

**General Terms and Conditions of Purchase ("Allgemeine Einkaufsbedingungen")  
of Henke-Sass, Wolf GmbH ("HSW")  
(dated April 2014)**

**Section 1 - General Provisions, Scope of Application**

- (1) These General Terms and Conditions of Purchase ("**GTP**") apply to all business transactions between HSW and its business partners and suppliers, including service providers ("**Suppliers**") to the extent the Supplier is an entrepreneur as defined by Section 14 of the German Civil Code ("**BGB**"), a legal entity under public law or a special fund under public law.
- (2) These GTP particularly apply to agreements on the purchase and/or supply of raw materials, materials, finished products and other products ("**Products**") and services HSW requires within the scope of its activities in the development and manufacturing of human and veterinary medical endoscopes, syringes, injection and application systems, as well as such other services provided on HSW's premises or in or with regard to HSW's facilities and installations, particularly HSW's EDP equipment and systems. They correspondingly apply to the order-bound manufacturing, supply and service of the Products according to HSW's specifications.
- (3) These GTP apply exclusively. Any differing, conflicting or supplementary terms and conditions of the Supplier or third parties do not become part of the contract even if HSW has been notified thereof and not objected to them separately in the individual case, except if such terms and conditions have been expressly approved by HSW in writing. Even if HSW refers to a letter containing or referring to terms and conditions of the Supplier or a third party, no approval of their applicability can be derived therefrom.
- (4) Individual agreements entered into by HSW and the Supplier in the individual case take always precedence over these GTP to the extent they are affected by such deviating agreements. The contents of such agreement require a written agreement or HSW's written acknowledgement.
- (5) These GTP as amended from time to time further constitute a framework agreement applying also to all future business transactions with the same Supplier without HSW having to refer to them again in each individual case; HSW will promptly notify the Supplier of any amendment hereof in this case. Contracts with the same Supplier are particularly concluded only if the provisions set forth in section 2 have been fulfilled.
- (6) Legally relevant declarations and notices to be made by the Supplier vis-à-vis HSW after the conclusion of the contract (e.g. fixing of a period, reminders, notices of rescission) have to be made in writing in order to be effective.
- (7) Any reference to the applicability of statutory provisions is only made for purpose of clarification. Such statutory provisions shall thus be applicable even without such clarification unless they have directly been amended or expressly excluded by these GTP.

**Section 2 - Conclusion of Contract**

- (1) HSW's order of the Products is deemed to be binding by no earlier than upon the Supplier's receipt of HSW's written order (fax or email is sufficient). The Supplier has to notify HSW of any obvious errors (e.g. typing and calculation errors) and gaps in the order including the order documents so that HSW is able to correct or complete them before the order is accepted; otherwise the contract is deemed to have not been concluded.
- (2) The contract on the supply of the ordered Products only becomes effective upon HSW's receipt of the Supplier's written notice of acceptance (fax or email including PDF copy of declaration of acceptance is sufficient). The provision of Section 151 *BGB* does not apply.
- (3) HSW's order of a service is deemed to be binding (i) by no earlier than upon the Supplier's receipt of HSW's written order confirmation (fax or email is sufficient) if the Supplier has submitted a written offer, and (ii) by no earlier than upon the Supplier's written order confirmation (fax or email including PDF copy of declaration of acceptance is sufficient) if he has not yet submitted a written offer. The second sentence of para. (1) and the second sentence of para (2) apply accordingly.
- (4) The Supplier has to accept the order within six (6) working days after receipt of the written order ("**Acceptance Period**"). The order is deemed to have been accepted in due time upon HSW's receipt of the written notice of acceptance. Upon expiration of the Acceptance Period, HSW will no longer be bound by its order.
- (5) Any acceptance of the order after the Acceptance Period or amendment or conditional acceptance of the order by the Supplier constitutes a new binding offer from the Supplier. The order is deemed to have been amended within the meaning of sentence 1 particularly if the Supplier arbitrarily supplemented or amended the order form countersigned by him without notice pursuant to para. (1) and HSW's approval.

