

# STANDARD TERMS AND CONDITIONS OF PURCHASE

## 1. VALIDITY

- 1.1** All deliveries, services and offers shall be carried out by the supplier exclusively according to these standard terms and conditions of purchase. They are part of all contracts with our suppliers regarding the deliveries and services offered by the supplier. They also apply for all future deliveries, services and offers to the principal even if they are not agreed separately.
- 1.2** Standard terms and conditions of our suppliers or third parties do not apply even if we do not object to them individually. Even if we make reference to a letter that contains the standard terms and conditions of the supplier or a third party or that makes reference to such standard terms and conditions, this does not constitute our consent to the validity of those standard terms and conditions.
- 1.3** Legally relevant declarations and notifications which are to be submitted toward us by the supplier after conclusion of the contract (e.g. setting of deadlines, requests for payment, notice of withdrawal) require the written form in order to be valid.
- 1.4** Individual agreements shall prevail over these standard terms and conditions.

## 2. ORDERS AND COMMISSIONS

- 2.1** Supplier has to fully comply with our requests and their provisions when making his offer. He has to expressly inform us about any deviations. Supplier's offers have to be made free of charge for us.
- 2.2** Our order becomes effective with its written submission or its approval. Supplier has to inform us about any obvious errors (e.g. write or calculation errors) and incompleteness of the order including the order documents before accepting the order allowing us to correct or complete it; otherwise the contract is deemed not concluded.
- 2.3** Supplier shall approve our order in writing within 5 days without deviations or carry it out without reservation by shipment of the goods (acceptance of the order).
- 2.4** Belated acceptance shall be deemed to be a new offer which needs to be accepted by us.
- 2.5** We are entitled to change time and place of delivery as well as the type of packaging at any time in writing within a notice period of at least 5 calendar days before the agreed delivery date. The same applies to changes of product specifications as long as they can be implemented in the supplier's regular production process without any increased expenses, whereas in those cases the notice period of the afore mentioned part is at least 10 calendar days. We will reimburse supplier for any proven and adequate additional costs, caused by the change. If such changes lead to delays in delivery which cannot be avoided in supplier's regular production and business process despite reasonable effort, the originally agreed delivery date will be postponed accordingly. The supplier

will inform us in writing about his careful assessment of the expected additional costs or delays of delivery in due time before the delivery date, however at least within 2 work days after receipt of our notification.

## 3. PRICES, CONDITIONS OF PAYMENT, INVOICES

- 3.1** The price specified in the order is binding.
- 3.2** Unless agreed otherwise, the price includes all services and supplementary works of the supplier (e.g. assembly, installation) and additional expenses (e.g. proper packaging, costs for transportation including costs for transport and liability insurances). Supplier has to take back all packaging material upon our request.
- 3.3** Unless agreed otherwise, we shall pay the price after delivery of the goods and receipt of the invoice within 14 days with 3 % deductible or within 60 days net. Timeliness of the payment is determined by the date when our bank receives our instruction to carry out the transfer.
- 3.4** All order confirmations, shipping documents and invoices must contain our order number, article number, delivery quantity and delivery address. Should one or more of these information be missing and therefore cause a delay in processing the delivery in our normal business operations, the payment period according to sec. 3.3 is extended by the period of the delay. Supplier has to reimburse any costs we incur investigating the missing information.
- 3.5** If in default with our payment, we owe default interest by 5 % over base interest rate according to § 247 German Civil Code.
- 3.6** We are entitled to our right to set off, our right of retention and our defence of non-performance according to the legal provisions. We are particularly entitled to retain due payments as long as we have claims against supplier because of incomplete or defective performances.
- 3.7** The supplier is only entitled to offset and retention rights if the counter claim has been finally determined by a court of law or is undisputed.

## 4. DELIVERY PERIODS AND DELIVERY, TRANSFER OF RISK

- 4.1** Time of delivery specified in the order (date of delivery or time period of delivery) is binding. Premature deliveries are not permitted, unless mutually agreed with the supplier on an individual basis.
- 4.2** Supplier is obliged to inform us immediately in writing if circumstances occur or become evident that will lead to supplier's failure to comply with the delivery date.
- 4.3** If the latest day on which the delivery has to be carried out can be determined by the contract, the supplier shall automatically be in default on the expiry of this day without requiring a reminder from our part.

