



1. APPLICATION OF THE TERMS OF PURCHASE
 - 1.1. These Terms of Purchase shall form the contractual basis of any legal transaction for the purchase of goods and services between Heaten (hereinafter "Buyer") and its affiliated companies and the respective Seller, even if no express reference is made thereto.
 - 1.2. Any terms and conditions of business, in particular terms and conditions of sale of the Seller shall be ineffective in their entirety.
 - 1.3. Unless otherwise agreed, all orders of the Buyer shall be placed exclusively on the basis of these Terms of Purchase in the version valid at the time of conclusion of the Agreement, as these are available at: www.heaten.com/GTC/
 - 1.4. In the event of contradictions with information in a purchase order, the provisions and ancillary conditions mutually agreed with the Supply Agreement and / or the purchase order (including by implied acceptance of a purchase order or its execution) shall take precedence. In all other respects, the provisions set out in the Supply Agreement and / or the purchase order and these Terms of Purchase shall prevail over any other provisions in other documents, unless a different order of the parts of the Agreement has been expressly agreed.
 2. PRICES AND TERMS OF PAYMENT
 - 2.1. Prices

The prices stated in the order are binding and, unless otherwise agreed, include all services and ancillary services of the Seller that are usually assumed as well as all ancillary costs such as, in particular, proper packaging as well as transport to the place of performance.
 - 2.2. Terms of payment

Unless otherwise agreed, the Seller grants a payment period of 45 days (the "Due Date") plus the number of days between the Due Date and Buyer's subsequent "normal payment date". For the purposes of this section, the start of the payment period shall be deemed to be the event occurring later of the following events:

 - the receipt of the invoice or
 - the receipt of all goods at the final destination (including documents, certificates, etc) of the Buyer and/or the defect-free performance of the services by the Seller.
 - 2.3. The Buyer's "normal payment day" is the day of the week on which the Buyer makes payments.
 - 2.4. The Buyer is entitled to deduct the following amounts from the invoice amount in the event of payment before the due date: 2% if payment is made within 30 days of the start of the payment period.
 - 2.5. The Seller's invoice shall contain the following information in particular: Buyer's order number; VAT and tax rate shown; EU tariff number; gross and net weight (in kg); VAT identification number of the Seller; shipping point; country and state/province; mode of transport (e.g. road, rail, sea, air, post, inland waterway).
 - 2.6. The Buyer is entitled to reject the Seller's invoice if it does not contain the required information or is otherwise incorrect. The Seller is responsible for any resulting delay in payment by the Buyer.
 3. DELIVERIES, TRANSFER OF OWNERSHIP
 - 3.1. Deliveries
 - 3.1.1. Upon acceptance of the order, the Seller shall be bound by all delivery dates stated in the order. Unless otherwise agreed in writing, partial, excess, advance or short deliveries are not permitted.
 - 3.1.2. All details of deliveries refer to INCOTERMS 2020. The respective place of delivery is also the place where the Seller's delivery obligations are fulfilled (place of performance). Unless otherwise specified, all goods delivered under this order shall be delivered FCA (Free Carrier). In any event, the Buyer shall be entitled to freely determine the mode of carriage. In the event of non-compliance with the Buyer's specifications, the Seller undertakes to bear all additional costs incurred. The Buyer reserves the right to assert further claims.
 - 3.1.3. If it is apparent to the Seller that it will be in default of delivery and/or performance, it shall immediately notify the Buyer of the impending default and its duration. In this case, the Buyer shall be entitled to demand that the Seller organise and implement measures to shorten the delivery time and assume responsibility for transport (INCOTERM 2020 "DAP"). In this case, all additional costs shall be borne by the Seller. Confirmation of the new delivery date does not constitute a waiver of the right to assert claims for damages, unless such a waiver has been expressly agreed in writing. The foregoing provisions are in addition to all other rights and remedies provided by law or under any order or contract. Statutory claims and liquidated damages shall remain unaffected by this provision.
 - 3.2. Transfer of ownership

