

# **GENERAL PURCHASING TERMS AND CONDITIONS**

Effective: December 2010

## **§ 1 General – Scope of validity**

1. Our general purchasing terms and conditions apply exclusively; we do not accept any conflicting or deviating supplier's terms and conditions unless we expressly agree to these in writing. Our general purchasing terms and conditions apply also if we accept supplier's delivery without any reservations even if we are aware of conflicting or deviating supplier's terms and conditions. They apply also for all future business relations even if they are not expressly agreed upon once again.
2. All covenants agreed upon between our company and the supplier in performance of this agreement will be fixed in writing in this agreement.
3. Our general purchasing terms and conditions apply exclusively to our relations with business undertakings.

## **§ 2 Quotations – tender documents**

1. The supplier undertakes to accept our orders within a period of three days.
2. We reserve all proprietary rights and copyrights to images, depictions, calculations and other documents; these may not be made accessible to third parties without our express written consent. They will be used exclusively for production according to our purchase orders; they will be returned to us without further request after our purchase order is completed. They will be kept secret from third parties; the covenant in § 9 sec. 4 shall also apply.

### **§ 3 Prices – terms of payment**

1. The price stated in the purchase order shall be binding. If no other written agreement has been made, the price shall be "free domicile" including packaging. Return shipment of empties and packaging material, unless disposable packaging, will be made freight collect at the supplier's expense.
2. Prices shall be understood to be stated without the applicable VAT.
3. We will process invoices only if we receive them apart from the goods shipment and if the purchase order number is stated in these in compliance with our order specifications. The supplier shall be responsible for all consequences arising from non-compliance with this obligation unless he is able to demonstrate that such act arose from circumstances beyond his sphere of influence.
4. Unless agreed upon differently in writing, we will pay the purchase price minus a 3% discount on the 15<sup>th</sup> day of the month following the month of delivery or net within 90 days after receipt of the invoice.
5. We are fully entitled to all statutory offsetting and retaining rights. We are authorized to assign all claims arising from the purchase agreement without the supplier's consent. The supplier is not authorized to assign claims from the contractual relation to third parties without our prior written consent.

### **§ 4 Delivery / delivery schedules**

1. The supplier must perform the contractual obligation himself. Subcontracting by the supplier is admissible only with our express written consent.
2. The deliveries must be in compliance with the quality, quantity and scheduling stated in the purchase order.
3. For orders not yet entirely performed, we are authorized to request changes related to design, delivery and delivery schedules provided we can demonstrate to have reasonable interest in such modifications, that the supplier has the technical capacities and abilities to implement such

modifications, and that the request for such modification is feasible.

4. The agreed delivery schedules shall be binding; the supplier warrants to provide for conditions allowing for punctual delivery.
5. In case of delayed delivery, we may resort to statutory relief. We are especially entitled, after fruitless expiration of a grace period, to claim damages due to delay in addition to contract performance or to claim damages for non-performance in lieu of contract performance or to step down from the contract. In case we claim damages, the supplier is entitled to demonstrate to us that he is not responsible for the violation of contractual duties.
6. Additional freight costs for rush or express deliveries required due to non-compliance with the stipulated delivery deadlines will be borne by the supplier.
7. The supplier is obligated to inform us immediately as soon as circumstances arise (or as soon as he becomes aware of these) which might lead to his inability to comply with the agreed delivery schedule.

#### **§ 5 Passage of risk – documents**

1. Unless agreed upon differently in writing, the delivery shall be made "free domicile"; passage of risk becomes effective as soon as the goods have been properly delivered and received.
2. The supplier is obligated to state our purchase-order number accurately on all shipping papers and delivery notes. Should the supplier fail to do so, we shall not be responsible for any delays in processing.

#### **§ 6 Quality**

1. The supplier warrants that his goods and services have the characteristics, qualities and features specified in the purchase order and that they are in compliance with our stated specifications, drawings, samples and other descriptions.
2. The supplier will perform quality inspections which are appropriate in terms of nature and scope and which meet state-of-the-art requirements.

3. In case initial samples or approval samples are requested, the supplier may begin with series production only after having received our formal written approval.
4. We expect the supplier to orient the quality of the products he delivers to us towards the respective state-of-the-art status and to notify us about potential improvements and technical modifications. All and any modifications of the delivery items must previously be approved by us in writing.
5. The supplier warrants and guarantees compliance with all statutory safety and environmental regulations applicable in Germany.

