

1. GENERAL

- 1.1 These Standard Terms of Purchase shall govern all our enquiries and orders (whether present or future) and all supply contracts and other arrangements relating to orders (whether present or future) made with the supplier ("Supplier"). We herewith object to any Supplier's terms even in the event that they have been transmitted to us in any confirmation letter or in any other way or that we accept the Supplier's delivery or services without again objecting to such Supplier's terms. This also applies as far as the Supplier's terms supplement these Standard Terms of Purchase.
- 1.2 Any verbal ancillary arrangement, divergence from these Standard Terms of Purchase, or modification or exclusion of these Standard Terms of Purchase shall require to observe the written form in order to be valid. This shall extend to apply to any abrogation of this written form clause.
- 1.3 As far as the parties have negotiated in the German language the German version of these Standard Terms of Purchase shall be binding and alone decisive in the construction hereof, even in the event that any translation of these Standard Terms of Purchase has been provided to the Supplier or executed by the parties.
- 1.4 If any term or condition hereof or any other term or condition of the contract is or becomes invalid, then the contract as for the rest shall remain valid. The parties shall replace such invalid term or condition by that valid term or condition that as closely as possible attains the commercial result of the invalid term or condition.
- 1.5 The Incoterms as amended at the time of entering the contract shall apply except where these Standard Terms of Purchase contain diverging terms or conditions.

2. ENQUIRIES, OFFERS, ORDERS

- 2.1 Our enquiries shall not be binding upon us. Our orders shall be binding upon us only where and to the extent we have made them in writing or confirmed them in writing.
- 2.2 The Supplier is bound by his offer for two weeks. The period begins to run when he has made his offer and expires when he has made his offer and expires when our acceptance of the offer reaches the Supplier.
- 2.3 Where the Supplier in the Supplier's offer diverges from our enquiry, the Supplier shall explicitly draw attention to such fact.
- 2.4 Offers shall be made free of charge and shall not be binding on us; no consideration shall be payable for any visit, preparation of plans, drawings or the like unless explicitly agreed in writing.

3. PRICES, PAYMENT

- 3.1 All agreed prices shall be binding. Except where otherwise agreed, prices shall be "free place of receipt" including the cost of packaging, shipping, insurance, customs, taxes and other dues. Where a delivery is not agreed to be "free place of receipt", the Supplier shall take out transport insurance at its own cost.
- 3.2 Invoices shall be delivered separately from the shipment of goods in three copies stating the respective destination, our order number and any other identification requested in the order.
- 3.3 Unless otherwise agreed, payments shall become due and payable 30 days after receipt of the invoice and goods; in the event of payment within 14 days after receipt of the invoice and goods, we shall be entitled to a cash discount at a rate of 3%. Where performance owed under any contract includes any documentation, test certificate or similar documents, the above payment periods shall not commence prior to due delivery of such documents to us in accordance with the contract.
- 3.4 We shall be entitled to make any payment by bank transfer or cheque.

4. DELIVERY AND OTHER SERVICES ("PERFORMANCE")

- 4.1 The Supplier shall only deliver original goods and must not substitute them with goods of other manufacturers.
- 4.2 All agreed dates and time periods shall be binding.
- 4.3 If any event occurs which may endanger due Performance at the agreed time, then the Supplier shall notify us thereof immediately stating the reasons. This shall not negate the obligation to perform within the agreed Performance time. The Supplier shall bear any additional cost of any delay beyond the agreed Performance time.
- 4.4 In case of any delay in performing the Supplier's duties the latter shall pay a penalty of 0,2% of the order value for each working day of delay but not more than 5% of the order value. In case that several penalties are due the amount of all such penalties is limited to a total sum of 5% of the order value.