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- 4.4** If the supplier is in delay with the delivery we are entitled to our legal claims without any restrictions including our right to withdrawal from the contract and our claim for compensation of damages instead of delivery after exceeding a reasonable time period set by us.
- 4.5** We are entitled to demand payment of a contractual penalty for delivery delays, after prior submission of a written warning to the supplier, for each begun week in default of 0,5 % and a maximum of 5 % of the net order value. The contractual penalty shall be set off against the damages for delay to be paid by the supplier.
- 4.6** Partial deliveries by the supplier are not permitted without our prior written consent.
- 4.7** Supplier is not entitled to have third parties (e.g. subcontractors) perform his services without our prior written consent. The supplier bears the procurement risk for his performances.
- 4.8** The delivery shall be effected "free at domicile" including packaging at the address specified in the order. If an address is not specified and not agreed otherwise, delivery is to be performed at our place of business in Groß-Umstadt. The delivery address is also the place of performance.
- 4.9** In case of foreign business transactions delivery shall be carried out based on the INCOTERMS 2010 DDP (Delivered Duty Paid) to the address specified in the order. In addition the Uniform Customs and Practice for documentary credits (UCP) apply in their version valid at the time of conclusion of the contract unless otherwise agreed in writing in the contract or in these standard terms and conditions.
- 4.10** Each delivery shall be accompanied by a delivery note stating the date (issue and dispatch), content of the delivery (article number and quantity) and our order identification (date and number). If the delivery note is missing or incomplete we are not responsible for delays in processing and payment resulting from this.
- 4.11** The risk of accidental loss or accidental deterioration of the goods shall pass to us, even if the shipment was agreed, not before delivery of the goods at the place of performance. If an acceptance is agreed, the acceptance determines the passing of risk. Also if an acceptance is agreed, the legal regulations of the German Civil Code on contracts to produce a work shall apply.

## 5. PROVISIONS OF MATERIALS

- 5.1** We reserve the property and copyrights of our orders, commissions and drawings, illustrations, calculations, descriptions and other documents submitted to the supplier. The supplier is not permitted to make them available to third parties, publish them, use or duplicate them himself or by third parties without our expressed consent. He is obliged to completely return all these documents upon our request if they are no longer needed

for proper business operations or if negotiations do not lead to the conclusion of a contract. Any copies made by the supplier have to be destroyed; this excludes any documents stored pursuant to the statutory storage duties and the storage of data as a backup as a part of usual data storage practice.

- 5.2** Tools, equipment and models, samples, software, works or works in progress submitted to the supplier or produced for the purposes of the contract and invoiced by the supplier remain our property or become our property. Supplier is obliged to mark these items as our property, store them carefully, protect them against damages of any kind and use them only for the purposes of the contract. Costs for maintenance or repair of these items shall be borne by both parties equally if not agreed otherwise. However, supplier shall bear all costs if they are caused by defects of items produced by the supplier or if they are caused by inappropriate handling by the supplier, his employees or other agents of the supplier. The supplier shall immediately inform us about any significant damage to the items. Upon our request he is obliged to return the items to us in proper condition when they are no longer needed to fulfil the contract.
- 5.3** The reservation of proprietary rights by the supplier is only valid if it relates to the payment duties for the ordered products where the supplier maintains proprietary rights until payment is made. Especially extended and lengthened reservation of proprietary rights is excluded.

## 6. QUALITY / DEFECTIVE DELIVERY

- 6.1** Supplier guarantees to comply with all applicable statutory, official or contractually agreed requirements and European legal standards, especially, but not limited to, security provisions and statutory prohibitions, regarding all products to be delivered or produced while performing the services and deliveries of the products. In addition, supplier guarantees that all services or products, that shall be delivered, comply with all our given quality requirements and technical specifications. All documentation or declaration, required in the contract or by law, constitute an essential part of each delivery and has to comply with the statutory provisions and commercial customs. Supplier guarantees that all deliveries, services and products fully comply with the provisions of the RoHS Directive, the so called REACH regulation and the Electrical and Electronic Equipment Act (ElektroG), to the extent that the products and services fall under those provisions. This also applies for any statutory provisions on declaration and registration. In relation to us and our customer supplier is considered to be the distributor of the delivered products or the products to be delivered to the customer with all corresponding obligations. Supplier indemnifies us from all third parties' receivables and claims that may arise from the breach of any of the provisions above.
- 6.2** In case of defects in quality and defects in title of the goods (including wrong and short delivery, improper

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assembly and defective guides for assembly, operation or usage) and other breaches of duty by the supplier, the legal provisions shall apply with the following exceptions.