#### **§ 7 Inspections for defects – liability for defects**

1. We are obligated to inspect the goods within a reasonable period of time for any visible quality and quantity deviations. A complaint will be considered made in due time if it is received by the supplier within a period of ten workdays after receipt of the goods or, in case of hidden defects, after these are detected.
2. We may avail ourselves without restrictions of all statutory claims for defects. In any case we are entitled at our sole discretion to demand correction of defect by the supplier or to demand delivery of new items. This shall not affect our entitlement to our right to recover damages, specifically to compensation in damages in lieu of contract performance.
3. We are authorized to correct the defects ourselves at the supplier's expense in particularly urgent cases or if time is of essence.
4. The period of limitation shall be 36 months starting at the passage of risk.

## **§ 8 Product liability – indemnification – liability insurance**

1. If the supplier is responsible for a product defect, he is obligated to save us harmless from third-party claims for damages upon first request if the cause lies within the supplier's organizational and responsibility domain and if the supplier himself is liable in respect of rights and duties as to third parties.
2. In the scope of his liability for claims as defined in sec. 1, the supplier is also obligated to refund any expenses as defined in §§ 683, 670 BGB (*German civil code*) and §§ 830, 840, 426 BGB, which we incur through or in context with any recall action initiated by us. We will inform the supplier - to the extent possible and reasonable - about content and scope of the recall action and will give him the opportunity to comment. This shall not adversely affect any other statutory claims.
3. The supplier undertakes to take out a product liability insurance with an insured sum of 10 million € per personal injury/property damage - blanket insurance- ; should we be entitled to more extensive claims for damages, these shall not be adversely affected.

## **§ 9 Industrial property rights**

1. The supplier warrants that no third-party rights in the Federal Republic of Germany and the EU are violated in context with his deliveries.
2. Should any claims be put forward against us by third parties for violation of industrial property rights, the supplier is obligated to save us harmless against these claims upon first written request. We are not authorized to come to any agreements with the third party - especially to come to an out-of-court agreement - without the supplier's consent.

3. The supplier's obligation to save us harmless relates to all expenses which we necessarily incur through or in context with the assertion of claims against us by third parties.
4. The supplier's aforementioned obligations to save us harmless shall not apply if the supplier manufactured the items of delivery on the basis of drawings, models or identical descriptions or specifications made available by our company and the supplier doesn't know or - in context with the products he developed - doesn't need to know that they violate third-party rights.
5. The period of limitation for these rights of indemnity shall be three years starting at the time we become aware of the assertion of third-party claims.

**§ 10 Retention of ownership – provision of materials – tools – obligation to maintain secrecy**

1. We retain ownership of all parts (conditional commodity) and tools provided by us. Processing or conversion by the supplier is done for our purposes. In case our conditional commodities are processed with/incorporated into items to which we have no ownership rights, we acquire co-ownership rights in the new item in proportion of the value of our item (purchase price plus VAT) to the other processed items at the time they are processed.
2. If the item we provide is irreversibly incorporated with other items to which we have no ownership rights, we acquire co-ownership rights in the new item in proportion of the value of the conditional commodity (purchase price plus VAT) to the other incorporated items at the time they are incorporated. If this incorporation is such that the supplier's item is the principal item, it is considered agreed that the supplier conveys proportional co-ownership rights to us. The supplier safeguards the sole ownership or co-ownership rights for us.
3. The supplier is obligated to use the tools exclusively for the production of the items we order. The supplier is obligated to insure our tools against fire, water and theft at reinstatement value at his own expense. At the same time, the supplier already now assigns all claims for compensation from this insurance to us; we hereby accept such

assignment. The supplier is obligated to have any required maintenance work and inspections as well as all repair and service work done in due time at his own expense. The supplier will immediately notify us about any defects. Should he culpably fail to do such, this shall not adversely affect any claims for damages.

4. The supplier is obligated to keep all provided depictions, drawings, calculations and other records and information in strict confidence. They may be disclosed to third parties only with our explicit approval. This obligation to maintain secrecy is also in effect after expiration of this agreement. The obligation ceases if and to the extent the know-how incorporated in the provided depictions, drawings, calculations and other records becomes general knowledge.
5. To the extent our collateral rights as defined in sec. 1 and/or sec. 2 exceed the purchase price of all our conditional commodities not yet paid by more than 10%, we are, upon request by the supplier, obligated to release the collateral rights at our discretion.

#### **§ 11 Place of jurisdiction – place of performance – applicable law**

1. To the extent the supplier is a trader as defined in the German Commercial Code (*HGB*), our registered office shall be the place of performance and exclusive place of jurisdiction for deliveries and payments (including check lawsuits) as well as all disputes between the parties related to the agreements concluded between these. However, we are entitled to bring legal action against the supplier at his registered office.
2. The laws of the Federal Republic of Germany shall apply exclusively. The CISG United Nations Convention on Contracts for the International Sale of Goods as of April 11, 1980 shall not apply.
3. Should one or several of the clauses of these General Standard Terms and Conditions be or become ineffective or unfeasible, this shall not affect the validity of the remaining clauses of the General Standard Terms and Conditions.