- (6) If HSW has received a new offer from the Supplier in accordance with para. (5), a contract including the amended provisions will only be concluded upon HSW's written acceptance (fax or email including PDF copy of the declaration is sufficient).
- (7) HSW hereby expressly declares that silence, particularly the failure to object to an offer from the Supplier in accordance with para. (5), shall not be deemed to be an approval. The uncontradicted acceptance of the supplied Products shall likewise not be deemed to be a tacit agreement.

### **Section 3 - Date of Delivery and Late Delivery**

- (1) When ordering the Products, HSW defines a date of delivery. The Supplier has to supply the Products by no later than upon expiration of the date of delivery. If HSW has not defined a date of delivery when ordering the Products or if no date of delivery has been agreed upon otherwise, the term of delivery shall be ten (10) working days after the dispatch of the notice of acceptance of the order by the Supplier.
- (2) If the Supplier identifies any circumstance due to which he will not be able to meet the date of delivery, he will promptly notify HSW thereof by stating the circumstances and the expected duration of the delay in writing (fax is sufficient). Para. (3) and (4) shall not be affected thereby.
- (3) If the Supplier does not make the agreed performance by no later than on the date of delivery, HSW's rights shall be subject to statutory provisions. The provisions in para. (4) shall not be affected thereby.
- (4) If the Supplier defaults in delivery, HSW may - in addition to further legal claims - request lump-sum compensation of the damage caused by default in the amount of 1% of the net price for each full calendar week, but not more than 5% of the net price of the Products delivered late. HSW reserves the right to prove higher damage. The Supplier reserves the right to prove that HSW incurred no or materially less damage.
- (5) The unconditional acceptance of late deliveries does not constitute a waiver of any claims HSW is entitled to as a result of the late delivery.

### **Section 4 - Delivery, Passing of Risk, Default of Acceptance**

- (1) Delivery is made at the Supplier's expense to the place within Germany specified in the order. If no specific place of delivery has been agreed upon, delivery shall be made to HSW's place of business in 78532 Tuttlingen/Germany at Keltenstrasse 1.
- (2) The place of delivery specified in para. 1 above is also the place of performance. The Supplier and HSW agree that the Supplier's delivery is deemed an obligation to be performed at HSW's place of business.
- (3) The Supplier is not entitled to have the owed service performed by a subcontractor without HSW's prior written approval. The Supplier and HSW agree that approval thereto may be given at HSW's sole discretion. If the Supplier has a subcontractor perform the owed service with HSW's approval, each change of the subcontractor must also be approved by HSW in writing in advance.
- (4) The Supplier is not entitled to make delivery by installments without HSW's prior approval.
- (5) The Supplier has to notify HSW in writing (fax or email is sufficient) of any storage or transportation risk and/or specific storage or transportation conditions prior to delivery in order to avoid any damage.
- (6) Each delivery must contain a delivery note in duplicate stating the shipping address, date (issuance and dispatch), contents of delivery (HSW's material number, batch number or serial number and quantity) as well as HSW's order identification (order number and date) and an image of the data in the form of a bar code according to Code 128 (ISO/IEC 15417). If the delivery is not accompanied by a delivery note or if the delivery note is incomplete, HSW shall not be responsible for any delay in the processing and payment resulting therefrom. In addition to the delivery note, the Supplier has also to send HSW a separate dispatch note with the same contents.
- (7) The risk of accidental loss and accidental deterioration of the Products passes to HSW upon the hand-over of the Products at the place of performance. If acceptance of the Products is agreed upon, the risk passes upon their acceptance. In other respects, the statutory provisions under the law on contracts for work and services also apply to the acceptance of Products. Hand-over and/or acceptance shall be deemed to have been effected even in case of HSW's default of acceptance.
- (8) HSW's default of acceptance is subject to statutory provisions. The Supplier has to expressly offer HSW his performance if a certain or definable calendar period has been agreed upon for any act or cooperation by HSW (e.g. provision of material). In case of HSW's default of acceptance, the Supplier may request compensation for his extra expenses pursuant to statutory provisions (Section 304 *BGB*). If the contract refers to the manufacture of a specific item (custom-made item), the Supplier shall be entitled to further rights only if HSW has undertaken to cooperate and if HSW is responsible for the failure to do so.

