

Purchasing Terms and Conditions  
effective 1 November 2002

**1. General – Scope**

- (1) All orders and other agreements are based on our Purchasing Terms and Conditions. Our Purchasing Terms and Conditions apply exclusively. We do not acknowledge any terms or conditions of the supplier that are in conflict with or deviate from our Purchasing Terms and Conditions, unless we have expressly approved their validity in writing. Our Purchasing Terms and Conditions are applicable even where we accept the supplier's delivery without reservation despite being aware of terms or conditions of the supplier that are in conflict herewith or deviate herefrom.
- (2) All agreements made between us and the supplier for the purposes of performing under this contract are to be set forth in writing in this contract.
- (3) Our Purchasing Terms and Conditions are applicable only with respect to entrepreneurs within the meaning of section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB).

**2. Offer – Offer documents – Order**

- (1) Offers must correspond precisely to our enquiries in terms of amount and characteristics. Deviations that are unavoidable must be expressly pointed out in the offer. Offers are made at no cost to us and are non-binding. Prices include freight and packaging. Packaging is returned only pursuant to special agreement.
- (2) Only orders that are made in writing are binding on us. Agreements made verbally or by phone must be confirmed in writing in order to be binding.
- (3) The supplier must give written notice of acceptance of the order promptly following receipt of same, but not later than within two weeks, making reference to the order number. If the order is not accepted within two weeks, we are no longer bound by it.
- (4) We retain title and copyright to illustrations, drawings, calculations, and other documents. They may not be made accessible to third parties without our express written consent. They are to be used exclusively for manufacturing purposes based on our order. Once the order has been filled, they must be returned to us, together with all copies and reproductions, without being prompted to do so. They must be kept confidential with regard to third parties. Accordingly, the arrangement in Section 9 (3) applies in addition.

**3. Price – Payment terms – Assignment of claims**

- (1) The price specified in the order is binding. The price does not include value-added tax.
- (2) We process invoices only if, in accordance with the requirements in the order, they indicate the order number shown on it. The supplier is responsible for all consequences that ensue from failure to comply with this obligation, unless it can demonstrate that it is not at fault for non-compliance.
- (3) Unless agreed otherwise in writing, we pay the purchase price within eight days, calculated from the date of delivery and receipt of invoice, with a 3% discount for prompt payment, within 14 days, calculated from the date of delivery and receipt of invoice, with a 2% discount for prompt payment, or within 30 days of receipt of invoice, net.
- (4) We are entitled to rights of set-off and retention to the extent permitted by statute.
- (5) Claims against us may not be assigned.

**4. Delivery time**

- (1) The delivery time specified in the order is binding. Unless agreed otherwise, it begins to run on the date that the order is placed.
- (2) The supplier is obligated to give us prompt written notice if circumstances arise, or become apparent to it, that prevent the stipulated delivery time from being able to be complied with.
- (3) In the event of default in delivery, we are entitled to statutory claims. In particular, after having set a reasonable deadline that went unmet, we are entitled to demand compensation of damages in lieu of performance and termination. If we demand compensation of damages, the supplier is entitled to demonstrate that it is not at fault for the breach of duty.

**5. Transfer of risk – Insurance – Documents – Invoices**

- (1) Unless agreed otherwise in writing, deliveries are made with freight pre-paid. Shipments must be made in precise compliance with our relevant shipping rules, and we must be immediately notified of them on the date of shipment.
- (2) Risk passes to us upon acceptance of the goods. The supplier must insure the goods, unless agreed otherwise in writing in a given case.
- (3) The supplier is obligated to indicate our order number on all correspondence and on all shipping documents (consignment notes, delivery notes, express goods addresses, parcel registration cards, etc.). If it fails to do so, we are not responsible for delays in processing.
- (4) Partial deliveries must be identified as such.
- (5) Invoices must contain the order number and be sent separately in duplicate by regular mail immediately after delivery is made, with the second copy to be clearly identified as such. In no event may invoices be enclosed with the goods. If the supplier breaches these duties, we are not responsible for delays in processing.

**6. Inspection for defects – Liability for defects**

- (1) We are obligated to inspect the goods by a reasonable deadline for possible deviations in quality or quantity. An objection is considered timely if it is received by the supplier within five working days following receipt of the goods or, in the case of latent defects, discovery of the defect.

