

# General Ordering Terms and Conditions for the Delivery and Setup or Assembly of Machinery for the Hipp Group of Companies (Revised: October 2013)

## § 1 General - Scope of Validity

- 1) These General Ordering Terms and Conditions for the Delivery and Setup or Assembly of Machinery for the Hipp Group of Companies apply exclusively; Hipp shall not recognise any terms and conditions of the supplier conflicting with or deviating from these terms and conditions of purchase, unless such terms and conditions have been accepted by Hipp explicitly in writing. These Terms and Conditions shall also apply even if Hipp accepts the supplier's delivery without reservations in awareness of the supplier's conflicting or deviating terms and conditions.
- 2) All agreements made between Hipp and the supplier for the purpose of executing this contract must be made in writing.
- 3) These Terms and Conditions shall also apply to all future transactions with the supplier.

## § 2 Offers - Sub-contractors

- 1) The preparation of offers shall be free of charge for Hipp. Offers must be submitted within the deadline specified in the enquiry or invitation for tenders. They must include a breakdown of any wearing components and consumables with statement of the prices. Alternative offers that offer Hipp technical, pricing or other advantages must be submitted separately.
- 2) The supplier's offer must relate precisely to the Hipp specification and the wording in the enquiry. Any deviations must be pointed out explicitly.
- 2) The supplier must check the materials provided to him with the enquiry or invitation for tenders (terms of reference, drawings, functional specification, etc.) for any inconsistencies prior to submitting his offer, and must compare them with the local situations and conditions under which the deliverables and services to be provided are to be used, if necessary. The supplier must point any discovered or suspected faults in the materials or inconsistencies with the local situations and conditions at the setup site to Hipp before submitting his offer, and must make all the necessary inquiries with Hipp.
- 4) Subcontractors must not be engaged without the prior written approval of Hipp. Sub-contractors must be named in the offer. Information must be provided about the scope of delivery and services provided by each of the sub-contractors. The supplier must impose all the obligations agreed with Hipp for the works he has undertaken to perform upon the sub-contractors and ensure compliance with same.
- 5) The supplier must not prevent his sub-contractors from arranging contracts with Hipp for other goods/services.

## § 3 Orders - Ordering Documents

- 1) Orders must be made in writing. Verbal orders, changes or amendments to orders shall only be binding if they are confirmed by Hipp in writing. Written form is also observed if orders are placed by way of electronic data transfer.
- 2) If the supplier does not accept an order within 14 calendar days, Hipp shall be entitled to revoke the order before receiving the supplier's declaration of acceptance.
- 3) The terms of reference, functional specifications, drawings, weight, dimension and consumption data, raw material and product specifications of Hipp shall be binding and describe the agreed condition.
- 4) The supplier shall name a project manager to Hipp at the time of the order, but not later than on commencement of technical processing by the supplier. This project manager shall monitor the handling of the contract and be the contact

General Ordering Terms and Conditions for the Delivery and Setup or Assembly of Machinery for the Hipp Group of Companies  
(Revised: October 2013)

person for Hipp for any questions concerning the contract. If a different project manager is appointed by the supplier in the course of handling of the contract, the supplier shall promptly notify Hipp.

5) The supplier shall not be permitted to assign orders from Hipp to third parties without the written consent of Hipp, and such assignment without consent shall entitle Hipp to rescind the contract in whole or in part, or to assert claims for damages due to non-fulfilment.

6) Unless agreed otherwise, the supplier shall address all correspondence relating to an order solely to the department at Hipp that placed the order, thereby always stating the order number and other identifying details.

## § 4 Integral Parts of the Contract

The integral parts of the contract in the order of priority are:

- The order including these General Ordering Terms and Conditions for the Delivery and Setup or Assembly of Machinery for the Hipp Group of Companies,
- The technical documents underlying the order (e.g. terms of reference, specification, requirements specification, functional specification, plans, drawings, device list, electrical and mechanical requirements specification as amended, etc.),
- The agreed time schedule,
- The generally recognised state of the art, such as DIN standards, VDE terms and conditions,
- The relevant standards of safety engineering (in particular Equipment and Product Safety Law; Ordinance on Industrial Safety and Health; Workplaces Ordinance; Ordinance on Hazardous Substances; § 2 I 1, 2 VBG 1)
- The EU machinery directive as amended
- The environmental protection regulations (e.g. Recycling and Waste Management Act; Federal Emission Control Act; Technical Instructions on Air Quality Control; Technical Instructions on Noise Protection; Water Management Act)
- The accident prevention and other industrial safety and occupational medicine regulations
- The general minimum requirements for work equipment as set out in Directive 89/655/EEC in conjunction with Directive 95/63, both as amended
- Any further safety regulations of Hipp (e.g. hygiene rules, environmental rules, assembly guidelines, hazardous substances list, site regulations, safety data sheet in accordance with Directive 91/155/EEC)
- The acceptance protocol

## § 5 Delivery and Performance Obligations

1) Deliveries and services must be performed in such manner that the contractually agreed use is guaranteed. The scope of performance shall include in particular all components that are required for operationally safe and turnkey machinery as well as in accordance with the state of the art or the existing technical regulations and necessary for the contractual agreed and flawless operation of the machinery. This shall apply regardless of whether such parts/deliverables are explicitly named in detail in the invitation for tenders, offer, order, technical specification or elsewhere.