## Section 5 - Quality Specifications/Technical Shipping Agreement

- (1) The Supplier has to permanently monitor the quality of his deliveries of goods and provision of services. The Products must in each case comply with the agreed specifications (including the Technical Shipping Terms ("**TST**") prepared for the Product), with the Quality Assurance Agreement ("**QAA**"), the accepted state of the art at the date of the order as well as with statutory and official provisions.
- (2) The Supplier is obligated to use only such material as packaging material directly getting into contact with the Product (primary packaging material) for which the Supplier has obtained a clearance certificate from the manufacturer.
- (3) If particular quality specifications beyond the customary quality shall apply to individual Products and/or packaging material, HSW will notify the Supplier within the scope of the order of the compliance with these specifications, particularly the applicability of the TST and/or any QAA applying to the Product.
- (4) In case of para. (3) above the Supplier is obligated to observe the TST and/or any QAA as amended from time to time applying to the Product (which is available on the internet at [www.henkesasswolf.de](http://www.henkesasswolf.de)). HSW will also send the Supplier the respective TST and/or any applicable QAA at his request (fax or email is sufficient).

By notice of acceptance in accordance with section 2(4) of the GTP, the Supplier acknowledges receipt/notice of the TST and/or QAA as amended from time to time applicable to the Product as well as their applicability within the scope of the contract concluded by the parties. By notice of acceptance in accordance with section 2(4) of the GTP, the TST and/or the QAA are incorporated into the contract. The Supplier will be notified in due time of any revision of the TST and/or QAA. The applicability of any differing, conflicting or supplementary technical agreements or agreements on quality specifications of the Supplier or third parties is excluded; they do not become part of the contract even if HSW has been notified thereof and not objected to them separately in the individual case, except if such agreement has been expressly approved by HSW in writing.

- (5) The Supplier has to promptly notify HSW if he is not able to meet the required quality specifications.
- (6) Any expenses incurred by HSW due to possible quality defects and/or directly or indirectly related to a defective quality of the Product must be borne by the Supplier.
- (7) The Supplier warrants that his Product remains free from defects during the entire warranty period. The warranty period depends on the statutory limitation period regarding claims based on defects of quality.
- (8) Any change in the Products to be supplied by the Supplier as regards the specifications, design, function, safety, cleanliness, reliability, life expectancy, manufacturing base and manufacturer and/or subcontractor must be approved by HSW.

## Section 6 - Prices and Terms of Payment

- (1) The price stated in the order is binding. Unless separately stated, all prices are exclusive of statutory VAT.
- (2) Unless otherwise expressly agreed upon, the price includes all ancillary expenses (e.g. proper packaging, transportation costs including potential costs for transportation and liability insurance as well as other expenses (pass-through costs)). The Supplier has to take back any packaging material at HSW's request
- (3) The agreed price is due and payable within fourteen (14) calendar days less 2% cash discount on the net invoiced amount or by no later than thirty (30) calendar days after full delivery and performance (including agreed acceptance, if applicable) as well as HSW's receipt of a proper invoice. A proper invoice includes particularly - but not exclusively - also the order number and position as well as HSW's material number if provided. The proper invoice is to be sent to the following address

Henke-Sass, Wolf GmbH  
Accounting department  
Keltenstrasse 1  
78532 Tuttlingen/Germany

- (4) Payment is deemed to have been made in due time if HSW has caused everything necessary to transfer the money.
- (5) HSW does not owe interest for due payments. Section 353 of the German Commercial Code ("**HGB**") does not apply. Statutory provisions apply if HSW is in default, whereat a written reminder by the Supplier is required in each case HSW fails to pay on the due date.
- (6) HSW is entitled to any rights of set-off and retention as well as the defense of the unfulfilled contract to the statutory extent. The Supplier has a right of set-off and a right of retention only if counter-claims have been found to be final and absolute, ready for decision or undisputed.