**6.3** According to the legal provisions the supplier is liable for the goods to be in the contractually agreed condition at the time of passing of the risk to us. In any case, those product descriptions that are the subject matter of the respective contract or incorporated in the contract in the same way as these standard terms and conditions – in particular due to identification or reference in our order – shall be deemed the contractual agreement on the properties and conditions, regardless whether the product description originates from us, the supplier or the producer.

**6.4** Notwithstanding § 442 sec. 1 sentence 2 German Civil Code we shall be entitled to unrestricted warranty claims if the defect remains unknown to us upon conclusion of the contract as a result of gross negligence.

**6.5** The commercial duty to examine and to notify defects shall be governed by the statutory provisions (§§ 377, 381 German Commercial Code) with the following exceptions. Our duty to inspect is limited to defects that are obvious upon visual inspection of the incoming goods by an external examination including the delivery papers and at the quality control by way of a random sample test procedure (e.g. transport damages, wrong and short deliveries). If an acceptance is agreed, the obligation to inspect the goods does not apply. For the rest it depends to what extent an inspection taking into account the particular circumstances of the individual case is feasible within the proper course of business. Our obligation to give notice of defects that are discovered later remains unaffected. In all cases our objection (notification of defect) is deemed timely and without delay when the supplier receives the notice within 10 working days.

**6.6** The costs spent by the supplier for the purposes of testing and remedying defects shall be borne by the supplier even if it turns out that there was in fact no defect. Our liability for damages caused by an unjustified request to remedy defects remains unaffected; insofar we are only liable if we recognized or gross negligently did not recognize that there was no defect present.

**6.7** If the supplier does not fulfil his obligation to supplementary performance – at our option either by remedying the defect (remedying defect) or by delivering a good which is free from defects (substitute delivery) – within an appropriate time period set by us, we shall be entitled to remedy the defect ourselves, perform a coverage purchase and demand reimbursement of our necessary costs or an appropriate advance payment from the supplier. If the supplementary performance by the supplier failed or is unacceptable for us (e.g. because of particular urgency, risk to operational safety or to prevent disproportionately large damages) we are not obliged to give a notice period; the supplier shall be informed immediately if at all possible in advance.

**6.8** As for the rest we shall be entitled to reduction of the purchase price or withdrawal from the contract according to the legal provisions in case of defects in quality and defects in title. We are also entitled to claims for damages and reimbursement of expenses according to the legal provisions.

**6.9** By acceptance or approval of samples or test products submitted to us we do not agree to waive the right of defect claims.

**6.10** Upon receipt by the supplier of our written defect notification the statutory limitation of guarantee claims is inhibited. In case of replacement delivery or removal of defects the defects liability period for the replaced or mended goods restarts unless we had to assume from the behaviour of the supplier that he did not feel committed to this action but carried out the removal of defects or replacement delivery as a gesture of good will or similar reasons.

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## 7. PRODUCT LIABILITY

**7.1** The supplier shall be responsible for all claims asserted by third parties based on damages to property or persons, which can be traced back to a defective product which he delivered and shall be obliged to release us from any liability that may result. If we are obliged to carry out a recall campaign toward third parties due to an error of products delivered by the supplier, the supplier shall cover all costs related to the recall campaign.

**7.2** The supplier is obliged at his own cost to maintain a product liability insurance policy for the duration of a possible product liability with an appropriate cover sum, which, unless otherwise agreed on an individual basis, does not have to cover the risk of a recall or punitive or similar damages. Upon our request the supplier shall send a copy of the product liability insurance policy to us at any time.

## 8. PROTECTIVE RIGHTS

**8.1** The supplier shall be responsible for insuring that no third party protection laws are breached in connection with products produced by the supplier or on behalf of the supplier in countries of the European Union, Northern America and other countries.

**8.2** The supplier is obliged to indemnify us from all claims that third parties raise against us in connection with the breaches of the commercial protection laws mentioned in sec. 8.1 and will refund us all necessary expenses in connection with the demands. This claim is irrespective of any fault of the supplier.

