

# Purchasing Conditions

## §1 General Terms and Conditions / Scope

- (1) These Purchasing Conditions apply to all current and future trading between the buyer and suppliers or service providers (hereinafter called: „supplier“). Our purchases shall be subject exclusively to our Purchasing Conditions. The General Terms of Delivery of the supplier do not apply either even if the buyer does not contradict expressly. The Purchasing Conditions shall also apply in the event that the buyer has received goods or services of the contractor on his General Terms of Delivery.
- (2) Suppliers in terms of these Purchasing Conditions are exclusively traders. A trader in terms of these Purchasing Conditions is a natural or artificial person or a partnership having legal capacity who acts in the execution of his commercial or independent occupational activity when concluding a legal transaction. A partnership having legal capacity is a partnership which is capable of acquiring rights and accepting obligations (§ 14 BGB (German Civil Code)).
- (3) Any modification of these Conditions as well as subsidiary agreements require a confirmation in writing of the buyer in order to become binding. Any deviating, contrary or additional General Terms and Conditions shall not become part of the contract unless the buyer has expressly agreed to be bound by such other conditions. The same applies in the event that the buyer accepts, without any reservation, the delivery from a supplier in the awareness of such terms and conditions.

## §2 Quotation and Conclusion of the Contract

- (1) Only orders placed in writing shall be binding. The supplier shall accept the order of the buyer within five business days; within this period of time, the buyer must have received an order confirmation indicating a binding delivery date of the supplier. Orders are placed by fax or in an electronic way without signature in each case.

## §3 Payment– Invoicing - Pricing

- (1) The price shown in the order shall be binding and shall exclude any subsequent price increases or supplementary claims. Unless otherwise agreed in writing, the delivery shall be effected „free domicile“, i. e. at supplier’s risk and expense. Unless otherwise agreed in writing, the price „free domicile“ includes appropriate packaging. For the return of the packaging, a special agreement shall be necessary.
- (2) One simple invoice shall be issued. Invoices can only be processed by the buyer if the order number, shown in the order of the buyer, is indicated according to the guidelines mentioned in the order. The supplier shall be solely responsible for any consequences that may arise from non-compliance with these provisions unless he can demonstrate that he is not responsible for such non-compliance.
- (3) Subject to any written agreement to the contrary, the buyer pays the purchase price within 14 days from proper delivery and receipt of invoice at a 3 % discount or within net 30 days from receipt of invoice. The buyer shall be entitled to set-off and retention rights as provided for under the law.
- (4) Price increases shall be acknowledged by us in writing. Should the market situation allow a price reduction, the stipulated price shall be reduced accordingly. The same applies to master agreements. If an agreement on the new price cannot be reached, the buyer is entitled to withdraw from the contract.

## §4 Delivery dates

- (1) The delivery dates stated in the order shall be binding. Delivery shall be deemed made on time when the goods are received at the stipulated place of receipt in a timely manner. The buyer is not bound to accept receipt of partial deliveries or partial performance.
- (2) The supplier shall notify the buyer immediately in writing, indicating reasons and a new delivery date, if circumstances arise, or if the supplier can identify circumstances, which give rise to the conclusion that the delivery time as stipulated cannot be complied with.

- (3) In the event of a delay in delivery, the buyer shall be entitled to claim penalties in the amount of 1 % of the value of the goods to be delivered for each full week of the delay, however not more than 10 %. Any other statutory claims (in particular withdrawal and claim for damages in lieu of performance) shall remain intact. The parties are entitled to demonstrate that, due to the delay, no, a significantly lower or a significantly more important damage has been caused.

#### **§5 Place of performance – Transfer of risk**

- (1) Place of performance is the domicile of the buyer.
- (2) The risk of accidental loss and accidental deterioration of the sold goods shall pass to the buyer only if the goods have been received and accepted by the buyer, at the earliest.

