

## General Terms and Conditions of Purchase of Accumulatorenwerke HOPPECKE Carl Zoellner & Sohn GmbH and its German affiliates\* (as of Januar 2016)

### 1. General

**1.1** These General Terms and Conditions of Purchase (referred to hereinafter as "GTC Purchase") apply to all business relationships with our business partners and suppliers (referred to hereinafter as "Supplier"). The GTC Purchase apply in their respective version valid at the time as a framework agreement even for future contracts for the sale and/or delivery of movables and for contracts for the provision of work ("Werkleistungen" in terms of German law<sup>1</sup>) and services ("Dienstleistungen" in terms of German law) (referred to hereinafter as products, goods, delivery or service provision) entered into with one and the same supplier whereby we are not required to again make specific reference to our GTC Purchase in each individual case; we will inform the Supplier of any changes to our GTC Purchase without undue delay ("unverzüglich").

**1.2** Conflicting, deviating or supplementary terms and conditions of sale of the Supplier are hereby explicitly rejected. We are not bound to any such terms and conditions of sale even if we have failed to explicitly repeat our rejection upon receipt of such terms and conditions.

**1.3** Our orders must be in writing to be legally valid. Orders placed orally or by phone are only valid if confirmed by us in writing. Unless otherwise agreed, the Supplier's written order confirmation indicating the binding delivery time, the price as well as any other applicable terms and conditions must be received by us ("Zugang"<sup>2</sup>) within five working days ("Werktage") from the date of our order letter to the Supplier. We are no longer bound to our order after expiry of the aforesaid time limit. Our orders as well as the Supplier's order confirmations are deemed to satisfy the written form requirement even if they are sent by fax or email.

### 2. Prices, payment and set-off

**2.1** The price indicated in the order is binding. All prices are exclusive of the statutory value-added tax, unless such tax is stated as a separate item.

**2.2** Unless otherwise agreed from time to time, the agreed upon price is due and payable within 30 calendar days from complete delivery and service provision (including formal approval ("Abnahme"), if so agreed) and receipt ("Zugang"<sup>3</sup>) of a properly issued invoice; the Supplier's invoice must at least contain the following information: order number, delivery note number and our contact person. If we make payment within 14 calendar days, the Supplier will grant us a 3% discount on the net invoice amount.

**2.3** We are entitled to set-off and retention as well as the defence of non-performance ("Einrede des nicht erfüllten Vertrages") to the extent provided for by law. We are in particular entitled to withhold any payment due for as long as we are entitled to claims against the Supplier for incomplete or defective delivery or service. The Supplier is only entitled to set-off or retention in the case of counter-claims that are undisputed or have been established by a final non-appealable court decision (res judicata).

**2.4** We are not liable to pay interest from the due date ("Fälligkeitsszinsen"). The default interest rate ("Verzugszins") amounts to 5 percentage points above the base interest rate per year. We are deemed in default ("Verzug") from the time prescribed by law whereby, from time to time notwithstanding the statutory provisions, a written reminder by the Supplier is agreed to be indispensable in any case.

**2.5** Payment of a lump sum of EUR 40 (§ 288 subs. 5 BGB – German Civil Code) is excluded unless such an exclusion is to be deemed grossly unfair with regard to the Supplier's concerns.

### 3. Assignment, reservation of title and subcontracting

**3.1** Claims against us may only be assigned with our prior written consent. This does not apply to monetary claims.

**3.2** Title to the goods is transferred to us unconditionally and regardless of whether the price has already been paid. If however from time to time we accept an offer by the Supplier for transfer of title subject to payment of the purchase price, the Supplier's reservation of title will expire upon payment of the purchase price for the delivered goods at the latest. We continue to be entitled to resell the goods in the due course of business even before the purchase price is paid, subject to

our assignment in advance of the claim resulting from the resale (or, as a secondary alternative, subject to simple and, with regard to the resale, prolonged reservation of title). Any other reservation of title is excluded, in particular any extended or transferred reservation of title ("erweiterter/ weitergeleiteter Eigentumsvorbehalt") as well as the prolonged reservation of title in the case of further processing of the goods ("auf die Weiterverarbeitung verlängerter Eigentumsvorbehalt").