- 4.5 Upon exceeding the agreed Performance time, the Supplier shall be in default irrespective of any reminder from us, except where Performance is prevented by any event lying outside the Supplier's sphere of responsibilities.
- 4.6 Our acceptance without reservation of any overdue Performance shall not be construed so as to constitute a waiver of our rights, if any, for exceeding the Performance time.
- 4.7 The Supplier can invoke the non-receipt of any documents to be provided by us that is necessary for making the delivery or service if the Supplier has not received such documents despite written reminder and extension of a period of grace.
- 4.8 Except where otherwise agreed, the delivery shall be "free place of receipt".
- 4.9 The risk shall remain with the Supplier up to the hand-over of the goods at the destination.
- 4.10 Unless the parties have agreed otherwise Schwetzingen is the place of receipt and destination including cases of supply via a consignment stock.
- 4.11 Those quantities, measurements and weights shall be binding for payment such as ascertained in our establishment.
- 4.12 Except where otherwise agreed, the Supplier at the Supplier's cost shall provide packaging suitable for the delivery of the goods. This shall not affect our right to issue instructions as to the packaging to be used in the event of any sale by delivery (*Versendungskauf*). We shall be entitled to elect to either return any packaging materials to the Supplier at the Supplier's cost and risk or to dispose of any packaging materials at the Supplier's cost; however, we shall be under no obligation to return and/or dispose of packaging materials. This shall not affect the provisions of the German Packaging Regulation (*Verpackungsverordnung*).
- 4.13 Shipping papers such as bills of lading, bills of delivery, dockets and similar papers and where contractually stipulated factory certificates and safety data sheets shall be enclosed with each shipment. Order numbers and any identification that had been requested in the order shall be stated on all papers. On or before the date of shipment, a shipping notice and a bill of delivery (two copies) shall be delivered to us. Advance notice of any ship arrival shall be given to us no later than 48 hours prior to arrival. If no proper shipping papers are available to us at receipt of the goods or if our order numbers are not correctly stated in the shipping papers, then the Supplier shall bear any resulting additional cost. The second sentence of clause 4.14 shall apply *mutatis mutandis*.
- 4.14 The Supplier shall be entitled to render any partial performance only with our prior consent. This shall not affect our right to claim partial performance from the Supplier.
- 4.15 The Supplier shall not be entitled to render performance prior to the agreed performance time. In the event of any premature performance, we shall be entitled to refuse acceptance of the goods or to send the goods back to the Supplier at the Supplier's cost and risk or to store the goods up to the agreed performance time. In rendering performance, the Supplier shall conform to our opening hours.

5. DECLARATIONS ON ORIGIN OF GOODS

Where the Supplier makes any declaration on the origin of the goods, the Supplier shall enable the customs authorities to verify the certificates of origin and to provide any necessary information and deliver any necessary confirmation. The Supplier shall be liable for any damage or loss resulting from the non-approval by the relevant authorities of the declared origin due to any defective certification or lack of verifiability.

6. PERFORMANCE, MODIFICATION OF PERFORMANCE, WORK ON OUR PREMISES, PERFORMANCE DOCUMENTS, DEPLOYMENT

- 6.1 The Supplier's deliveries and services shall be made so as to comply with the terms and conditions of the contract, the German Technical Working Equipment Act (*Gesetz über technische Arbeitsmittel*), the applicable prevention of accidents provisions, industrial safety, environmental and other provisions, applicable technical standards and generally accepted technical rules. In rendering performance, the Supplier shall ensure that where possible in working, due regard shall be had to environmental concerns, as far as possible preserving resources and as far as possible preventing emissions. We shall be entitled, even after the conclusion of the contract, to claim modified performance unless even with due regard to our interest such modification claimed by us would constitute an unreasonable hardship for the Supplier.
- 6.2 Persons working on our premises in performance of the Supplier's obligations shall be subject to our directions and to the provisions of our shop rules (*Betriebsordnung*) and those prevention of accidents, industrial safety, environmental and other laws and provisions applicable to us. Hazardous materials may be used on our premises only after consultation with us and must be duly and correctly labelled.
- 6.3 The Supplier shall refrain from using any performance documents made available by us for creating the item to be delivered or in connection with any tool for any purpose lying outside the contract, and from copying such documents or making such documents available to any third party. Performance documents shall be returned to us at request but no later than upon performance of the Supplier's deliveries and services.
- 6.4 The Supplier shall make available to us any plans, execution drawings, technical calculations and other papers and documents relating to the goods or tools to the extent that we require such papers and documents for the use, maintenance or repair of the goods or tools or to the extent this has been agreed by the parties. At request, the Supplier shall also deliver replacement part drawings together with sufficient information to enable us to obtain replacement parts. At the delivery of such papers, documents and drawings, title to them shall pass to us. Furthermore, the Supplier shall make available for our inspection all and any papers and documents relating to the goods or tools (even prior to delivery of the goods) where this is necessary to enable us to monitor and verify the proper condition and

quality of the goods and tools in accordance with the contract; our approval of any such papers and documents shall not be construed so as to release the Supplier from the Supplier's responsibility for the proper condition and quality of the goods in accordance with the contract, except where we insist on our desired design despite the Supplier's concerns having been communicated to us in writing.