2) The object of delivery must - where applicable - be marked with the CE mark. The hazard analysis must be handed over not later than at the time of operational readiness, and on delivery or at onset of usability the EC declaration of conformity or, in the case of non-usability, the manufacturer's declaration must be handed over.

3) The supplier must perform the deliveries and services in accordance with the technical documents from Hipp underlying the order. Technical documents that the supplier must prepare in accordance with the contract, technical regulations or commercial practices must be submitted within such good time that any modifications deemed necessary by Hipp can still be integrated.

4) If the supplier has concerns about the planned type of design (e.g. including the safeguards to prevent accidents) or otherwise, he shall notify Hipp thereof promptly - before starting the work if possible. Before conclusion of the contract the supplier shall obtain information from Hipp in particular regarding the local conditions, structures, access roads, setup sites for work machines, foundations and scaffoldings, as well as all other relevant installations and objects. The supplier shall not be able to later rely on or demand additional remuneration for any difficulties or impairments due to circumstances already identifiable at the time of conclusion of the contract.

5) The specifications by Hipp must be observed with regard to the electrical equipment (drives, controls and other electrical fittings). In the case of deviations, the written consent of Hipp must be obtained by prior statement of the manufacturer, type designation, prices and justification by the supplier.

6) The supplier undertakes to observe the recommendations of BGN/AUVA as well as the machinery directives, and provenly to minimise all sources of noise in accordance with the state of the art and without impairing the user friendliness of the machinery. The noise level of the plant must in particular not include any audible individual tones. Unless agreed otherwise between the parties, the measuring-surface sound-pressure level of the noise emitted by the individual components of the machinery when running at full load - measured in accordance with DIN 45635 at a distance of 1 m and, in the case of a fluctuating level, averaged in accordance with DIN 45641 - must not exceed a level of 78 dB (A). The sound-pressure level of the individual workplaces assigned to the machinery must in no case exceed the level of 80 dB (A). Compliance with the respective limits set out above must be proven by noise measurements under production conditions and included in the acceptance protocol as an additional basis of contract.

7) When planning, projecting and designing the machinery, the supplier must make sure that parts which may need to be replaced under the contractually required operating conditions can be uninstalled and installed without avoidable structural measures and technical difficulties. The supplier is obliged to check the drawings and other materials provided to him to make sure that the above conditions are fulfilled. In the case of delivery of multiple identical machinery components, exchangeability of the corresponding individual components must be guaranteed.

8) The supplier shall make any modifications to the agreed deliverables and services later requested by Hipp within the scope of what is technically feasible. Any extra costs or cost reductions resulting therefrom must be agreed upon prior to the individual modification being implemented.

9) The supplier shall hand over the drawings and other materials pertaining to the machinery in the agreed number of counterparts, but at least 3 sets thereof, not later than on commencement of the works.

10) All materials required for operation and maintenance of the machinery must be handed over to Hipp in their final version in the agreed number of counterparts, but at least in 3 sets, not later than on commencement of the test run.

11) If the scope of delivery includes items that are subject to official approval as individual components or with regard

to their integration in the machinery as a whole, the supplier shall be obliged to procure such approval at his own costs. The same applies to the machinery as a whole, unless Hipp is responsible for obtaining the approval on the grounds of statutory or official regulations. In this case the supplier shall, at his own costs, provide the materials necessary for the application for approval in a form suitable for submission to the authorities and in the required number of counterparts. The above provisions shall apply *mutatis mutandis* to any officially stipulated inspections and acceptances. In particular the supplier shall, at the request of Hipp, provide written confirmation that the object of delivery is compliant with the provisions of the accident prevention regulation "Electrical Machinery and Equipment" (VBG 4).

12) The supplier shall perform the commissioning and subsequent trial operation for the agreed duration or for a reasonable period of time.

## **§ 6 Delivery and Service Schedules - Impairments of Performance**

1) The agreed time schedule shall be binding. Deliveries and services at earlier times than scheduled shall require the prior written consent of Hipp. If it is contractually agreed that the supplier's performance is to be fulfilled exactly at a specified point in time or within a fixed period of time (absolutely fixed contract), Hipp may - if the performance is not fulfilled at the specified point in time or within the specified period of time - rescind the contract or, if the supplier is in default, demand damages for non-fulfilment in lieu of fulfilment.

2) If the supplier fails to meet a delivery schedule specified or specifiable as a calendar date due to his fault, he shall be in default without further reminder or period of grace being set; at the end of the day when a delivery date is set as a fixed calendar date, at the end of the last workday of the week when a certain calendar week is specified, and at the end of the last workday of the month when a certain calendar month is specified.

