

# Horiba Europe GmbH Conditions of Purchase 2017

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## § 1 General - scope

1. Our conditions of purchase apply exclusively; we shall not acknowledge the supplier's conditions that are contrary to or vary from our conditions of purchase unless we had expressly approved the validity of such conditions in writing. Our conditions of purchase shall also apply if we unconditionally accept the supplier's delivery although we are aware of the supplier's conditions that are contrary to or vary from our conditions of purchase.
2. Written correspondence is to be maintained with the ordering purchasing department. Agreements entered into with other departments shall only become binding following express, written confirmation by the purchasing department placing the order.
3. Our conditions of purchase only apply in dealings with entrepreneurs.

## § 2 Offer - offer documents

1. After receiving our order the supplier is to provide confirmation within 5 national German workdays.
2. We reserve the right to hold all ownership rights and copyrights in full to diagrams, drawings, calculations and other documents; these may not be made available to third parties without our express, written approval. They are to be used exclusively to honour our order; once the order has been executed, they are to be returned to us without request or at our request. In dealings with third parties, secrecy is to be maintained regarding the diagrams, drawings, calculations and other documents. Insofar, Section 9(3) applies additionally.

## § 3 Prices - payment conditions

1. The price stated in the order is binding. In the absence of agreements to the contrary, the price includes delivery and appropriate packaging. Returning packaging shall be subject to a separate agreement.
2. Prices are to be understood plus the statutory turnover tax.
3. The supplier undertakes to state our order number in all invoices. If the supplier fails to do so, processing delays shall not be our responsibility.
4. In the absence of written agreements to the contrary, we shall make payments within 14 days following receipt of the delivery and invoice at a 2% trade discount or within 30 days following receipt of the delivery and invoice without any deductions.
5. We are entitled to setting off and retention rights as specified by law.

## § 4 Delivery

1. The delivery time stated in the order is binding.
2. The supplier undertakes to inform us in writing without delay if it realises that the stated delivery time cannot be honoured.
3. In the event of default in delivery, we shall be entitled to assert the statutory claims. We are entitled, in particular, following expiry in vain of a reasonable period to demand claims for damages instead of performance and withdrawal.
4. Early or partial deliveries may be made following our written approval.

## § 5 Passing of risk - documents

1. In the absence of written documents to the contrary, deliveries are to be performed "DAP" (Incoterms 2010).
2. The Supplier undertakes to state our order number in all shipping documents and delivery notes. If the Supplier fails to do so, processing delays shall not be our responsibility.

## § 6 Inspecting defects - liability for defects

1. We shall inspect the goods within a reasonable period as regards potential, obvious quality and quantity variations. Notification of defects shall be deemed given in good time if the supplier receives it within a period of 10 German national workdays calculated from receipt of the goods or in the event of hidden defects once such defects are identified.

2. We are entitled to the statutory warranty claims without limitations; in any case, we shall be entitled to demand, at our request, that the supplier either rectifies defects or supplies a new item. The right to claim for damages, in particular a claim for damages instead of performance, is expressly reserved.
3. We are entitled to rectify defects at the supplier's cost in the event of imminent danger or in the event of particular urgency.
4. The period of limitation is 24 months calculated from the passing of risk. This does not apply if the law specifies longer periods.
5. Payment by us does not mean that we acknowledge that the delivery is as per agreement or is fault-free.
6. Our approval with regard to the supplier's technical documents and/or calculations does not affect the supplier's liability for defects.
7. Imposing contractual penalties is reserved up until payment in full, including without the express statement of a corresponding reservation.

## **§ 7 Product liability and third party liability insurance cover**

1. The supplier is liable in accordance with statutory requirements.
2. The supplier is to render us exempt from potential product liability provided the supplier is responsible for the fault that triggers liability.
3. The supplier undertakes to maintain an employer's liability and product liability insurance policy with an amount covered of at least € 10 million for each case of personal/material damage – on a flat-rate basis – during the period in which this contract is executed and up until the respective expiry of the period of limitation. On request, the supplier is to present corresponding insurance confirmation.

## **§ 8 Proprietary rights**

1. The supplier guarantees that no third party rights shall be infringed upon in conjunction with the supplier's delivery.
2. If third party rights are infringed upon in conjunction with the supplier's delivery and/or a third party brings an action against us as a result, the supplier undertakes to render us exempt at the first request from any claims. We are not entitled to enter into a composition agreement with the third party without approval by the supplier.
3. The supplier's obligation to render us exempt refers to all expenses that we incur as a result of or in conjunction with action brought by a third party.

