

## **International Purchasing Conditions for Suppliers not Resident in Germany**

### **I. Application of the International Purchasing Conditions**

1. These International Purchasing Conditions apply to all suppliers to HERA GmbH & Co. KG - hereinafter referred to as HERA - whose relevant place of business is **not in Germany**. For suppliers whose place of business is in Germany, the General Purchasing Conditions (Allgemeine Einkaufsbedingungen) of HERA apply, which will be forwarded on request. In each case, the relevant place of business is the one which concludes the contract in its own name.
2. These International Purchasing Conditions apply to all contracts which are concluded as of March 1st, 2013 and whose preponderant object is the **delivery of goods** to HERA. Additional obligations assumed by the supplier do not affect the application of these International Purchasing Conditions.
3. Conflicting or differing **terms of business of the supplier** do not bind HERA, even if HERA does not object to them or even if HERA unconditionally renders performance or accepts the supplier's performance. Equally, HERA is neither bound, insofar as the terms of business of the supplier, irrespective of the contents of these International Purchasing Conditions, deviate from statutory provisions.

### **II. Formation of the Contract**

1. The supplier is under an obligation to give **written notice to HERA** prior to the formation of the contract if the goods to be delivered are not fit without restrictions for the purpose made known to the supplier or for the purpose provided in the contract, if particular safety provisions are to be observed when dealing with the goods to be delivered, or if a risk to health, safety or the environment or a risk of atypical damages or unusual amounts of loss is associated with the goods to be delivered of which the supplier is or ought to have been aware. Furthermore, the supplier is under an obligation to give written notice to HERA prior to the formation of the contract if assertions regarding the goods to be delivered made by the supplier or by third parties in adverts, prospectuses or other public announcements whether in or outside Germany of which the supplier is or ought to have been aware, cannot in each and every respect be complied with.
2. **Offers of the supplier** have to be set out in writing. If the supplier's offer deviates from the inquiry or order submitted by HERA, the supplier will emphasize the **differences** as such. Pictures and drawings accompanying the contract as well as details of amounts, size and weight are binding.
3. All orders, in particular also those placed by employees of HERA, will **take effect exclusively if followed by a written acknowledgement** of the order by HERA. The actual taking delivery of the goods, the payment for such goods or any other conduct of HERA or silence on the part of HERA does not allow the supplier to assume the formation of the contract. HERA can dispatch such written acknowledgement of the order up to and including fourteen **(14) calendar days after** the supplier's offer has been received by HERA. Until this time, the supplier's offer is irrevocable.
4. The written **acknowledgement of the order** by HERA shall be **received in time** if it is received by the supplier within fourteen (14) calendar days after its date of is-

sue. The supplier will inform HERA without delay, if the written acknowledgement of the order is received with a delay.

5. The written acknowledgement of the order by HERA sets out all the **terms of the contract** and brings the contract into effect even if - except for the purchase price and the quantity to be delivered - the written acknowledgement deviates from the declarations of the supplier in any other way, especially with reference to the exclusive application of these International Purchasing Conditions. The contract will only fail to come into existence if the **supplier objects in writing** that the acknowledgement of the order by HERA is not completely consistent with the declarations of the supplier, the supplier specifies the deviations in writing and if the objection is received by HERA within a short time, at the latest seven (7) calendar days, after receipt of the written acknowledgement of the order by the supplier.
6. Any restriction on HERA's legal rights or on the rights granted by these International Purchasing Conditions, namely any limitation to or any exclusion of statutory remedies, guarantees, warranties or assurances by the supplier in relation to the goods or the execution of the contract, require **expressed and written confirmation** by HERA in every case.
7. Order confirmations produced by the supplier are of **no effect** without any objection by HERA being necessary. In particular, neither the actual taking delivery of the goods, the payment for such goods or any other conduct of HERA or silence on the part of HERA shall give rise to any belief by the supplier in the relevance of its order confirmation.
8. HERA's **employees** or agents are not authorized to dispense with the requirement of a written acknowledgement of the order by HERA or to make promises which differ from its content. If and to what extent such persons are authorized to make or receive declarations with effect for or against HERA, is to be determined according to German law.
9. Against reimbursement of the supplier's proven and reasonable expenses caused thereby, HERA after formation of the contract is entitled to **change** the order for the goods to be delivered or to **cancel** part of the contract already made. In the case of a partial cancellation the supplier is also to be reimbursed for that part of its profit proven and lost by the cancellation.
10. **Amendments** to the concluded contract always require written confirmation by HERA.

