

# STANDARD CONDITIONS OF PURCHASE

VALID FROM 01.07.2005



## 1

### General - Scope of Application

- (1) Our Conditions of Purchase are solely applicable. We do not accept conditions of the Supplier that are inconsistent with or deviate from our Conditions of Purchase, unless we have expressly agreed to their validity in writing. Our Conditions of Purchase shall apply, even if we unconditionally accept the Supplier's delivery knowing of conditions of the Supplier that are inconsistent with or deviate from our Conditions of Purchase.
- (2) All agreements entered into between us and the Supplier for the purpose of implementing this contract shall be recorded in writing.
- (3) Our Conditions of Purchase are also applicable to all future transactions with the Supplier.

## 2

### Offers - Offer Documents

- (1) If our order is not acknowledged within 7 working days after the order date, we shall be entitled to revoke the order. Additions, limitations or other deviations from our order and/or accompanying documents shall be subject to our written agreement.
- (2) We shall reserve ownership rights and copyrights in illustrations, drawings, calculations and other documents. They may not be made accessible to third parties without our express written consent. They shall be used solely for manufacturing on the basis of our order. Once the order has been handled, they shall be automatically returned to us. They shall be treated with confidentiality in relation to third parties. In this respect the provision in Condition 10 (4) applies supplementarily.

## 3

### Prices - Payment Terms

- (1) The prices quoted in our order are fixed prices free of charge to the point of receipt. Price increases shall be subject to our express written consent.
- (2) Unless otherwise agreed in writing, the price includes delivery "DDP" and packaging.
- (3) Statutory value-added tax is included in the price.
- (4) All invoices shall always be in duplicate indicating our order number, our article number as well as our account and delivery note number as well as our account number.
- (5) We shall choose the method of payment. Invoices shall be paid either on the 25th of the month following receipt of the goods and the invoice at a 3 % cash discount off the gross amount or after 90 days without deduction. All payments shall be made subject to our rights arising from defective delivery. In so far as notices of defects have already been given on the due date, we shall be entitled to a refund.
- (6) The Supplier's rights arising from the contract may only be assigned to a third party with our written consent. Collection by a third party is excluded.



- (7) Our claims arising from the business relationship may only be offset against, if the Supplier's counterclaim has been determined to be legally valid by a final and binding judgment or has been expressly acknowledged by us. The same applies to the claiming of rights of retention.
- (8) We shall be entitled to offset claims to which sister companies, subsidiary companies or other companies associated with us are entitled.

## 4

### **Elements of the Contract - Calling In a Third Party**

- (1) Individual contracts shall be based on details given in the order placed by us along with documents belonging thereto such as drawings, technical conditions of delivery, building specifications, specifications of materials etc. as well as relevant rules for the prevention of accidents. Performance details or other details regarding technical, physical, chemical, mechanical or other features and DIN, VDE or other aforementioned external standards shall be deemed as a warranty of qualities.
- (2) Serial delivery may first commence once we have accepted initial samples. In this case and in other cases where the placing of an order, delivery etc. is dependent upon the approval of a sample, this shall be deemed a purchase by sample.
- (3) In so far as details regarding parts ordered are not recorded in our drawings, Technical Conditions of Delivery or other specifications, the Supplier shall notify us (by supplying a sample if applicable) of all intended alterations made to the parts concerned after the order was placed. Alterations shall be subject to our written consent. If alterations affect the suitability of the delivery item for the purpose envisaged by us, we may refuse to accept the intended alteration and either demand that the delivery be made in the manner, form etc. taken as a basis in our order or cancel the order without compensation.
- (4) Orders may only be passed on to a third party and/or subcontractors may only be called in with our written consent. Even if consent is granted, the third party called in by the Supplier shall be deemed to be a party instructed by the Supplier to perform an obligation.

## 5

### **Delivery Period**

- (1) The delivery period quoted in the order is binding.
- (2) The Supplier shall be obliged to notify us in writing without delay, if circumstances occur or it becomes aware of circumstances as a result of which any stipulated deadline period cannot be met.
- (3) We shall be entitled to statutory claims in the event of default in delivery. In particular we shall be entitled to demand damages for non-performance once a reasonable additional period has expired without effect.
- (4) In the event of default in delivery we shall be entitled to demand a contractual penalty at the rate of 0.5 % of the delivery value for every full week, but not more than 10 %. We shall be entitled to claim a contractual penalty in addition to performance.



We undertake to claim our right to a contractual penalty in relation to the Supplier not later than within 10 working days as from acceptance of the late delivery.

- (5) The delivery period quoted by us shall commence on the order date. If the delivery date in the specific case has been referred to as "expected" "approximate" or the like, the period between the date quoted and the actual date of delivery may not exceed 10 working days.
- (6) Force majeure, industrial disputes, public disorder or other circumstances for which we are not to blame that lead to disruptions in our manufacturing or that of our clients shall release us from any obligation to accept or pay damages for the duration and to the extent of the effect thereof. Where applicable, we shall be obliged to notify the Supplier of the end of the disruption without delay.

## 6

### **Passage of Risk - Method of Delivery**

- (1) Unless otherwise agreed, the delivery shall be made at the Supplier's risk free of charge to the destination quoted by us. In the case of delivery ex works the Supplier shall be obliged to choose the cheapest method of forwarding, unless the method of forwarding was stipulated.
- (2) The Supplier shall not be entitled to deliver increased or decreased quantities.
- (3) The goods to be delivered shall be properly packaged. If packaging and/or forwarding specifications given by us are not observed, we shall be entitled to refuse to accept goods without this leading to default in acceptance.
- (4) In so far as the price was not agreed inclusive of packaging, packaging may only be charged at the cost price. Reusable packaging such as boxes, containers etc. shall be returned by us to the Supplier post-paid and be refunded at the full invoiced value. Other packaging material such as wood shavings, paper etc. may not be charged.
- (5) Consignments shall be insured against transport damage at the expense of the Supplier.
- (6) The Supplier shall be obliged to precisely quote our order number on all forwarding documents and delivery notes. Failing this, we shall not be held responsible for delays in processing.

