in English if requested, with the delivery and guarantee their completeness and correctness, otherwise it shall be liable to us and the end customer for damages arising from the breach of these provisions.

6. Packaging

The packaging must be customary in the trade, appropriate, faultless and of such a nature that it is sufficient to protect the goods up to the specified place of destination or assembly. We are entitled, but not obliged, to return packaging at the expense and risk of the contractual partner.

7. Delay in delivery, Contractual Penalty

The contractual partner is obliged to inform us in writing and in detail as soon as he becomes aware of the risk of a delay in delivery. Otherwise he is obliged to indemnify us, also with regard to any damages incurred by the end customer.

In the event of a delay, we shall be entitled to grant the contractual partner a reasonable period of grace to effect performance, together with a declaration that we will refuse to accept performance after the unsuccessful expiry of the period.

If the contract is not fulfilled before the expiry of this period, we shall be entitled to withdraw from the contract and to claim compensation for all damages, including loss of profit, incurred by us and the end customer.

In the event of a delay in delivery, we shall in any case be entitled to deduct a delay penalty of 1.0 % up to a maximum of 10 % of the total order value for each commenced week of delay and order item. We may reserve the right to claim the default penalty until the final payment. The deduction of a penalty for delay shall not release the contractual partner from its obligation to deliver and/or perform, nor shall it preclude the assertion of claims exceeding the penalty claim.

8. Withdrawal

In the event of serious breaches of contract, we shall be entitled to withdraw from the contract by setting a reasonable deadline. Serious breaches of contract shall be understood to mean in particular non-compliance with delivery dates as well as defects which may jeopardise the fulfilment of the contract with the end customer.

In this case, we shall have the right, without prejudice to our other legal options, to remedy the defects or services not provided at the place of use of the ordered item ourselves or have them remedied by third parties at the expense and risk of the contractual partner. The obligations of the contractual partner remain unaffected by this.

In the event of insolvency proceedings of the contractual partner or in the event of a change in the ownership structure, we shall be entitled to withdraw from the contract in whole or in part. The contractual partner shall be obliged to notify us of such circumstances immediately and demonstrably.

9. Shipping

The delivery conditions specified in the order shall apply on the basis of INCOTERMS 2020.

If components are provided by us or third parties, the contractual partner shall bear the risk for these components from the time of delivery or handover to him. The transport risk shall be borne by the party commissioning or executing the order. This applies analogously to the return delivery to us or the forwarding of the goods.

For the purpose of dispatch and smooth receipt of the goods, the contractual partner must enclose a delivery note with each shipment stating our order data, such as order number, order item number, our part number and the exact description of the contents. If this data required for the acceptance of the delivery is not included in the delivery note or if it is not available, we are entitled to reject the delivery at the expense and risk of the contractual partner. A joint delivery of several items from different orders and a joint delivery note is only permitted if clear allocation information is provided on the different orders and order items.

In the case of deliveries from other EU countries, a customs invoice (3-fold) as well as a proof of origin (declaration of origin, movement certificate, etc.) valid for preferential import customs clearance must be enclosed free of charge with the freight consignment note. The export customs clearance shall be provided by the contracting party at its own expense and risk. In the case of delivery of goods not manufactured in Austria and in the case of goods subject to customs clearance, a pre-supplier declaration stating our part number must be enclosed with the goods.

In the event of non-compliance with these requirements, all damages, risks and costs shall be borne by the contractual partner.

If the contractual partner based in the EU intends to have the requested goods manufactured outside the EU, this must be indicated in the course of submitting the offer.

If there is no corresponding indication in the offer of the contractual partner, we assume that export licences are not required in the country of manufacture. In the event that export licences are nevertheless required, these shall be procured by the contractual partner at its own expense and risk.