- (7) The Supplier is not entitled to assign to or have collected any claims against HSW by third parties. The provision of Section 354a *HGB* shall not be affected thereby.

#### **Section 7 - Rights in case of Defects, Duty to Inspect the Products and to Give Notice of Defects**

- (1) HSW's rights in case of defects of quality and title of the Products (including wrong or short deliveries) as well as any other breach of a duty by the Supplier are subject to statutory provisions unless otherwise provided for hereinafter.
- (2) Supplementary performance will be made at HSW's option either by delivering a new item free of defects (substitute delivery) or by removal of defects.
- (3) Pursuant to statutory provisions, the Supplier is particularly liable that the Products have the agreed quality upon the passing of risk. Product specifications defined by HSW in its order or to which HSW has referred in its order and which have thus become part of the order are also deemed an agreement on the quality. This further includes the observance of the quality specifications agreed upon in section 5.
- (4) Statutory provisions (Sections 377, 381 *HGB*) apply to the commercial obligation to inspect the Products and give notice of defects with the following proviso: HSW 's duty to inspect the Products is limited to defects being obvious within the scope of the incoming goods inspection by HSW by external appraisal of the Products, including the delivery note, e.g. transportation damages or wrong or short deliveries. HSW will give notice of such defects without undue delay. Notice of defects is deemed to have been made in due time if it is made within five (5) working days after the passing of risk, whereat the due dispatch of the notice is sufficient to observe the time limit.

Otherwise, HSW will give notice of all defects as soon as they have been identified in consideration of the circumstances in the individual case in the due course of business. In this case, too, a notice of defects is deemed to have been made in due time if it is made within five (5) working days after the identification of the defect, whereat the due dispatch of the notice is sufficient to observe the time limit.

- (5) Notwithstanding Section 442(1), 2<sup>nd</sup> sentence *BGB*, HSW shall have unlimited claims based on defects even if the defect remained unknown to HSW due to gross negligence.
- (6) If the Supplier does not meet his duty to make supplementary performance - by delivering an item free of defects (substitute delivery) - within a reasonable period of time set by HSW, HSW may request the Supplier to compensate any expenses incurred thereby. If the Supplier fails to make supplementary performance or if supplementary performance is unreasonable for HSW (for example because of particular urgency, threat to operational safety), HSW is not obligated to set a time limit but entitled to directly order the Products from another supplier at the Supplier's expense. The Supplier shall be notified thereof in advance, if possible.

#### **Section 8 - Protected Privileges**

- (1) The Supplier shall be liable that no protected privileges of third parties in the countries of the European Union, North America and in all other countries where the Supplier manufactures or has the Products manufactured are infringed in connection with the delivery of the Products unless he proves that he is not responsible for the infringement.
- (2) The Supplier undertakes to notify HSW without undue delay of any risks of infringement or alleged cases of infringement regarding third parties' protected privileges in the Products he has obtained or obtains knowledge of.
- (3) If third parties' protected privileges affect the use or utilization of the Products by HSW, the Supplier shall at his expenses and option obtain either a respective approval within a reasonable period of time or change or exchange the affected Products or parts of the Products in such a way that the use and utilization of the Products do not affect third parties' protected privileges and that they also comply with contractual agreements, particularly with the quality specifications. This shall not apply if the Supplier proves that he is not responsible for the infringement.
- (4) The Supplier is obligated to indemnify HSW against all claims asserted by third parties against it as a result of infringements of intellectual property rights as set forth in para. (1) above and to reimburse HSW for expenses incurred in connection with the claim unless he proves that he is not responsible for the infringement. If third parties assert claims against HSW, HSW will counteract any asserted claims by common consent with the Supplier.

#### **Section 9 - Reporting Obligations and Product Liability**

- (1) The Supplier and HSW will mutually notify each other without undue delay of any recall of loads and complaints in connection with the Products and/or their raw materials and/or packaging material if the other party's area of responsibility is affected thereby.

