

## General Purchasing Conditions

### § 1 Validity of our purchasing conditions

The legal relationships with our suppliers are exclusively subject to the general business terms as stated hereunder. Without prior arrangement these terms shall apply to all future relationships. We shall not accept any conditions deviating from our purchasing conditions hereunder even if we have not expressly rejected such conditions in a particular case. Our conditions shall also apply to such cases where we accept delivery without reservations in spite of being aware of contradicting or deviating conditions of the supplier. Furthermore and independent of the purchasing conditions hereunder, we shall not accept any obligation related to business terms of suppliers which are not in accordance with legal provisions.

### § 2 Quotation and conclusion of contract

1. The supplier shall explicitly point out deviations of his quotation from our inquiry.
2. All orders shall be placed in writing; orders placed orally or by telephone are subject to written confirmation. Confirmations submitted by telefax or e-mail shall also be accepted.
3. Our orders shall be regarded as a binding offer. The supplier may accept the offer by sending a written order confirmation within one week or by delivering the ordered items within this period.

### § 3 Prices, payment, default of payment

1. The prices stated in the order shall be binding. VAT shall not be included in the prices stated. The prices include cost of packaging and delivery free of charge.
2. The invoice shall be sent to us in duplicate and shall contain supplier number, number and date of order, VAT identification number in case of deliveries within the European Union, destination, number and date of delivery note and amount of items invoiced.
3. The supplier shall be obliged to take back packaging material left with us on delivery on demand. If required by the supplier we shall return or dispose of packaging material at the supplier's expense.
4. Payment shall be effected either by bank transfer or cheque.  
Unless otherwise agreed, the invoice is due for payment 30 days after complete delivery free of

any defects (including documentation) or receipt of invoice – counted according to which date is the later. In case of early delivery maturity shall be according to the agreed date of delivery, and in case of part deliveries the receipt of the last part delivery shall be the relevant date for maturity. Should payment be effected within 14 days counted from the date stipulated above, we shall be entitled to a discount of 3 % of the amount of invoice.

The regulations on default of payment are subject to the valid legal provisions.

5. If we fall in arrears with payment the supplier shall be entitled to charge interest to the amount of 4 % per year. We may present evidence which verifies a lower damage caused by delay. Also the supplier may verify a higher damage caused by delay.

If the supplier declares to retain title to the items, we will only accept a simple title; a prolonged or enhanced title shall not be accepted.

### § 4 Set-off, right of retention, non-assignability

1. The supplier may offset his claims against ours only if these claims have been legally decided to be final and absolute, are undisputed or acknowledged by us.  
We shall not accept claims assigned by other parties to the supplier to be offset against our claims.
2. The supplier shall have a right of retention only to the extent of claims from the same transaction which are legally made final and absolute, are undisputed or which we have acknowledged. We reserve the right to avert rights of retention as well as the defence of non-performance of contract by provision of security which may also be provided by bank guarantee. The security shall be regarded as paid at the latest when the supplier delays in acceptance of the security.
3. Without prior written consent the supplier shall not be entitled to assign claims against us to third parties or to burden them with rights of third parties.

### § 5 Delivery, risk transfer, delayed delivery

1. Agreed times and deadlines shall be binding. Completion of delivery date or time shall be

stipulated on receipt of the items at our site.

The items shall be delivered against invoice and free of charge at the risk of the supplier to the delivery address stated by us. If delivery "free works" or "ex works" is stipulated the supplier shall make available the items in good time considering adequate periods for goods handling and dispatch.

2. The supplier shall be obliged to hand over all the documents related to the delivered goods in the requested number (e.g. certificates of guarantee, examination certificates, manuals, installation instructions, operating instructions, declarations of conformity) on delivery and free of charge.
3. The supplier may effect part deliveries only with our prior written consent. Where part deliveries have been agreed to, the remaining items shall be listed in the delivery note.
4. In case of third-party deals we shall be informed of the delivery by written dispatch notes.
5. The risk of accidental loss or deterioration shall be transferred to us on delivery of the goods to the delivery address stipulated in the documents.
6. The supplier shall inform us without delay as soon as he becomes aware that he will not be able to keep to the agreed date of delivery. We reserve the right to further claims due to the delay.
7. The supplier delays in delivery as soon as the goods have not arrived at the stipulated address of delivery at the agreed time.
8. In case of delay in delivery we shall charge for damage caused by delay the amount of 0.3 % of the gross order value for every day in delay, with a maximum of 5 % of the gross order value. The supplier may present evidence to verify lower damage caused by delay. We reserve the right to claim higher damage caused by delay.
9. The supplier is aware of the fact that even short-term delays in delivery may lead to loss of production at our works. As we supply our customers just in time, even short-term delays in delivery may cause considerable claims for damages and/or penalties from our customers for which in the end the supplier shall be liable to recourse.
10. Our claim for performance shall be settled only after the supplier has completely satisfied all damages optionally claimed against him.