- (2) We are entitled to statutory claims for defects without limitation. In particular, we are entitled to demand from the supplier that it eliminate the defect or deliver a new item, at our discretion. The right to compensation of damages, including compensation of damages in lieu of performance, remains expressly reserved.
- (3) Where there is imminent danger or special urgency, we are entitled, at the supplier's expense, to eliminate the defect or procure a replacement ourselves or to have same undertaken by third parties.
- (4) The prescription period amounts to 36 months and begins to run on the date of transfer of risk.
- (5) Payment has no bearing on our right to object to defects or on our claims for defects.

#### **7. Product liability – Indemnification – Liability insurance coverage**

- (1) If the supplier is responsible for damage caused by a product, it must indemnify us on first demand against claims by third parties for compensation of damages, insofar as the cause is rooted in its area of control and organisation and it itself is liable to third parties.
- (2) In connection with its liability for events of damage within the meaning of subsection 1, the supplier is also obligated to reimburse any expenses pursuant to sections 683 and 670 BGB, as well as pursuant to sections 830, 840, and 426 BGB, that result from or are connected with a recall action undertaken by us. We will notify the supplier – insofar as same is reasonable and can be expected of us – as to the content and scope of the recall measures to be undertaken and give it the opportunity to comment. Other statutory claims remain unaffected.
- (3) The supplier undertakes to maintain product liability insurance with blanket coverage in the amount of €10 million per personal injury/property damage. If we are entitled to more extensive claims for compensation of damages, same remain unaffected.

#### **8. Proprietary rights**

- (1) The supplier warrants that no patents or other third-party proprietary rights will be infringed in connection with its delivery.
- (2) If in this regard a third party lodges a claim against us, the supplier is obligated to indemnify us against same upon first written demand. We are not entitled to enter into any agreements with the third party without the supplier's consent, including conclusion of a settlement.
- (3) The supplier's obligation to indemnify relates to all expenses necessarily incurred by us as a result of or in connection with a claim being lodged by a third party.
- (4) The prescription period amounts to 10 years and begins to run on the date of contract conclusion.

#### **9. Retention of title – Consignment – Tools – Confidentiality**

- (1) If we consign parts to the supplier, we retain title thereto. Processing or working by the supplier is done for us. If the goods to which we retain title are processed with other items not belonging to us, we acquire co-ownership in the new item in the ratio that the value of our item (purchase price plus VAT) bears to the other processed items at the time of processing.
- (2) If the item consigned by us is inseparably mixed with other items belonging to us, we acquire co-ownership in the new item in the ratio that the value of our item (purchase price plus VAT) bears to the other mixed items at the time of mixing. If mixing takes place in such a way that the supplier's item is considered to be the principal item, it is deemed agreed that the supplier assigns to us pro-rata co-ownership. The supplier must safeguard sole or co-ownership on our behalf.
- (3) The supplier is obligated to maintain in strict confidence all illustrations, drawings, calculations, and other documents and information that it receives. The foregoing may be disclosed to third parties only with our express consent. The obligation of confidentiality survives performance of this contract. It expires if and when the manufacturing know-how contained in the illustrations, drawings, calculations, and other documents provided to the supplier have become public knowledge.
- (4) We retain title to tools. The supplier is obligated to use the tools solely for the manufacture of the goods ordered by us. The supplier is obligated to insure at its expense the tools belonging to us in their replacement value against damage due to fire, water, and theft. At the same time, the supplier hereby assigns to us all compensation claims under such insurance. We hereby accept the assignment. The supplier is obligated to perform in a timely manner any necessary maintenance, repair, and inspection work on our tools at its expense. It must promptly notify us of any incidents. If it culpably fails to do so, all claims for compensation of damages remain unaffected.
- (5) If the security rights to which we are entitled pursuant to subsection 1 and/or 2 exceed by more than 10% the purchase price for all of the goods to which we retain title that have not yet been paid for, we are obligated at the supplier's request to release the security rights of our choice.

#### **10. Place of jurisdiction – Place of performance – Applicable law**

- (1) If the supplier is a merchant, the place of jurisdiction is our registered office. However, we are also entitled to bring suit against the supplier before its local court.
- (2) Unless specified otherwise in our order, our registered office is the place of performance.
- (3) Unless expressly agreed otherwise in writing, the law of the Federal Republic of Germany is applicable.