

**General Terms and Conditions of BCM Businesscenter für den Mittelstand GmbH and the companies represented by BCM Businesscenter für den Mittelstand GmbH (Attachment 1)- hereinafter unitary referred to as Purchaser-**

**1. Preamble**

These General Terms and Conditions shall only apply between merchants. All orders and purchase-, delivery and service- contracts concluded with the Purchaser are based on the following Terms and Conditions, unless otherwise agreed upon in the Purchase Order. These Terms and Conditions as amended shall also apply to all future transactions with the Supplier. Conditions of Sale or other trade conditions of the Supplier shall not apply, even if the Purchaser performs the contract without contradicting the inclusion of Supplier's terms and conditions of business. The acceptance of deliveries, services or payments thereof shall not be considered as approval of the Supplier's Conditions of Sale.

**2. Prices/Payments**

2.1. The prices stated in the purchase order shall be binding.

2.2. All prices are quoted as fixed prices excluding VAT.

2.3. Unless otherwise stipulated, the price includes adequate packing, freight charges and freight insurance.

2.4. The invoice shall be paid with 3% cash discount within 14 days after delivery and receipt of the invoice, but at the latest net within 60 days after delivery and receipt of the invoice, unless otherwise agreed. Payments shall be effected only on receipt of complete delivery of the goods as well as corresponding documentation and/or certificates (refer to item 4.3 and 11.1.).

2.5. For bank transfers, the day of the release or posting of the payment order to the bank shall be considered as date of payment.

**3. Delivery time**

3.1. The delivery time stated in the purchase order shall be binding and requires unconditional conformation.

A delay in delivery occurs without reminder, if for the delivery a calendar day is fixed or if the delivery date can be calculated by taking reference to a prior event and the corresponding deadline has been exceeded.

3.2. The delivery is considered to be effected on the date of the receipt of the goods by the Purchaser or a recipient designated by the Purchaser. The Supplier shall notify the Purchaser immediately in writing if any delivery or performance is delayed or likely to be delayed beyond its specified date and has to state the reason and the expected time of delay. The Supplier can only plead a delay beyond its control, in case of fulfilment of its obligation for claims notification.

3.3. In event of a failure to meet the agreed delivery dates or deadlines, the Purchaser is entitled to claim liquidated damages in an amount of 1% for each beginning week of delay up to a maximum of 5% of the total order value. Further statutory consequences will be reserved. In the event of accrued liquidated damages due to a delay in delivery, the Purchaser has the right to claim these until settlement of the last invoice (final payment), without prior notification on acceptance.

3.4. In case start date(s) is (are) delayed for reasons beyond control of the Supplier, the execution time, i.e. the agreed upon number of working days or weeks for the respective works, shall in any event remain unchanged.

**4. Delivery terms**

4.1. The Supplier shall advise the Purchaser of all deliveries on time.

4.2. Unless otherwise expressly stipulated, all deliveries shall be effected on DDP basis (INCOTERMS 2000) to the delivery address given by the Purchaser.

4.3. Delivery shall only be effected during the delivery times agreed upon with the Purchaser. At the latest on the day of delivery, a shipping advice, a delivery note, an invoice in twofold and a duplicate of way bill as well as all customary certificates, especially the certificates stated in the Purchase Order including the documentation shall be sent to the Purchaser, indicating the order no.

4.4. All risks of loss or damage to the goods shall be borne by the Supplier until the goods have been delivered and/or accepted to/by the Purchaser or his representative.

4.5. Unless otherwise agreed, all goods have to be packed and shipped in such a way to prevent damages. All damages and costs occurred due to non-observance of the delivery and packing regulations have to be borne by the Supplier.

4.6. In case the delivered goods have to be erected and installed at the Purchaser's premises, this shall be effected at the costs and risk of the Supplier.

Machines and plants have to be accepted by the Purchaser. The Supplier has to prove during a test run the compliance of the technical specification.

**5. Delivery terms for castings**

5.1. The gross weights stated in the purchase order have to be observed with a plus or minus 5% tolerance. The Supplier is obliged to check the pattern and core boxes, in order ascertain that the stated weight is correct. In case patterns are faulty, this has to be notifying immediately in writing after the last pouring. In case this information will not be forwarded and casting will be finished nonetheless, the accrued costs have to be borne by the Supplier. Especially overweights will not be paid by the Purchaser. In case it is recognizable prior to the pouring that the construction of the casting is not correct and the design of the patterns provided by the Purchaser cannot ensure the purpose/function, this has to be notified immediately in writing.

Repair welding of any kind shall only be carried out with the expressly written approval from the Purchaser. The foundry undertakes the full responsibility for the appropriate execution of these works.

5.2. Drawings and pattern remain the Purchaser's property and have to be returned upon request, respectively have to be stored free of charge. Third parties shall not have access to originals and copies and reproductions shall also not be provided to third parties.

**6. Receipt of goods**

The Purchaser reserves the right to inspect quantity, nature and quality incoming goods immediately after receipt with regard to obvious and visible defects. A claim in terms of § 377 HGB is considered to be in time, as long as it is effected immediately after notification of a defect by the Purchaser. The Supplier waives during the warranty period its right for objection of delayed notification with regard to hidden defects.

**7. Liability for faults (warranty)**

7.1. The Supplier shall strictly comply with the declarations regarding specification, packing, equipment and delivery stated in the Purchase Order.

