

**General Terms and Conditions of Purchase of HELBAKO GmbH**  
**(January 2016)**

**1. General – Scope of Application**

1. Our Terms and Conditions of Purchase shall apply exclusively; we do not recognise any terms and conditions of the Supplier that conflict with or differ from our Terms and Conditions of Purchase, unless we have expressly agreed in writing to their application.

However, we agree to a simple retention of title by the Supplier until the the delivery in question is paid.

With the first delivery based on these Terms and Conditions for Purchase the Supplier recognises these terms and conditions as agreed in their relevant version in effect also for any future contract relationships.

Our Terms and Conditions for Purchase shall be applicable even if we accept the delivery of the Supplier without any reservations in the knowledge that the terms and conditions of the Supplier conflict with or differ from our Terms and Conditions.

2. Our Terms and Conditions for Purchase shall only apply to companies as defined in Sec. 310 Par. 1 BGB (German Civil Code).
3. Our Terms and Conditions shall also apply to all future transactions with the Supplier.

**2. Quotation, acceptance / order and scope of delivery**

1. Delivery contracts, orders and acceptance, call-off orders and their changes and amendments have to be done in writing. Our orders, call-off orders and their changes and amendments may also be done by way of remote data transmission, machine-readable media or electronically.

We are basically bound by our order for a period of four weeks. In case of order made electronically we shall be bound by our order for a period of one week. After the end of this period we shall have the right to cancel our order. Any claims of the Supplier based on an effective cancellation shall be excluded.

2. In case of acceptance the Supplier has to confirm the order in writing, stating the item number of the order and the item description of the order. If we order electronically, the Supplier may also confirm the order electronically. Call-off orders become binding not later than in one week, unless the Supplier objects in writing or electronically within this period of time.
3. Any illustrations, drawings, calculations and other documents as well as the copyright thereto remain our property; they may not be made available to third parties without our explicit consent. They shall only be used to check our order documents or for production based on our order, and after the order has been processed or in case of non-conclusion of the agreement they have to be returned to us without further request. They have to be kept secret from third parties. The provisions of Article 11 of these General Terms and Conditions of Purchase shall particularly additionally apply.

4. At our request the Supplier shall be obligated to make changes in the construction and design of the delivery item even after the conclusion of the contract, if this can be reasonably expected from him. Any effects, in particular as regards extra costs or reduced costs and delivery terms, have to be agreed adequately by mutual consent.
5. The Supplier may only place sub-orders with our consent.
6. Goods or their components that are not stated in the order but are indispensable for a safe and efficient operation of the product, shall be considered part of the delivery item and shall be considered owed by the Supplier together with the delivery item.
7. If the delivery item contains software, we shall obtain the right to use the software company-wide, to copy it without restrictions and to leave it to third parties worldwide together with the delivery item for or without a consideration. We shall be entitled to decompile the software for maintenance or further development purposes.

### 3. Prices – payment conditions

1. The price shown in the order shall be binding. In the absence of a differing agreement in writing, the price shall include delivery free domicile, the costs of transportation, insurance and packing, and customs clearance that may be necessary. Moreover, the risk shall be transferred to us and the performance is done only with the receipt of the delivery on our business premises. In the absence of any special agreement the packaging material shall be returned at Supplier's expenses, for other cases a special agreement is required.
2. The price does not include the statutory VAT.
3. Unless agreed otherwise, the payment shall be made by the 25th of the month following the delivery or the performance after the goods have been received according to the contract and after the correct and auditable invoice has been received with a 2% discount or net cash 90 days. When accepting earlier deliveries the due date shall go by the agreed delivery date. Payments shall not be considered waiver of possible notice of defects and in no way do they constitute acknowledgment of the performance in accordance with the contract.
4. Invoices have to be sent on the date the goods are dispatched. We can only process invoices that contain the order number, item number and item description as stated in our order. The Supplier shall be responsible for all the consequences of non-fulfilment of these obligations.
5. The Supplier shall have no right to assign his claims against us or to have them collected by third parties without our written consent in advance, while such consent may not be withheld without a reason. However, we agree to an assignment in advance in case of extended retention of title.
6. We shall have the right to set off and to retain as provided by law.

### 4. Delivery dates and deadlines, delivery period, delay and force majeure

1. Delivery dates and delivery periods shall be binding. If the delivery is agreed free domicile, the Supplier has to provide the goods in due time, taking into consideration the remaining time required for the loading and shipment. The delivery date or deadline shall be considered met if we receive the goods in due time.
2. In case of call-off orders we reserve ourselves the right to determine the individual call-off orders and the call-off dates for partial deliveries.

