

Terms and conditions of purchase Effective from 01.09.2011

§ 1 Orders

- (1) Orders are binding only if they are made on our duly signed order forms and based on these conditions. Any orders that deviate from the latter like consignment stock transactions, EDI (Electronic Data Interchange) orders or other electronic order processing are to be governed by separate frame contracts. Oral agreements, consents and declarations of any kind must be made in writing to be legally binding. Confirmation by telecommunication is sufficient to meet the requirement of the written form; this also applies to a cancellation of the contractual clause.
- (2) Any conflicting or deviating terms and conditions are not binding for us, unless we have explicitly confirmed them. This is also valid in case we have not explicitly opposed to an order confirmation which is based on terms of business deviating from or conflicting with these conditions. Even if we have accepted delivery without objection or if we have paid the purchase price, this does not imply that other conditions conflicting with ours will be accepted.
- (3) Supplier's drawing up of quotations, technical projects, preliminary studies, etc. are free of charge for us in any case and do not oblige us to place an order.
- (4) Any objections by the supplier against our intended use of the products have to be addressed to us in writing immediately before delivery. In such cases, the order is to be carried out only after a new written notice from our part. In case contents and interpretation of our demands should not be clear, the supplier is obliged to demand a clarification from us immediately.

§ 2 Delivery period

- (1) The supplier undertakes to strictly adhere to the delivery dates indicated in the respective order form.
- (2) If the supplier fails to deliver within the period agreed upon, we have unrestricted legal rights (notably to withdraw from the contract and to demand compensation for damages instead of performance). Within the scope of these claims we have the right to demand a lump-sum compensation in damages amounting to 3 % of the contractual goods' value (total invoice amount, excluding VAT) per commenced calendar week of the missed deadline, on the whole, however, at most 10 % of the contractual goods' value, unless in normal cases according to the normal course of events the lump-sum exceeds the damage to be expected. The supplier is explicitly entitled to prove that damage or a decrease in value has not occurred or amounts to essentially less than the lump sum.
- (3) If the supplier realizes that an agreed deadline cannot be maintained for whatever reasons or that such circumstances can be foreseen, he shall immediately inform us about it in writing, stating the reasons and a binding delivery date.
- (4) If the supplier fails to meet his obligations despite set time limit or does not meet them in time, we are entitled without further announcement to obtain replacement for the goods or materials on our own or by a third party at the expense of the supplier. The supplier also has to bear additional costs arising hereof as well as losses resulting from the non-execution of the order.
- (5) In the event the supplier delivers the contractual goods before the agreed delivery date, we shall reserve the right to return the goods at risk and expense of the supplier or to charge the supplier with costs incurred to us by the early delivery (e.g. stall money).

§ 3 Force Majeure

- (1) All cases of force majeure and events which are unforeseeable, which cannot be prevented and are exceptional, including possible business disruption, lawful strikes and other industrial actions as well as all other events introduced from outside exempt us from the acceptance and purchase obligation for the duration of the interference.
- (2) We are entitled to withdraw from the contract if an event as described in subsection (1) lasts longer than one month; the supplier has no right to derive a claim for damages hereof. In all other cases the contractual time limits will be prolonged accordingly.

§ 4 Invoices

- (1) All invoices in duplicate must bear the order number and the date of the order. Invoices not meeting these requirements are returned without justifying claims for delay in payment.
- (2) Cash discount periods count from the day of receipt of the invoice with us, at the earliest, however, from receipt of the goods. We are entitled to deduct 3 % cash discount off the total invoice amount if the invoice is paid by the 15th of the month following the delivery date. We shall pay the net invoice amount within 60 days end of the month following the delivery.
- (3) Payment is made by means of payment at our discretion. This is also valid for payment by cheque and bill of exchange as well as acceptance.
- (4) We are fully entitled to set-off and retention rights.

§ 5 Prices

- (1) Prices are fixed prices; they are to be understood free our works acc. to INCOTERMS 2010 including packaging. Modifications due to later price increases, independent of the reason, are excluded unless other agreements have explicitly been made.
- (2) Unless other agreements have explicitly been made, our payments shall be made in EUR free domestic bank account of the supplier.
- (3) VAT, if any, shall be itemized separately.

§ 6 Dispatch / packaging

- (1) Our dispatch instructions and general forwarding instructions are to be strictly observed in any case; the supplier is liable for all damage incurred to us caused by non-observance, unless he is able to prove that he is not responsible for the damage incurred. At least, the goods are to be packed according to the General Conditions for Forwarders.
- (2) Dispatch costs shall be at the expense of the supplier. He shall also take over costs for transport insurance. In case of invoicing of packing material which is to be returned, a credit note is to be made out; return shipment is effected carriage unpaid.
- (3) Each shipment shall be accompanied by a packing slip showing order number, type, quality and quantity of the goods or materials.

§ 7 Passing of the risk

In case of shipments free our works the risk passes to us when the goods have been unloaded by the supplier or by the transport company. This also applies if our personnel assisted with unloading. Same is valid also for deliveries free distributing warehouse of our authorized representative or dealers.

§ 8 Receipt of goods

- (1) Goods shall be received during our normal working hours only.
- (2) According to the contract we shall only accept goods corresponding in type, quality and design to the drawings, samples and instructions handed over for this order.