**3.3** The Supplier is not entitled without our prior written consent to have the work or service to be provided by the Supplier rendered by third parties (e.g. subcontractors).

### 4. Delivery times and dates

**4.1** The delivery times and dates stated in our order are firm and binding. They pertain to the time of arrival or service provision at the destination.

**4.2** Early deliveries and partial deliveries without our prior written consent are impermissible.

**4.3** As soon as the Supplier becomes aware of circumstances which may cause a delay in delivery, the Supplier is obliged to inform us to that effect in writing without undue delay ("unverzüglich"), thereby stating the reasons and the duration of the expected delay. This is without prejudice to the Supplier's obligation to deliver on time.

**4.4** If the Supplier fails to perform or fails to perform within the agreed upon delivery time or if the Supplier is in default ("Verzug"), our rights – including but not limited to our right to rescission and our claim to damages – are defined by and subject to the statutory provisions. The provisions in No. 4.5 remain unaffected.

**4.5** If the Supplier is in default ("Verzug"), we are entitled to claim contractual penalty amounting to 1% of the net price for each full calendar week, not exceeding however the amount of 5% in total of the net price of the goods which are delivered late. We are entitled to claim payment of the contractual penalty in addition to proper performance and as a minimum amount of damages to be paid by the Supplier by virtue of law; this is without prejudice to our right to claim compensation of further damage incurred by us. If we accept the delayed delivery, we will claim payment of the contractual penalty no later than upon final payment.

### 5. Shipment, packaging, other ancillary costs

**5.1** All consignments need to be accompanied by a delivery note in duplicate stating the order number and order date.

**5.2** All shipping documents as well as all documents relating to the supply contract must contain, besides the name of the item, our material number and order number, the order date, the quantities, the destination, the name of our contact person and the mode of packaging. The Supplier is liable for the consequences of incorrect information on the bill of lading.

**5.3** The Supplier is liable for compliance with the shipping requirements imposed on the Supplier. We are entitled to refuse acceptance of delivery if no proper shipping documents have been made available to us by the date of receipt or if our order data on the shipping documents is missing or incomplete. If we refuse acceptance of delivery for any of the aforesaid reasons, we may not be deemed in default of acceptance ("Annahmeverzug"); the costs of refused acceptance are borne by the Supplier.

**5.4** Unless otherwise agreed from time to time, we accept no transport packaging other than:

**a)** European wooden four-way flat pallets according to UIC 435 – 2 bearing the EUR marking,

**b)** European mesh box pallets

**c)** as well as other reusable packaging and packaging made of recyclable material in terms of the „Verpackungsverordnung“ (German Packaging Ordinance) which bears appropriate markings. The Supplier is obliged to accept return, at his expense, of the entire consignment packaging at the destination during usual operating hours, no later than within one week from an appropriate written request, thereby complying with the applicable statutory provisions including but not limited to the provisions of the „Verpackungsverordnung“ (German Packaging Ordinance) in the respective version valid at the time. The preceding obligations apply mutatis mutandis with regard to any other waste and residual material generated during the production or delivery.

**5.5** Subject to the provisions set out hereinafter, all deliveries are made at the Supplier's expense, carriage paid resp. free destination, including packaging and all other costs including customs duties, freights etc. If from time to time delivery is agreed to be made carriage forward, the Supplier is obliged to choose for us the cheapest mode of shipment. He may only take out a transport insurance policy if explicitly

<sup>1</sup> Note: "Werkleistung" in terms of German law pertains to work to be carried out whereby the contractor undertakes to bring about a particular result (e.g. repair a car, transport goods to a specific destination etc.).

<sup>2</sup> Note: The order confirmation is deemed to have been received ("Zugang" in terms of German law) if and as soon as it has come into the sphere of the recipient in the way that the recipient can reasonably be expected to take note of it.

<sup>3</sup> Cf. foot note 2.

instructed by us to that effect.

## 6. Passing of risk

**6.1** The Supplier bears the risk of accidental loss or perishing and accidental deterioration until the goods arrive at our premises resp. the agreed upon destination.