- 6.5 Title to any moulds, tools, setting copies etc. that are invoiced to us shall pass to us at payment; such items shall be kept in custody by the Supplier on our behalf, free of charge, and shall be delivered to us at request.
- 6.6 Any materials and tools provided by us shall remain our property. Any processing or modification (*Verarbeitung oder Umbildung*) shall be deemed to be performed on our behalf without binding us. Any provided materials and tools shall be stored clearly and separately from other items and shall be marked as our property; they shall be sufficiently insured against fire, water and theft at the Supplier's cost.

7. INSPECTION OF GOODS PRIOR TO DELIVERY AT DESTINATION, VERIFICATION OF SUPPLIER'S QUALITY ASSURANCE PROCEDURES, ACCEPTANCE

- 7.1 At any reasonable time after prior appointment, we shall have access to the Supplier's premises and shall be entitled to inspect the goods and the production process (even prior to completion of production). If the goods are on any third party's premises, the Supplier shall take all steps to enable us to inspect the goods. The Supplier shall clear up any defects detected at the inspection of the goods.
- 7.2 Furthermore, at any time we deem appropriate, we shall be entitled to verify the Supplier's quality assurance procedures and systems. To such purpose, at any reasonable hour after prior appointment, the Supplier shall grant us access to the Supplier's premises and shall provide us with all information relevant for evaluating the quality assurance procedures and systems. This shall not affect the terms and conditions under any quality assurance agreement.
- 7.3 Where any applicable law or any contract requires acceptance, formal acceptance shall be performed with a written acceptance record being prepared.

8. DEFECT IN QUALITY OR TITLE

- 8.1 In the event of any delivery of several products of the same kind, we shall be obligated only to perform sample random inspections. Any defect detectable at due and proper inspection of the goods after receipt shall be reported within one week after receipt; any other defect shall be reported by us within one week after detection.
- 8.2 The Supplier shall deliver the goods to us free and clear of any defect in quality and shall transfer title to the goods to us free and clear of any domestic or foreign intellectual property right or other third party right.
- 8.3 If any defect in quality becomes apparent within six months after the passing of the risk, then the relevant item shall be presumed to have already been defective at the time of the passing of the risk except where such presumption is irreconcilable with the nature of the item or defect.
- 8.4 In the event of any justified defect report, we may claim a flat-rate fee for warranty handling in the amount of Euro 100.00. Further rights shall be reserved.
- 8.5 If the Supplier allows any reasonable period of grace granted to the Supplier to expire without having cleared up the defect or having delivered defect-free goods, then we may elect to clear up such defect or cause it to be cleared up by any third party. This shall not affect either the statutory provisions pursuant to which a period of grace is not mandatory nor any statutory warranty remedy including any recourse claim.
- 8.6 Our approval, if any, of the Supplier's plans, execution drawings, technical calculations etc. shall not affect the Supplier's warranty obligation.
- 8.7 The limitation period for warranty claims including recourse claims, if any, shall be three years, except where statutory limitation periods are longer. This shall not affect the statutory provisions on the suspension of the limitation period of recourse claims in certain circumstances.
- 8.8 The limitation period for warranty claims regarding items ordered as replacement parts for goods obtained from the Supplier shall commence only at installation of such replacement parts; however, the limitation period shall expire no later than five years after receipt of such parts by us.

9. CONTRACTUAL PENALTY

If a contractual penalty has been agreed, then we shall be entitled to claim payment of any payable contractual penalty even where we had not reserved such right at accepting performance; however, such contractual penalty shall be claimed at or before the time of the final payment.

10. INDEMNITY AGAINST MANUFACTURER'S LIABILITY CLAIMS AND PRODUCT LIABILITY CLAIMS, LIABILITY INSURANCE

- 10.1 The Supplier shall indemnify us against any manufacturer's liability claims or product liability claims towards any third party to the extent the Supplier is responsible for the product defect that had given rise to such the relevant claim. The indemnification includes all costs of bringing an action and all further expenses.

