

# General Terms and Conditions of Supply and Payment

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This text is a translation from the authoritative terms and conditions in the German language and for reference purposes only.

## I. Relevant Conditions, Exclusion of Application of other Business Terms.

The legal relationship between supplier and purchaser shall be determined by the following conditions and any additional terms agreed between the contracting parties, if any. Changes and amendments to these conditions have to be made in writing. Any other business terms shall not be applicable, even if they were not rejected explicitly in any individual case.

## II. Conclusion of Contract

1. For legal validity, acceptance of a contract requires a written acceptance of order by the supplier. This also applies to all direct subsidiary agreements or those made by proxy. Acceptance of offer jointly with written order confirmation and included conditions constitute the contractual relationship.

2. Individually agreed arrangements shall be applied. Besides, state of the art, which is determined by the latest DIN standards and directives, shall be considered as a part of these terms and conditions.

## III. Prices, Price Adjustments

1. Prices are ex works in Euro and, unless otherwise agreed, exclusive of turnover tax, packing, carriage, postage and insurance.

2. If any significant change occurs in the case of long-term contracts (contracts with a term of more than 12 months and unlimited contracts) and of contracts with a term of more than three months between the conclusion and the first order, in respect of wage, material or energy costs, each of the contracting partners is entitled to demand an appropriate adjustment of price, taking these factors into consideration. The same applies for changes of quantities ordered.

3. Where a binding order quantity is not agreed, calculation of the supplier will be based on the non-binding order quantity expected by the purchaser for a specific period of time (target quantity). Where the purchaser takes less than the target quantity, the supplier is entitled to increase the unit price by an appropriate amount with consideration of additional set-up and start-up costs and, if applicable, the agreed tool cost portion.

## IV. Payment

1. Payment is to be made with a discount of 2 %, if it is made within 14 days or without discount within 30 days unless otherwise agreed between the contracting partners. Punctual payment is determined by actual receipt of payment.

2. If it becomes apparent after conclusion of the contract that the claim for payment is at risk owing to the purchaser's lack of adequate financial capacity, the supplier shall be able to refuse delivery and to set a reasonable deadline within which the purchaser must pay concurrently or furnish security. If the purchaser refuses to do so, the supplier is entitled to withdraw from the contract and demand damages.

3. Bills of exchange and cheques will only be accepted on account of performance and on condition that they may be discounted. Discount charges will be calculated from the due date for payment of the invoice amount.

4. The supplier is entitled to balance all receivables and liabilities relating to the business relationship.

5. Where the supplier has indisputably supplied goods, which are partly defect, the purchaser is nevertheless obliged to pay for the non-defective part, unless partial delivery is of no use to him.

6. The purchaser may only set off payment against counter-claims which have been determined by final judgement or are not disputed.

7. If payment terms are not met the supplier shall be entitled to bill interest on arrears at the rate charged to the supplier by the bank for current account overdrafts, but a minimum of 8.5 percentage points above the base interest rate of the European Central Bank at the time.

## V. Long-term and Call-off Purchaser Agreements

1. Unlimited contracts may be terminated by 6 months' notice.

2. In case of call-off purchaser agreements binding quantities are to be notified to the supplier by call according to time for materials procurement and machine uptimes before delivery unless otherwise agreed.

3. Any additional costs caused by the purchaser through late calling or subsequent amendments to the call in respect of time or quantity are to be borne by the purchaser; in doing so, calculation of the supplier is relevant.

4. In case of end of production or changes in subject of the contract, the purchaser is obliged to accept already completed parts, work in progress and primary material, as far as these were necessary according to materials procurement and machine uptimes.

## VI. Drawings and Specifications

If one of the contractual partners makes available drawings or technical documents relating to the goods to be supplied to the other partner these remain property of the submitting partner.

## VII. Production Facilities

1. Tools, forms, molding tools, samples and devices (production facilities) provided for production remain property of the supplier until payment has been made completely.

2. The costs for maintenance and proper storage as well as the risk of damage or destruction are borne by the supplier.

3. Purchaser-related production facilities shall be used by the supplier for deliveries to the purchaser only.

4. The supplier shall store the production facilities for the purchaser for two years starting from last delivery. Afterwards, the supplier requests the purchaser in writing to make representations regarding further storage within three months. If no comment is made, the supplier has the production facilities at his disposal. Otherwise the purchaser bears storage costs.

5. If the purchaser intermits the order temporarily or stops it during the period of manufacturing the production facilities, all production costs incurred until that time will be charged to his account, as far as they are within his responsibility.

6. Even if the purchaser has paid for them, production facilities remain in the possession of the supplier at least until completion of the supply contract. The purchaser is then entitled to reclaim the production facilities when he has complied with his contractual obligations completely.

## VIII. Reservation of Title

1. Goods supplied remain property of the supplier until all claims under the business relationship with the partner are fulfilled.