3. The Supplier is obligated to inform us immediately in writing as soon as circumstances occur or he becomes aware of circumstances, from which it results that the conditions or the delivery deadline cannot be met. Such information does not release the Supplier from his original obligations to supply. In case of violation of this obligation we shall have the right to claim damages incurred because of this from the Supplier. If the goods are delivered earlier than agreed, we reserve ourselves the right to return the goods at Supplier's expenses. If, in case of earlier delivery, the goods are not returned, they shall be stored at the Supplier's costs and risk until the delivery date.
  4. We accept partial deliveries only after we have expressly agreed to do so. If partial deliveries have been agreed, the remaining quantity still to be delivered has to be stated.
  5. In case of delays in delivery, we shall have the right to claim lump-sum damages because of delay amounting to 0.2% of the gross value of the goods delivered per day in delay, however, not more than a total of 10%, without prejudice to any further statutory claims (rescission and damages instead of performance). The Supplier shall have the right to prove to us that the delay resulted in no damage at all or in a considerably lower damage. In the latter case we may claim the damages we incurred in fact. The acceptance of late delivery entails no waiver of the claims for damages and of the lump-sum damages.
  6. The number of units, weights and measures as well as delivery quantities are determined according to the values ascertained in our incoming goods inspection, except if proven otherwise.
  7. Force majeure, collective actions, business disruptions for which we are not responsible, unrests, official measures and other inevitable events entitle us to withdraw from the contract, provided that they are of considerable duration and that they result in considerable decrease of our demand, without prejudice to our other rights.
- 5. Packaging, proof of origin, labelling**
1. Unless agreed otherwise, the goods to be delivered have to be packaged in a standard and appropriate manner in recyclable homogenous materials or in special packaging at our request according to our instructions. The Supplier shall be liable for damages resulting from faulty packaging.
  2. The Supplier is obligated to make the necessary declarations about the origin of the goods available to us at our request in due time according to the customs law. He shall be liable for any disadvantages that arise to us because of undue or late supplier's declaration. If necessary, the Supplier has to prove his information about the origin of goods by his information sheet confirmed by his customs office.
  3. The delivery note has to include the item number, the item description and the order number. If possible, the above information has also to be given in form of bar code. At Supplier's request we will make the necessary specifications available to him.
- 6. Incoming inspection, notice of defects**
1. The commercial obligation to inspect and to notify defects shall be governed by the statutory requirements (Sec. 377, 381 of the HGB (German Commercial Code)), provided that our obligation to inspect shall be restricted to defects that become apparent during our incoming goods inspection and visual examination including shipping documents and during quality control using sampling procedure (e.g. transport damage, incorrect or short deliveries). No inspection is required if an acceptance procedure has been agreed on. Apart from that, it depends on the extent to which an examination is feasible according to the proper business procedures, taking into account the circumstances of the particular case.

2. Any payments of the purchase price done before the detection of defects or the acceptance of the goods by us or by one of our representatives with the Supplier do not constitute a recognition that the good is free of any defects and do not release the Supplier from his warranty obligation.

## 7. Quality

1. The Supplier has to comply with the generally accepted technology standards, the safety requirements and the agreed technical data for his deliveries. For any changes of the delivery item our previous consent in writing is required. The Supplier assures that the products to be delivered are state-of-the-art. The Supplier agrees to use only materials that comply with the relevant valid statutory safety requirements and provisions, particularly these for toxic and hazardous materials. The same shall apply to environment protection provisions and requirements in connection with the electricity and electromagnetic fields. The obligation comprises any regulations that apply to Europe, including the country of origin and, if different, also the regulations of the buying countries communicated to the Supplier. If we intend to deliver the subject-matter of the contract to a new market abroad, we shall be obligated to inform the Supplier about this without delay. The parties have to inform themselves about the more strict quality and/or production standards valid in such countries. If the Supplier fails to declare within a period of one month, whether he is aware of the new quality and/or production standards and whether he can fulfil them or not, the parties shall be considered to have agreed that the Supplier is aware and fulfils the quality and/or production standards valid in this country. (The issue is still awaiting decision of the supreme court).
2. The Supplier agrees to comply with the protection laws and other safety requirements, such as requirements of the commercial supervisory authority, provisions of the German Association for Electrical Engineering (VDA) for electrical parts, the accident prevention regulations of the Employers' Liability Insurance Association that are applicable for the delivery items in each case. For the initial sample testing we refer to the VDA publication "Quality Assurance for Deliveries in the Automotive Industry – Evaluation of Suppliers' Initial Sample Testing". The Supplier shall indemnify us for any claims under public and private law based on violation of these regulations. The Supplier shall include in the delivery all the necessary inspection documents and certificates without further requests.
3. If the order fails to meet the relevant requirements in effect, it has to be changed by the Supplier accordingly at no charge. The missing protection parts have to be supplied and installed at no charge.
4. As regards the quality assurance procedures for his delivery to be observed by the Supplier, our relevant quality insurance guidelines or delivery specifications in effect shall apply.
5. In case of first delivery or in case of changes of contract implementation, before the final production, we have to be delivered the number of samples requested by us, which have to be clearly marked as such. Only after our release of samples in writing the contract is considered to be finally placed. We reject defective deliveries and performance, and deliveries and performance that otherwise vary from our or otherwise valid requirements. Irrespective thereof the supplier has to inspect the quality of his deliveries and performance. The contract partners shall inform each other about the possibilities of quality improvements.
6. If the type and the scope of the inspection and the inspection tools have not been agreed between the Supplier and us, we are ready at the Supplier's request within the scope of our knowledge, experience and possibilities, to discuss the inspection with him in order to determine the required state of the test technology.
7. For car parts especially marked, e.g. with a "D", in the technical documentation or in a separate agreement the Supplier also has to record in addition in special records when, how and by whom the delivery items have been checked for characteristics, which documentation is mandatory, and what were the results of the required quality tests. The test documents

