

# Purchase Terms and Conditions

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## § 1 Overriding Terms and Conditions

- 1) Our purchase orders are placed exclusively on the basis of our purchase terms and conditions. The General Delivery Terms and Conditions of the Supplier or other terms and conditions shall only be applicable, if confirmed by us in writing as amendment to our Purchase Terms and Conditions.
- 2) Our Purchase Terms and Conditions shall also be applicable, if delivery is accepted by us without reserve and knowing the supplier's terms and conditions contrary to our Purchase Terms and Conditions. References or confirmations by the supplier with respect to its Delivery Terms and Conditions are herewith explicitly contradicted.
- 3) Our Purchase Terms and Conditions are also applicable to all future transactions with the supplier.
- 4) The present Purchase Terms and Conditions are equally applicable to products and services (hereinafter called "delivery").

## § 2 Purchase Orders

- 1) Only purchase orders placed in writing shall be valid. The writing requirement is also met by telefax. Authoritative are the contents of our written purchase order.
- 2) Acceptance of each purchase order must be confirmed by the supplier immediately after receipt but not later than within two weeks. If we do not receive confirmation within two weeks after the date of the purchase order, we shall be entitled to cancel the purchase order.
- 3) As far as is reasonable for the supplier, we can request modifications of the object in design and execution. In this connection the effects, especially of surplus and less cost as well as the delivery dates must be adequately taken into consideration.
- 4) Units, parts etc., which are not explicitly mentioned in the purchase order or in the purchase order confirmation, but which are necessary for fulfilment of the agreed upon work, are included in the scope of delivery and work, and are included in the agreed upon price.
- 5) The supplier has to inform us about the possibilities of eventual quality improvements / modifications. These can only be carried out with our approval. Modifications with respect to prices, weight, function and delivery time result, shall only apply with our written approval.

## § 3 Prices

- 1) Unless otherwise agreed upon, the prices mentioned in our purchase order and confirmed by the supplier shall be binding.
- 2) If no special agreement has been made, the prices for the delivery are free of freight charges to the place for unloading specified by us, and if no place for unloading is specified, to our business place, including packing.
- 3) If requested by us, the supplier must take back the packing free of charge and collect it at our premises.

## § 4 Invoices and Supplier's Declarations

- 1) Invoices will only be processed by us, if the specifications for invoices of our purchase order and the purchase order number specified in this purchase order are given on these invoices. The supplier shall be responsible for all consequences arising from non-compliance with this obligation.
- 2) Receipt of the invoice solely does not automatically result in the debt falling due.
- 3) With the first delivery at the latest, the supplier shall be obliged to furnish all declarations required in connection with the delivery for importation/exportation and for evidence to authorities.
- 4) As long as the prerequisites pursuant to paragraph 1) and 2) are not fulfilled, the invoices are deemed to not having been given and/or the deliveries as not having been orderly supplied.

## § 5 Payment Terms

- 1) Unless otherwise agreed upon, payment will be made at our option within 14 days after maturity with 3 % discount and within 30 days after maturity net.
- 2) Delay in payment occurs only 30 days as from maturity and receipt of invoice. Maturity of the debt exists under the following prerequisites:
  - 30 days after further processing but not later than 60 days after receipt of invoice, and
  - compliance with formal requirements stipulated in § 4 paragraph 1) and 2), and receipt of the delivery by us.
- 3) Payment is made subject to invoice checking.
- 4) When premature deliveries are accepted, the delays for determination of maturity start only after the agreed upon delivery date.
- 5) Default interest for payment claims are limited to max. 5 % points above the basic interest rate. If the supplier pays lower credit interest, such interest rates shall be authoritative. The supplier must supply evidence to

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us for the interest on loans when compensation for default is claimed.

- 6) The supplier shall only be allowed to assign its claim to third parties or have collected its claim by third parties, if our approval has been given. Partial assignment by the supplier or collection of partial amounts by third parties is excluded.

## § 6 Delivery Dates and Deadlines

- 1) The dates, quantities and deadlines fixed in the purchase order and/or delivery schedule are binding and must be entirely complied with/met. We are not obliged to accept partial services. In the event of partial services having been effected by the supplier, we can reject it as not having been owed, if an adequate delay for performance of the total delivery quantity has been fixed without success. Receipt of the goods at the agreed upon place for unloading, and if no place for unloading has been agreed upon, receipt of the goods at our business place, is authoritative for observance of the delivery dates and deadlines.