Unless otherwise agreed in writing, at the delivery at the dock of the Buyer.
 4. LIQUIDATED DAMAGES
 - 4.1. If the Seller delivers the ordered goods later than agreed, the Buyer may claim liquidated damages of 3% (at least EUR 500) of the order value per commencing week of delay, irrespective of the Seller's fault. Notwithstanding the foregoing, the liquidated damages shall not exceed 15% (at least EUR 2,500) of the order value. The Buyer shall be entitled to claim the liquidated damages in addition to the Buyer's existing claim for performance under this Agreement. The Buyer's claim and assertion of liquidated damages for the period of delay shall not exclude the Buyer's right to other remedies and
- claims, in particular any claim for damages provided for by law in addition thereto.
- 4.2. The Seller shall be in default as soon as the delivery time agreed in advance (if such a delivery time was agreed in advance) from the transmission of the order or the delivery date mutually agreed with the order has been exceeded.
5. PROPERTY OF THE BUYER
 - 5.1. Property rights

All tangible and intangible goods provided to the Seller remain the property of the Buyer.
 - 5.2. Use of property of the Buyer

The Buyer assumes no liability whatsoever for any defects or consequential damages arising out of the use of Buyer's property. The Seller uses such property at its own risk and the Buyer makes no assurance as to its characteristics. Such property shall be marked by Seller as Buyer's property, kept separate from Seller's property and properly maintained, serviced and insured by Seller at replacement value. The Seller undertakes not to pass on the Buyer's property to third parties and to ensure that it is returned at its own expense in the same condition as when it was handed over. In all other respects, the statutory provisions on the loan contract shall apply.
 - 5.3. Any materials, tools or technology handed over which are used in the manufacture of the goods and which are not included in the purchase price of the goods and/or services supplied by the Seller shall be separately identified on the commercial or pro forma invoice used for international shipments. Each invoice shall also state the applicable purchase order number or other reference data for goods on consignment and any discounts or rebates on the base price that are applied in determining the invoice value.
 6. INTELLECTUAL PROPERTY AND LICENCES
 - 6.1. The ownership rights to confidential information and the intellectual property that a party already held prior to the start of the discussions on the planned cooperation and prior to its own evaluation of confidential information shall remain with that party. In particular, the provision of Confidential Information does not constitute the granting of a licence for commercial exploitation. Notwithstanding the above, the parties may grant such a licence in a separate written agreement.
 - 6.2. In particular, the Seller shall not use the name or logo or any other Intellectual Property of the Buyer or any of the Buyer's Affiliates without the prior written consent of the Buyer (or its relevant Affiliate).
 - 6.3. Unless otherwise agreed, all rights to ideas, inventions, copyrighted works, strategies, plans and data and other intellectual property rights created in cooperation between the parties or within the framework of the contractual relationship shall become the exclusive property of the Buyer. If necessary, the Seller shall take appropriate measures for assignment.
 - 6.4. Should a transfer of the aforementioned rights into the ownership of the Buyer not be possible for any reason, the Seller undertakes to grant the Buyer an exclusive, unrestricted, unlimited, free of charge, transferable, worldwide and irrevocable right to use the aforementioned rights.
 - 6.5. In addition, the Seller grants the Buyer an exclusive, unrestricted, unlimited, free of charge, transferable, worldwide and irrevocable right to use its intellectual property rights necessary for the Buyer to perform the contract.
 - 6.6. The Seller and its Affiliates shall not, directly or indirectly, manufacture, market, distribute or sell products or services (for themselves or for third parties) that imitate or are deceptively similar to products equipped with the Buyer's Rights described above and the associated features or functions. In particular, the Seller and its Affiliates shall not sell products or services to third parties if such products or services have been provided with a Buyer Part Number or Buyer Marking.
 7. CONFIDENTIALITY

All information provided to the Seller shall be confidential, unless the circumstances clearly indicate otherwise. The Seller undertakes to keep confidential information secret and not to disclose it to third parties without the Buyer's consent.
 8. DRAFTS

Any review or approval of drafts or prototypes by the Seller by the Buyer is for assistance only and does not relieve the Seller of its obligation to deliver the goods or services free of defects with the agreed characteristics.
 9. ACCESS TO WORKSHOPS/INSPECTION OF MANUFACTURING PROCESSES AND QUALITY

The Buyer shall have the right to enter the Seller's production facilities during normal business hours in order to inspect and ensure compliance with the agreed provisions and processes in connection with the manufacture of the goods. If, for whatever reason, it is not possible for the Buyer to physically inspect the production facilities, a suitable virtual alternative shall be used to exercise this right of inspection.
 10. WARRANTY
 - 10.1. Subject of the warranty

The Seller shall deliver goods and/or services without material defects and deficiencies in title and with the agreed characteristics. In particular, all product, performance and process specifications and documentation referred to in the order or the order confirmation shall also be deemed to be agreed properties or characteristics.
 - 10.2. The Buyer is not obliged to inspect the delivered goods and to immediately give notice of any defects.
 - 10.3. Limitation period for warranty claims