3) In the case of a foreseeable delay of delivery or service, the supplier shall be obliged to notify Hipp promptly in writing and to obtain his written decision on the further procedure. Hipp shall be entitled to demand an increased deployment of staff, the deployment of qualified staff or overtime (even on Sundays and public holidays) as well as the accelerated transportation of deliveries from the supplier, if it is foreseeable that the agreed deadlines will not be met for reasons for which the supplier is responsible or the project is jeopardised due to inadequate qualification of the staff deployed. The supplier is obliged to obtain the approvals necessary for this. The supplier shall not be entitled to remuneration of his additional expenses for such actions demanded by Hipp. Hipp shall be entitled to rescind the contract in whole or in part if the supplier fails to comply fully with such a demand by Hipp or it is foreseeable that due and proper fulfilment of the contract will not be possible even with such measures.

4) If performance deadlines or dates cannot be met for reasons for which Hipp or the supplier is not responsible due to force majeure or due to other circumstances for which Hipp or the supplier is not responsible, the deadline shall be extended by the duration of the delay.

5) If the supplier is in default, Hipp shall be entitled to demand a contractual penalty in the amount of 0.5% of the order value per started calendar week, but not more than 5% of the total order value. Dates subject to the contractual penalty shall be marked specifically in the order: Otherwise, only the acceptance date shall be subject to the contractual penalty. Hipp may also demand the contractual penalty in every case if Hipp reserves the right to do so within one month after acceptance.

6) To avoid a delay, the supplier may with the prior approval of Hipp set up a provisional solution, unless this is precluded by the purpose of the contract. Thereby a separate supplementary agreement shall be concluded for

each individual case. All costs and additional costs associated with the setup, operation and removal of the provisional solution shall be borne by the supplier.

7) Inasmuch as Hipp has reserved decisions, these must be demanded by the supplier within such good time that difficulties or delays in the handling of the contract are avoided.

#### **§ 7 Delivery**

1) Shipping addresses shall be provided in the order. They may be changed by written notification by Hipp up to the time of delivery.

2) Even after placing the order Hipp shall be entitled to dictate the form of packaging and transportation to the supplier. Any additional costs incurred thereby shall be reimbursed by Hipp, provided the amount of the difference was pointed out to Hipp by the supplier and Hipp still insists on the instruction being carried out.

3) Unless agreed otherwise, delivery shall be made to the final destination within the premises and the buildings of Hipp; transportation, unloading and setup shall be at the supplier's risk.

4) The supplier shall be obliged to coordinate the details of the delivery with the responsible project manager at Hipp within good time. Hipp must be notified in good time that the delivery is ready for shipping. The shipping notifications must be received by Hipp within good time prior to arrival of the deliveries.

5) Every delivery must be accompanied by packing slips or bills of delivery stating the contents as well as the full order identification. All packaging units and unpackaged deliveries must be bear weatherproof and easily visible labelling that allows the delivery to be identified readily.

6) The supplier shall be obliged to remove all packaging material free of charge.

7) Deliveries shall always be made free to the place of use.

8) Any costs incurred as a result of non-compliance with the above delivery regulations shall be borne by the supplier.

9) Deliveries by the supplier or a third party engaged by him must be made during the normal opening hours of Hipp.

#### **§ 8 Setup - Assembly**

1) Unless agreed otherwise, the supplier shall be responsible for accommodation of his qualified personnel and unskilled workers.

2) Existing facilities on the premises of Hipp may be made available to the supplier by separate agreement.

3) The daily working times, night, Sunday and public holiday shifts on the premises of Hipp must be agreed with Hipp. The supplier shall obtain any necessary approvals for this from the responsible authorities himself. A copy of the approval must be presented to Hipp before the works are started.

4) The supplier shall be responsible for his own installations, machinery, equipment, materials, etc. on the premises of Hipp, even if the premises are guarded by Hipp.

5) Subject to other agreements, the following shall apply: If the local conditions allow, electricity shall be available free of charge from the connection points to be designated by Hipp for the performance of necessary works and within the scope agreed, but not for heating purposes. The supplier must provide for the connections to the consumer points and local sub-distribution of power and lighting electricity including maintenance of the necessary installations himself. If a connection point cannot be provided by Hipp, the supplier shall arrange for power supply himself. The costs of this and of power consumption shall be borne by the supplier.

6) Hipp shall name an assembly manager for the performance of the works. He shall be authorised to issue

instructions to the supplier. In the case of breaches and contraventions of the respectively applicable site rules as well as the safety regulations by employees of the supplier, he shall be authorised to expel the relevant employees from the site and to demand the deployment of other employees by the supplier.

7) The supplier shall be obliged to report any work interruptions, thereby stating the reasons, as well as any accidents or incidents to Hipp forthwith. Verbal notifications must be confirmed in writing within 2 workdays.

#### **§ 9 Entry to and Movement on the Works Premises/Site:**

1) Instructions by the qualified personnel of Hipp must be followed when entering and moving on the Hipp works premises/site. The locally applicable traffic regulations must be observed.

2) If services are provided on the works premises/site, the relevant site regulations shall apply. On commencement of the work or by prior request, the supplier's supervisors shall be provided with a copy of the site regulation, including list of annexes. Familiarity with the content of the site regulations, including list of annexes, must be confirmed with a signature.

#### **§ 10 Supplier's Employees**

1) The supplier must deploy the necessary supervisors. The names and addresses of the supervisors must be provided to Hipp in writing. Hipp must be notified of any change in writing forthwith.