## § 7 Shipment/Place of Performance/Risk Taking

- 1) Shipment has to be made to the address specified on the purchase order. The delivery note must be attached to the goods.
- 2) Unless shipment is made by us and/or the carrier is appointed by us, place of performance is always the address specified on the purchase order and our business place, if no address for shipment is specified.
- 3) The supplier shall bear the risk up to delivery of the delivery object to the address for shipment specified (place of performance), even if the carrier and/or transport insurance is paid by us.

## § 8 Delay in Delivery

- 1) The supplier shall bear the procurement risk for the delivery objects ordered by us.
- 2) Authoritative for the delivery date specified in accordance with the calendar is the date specified by us in the written purchase order or in other declarations made by us in connection with the purchase order. Specifications with respect to dates given by the supplier are irrelevant unless they agree with the dates specified by us.
- 3) As soon as the supplier foresees difficulties with respect to material ordering, production etc., which might prevent him from timely and above all agreed upon delivery, he must inform us immediately. The

obligation by the supplier to deliver on time and to bear the procurement risk is not affected by this.

- 4) Acceptance of delayed delivery or work does not constitute a waiver of the claims towards the supplier to which we are entitled due to late delivery. Partial services can always be rejected by us as non-performance of the delivery obligation of the supplier.
- 5) If the supplier is obliged to deliver the delivery objects several times to us, and if the supplier exceeds the agreed upon delivery dates at two deliveries/partial deliveries, we shall be entitled to terminate an eventually existing basic agreement with the supplier concerning the delivery for cause. In this connection objection to the first exceeding of the delivery date by us shall be deemed as a cease-and-desist letter which has remained unsuccessful due to another exceeding of the delivery date.
- 6) Our right to claim all rights to which we are entitled due to exceeding of the delivery date of the respective individual delivery, remains unaffected.
- 7) If with respect to the above mentioned cases no basic agreement exists between us and the supplier, we shall be entitled to withdraw the still outstanding deliveries/partial deliveries, if a delivery date has been exceeded twice, even if the supplier had not been responsible for the delay. Further rights by us remain unaffected, even if we withdraw from contract.

## § 9 Quality and Documentation

- 1) The supplier must observe for its delivery the recognised Rules of the Art, the most recent State of the Art, the safety rules as well as the agreed upon technical data. Modifications of the delivery object shall only apply with our prior written approval.
- 2) The supplier cannot rely on documents, advertising statements or drawings, which include statements on the quality and condition of the delivery object, if the requirements specified do not correspond to the requirements in our specification and/or the terms and conditions given below and/or other agreements with the supplier. Otherwise, however, the supplier shall be bound by such statements, in so far as they exceed the requirements specified by us in this agreement, in other agreements and in these purchase terms and conditions.
- 3) The supplier must establish and furnish proof of a corresponding quality management. We reserve the right to verify efficiency of the quality management system in place. Modifications of the delivery object require prior written approval. Irrespective of it, the supplier must constantly check the quality of the delivery objects. The contracting parties will mutually in-

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form each other on the possibility of a quality improvement.

- 4) Beyond that the supplier must record in its quality documents for all products, when, how and by whom production of the delivery free from defects has been ensured. This evidence must be preserved for 15 years and presented to us on demand.
  - 5) If the supplier prior to expiration period of 15 years discontinues its business operation, he must hand over the documents to us at that point in time free of charge.
  - 6) Subsuppliers must be bound by the supplier to the same extent within the scope of statutory possibilities.
  - 7) If authorities, which are responsible for product safety, exhaust gas standards etc., as well as our customers, require from us inspection of the production flow and the inspection documents in order to verify certain requirements, the supplier will be prepared on request by us to grant the same rights to them in its enterprise and give all reasonable support in this connection.
  - 8) For materials (substances, preparation) and objects (e.g. commodities, parts, technical devices, uncleaned empties) from which due to their nature, their properties and their condition a risk for life and health of people, the environment as well as objects might emanate, and which therefore due to specifications require special treatment with respect to
  - 9) packing, transport, storage, handling and waste disposal, the supplier will hand over to us a filled in safety data sheet pursuant to § 14 of the German Dangerous or Toxic Chemicals Ordinance (GefStoffV) and applicable instructions on accidents (transport). In the event of modifications of the materials or the legal situation, the supplier will hand over to us updated data sheets and instructions.
- 4) If a claim can be put forward against us for a defect, which is based upon the fact that the supplier and/or its vicarious agent and/or the manufacturer and/or its vicarious agent has made incorrect statements concerning the condition or quality of the delivery object, the notification of defect is made in time, if such defect is notified by us to the supplier 14 days after notification of defect by our customer.
  - 5) If the facts stipulated after paragraph 2) – 4) represent a limitation of the rights of the supplier out of § 377 HGB (German Commercial Code), the supplier waives the objection of a late notification of defect.
  - 6) Eventual payment of the purchase price made prior to detection of the defects, does not represent an acknowledgement that the goods are free from defects and have been supplied according to specifications.

