

# General Terms & Conditions of Purchase of Hengstler GmbH

## I. General provisions

1. These General Terms & Conditions of Purchase (T&Cs) shall apply to all orders of either Hengstler GmbH or Hengstler s.r.o., as applicable (hereinafter each "**Hengstler**") with its business partners and suppliers (hereinafter "**Sellers**"). The T&Cs only apply if the Seller is an entrepreneur (s. 14 BGB (German Civil Code)), a legal entity under public law or a special fund under public law.
2. The T&Cs shall apply to all services performed for Hengstler, in particular for contracts on the sale and/or delivery of movable objects (hereinafter also referred to as: **goods**) irrespective of whether the Seller manufactures the goods itself or outsources them from sub-contractors. The current version of the T&Cs shall also serve as a framework agreement for future contracts with the same Seller, without Hengstler having to refer to them again in any individual case.
3. These T&Cs shall apply exclusively. Deviating, contrary or supplementary General Terms & Conditions of Business from the Seller shall only become part of the contract subject to Hengstler's express written permission.
4. Declarations and notices by the Seller which are of legal relevance must be put in writing in order to be valid.

## II. Conclusion of the contract

1. Unless otherwise agreed, Hengstler shall be bound by an offer, which it has declared as binding, for a period of one week. The date on which Hengstler receives the declaration of acceptance shall determine whether or not the Seller's offer is accepted on time.
2. Once the self-defined binding period of one week has elapsed, the later acceptance of the offer shall be considered to be a new offer within the meaning of s. 150 BGB. Hengstler shall not be under any obligation to accept the Seller's new offer.
3. To the extent that Hengstler and the Seller have concluded a framework order agreement and Hengstler has made purchase orders in accordance therewith, such purchase orders shall become binding for the Seller if he does not object to the respective purchase order in writing within seven calendar days after its receipt.

## III. Right to determine performance

1. Hengstler shall reserve the right to change when and where the delivery of the goods is to take place, as well as the nature of the packaging, at its discretion, by means of written notification, giving notice of at least five working days prior to the agreed delivery date. The same shall apply to changes to product specifications for the goods provided they can be implemented within the scope of the Seller's normal production process without any considerable additional outlay.
2. Hengstler shall agree to reimburse the Seller for any verified and reasonable additional expenses caused by the change, subject to subsection III.3 below. Should these changes result in delays in delivery which are unavoidable under the Seller's normal production and trading activities, allowing for reasonable efforts on the part of the Seller, the delivery date originally agreed shall be put back accordingly.
3. The Seller shall undertake to inform Hengstler of the likely additional costs and/or delays in delivery forthwith, albeit not later than three working days after receipt of the change notification from Hengstler.

## IV. Lead time and delay in delivery

1. The agreed deadlines and dates are fixed dates. In the event of non-compliance, the Seller shall be liable in accordance with statutory regulations. section III. Shall remain unaffected.
2. The Seller shall undertake to advise Hengstler without delay of likely delays in delivery, irrespective of the reasons for them.
3. The Seller shall be deemed to be in default with delivery without having received a reminder.
4. Hengstler is not obliged to accept the respective goods before their agreed date of delivery.

## **V. Performance, delivery, transfer of risk, default in acceptance**

1. Without the prior written permission of Hengstler, the Seller may not have a third party carry out the work undertaken by it.
2. Unless otherwise agreed in writing, the goods shall be delivered to Hengstler's place of business. The place of performance shall be the respective delivery address (performance obligation).
3. A delivery note specifying the shipping date, the object being delivered, citing the item number and the quantity of goods, Hengstler's order code (date and number), and, for any drawing parts, information about the revision status, shall be attached to the delivery. If the delivery note is missing or incomplete, Hengstler shall not be responsible for resulting delays in the processing and settling of the invoice.
4. The Seller shall bear the risk of accidental loss and accidental deterioration of the goods up to the time of handover at the place of performance.
5. The Seller is only entitled to partial delivery upon Hengstler's approval.
6. Notwithstanding the statutory regulations on default in acceptance (s. 296 BGB), the wording of the offer of the service shall also be required if a specific or definable timeframe is to be agreed for actions or cooperation by Hengstler.
7. In case of delayed delivery, Hengstler shall be entitled – after prior written warning to the Seller – to demand a contractual penalty payment of 0.5 % of the respective order value for every commenced week of delay up to a maximum of 5 % of the respective order value. The right to claim further damages shall remain unaffected. The contractual penalty payment shall be credited towards the default damage to be compensated by the Seller.
8. The Seller shall package the goods as agreed. If there is no agreement regarding the packaging of goods, they shall be packed in accordance with standard commercial practice. In any case, the Seller shall ensure that the goods are protected against damage. Should the Seller require the return of the packaging material, he shall make a corresponding indication on the delivery note. In this case, Hengstler shall return the packaging material at the Seller's expense.