2) Hipp may refuse persons working for the supplier access to the works area for important cause.

3) The supplier shall be obliged to deploy only qualified staff for performance of the ordered works. If the supplier's employees prove to be unsuitable, they must promptly be replaced by suitable employees. The supplier shall not be entitled to claim any extension of deadline or indemnity for this.

4) The supplier must ensure that the relevant site regulations as well as the safety regulations are observed by his employees.

5) The supplier shall inform his employees that they must subject themselves to the usual controls when entering and leaving the premises of Hipp.

6) Employees of the supplier may enter the premises of Hipp only for the purpose of performing the ordered works. Persons who are not deployed by the supplier to perform the works shall be denied access.

7) The supplier must, on demand by Hipp, prove that any foreign employees deployed by him are in possession of a valid work permit.

#### **§ 11 Trial Operation**

1) The trial operation serves to prove that the machinery has been designed and executed in compliance with the contract under the intended conditions of use, and in particular to prove the promised and guaranteed or contractually agreed properties and reliability of the machinery.

2) The form, duration, start and scope of trial operation shall be defined by Hipp, unless agreed otherwise. Before the trial operation is started, commissioning suitability of the machinery must be ascertained jointly by Hipp and the supplier. For this purpose the supplier must notify Hipp of completion of the machinery in writing within good time.

3) The trial operation shall be performed by the supplier unless agreed otherwise. For this purpose he shall provide the necessary measuring and testing instruments as well as the necessary personnel at his own expense. Hipp may, in coordination with the supplier, provide own personnel for collaboration.

4) Any reworks resulting from the trial operation must be performed by the supplier forthwith at his own expense. The

supplier shall also bear any costs incurred to Hipp by a repeat trial operation that may be necessary thereafter.

5) The supplier shall record the process and results of the trial operation in a protocol that must be handed over to Hipp after conclusion of the trial operation.

#### **§ 12 Acceptance - Transfer of Risk**

1) Acceptance shall be conditional upon complete and faultless design and execution of the deliverables and works to be provided by the supplier at the place of fulfilment, successful conclusion of trial operation of the machinery, as well as delivery of all contractually required materials, such as drawings, operating instructions, etc.

2) An acceptance protocol shall be drawn up, which must be signed by Hipp and the supplier. With signing of the acceptance protocol, the deliverables and works of the supplier shall be deemed accepted by Hipp. Verbal acceptance or conclusive acceptance through commissioning shall be ruled out.

3) Acceptance is the condition precedent for the supplier's claim to remuneration becoming due.

4) In the case of machinery that requires a start-up operation, the acceptance should take place as soon after its start as possible. Within the scope of the existing possibilities, the machinery can also be used for the production of commercial products during the trial operation.

5) Acceptance shall be contingent in particular on fulfilment of the key properties and performance ratios owed by the supplier, proof of which during the trial operation shall start not earlier than on readiness for operation of the machinery being reached (end of successful warm commissioning) and ends with fulfilment of the key properties and performance ratios. It may be denied until major faults have been remedied. Hipp shall have the same right in the case of missing operating or maintenance instructions or other information to be provided not later than on acceptance (e.g. documentation), until the same are available in full and without fault. The period of limitation for faults shall not commence for as long as Hipp may refuse acceptance.

6) If Hipp wishes to use deliverables and works by the supplier although acceptance was not possible by the contractually set date for reasons for which the supplier is responsible, the supplier shall operate, monitor and maintain his deliverables and works at his own costs to such a scope that the operating requirements of Hipp are fulfilled. Such use shall not be deemed acceptance.

7) Risk shall transfer to Hipp on acceptance.

8) Partial acceptance, also at the works of the supplier, shall be carried out if parts of the deliverables or works can no longer be inspected at a later date or if demanded by Hipp. Legal consequences, e.g. transfer of risk or commencement of the liability period for faults, shall not be triggered by such partial acceptance.

#### **§ 13 Instruction - Maintenance**

1) During the trial operation the supplier shall instruct employees of Hipp at his own expense and in such manner that operation and maintenance of the machinery is ensured and the employees of Hipp can troubleshoot minor faults.

2) The supplier shall be obliged, on demand by Hipp, to offer Hipp a maintenance contract for the machinery before the end of the liability period for faults.

#### **§ 14 Wearing Parts, Consumables, Spare Parts**

1) The supplier shall be obliged to deliver wearing parts and consumables in accordance with the terms of the original order until the end of the liability period for faults.

2) The supplier shall be obliged to deliver spare parts at reasonable terms and conditions for the duration of the

expected technical use, but at least for a period of ten years as of acceptance of the machinery.

3) Should the supplier stop manufacturing the spare parts, he shall be obliged to give Hipp the opportunity to make a last order and to hand all the equipment and materials necessary for manufacturing the spare parts to Hipp and to allow Hipp to use them free of charge.