### **III. Obligations of the Supplier**

1. The supplier shall fulfil all the duties imposed by the contract and these International Purchasing Conditions as well as ancillary by the rules of the ICC for the use of the clause **DAP Incoterms® 2010** and statutory provisions in due time, and in particular shall **deliver the goods** referred to in the written acknowledgement of the order by HERA and to procure appropriate instructions for their processing and use. Guarantees, warranties and assurances given by the supplier are to be honoured, without these having to be confirmed in writing.
2. Without explicit written consent by HERA in every case the supplier is not allowed to entrust **sub-suppliers** the performance of its obligations owed to HERA if according to the applicable law such entrustment can result in legal consequences regarding the contractual relationship with HERA.
3. Irrespective of other obligations to inform, the supplier has to **inform** HERA in writing with a reasonable lead time of the forthcoming delivery and is obliged to **examine** the goods prior and as close in time as possible to their handing-over to HERA

to the same extent as HERA is obliged to examine the goods after taking delivery and to record the result of the examination in writing.

4. The **transport** and the custody of the goods up to the taking over by HERA is the sole responsibility of the supplier. In particular the supplier is responsible vis-à-vis HERA for the goods being packed suitably for transportation, being loaded in a safe manner and being transported by suitable means of transport. The agreement of other clauses of the Incoterms or other delivery clauses merely involve a variation of the provisions as to transportation and transportation costs and does not modify the provisions laid down in this paragraph.
5. Regardless of the regulation set out in section IV.-3. the supplier warrants compliance with customs, **import and security regulations** and with weight and measuring systems applying to the goods in Germany at the time of delivery and is responsible vis-à-vis HERA that the goods comply with all requirements that have to be respected when importing the goods and making them available on the market in Germany. This warranty applies even to the extent HERA clears the goods for import. The agreement of other clauses of the Incoterms or other delivery clauses merely involve a variation of the provisions as to the transportation and the transportation costs and does not modify the provisions laid down in this paragraph.
6. The supplier is under a duty to fulfil its obligations timeously and in particular hand over the goods to HERA unloaded at the **place of delivery** indicated in the written acknowledgement of the order or - if a place of delivery is not indicated - at the premises in Enger/Germany. Only employees of HERA named on the notice at the entrance of the depot are entitled to receive the goods.
7. Subject to promises providing for more, the supplier is under a duty to hand over to HERA goods of the agreed type and quantity, which are of the **quality** and in the **packaging** and which comply with the **labelling** and marking requirements, which in each case satisfy the legal provisions and standards applicable to making the goods available on the market in Germany at the specific time and comply with the latest developments of science and engineering. In particular, the supplier shall ensure that the goods are not subject to deviations which could adversely affect their normal value in use or their economic value in Germany or the purpose made known to the supplier. The supplier is not entitled to make **part deliveries** or to invoice them separately.
8. At the time of delivery, the supplier guarantees that the goods are free from **rights or claims of third parties**, in particular those based on title, industrial property or any other intellectual property, which could hinder the unrestricted usability of the goods by HERA in the European Union.
9. The supplier is under a duty to obtain and to hand over to HERA in Enger/Germany any licences, authorizations, certificates of origin, of movement and of preference, other certificates and other **documents** necessary for the free export, transit or import of the goods as well as for receiving tax relief in the European Union. The supplier guarantees that they are authentic documents with legal validity. Furthermore, suppliers with a place of business within the European Union are under a duty to present a supplier's declaration. The agreement of other clauses of the Incoterms or other delivery clauses merely involve a variation of the provisions as to transportation and transportation costs and does not modify the provisions laid down in this paragraph.
10. Every delivery must be accompanied by a **delivery note** which clearly states the order number of the acknowledgement of the order by HERA and for each type of goods the applicable customs tariff number. **Invoices**, delivery notes and transportation documents must correspond to the details in the acknowledgement of the order by HERA, must comply with all legal requirements and are to be forwarded to HERA separately by post and additionally by electronic means. **Invoices** must

clearly state the order number and the date of the acknowledgement of the order by HERA as well as the supplier's tax number. Partial deliveries agreed upon or final instalment deliveries are to be identified as such in the delivery note and in the invoice.

