

AUSTRIA - GENERAL PURCHASING TERMS AND CONDITIONS OF **HERBERT FISCHER//HFSEMI**

1. APPLICATION, DEFINITIONS

(1) These General Terms and Conditions apply to all current and future Contracts between Herbert Fischer – HFSEMI (hereinafter: HFSEMI) on the one hand and a supplier (hereinafter: the Supplier) on the other relating to the supply of Goods or the rendering of services by the Supplier to HFSEMI. Should the supply of Goods entail any (installation) work, the performance of that work is included in the contract unless the contract stipulates otherwise.

(2) These General Terms and Conditions only apply if Supplier is either an Entrepreneur (as defined in subpara (3) below) or an entity of public law. In particular, they do not apply if Supplier is a Consumer (as defined in subpara (3) below).

(3) In these General Terms and Conditions the following terms have the meaning as set forth in this subsec. (3):
Entrepreneur: each individual, corporate entity or business partnership acting on behalf of his/her own commercial or professional business.
Consumer any individual not acting on behalf of his/her own commercial or professional business.

Contract any contract, agreement or other kind of business transaction, whether made in writing, orally or otherwise.
Goods each thing purchased by HFSEMI, including any accessories included in the sale such as, e.g., software and instruction manuals.

(4) Beside these General Terms and Conditions, only statutory law and individual agreements shall apply. Any other general terms and conditions, whether contrary or supplementary (e.g. general terms and conditions of sale of Supplier), shall not become part of the contract unless their application is explicitly approved by HFSEMI in writing. This shall apply even if HFSEMI accepts a Supplier's offer while being aware of such Supplier's contrary or supplementary general term and conditions.

2. CONCLUSION OF CONTRACTS, MODIFICATIONS

(1) A request or purchase order placed by HFSEMI is at all times an offer without obligation within the meaning of the law and shall therefore not be binding unless the offer expressly states otherwise.

(2) HFSEMI is entitled to order modifications to the delivery, in particular regarding technical specifications, shape, color and/or weight; the Supplier will accept any such modifications provided they are reasonable.

3. PRICES, PAYMENT

(1) The agreed price is fixed and is quoted DDP (delivery duty paid), as defined in the most recent versions of INCOTERMS, to the location mentioned in the purchase order, save as otherwise stated in the purchase order or agreed upon between the Supplier and HFSEMI. In addition to the agreed fixed price the Supplier is not entitled to any extra payment whatsoever, unless the parties agree otherwise in writing.

(2) The DDP price includes the costs of packaging, transport and insurance. All exchange rate risks, customs costs and import and export duties will be borne by the Supplier.

(3) Payment shall be made against invoice on the later of sixty (60) days from the invoice date or (60) days after receipt and approval of the Goods and/or services.

(4) The Supplier is obliged to state in his invoice the order number and project number (if any), as well as the Goods and/or services invoiced along with a reference to the codes (if any) assigned to them in the Contract or order. The Supplier is obliged to send HFSEMI the invoices in duplicate.

(5) If a deposit or partial payment has been stipulated, HFSEMI will be entitled to require a bank guarantee from the Supplier equalling the amount of such advance or partial payment. The costs of the bank guarantee will be borne by the Supplier.

(6) HFSEMI is entitled to settle its payment obligations toward the Supplier with any claims to payment of any kind whatsoever it has against the Supplier provided such claims of HFSEMI have already become due.

(7) HFSEMI is entitled to exercise a right of retention against Supplier's claims with regard to any claims other than payment claims it has against the Supplier provided such claims of HFSEMI's have already become due.

4. Delivery Period

(1) The Supplier will deliver the Goods at the agreed date, unless HFSEMI has agreed in writing to an alternative date.

(2) Any failure to deliver Goods and/or to provide services at the agreed time will count as culpable failure on the part of the Supplier to comply with the Contract and will render the Supplier in default, unless such delay is not due to any shortcoming on the part of the Supplier or the Supplier cannot be held liable for such delay under the laws applicable to the Contract or under applicable trade practice.