## 9. SUPPLIER RECOURSE

**9.1** We are entitled without restrictions to our statutorily determined rights of recourse within a supplier chain (supplier recourse according to §§ 478, 479 German Civil Code) as well as claims for defects. We are entitled to demand a certain type of supplementary performance (remediating defects or replacement delivery) that we owe to our customer. Our legal right to choose (§ 439 sec. 1 German Civil Code) remains unrestricted.

**9.2** Before we approve or fulfil a claim for defects, raised by our customer against us (including a claim to repay expenses according to §§ 478 sec. 3, 439 sec. 2 German Civil Code) we will inform the supplier including a short notification of the facts and request from him a written statement. If the supplier does not submit his statement to us within reasonable time and no amicable solution is found, the fulfilled claim for defects is regarded as owing to our customer; in that case the supplier shall be responsible for supplying counter evidence.

**9.3** Our claims arising from supplier recourse also apply if we or our customer further processed the product, e.g. by implementing it into another product, prior to delivery to a consumer.

## 10. SPARE PARTS

**10.1** The supplier is obliged to keep spare parts for the products delivered to us available for a time period of at least 10 years after delivery.

**10.2** If the supplier intends to stop the production of spare parts for the products delivered to us, he shall inform us immediately after his decision. This decision has to – subject to section 10.1 – be made at least 12 months before production is stopped.

## 11. LIMITATION PERIODS

**11.1** The statutory limitation periods for claims of both parties shall apply with the following exceptions.

**11.2** Notwithstanding § 438 sec. 1 no. 3 German Civil Code the limitation period for claims arising due to defects shall be 3 years beginning with the date of the passing of the risk. Risk passes not before delivery at the address specified by us. If an acceptance is agreed, the limitation period begins with the acceptance. The 3 year limitation period also applies for claims arising from defects in title, whereas the statutory limitation period for claims for the restitution of property (§ 438 sec. 1 no. 1 German Civil Code) remains unaffected; beyond that, claims arising from defects in title are not subject to limitation for as long as the third party's right – especially in lack of limitation – can be brought against us.

**11.3** The statutory limitation periods regarding purchase contracts including the above mentioned extension apply – to the extent permitted by law – for all claims arising from defects. If we are entitled to non-contractual claims for damages, the regular statutory limitation period (§§ 195, 199 German Civil Code) shall apply unless in the individual case the application of the limitation periods under the law governing the sales of goods or services leads to a longer limitation period.

## 12. MINIMUM WAGE, USE OF SUB-CONTRACTORS, RIGHT TO CANCEL

**12.1** The supplier is obliged to comply with the minimum wage regulations (MiLoG) in its currently valid version. We reserve the right to require the supplier to provide current evidence of compliance with the minimum wage regulation, e.g. listing of the working hours performed and the wages paid for them.

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**12.2** The supplier is obliged to carry out the works or services owed to us. The use of a sub-supplier for this requires our written consent in advance. In such cases the supplier has to indemnify us against third party claims under § 13 MiLoG on the first demand.

**12.3** Should the supplier not meet their obligations above then we have the right to terminate the contract without notice.

## **13. CONFIDENTIALITY**

**13.1** For a period of 5 years after conclusion of the contract the supplier is obliged to maintain strict confidentiality regarding the conditions of the order and all information and documents provided for this purpose (with the exception of publicly accessible information) and to use them solely for the execution of the order. The supplier will hand back any information immediately upon our request after processing enquires or orders.

**13.2** Without our prior written consent the supplier is not permitted to mention the business relationship with us in advertising materials, brochures etc. and to exhibit products produced for us.

**13.3** The supplier shall be obliged to commit his employees and subcontractors to follow these standard terms and conditions, especially this sec. 12.

## **14. SURRENDER**

**14.1** The supplier is not authorised to surrender claims from this contractual relationship to third parties. This does not apply to monetary claims.

## **15. PLACE OF JURISDICTION, APPLICABLE LAW**

**15.1** The exclusive place of jurisdiction for all disputes arising from the contractual relationship is Darmstadt. However, we shall be entitled to bring action against the supplier also at his place of business.

**15.2** The contracts concluded between us and the supplier are subject to the laws of the Federal Republic of Germany with exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **16. DATA PROTECTION**

**16.1** We are working with EDP systems and store data to the extent permitted by law (§ 33 German Privacy Act).