- (2) The Supplier is responsible for the technical review and internal follow-up of complaints regarding the Products. The Supplier and HSW will assist each other as best as possible to clarify the reason for complaint.
- (3) If the Supplier is liable for a product damage, he will indemnify HSW against any third party claims to the extent the reason for this was within his domain and organizational area and if he was personally liable in the external relationship.
- (4) Within the scope of the duty to indemnify, the Supplier has to reimburse HSW for expenses pursuant to Sections 683, 670 *BGB* incurring under or in connection with third party claims including any recalls made by HSW. Any further statutory claims shall not be affected thereby.
- (5) The Supplier undertakes to take out a product liability insurance with an internationally recognized insurance company with an adequate insured sum for foreseeable damage, unless otherwise agreed upon in writing by means of individual agreements, but at least in the minimum amount of €15m per claim and to promptly notify HSW thereof in writing at its request.
- (6) The provisions of section 9(3) and (4) apply accordingly to any liability resulting from the German Drug Law ("**AMG**") and the German Medical Devices Act ("**MPG**").

#### **Section 10 - Deliveries/Services Provided on HSW's Premises, Liability, Liability Insurance**

- (1) If the Supplier delivers Products to and/or provides services on HSW's business premises, he has to notify the coordinator named by HSW of both the beginning as well as the scope of the works planned within the scope of the delivery and/or services and to arrange the procedure with him. The Supplier acknowledges that the coordinator is authorized to give him instructions in this regard. With regard to materials (substances, preparations) and objects (e.g. goods, parts, technical equipment which, due to their nature, characteristics and condition, may pose a risk to life and health of individuals, to the environment and things and which may thus be treated in a special way because of regulations as regards their packaging, transportation, storage, treatment and waste disposal, the Supplier has to provide HSW with a completely filled material safety data sheet according to Section 14 of the German Ordinance on Hazardous Material (*GefStoffV*) and a correct accident procedures sheet together with the offer. The Supplier will provide HSW with updated data and information sheets in case of changes in the materials and the legal situation.
- (2) In the event the Supplier intentionally or negligently causes the death, injury or damage to the health of an individual or damage to or destruction of a thing in the execution or on the occasion of a delivery and/or service on HSW's business premises, he shall be held liable in accordance with statutory provisions.
- (3) The Supplier undertakes to take out a company liability insurance with an internationally recognized insurance company with an adequate insured sum for foreseeable damage, unless otherwise agreed upon in writing by means of individual agreements, but at least in the minimum amount of €15m per claim and €2m for cases of recalls and to provide written evidence of them at HSW's request without undue delay.

#### **Section 11 - Secrecy and Reservation of Title**

- (1) HSW reserves title to and copyrights in illustrations, plans, drawings, calculations, standing operating procedures and other documents. This also applies not only to substances and materials but also to tools, prototypes, samples and other objects HSW provides to the Supplier for manufacturing. These objects shall - as long as they are not processed - be separately stored at the Supplier's expense and adequately insured against destruction and loss.
- (2) Any processing, mixing or compound (further processing) of provided objects is made by the Supplier for HSW. HSW acquires title to the Product in accordance with statutory provisions.
- (3) Any reservation of title by the Supplier only applies to payment obligations referring to the respective Product with regard to which the Supplier reserves title. Any expanded or extended reservations of title are impermissible in particular.
- (4) The Supplier and HSW mutually undertake to keep secret the contents of the business transaction and the respective order as well as any and all information and documents (including but not limited to illustrations, plans, drawings, calculations, standing operating procedures and product specifications) submitted to the other party for this purpose. Both parties may use such documents exclusively for purpose of the contractual performance/delivery and the receiving party has to return or destroy them after the termination of the contractual relationship at the other party's request within a reasonable period of time at the other party's expense if in compliance with statutory provisions on the preservation of records. In case of documents that cannot be handed over and that contain confidential information, such as hard disks or the like, the receiving party has to delete or otherwise destroy the respective documents. At the other party's request, the receiving party will promptly notify the other party of the return, deletion and/or destruction of any and all documents and papers in accordance with the above obligation.