#### **§ 15 Quality - Environment - Social Policy**

1) Hipp has specifically undertaken to protect the environment. The supplier generally undertakes to comply with the respective environmental protection regulations applicable in his country. In addition, the supplier shall be obliged to avoid or reduce any environmental pollution within the sphere of his control and to improve environmental protection continuously. The supplier further undertakes to give Hipp the best assistance possible in the collection of data for the preparation of eco-balances.

2) HiPP welcomes the introduction of national and international standards and norms for quality, environment and social affairs (e.g. ISO 9001, BRC, ISO-14001, EMAS, SA 8000).

3) The Hipp Group strictly forbids the use of child labour in the manufacture of goods or the provision of services. The supplier also undertakes to comply with the quality, environmental and social standards set out in detail in the following **Code of Ethics for the HiPP Group of Companies**.

#### **§ 16 Retention of Title - Confidentiality - Provision**

1) Inasmuch as Hipp provides parts to the supplier, these shall remain the property of Hipp. The supplier shall be obliged to clearly mark material provided by Hipp as such, and to store it separately, specifically so that a combination/mixing cannot occur. The supplier undertakes to use the material provided only within the scope of the intended contractual production. Parts shall be processed or remodelled only for Hipp by the supplier. If the deliverables of which Hipp retains ownership are processed with other objects not owned by Hipp, Hipp shall acquire co-ownership of the new product in the ratio of the value of our part (purchase price plus VAT) to the other combined/mixed parts at the time of combination/mixing.

2) Hipp reserves the right of ownership to tools; the supplier is obliged to utilise the tools exclusively to produce the goods which Hipp has ordered.

3) Inasmuch as the security interests to which Hipp is entitled in accordance with par. (1) exceed the cost of all still unpaid goods subject to retention of title by Hipp by more than 20%, Hipp shall be obliged to release the security interests on demand by the supplier at the option of Hipp.

4) Any models, specimens, manufacturing equipment, tools, measuring and testing resources, materials, drawings, specification sheets, print templates and the like provided - also inadvertently - to the supplier by Hipp shall remain the property of Hipp. They shall be held in safekeeping at no cost by the supplier with the due care of a prudent businessman, marked as the property of Hipp, and used by the supplier only in performance of the deliverables and works for Hipp. They may only be made accessible to third parties with the prior written consent of Hipp (confidentiality), and unless explicitly agreed otherwise in the individual case, Hipp may demand their surrender at any time. They must be returned to Hipp unmodified and undamaged not later than on termination of the contract. The duty to maintain confidentiality shall survive the termination of contract. Should the supplier act in breach of this obligation, he shall be liable to Hipp for damages.

5) The design documents provided to Hipp by the supplier shall become the property of Hipp upon the award of

contract, and Hipp shall be entitled to their further use without separate permission by the supplier.

6) The supplier's duty to maintain confidentiality shall apply to all information and know-how that he and his employees gain with regard to the internal processes, manufacturing processes, recipes, etc., at Hipp. This duty to maintain confidentiality shall also apply to all affiliated companies and their employees and shall survive the termination of the business relationship.

#### **§ 17 Complaints - Claims for Faults - Liability**

1) In the case of material and legal faults of the deliverables (including incorrect or incomplete delivery as well as incorrect assembly, faulty assembly or operating instructions) and other breaches of duty by the supplier, the statutory provisions shall apply unless regulated otherwise in the following.

2) In accordance with the statutory provisions, the supplier shall be liable in particular for ensuring that the deliverable is in the agreed condition upon transfer of risk to Hipp. In any case the product descriptions that are the subject matter of the respective contract - especially by designation or reference in the order - or included in the contract in the same manner as these Terms and Conditions shall apply as the agreement of condition. Thereby it shall make no difference whether the product description was provided by Hipp, the supplier or the manufacturer. The supplier shall guarantee the condition of the deliverable, and that the contractually defined condition of the deliverable shall be maintained for the contractually agreed duration (term of usability guarantee).

3) Inasmuch as a term of usability guarantee has been accepted, it is assumed that any material fault occurring during its term of validity establishes the rights under the warranty.

4) The following shall apply with regard to the commercial inspection and notification duty: The inspection duty of Hipp shall be limited to faults that are openly identifiable on external examination in the course of incoming goods inspection, including the delivery papers (namely transport damage, incorrect and incomplete delivery).

5) Complaints shall be considered to have been lodged in good time, provided they are received by the supplier within 12 working days of the goods having been received. Complaints concerning concealed faults shall be considered to have been lodged in good time, provided they are received by the supplier within 12 working days of the fault having been discovered.

6) The supplier shall be liable in accordance with the statutory regulations; in particular the supplier shall be liable for wilful intent and any form of negligence, also by his representatives, agents or vicarious agents. The liability cannot be limited in terms of totals.

7) Hipp shall be entitled to demand either that the supplier remedies the fault or provides a replacement at the option of Hipp. In this case, the supplier shall be obliged to bear all the costs necessary for such remedy or replacement. The right to compensation, especially damages for non-fulfilment, shall explicitly remain unprejudiced.

8) Hipp shall also be entitled without restriction to claims for faults if the fault remained unknown to Hipp on conclusion of contract due to gross negligence.