**6.2** If and to the extent that formal approval of the goods ("Abnahme") has been agreed upon, the time of such approval will be decisive for the time of the passing of risk. Even otherwise, in the case of an agreed formal approval of the goods, the statutory provisions governing contracts for work ("Werkvertragsrecht"<sup>4</sup>) apply mutatis mutandis. For the purposes hereof, if we are in default of acceptance ("Annahmeverzug"), the same applies as if the goods were handed over or accepted.

## 7. Drawings, designs, sketches, samples, tools

**7.1** Drawings, designs, sketches, samples, models, tools including but not limited to punching and cutting tools, injection moulds, die casting moulds, pressing moulds, coquilles, models and forging dies and other production tools (referred to hereinafter as "production equipment") which we make available to the Supplier remain our property and must not be used for any purposes other than the execution of our orders. Reproduction or provision for use of production equipment to third parties is only permissible with our prior written consent. The production equipment is to be returned to us after termination of the contract or other cancellation or discontinuation of the order as well as in the case of Supplier's default ("Verzug").

**7.2** Tools for which we pay tool costs according to an appropriate agreement with the Supplier become our property upon purchase or production by the Supplier. Hand-over of such tools is replaced by the Supplier keeping these tools in custody for us without charge. The tools are to be returned to us after termination of the contract or other cancellation or discontinuation of the contract as well as in the case of Supplier's default ("Verzug"). In the case of early withdrawal of the tools to which we are entitled at any time, we will be obliged to compensation the Supplier for such portion of the agreed upon tool costs (subject to interest discounted at the conditions usual in the market) as, by the time of withdrawal, has not yet been paid or has not yet been amortized by surcharges per delivered part as may be agreed from time to time.

**7.3** The Supplier is obliged to maintain and repair the production equipment and tools in terms of No. 7.2 at his own expense.

**7.4** The Supplier is only entitled to retain and withhold production equipment and tools in terms of No. 7.2 if he has counterclaims against us that are undisputed or have been established by a final non-appealable court decision (res judicata).

## 8. Defective delivery

**8.1** Our rights in the case of defects in quality or title of the goods or any other breach of duty by the Supplier are governed by the statutory provisions, unless stipulated otherwise hereinafter.

**8.2** As to the obligation to inspect the goods and give notice of defect in terms of commercial law, the statutory provisions apply with the following proviso: Our obligation to inspect is limited to defects that become evident and are clearly perceptible when conducting an outward inspection of the incoming goods including the shipping documents or when conducting a quality control by taking random samples (e.g. transport damage, wrong delivery/ aliud delivery, short delivery). Apart from that, the point is to what extent, with regard to the specific circumstances given from time to time, an inspection can be considered as reasonably necessary within the limits of the ordinary course of business. Our obligation to give notice of any defect which is detected later remains unaffected. In any case, our notice of defect ("Mängelanzeige") is deemed given without undue delay ("unverzüglich") and thus in due time if it is received by the Supplier within 10 working days ("Werktage").

**8.3** Any costs and expenses incurred by the Supplier for examination, verification and subsequent performance ("Nacherfüllung") (including the costs of de-installation/ disassembly and reinstallation/ reassembly, if any) are borne by the Supplier even if the goods finally prove to be non-defective. This is without prejudice to our liability for damages in the case of an unjustified request for defect remedy; however, in this context, we can only be held liable if we were positively aware or unaware due to gross negligence that the goods were not defective.

**8.4** If the Supplier fails to comply with his obligation to provide subsequent performance – at our choice either by defect remedy (subsequent improvement – "Nachbesserung") or by delivery of non-defective goods (substitute delivery – "Ersatzlieferung") within a

reasonable time limit fixed by us, we will be entitled to remedy the defect on our own and claim from the Supplier reimbursement of the expenses incurred by us for such purpose resp. claim an appropriate advance payment. If the subsequent performance by the Supplier has failed or is reasonably unacceptable for us (e.g. for reasons of urgency, endangerment of the operating safety or threatening unreasonable damage), the granting of an additional time limit is dispensable; we will inform the Supplier of any such circumstances without undue delay ("unverzüglich"), even beforehand, if possible.