11. Strict **compliance with agreed dates or periods** shall be a fundamental obligation of the supplier. HERA is entitled to select the date of delivery within an agreed period. Without prejudice to any claim, which HERA may have against the supplier, any delay must be communicated to HERA in writing immediately after discovery thereof and giving the new delivery date. The supplier is entitled to perform its obligations outside the agreed dates or periods only insofar as HERA has in each individual case agreed thereto in writing.
12. Agreed **penalties** (contractual penalties and/or liquidated damages) shall be paid in addition to the agreed services, do not exclude the claim for further damages and may be claimed by HERA regardless of whether it accepts the delivery without reservation.
13. Statutory rights of the supplier to **exercise a lien** or to **suspend performance** and to **raise defences or counterclaims** are excluded, except where the corresponding claim of the supplier is due and undisputed or has been finally adjudicated upon or where despite written warning HERA has committed a fundamental breach of its obligations due and arising out of the same contractual relationship and has not offered any adequate assurance.
14. The supplier is obliged to use exclusively environmentally friendly packaging material and to collect packaging material and delivered goods, as far as these are subject to particular **legal provisions regarding waste-disposal** and for which disposal is imminent and not ensured otherwise, at its own cost from the place of delivery indicated in the written acknowledgement of the order or - if a place of delivery is not indicated - at the premises in Enger/Germany or to take it back from third parties. Irrespective of any statutory provisions, the supplier shall at its own cost take care of or in any other way ensure renewed utilization, material recycling or otherwise prescribed waste-disposal of the goods delivered and of the packaging material. HERA is entitled at the supplier's cost to dispose of packaging or goods which are not taken away by the supplier.

#### **IV. Obligations of HERA**

1. HERA is obliged **to pay the agreed purchase price**. HERA may pay subject to the right subsequently to check the invoice by a transfer to a bank with which the supplier maintains business. There are no obligations on the part of HERA to secure or to enable payment.
2. The claim to the payment of the price **comes into being** after the goods and the documents have been handed over to HERA completely and in conformity with the contract. Without prejudice to the compliance with the respective applicable legal requirements, the payment is **due** within fourteen (14) days with an application of a discount of 3% or within thirty (30) days net. The payment period does not start before HERA has received an invoice in due form.
3. The **price covers** all of the supplier's services including any accessory expenses, in particular customs duties, taxes and charges regarding the export and the transit and banking fees accruing outside of Germany. Any increase in the price agreed at formation of the contract - irrespective of the legal ground - is excluded. HERA shall pay the import turnover duty (Einfuhrumsatzsteuer) due in Germany and other charges payable on import clearance.

4. Third parties not involved in the making of the contract are not entitled to request payment. The supplier's **entitlement to receive payment** continues to exist even if it assigns claims to third parties.
5. Statutory rights of HERA to reduce the price or to exercise a **set-off** against the price or to **suspend** the performance of its obligations and/or to **raise defences** or **counterclaims** are not restricted by the provisions laid down in these International Purchasing Conditions and HERA shall be entitled to these rights irrespective of any further statutory remedies even if cash-payment terms are agreed. Without any previous notice to the supplier being necessary, HERA is entitled to **suspend** the performance owed by HERA, so long as in HERA's view there is a concern that the supplier will not wholly or partly perform in accordance with the contract its duties under the particular contract or another contract made with HERA which has not been completely fulfilled. HERA is also entitled to exercise a set-off against the price or to suspend the performance of its obligations or to raise defences or counterclaims when the claim set up against the supplier is contested by the supplier, has been acquired by HERA by assignment or HERA is entitled to request payment for any other reason or when the claim set up against the supplier exists but has not yet fallen due or is in another currency or is subject to the exclusive jurisdiction of a court or an arbitral tribunal different to that provided for the claim of the supplier.
6. HERA shall **not be obliged to perform** other than as set out in the written acknowledgement of the order by HERA or in these International Purchasing Conditions.
7. The **taking over** of the goods by HERA is subject to the condition that the goods are in every respect in conformity with the terms of the contract, these International Purchasing Conditions and the applicable statutory provisions and free from rights or claims of third parties.

