



## **General Terms and Conditions of Purchase**

### **1 General Stipulation - Scope of Application**

- (1) Our Terms and Conditions of Purchase apply exclusively. We do not recognise terms and conditions of the Supplier which conflict with or deviate from our Terms and Conditions of Purchase, unless we have given our express written consent to their application. Our Terms and Conditions of Purchase shall apply even if we unconditionally accept delivery from the Supplier knowing of terms and conditions of the Supplier which conflict with or deviate from our Terms and Conditions of Purchase.
- (2) All agreements made between us and the Supplier for the purpose of implementing this contract shall be laid down in writing in this contract.
- (3) Our Terms and Conditions of Purchase apply only in relation to entrepreneurs as per section 310, subsection 4 of the German Civil Code [BGB].
- (4) Our Terms and Conditions of Purchase shall also apply to all future transactions with the Supplier.

### **2 Offer - Offer Documents**

- (1) The Supplier shall be obliged to accept our purchase order within a 2-week period.
- (2) We retain rights of title and copyrights to illustrations, recipes, cost estimates, plans and other technical and commercial documents. These must not be made accessible to third parties without our express written consent. They shall be used exclusively for manufacturing on the basis of our purchase order and be automatically returned to us following execution of the purchase order. They shall be kept secret in relation to third parties. The provision under section 10, subsection (4) applies supplementarily in this respect.

### **3 Prices - Payment Terms**

- (1) The price indicated in the purchase order shall be binding. In the absence of a written agreement to the contrary, the price shall include delivery carriage-paid, including packaging. Returning of packaging shall require special agreement.
- (2) The prices are understood to be net. The respective valid value-added tax shall be added.
- (3) We shall only be able to process invoices, if they state - as instructed in our purchase order - the purchase order number indicated in the purchase order. The Supplier shall be responsible for all consequences ensuing on account of non-compliance with this obligation, except where the Supplier proves that these consequences are not imputable to it.
- (4) Except where otherwise agreed upon in writing, we shall pay the purchase price within 14 days of delivery, and receipt of the invoice, with a 3 % cash discount or net within 30 days of receipt of the invoice.
- (5) We shall be entitled to rights of set-off and retention to the statutory extent.
- (6) Except with the Supplier's prior written consent, the Supplier shall not be entitled to assign to third parties any receivables arising from the contractual relationship.
- (7) The Supplier shall only be entitled to rights of set-off and retention, if its counterclaim is undisputed by us or has already been determined by a final and non-appealable court judgement.
- (8) The goods shall be packaged in such a manner that transport damage is avoided. The packaging material must be environmentally friendly and shall only be used to the extent necessary in the respective case. Proper disposal of the packaging material shall be the Supplier's responsibility and be effected at its expense. Over and above the foregoing, the obligation to take back packaging material shall be governed by the relevant statutory stipulations.



#### **4 Delivery Period**

- (1) The delivery periods, or dates for delivery, stated in the purchase order shall be binding.
- (2) In principle, we shall only take delivery of goods during the hours from 07.00 to 12.00 h on Mondays to Thursdays and during the hours from 7.00 to 11.00 h on Fridays or according to prior consultation.
- (3) The Supplier shall be obliged to inform us in writing without undue delay, if circumstances indicating that the stipulated delivery periods, or dates for delivery, cannot be complied with occur or become evident to the Supplier. The duration of the delay shall also be stated, if possible.
- (4) In the event of default in delivery, we shall be entitled to the statutory claims. In particular, we shall be entitled, upon expiration of a reasonable time limit to no avail, to demand compensatory damages - in lieu of performance - and rescission. If we demand compensatory damages, the Supplier shall be entitled to the right to also prove that the breach of duty is not imputable to the Supplier.
- (5) In the event of default in delivery, we shall be entitled to demand a contractual penalty at the rate of 5 % of the delivery value for every full week, but no more than 10 %. We shall be entitled to assert a contractual penalty in addition to performance. We undertake to declare in relation to the Supplier the reservation of a contractual penalty no later than within 10 working days of receipt of a late delivery. Claims and rights beyond the foregoing remain reserved.

#### **5 Passage of Risk - Documents**

- (1) Except where otherwise agreed upon in writing, delivery shall be effected on a carriage-paid basis.
- (2) The Supplier shall be obliged to accurately state our purchase order number in all dispatch documents and delivery notes. If it omits to do so, delays in processing shall not be imputable to us.
- (3) In principle, passage of risk shall not occur until the goods have been loaded and handed over. If, however, the Supplier carries out transportation or calls in a third party to carry out transportation, passage of risk shall, even if we assume the cost of transportation, only occur after the goods have been unloaded at the place of receipt (place of delivery for the transportation).
- (4) Increased services, reduced services or part deliveries shall only be permitted with our express written acknowledgement.

#### **6 Examination for Defects - Liability for Defects**

- (1) We shall, within a reasonable period, inspect the delivered goods for any deviations in quality or quantity. Random checks shall normally suffice. In any event, a complaint from us shall be timely, if it is received at the Supplier within a period of 7 working days from receipt of the goods or, in the case of hidden defects, from discovery of the defect.
- (2) We shall be fully entitled to the statutory defect-related claims. In any event, we shall be entitled to demand of the Supplier, at our choice, defect elimination or delivery of a new item. The right to compensatory damages, particularly compensatory damages in lieu of performance, remains expressly reserved.
- (3) We shall be entitled to eliminate defects ourselves at the Supplier's expense, if there is imminent danger or a particular need for urgency.
- (4) The limitation period for our claims and rights based on defects in deliveries/services, on any legal basis whatsoever, is 4 years. This period shall apply even in so far as the claims are not related to a defect. Longer statutory limitation periods, as well as the regulations on commencement of the limitation period, suspension of expiration, suspension of limitation periods and recommencement of limitation periods remain unaffected.

