



## General Terms

### Terms and Conditions of Purchase

as at 01.09.2014

#### I. Main Conditions

These terms of purchase apply for all of the business transactions with suppliers or other contractors (hereinafter referred as "Supplier") even if these are not mentioned in subsequent contracts. These terms apply also if the Supplier refers to his own terms of business in particular when accepting an order or in confirming an order provided that said terms were approved explicitly.

#### II. Purchase Orders

1. A purchase order is to be considered as placed if it is issued in writing and signed by us. Verbal or telephone purchase order are binding for us only if we confirm said order with the subsequent sending of a written confirmation. In particular, the drawings provided by us including the tolerance indications are binding. With the acceptance of the purchase order the Supplier acknowledges that he has examined the available plans of the type of execution and the scope of the performance and taken note of these. We are not liable for any obvious mistakes or writing or calculating errors in the documents, drawings or plans which we have provided. The Supplier undertakes to notify us of these errors, so that we can correct our purchase order and re-submit it. This applies also in the case of missing documents or drawings.
2. The acceptance of the order is to be confirmed by signing the copy of the purchase order within two weeks from the order. Otherwise we are entitled to cancel the order.
3. Deviations in the quantity and quality as per the text and contents of our purchase order and subsequent contract amendments are considered as agreed if we confirm these explicitly in writing.
4. Drawings, tools, patterns, models, brands and layouts or the like as well as finished products and semi-finished products, which were provided by us or manufactured in the course of our order, shall remain our property and are to be provided to third parties only with our explicit authorization in writing. Save for agreements specifying otherwise for single cases, these items are to be returned to us immediately with the completion of the purchase order with no need for any particular request. The products manufactured or marked with such production means, brands and layouts can be supplied to third parties only with our explicit authorization in writing.

#### III. Delivery deadlines

1. The agreed delivery periods and deadlines are binding. These start to run as of the date of the purchase order. The goods must be received at the place of receipt specified by us by the end of the delivery period or by the delivery deadline. If delays are to be expected, the Supplier must inform us immediately of these and request our decision on the maintenance of the order.
2. Should the Supplier fall in arrears, we are entitled following our reminder to demand a penalty of 0.3% of the net order value per day and up to maximum of 5% of the net order value and/or delivery and/or withdraw from the contract. The penalty borne will be deducted from the claim for damages.
3. We are not obliged to grant acceptance before the expiry of the delivery deadline.

#### IV. Delivery / Packing

1. The delivery is to be carried out at the expense of the Supplier free of charge at the place of receipt specified by us, including the packing. If, by way of exception, we must pay the freight charges, the

Supplier must choose the mode of transport we have prescribed or the mode of transport and delivery most favourable for us.

2. The passing of the risk shall take place with acceptance at our place of receipt.
3. The packaging is included in the price. If otherwise agreed, the packaging is to be charged at cost price. The Supplier must choose the packaging we have prescribed and make sure that the goods are protected by the packaging against damage. In case of returns at least two thirds of the charged value is to be credited.
4. The supplier has to collect the packing and transport aids again. If the supplier does not comply with this duty despite a reasonable time limit having been set, then we can dispose of them at the supplier's cost.

## **V. Documentation**

1. Invoices, delivery notes and packing slip for each delivery is to be provided in duplicate. These documents must comprise:
  - the purchase order number,
  - the quantity and quantity unit,
  - the gross, net and, if necessary, the charged weight,
  - Article description with our article number,
  - Remaining quantity for partial deliveries.
2. In case of freight shipments a dispatch note is to be sent to us separately on the day of the dispatch.

## **VI. Prices**

1. The price that is quoted in the purchase order is binding. Unless otherwise specified, the agreed prices are fixed prices, insofar as the Supplier does not reduce the relevant prices in general.
2. The prices that are quoted by us are net prices. The supplier has to quote the statutory value-added tax separately in addition, according to the UstG (German turnover tax law), insofar as he is obligated to pay it.
3. The Supplier shall not apply with us prices and terms that are more unfavourable compared to those granted to other customers, if and to the extent in which identical or equivalent requirements subsist in the specific case.

## **VII. Invoicing / Payment**

1. Invoices are to be issued separately for each purchase order. The payment shall be settled only upon the complete receipt of goods in perfect conditions or of the complete and faultless service and after the receipt of the invoice. The foregoing is to be applied accordingly for partial deliveries. Delays in time owing to incorrect or incomplete invoices do not interfere with any discount period.
2. We will pay the purchase price with a discount of 3% within 14 days from delivery and receipt of the invoice, or within 30 days after receiving the invoice, insofar as nothing else has been agreed in writing. The day when the bank-transfer order is handed over or sent to the post or bank applies as the day of payment, in the case of a bank transfer or payment from one of our bank accounts.
3. Rights of setoff and retention are vested in us to the legal extent.
4. Receivables of the Supplier involving us can be assigned to third parties only with our approval. Payments shall be made only to the Supplier.

## **VIII. Supplier's inspection and testing duty / Quality assurance**

1. The supplier undertakes to continuously inspect the respective goods in detail for faultlessness prior to delivery. While doing so, the supplier is especially obligated to check whether the goods which he is to deliver personally have a faultless quality as stated under terms of contract and that they are suitable for the typical utilization purpose for which they are designed. (such as the good's typical installation or customary use).
2. The supplier has to maintain a certified quality-assurance system and to submit proof of it in response to our demand.