10.2 The Supplier shall take out liability insurance with a reasonable insured sum for personal injury and property damage. On our demand the Supplier shall provide us with evidence of the insurance coverage within 14 days. In case that the Supplier intentionally or negligently does not provide for such insurance or such evidence the Supplier shall pay after the expiration of these 14 days a penalty of 0,5 % of the order value for each further week he intentionally or negligently does not provide us with evidence of the insurance coverage. In no case such penalty will exceed 5 % of the order value. In case that several penalties are due the amount of all such penalties is limited to a total sum of 5 % of the order value.

11. SUPPLIER'S SET-OFF AND RETENTION RIGHTS, NO ASSIGNMENT

11.1 The Supplier shall have a right to set off with any counterclaim only if such counterclaim is either undisputed or has been awarded in a final and unappealable judgement. The Supplier shall have a right of retention only with regard to those claims that are undisputed, have been awarded in a final and unappealable judgement or are pending and ready for judgement (*entscheidungsreif*), and arise under the same contract with us.

11.2 The assignment to any third party of any Supplier's claim against us shall be excluded; this shall not affect s. 354a German Commercial Code (*Handelsgesetzbuch*).

12. LIABILITY

12.1 We shall be liable without restriction pursuant to the relevant laws for any damage or loss caused by any intentional or grossly negligent breach by our statutory representatives or our executives (*leitende Angestellte*). In the event of any intentional or grossly negligent breach by any ordinary agent employed in our performance (*einfache Erfüllungsgehilfen*) and in the event of a slightly negligent breach of any material term or condition of the contract that is absolutely necessary for attaining the purpose of the contract and on the strict compliance with which the Supplier must be able to rely, we shall be liable pursuant to the relevant laws limited to such damage or loss the type and scope of which had been foreseeable by us at entering the contract; in the event of payment default, such foreseeable damage and loss shall be deemed to include default interest at the statutory rate. As for the rest, the Supplier's damages claims for any direct or indirect damage or loss (on whatever legal grounds, including damages claims for breach of any pre-contractual duty and tortious claims) shall be excluded.

12.2 The limitation of liability stated in this clause 12 shall extend to the liability, if any, towards the Supplier of our statutory representatives, executives (*leitende Angestellte*) and our other agents employed in our performance (*Erfüllungsgehilfen*).

13. CONFIDENTIALITY

13.1 Each party shall keep confidential any confidential information obtained or learned from the respective other party, shall not disclose any such confidential information to any third party (subject to clause 13.2 below), and shall limit the use of such confidential information to that which is necessary for the due and proper performance of the contract. Confidential information means any information which has been declared in writing as ²confidential² or the like.

13.2 Each party may disclose confidential information to employees and advisors only to the extent disclosure is necessary for due and proper performance of the contract. Each party shall bind any such employee or advisor to the confidentiality obligation stipulated in clause 13.1 above and shall deliver written proof thereof to the respective other party.

13.3 This confidentiality obligation shall not apply to any information that at the time of its being communicated to the other party was already public domain or that after the time of its being communicated to the other party has become public domain without any contribution on such other party's part.

13.4 The disclosure of such confidential information and the delivery, if any, of relevant documents shall not be construed so as to constitute any right in any intellectual property right, know-how or copyright owned by the disclosing and/or delivering party. The parties agree that the disclosure and/or delivery of confidential information shall not be construed so as to constitute prior publication or prior use pursuant to the German Patents Act (*Patentgesetz*) or German Industrial Design Act (*Gebrauchsmustergesetz*).

14. PLACE OF PERFORMANCE, LEGAL VENUE, GOVERNING LAW

14.1 The place of performance for the delivery of the goods shall be the destination stated by us. The place of payment for our payments shall be the place of that of our establishments that had made the relevant contract.

14.2 If the Supplier is a Commercial Code business entity (*Kaufmann*), a public-law corporation or a public-law special fund, Mannheim shall be the exclusive legal venue for any dispute arising directly or indirectly under the contract; however, we may elect instead to bring any such dispute before any other court that has jurisdiction pursuant to the law.

14.3 The contract shall be governed by the laws of the Federal Republic of Germany including the UN Convention on the International Sale of Goods.

NOTICE

We electronically store and process the data of the Supplier and any involved third party to the extent this is necessary for due and proper performance of the contract. In the course of such processing purpose, such data may also be transmitted to other companies affiliated with us.