2. Allocation of accounts receivable in a current invoice as well as striking a balance and acceptance of it will not affect reservation of title. Conformance to requirement is considered to be made when the value has been received by the supplier.

3. The purchaser is entitled to sell the goods in the regular course of business, pledge of the reserved goods or transfer of ownership is not permitted to him. The purchaser is obliged to protect the supplier's rights which are subject to reservation of title in case of resale on credit.

4. With immediate effect, the purchaser assigns to the supplier as security all claims and rights deriving from the sale or a permitted hiring of goods over which he has rights of ownership. The supplier accepts the assignment. On demand of the supplier, the purchaser has to give all necessary data and inform all principals about the assignment.

5. If the supplier's products are combined or mixed inseparably with other moveable items to form a single product and the other product is deemed to be the principal product, the purchaser transfers joint ownership to the supplier on a pro rata basis, as far as the principal product is owned by the purchaser. The purchaser stores property for the supplier. The same shall apply to the product created by processing or combination or mixing as to the goods which are subject to reservation of title.

6. The purchaser has to inform the supplier immediately of enforcement measures being taken by third parties in respect of the reserved goods or beforehand assigned claims and rights by handing over documents required for any intervention. This also applies to infringements of any other kind.

7. Where the requirements of article IV. para. 2 are available the purchaser shall be obliged to surrender the goods after expiry of the deadline.

#### **IX. Delivery Dates and Time Limits**

1. Specifications of delivery dates occur in all conscience but without engagement. Agreed time limits begin to run the day the supplier sends written confirmation of an order. They are considered to be met if the goods are at the agreed place of performance in the agreed time.

2. Production-related additional or short deliveries are permitted in case of serial production within a tolerance of 10 % of the total order quantity. The total price will be adjusted accordingly.

3. Partial deliveries are permitted within reason. They are invoiced separately.

#### **X. Delay, Impossibility**

1. In case of delay the purchaser is entitled to withdraw from the contract only if the supplier is responsible for the delivery date not being met and the purchaser has allowed the supplier a reasonable period of grace without result.

2. In the event of delivery being delayed by one of the circumstances as set forth in article XVI below or as a result of any action or omission on the part of the partner, an extension of delivery period will be granted appropriate to the circumstances.

#### **XI. Dispatch and Passing of the Risk**

1. The purchaser bears passing of the risk when the delivery leaves the factory unless otherwise is agreed upon.

2. Goods which are notified as being ready for dispatch on schedule are to be taken over by the purchaser immediately. Otherwise the supplier is entitled to dispatch or store them at his own option at the cost and risk of the purchaser.

3. In absence of any special agreement the supplier selects method and routing of transport.

#### **XII. Warranty**

1. Quality of the goods is determined by the arrangements made between the partners. If no arrangements have been made, state of the art, which is determined by the latest DIN standards and directives, is part of these terms and conditions.

2. In the event the supplier supplies in accordance with drawings, specifications, samples, etc. provided by the purchaser the latter takes over the risk of fitness for the intended use. The contractual condition of the goods is determined by the time of passing of the risk according to article XI.

3. Any material defects in respect of any defect deriving from unsuitable or improper use, defective assembly or operation by the purchaser or third parties, normal wear and tear, defective or negligent handling, are also excluded as well as the consequences of unsuitable modifications or repairs undertaken by the purchaser or third parties without approval by the supplier. The same shall apply to defects which only reduce the value of the goods or their fitness for their intended use to an insignificant extent.

4. Claims for material defects shall become statute-barred after 12 months. This shall not apply where law prescribes longer periods of time as mandatory.

5. Where it is agreed that the goods are to be accepted after completion or first sample inspection, notification of defects which could have been discovered by the purchaser under careful acceptance or first sample inspection is excluded.

6. The supplier is entitled to assess the notified defect himself. The goods complained of must be returned to the supplier immediately; the supplier takes over the costs of transport where the notice of defect is justified. In the event the purchaser fails to observe these obligations, or carries out modifications of the goods which are complained of without consent of the supplier, he loses any claims for material defects.

7. In the event of notice of defect which is justified and made at the due and proper time, the supplier will, at his choice, make improvements to the goods complained of or supply a replacement free of defect.

8. In the event of the supplier failing to meet these obligations, or failing to do so within a reasonable time in accordance with the terms of the contract, the purchaser may set in writing a final deadline within which the supplier must fulfil his obligations. In the event of this period expiring without result, the purchaser may demand reduction of the price, withdraw from the contract or himself carry out, or have the necessary subsequent improvement carried out by a third party after prior consultation with the supplier. There shall be no reimbursement of costs if the expenses increase in an inappropriate way.

9. The purchaser has statutory rights of recourse against the supplier only insofar as the purchaser has not reached any agreements with his customer which go beyond the statutory claims.