9) The supplier shall be liable in accordance with the statutory regulations for any violation of obligations; in particular the supplier shall be liable for wilful intent and any form of negligence, also by his representatives, agents or vicarious agents; liability cannot be limited in terms of totals.

10) The statutory periods of limitation shall apply to claims for faults. They shall commence on delivery to the point of use.

11) In the case of used goods, paragraphs (1) to (10) shall apply *mutatis mutandis*.

#### **§ 18 Insurance - Product Liability - Indemnity**

1) Inasmuch as the supplier is responsible for a product loss, he shall be obliged to hold Hipp harmless from any third-party claims for damages on first demand.

2) Within the scope of this liability, the supplier shall also be obliged to reimburse any expenses in accordance with contractual law as well as tort law that may arise from or in connection with a recall action by Hipp. Hipp shall inform the supplier - where possible and reasonable - about the content and scope of the recall actions to be implemented, and shall grant the supplier an opportunity to comment. Other statutory claims shall remain unprejudiced.

3) The supplier shall be obliged to take out employer's and product liability insurance - of which proof must be furnished to Hipp on demand - and to maintain the same at least until the end of the liability period for faults. The insurance cover of the liability insurances must be at least € 2,500,000.- - with a maximised blanket of 2 times this amount p.a. - per insured event for personal injury, property damage and financial loss, unless another amount is agreed. Further claims for damages by Hipp shall remain unprejudiced.

4) In addition, Hipp may demand that the supplier takes out further insurances, such as e.g.

- transport insurance
- assembly insurance
- warranty insurance

and maintains them at least for the relevant period of time. Hipp must be included as co-insured party in these insurance contracts. The type and scope of the insurance shall be defined in the order. If Hipp takes out building insurance, Hipp shall be entitled to charge the premiums to the supplier in proportion to his share in the overall project.

5) The costs of insurance of the goods, in particular freight forwarders' liability insurance, shall not be taken over by Hipp.

6) The supplier's insurance contracts must explicitly rule out any recourse to Hipp and his agents by the insurer. The supplier must oblige his insurers to notify Hipp forthwith and in writing of any amendment to the insurance contracts that occur during the agreed term of insurance and impair the insurance cover.

7) The supplier must present proof of coverage for all the required insurances not later than on order confirmation.

#### **§ 19 Prices**

1) Unless agreed otherwise, the prices shall be fixed prices until complete fulfilment of the contract. They shall include all expenses for the deliverables and works to be performed by the supplier. By way of example, these include expenses for

- insurances
- customs
- packaging and transport free to the place of use
- intermediate transports
- loading and unloading and shifting
- necessary qualified personnel and unskilled workers
- tools, equipment and hoisting equipment
- scaffolding
- accommodation, storage rooms and utility systems
- assembly and welding materials and consumables
- inspections and acceptances prescribed by law or contractually agreed
- measuring and testing resources
- commissioning and trial operation
- acceptance, including acceptance with reservation or repeated acceptance
- training, instruction
- disposal of all the supplier's waste resulting from his works
- disassemblies, cleaning and modification works, where necessary for fulfilment of the contract by the supplier

2) The agreed prices shall be net (excl. VAT). VAT must be stated as a separate item on invoices. Invoices that do not fulfil these conditions shall be returned. Notwithstanding our other rights, we shall have a retention right with regard to the purchase price/service fee until presentation of an invoice that fulfils these conditions.

3) Additional deliverables and works shall only be remunerated by Hipp if Hipp has ordered them in writing, in particular with a statement of the prices, prior to their performance.

## § 20 Payments

1) Payments shall be made in accordance with the terms agreed in the order. Unless agreed otherwise, Hipp shall make payments after acceptance and auditing of the invoice, within 21 days with a discount of 3% or within 45 days net, by the method of our choice.

2) Inasmuch as the supplier has to provide surety, e.g. for down-payments by Hipp, due and proper fulfilment of contract, or in lieu of a fault liability retainer, this must be provided in the form of a bank guarantee. The guaranteeing bank must waive the plea of contestation and benefits of discussion and undertake to make payment on first written demand. The guaranteeing bank shall not be entitled to release itself from its obligation by depositing the agreed amount.

3) Payments shall not be interpreted as recognition of the supplier's deliverables and works being in conformity with the contract; they shall be made subject to the reservation of a later inspection.

4) If the supplier does not raise any objection within 30 days of receipt of the final payment from Hipp, all the supplier's claims against Hipp - with the exception of any retentions by Hipp - shall be deemed settled with the final payment, inasmuch as Hipp has pointed this consequence out to the supplier in writing.

## § 21 Invoices

Invoices stating the order number and other order identifiers shall be issued to the address of Hipp, unless a different invoice address is stated in the order. They must include an auditable breakdown of the deliverables and works performed. Sales tax must be stated separately. Duplicate invoices must be marked as such. Invoices must be issued either in EURO or an alternative currency at the option of Hipp.

## § 22 Inter-group Settlement Proviso

1) The supplier agrees that as general creditors, all Hipp Group companies shall be entitled to the individual claims acquired by the companies affiliated with the Hipp Group and companies at home and abroad, which are affiliated through participation links of at least 50%, against the suppliers; these claims may therefore be offset against obligations of any of the Hipp companies.