## **V. Non-conforming Goods**

1. Further to statutory non-conformities, goods **do not conform with the contract** if they do not conform with the requirements set out in sections III.-1., III.-5., III.-7. and III.-8. or with assertions in adverts or with declarations made by the supplier to HERA or with other legal provisions applicable within the European Union, if claims in favour of a third party based on product liability law occur due to the goods or if rights or claims of third parties, in particular those based on title, industrial property or any other intellectual property are claimed, unless a different term is set out in HERA's written acknowledgement of the order or unless the supplier proves that HERA was well aware of the non-conformity at the time of formation of the contract and agreed to take the non-conforming goods.
2. Likewise, the confirmation to HERA by the supplier as to the quality or suitability requested of the goods constitutes an unconditional and unrestricted **guarantee of the supplier** unless the supplier has declared in writing vis-à-vis HERA that it cannot give such a guarantee. The same applies to all references made by the supplier to generally accepted standards or quality marks or to similar declarations by the supplier indicating that the goods have certain qualities and/or are suitable for a particular purpose. In the case of subsequent transactions concerning the same type of goods the confirmations, references or other declarations continue to apply, without them needing to be mentioned again.
3. With the exception of very obvious non-conformities, the **duty to examine** the goods only arises when the goods are processed or used by HERA, however at the latest half a year after their handing-over to HERA. The duty to examine exists only in respect of typical deviations of a factual kind in type, quantity, quality and packaging of the goods delivered and is sufficiently fulfilled by applying HERA's usual methods of examination and limiting the examination to spot checks undertaken by

HERA. In the case of delivery in instalments or of part deliveries, the examination of individual deliveries shall suffice. The consulting of experts, damage assessors, inspection offices or other external third parties is not required. HERA is not obliged vis-à-vis the supplier to examine the goods in respect of compliance with legal rules or whether they are free from any right or claim of a third party. If the supplier delivers late, the duty to examine falls away insofar as an adequate time for examination is no longer available in consequence of the late delivery. If the supplier remedies a notified non-conformity, the duty to examine falls away until HERA has received a written notice of the supplier stating that the remedial measure has been completed.

4. HERA shall **give notice** of very obvious non-conformities within five (5) working days after the handing-over of the goods to HERA and of non-conformities discovered pursuant to the examination, within ten (10) working days after the completion of the examination. Notice of non-conformities not discovered by the examination shall be given within fifteen (15) working days after the non-conformity and the supplier's responsibility therefor are finally determined and at the latest until the expiration of the limitation period. There is no obligation of HERA to give notice, if the supplier knew or could not have been unaware of the lack of conformity. Apart from that, notice shall be given to the supplier or to its agents. The notice shall describe the non-conformity in general terms; greater details as to the type of non-conformity or the extent of the goods affected are not required. The supplier is obliged, when required, to ask HERA in writing for further details of the type of non-conformity or the number of affected goods. Rights or claims of third parties regarding the goods can be given notice of at any time without complying with any time limit.
5. Without prejudice to its continuing contractual or statutory rights, HERA is according to these International Purchasing Conditions entitled to rely on the remedies provided in section V.-6. if the goods do not conform with the contract under the terms of these International Purchasing Conditions **at the time** the notice period stipulated in section V.-4. commences, unless the supplier sets forth that the non-conformity with the contract was caused after the taking over of the goods by HERA and is attributable to HERA's area of responsibility.
6. Irrespective of any fortuitous damage to the goods after risk has passed, HERA is entitled in the case of non-conforming goods according to these International Purchasing Conditions to rely without restrictions on the **remedies** provided by law and/or to advance extra-contractual claims. Delivery of substitute goods and avoidance of the contract are not conditional on a fundamental breach of contract or the intact restitution of the non-conforming goods, can be claimed beyond the extent of the non-conforming goods for the whole contract and shall be declared at the latest four (4) months after the notice of the non-conformity. If reduced quantities are delivered HERA is entitled to reduce the purchase price without further ado. Quantities delivered in excess may be returned totally or partly by HERA without a notice of non-conformity being necessary. Moreover, the stipulations in VI.-2. on the avoidance of the contract and in VII.-2. on damages apply to the delivery of non-conforming goods as well. Until the complaint has been settled completely, HERA is in addition entitled to retain from the purchase price up to 3 times the costs of repair. HERA is also entitled, notwithstanding any other claims, to be reimbursed for any **expenses** incurred by HERA and reasonable indirect costs, in particular expenses incurred by HERA towards its customers or other third parties insofar as the expenses are the consequence of non-conformities attributable to the supplier according to these International Purchasing Conditions and the underlying obligations were not entered into by HERA after the non-conformity had been discovered.
7. The **limitation period for remedies** begins to run on taking over of the goods by HERA at the place of delivery indicated in the written acknowledgement of the order or - if a place of delivery is not indicated - at the premises in Enger/Germany and after complete performance of all of the supplier's primary obligations. In no case shall the limitation period expire before the expiration of six months from the giving of notice of the non-conformity if the notice was given before the limitation period

elapsed. The limitation period for remedies of HERA against the supplier in respect of violation of third parties' rights or claims is ten (10) years.