10. The supplier complies with the legal regulations as applicable in the European Union and the Federal Republic of Germany, e.g. the REACH regulation (Regulation (EC) No 1907/2006), the law of the sale, return and environmentally sound disposal of electric and electronic equipment (Electrical and Electronic Equipment Act) as national implementation of the directive 2002/95/EC (ROHS) and the directive 2002/96/EC (WEEE) and the End-of-life Vehicle Act as national implementation of the ED directive 2000/52/EC.

11. The supplier shall immediately inform the purchaser about relevant changes in the product due to legal regulations, in particular the REACH regulation, its supply availability, use or quality and shall in individual cases agree with the purchaser on suitable measures to be taken.

#### **XIII. Exclusion of Liability**

1. Unless otherwise specified below, any additional or more extensive claims by the purchaser against the supplier are excluded. This shall apply in particular to claims for damages for a breach of duties arising from the obligation or from unlawful acts. The supplier therefore is not liable for any damage not deriving from the delivered goods themselves. In particular, there is no liability of the supplier for any loss of profit or financial loss.

2. The limitations of liability indicated above do not apply in the case of specific intent, gross negligence on the part of the supplier's legal representatives or senior employees, and in the event of culpable violation of significant contractual obligations. In the event of culpable violation of significant contractual obligations, the supplier is liable – other than in cases of specific intent or gross negligence on the part of the supplier's legal representatives or legal employees – only for loss typical for the contract or loss which might reasonably have been expected.

3. The limitation of liability is also not applicable for personal injury and damages to property where there is liability in accordance with product liability laws in the case of defects in goods supplied for private use. It is also not applicable in case of injury of life, body or health and in the absence of guaranteed characteristics, if and insofar as the object of the guarantee was to cover the purchaser against any losses not deriving from the goods supplied.

4. Insofar as the supplier's liability is excluded or limited, this is also applicable to the personal liability of the supplier's employees, workers, personnel, legal representatives and vicarious agents.

5. The legal provisions relating to burden of proof are not affected by this.

6. In execution of contractually incurred quality and pre-delivery controls, there is no acceptance for liability of premises at the same time by the supplier. The supplier assumes the purchaser to take all necessary quality inspections for performance of liability of premises.

#### **XIV. Secrecy**

1. The contracting parties commit themselves to deem as business secrets all commercial and technical details which come to their knowledge during the course of their business relationship unless such details are public.

2. Documents, drawings, data, IT information, software, materials or other similar objects (samples, models, etc.), provided by one of the contractual partners remain property of the providing partner and shall not be made available or otherwise be made accessible to unauthorized third parties. Reproduction of such objects is permitted only according to business requirements or in compliance with the laws on copyright.

3. Knowledge acquired of the data stated in para. 1 shall also not be used further on or be transferred to third parties if the purchase order is settled as long as the requirements of para. 1 are still valid.

#### **XV. Protective Rights**

The purchaser is obliged to check by himself if by placing the order, infringements of protective rights are possible and to inform the supplier if necessary that the ordered goods refer to parts effectively protected by industrial property rights. He assumes liability for all claims which will be asserted against the supplier by a beneficiary on this account while executing the order.

#### **XVI. Force Majeure**

In case of act of God, strike, lockout, civil commotion, government directives and other non-foreseeable, inescapable and serious events, which cause a partial or complete stoppage of work, the contracting parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The contracting parties are committed to give each other the necessary information (which may reasonably be expected without delay) and to adjust their obligations in good faith to the changed circumstances.

#### **XVII. General Provisions**

1. The amount of damages to be paid by the supplier according to articles XII., XIII. shall be determined by having, in favour of the supplier, due regard to the economic situation of the supplier, nature, size and duration of the business relationship, possible causative or responsible contributions by the purchaser according to § 254 BGB.
2. In the event one of the contracting parties ceases payment, or insolvency or non-judicial settlement proceedings are applied for, then the other party shall be entitled to rescind the contract with respect to the part not yet performed.

#### **XVIII. Place of Performance, Severability Clause, Place of Jurisdiction, Applicable Law**

1. Unless otherwise is stated in the order confirmation, the place of performance is the supplier's principal place of business.
2. Should one of the provisions of these conditions or of any additional stipulations agreed upon be or become invalid, the validity of the remaining part of these conditions shall not be affected thereby. The contracting parties are committed to replace the invalid provision by another equivalent term, in so far as this is possible, with respect to the commercial effect.
3. The court at the place where the plaintiff is domiciled, or any other competent court, shall have jurisdiction over these conditions.
4. If the parties have not agreed otherwise the laws of the Federal Republic of Germany shall be applied exclusively for all contractual and business relationship between the purchaser and the supplier. The application of the uniform law of sale contained in the Hague Convention on International Sale of Goods, dated 11th of April 1980, is hereby excluded.