#### **§6 Quality – Warranty– Documentation**

- (1) The supplier shall observe approved technical regulations, all relevant safety regulations and the stipulated technical data with regard to the goods to be supplied.
- (2) The supplier shall document the manufacturing process and any taken quality assurance measures. The corresponding proofs shall be saved for ten years and demonstrated to us on demand. Should the supplier give up his business before the expiration of this term, the supplier shall let us have any such documentation free of charge.
- (3) Should public authorities or customers request insight into production process and documentation for verifying the compliance with necessary requirements, the supplier shall provide any reasonable assistance.
- (4) The supplier shall commit his suppliers accordingly.
- (5) With regard to material and articles harmful to health and/or the environment which are, due to regulations, subject to any special treatment regarding packaging, transport, storage, handling and disposal, the supplier shall provide us with a duly completed safety data sheet as per § 14 of the Ordinance on Hazardous Substances and a relevant accident procedures sheet (transport). In the event of modifications of the materials or the legal situation, the supplier shall provide us with updated safety data sheets and leaflets.
- (6) The supplier shall carry out quality assurance. Upon receipt of goods, the buyer inspects the goods only visually within a reasonable period of time for any deviations in terms of quality and quantity as well as for transport damages and reprimands defects within a reasonable period of time. Any complaint made shall be deemed as having been made in a timely manner if it is received by the supplier within a period of five business days from receipt of the goods. An operation test is only carried out by the buyer once the unit is finally assembled for the purchaser. For the complaint of defects revealed during the operation test, the first sentence applies accordingly from the time of discovery. In this respect, the supplier renounces his rights as per § 377 HGB (German Commercial Code).
- (7) The buyer shall be entitled to bring claims based on defects to the full extent provided for under the law. At any rate, the buyer shall be entitled, at his discretion, to require the supplier either to rectify the defect or to deliver replacement goods. The buyer shall reserve in express terms the right to damages, particularly the right to damages in lieu of performance.
- (8) Claims shall be barred after three years from transfer of risk unless the law provides for longer periods.
- (9) The supplier shall provide spare parts availability for a period of ten years.

#### **§7 Product liability – Release – Manufacturer’s liability**

- (1) In the event of a manufacturing damage for which the supplier is responsible, the supplier shall indemnify the buyer against claims of a third party upon initial request provided that the cause for these claims originates from his territory or organization domain and that he himself is liable for external transactions or operations.
- (2) The supplier shall, for the term of this contract, take out and maintain production liability insurance with a minimum cover of EUR 10 million per claim – lump sum – i. e. until the statute of limitation of defects has expired. Any other claims for damages by the buyer shall remain intact.
- (3) The buyer is ? selling the products worldwide. Should the buyer and/or his customer be obliged to a recall or to take over recall costs due to a defect in the supplier’s goods, the supplier shall reimburse us any such expenses. The supplier takes out a product liability insurance with

sufficient cover which also includes recall costs. The supplier shall demonstrate us the conclusion of the insurance on demand.

### **§8 Proprietary rights**

- (1) The supplier shall guarantee that the delivery shall not infringe upon the rights of a third.
- (2) If a third party asserts a claim against the buyer for such infringement of its rights, the supplier shall indemnify us against such claims upon initial written request. The supplier's duty of indemnification shall also cover all expenses incurred by the buyer as a result of or in connection with the claim asserted against the buyer by a third party.
- (3) Any such claims shall be barred after three years from the date on which the contract was entered into.

### **§9 Trade secrets**

- (1) The buyer reserves all owner's rights and copyrights regarding illustrations, drawings, calculations and other documentation as well as samples (herein after called: „documents“).
- (2) On receipt of the order, the supplier is obliged neither to use himself the documents and tools made available to him nor to make them available to third parties. The same applies to our print jobs correspondingly. The supplier shall keep these documents in the strictest confidence with regard to third parties.
- (3) Such documents may only be made available to third parties with the prior express consent of the buyer in written form.
- (4) The documents shall exclusively be used for production on the basis of an order of the buyer. The same applies to any other information given by the buyer. After processing the order, any such documents must be returned unrequested to the buyer. There is no right of detention of the supplier under any legal aspect. The duty of confidentiality shall survive the expiry or termination of the contract. It shall cease to apply only if the know-how contained in the documents and other information made available has become generally known.
- (5) The supplier shall treat our orders and all relating commercial and technical details as trade secrets. This duty shall survive the expiry or termination of the delivery contract.
- (6) Without our written approval, the supplier shall neither use himself or make available to third parties the products which have been manufactured according to our guidelines or which the buyer has developed or enhanced in cooperation with the supplier.

### **§10 Final clause**

- (1) This contract shall be subject to the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Should the supplier be a merchant registered as such in the Commercial Register, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising directly or indirectly from this contract shall be the head office of the buyer. The same applies if the supplier does not have a general court of jurisdiction in Germany or if his domicile or habitual residence are not known when action is taken. However, the buyer is also entitled to sue the supplier at a court of law in the jurisdiction of his domicile.
- (2) Should any provision of the contract with the supplier, including these Purchasing Conditions, be void, either in full or in part, the validity of the remaining provisions hereof shall in no way be affected thereby. The provision which is void either in full or in part shall be substituted by a valid provision which corresponds as much as possible to the intended economic success.