The period of limitation is 48 months calculated from the passing of risk.

## **§ 9 Reservation of title regarding provisions and tools - secrecy**

1. Materials and parts made available by us shall remain our property. These are to be used exclusively in accordance with the provisions and for manufacturing the goods we have ordered. Materials shall be processed and parts put together on our behalf. Agreement has been reached that we shall acquire co-ownership of the products manufactured by way of using our materials and parts in the proportion of the value of the provision to that of the overall product. Such overall products shall be stored by the supplier on our behalf.
2. We reserve ownership to tools and/or models that we own. The supplier undertakes to use tools and/or models that we own exclusively to manufacture the goods that we have ordered.
3. The supplier undertakes to maintain strict secrecy regarding all received diagrams, drawings, calculations and other documents and information. These may only be disclosed to third parties following our express approval. The obligation to maintain secrecy shall continue to apply once this contract has been executed; it shall cease to apply if and insofar as the production know-how contained in the surrendered diagrams, drawings, calculations and other documents has become general knowledge.
4. All materials and parts made available to us, tools and/or models that we own as well as diagrams, drawings, calculations and other documents and information surrendered by us are to be returned to us on request free of charge and without delay.

## **§ 10 Jeopardising the execution**

If the supplier's economic situation deteriorates during the term of the order in a manner that seriously jeopardises executing the contract, if the supplier discontinues its payments (including temporarily) or if an application is filed for insolvency or for court or out-of-court composition proceedings, we shall be entitled to withdraw from the contract regarding the part that has not been executed. We shall be entitled to withdraw in full provided the partial execution is of no interest to us.

## **§ 11 Foreign trade and payments law and Supplier details**

1. The Supplier is to make available to us free of charge in its offers and order confirmation complete details about all information relevant to an export or rendering, such as the
  - Statistical goods number
  - Country of origin of the goods ( certificate of origin)
  - Preferential origin of the goods
  - Details whether or not the delivery item is subject to a delivery item (e.g. listed in the export list or the EU Dual Use List)
  - Details whether or not the ordered goods are subject to country-specific trading restrictions
  - Details whether or not the delivery item is subject to US law
  - Details of all relevant list numbers (e.g. export list, EU Dual Use List, Commodity Control List and country-specific sanctions etc.)

We reserve the right to withdraw from the contract in the event that we are not granted an export license that may be necessary.

2. The goods must satisfy all relevant requirements such as product safety or environmental protection requirements such that they can be used without restrictions in the EU and in the country of determination (provided the Supplier was informed of this). Statements, confirmation and registration etc. are to be made available or procured or made by the Supplier without a request to do so and free of charge.
3. The Supplier is to provide us with confirmation of the origin/source of the goods in compliance with the statutory requirements, including by way of a Supplier's declaration or a declaration of origin or EUR1. In the Supplier's declaration, the Supplier/manufacturer is to state the originating status of its goods in accordance with the valid origin regulations of the country of destination that we state to the Supplier. On request, the Supplier is to present the certificate of origin free of charge.
4. The Supplier is to comply with any substance bans resulting from legal standards.

## **§ 12 Technical documentation**

1. In the absence of agreements to the contrary, the technical documentation, and all requested records, must be an element of the principal delivery.
2. In the absence of agreements to the contrary, the technical documentation shall be supplied in paper form and as a CD.

## **§ 13 Safety conditions**

1. All deliveries/services are to correspond with the latest technological developments, the relevant provisions and regulations (e.g. DIN standards).
2. Statutory requirements that apply in the transition period are to be taken into consideration. E.g. RoHS-directive (2011/65/EU and 2015/863/EU). The Supplier makes sure that its products/deliveries/services comply with prevailing European Rights and their accompanying actualizations e.g. CLP-decree (EG (No. 1272/2008) or REACH (EG-decree No. 1907/2006).
3. This applies, in particular, regarding the environmental protection provisions that apply in the EU, the Federal Republic of Germany and at the Principal's registered office. If a CE mark is proposed for this delivery in accordance with EC guidelines, such a mark is to be attached and the specified documentation is to be delivered with the goods.
4. By way of returning the confirmation of order, the Contractor is to confirm to the Principal that it shall comply with all applicable EU Directives and shall apply harmonised standards associated with such Directives. The Contractor is responsible for compliance and implementation.