have to be kept for 15 years and have to be presented to us if required. The Supplier has to obligate his sub-suppliers accordingly. For guidance we refer to the VDA publication „Parts that are subject to documentation requirement in the automotive industry and the automotive supplier industry – How to carry out the documentation“.

8. If authorities that are competent for vehicle safety, exhaust emission regulations and similar areas, demand access to our production process and our test documents to investigate the compliance with certain requirements, the Supplier agrees at our request to grant them the same rights in his company and to provide any reasonable assistance.
9. The Supplier agrees to have product, process and system audits carried out by us or by a person authorised by us after prior agreement. In this case the Supplier is not obligated to disclose his trade secrets.
10. Intended changes of the subject-matter of the delivery have to be communicated to us in writing. They require our previous written consent.

## 8. Warranty

1. In case of delivery of defective goods the Supplier shall be liable in accordance with the legal regulations. If during the warranty period material defects of the deliverables occur, the Supplier has to provide supplementary performance, while basically we shall have the right to choose the type of supplementary performance. The Supplier shall have the right to refuse the type of supplementary performance chosen by us, provided that the requirements of Art. 439 Par. 2 BGB are met. We shall be entitled to unabridged statutory warranty claims; in any case we shall have the right to demand rectification of defects or delivery of a new product. The right to claim damages, particularly the right to graduated damages shall expressly remain unaffected. Moreover, the Supplier shall also be liable to us for the compensation of extra costs and damages incurred by us or our customer as a result of the defects and damages. This shall include the compensation of any financial losses.
2. If the Supplier fails to begin the rectification of defect directly after he was requested to do so by us, in cases of urgency, particularly to avert imminent danger or to avoid still larger damages, we shall have the right to do it ourselves or to have it done by a third party at Supplier's cost. The Supplier shall bear the resulting costs.
3. In case of deliveries repaired within the period of limitation for our warranty claims, the period of limitation shall begin again at the moment the Supplier has completely fulfilled our claims for supplementary performance.
4. If we recall the products produced and/or sold by us as a consequence of the deficiency of the subject-matter of the contract delivered by the Supplier or if the purchase price was decreased because of this or if we were otherwise claimed against because of this, we reserve ourselves the right to recourse against the Supplier, while no deadline has to be set, as required otherwise, because of our warranty rights.
5. If within six month after the transfer of risk a material defect is detected, it is assumed that the defect already existed at the moment of transfer of risk, unless such assumption contradicts to the type of the object or the defect in question.
6. The warranty period is 24 months from the moment of transfer of risk. Irrespective of the above provision, the period of limitation for material defects shall be at least two months after we have fulfilled our customer's claims because of the defect against us, and not longer than five years after the delivery by the Supplier.

## **9. Liability / product liability**

1. Unless the liability has been regulated otherwise in these terms and conditions, the Supplier shall be liable for compensation of damages incurred by us directly or indirectly as a result of a culpable tort or violation of his obligations by the Supplier.
2. Insofar as the Supplier is liable for the damage of a product, he shall be obligated to indemnify us from damage claims of third parties at our first request insofar as the cause for such claims lies in his area of responsibility and he is liable in external relations. The Supplier's obligation to indemnify includes in addition to payment of damages to third parties also the legal costs, recall costs, inspection costs, assembly and disassembly costs as well as our administration expenses and other expenses for the processing of claims.
3. In this context the Supplier shall also be obligated to compensate any expenses pursuant to Sec. 683, 670 BGB and Sec. 830, 840, 426 BGB that result from or in connection with a recall campaign or preventive customer service measures. We will inform the Supplier about the contents and the scope of the recall campaign or preventive customer service measures we have carried out or taken and offer him the opportunity to make representations – as far as this is possible and can be reasonably expected from us.
4. The Supplier agrees to carry product liability insurance with a sum insured amounting to a lump sum of 5 million per event of personal injury/property damages and a recall costs insurance with a sum insured amounting to 5 million per event of damage, unless agreed otherwise. Any further claims for damages we are entitled to shall remain unaffected.