- (3) If we demand initial samples they have to be provided to us for acceptance with first sample report acc. to VDE regulations. Bulk delivery may start only after our written acceptance of the sample. Exceptions to this must also be accepted in writing.

§ 9 Requirement to make a complaint / objections

- (1) Incoming goods pass our acceptance test. Inspection criteria, scope and intensity of the test are defined by us with the initial order. In case of non-respect of our criteria, we are entitled to assert warranty claims regarding the whole delivery.
- (2) Notifications of defects are made in time if they are brought forward to the supplier in writing or by telefax within 10 days from receipt of goods or in case of hidden defects from discovering the defect respectively.
- (3) Aforementioned regulations are also valid for over- or under-deliveries as well as for the delivery of other goods acceptable pursuant to § 377 German Commercial Code. In case of bulk articles a tolerance of +/- 5 % is acceptable.

§ 10 Warranty

- (1) The period for possible claims on defects begins with delivery and runs to 36 months.
- (2) If the supplier has committed himself to install the goods or materials supplied by him in our works, the limitation period acc. to subsection (1) starts with acceptance of the works.
- (3) In case of a defect we have legal rights – acc. to our choice; notably we are entitled to
 - a) send back the defective goods at risk and expense of the supplier and to demand flawless replacement or to renounce the right of replacement by refunding the invoice value; or
 - b) demand removal of the defect complained about by the supplier at his own expense.
 - c) if the supplier fails to meet obligation b) in time or in case of other urgent reasons like operational safety being in danger, we are entitled to remove the defect or to have it removed by a third party at the expense of the supplier.
- (4) Hidden defects give us the right to demand compensation for the wages uselessly paid, unless the supplier can prove that the defect is not within his responsibility.
- (5) All costs arising in case of a defect are to be borne by the supplier, unless he proves that the defect is not within his responsibility.
- (6) Furthermore we reserve all legal rights we can assert at our discretion, especially claims for damages.
- (7) As far as claims regarding a supply recourse acc. to §§ 478, 479 German Civil Code must be taken into consideration, the limitation period – other than the regulation in subsection (1) – is five years from delivery.

§ 11 Product liability

- (1) The supplier is obliged to release us from all claims of a third party, which are due to a production defect for which he is liable; independent of the legal nature of the claim put forward. The supplier is particularly obliged to release us from claims out of the Product Liability Act as far as the supplier or his vicarious agents are responsible for the occurring defect or the resulting damage.
- (2) Within this scope the supplier is also obliged to undertake all necessary and reasonable product modifications, including writing new texts for instructions of any kind. Notably, the supplier is also obliged to carry out a possible necessary recall of goods on his own expense.

§ 12 Work carried out in our works

- (1) Persons entering our premises in fulfillment of a supply contract are subject to the terms of our factory regulations.
- (2) We are liable for accidents or damages only in case of intent and gross negligence. Same is valid as far as we have culpably infringed an essential contractual obligation.

§ 13 Industrial property rights

- (1) It is under the liability of the supplier that the goods ordered can be used or resold without infringing foreign industrial property rights (patents, utility models, trademarks, license rights, etc.) In case of an infringement of foreign property rights, he releases us from all claims; furthermore we are entitled to withdraw from the contract any time.
- (2) In case of a lawsuit for infringement of an industrial property right, the supplier has to make a security deposit to the full amount of the proved, imminent damage.
- (3) Furthermore, the supplier shall bear all judicial and extra-judicial costs and expenses incurring in relation with a lawsuit for infringement of industrial property rights.
- (4) The supplier can be held liable within the scope of subsections (1) to (3) for the period of 10 years, calculated from delivery.

§ 14 Materials and tools provided

- (1) We retain title to materials provided by us; this also applies as far as the supplier works on or processes material provided; working on and processing is always done on our behalf.
- (2) The materials provided by us are to be stored separately; they are to be insured sufficiently against damage caused by fire, water, theft and other damages to the expense of the supplier.
- (3) The materials provided by us must be used only according to their determination.
- (4) As far as we provide tools, they remain our property; they are to be marked as our property and protected against access of a third party. Same applies to tools which have been fabricated by order of us.
- (5) All tools remain our property, even if we write off the tool costs via the price of orders and the fabrication costs have amortized.
- (6) The manufacturer is obliged to use the tools only for fabrication of products ordered by us. In case he fails to meet these requirements, we reserve the right to assert our claims for damages.

§ 15 Samples, drawings, etc.

- (1) We retain title to samples, drawings, models, specifications, material prescriptions, construction regulations, etc. Copies must be made only with our explicit approval. Without our explicit prior written approval, samples, drawings, etc. must not be passed on to a third party nor used for the latter. They have to be returned unsolicited as soon as they are no longer needed for execution of the delivery.
- (2) Parts manufactured according to our indications, drawings, samples, models, etc. are to be supplied to us only and must not be supplied to or left with a third party temporarily. The supplier has the duty to observe secrecy.

§ 16 Miscellaneous

- (1) The contractual relationship exclusively underlies German law; provisions of the UN Sales Convention are excluded.
- (2) Place of performance, also for our payment obligations, is Lüdenscheid resp. our works, unless something else has expressly been agreed upon. This also applies to the place of subsequent performance by the supplier.
- (3) Place of jurisdiction is Lüdenscheid, this also applies to claims arising from default proceedings as well as to any actions on bills of exchange or cheques. However, we are also entitled to sue the supplier at the court responsible for his domicile.