## **VI. Audit of business premises**

During the course of a supply relationship between Hengstler and the Seller and after prior consultation, the Seller shall grant Hengstler access to its business premises during normal business hours enabling Hengstler to perform audits in order to examine and secure the sustainability of the business relationship, the quality and the innovative capacity. The Seller shall support Hengstler appropriately in its performance of such audits.

## **VII. Prices and payment terms**

1. The price stated in the applicable order shall be deemed the maximum price. It may exceed but may not be exceeded by the actual price. The risk of currency fluctuations or changes regarding material surcharges, in particular, shall be borne by the Seller; section III. shall remain unaffected. All prices shall be quoted inclusive of the statutory rate of value-added tax if this is not shown separately.
2. Unless otherwise agreed in any individual case, the price shall include all services and additional services performed by the Seller (for example, assembly or installation), as well as all ancillary costs (such as correct packaging, transport costs, including any transport and third-party liability insurance). The Seller shall be required to take back packaging materials at Hengstler's request, free of charge.
3. The agreed price is due within the payment conditions agreed upon separately between the Seller and Hengstler after complete delivery and performance (including any agreed acceptance inspection), as well as receipt of a correct invoice. Hengstler shall not owe interest following the due date. The default interest shall be five percent above the base rate; s. 288 (2) to (4) BGB shall not apply. The Seller must have issued a written reminder before Hengstler can be considered to be in arrears with payment.
4. Hengstler shall reserve the right to withhold due payments if it has outstanding claims against the Seller for incomplete or defective performance.

## **VIII. Reservation of title**

1. Hengstler reserves ownership of and copyright in all placed orders, instructions and drawings, illustrations, calculations, descriptions and other documents provided to the Seller. The Seller may neither make them available to third parties nor use or copy them or cause a third party to do so, without the prior written consent of Hengstler. Upon Hengstler's request, the Seller shall return these documents in full, if they are no longer needed in the ordinary course of business or if negotiations have not led to the conclusion of an agreement. In this case, copies made by the Seller shall be destroyed; excluded herefrom are retention as dictated by legal retention duties and storage of data for backup purposes in accordance with standard data backup procedures.
2. Tools, devices and models provided by Hengstler to the Seller or produced for contractual purposes and invoiced separately by the Seller, shall remain or become Hengstler's property. They must be marked as property of Hengstler, kept carefully, protected against damages of any kind and be used for contractual purposes only, in each case by the Seller. Furthermore, the Seller shall perform, in a timely and regular manner, maintenance and inspection work as well as service and overhaul on these objects where necessary. The cost of such work and possible additional costs (e.g. for insurance coverage) shall be borne by the Seller. The Seller shall notify Hengstler immediately of all damages to these objects, unless they are negligible. Upon request, the Seller shall return these objects to Hengstler in proper condition, if they are no longer needed for the fulfilment of the contracts concluded with Hengstler.
3. Should the Seller retain title to the goods until such time as the agreed remuneration has been paid in full, this reservation of title shall only be valid until the claim arising from the delivery of the respective goods has been settled.

## **IX. Defects in delivery**

1. Regarding Hengstler's commercial obligation to inspect and reprimand, the statutory provisions (sections 377, 381 German Commercial Code, HGB) are expressly excluded, so that the Seller waives his objection to any delayed complaints of defect. A payment by Hengstler shall not constitute an unreserved acceptance of the delivery.
2. If the Seller fails to discharge its duty to provide a cure - be it by repairing the defect (remedy) or by supplying an object which is free from defects (replacement), at Hengstler's discretion - within a reasonable time limit set by Hengstler, Hengstler shall reserve the right to rectify the defect itself and to demand reimbursement of the costs involved or of an appropriate advance.
3. If the cure provided by the Seller fails or is unacceptable to Hengstler (for example, owing to particular urgency, risk to operational reliability or to the threat that disproportionate damage or loss may occur), Hengstler shall not be required to set a time limit for rectification; the Seller shall be notified forthwith.