## **10. Industrial property rights**

1. The Supplier shall be liable for any claims resulting in the course of the use of delivered items because of violation of industrial property rights and applications for industrial property protection. The Supplier assures that in connection with the delivery and through such delivery no rights of third parties are violated.
2. If we are claimed against because of the above by a third party, the Supplier is obligated to indemnify us against such claims at our first written request; we shall not be entitled to make any agreements with the third party, particularly to reach any settlements without the Supplier's consent.
3. The above shall not apply if the Supplier had produced delivery items according to drawings, models or descriptions or data equal to them provided by us and does not know or does not has to know in the context of products developed by him that industrial property rights are violated by this.
4. At our request the Supplier has to inform us in writing about the use of published and non-published own or licensed industrial property rights and application for industrial property protection for the delivery item.

## **11. Retention of title – provision of parts – tools**

1. Insofar as we provide any parts to the Supplier, we shall retain the title in such parts. Any processing or alterations are made by the Supplier on our behalf. If our goods subject to retention of title are processed together with other objects that do not belong to us, we shall acquire the joint title to the new object at the ratio of the value of our item (purchase price plus VAT) to the other processed objects at the moment of processing.

2. If the item provided by us is mixed inseparably with other objects that do not belong to us, we shall acquire the joint title to the new object at a ratio of the value of the item subject to retention of title (purchase price plus VAT) to the other mixed objects at the moment of mixing. If the mixing is done in a way that the Supplier's object has to be considered the main item, the parties agree that the Supplier shall assign us proportionate joint title to it; the Supplier shall keep the sole ownership or joint ownership in custody on our behalf.
3. We reserve our title to tools; the Supplier shall be obligated to use the tools exclusively for the production of goods ordered by us. The Supplier shall have the obligation to insure the tools that belong to us at replacement value and at his own expenses against damages caused by fire, water or theft. At the same time, already now the Supplier shall assign any claims for compensation based on such insurance to us and we hereby accept the assignment. The Supplier agrees to carry out any service and inspection work as well as maintenance and repair work on our tools that could be necessary in due time and at his own expenses. He shall inform us immediately of any failures; if he culpably fails to do so, any claims for damages shall remain unaffected.
4. We shall be obligated to release the security interests at our own discretion and at Supplier's request, if the security interests we are entitled to based on Par. 1 and/or Par. 2 exceed by more than 10% the purchase price of all our goods subject to retention of title that have not been paid yet.
5. Any models, moulds, templates, samples, tools and other manufacturing equipment as well as confidential data provided by us to the Supplier may only be used for deliveries to third parties with our previous consent in writing.

## 12. Confidentiality

1. Any business or technical information whatever made available by us, including characteristics that can be taken from any objects and documents provided, and any knowledge or know-how have to be kept secret from third parties and may only be made available to persons in the Supplier's own company, who have to be employed in the field of the application of such data for the purpose of delivery to us to a necessary extent and who also have to be sworn to secrecy; they shall exclusively remain our property. Such information may not be multiplied or used commercially without our previous consent in writing, except for deliveries to us.
2. The confidentiality obligation shall not apply to information that is proven to
  - be already manifest at the moment of its transfer,
  - become manifest after its transfer, and the Supplier is not responsible for this,
  - be made available to the Supplier by a third party after its transfer in a legally permitted way and without restrictions as to confidentiality or use.

The confidentiality obligation shall expire two years after the end of the contractual relationship between us and the Supplier.

Any information that comes from us (if applicable, including copies or records made) and objects provided on a loan basis have to be returned to us or destroyed immediately and completely at our request. The destruction has to be confirmed to us in writing. We reserve ourselves any rights as regards such information (including copyrights and the right to exercises the industrial property rights, such as patents, utility models, trademark protection etc.). Insofar as such information was provided to us by third parties, this legal reservation shall also apply in favour of such third parties.

Drawings, models, templates, samples and similar objects may not be left or made otherwise available to unauthorised third parties. Copying of such objects is only permitted within the scope of the operational requirements and the copyright provisions.

Sub-suppliers have to be obligated accordingly.

The contract parties may only refer to their business relationship in their advertising only with previous written consent of the other party.

### 13. General Provisions

1. The law of the Federal Republic of Germany shall apply exclusively, unless agreed otherwise. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
2. Place of performance shall be our place of business.
3. Place of jurisdiction shall be our place of business; however, we shall have the right to bring a legal action against the Supplier also at his place of general jurisdiction.
4. The invalidity of individual provisions does not affect the validity of the remaining provisions. The contracting parties are obligated to replace the invalid provisions by valid provisions that are equal in their economic outcome to the replaced provisions. The same shall apply in case of omissions.