## 7

### **Claims Arising from Defects - Liability**

- (1) In the case of commercial purchases we shall be obliged to inspect goods for any defects within a reasonable period. A notice of defects shall be deemed timely, if it is received by the Supplier within a period of 10 working days as from receipt of the goods or, in the case of hidden defects, as from the time of discovery.
- (2) We shall be fully entitled to statutory claims arising from defects. In particular we shall be entitled to demand at our option that the Supplier remedies defects or delivers a replacement. In this case the Supplier shall be obliged to bear all expenses necessary for the purpose of remedying defects or delivering a replacement. The right to



damages, in particular the right to damages for non-performance, shall remain expressly reserved.

- (3) The statutory period of limitation for claims arising from liability for defects shall be 2 years as from the passing of risk.
- (4) The Purchaser's statutory right of recourse may be limited or excluded only by individual agreement.
- (5) We shall not be liable for damage caused by us, our statutory representatives or persons employed by us to perform an obligation as a result of simple negligence. This applies irrespective of the legal nature of the claim asserted, particularly to claims out of default, any other breach of duties or tort. This limitation of liability does not apply to damages arising from damage to a person's life, body or health and out of a breach of significant contractual duties.
- (6) The Supplier shall be liable for all damage caused by it, a legal representative or a person employed by it to perform an obligation as a result of negligence or intent.

## 8

### **Product Liability - Indemnification - Liability Insurance**

- (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, in so far as the cause lies within its sphere of control and organisation and the Supplier itself is liable in relation to third parties.
- (2) As part of its liability for damaging events within the meaning of section (1) the Supplier shall also be obliged to reimburse any expenses pursuant to Sections 683, 670 BGB [German Civil Code] and pursuant to Sections 830, 840, 426 BGB [German Civil Code] that arise from or in connection with a recall campaign carried out by us. In so far as possible and reasonable, we shall notify the Supplier of the content and extent of recall measures to be taken and give it the opportunity to express its opinion. Other statutory claims shall remain unaffected.
- (3) The Supplier undertakes to maintain product liability insurance with an insured sum of EUR 5 million per claim of personal injury / property damage (all-included). If we are entitled to damage claims over and above this, these shall remain unaffected.

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### **Protective Rights**

- (1) The Supplier guarantees that no third-party rights shall be infringed in connection with its delivery. In particular this applies to industrial property rights such as titles to a trademark etc.
- (2) If we are held liable by a third party on this account, the Supplier shall be obliged to indemnify us against these claims on first written request. We shall not be entitled to enter into any agreements, particularly a settlement, with the third party (without the consent of the Supplier).
- (3) The Supplier's duty to indemnify relates to all necessary expenses that we incur as a result of or in connection with being held liable by a third party.



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### **Reservation of Ownership - Provision of Materials - Tools - Confidentiality**

- (1) In so far as we provide the Supplier with parts, we shall reserve ownership rights therein. Any processing or transforming by the Supplier shall be undertaken on our behalf. If our goods under reservation of ownership are processed with other items not belonging to us, we shall acquire co-ownership rights in the new item in the ratio of the value of our item (purchase price plus VAT) to the value of the other processed items at the time of processing.
- (2) If the item provided by us is inseparably mixed with other items not belonging to us, we shall acquire co-ownership rights in the new item in the ratio of the value of the item under reservation of ownership (purchase price plus VAT) to the value of the other mixed items at the time of mixing. If mixing is undertaken in a manner such that the Supplier's item is to be regarded as the principal item, it shall be deemed agreed that the Supplier shall transfer co-ownership rights to us on a proportionate basis. The Supplier shall keep the sole property or joint property in safe custody for us.
- (3) We shall reserve ownership rights in tools. The Supplier shall be obliged to use the tools solely for manufacturing goods ordered by us. The Supplier shall be obliged to insure at its own expense tools belonging to us against fire, water damage and theft at the replacement value. At the same time the Supplier already now assigns to us all damage claims arising from this insurance. We hereby accept the assignment of claims. The Supplier shall be obliged to carry out in good time at its own expense any necessary servicing and inspection work as well as all maintenance and repair work on our tools. The Supplier shall immediately notify us of any disruptions. If it culpably fails to do so, damage claims shall remain unaffected.
- (4) The Supplier shall be obliged to treat with utmost confidentiality all illustrations, drawings, calculations and other documents and information received. These may be disclosed to third parties only with our express consent. The obligation to observe confidentiality shall also apply after this contract has been terminated. It shall expire once and in so far as manufacturing know-how contained in the illustrations, drawings, calculations and other documents handed over has become commonly known.
- (5) In so far as security rights to which we are entitled pursuant to section (1) and/or section (2) exceed by more than 20 % the purchase price not yet paid for all goods under reservation of ownership, we shall be obliged to release security rights at our option at the request of the Supplier.

## 11

### **Place of Jurisdiction and Performance**

- (1) In so far as the Supplier is a businessman, the place where our registered office is located shall be the place of jurisdiction. However we shall be entitled to also take legal action against the Supplier at the court having jurisdiction over the Supplier's registered office.

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- (2) Unless otherwise stated in the order, our registered office shall be the place of performance.

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### **Applicable Law**

- (1) The contractual relationship shall be governed by German law at the exclusion of the UN Convention on the International Sale of Goods.
- (2) If one of the above provisions is invalid in whole or in part, this shall not affect the validity of the remainder of the provisions and/or the contract.