### § 10 Notification of Defects

- 1) Unless otherwise stipulated below, the supplier waives the objection of the late notice of defects.
- 2) For goods where the defect can be detected when processed by us and/or when built in by our customers, notification of defects will still be made in time, if made within one week after the defect has been detected by us or when built in by our customers after receipt of the notification of defect of the customer by us.
- 3) If a claim is put forward by our customer against us for a defect - despite non-compliance with the provision on an orderly notification of defect - the notification of defect by us is made still in time when made by us seven days after the defect has been claimed by the customer.

### § 11 Material Defects

- 1) In the event of a defective delivery, the statutory provisions at the time of delivery by the supplier shall be valid, unless otherwise is stipulated in the present purchase terms and conditions or other agreements of the parties.
- 2) The provision of § 8 paragraph 5) of the present purchase terms and conditions shall be applicable accordingly to defective call orders.
- 3) Unless otherwise agreed upon below, the period of limitation for material defect claims, which do not concern a building and which are not objects usually used for a building, is 24 months as from the time when the delivery object is processed by us, but not more than 30 months as from delivery of the delivery object to us.
- 4) Interruption or suspension of the statute of limitations is based upon statutory provisions, provided that interruption or suspension of the statute of limitations starts at the time of receipt of the notification of defects at the supplier. In the event of several attempts of rectification of defects or repair for removal of the defect, the statute of limitations is interrupted at least for another 3 months as from the last attempt of rectification or repair.

### § 12 Product Liability

- 1) The materials and parts to be supplied to us are intended for products distributed on a world-wide basis.
- 2) The supplier must carry out all inspections of the products produced and/or supplied by the supplier regardless of an eventual incoming inspection by us and is responsible for a condition or quality of the de-

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livery object free from defects. An eventual inspection carried out by us does not release the supplier.

- 3) The statutory provisions shall be applicable concerning our claims towards the supplier with respect to producer's liability. If statutory provisions do not include any stipulations for facts where nevertheless a claim can be put forward against us on the basis of producer's liability or on the basis of infringement of official safety rules or infringement of obligations of protection pursuant to domestic or foreign law, the supplier must indemnify us for the resulting damage including the costs of bringing an action, in so far as the supplier has supplied the defective part or the part which has been causative for the defect. Liability of the supplier exists even if the defect is not the supplier's fault, in so far as a claim is put forward against us for these defective delivery parts due to liability independent of fault pursuant to domestic or foreign law. The same rules with respect to the burden of proof are applicable to the relationship between the supplier and us as with respect to the relationship between the party having suffered the damage and us. If for the same damage several parties are liable simultaneously, § 5 ProdhaftG (German liability for defective products' law) shall be applicable. If a contributory fault exists with respect to us, § 6 ProdhaftG shall be applicable. If we and/or our customer is obliged to recall due to a fault for which the delivery object of the supplier has been causative, or if it is at least reasonable to carry out a recall and/or if we are obliged to assume the cost for the recall, the supplier shall be obliged to assume the cost vis-à-vis to us. If the cost have to be distributed due to the existence of several parties who are responsible, §§ 5, 6 ProdhaftG shall be applicable accordingly.
- 4) The supplier engages itself to effect a corresponding third party liability insurance, especially to effect a sufficient product liability insurance which also covers recall cost. If requested by us, the supplier must furnish immediate proof of conclusion of such an insurance.