## **VI. Avoidance of the Contract**

1. Complying with the legal requirements the **supplier** is entitled to declare the contract avoided after it has threatened HERA with avoidance of the contract in writing and a reasonable additional period of time given in writing for performance has expired to no avail. The notice of avoidance of the contract is to be given to HERA directly within reasonable time in writing.
2. Without prejudicing its other legal rights, **HERA** is entitled to avoid the contract in whole or in part if the supplier objects to the application of these International Purchasing Conditions, if on grounds for which HERA is not responsible the written acknowledgement of the order by HERA is received by the supplier more than fourteen (14) calendar days after its date of issue, if insolvency proceedings are applied for or commenced relating to the assets of the supplier, if the supplier without providing a reason justifiable in law does not meet fundamental obligations due towards HERA or towards third parties, if according to these International Purchasing Conditions and due to the delivery of non-conforming goods HERA is entitled to remedies, if the supplier has failed to comply with other obligations and an additional period of time for performance set by HERA has expired to no avail, or if HERA cannot be expected to fulfil its obligations by means, which taking into consideration its own interests and that of the supplier as far as ascertainable and legitimate at the time of formation of the contract, are unreasonable in particular in relation to the agreed counter-performance.

## **VII. Damages**

1. The supplier is entitled to claim **damages from HERA** in case of unjustified late payment. Damages amount to a flat interest rate of 2% per annum above the base interest rate of the German Federal Bank (Deutsche Bundesbank) or if the payment is not to be made in Euro, above the official rate of discount of the currency in which payment is due applicable during the unjustified retention of payment. With the exception of blameworthy injury of life, body or health, of damages due to intentional harm or gross negligence by the organs or executive employees of HERA and of obligatory product liability, any claim by the supplier on any other ground to damages, to further interest or to an indemnity against any other kind of damages is excluded.
2. Without prejudicing other claims inclusive claims of an extra-contractual nature, HERA is entitled without any restriction and in accordance with the legal requirements to claim **damages from the supplier** instead of or in addition to any other remedy for every kind of breach of contract. The taking of delivery of the goods or the paying of the purchase price without any reservation shall not result in a waiver of the right to damages. Without prejudice to any further reaching legal rights, the damages to be compensated shall comprise all direct and indirect expenses, losses and inconveniences caused to HERA by the breach of contract, unless the supplier proves that the extent of the damages was foreseeable neither at the time of formation of the contract nor during its performance. Without prejudice to the supplier proving that damage was either not caused or was caused in a significantly smaller size, and without prejudice to HERA claiming further damages, in each case of **late delivery or non-delivery** by the supplier HERA is entitled to claim **liquidated damages** of 0.5 % of the value of the respective goods for each week of delay commenced, up to a maximum of 10 %, without any evidence being necessary.

## **VIII. Other Provisions**

1. On delivery the goods as well as all related papers and documents become the unrestricted property of HERA. If a **reservation of title** in favour of the supplier has been agreed, this has only the effect of a simple reservation of title; in addition, HERA is entitled, regardless of the reservation of title, to utilise the goods at any time without any restrictions, namely by processing the goods and/or selling them, as well as by transferring property in the goods to third parties even when such utilisation by HERA has the consequence of destroying the reservation of title.
2. Without prejudice to HERA's continuing claims, the supplier will indemnify HERA against all claims of third parties which may be brought against HERA based on **product law** or **product liability law** or similar provisions insofar as the product was delivered by the supplier or the causation of the product defect by materials or parts delivered by the supplier cannot be excluded. In particular, the indemnification also includes compensation for expenses incurred by HERA and the costs of any precautionary campaign to redress or recall potentially defective goods and is granted by the supplier waiving further conditions or other objections, in particular without requiring compliance with any duty of examination, giving notice, supervision or recall, and waiving any defence of limitation. Irrespective of any additional claims of HERA, the supplier shall maintain a **product liability insurance and a product recall insurance**, each with a cover figure of not less than € 5 Mio. for each event of damage or loss.
3. Without prejudice to HERA's continuing claims, the supplier will furnish the due particulars and technical documentation regarding the goods in writing to HERA and give HERA unlimited security or compensation on first demand and waiving all further conditions or other defences, in particular waiving the observing of all duties of examination, notifying, control or recall or the prior taking of administrative or legal proceedings as well as waiving the defence of limitation if in consequence of an **administrative order** HERA is threatened with detriment or if HERA is subject to administrative fines or if HERA learns of other detriment and the administrative order is based on provisions of product law, the observance of which is according to the provisions of these International Purchasing Conditions within the supplier's sphere of obligation. The same applies if HERA is obliged on the basis of applicable statutory provisions to recall goods, which have been delivered by the supplier or which contain parts delivered by the supplier as far as their causation for the **recall of the goods** cannot be excluded.
4. In relation to pictures, drawings, calculations and other **documents** as well as computer-software, which have been made available by HERA in a material or electronic form, HERA reserves all proprietary rights, copyrights, other industrial property rights as well as know-how rights.
5. All communications, declarations, notices etc. are to be drawn up exclusively in **German or English**. Communications by means of fax or e-mail fulfil the requirement of being **in writing**.

