

HIRE ASSOCIATION EUROPE LIMITED

Conditions of Purchase

GUIDANCE NOTES FOR IMPLEMENTING THE CONDITIONS OF PURCHASE 2025

IMPORTANT

PLEASE READ THE FOLLOWING NOTES CAREFULLY AND ACT ON THEM BEFORE USING THE MODEL CONDITIONS OF PURCHASE (HEREAFTER CALLED THE CONDITIONS OF PURCHASE). FAILURE TO DO SO COULD RESULT IN THE CONDITIONS OF PURCHASE HAVING NO LEGAL EFFECT.

SECTION ONE explains how to correctly use and incorporate the Conditions of Purchase into your business procedures.

SECTION TWO explains how to complete and if needed bespoke the Conditions of Purchase for your business.

SECTION THREE provides a summary check list.

You should make sure you read the Conditions of Purchase carefully. Questions concerning these should be directed to the Legal Support Helpline. Details can be obtained from HAE Membership Services: 44 (0) 121 380 4600.

It should be noted that the HAE Conditions of Purchase are chiefly intended for the purchase of products up to a value of around £30,000. They are not intended for use primarily in relation to the purchase of products or sub hire of goods of significant value and/or volume products.

The terms and conditions are intended to be used for purchasing in England and Wales, the Republic of Ireland, Northern Ireland and Scotland.

SECTION ONE

1. GENERAL

1.1 It is vital that you incorporate the Conditions of Purchase into any existing and new buying arrangements. If you do not, the Conditions of Purchase will not form part of the contract. As a result, you will be unable to rely on them or seek legal enforcement.

1.2 A purchase contract can be made orally, electronically or in writing. It will come into existence as soon as agreement is reached on the most important issues such as the products required and/or services involved.

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1.3 It is not always even necessary to agree the price, as the courts may be prepared to imply certain terms, including the price to be paid.

1.4 These notes are designed to assist you with the implementation of the Conditions of Purchase so that they form a binding part of the contract you are making.

2. STATIONERY

2.1 You **MUST** do as much as possible to draw your Conditions of Purchase to the supplier's attention before the contract is formed.

2.2 This is assisted by your Conditions of Purchase being printed and/or hyperlinked on as many pre-contractual documents and locations as possible. This could include:

- Quotation request forms;
- Order forms;
- Purchase order acknowledgement forms;
- Publishing them on your website
- Hyperlinks linked back to your website on email footers
- Giving to suppliers when issuing purchase orders
- Sending to suppliers where you have an existing purchasing agreement

2.3 Where Suppliers provide an ongoing credit account, please email the new Conditions of Purchase to them, please make it clear in the covering email that the new Conditions of Purchase apply to all future hire and purchases. Please request a read receipt and put a copy of the read receipt and the email you sent in your file, as you may need this as future evidence.

2.4 Where the Conditions of Purchase are printed on the reverse of a document like a purchase order, it is important to state clearly on the front of the document that important terms of business which will affect the other party's rights are set out on the reverse of the document. This warning should be printed prominently so that your supplier's attention is clearly drawn to your Conditions of Purchase.

2.5 Wherever possible, you should obtain your Supplier's signature agreeing that your Conditions of Purchase apply or if offsite an electronic confirmation after allowing your Supplier to scroll down, then using something like DocSign or, failing that, an email confirmation. This may reduce the potential for future disputes as to whether your Conditions of Purchase apply to the contract and/or were accepted by the Supplier.

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3. ORAL CONTRACTS

3.1 A valid and binding contract can be made by oral means, e.g. by telephone or in person. Staff should make it clear that any goods purchased or sub hired are subject to your Conditions of Purchase before the contract is concluded.

3.2 Standard scripts can be used to ensure that buying staff adhere to this practice. You may also wish to consider having a proforma order form which staff complete to confirm that they have informed the Supplier that the contract will be subject to your Conditions of Purchase. Where the contract is made by telephone you have the legal right to record the call and keep it as legal evidence, but you should inform suppliers that calls are recorded for security and training purposes and also replicate this on your Privacy Policy.

3.3 Where possible your Conditions of Purchase should be supplied to the supplier in advance of the contract being formed and at the time it is formed. If this is not possible, they should be sent to the supplier as soon as possible after the contract has been made and before the goods are received.

4. POSTAL, EMAIL, FAX AND WRITTEN CONTRACTS

4.1 The aim is to ensure that your Conditions of Purchase appear on the last document to pass between you and your supplier before the contract is concluded. This is in an attempt to win the so-called "battle of the forms".