10. Warranty/Liability

The contractual partner assumes full warranty for itself, its subcontractors or sub-suppliers for the order-conforming, complete and defect-free execution, for the usual and assured properties of the delivery and/or services, for compliance with all relevant statutory and official regulations valid at the place of destination for a period of 24 months. Furthermore, it warrants that the design, construction, practicality and production technology of the ordered item correspond to the latest state of the art, that only materials of first-class and suitable quality have been used and that these are suitable for the intended purpose. In the case of immovable items or items intended for installation or use with immovable items, a warranty period of 60 months shall apply.

The warranty period shall run from acceptance of the end product by the end customer or, in the case of exclusive use by us, from acceptance by us.

In the case of engineering, consulting, software or documentation services as well as in the case of personnel secondment, the contractual partner shall assume unlimited warranty for the correctness and completeness of the written and verbal information and instructions.

The contractual partner guarantees the performance of training, maintenance, repair and overhaul services with regard to the delivered products against remuneration customary in the market as well as spare and wear part deliveries for a period of 15 years from the date of performance of the contract.

The contractual partner acknowledges that the inspection of the delivery item shall only take place on the occasion of the handover of the end product to our end customer. The obligation to inspect defective deliveries of goods pursuant to § 377 of the Austrian Commercial Code (UGB) is expressly waived.

In the event of the occurrence of defects, we shall be free to choose between replacement, repair or price reduction if there is no claim to conversion and we make use of this right.

The contracting party shall remedy defects at its own expense and risk by repair, replacement and/or subsequent delivery at short notice. If it does not comply with its obligation without delay, we shall be entitled to remedy defects or non-performed services ourselves or have them remedied by third parties at the expense and risk of the contractual partner. Further obligations of the contractual partner remain unaffected by this.

Insofar as we insist on repair or replacement, we shall be entitled to retain the entire payment until complete fulfilment of the service/delivery owed.

In the event of repair of the delivery item by replacement of defective parts, the warranty period for these shall start anew. At the same time, the warranty for the entire product shall be extended by the period during which the product could not be used due to the defect and its elimination.

Should we, as the manufacturer of the end product, be liable for damages which are attributable to defects or faults in the basic material or partial product supplied by the supplier, the supplier shall indemnify us in full against such liability and provide full recourse, irrespective of fault. Furthermore, it undertakes to support us to the best of its ability in any legal dispute with third parties.

If the contractual partner claims that there is no defect or fault in the delivered product or the rendered service within the meaning of product liability provisions, it shall also provide us with proof thereof.

Exclusions of liability on the part of the contractual partner, in particular under the title of warranty, compensation for damages and/or product

liability, shall not be accepted unless these have been expressly negotiated and agreed with us in detail.

Consequently, deviations from the statutory provisions - relating to damages or warranty - such as changes in the distribution of the burden of proof, shortening of deadlines and the like require our express written consent in each individual case in order to be effective.

We do not accept the exclusion of the right of recourse according to § 933b ABGB (Austrian Civil Code).

We do not accept the exclusion of a recourse claim on our part pursuant to § 12 PHG (Austrian Product Liability Act).

11. Invoicing

Invoices shall be sent to us in single copy in compliance with the respective applicable formal requirements under turnover tax law.

In the case of personnel deployments for assembly, repair or maintenance work, the contractual partner's personnel must report to our responsible person named in the order before commencing the work. The original service and material certificates signed by our responsible person must be enclosed with the invoices. Services and materials which have not been confirmed by our responsible person shall not be remunerated.

12. Payment

Unless otherwise agreed, payment shall be made at our discretion within 30 days with 3% discount or within 60 days net after fulfilment of all conditions stipulated in the order and after proper receipt of the invoice.

Unless otherwise agreed, agreed down payments shall be made within 30 days with a 3% discount or within 60 days net after receipt of a down payment invoice.

Payment does not imply any acknowledgement of the compliance of deliveries or services and thus no waiver of claims to which we are entitled, of whatever kind.