## **X. Recourse to the supplier**

1. Hengstler shall have unlimited right to assert claims for recourse within a supply chain (recourse to the supplier pursuant to ss. 478, 479 BGB), in addition to warranty claims. Hengstler shall be entitled, in particular, to ask the Seller to provide the type of cure (remedy or replacement) which Hengstler owes its customer in any individual case. This shall not limit the statutory right to choose (s. 439(1) BGB).
2. The entitlements to seek recourse to the supplier shall also apply if the goods have been processed further before being sold to a consumer by Hengstler or by one of Hengstler's customers, such as integration into another product.

## **XI. Manufacturer's liability**

1. The Seller shall assume liability for all claims asserted by third parties due to injury to people and damage to property and shall hold Hengstler harmless from any such claims unless the Seller does not bear responsibility for the damage or loss.

2. The Seller shall bear all costs incurred by Hengstler in connection with a goods recall which is required pursuant to the ProdHG (Product Liability Act) so long as the recall is caused by goods delivered by the Seller.
3. Regardless of any statements in the Seller's self-disclosure, the Seller shall be required to take out and maintain product liability insurance with a flat-rate cover of at least five million euros per injury/damage claim. On request, the Seller shall send Hengstler a copy of the product liability insurance policy.

## **XII. Industrial property rights**

1. The Seller shall provide an assurance that no third-party industrial property rights are infringed in connection with performance under the contract.
2. The Seller shall indemnify Hengstler against any claims asserted by third parties in connection with an infringement of industrial property rights, including any costs incurred by Hengstler in connection with mounting a defense against a third-party claim (in particular, prosecution costs).
3. Hengstler shall notify the Seller forthwith if it becomes aware of any claims by third parties.
4. The Seller shall do its utmost to support Hengstler in defending against claims by third parties.
5. The above shall apply irrespective of whether there is blame attaching to the Seller.

## **XIII. Ability to deliver and discontinuation**

1. If the Seller or any of its sub-contractors intend to discontinue any goods, Hengstler shall be notified in writing at least one (1) year in advance but in any case immediately after the planned discontinuation has become known. Hengstler shall immediately be given the opportunity to make a final purchase order. The Seller shall propose solutions as to how the further supply to Hengstler can be ensured while maintaining competitive prices and – as far as possible – unchanged specifications.
2. Furthermore, the Seller shall ensure Hengstler's supply of spare parts of the goods for five years after the respective delivery and deliver such spare parts to Hengstler at reasonable rates. If the Seller is no longer able to supply the spare parts after expiry of said time period, Hengstler shall be notified in writing and given the opportunity to make a final purchase order.

## **XIV „Conflict Minerals“ and REACH/RoHS**

1. The Seller shall be obliged to ensure compliance with sec. 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank-Act”), as amended from time to time, irrespective of being legally bound by sec. 1502 of the Dodd-Frank-Act itself or not. The Seller shall verify whether the goods contain “Conflict Minerals” pursuant to sec. 1502 of the Dodd-Frank-Act (currently tantalum, tin, gold, wolfram). If this is the case, the Seller shall notify Hengstler of the use of Conflict Minerals immediately and verify the origin of the Conflict Minerals. The Seller shall commit its sub-contractors to equivalent verification and notification obligations opposite the Seller in accordance with the above sentence 1 to 3.
2. Before first delivery, the Seller shall confirm that his goods comply with the currently applicable guidelines of the REACH- and RoHS-directive. In case of Hengstler's drawing requirements not being in compliance with the currently applicable guidelines, the Seller shall inform Hengstler proactively. Furthermore, whenever the guidelines of the REACH- and RoHS-directive are amended, the Seller shall provide Hengstler proactively with an updated declaration of compliance. In case on non-compliance, the Seller shall immediately notify Hengstler in writing.