The limitation period for warranty claims is as follows:

- 10.3.1. forty-eight (48) months from the date of actual commissioning in the course of the entrepreneurial activity, or
- 10.3.2. fifty-four (54) months from the date of the completed delivery of all the goods from the Seller to the place of destination or the performance of the services at the place of destination, depending on which occurs first.
- 10.4. The "time of actual commissioning in the course of entrepreneurial activity" means the time at which the end product manufactured by the Buyer is operated by the Buyer or a third party in the course of entrepreneurial activity.
- 10.5. Scope of the warranty
 - 10.5.1. The Buyer shall have the unrestricted choice of the warranty remedy (improvement, exchange, price reduction, rescission). Accordingly, the Seller shall, at the Buyer's option
 - 10.5.1.1. repair the defective goods and/or services at its expense,
 - 10.5.1.2. replace the defective goods and/or services or parts thereof at its own expense or
 - 10.5.1.3. reimburse the Buyer for the costs of repair or replacement of the defective goods and/or services or parts thereof, provided that the repair is carried out by the Buyer himself or by a third party appointed by the Buyer for this purpose.
 - 10.5.2. The Buyer shall notify the Seller of the chosen warranty remedy in the event of a defect.
 - 10.5.3. The Seller shall reimburse the Buyer for the necessary expenses for the removal and installation or attachment of the defect-free item if the Buyer has installed the defective item in another item or attached it to another item in accordance with its type and intended use.
 - 10.5.4. If the Seller carries out the repair work himself, he shall bear all associated costs, in particular all travel costs, transport costs, taxes, fees and duties. In the event that the Buyer or a third party appointed by the Buyer carries out the repair or replacement of the defective goods and/or services, the Seller shall in turn bear the associated costs. In this case, the Seller shall reimburse the Buyer for all related costs, in particular the time and material costs, any third-party costs, travel costs, transport costs, taxes, fees and duties.
11. MODIFICATION AND SUSPENSION OF DELIVERY
 - 11.1. The Buyer reserves the right to modify the order at any time (including postponing the delivery date) or to suspend it for a certain period of time by written notice via e-mail or EDI system.
 - 11.2. If the change directly leads to a change in circumstances, an appropriate adjustment of the mutual performance obligations to the actual circumstances shall be made by mutual agreement. In this case, the Seller must provide evidence of the circumstances directly resulting from the change. If this is not done within 4 weeks of the request for change being communicated, the change shall be deemed to have been approved by the Seller without any other adjustment to the Agreement. The tacit approval of the change shall exclude the assertion of claims for damages insofar as the resulting damage does not exceed the simple order value.
 - 11.3. Should the Buyer postpone the required delivery date by more than 6 months into the future ("suspension"), the Seller shall, at the Buyer's request, immediately send copies of the outstanding orders and the subcontracts already placed as well as a detailed statement of the additional costs likely to be incurred as a result of the suspension.
 - 11.4. Without prejudice to the foregoing provisions, the Seller shall only be reimbursed for costs actually incurred and proven as a result of the modification or suspension, provided that the Seller has taken and proven appropriate measures to reduce costs.
 - 11.5. The Seller shall inform the Buyer without delay if it intends to change the production process, in particular, however, in the event of process changes, transfer of processes to another location, or a change of suppliers, the latter only being permissible after written approval by the Buyer.
12. RIGHT OF WITHDRAWAL
 - 12.1. The Buyer may at any time cancel an order in whole or in part by giving written notice to the Seller. In such event, the Buyer shall pay to the Seller reasonable termination costs equal to the actual costs incurred.
 - 12.2. In addition, the Buyer has the right to withdraw from an agreement if the Seller is in default. The Seller is in default if
 - the Seller does not provide the service/goods on the agreed due date or the Buyer justifiably refuses to accept the offered goods because the service was provided contrary to the Agreement or in a manner contrary to the Agreement, or
 - one of the other cases provided for in the law triggering the consequences of default occurs.
 - 12.3. A period of 14 calendar days is agreed as a reasonable grace period for complete performance of the Agreement before declaration of withdrawal.
 - 12.4. If the Buyer withdraws from the Agreement in the event of default, the Seller shall bear any resulting damage, in particular also additional costs incurred in connection with the replacement procurement of similar goods (covering transaction).
 - 12.5. However, in the event of default, the Buyer shall be free to continue to adhere to the Agreement and its performance.
 - 12.6. If the Buyer exercises its right of withdrawal, the Seller shall hand over to all documents, materials and plans relating to the order in editable file format.