**8.5** From the time of receipt ("Zugang"<sup>5</sup>) of our written notice of defect, the limitation period for warranty claims is suspended until the Supplier either rejects our claims or declares the defect remedied or otherwise refuses to continue negotiations on our claims. In the case of substitute delivery and defect remedy the warranty period commences anew for any substituted or subsequently improved parts, unless we can reasonably be expected to conclude from the Supplier's acts that the latter did consider himself under any obligation to provide substitute delivery or defect remedy but only did so as a gesture of goodwill or obligingness or for similar reasons.

## 9. Product liability

**9.1** The Supplier is liable for any and all claims asserted by third parties for personal injury or damage to property which are due to a defective product delivered by the Supplier and the Supplier is obliged to indemnify us from any liability claims resulting therefrom. If we are obliged to conduct a recall of products from third parties which is due to a defective product of the Supplier, the latter will bear all costs associated with the recall.

**9.2** The Supplier is obliged to take out and maintain at his sole expense a product liability insurance policy with a minimum cover of EUR 5 million which, unless otherwise agreed from time to time, need not cover the risk of recall or punitive damages or similar damages. The Supplier will provide us with a copy of the liability insurance policy at any time upon request.

## 10. Industrial property rights

**10.1** The Supplier warrants and is liable according to No. 10.2 to ensure that the products delivered by him do not constitute or cause an infringement of industrial property rights of third parties in any country of the European Union or any other country in which the Supplier produces the products by himself or through third parties.

**10.2** The Supplier is obliged to indemnify us from any and all claims asserted against us by third parties for an infringement of industrial property rights in terms of No. 10.1 and reimburse us for all necessary expenses incurred by us in connection with these claims. This claim is excluded if and to the extent that the Supplier proves that the infringement of industrial property rights is not imputable to him and that the Supplier could not reasonably be expected, even when exercising the diligence of a prudent businessman ("kaufmännische Sorgfalt"), to be aware of the infringement at the time of delivery.

**10.3** Any further statutory claims for defects in title of the products delivered to us to which we may be entitled remain unaffected.

## 11. Spare parts

**11.1** The Supplier is obliged to keep spare parts for the products delivered to us available during a period of at least 10 years from delivery.

**11.2** If the Supplier intends to discontinue the production of spare parts for the products delivered to us, he will inform us without undue delay ("unverzüglich") after the decision for discontinuation has been taken. Subject to No. 11.1, the said decision must be taken at least 12 months before the production is actually discontinued.

## 12. Special provisions regarding work ("Werkleistungen"<sup>6</sup>) and services ("Dienstleistungen")

For installations, assemblies, repair work and other work and services, the following applies in addition:

**a)** We will only accept charging of such work and services if they are properly documented on our form "performance report" and have been signed by both parties.

**b)** The Supplier when performing any work or service whatsoever is obliged to comply with the regulations of the responsible „Berufsgenossenschaft“ (occupation cooperative), the accident prevention regulations as well as the regulations of the „Verband der Sachversicherer“ (property insurers' association – "Vds").

**c)** The regulations for environment protection and safety at work which

<sup>5</sup> Cf. foot note 2.

<sup>6</sup> Cf. foot note 1.

<sup>4</sup> Cf. foot note 1.