#### **7 Procurement**

- (1) The Supplier shall - even if it is not at fault - be fully accountable for procurement of the supplies and services essential for its deliveries/services (full assumption of the procurement risk).
- (2) In any event, the Supplier shall - even if it is not at fault - be accountable for the supplies and services procured by it, just as it is accountable for its own deliveries or services. This particularly applies in respect of defects.



### **8 Product Liability - Indemnification - Liability Insurance Cover**

- (1) In so far as the Supplier is responsible for product damage, it shall be obliged to indemnify us against third-party damage claims on first request, to the extent that the cause lies within the Supplier's sphere of control and organisation and the Supplier itself is liable in relation to third parties.
- (2) The Supplier shall indemnify us against all claims of our customers/buyers which our customers/buyers assert by reason of advertising statements made by the Supplier, a supplier of the Supplier (manufacturer within the meaning of section 4, subsection 1 or 2 of the Product Liability Act [Produkthaftungsgesetz]) or an assistant of one of the aforementioned and which would not exist, or would not exist in this manner or sum, had the advertising statement not been made. The provision shall apply regardless of whether the advertising statement is made prior to or after the conclusion of our contract with the Supplier.
- (3) Within the framework of its liability for cases of loss or damage within the meaning of subsection (1), the Supplier shall also be obliged to reimburse any and all expenditures, as per sections 683 and 670 of the German Civil Code or sections 830, 840 and 426 of the German Civil Code, ensuing from or in connection with any recall campaign carried out by us. In so far as possible and reasonable, we shall inform the Supplier of the subject and scope of the recall measures to be taken and give the Supplier the opportunity to state its position. Other statutory claims shall remain unaffected.
- (4) The Supplier undertakes to maintain product liability insurance with cover in the blanket sum of € 10 million per case of personal injury/property damage and prove this to us on request. If we are entitled to further damage claims, these shall remain unaffected.
- (5) The respective contractual partner shall be obliged to carry out quality assurance which is suitable in terms of its type and scope and is in keeping with the latest state of the art in the field of technology and shall prove this to us on request.

### **9 Third-Party Rights**

- (1) The Supplier guarantees that the item delivered shall be free from third-party rights, particularly retentions of title, industrial property rights, rights of lien and other encumbrances.
- (2) If a third party makes a claim against us on this account, the Supplier shall be obliged to indemnify us against that claim on first written request. Except with the Supplier's consent, we shall not be entitled to make any agreement whatsoever, particularly a settlement, with the third party.
- (3) The Supplier's duty to indemnify relates to all necessary expenditures resulting to us from or in connection with a claim brought by a third party.
- (4) The limitation period is ten years, calculated from the conclusion of the contract.

### **10 Retention of Title - Supplies from Us - Tools - Maintenance of Secrecy**

- (1) In so far as we supply parts to the Supplier, we shall retain title thereto. Processing or remodelling by the Supplier shall be undertaken on our behalf. If our goods under retention of title are processed with other items not belonging to us, we shall acquire joint title to the new item in the ratio of the value of our item (purchase price plus VAT) in relation to the other processed items at the time of processing.
- (2) If the item supplied by us is inseparably mixed with other items not belonging to us, we shall acquire joint title to the new item in the ratio of the value of the item under retention of title (purchase price plus VAT) in relation to the other mixed items at the time of mixing. If mixing is effected in such a manner that the Supplier's item is to be regarded as the main item, it shall be deemed agreed that the Supplier transfers joint title to us on a pro-rata basis. The Supplier shall hold the sole or joint property in safekeeping for us.
- (3) We shall retain title to tools. The Supplier shall be obliged to use the tools exclusively for manufacturing the goods ordered by us. The tools belonging to us shall be insured by the Supplier, at its expense, against fire damage, water damage and theft on a replacement value basis. At the same time, the Supplier assigns to us here and now all compensation claims arising from this insurance. We hereby accept the assignment. In respect of our tools, the Supplier shall be obliged to carry out in due time, at its own expense, any and all necessary servicing and inspection works, as well as all maintenance and reinstatement works. The Supplier shall immediately notify us of any and all malfunctions. If the Supplier culpably omits to do so, damage claims shall remain unaffected.
- (4) The Supplier shall be obliged to keep strictly secret all illustrations, recipes, calculations, cost estimates, plans and other technical and commercial documents and information received. These must only be disclosed to third parties with our express consent. The duty to maintain secrecy shall also apply after this contract has been executed. It shall become extinguished when and in so far as the manufacturing know-how contained in the illustrations, drawings, calculations and other documents made available has become



generally known.

- (5) In so far as the security interests to which we are entitled under subsection (1) and/or subsection (2) exceed by more than 10 % the purchase price of all our goods which are under retention of title and have not yet been paid for, we shall be obliged, at the request of the Supplier, to release security interests of our choosing.

#### **11 Applicable Law - Place of Jurisdiction - Place of Performance**

- (1) The relations between us and the Supplier shall be governed exclusively by the law applicable in the Federal Republic of Germany.
- (2) In so far as the Supplier is a merchant, the place of jurisdiction shall be 49740 Haselünne. However, we shall be entitled to also bring an action against the Supplier at the court where the Supplier's domicile is located.
- (3) Except where otherwise ensues from the purchase order, the place of performance shall be 49740 Haselünne.

#### **12 Severability Clause**

If individual stipulations of these General Terms and Conditions of Purchase are ineffective or unenforceable, this shall not affect the effectiveness or enforceability of the rest of the General Terms and Conditions of Purchase.