13. Ownership

The transfer of ownership of the subject matter of the contract shall take place analogously to the transfer of risk.

Tools, components or materials provided by us remain our property. The contractual partner is obliged to inspect these tools, components or materials upon receipt, to immediately report any transport damage to the carrier and any deviations to us, then to clearly mark them and to store them separately and carefully at his risk.

Equally, plans, sketches, samples, catalogues and other documents made available by us shall remain our intellectual property. Any use, in particular passing on, duplication, publication and making available, including copying, even of extracts, shall require our express consent.

Drawings, models, clichés, samples, means of production, devices and other aids required for the execution of an order shall become our property if they have been produced at our expense. They are to be returned to us after fulfilment of the contract or upon first request.

14. Third Party Rights

The contractual partner shall be liable for ensuring that the contractual use of the delivery item does not infringe any third-party property rights (patent rights, trademark rights, design rights, etc.). It shall indemnify us against all claims arising from the infringement of such industrial property rights and undertakes to procure the necessary authorisations (licences) for us at its own expense.

We are entitled to pass on technical documents of the contractual partner to the end customer to the extent necessary.

15. Non-Disclosure

The documents provided to the contractual partner, such as specifications, drawings, computer documents and the like remain our property, must be kept secret from third parties and may not be reproduced or made accessible to third parties without our consent.

The use of our logo or company lettering for advertising purposes and our naming as a reference customer is only permitted with our express written consent.

16. Data Protection/Changes

The Contractual Partner consents to the computer-aided storage and processing of the personal data provided in the course of initiating, concluding and implementing the contract within the companies of the Hirsch Servo Group for the purpose of fulfilling the contract. The contracting party undertakes to inform Hirsch Servo Group of any changes of contact or address. Otherwise, any declarations sent to the address provided to us shall be deemed to have been received.

17. Social Standards

Basic social standards must apply throughout the entire production chain.

We therefore require that the contractual partner as well as its pre-suppliers and subcontractors, even if they are not active at the final processing stage, comply with the standards of the International Labour Organisation (ILO; www.ilo.org) and the BSCI Code of Conduct (Business Social Compliance Initiative), as amended from time to time, and can prove this if required.

This includes, among other things, that

- internationally recognised human rights are respected. Forced or compulsory labour and child labour are not permitted.
- special protection is provided for young workers.
- discrimination of any kind is avoided.
- Health and safety regulations concerning health and safety at work and regulations concerning working hours and appropriate remuneration are observed.

18. Environmental Management

The contractual partner shall ensure that environmental protection is sufficiently and comprehensively guaranteed in all phases of the production chain and shall take all necessary measures to avoid environmental damage.

In the sense of joint environmental responsibility, the contractual partner will maintain an environmental management system in accordance with EMAS or ISO 14001.

Contractual partners without such certification are requested

- seek certification
- maintain an environmental protection programme
- be aware of and comply with environmental laws and relevant ordinances and regulations
- keep up to date with legal changes
- to document and measure environmental aspects and impacts and to derive appropriate improvement programmes from them
- train employees on environmentally relevant topics

19. Certifications/Audits

Due to existing certifications of the companies of the Hirsch Servo Group (e.g. ISO 9001, ISO 14001), we reserve the right to carry out an audit at the contractual partner's premises, insofar as this is necessary to maintain the certifications.

We are therefore entitled, among other things, to carry out inspections of the production status and quality at the contractual partner or its subcontractors and pre-suppliers at any time.

20. Partial Invalidity

Should individual provisions of these General Terms and Conditions of Purchase be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a provision which comes as close as possible to the meaning and purpose of the invalid provision. Gaps shall be filled in the same way.

21. Place of Jurisdiction and Applicable Law

The exclusive place of jurisdiction is the Regional Court of Klagenfurt as the commercial court. Austrian substantive law shall apply to the exclusion of the conflict of law rules and the UN Convention on Contracts for the International Sale of Goods.