The "battle of the forms" effectively provides that "he who fires the last shot wins". This means that the terms and conditions contained in the last document passing between two parties before a contract is concluded will usually be those which apply to the contract.

4.2 As a result, if you receive a supplier's quotation with their terms and conditions, in order to win the "battle of the forms", it is important that you take some action. Either send back a purchase order which is placed subject to your own Conditions of Purchase, or bring it to the supplier's attention in some other way that you do not accept its terms and conditions and that the contract is to be subject to your Conditions of Purchase.

4.3 Where orders are placed with a supplier by post, email or even fax, and particularly where the order refers to the provider's standard terms of business, you MUST ensure that the purchase order is placed on the basis of your own Conditions of Purchase.

4.4 Acceptance by your supplier of an order can be oral and it is important to remind the provider that all orders are placed subject to your Conditions of Purchase, together with some note or evidence of this. Where the supplier's order acceptance is by email, fax or post, you should acknowledge and remind the provider that the order is subject to your Conditions of Purchase.

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4.5 It is also helpful to try to avoid returning any documents originating from your suppliers and to always respond to any terms put forward by your supplier with a document which contains or refers to your own Conditions of Purchase.

5. TIMING

5.1 Please note that putting Conditions of Purchase on the back of invoices is too late in the purchase cycle as you must demonstrate that your supplier knew or ought to have known them before they entered into any supplies contract

5.2 This is because the invoice is sent after the contract itself has been entered into resulting in your Conditions of Purchase being treated as a post-contractual document.

6 JURISDICTION

6.1 There is only one set of HAE model Conditions of Purchase that can be used irrespective of the legal jurisdiction.

6.2 The governing law that will apply to a contract will be the law of England and Wales. If the HAE Member is based in Scotland, Northern Ireland or the EU (ROI) clause 16.1 and 16.2 can be amended to a country of choice.

6.3 Please note that specific advice has not been sought from lawyers based in different jurisdictions. Therefore, if you are based outside England and Wales you may wish to obtain local legal guidance on any amendments required to these Conditions of Purchase to meet your specific trading requirements.

SECTION TWO

1 The 2025 Conditions of Purchase are relatively straightforward to complete.

1.1 Clause 0 '[Insert HAE Member's full trading name and address and telephone number plus email address],

1.2 Clause 1.2 '[Insert your trading name and if applicable company registration number], INSERT SUPPLIER NAME' Insert your company name, and complete the other sections in brackets. You may also want to add a link to your Privacy Policy.

1.3 'Purchase order' and verbal orders: HAE members use different methods for placing supplier orders. This could involve a handwritten order pad, a computer-generated order, a purchase order numbering system or some other method. However, many HAE members, even if a supplier provides a written order, have a computer-generated note that produces the purchase order or a purchase order book. Whatever method your business uses to record the transaction should be inserted into Clause 2.5 [insert method use i.e. purchase order] so as an example Specification could be changed to read: as set out on the delivery note issued by the Supplier. If not applicable please delete: [insert method use i.e. purchase order]

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1.4 Clauses 16.1 and 16.2 may need changing, [England and Wales] if the HAE member is based in Scotland, Northern Ireland or the Republic of Ireland to reflect the relevant jurisdiction.

SECTION THREE

When implementing the Conditions of Purchase please cross reference with the check list below:

- 1 Insert into the various highlighted red brackets of the new Conditions of Purchase the information requested, see Section Two for more guidance.
- 2 Please send the Conditions of Purchase to all your regular suppliers and inform them that these replace any earlier versions issued.
- 3 Amend any stationery such as purchase orders, order processing paperwork etc so that the Conditions of Purchase are printed on the back of any supplier facing paperwork.
- 4 Consider how best you can inform suppliers about the new Conditions of Purchase and ensuring the buying department use and reference them. For regular suppliers you could send a copy and covering note with your monthly remittance statements, which can be posted or emailed. Remember, you don't need permission to email because it is a transactional email.
- 5 Consider having a team training morning covering the new Conditions of Purchase.
- 6 Regularly review the Conditions of Purchase (e.g. every six months) to see that they are working.
- 7 When setting up new supplier accounts consider having a section where the supplier is required to sign and accept your Conditions of Purchase.
- 8 Please ensure that suppliers don't impose their own terms and conditions on your business, by ensuring that any purchase orders are placed subject to your Conditions of Purchase.

These Conditions of Purchase notes are provided as a guide to the procedures to ensure your terms and conditions are correctly applied to all business and consumer transactions.

If you have any queries, please contact the HAE Legal Helpline.

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