7.2. For all goods delivered by the Supplier, the Supplier guarantees that the goods:

7.2.1. comply with the legal German regulations regarding content, packing and declaration,

7.2.2. comply with EG regulations and provisions as well as its subsequent regulations,

7.2.3. are free of faults as regards design, manufacture and material, and

7.2.4. comply with all guidelines of the Purchaser and the prescribed specification and characteristics will be adhered to,

7.2.5. The Supplier safeguards the delivered goods to be free of ionizing radiation that exceeds the natural self-radiation. Ionizing radiation exists when suitable measuring device observes parameters exceeding surrounding background radiation.

7.3. In each case of infringement against of the conditions stated above, the Purchaser is entitled – without limitation- to claim for defects according to the statutory provisions.

7.4. In case the faulty goods will be returned, the Supplier has to bear the costs and risks thereof.

7.5. The Purchaser reserves the right to check the manufacturing progress at Supplier's work. Any inspection or approval shall not relieve the Supplier from its obligations under the Purchase Order and shall not limit the Purchaser's claims for defects against the Supplier.

7.6. In case of faulty delivery, the Purchaser has the right to choose either remedy of defect or the delivery of goods free from defects.

7.7. Any warranty obligations will expire 24 months after receipt of goods, unless otherwise stipulated.

**8. Product liability**

The Supplier has to fully indemnify the Purchaser against any third party claims and to compensate the Purchaser promptly for any and all damages and losses suffered by and resulting from product liability in connection with the supply of the goods.

**9. Offset and Assignment**

9.1. Offsets with counterclaims of the Supplier are admissible only insofar as these claims are not disputed and due or have been found legally valid.

9.2. Without our written approval, the Supplier is not entitled to assign claims or equitable assignments directly against us, either in whole or in part, to third parties. The approval shall not be unreasonably withheld. However, in case the Supplier assigns a claim without our prior written approval, such assignment is nevertheless effective. Notwithstanding the Purchaser can continue to offset further counterclaims occurred thereafter, respectively make payments to an account of the Supplier known to the Purchaser with discharging effect.

**10. Confidential**

Unless otherwise agreed and/or if not absolutely necessary for the performance of the placed order, the Supplier will treat all information related to the order as confidential and will not disclose them to third parties

**11. Export Control**

11.1. The Supplier is obliged to actively inform the Purchaser of any goods-related licensing requirements for (re-) exports of his goods under German, European and U.S. export and customs regulations as well as the export and customs regulations of the country of origin of the goods by including such information in his business documentation.

For goods requiring an export license the Supplier is obliged to give the Purchaser within 10 day after receive of a purchase order the following information:

- Classification of goods according to export control list (Ausfuhrliste) Annex AL of the German foreign trade regulations or in accordance with comparable and relevant export list

- For U.S. goods the ECCN in accordance with the EAR

- (Non-preferential) certificate of origin of the Products and their components, including technology and software

- Information on whether the goods are transported through the U.S., were made or stored in the USA or manufactured by using U.S. technology

- The commodity code (HS code) of goods supplied

11.2. At the request of the Purchaser, the Supplier must provide the Purchaser in writing with any other additional foreign trade data of the supplied goods and their components; also, the Supplier is obligated to immediately inform the Purchaser in writing about any changes to the above mentioned information and data of goods supplied (prior to shipment of the relevant goods).

11.3. Purchaser's payment obligation under Section 2.4. is subject to the receipt of all required information as outlined above.

**12. Miscellaneous**

12.1. The place of fulfilment for all supplies and/or services to be rendered by the Supplier is the place of receipt/use specified by the Purchaser.

12.2. The sole place of jurisdiction with regard to all disputes directly or indirectly arising from the contractual relationship with the Supplier shall be Siegen (court of the city of Siegen). At the Purchaser's option, however, the Purchaser remains entitled to assert claims against the Supplier also at the courts which have jurisdiction over the Purchase's place of business.

12.3. The law of the Federal Republic of Germany shall solely apply.

Version 6

Up to date 15<sup>th</sup> May 2011

## List of the companies represented by BCM Businesscenter für den Mittelstand GmbH

Maschinenfabrik Herkules GmbH & Co.KG  
Eisenhüttenstrasse 21  
57074 Siegen

Waldrich Siegen Holding GmbH  
Daimlerstrasse 24  
57299 Burbach

Maschinenfabrik Herkules  
Hans Thoma GmbH Siegen  
Eisenhüttenstrasse 21  
57074 Siegen

Waldrich Siegen GmbH & Co.KG  
Daimlerstrasse 24  
57299 Burbach

Maschinenfabrik Herkules  
Verwaltungs- GmbH  
Eisenhüttenstrasse 21  
57074 Siegen

Waldrich Siegen  
Verwaltungs- GmbH  
Daimlerstrasse 24  
57299 Burbach

Herkules Meuselwitz GmbH & Co.KG  
Industrieanlagen  
Industriepark Nord  
04610 Meuselwitz

Waldrich Siegen  
Werkzeugmaschinen GmbH  
Daimlerstrasse 24  
57299 Burbach

HCC/KPM Electronics GmbH  
Eisenhüttenstrasse 21  
57074 Siegen

HCC/KPM LLC  
Eisenhüttenstrasse 21  
57074 Siegen

Waldrich Siegen  
Japan GmbH  
Daimlerstrasse 24  
57299 Burbach

Maschinenfabrik Herkules  
Meuselwitz GmbH  
Industriepark Nord  
04610 Meuselwitz

Thoma GmbH & Co.KG  
Eisenhüttenstrasse 21  
57074 Siegen

Herkules Meuselwitz  
Verwaltungs- GmbH  
Industrieanlagen  
Industriepark Nord  
04610 Meuselwitz