are contained in the safety information sheet and are valid for the respective HOPPECKE location concerned are made available to the Supplier by the responsible HOPPECKE coordinator (project manager). They must be observed and complied with by the Supplier and passed on for taking cognizance, to all of the Supplier's employees and vicarious agents and other persons engaged by him in the fulfilment of his obligations ("Erfüllungsgehilfen") who, now or in the future, do or will work on any of the HOPPECKE factory premises. The Supplier's employees and vicarious agents and other persons engaged by him in the fulfilment of his obligations ("Erfüllungsgehilfen") are to be instructed by the Supplier's coordinator (project manager). After the Supplier's employees and vicarious agents and other persons engaged by him in the fulfilment of his obligations ("Erfüllungsgehilfen") have been instructed by the responsible coordinator of the Supplier, the so instructed employees are to sign the "Instruction report for outside contractors – list of employees" ("Unterweisungsnachweis für Fremdfirmen - Mitarbeiterliste") and the responsible coordinator of the Supplier is to sign the training report "Instruction report for outside contractors" and said reports are to be presented and handed over to HOPPECKE before the said employees and agents of the Supplier start working on the factory premises. The Supplier is obliged to fill in, sign and return to the HOPPECKE coordinator without undue delay ("unverzüglich") the form "Requirements for the Behaviour of Contractors" ("Anforderungen an das Verhalten von Auftragnehmern") which is provided to the Supplier along with the safety information sheet. The safety information sheet remains with the Supplier. On the factory premises, only certified operating equipment in terms of the operating safety rules (e.g. ladders, steps, scaffolds, electrical operating equipment, load handling devices etc.) is allowed to be used. It is not allowed to engage for work on our factory premises employees other than lawfully employed personnel who are paid in accordance with the provisions of the "Gesetz zur Regelung eines allgemeinen Mindestlohns" (German General Minimum Wage Act) and any other regulations that are binding for the Supplier. The Supplier, upon request, is obliged to sign an appropriate undertaking to confirm compliance with the minimum wage regulations and provide HOPPECKE with appropriate evidence to demonstrate compliance with the said regulations.

**d)** It is the sole responsibility of the Supplier and his agents or vicarious agents and other persons engaged by him in the fulfilment of his obligations ("Erfüllungsgehilfen") to ensure careful and safe keeping of any of their property items that were brought onto our premises. We do not accept liability for loss or theft.

### 13. Limitation

The limitation period for claims based on warranty for defects under the applicable contract is 3 years from the passing of the risk, unless the limitation periods prescribed by law from time to time provide for the limitation period to be longer or run from a later point in time; in this case, the longer limitation period applies. If and to the extent that formal approval of the goods ("Abnahme") has been agreed upon, the limitation period runs from the time of such approval. Otherwise, the mutual claims of the contracting parties are subject to the statutory provisions governing limitation.

### 14. Requirements under the "Elektrogesetz" (German Act on the putting into circulation, return and disposal of electrical and electronic equipment)

The Supplier undertakes to check and verify, with regard to all goods delivered to us, compliance with the provisions of the "Elektrogesetz" (German Act on the putting into circulation, return and disposal of electrical and electronic equipment – referred to hereinafter as "ElektroG") and to fulfil any obligations arising therefrom (including but not limited to the obligations according to §§ 4 et seqq. ElektroG). The Supplier will indemnify us from any and all claims asserted against us by third parties for any non-compliance with the provisions of the ElektroG which is imputable to the Supplier.

### 15. Compliance

The Supplier undertakes to enhance the principles of the UN Global Compact in the field of human rights, labour rights, environment protection and fight against corruption ([www.unglobalcompact.org](http://www.unglobalcompact.org)) and observe and comply with the rules stipulated in these principles and all applicable statutory provisions. The Supplier undertakes to sign upon our request an appropriate supplier's undertaking regarding compliance.

### 16. Place of performance ("Erfüllungsort"), place of jurisdiction, applicable law

**16.1** The place of performance for all deliveries and services is the

destination stated in the order.

**16.2** If the seller is a merchant in terms of the „Handelsgesetzbuch“ (German Commercial Code), a legal entity organized under public law or a special fund under public law (öffentlich-rechtliches Sondervermögen), the place of exclusive - also international - jurisdiction for all disputes arising out of the contractual relationship is our business domicile in Brilon.

**16.3** All legal relations between us and the Supplier are governed by the law of the Federal Republic of Germany which is the applicable law for legal relations between German parties. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 is excluded.

\* To be applied for the following affiliates:

HOPPECKE Batterien GmbH & Co. KG  
HOPPECKE Industriebatterien GmbH & Co. KG  
HOPPECKE Batterie Systeme GmbH  
HOPPECKE Service GmbH & Co. KG  
HOPPECKE Industriedienstleistungen GmbH & Co. KG  
HOPPECKE Technologies GmbH & Co. KG  
HOPPECKE Advanced Battery Technology GmbH  
Metallhütte HOPPECKE GmbH & Co. KG