

**General Terms and Conditions of Purchase**  
effective from 01 January 2019

No. I.1.1

**Sec. 1 Scope and Form**

- (1) Oral agreements, promises and declarations of any kind must be in text form to be legally effective.
- (2) We do not recognize terms and conditions that conflict with or differ from these Terms. Other conditions shall only apply if we have expressly confirmed this. The same shall apply in the event that an order confirmation which includes terms and conditions that differ from or conflict with these Terms is not expressly objected to. Nor does the unconditional acceptance of the delivery or the payment of the purchase price imply recognition of terms and conditions which conflict with these Terms.
- (3) Our conditions of purchase apply only to entrepreneurs.
- (4) Under all circumstances, the preparation of offers, technical projects, preliminary studies etc. is free of charge to us and in particular does not commit us to place an order.
- (5) Any concerns on the part of the supplier regarding our intended execution must be notified to us immediately prior to delivery of the order. In such cases, the order may only be executed on the basis of a further notification in text form from us.

**Sec. 2 Delivery Deadlines**

- (1) The Supplier shall undertake to strictly comply with the specified delivery deadlines.
- (2) If the Supplier defaults, we shall be entitled to all statutory claims (in particular rescission and damages in place of performance) without restriction. In the case of default and when delivery times are exceeded we shall also be entitled to demand a lump-sum compensation of 0.5% per calendar day but a maximum of 5% of the delivery value (final invoice amount excluding value-added tax) unless in the regarded case the lump sum exceeds those damages to be expected in the ordinary course of events. The Supplier is expressly permitted to prove that no damages or a reduction in value occurred at all or that these are substantially lower than the lump sum.
- (3) Moreover, the Supplier shall be obligated to notify us immediately should any circumstances arise which prevent it from adhering to the agreed delivery deadline or if such circumstances are foreseeable. In this case, the Supplier shall at the same time notify us of a binding delivery date.
- (4) Should the Supplier fail to fulfill its obligations or fail to do so in a timely manner despite a deadline having been set, we shall be entitled without further notice to procure a replacement of the goods or materials either ourselves or via third parties at the expense of the Supplier. The Supplier shall also bear the additional costs arising therefrom as well as the losses resulting from non-performance of the order.

**General Terms and Conditions of Purchase**  
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No. I.1.1

- (5) If deliveries are made prior to the agreed date, we reserve the right to return the goods at the Supplier's risk and to charge the Supplier for costs arising from the early delivery (particularly demurrage).

**Sec. 3 Force Majeure**

- (1) All cases of force majeure as well as such events which are unforeseeable, unavoidable and extraordinary, including any operational disruptions, lawful strikes and other labor disputes as well as all other events for which we are not responsible shall free us from our obligation to take and accept delivery during this period.
- (2) We shall be entitled to withdraw from the contract if an event as described in para. (1) lasts for longer than one month; the Supplier cannot derive any claim for damages therefrom. In all other cases, the contractual deadlines shall be extended accordingly.

**Sec. 4 Invoices**

- (1) Besides the order number, all invoices must include the date of the order. Invoices that do not include this shall be returned without late payment claims arising therefrom unless the Supplier proves that it is not responsible for these circumstances.
- (2) Discount periods shall be counted from the day on which we receive the invoice, but at the earliest from the date of receipt of the goods. We shall be entitled to deduct a 3% discount from the final invoice amount if we pay the invoice by the 15th day of the month following the delivery.
- (3) The payment shall be made in the means of payment of our choice; the same shall apply for payments by check and bills of exchange as well as for acceptance services.
- (4) We shall be entitled to rights of set-off and rights of retention without restriction.

**Sec. 5 Prices**

- (1) The prices are fixed prices; they are to be understood as ex our works pursuant to INCOTERMS 2010 including packaging. Changes resulting from subsequent cost increases are precluded regardless of the reason unless expressly agreed otherwise.
- (2) Unless otherwise expressly agreed, we shall make payment in EUR free the Supplier's domestic bank account.
- (3) Value-added tax shall be shown separately, where applicable.

**General Terms and Conditions of Purchase**  
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No. I.1.1

**Sec. 6 Shipment / Packaging**

- (1) Our shipping instructions are to be complied with precisely. The Supplier shall be liable for all damages arising from non-compliance unless the Supplier proves to us that it is not responsible for the damages incurred. The goods must be packaged with care at all times.
- (2) The costs of shipping shall be borne by the Supplier. The Supplier shall also bear the costs of cargo insurance. For charges for packaging material that is subject to return, full credit must be issued; returns shall be made carriage forward.
- (3) A packing slip must be enclosed with each shipment which includes the order number and type, quality and quantity of the goods or materials.

**Sec. 7 Transfer of Risk**

In the case of delivery free to our works, the risk shall pass to us when the goods are unloaded by the Supplier or the carrier. This also applies if our personnel have assisted with unloading. The same shall also apply if goods have been delivered free to the distribution depot of our authorized representatives or authorized dealers.