## **IX. Guarantee / Warranty / Complaints**

1. The supplier has to provide with the goods free from materials defects and defects of title.
2. The supplier accepts the obligation that his supplies and services comply with our information, with the contractually agreed qualities and with the respectively generally recognized engineering rules, especially the relevant DIN standards and the public building regulations. Insofar as they (i.e., the goods) bear a quality label or a seal of approval from a quality assurance association or another association, they must fulfil the quality requirements that are associated with it.

3. Moreover, the supplier assures that the goods which he has personally delivered are suitable for the typical utilization for which they are designed (such as the goods' typical installation or customary use).
4. In case of the delivery of faulty goods the Supplier shall be granted the opportunity of rectifying the defects or making a subsequent delivery. If the Supplier cannot provide for or fails to carry out the foregoing immediately upon request and within the envisaged time, we are entitled to send us the goods at the risk of the Supplier and to cover our requirements otherwise. In urgent cases we are entitled to provide personally for the rectifying of the defects after notifying the Supplier or to have these works be performed by a third party. The resulting costs shall be borne by the Supplier.
5. The statutory period of limitations for claims due to defects in the product that was manufactured by the supplier, or for claims arising from the order that was implemented by him, will end when five years and six months have expired after the delivery and acceptance.
6. If the purchase is a commercial act for both of the contracting parties, then article 377, paragraph 1 of the German Commercial Code applies, provided that we can inspect the delivered goods and notify any defects in the goods within a period of three weeks after delivery.
7. The supplier is prevented from pleading that we have not notified the defect in good time according to article 277, paragraph 2 of the German Commercial Code, if the defect was recognizable to him within the framework of his own duties of inspection and testing (clause VIII).
8. The warranty is determined according to the legal regulations, insofar as nothing else is regulated beforehand or afterwards.

## **X. Costs of dismantling and re-installation**

1. If we have installed the goods which were delivered by the supplier or used them in another way and a claim is made against us by a third party to dismantle and reinstall the goods on account of the goods' defectiveness, or to remanufacture them, or to reimburse the costs of dismantling and reinstalling them (possibly the costs of disposal and transport too) or for the manufacturing costs, then the supplier will be obligated to exempt us from the costs arising from these activities, insofar as the goods' defectiveness was recognizable to him within the framework of his duties of inspection and testing (clause VIII) or if the supplier has culpably infringed his obligations. The supplier reserves the right to prove that the claimed defect did not exist yet when the risk passed to us. Any further legal rights, especially claims for reimbursing the consequential damages arising from the defect, remain unaffected in our favour in every case. The supplier's right and duty to remedy the defect in the defective goods which were delivered by him remains unaffected likewise.
2. If we resell the goods which were delivered by the supplier to a customer and the latter installs them in a building according to their customary type of utilization, or if he uses them in another way and the customer makes a claim against us for reimbursing the costs of dismantling and reinstallation on account of the goods' defectiveness (possibly the costs of disposal and transport too) or for the manufacturing costs, then the supplier will be obligated to exempt us from the costs arising from these activities, unless the defect about which the customer has made a claim still did not exist when the risk passed to us (article 478, paragraph 2 of the German Civil Code).

## **XI. Manufacturer's Liability**

As regards defects ascribable to a fault of the Supplier, he shall exempt us from the resulting manufacturer's liability insofar as he is immediately liable for said defects.

## **XII. Trademark Rights**

1. The supplier is responsible for no patents or other third-party rights being infringed because of his delivery and our utilization of it.
2. If claims are made against us by a third party in this respect, then the supplier will be obligated to exempt us from these claims on first written request.
3. The supplier's duty of exemption also refers to all expenditures that we necessarily incur or which arise in connection with a third party's assertion of a claim.
4. This does not apply insofar as the Supplier has manufactured the supplied goods as per the drawings, models or other equivalent descriptions and instructions provided by us and does not know or cannot know with regard to the products he has manufactured that trademark rights were violated.
5. The statutory period of limitations for these claims is ten years, beginning from the date when the respective contract is concluded (i.e., signed).

### **XIII. Insurances**

The supplier is obligated to arrange a third-party liability insurance (especially with an extended product liability insurance inter alia, for covering any costs of dismantling or installation that are caused by defects (according to article X)), with a reasonable sum insured for the case of his product liability. The supplier assures that he has arranged a mechanical breakdown insurance corresponding to the value in the case of hiring vehicles, machines or equipment with or without operating personnel. The aforementioned insurances must be proved on demand.

### **XIV. Force Majeure**

1. War, civil wars, export restrictions or trade restrictions owing to a change in political relations as well as strikes, lockouts, breakdowns, operating restrictions and events that make the performance of the contract impossible or unreasonable are to be considered as force majeure and exempt us from the obligation to timely acceptance for the whole duration of one of the said events. The Contracting Partners undertake to notify each other of the foregoing and to adjust to the new circumstances in good faith.

### **XV. Custody / Property**

1. We shall retain title to the material supplied by us. It is to be stored separately and is to be used only for our purchase orders. The Supplier is liable for depreciation or loss even if without fault. The items manufactured with the materials supplied by us are our property in the relevant manufacturing status. The Supplier shall keep these items for us; the costs for the safekeeping of the items and materials kept on our behalf are included in the purchase price.

### **XVI. Business Secrets**

1. The Supplier undertakes to handle our purchase order and all of the related commercial and technical details as business secrets.

### **XVII. General Terms and Conditions**

1. The invalidity of any provision herein it shall not affect any part of the remaining provisions.
2. As regards the legal relations between the Supplier and us, German law including the laws on international sale of movables shall apply even if the domicile of the Supplier is located abroad.
3. The place of performance shall be the city of Osnabrück. As regards the delivery, a place other than the above can be agreed.
4. Venue shall be the city of Osnabrück..