#### **IX. General Basis of Contracts**

1. The **place of delivery** results from section III.-6. of these International Purchasing Conditions and applies also to the delivery of substitute goods or repair of delivered goods. The **place of payment and performance** for all the rest of obligations arising from the legal relationship between HERA and the supplier is Enger/Germany. These provisions also apply if the supplier renders performance for HERA somewhere else or payment is to be made against the handing over of the goods or documents or in the case of restitution of performance already rendered. The agreement of other clauses of the Incoterms or other delivery clauses merely involve a variation of the provisions as to transportation and transportation costs and does not modify the provisions laid down in this paragraph.



2. The United Nations Conventions of 11 April 1980 on Contracts for the International Sale of Goods (**UN Sales Convention / CISG**) and on the Limitation Period in the International Sale of Goods, both in the English version govern the legal relationship with the supplier. The UN-Conventions apply above and beyond their own area of application and regardless of reservations adopted by any state, to all contracts to which these International Purchasing Conditions are to be applied according to the provisions of section I. Where commercial terms are used, in case of doubt the Incoterms® 2010 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Purchasing Conditions.
3. The **formation of contract**, including agreements as to the jurisdiction of courts or arbitral tribunals, and the contractual **rights and obligations of the parties**, also including the liability for death or personal injury caused by the goods to any person and for non-compliance with pre-contractual and collateral obligations as well as the limitation of actions and the interpretation are exclusively governed by the UN-Conventions specified in section IX.-2. together with these International Purchasing Conditions. Subject to differing provisions in these International Purchasing Conditions, the rest of the legal relationship between the parties is governed by the Swiss law of obligations (Obligationenrecht).
4. All contractual and extra-contractual disputes as well as disputes under insolvency law, arising out of or in connection with contracts to which these International Purchasing Conditions apply, including their validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the parties shall be finally resolved, without recourse to the ordinary courts of law, by arbitration according to the Swiss Rules of International **Arbitration** (Swiss Rules) in force on the date when the Notice of Arbitration is received in accordance with these Rules. The tribunal shall consist of three arbitrators, one (1) of them shall be nominated by the claimant, one (1) of them by the respondent and the chairman of the tribunal shall be designated by the two arbitrators so nominated, or if the amount in dispute is inferior to € 50.000, there shall be one (1) arbitrator appointed according to the Swiss Rules of International Arbitration. The place of the arbitration shall be Zürich/Switzerland, the languages used in the arbitral proceedings shall be German and/or English. The competence of the Arbitral Tribunal excludes especially every statutory competence, which is provided by reason of a personal or substantive relation. If this arbitration clause is ineffective or ceases to be effective, the exclusive local and international jurisdiction of the courts which have jurisdiction for Enger/Germany is agreed for the disputes instead. Instead of bringing an action before the arbitral tribunal or before the State Court which has jurisdiction for Enger/Germany, HERA is also entitled to bring an action before the national courts of the supplier's place of business, or other national courts having jurisdiction according to domestic or foreign law.
5. If provisions of these International Purchasing Conditions should be or become partly or wholly ineffective, the remaining arrangements will continue to apply. The parties are bound to replace the ineffective provision with a legally valid provision as close as possible to the commercial meaning and purpose of the ineffective provision.