**Sec. 8 Acceptance of Goods**

- (1) Goods will only be accepted during our normal business hours.
- (2) Only those deliveries of goods which comply with the type, quality and execution of our drawings, samples and instructions provided for the order shall be recognized by us as being in accordance with the agreement.
- (3) Should we request an initial sample, the Supplier must hand this over to us for approval along with an initial sample test report pursuant to VDA guidelines. Serial deliveries may only begin after the sample has been approved.

**Sec. 9 Duties to Inspect and Notify of Defects/Complaints**

- (1) Unless otherwise agreed, we will inspect incoming goods within a reasonable time for deviations in quality or quantity. Generally, the criteria for, scope of and accuracy of inspection have already been defined with the first order.
- (2) Notices of defects are deemed timely if we have sent them to the Supplier within eight days, calculated from the receipt of goods, or in the case of hidden defects after the defect is discovered.
- (3) The above provisions shall also apply for delivery overages and underages; they shall also apply for the delivery of other goods capable of approval in terms of Sec. 377 German

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Commercial Code (HGB). In the case of mass-produced articles, a tolerance of +/- 5% is permissible.

- (4) If separate provisions have been agreed between us and the Supplier with respect to our obligations to inspect for and provide notification of defects, particularly within the framework of quality assurance agreements, those provisions shall prevail.

### **Sec. 10 Liability for Defects**

- (1) 36 months, unless the mandatory provisions of Secs. 445 b, 478 para. 2 German Civil Code (BGB) apply.
- (2) If the Supplier is obliged to install the goods or materials that it has delivered on our premises, the statute of limitations shall begin pursuant to para. (1) with the acceptance of the installation work.
- (3) In the case of a defect, we shall be entitled to statutory rights at our option; in particular, we shall be entitled
- a) to return the defective goods at the Supplier's cost and risk and to demand defect-free replacements or to waive the replacement by charging back the invoice amount of the goods; or
  - b) to demand that the Supplier remedy the reported defect at its own cost.

Should the Supplier default in obligation sub b) or should other urgent events occur such as an operational safety risk, we shall be entitled to remedy the defect at the Supplier's expense or to have a third party remedy the defect.

If we have installed the defective good in or attached it to another item in a manner consistent with its nature and intended purpose, the Supplier shall be obligated to compensate us for the expenses necessary to remove the defective item and install or attach the repaired or supplied defect-free item within the framework of supplementary performance.

- (4) The Supplier shall bear all costs that arise in the case of a defect.
- (5) Moreover, we reserve all statutory claims which we can assert at our option, particularly claims for damages.
- (6) If claims come into consideration with respect to recovery against the Supplier pursuant to Secs. 445a, 445b, 478 German Civil Code (BGB), the statute of limitations - departing from the provision in para. (1) - shall be five years calculated from delivery.

**General Terms and Conditions of Purchase**  
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No. I.1.1

### **Sec. 11 Product Liability**

- (1) The Supplier shall be obligated to release us on first demand from all third-party claims based on a product defect for which the Supplier is responsible or if the cause lies within the Supplier's sphere of control and organization; this shall apply regardless of the legal nature of the asserted claim. In particular, the Supplier shall be obligated to release us from claims under the product liability law insofar as the Supplier or its vicarious agents are responsible for the defects which occur and the damages resulting therefrom.
- (2) Within the framework of his own liability for cases of damage in terms of para. 1, the Supplier shall also be obligated to reimburse us for any costs pursuant to Secs. 683, 670 German Civil Code (BGB) and/or pursuant to Secs. 840, 426 German Civil Code (BGB) (analogous) which arise from or in connection with a recall action which we have lawfully conducted.
- (3) The Supplier shall undertake to maintain product liability insurance with a coverage amount of at least 10 million euros per case of personal injury or property damage – as a lump sum – during the term of the agreement.

### **Sec. 12 Property Rights**

- (1) The Supplier warrants that the use or resale of the goods ordered is permissible without infringing third-party industrial property rights (patents, utility patents, trademarks, license rights, etc.). In the case of infringement of third-party property rights, the Supplier shall release us from all claims on first demand; moreover, we shall be entitled to withdraw from this agreement in the case of infringement.
- (2) The statute of limitations for this claims shall be three years; beginning with the transfer of risk.

### **Sec. 13 Patterns, Drawings, Etc.**

- (1) Samples, drawings, models, specifications, material instructions, building regulations, etc. shall remain our property. Copies may only be made with our consent.
- (2) Samples, drawings, etc. may not be disclosed to third parties or used therefor absent our prior and express written consent. They shall be returned unsolicited as soon as they are no longer needed to perform the delivery.
- (3) Parts manufactured according to our specifications, drawings, samples, models, etc. may only be handed over to us and under no circumstances may be delivered to third parties or even temporarily handed over to them. The Supplier is committed to maintain confidentiality.

**Sec. 14 Applicable Law, Place of Performance, Place of Jurisdiction**

- (1) The contractual relationship shall be governed exclusively by German law; the provisions of the UN Convention on Contracts for the International Sale of Goods are excluded.
- (2) The place of performance, including for our payment obligations, is Lüdenscheid or our works, unless expressly agreed otherwise. This shall also apply for the place of supplementary performance by the Supplier.
- (3) The place of jurisdiction is Cologne. However, we are entitled to file suit against the Supplier at the latter's general place of jurisdiction.