### § 13 Production Facilities

- 1) Substances or parts manufactured by us shall remain our property and must be indicated as such. They must only be used according to purpose. Processing of substances and assembly of parts will be made for us. It is agreed that we become co-owner of the products produced by utilisation of our substances or parts in the ratio of the value of the contribution to the value of the overall product. Delivery of the property of the facilities will be replaced by the agreement that the

goods remain in the possession of the supplier for processing up to the agreed upon delivery date and will be kept in separate custody for us.

- 2) The supplier will point out our ownership to eventual creditors who want to levy execution into these objects and the supplier will inform us on eventual planned or carried out execution measures with respect to such objects by handing over the necessary documents.
- 3) Documents of any type, which we will make available to the supplier, such as samples, drawings, models etc. must be sent back to us free of charge on request and may not be delivered or communicated to third parties.
- 4) The supplier shall be obliged to effect sufficient insurance at his own cost for the substances and parts supplied against all risks including but not limited to fire and theft and on request furnish proof of conclusion of such insurance.
- 5) Moulds, patterns, working stock etc. must only be destroyed when our written approval has been given. The supplier shall be obliged to communicate in regular intervals as well as at any time on request a list of the production means with respect to which we are entitled to ownership or co-ownership .
- 6) Upon our request the supplier must return to us immediately but not later than within one day the substances, parts, moulds, patterns, working stock or other production means made available to him by us. If co-ownership by the manufacturer exists with respect to these items, return will be made concurrently against remuneration of the co-owner's interest or share. If a dispute exists concerning the amount of the co-owner's interest or share, we can prevent a right of retention of the supplier with respect to such co-owner's share or interest by furnishing a surety in the amount of the sum in dispute.
- 7) Otherwise a right of retention of the supplier in the production means is excluded, if the claim upon which the right of retention is based, is controversial among the parties or has not been recognised by declaratory judgement.
- 8) In so far as the security interests to which we are entitled in accordance with paragraph 1) exceed the purchase price of all goods under retention of title not yet paid by us by more than 10 %, we are obliged to release the security interests at our option upon request by the supplier.

### § 14 Service/Spare Parts Delivery

- 1) With respect to the parts supplied by him, the supplier shall be obliged to render sufficient service during

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the entire usual lifetime of the delivery parts supplied by him.

- 2) The supplier shall be obliged to deliver spare parts to us during the entire usual lifetime of the products supplied by him.

### § 15 Business Secrets

- 1) The supplier shall be obliged to treat our purchase order and all commercial and technical details associated with it as business secrets. This obligation shall continue to be valid also after termination of the supply contract until such business secret has been disclosed without contribution by the supplier.
- 2) Products, which have been manufactured pursuant to documents designed by us such as drawings, patterns etc. or pursuant to confidential information given by us, or which have been manufactured with our tools or tools constructed after a model, must not be used by the supplier himself nor offered or supplied to third parties.
- 3) Parts, which we have developed with the supplier or developed further, can be supplied by the supplier to third parties only with our written approval.
- 4) In so far as the supplier uses sub-suppliers for fulfillment of his delivery obligation towards us, he must see to it that they are likewise bound by the confidentiality obligation within the scope of § 15 para 1 and 2. If requested by us, the supplier must present a corresponding written agreement with his sub-supplier to us.

### § 16 Final Provisions

- 1) The purchase terms and conditions and the entire legal relations between us and the supplier shall be governed by the laws of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 2) The business place of our company and at our option also the courts at the supplier shall have exclusive jurisdiction for all disputes arising directly or indirectly from the contractual relationship of the parties.
- 3) If a contractual party stops payments or if insolvency proceedings are filed with respect to its property or composition proceedings in or out of court are filed, the other contractual party shall be entitled to withdraw from the part of the contract not complied with. Further claims remain unaffected.
- 4) If a provision in these purchase terms and conditions or a provision within the scope of other agreements is or becomes invalid, validity of the remaining provi-

sions or agreements remains unaffected. If the invalid provision or agreement is not General Terms and Conditions, the parties shall be obliged to replace the invalid provision or agreement by a valid provision or agreement which comes closest to the economic purpose of the invalid provision or agreement in a legally valid way.

Version 12<sup>th</sup> January 2021

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