2) All material and procedural rights to which the supplier is entitled from a Hipp company may also be claimed from any of the other Hipp companies as general creditors.

3) The supplier's claims against a Hipp company may be offset by this particular company's claims or those of a different Hipp company.

4) The above regulations shall apply even if payment both in cash on the one hand and the presentation of bills of exchange on the other hand is agreed, or if the reciprocal claims fall due at different times, in which case settlement shall be as per the value date.

5) In the case of recurring payment transactions, the entitlement relates to the balance.

6) Hipp waives the right, in the event of a claims majority, to contest the determination of the claims to be offset by the supplier.

## § 23 Assignment, Pledging

The supplier shall not be entitled to assign his claims against Hipp or to have them collected by third parties without the written consent of Hipp. This shall not apply on effective agreement of an extended vendor's lien for the supplier.

## § 24 Dissolution of the Contract - Termination

1) The contract for works or deliverables can be cancelled by Hipp at any time prior to completion of the work or deliverable. Contrary to the legally specified cancellation consequences, the following shall apply: Should cancellation be effected by Hipp for any good reason attributable to the supplier, the supplier shall be remunerated only for the individual services that have been used by Hipp and which were provided up to the time of cancellation. The right to claim damages from the supplier is reserved. In particular, the supplier must reimburse any additional expenses incurred.

2) Should cancellation be effected by Hipp for any good reason not attributable to the supplier, the supplier shall receive only the agreed remuneration for the individual works provided and accepted by Hipp up to the time of cancellation. Any further claims by the supplier are excluded.

3) For the rest, the supplier must accept the offset of anything that he saves in terms of costs or effort as a result of the cancellation of contract, or acquires or maliciously fails to acquire through other use of his labour.

4) Hipp may cancel the order for deliverables for good reason at any time before hand-over of such deliverable. In this case, the above paragraphs (1) to (3) apply *mutatis mutandis* in respect of the supplier's claim for remuneration; Hipp shall acquire ownership of the part services for which payment has been made.

5) Good reason as defined by this regulation shall be present specifically if, as a result of official decisions, Hipp's interest in the provision of the contractual services should lapse, an application for insolvency or comparison proceedings is made against the supplier, the conditions for an insolvency or comparison application exist, or the supplier fails to meet his obligation for the subsequent supply/repair of sub-standard services within an appropriate period set in writing.

6) Hipp shall be entitled to rescind the contract in whole or in part, or to reject the offered works and claim damages for non-fulfilment, if the supplier or a person involved in the conclusion or implementation of the contract with his knowledge holds out, promises, offers or grants an employee of Hipp or a third party in the interest of an employee of Hipp any benefits of any kind or colluded with the same in an anticompetitive manner or took recommendations into consideration in offers.

7) In the event of delayed fulfilment of contract due to mobilisation, riot, war or other circumstances not attributable to the supplier in accordance with general legal principles (force majeure), the contractually agreed deadlines shall be redefined taking such circumstances into account, unless the supplier is already in default at the time when such an event occurs. Inasmuch as the supplier's deliverables or works are no longer of interest for Hipp due to such delays, Hipp shall be entitled to rescind the contract or parts thereof.

## § 25 Offsetting - Retention

The supplier may only offset undisputed claims or legally recognised claims.

He shall only be entitled to retention rights inasmuch as they are based on the same contractual relationship.

## § 26 References - Publications - Advertising

When providing references, the supplier may only use the names and brands of Hipp with the prior written consent of Hipp. An evaluation or disclosure of the business relationships existing with ourselves in publications or for advertising purposes is acceptable only with our explicit prior written consent.

## § 27 Data Protection

The supplier consents to us saving and processing the supplier's data and to transferring such data to other companies, provided this is necessary to process the order.

## § 28 Commercial Property Rights (Patents, Licences, Utility Patents, etc.) - Copyrights

- 1) The supplier shall be liable for ensuring that supply and use of the deliverables and/or the manufactured plant does not result in the infringement of a patent or other third-party property right.
- 2) In the event that third-party claims are nevertheless raised against Hipp, the supplier shall be obliged, at Hipp's first written demand, to indemnify Hipp from such claims and otherwise hold Hipp harmless.
- 3) The supplier's duty to indemnify relates to all expenses that are necessarily incurred to Hipp from or in connection with such a third-party claim.

## § 29 Salvatorial Clause

- 1) Should these Terms and Conditions of Purchase be or become ineffective either in whole or in part, the remainder of the contract shall remain unaffected.
- 2) Should individual terms be ineffective, the content of the contract shall be based on the statutory regulations.

## § 30 Court of Arbitration – Venue – Place of Fulfilment – Governing Law

- 1) The contractual parties shall endeavour to settle any differences of opinion amicably. The parties may furthermore agree by mutual consent that any disputes arising in connection with this contract or its validity shall be settled finally in accordance with the Arbitration Code of the Chamber of Industry and Commerce for Munich and Upper Bavaria (IHK Munich) with exclusion of ordinary recourse.
- 2) The parties shall also be at liberty to enforce claims of any nature through the proper legal channels. In this case, the courts responsible for Pfaffenhofen/Ilm are agreed as the venue; Hipp shall however be entitled to bring actions against the supplier at the court responsible for his principle place of business.
- 3) Unless specified otherwise in the order, the place of fulfilment shall be at the registered office of Hipp.
- 4) All deals transacted with the supplier shall be governed both materially and procedurally by the national and European law valid in the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not be applicable.
- 5) The contractual language shall be German. This shall also apply to all materials including documentation.
- 6) Standard commercial clauses shall be interpreted in accordance with the relevant Incoterms - ICC, Paris.