## **§ 14 Software**

1. Software shall be made available to us on data carriers that are customary in the market in machine-readable code in addition to user documentation.
2. In addition, software that is developed individually for us is to be surrendered in the source code with the manufacturer's documentation. Copies of source code and manufacturer's documentation are to be handed over to us upon acceptance, and must correspond with the programme status at the time of acceptance.
3. As part of the liability for defects, measures conducted regarding the software are to be incorporated in the source code and the manufacturer's documentation without delay. A copy of the respective up-dated status is to be made available to us without delay free of charge.

## **§ 15 Utilisation rights**

1. We shall irrevocably acquire an exclusive utilisation right, which is not limited in terms of time or geographical location, to the deliveries and services we develop, such as software. This comprises every known type of utilisation including the right to rework, duplicate, alter, extend, and grant third parties basic utilisation rights provided a restriction does not arise in the following sub-sections.
2. If the acquisition of a utilisation right in accordance with the aforementioned sub-section conflicts with third party rights to outside programmes or other outside performance results incorporated in the services, the scope of our utilisation right is to be agreed upon accordingly in the contract. Such third party programmes or other outside performance results may not be integrated without our prior consent.
3. The Supplier remains authorised, in the case of obtaining the performance results, to continue to use related standard programmes, programme components, tools and know-how it has incorporated, including for third party orders.
4. The Supplier shall only be entitled to publish any kind of performance results created for us - including in parts - following written approval by the Principal.

## **§ 16 Data protection**

1. The Supplier is to process personal data in compliance with the statutory requirements.
2. We shall save personal data in compliance with the statutory requirements.

## **§ 17 Occupational safety and environmental protection**

1. Our guidelines on occupational safety and environmental protection are to be complied with in full. On request, we would be happy to send you a copy. However, they can be viewed on the internet at [www.horiba.com](http://www.horiba.com).
2. Horiba Europe GmbH plays an active role in environmental protection by way of its environmental management system. We therefore request that you organise your transport operations such that they are environmentally-friendly (lorry with Euro 5) and similarly use packaging that is environmentally-friendly and is adjusted in line with the intended use.

## **§ 18 Code of conduct for suppliers**

1. The Supplier shall not employ any persons under the age of fifteen years of age. In the case of dangerous work, the Supplier shall not employ any persons under the age of eighteen years of age for the manufacture of the goods or the rendering of services (child labour). The Supplier shall endeavour to determine, to an acceptable extent, whether or not child labour is used for its deliveries in respect of manufacturing goods or rendering services, and such a reasonable investigation did not establish any details in that respect. The Supplier's workers used for the manufacture and delivery of the goods or the rendering of the services are present on a voluntary basis. The Supplier shall compensate HORIBA EUROPE GMBH for any damage resulting from the violation of these provisions by the Supplier or one of its suppliers. The Supplier shall, insofar, render HORIBA EUROPE GMBH exempt.
2. If HORIBA EUROPE GMBH informs the Supplier of violation of sub-section 1, the Supplier shall rectify such violation without delay. If HORIBA EUROPE GMBH establishes that the Supplier has not rectified the violation within a reasonable period, this shall constitute good cause for HORIBA EUROPE GMBH to terminate without notice contracts that may have been entered into with the Supplier.
3. The Supplier shall not conduct any illegal practices such as making financial allowances or other gifts to employees of HORIBA EUROPE GMBH or their family members for the purpose of receiving orders from HORIBA EUROPE GMBH. It shall not conduct such practices in the future. In the event of violation, HORIBA EUROPE GMBH may terminate without notice contracts that may have been entered into with the Supplier. The Supplier shall then be required to provide compensation and render HORIBA EUROPE GMBH exempt from claims that third parties may assert against HORIBA EUROPE GMBH.

## **§ 19 Place of jurisdiction - place of performance - applicable law**

1. Our company headquarters is deemed the place of jurisdiction. We reserve the right to bring legal action at the supplier's legal place of jurisdiction.
2. In the absence of agreements to the contrary in the order, the place of performance is deemed the place of receipt stated in the order, alternatively our company headquarters.
3. The law of the Federal Republic of Germany applies by way of exclusion of the conflicting rules and the United Nations Convention on the International Sale of Goods (CISG).

## **§ 20 Miscellaneous**

1. In the event that individual provisions of these terms and conditions of business or the contract entered into by us and the supplier are or become wholly or partially invalid, this shall not affect the other conditions.
2. We shall only be exempt from the obligation to deduct taxes in accordance with Section 48 b(1) EStG (German Income Tax Act), if the supplier presents us with a valid certificate of exemption issued by the tax office responsible for the supplier. Presenting a copy of the certificate of exemption shall be deemed sufficient provided the certificate of exemption was not issued on an order-related basis.