13. RELEASE

The Seller is obliged to defend the Buyer, its affiliated companies, any legal successors and the persons acting on behalf of the Buyer in all legal disputes (out of court and in court) in connection with the Agreement which are based on at least negligent conduct on the part of the Seller or its assistants, to indemnify them against costs and to hold them completely harmless and free of claims. This applies in particular to claims raised by third parties on the basis of alleged infringement of intellectual property.

14. LIABILITY AND INSURANCE

- 14.1. The Seller shall be liable within the scope of the statutory provisions for all personal injury, property damage and financial loss for which he or its vicarious agents are responsible in connection with its goods and/or services. In order to adequately cover the Seller's liability risks, the Seller shall take out and maintain, at its own expense, business/professional liability insurance (including subcontractor risk, if applicable) with an appropriate coverage amount, but at least in the amount of EUR 1 million per claim, with an "A"-rated insurer (AM Best or S&P; "A"-rating or better) for the duration of the contractual obligation towards the Buyer. If the goods and/or services of the Seller are in principle also capable of causing product liability and/or environmental damage, the liability insurance to be maintained by the Seller shall also include risk-adequate insurance cover for product liability and/or environmental risks with an appropriate sum insured, but at least in the amount of EUR 1 million per claim (including subcontractor risks, if applicable). If the Seller's goods and/or services are in principle suitable for also causing pure financial loss to the Buyer (e.g. installation and removal costs within the scope of product liability or costs/losses at the Buyer due to software errors), the liability insurance to be provided by the Seller must also include financial loss liability insurance (e.g. "extended product liability insurance" or IT financial loss insurance) with adequate coverage, but at least in the amount of EUR 1 million per claim (including subcontractor risk, if applicable).
- 14.2. The Seller shall maintain the aforementioned liability insurance cover for at least three (3) further years after complete fulfilment of the Agreement. The existence of the aforementioned liability insurance cover shall be proven at any time at the Buyer's request by submitting the relevant confirmation of cover from the insurer. The Seller's liability exists independently of the insurance cover and is not limited to the scope of the insurance cover or the amount of the sum insured.

15. ASSIGNMENT AND SUBCONTRACTING

- 15.1. The Seller shall not be entitled to assign the Agreement or any of its rights and obligations, including claims, without the prior written consent of the Buyer. The Seller shall not, without the prior written consent of the Buyer, subcontract or assign to any third party the performance of all or any substantial part of the work required by this order.
- 15.2. If the Buyer agrees to an assignment of the Agreement or subcontracting by the Seller, the Seller shall ensure that the assignee is bound by all the terms of the Agreement. The Seller shall provide the Buyer with all information requested by the Buyer without delay.
- 15.3. If the Seller has subcontracted any part of the work under the contract to a third party which is not located in the country of final destination of the goods and/or services, the Seller shall ensure compliance with all customs regulations relevant in this context.
- 15.4. The Seller agrees that the Buyer shall be entitled to freely assign the Agreement or the order and the rights and obligations arising therefrom to any third party or affiliate.

16. COMPLIANCE AND SUSTAINABILITY

The Seller warrants that it will comply with all laws applicable to the relevant legal transaction as well as with the "Ten Principles of the UN Global Compact", which are available at <https://www.unglobalcompact.org/what-is-gc/mission/principles>

17. APPLICABLE LAW/JURISDICTION

- 17.1. The Agreement and all legal disputes in connection therewith shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the conflict of laws rules and excluding the United Nations Convention on Contracts for the International Sale of Goods.
- 17.2. The exclusive place of jurisdiction shall be the competent court in Frankfurt am Main. Alternatively, the Buyer is entitled to choose the registered office of the Seller against whom a claim is made as the place of jurisdiction (place of jurisdiction at the registered office of the defendant).
- 17.3. In addition, the Buyer shall be entitled to have all disputes arising out of any contractual relationship between the Buyer and the Seller finally settled by recourse to arbitration under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with those Rules.

18. SEVERABILITY CLAUSE

Should one or more provisions of these Terms of Purchase be or become invalid, this shall not affect the validity of the remaining provisions. The parties hereby agree to replace the invalid provision with a valid provision coming as close as possible to the economic purpose of the invalid provision.