## Code of Ethics for the Hipp Group of Companies

This Code of Ethics is the basis for long-term business relationships with our suppliers. It is based on international standards and guidelines such as the principles of the International Labour Organisation (ILO), the General

Declaration of Human Rights of the United Nations and the UN Conventions on Children's Rights.

## I. Quality Standards:

- 1.) The supplier must observe the recognised rules of technology and the relevant legal and official regulations and also our operational rules and regulations. The supplier must in particular observe the accident prevention regulations and the generally recognised functional reliability and medical regulations. Machinery and technical work equipment must be supplied with operating instructions and an EC certificate of conformity in accordance with the industrial health and safety regulations. Preferably, machinery with CE marking in accordance with Regulation (EC) 765/2008 should be delivered. If a test mark is not awarded, compliance with the aforementioned regulations must be proved at our request. Goods intended for delivery must correspond to all aspects of our specific requirements. Notwithstanding our raw material and product specifications and other specific contractual conditions, foodstuffs must comply in terms of composition, quality, packing and declaration with the respective applicable foodstuff regulations.
- 2.) We are entitled at any time, particularly in respect of foodstuffs and packing materials, to request from the supplier, at his own cost, samples or specimens. Furthermore we are entitled to perform unannounced controls at the supplier's fields, stables, production plants and warehouses. The supplier assures to us that the same rights will be granted to us by his pre-suppliers. Any tests conducted in this respect serve orientation purposes only and do not replace the incoming goods check, so that any faults detected during the incoming goods check can be reported in full.

## II. Environmental Standards:

Hipp has specifically undertaken to protect the environment. The supplier or service provider undertakes to comply in particular with the following:

- a. A precautionary approach must be selected to avoid potential environmental problems (e.g. risk analysis, environmental impact assessment).
- b. Efforts must be made to develop and propagate environmentally friendly technologies and products.

The supplier or service provider further generally undertakes to comply with the respective environmental protection regulations applicable in his country, and to assist Hipp to the best of his ability in the collection of data for the preparation of eco-balance reports.

## III. Social Standards:

- 1.) Respect for human rights is an elementary principle of human co-existence. Contemptuous work relationships and conditions contradict this principle.
- 2.) Our business relationships are based on social standards being respected. As a requirement for each business relationship, our suppliers and service providers declare, both in their own environment and also that of their secondary suppliers and service providers, their consent to the following conditions, as basic rights of the employees, being complied with:
  - 3.) The Hipp Group forbids the use of child labour to produce goods or provide services. A definition of child labour can be found in the regulations published by the United Nations or the nationally valid regulations, whichever are the more stringent.
  - 4.) The employees must receive wages and other benefits that secure their livelihood and which comply with the applicable laws and/or reasonable standards of the local production industry, whichever is higher. The maximum

number of regular working hours is 48 per week. All additional hours must be paid as overtime on the basis of the valid regulations and/or the reasonable industrial practices employed in the region, whichever is the higher. The number of working hours, including overtime, must not exceed 60 on a regular basis. Employees are entitled to at least one day off per week.

5.) The legal entitlement of employees to establish trade unions of their choice and to become a member of and hold wage negotiations with such trade unions, may under no circumstances be restricted by the suppliers and service providers.

6.) There shall be no discrimination on the basis of personal attributes or beliefs of employees.

7.) The use of forced labour, physical punishment, physical or mental coercion is forbidden.

8.) Safe and where possible healthy working conditions must be guaranteed. Similar principles apply to the accommodation for the employees, if such is provided.

9.) The international human rights must be respected. The suppliers and service providers must ensure in their own environment and for their secondary suppliers and service providers that the human rights of the employees are not violated, either directly or indirectly (in upstream/downstream areas).

10.) There is a self-duty to refuse any form of bribery and corruption as well as blackmail.

#### **IV. General**

The suppliers and service providers and their secondary suppliers and service providers declare their consent to this Code of Ethics being monitored either by a Hipp company or by an independent organisation contracted by Hipp. Any infringement against this Code of Ethics made known to the Hipp company may lead to a severing of the business relationship.

The suppliers and service providers declare their willingness to report any infringements against the aforementioned regulations on their part and on the part of their secondary suppliers and service providers to the relevant Hipp company immediately and without further demand, and to make suggestions for suitable remedies where possible.

In order to comply with the requirements of Hipp in the best possible manner, the company informs and trains its employees in a suitable manner at regular intervals.

Hipp welcomes the introduction of national and international standards and norms for quality, environment and social affairs (e.g. ISO 9001, BRC, ISO-14001, EMAS, SA 8000).

\*\*\*