(3) In the event the Supplier is in default with delivery, the Supplier agrees to pay to HFSEMI, as liquidated damages, the amount of one (1) percent of the agreed price for each day of such default, up to a maximum of ten (10) percent of the agreed price. HFSEMI's right to recover damages exceeding the amount owed by Supplier as liquidated damages shall remain unaffected. HFSEMI shall be entitled to set off any liquidated damages or claims to exceeding damages against the purchase price.

5. TRANSFER OF TITLE AND RISK

(1) HFSEMI acquires title to the Goods upon acceptance of delivery unless under statutory law such transfer of title occurs earlier.

(2) The risk of accidental destruction, deterioration or damage to the Goods passes to HFSEMI upon transfer of title to the Goods to HFSEMI.

6. TITLE TO MATERIALS SUPPLIED BY HFSEMI, CONFIDENTIALITY

(1) Any drawings, models, tools, specifications, instructions and other materials provided to the Supplier by HFSEMI under the Contract, or which the Supplier has manufactured or has had manufactured under the Contract, will remain the property of HFSEMI or become the property of HFSEMI immediately upon manufacturing. The Supplier is obliged to identify these items properly and to keep them separate from its own property.

(2) The Supplier undertakes to keep confidential all drawings, models, constructions, diagrams, technical documentation and other business information and know-how in the broadest sense of the word provided by HFSEMI under the Contract.

7. QUALITY, ACCESSORIES, PACKAGING

(1) The Supplier is obliged to ensure that the Goods or services supplied comply with the terms of the agreement and therefore meet the requirements HFSEMI may expect on the basis of the agreement or according to trade practice. Unless the Contract provides otherwise, the Goods are sold as new.

(2) The Goods shall be delivered together with any accessories belonging thereto including (without limitation), software and instruction manuals.

(3) The Goods shall be packaged in such a way as to meet the agreed or usual transport and destination requirements and have to be marked according to the instructions of HFSEMI. All packaging used, with the exception of returnable packaging, becomes the property of HFSEMI on delivery of the Goods. Returnable packaging must be clearly marked as such and must be picked up by the Supplier at the place of delivery at Supplier's own risk and expense.

8. INSPECTION AND TESTING

(1) HFSEMI has the right to inspect or test the Goods to be supplied before or after delivery, either directly or through others instructed by HFSEMI. HFSEMI is not obliged to make use of this right.

(2) The Supplier is obliged to provide HFSEMI, at no charge, with all information and facilities required for such inspection or test.

(3) The inspection, testing, acceptance or approval of the delivery does not discharge the Supplier of any guarantees (if any), representations and warranties given by him.

9. DEFECTIVE GOODS

(1) Where Goods do not comply with the specifications or are otherwise defective, the Supplier shall at HFSEMI's choice either repair the defects or replace the defective Goods free of any charge. If within reasonable time the defective Goods are not either successfully repaired nor replaced, depending on the remedy chosen by HFSEMI, HFSEMI shall be entitled to claim at its choice a proportionate reduction of the purchase price or to rescind the Contract.

(2) The statutory claims of HFSEMI to damages and any other remedies available to HFSEMI under applicable law shall neither be precluded nor limited by the Contract.

10. INDUSTRIAL PROPERTY RIGHTS

(1) The Supplier warrants that the Goods including any software and other accessories supplied therewith do not violate any patent, copyright, trademark, model right or other industrial property rights. The Supplier undertakes to indemnify HFSEMI against any and all third-party claims of that nature.

11. APPLICABLE LAW, VENUE

(1) The laws of Austria shall apply. The application of the UN Convention on the International Sale of Goods (CISG) is excluded.

(2) The courts in charge of "Salzburg" (Austria) shall have exclusive jurisdiction over all disputes arising from these General Terms and Conditions or from any Contract governed by these General Terms and Conditions.

Revisions Nr. 1.1 Austria