## **XV. Confidentiality**

1. The Seller shall treat as confidential the terms and conditions of the contract, as well as information and documentation received in connection with the execution of the contract

(apart from information in the public domain), including after the end of the contract and shall only use same for the execution of the contract.

2. The Seller shall undertake to return the confidential information and documentation to Hengstler without delay when asked to do so, as soon as it no longer requires this for the execution of the contract.
3. Without Hengstler's prior written permission, the Seller may not make reference to its business relationship with Hengstler in advertising materials, brochures, etc.
4. The Seller shall commit its suppliers to observe confidentiality in accordance with section XV.

#### **XVI. Assignment**

The Seller shall not be entitled to assign its claims under the contractual relationship to third parties. This shall not apply where money claims are concerned.

#### **XVII. Limitation of actions**

1. The contracting parties' claims against each other shall elapse in accordance with statutory regulations unless otherwise agreed below.
2. Notwithstanding s. 438(1) No. 3, s. 634a(1) No. 1 BGB, claims for defects shall generally become statute-barred after three years. The period of limitation for claims arising from recourse to suppliers in accordance with clause IX shall be at least two months after the end of the period of limitation for corresponding third-party claims asserted against Hengstler.
3. Extra-contractual claims for compensation shall be subject to the statutory standard period of limitation defined in ss. 195, 199 BGB except in cases where a longer period arises from application of the extended period of limitation in accordance with subsection XVII. 2.

#### **XVIII. Order of application**

These Terms & Conditions, a possibly concluded Supply and Quality Assurance Agreement and individual order documents shall apply in the following order:

1. Individual order documents
2. Supply and Quality Assurance Agreement
3. Terms & Conditions

In case of a conflict between these documents, the terms of the higher-ranking document shall apply.

#### **XIX. Final provisions**

1. Subject to section 2 above, these T&Cs and all legal relations between Hengstler and the Seller shall be governed solely by the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sales of Goods (CISG).
2. The exclusive place of jurisdiction, both nationally and internationally, for all disputes arising out of the contractual relationship shall be Hengstler's commercial domicile. However, Hengstler shall reserve the right to take legal action at the Seller's commercial domicile.
3. Should individual provisions become invalid, the validity of the other provisions shall remain unaffected. The invalid provision shall be replaced by a provision whose content is most in keeping with the commercial interests of both parties.
4. Ancillary verbal agreements shall not be made. Addenda and amendments to the contract shall be put in writing. This shall also apply to waiving the requirement to use the written form.
5. The Seller may only exercise a right to offset where its claim is legally established or undisputed. The same shall apply to the right to withhold which may also only be exercised effectively if the counterclaim by the Seller is based on the same supply contract.
6. As a subsidiary of the Fortive Corporation, Hengstler has committed itself to a standard of excellence regarding all aspects of the business. This entails that all transactions shall be executed with integrity, that the rights of all individual shall be respected and that the environment shall be protected. Hengstler expects and demands that the Sellers (and all approved sub-contractors) which have business dealings with Fortive and subsidiaries of

Fortive shall make the same commitment. When deciding whether a Seller may be granted or maintain a preferential status, Hengstler shall also consider the Seller's compliance with these standards. Sellers which do not comply with these standards may potentially be deprived of the preferential status and/or their business relationship with Fortive or a subsidiary of Fortive (e.g. Hengstler) may be terminated. The Seller shall comply with all laws and regulations applicable to its sector or industry as well as the sector or industry standards, including those regarding production, pricing, sale, distribution, labelling, transport, import and export of goods and services. Without compromise to these requirements, the Seller shall not participate in (A) violation, unlawful appropriation or infringement of intellectual property rights of any natural or legal person, including Fortive or its subsidiaries; or (B) violations of applicable laws or regulations regarding (1) bribery, corruption or illegal payments, (2) unfair competition and fraudulent business practices, (3) the environment, (4) health and safety, (5) international trade including import and export, (6) data protection and data security, (7) money laundering, (8) employment conditions and hiring, (9) contracts with governmental authorities or (10) healthcare provision and medical appliances. The code of conduct applicable to all Sellers and their sub-contractors can be retrieved under <http://www.fortive.com/suppliers>.