- (5) The Supplier and HSW further undertake to strictly keep secret the other party's know-how. This obligation expires seven (7) years after the termination of the contractual relationship with the Supplier. Neither the Supplier nor HSW are entitled to use or otherwise exploit the other party's know-how disclosed within the scope of the order and the contractual relationship during or after the termination thereof.
- (6) The obligation to keep the exchanged information secret pursuant to para. (1) above does not apply if and to the extent
  - a. the respective party has been released from this obligation by express and written approval of the other party; or
  - b. the information was already known to the other party before the disclosure of the information by HSW or the Supplier and the other party was notified thereof without undue delay; or
  - c. the information is or becomes public knowledge by way of publication or otherwise; or
  - d. the information is disclosed to HSW or the Supplier other than directly or indirectly by the other party; or
  - e. the information is disclosed to authorities due to applicable provisions.
- (7) The Supplier is not entitled to refer to the contractual relationship with HSW in advertising material, brochures, etc., or to display products manufactured for HSW without HSW's prior written approval.
- (8) The Supplier will correspondingly advise and oblige his subcontractors in accordance with this section 10(4) to (7).

### **Section 12 - Statute of Limitations**

- (1) The mutual claims of the contracting parties under or in connection with the business transaction and the individual orders shall become time-barred in accordance with statutory provisions unless otherwise provided for hereinafter.
- (2) Notwithstanding Section 438(1)(3) *BGB*, HSW's claims for defects of quality shall become time-barred three (3) years after the passing of risk. If and to the extent acceptance has been agreed upon, the statute of limitations commences upon acceptance.
- (3) The limitation period of three (3) years pursuant to para. 2 above applies accordingly to claims for defects of title, whereat the statutory limitation period for a real third party right for return (Section 438(1)(1) *BGB*) shall not be affected thereby.
- (4) Notwithstanding Section 634a(1)(1) *BGB*, HSW's claims for defects of quality and title shall become time-barred three (3) years after acceptance. Section 634a(3) *HGB* shall not be affected thereby.
- (5) To the extent HSW is also entitled to non-contractual claims for damages due to a defect, the statutory statute of limitations shall regularly apply (Sections 195, 199 *BGB*) unless the applicability of the Sales Convention of the German Civil Code results in longer limitation periods in the individual case.

### **Section 13 - Application to Supplier's Services**

Any and all provisions of these GTP correspondingly apply to the provision of services by the Supplier to the extent they are applicable to them and no special provisions are agreed upon.

### **Section 14 - Final Provisions**

- (1) These GTP are subject to the laws of the Federal Republic of Germany to the exclusion of the provisions of the UN Sales Convention.
- (2) Exclusive place of jurisdiction for any and all disputes arising under or in connection with the parties' contractual relationship, including these GTP, shall, to the extent the Supplier is an entrepreneur as defined by the German Commercial Code (*HGB*), a legal entity under public law or a special fund under public law, be HSW's place of business in Tuttlingen/Germany (Tuttlingen local court (*Amtsgericht*), Rottweil regional court (*Landgericht*)).

This also applies if the Supplier has no general place of jurisdiction within Germany or if his place of business, residence or habitual abode is unknown at the time the action is commenced. HSW is, however, also entitled to commence an action at the Supplier's general place of jurisdiction or place of performance.

Mandatory, statutory provisions regarding the exclusive place of jurisdiction shall not be affected thereby.

- (3) In the event any provision of these GTP is or becomes totally or partially invalid, the validity of the remaining provisions hereof shall not be affected thereby. In lieu of the totally or partially invalid provision, such provision shall apply which most closely corresponds to the economic purpose of the invalid provision.

- (4) The Supplier has been provided with a German and an English version hereof. In case of conflicts between the German and the English version, the German version of these GTP shall prevail.