#### **§ 6 Non-acceptance, delay in acceptance**

1. We reserve the right to refuse acceptance of

delivery due to force majeure, operational break-down, strikes or industrial action, political disturbances and official orders unless the reasons lie within our responsibility.

If the reasons for non-acceptance of delivery last for more than one month we reserve the right to withdraw from the contract and to claim return of payments already effected. Where the order has already been performed in parts and we are interested in keeping that part of the order, we may cancel the order only for those parts which have not yet been performed.

2. If we fall in delay with acceptance of delivery the claims of the supplier shall be limited to damages for unsuccessful offering of the goods as well as storing and maintenance of the goods to the amount of 0.5 % of the net value of the goods for every week of delay completed. This shall not affect further claims of the contractor for damage due to the delay. In any case the supplier is obliged to verify his claims for damages by presenting substantial evidence.

#### **§ 7 Condition of the items**

1. The supplier is aware of the field of application and modes of subsequent treatment of the supplied items. The condition of the supplied goods shall comply with the latest standards of science and technology, safety regulations and the agreed technical data. The supplier is obliged to establish and give evidence of an adequate quality management system.
2. The supplier is aware of the fact that the intended usage of the supplied items is not limited to Europe. Where the intended purpose is unknown to the supplier he is obliged to ask for such information.
3. Modifications of the subject of delivery require prior written consent.
4. Drawings, descriptions etc. pertaining to the order are binding to the supplier. However, he shall check the documents for inconsistency and is obliged to inform us in writing without delay of any such inconsistency. For drawings, calculations, schedules etc. set up by the supplier he shall take sole responsibility, even if we confirmed them. Without further agreement this applies to technical documentation, examination certificates and other certificates. Unless otherwise agreed, orders of devices or facilities or components shall contain the

pertaining documentation, instructions, spare parts lists, circuit drawings, dimensioned drawings, tools lists, brochures, etc. in triplicate on paper as well as data carrier. These documents shall be provided free of charge.

5. All activities performed by the supplier or his sub-suppliers on out site are subject to the latest edition of our safety guidelines.

### **§ 8 Liability for defects**

1. The supplier shall assume unlimited liability for defects of any kind of the items according to the legal provisions. If the amount of the items delivered is higher than the amount stated in the order this order shall be treated as defective in the subject matter.

Regardless of negligence or fault the supplier shall guarantee that the supplied items are delivered in such condition as stated under § 7.

2. We may enter claims due to defects or faults according to § 377 HGB (German Commercial Code) within 14 days on receipt in case of apparent defects and within 14 days after detection in case of hidden defects on the condition that a written complaint is sent to the supplier within due time.
3. At our own option we may either withdraw from the contract or assert abatement of the purchase price without being obliged to grant the supplier the opportunity to re-perform the order (removal of defects or re-delivery).
4. Should a defect of an item be detected within 6 months after transfer of risk we shall assume that this defect already existed in the moment of risk transfer, unless the nature of the item or defect shall indicate otherwise.
5. The period to enter a claim for defects shall be limited to 3 years. The limitation of liability for defects shall start with commissioning of the item. However, if we re-sell the supplied items the limitation of time shall not end before 6 months after delivery of the items to our customer. This shall have no effect on our rights according to §§ 478, 479 BGB (German Civil Code). If we give notice of defects the limitation period shall be extended, ending two months after the contract party either re-performed the order or refused re-performance or other warranty claims finally and absolutely in writing.
6. In the case of urgent requirements we shall be allowed to remedy defects of delivered items either ourselves or let defects be remedied by third

parties, the costs of which shall be charged to the supplier.

7. The rights derived from §§ 478, 479 BGB (German Civil Code) shall have effect even in such circumstances where the final buyer of the items is a company according to § 14 BGB (German Civil Code). Furthermore, the rights from §§ 478, 479 BGB (German Civil Code) remain unaffected even if the defect is detected before delivery to the final buyer (even if it is a company).
8. The supplier is obliged to refund to us all costs arising from necessary recalling procedures due to defects of the supplied items.
9. The supplier is obliged to effect product liability insurance covering up to 3 million Euros for each case of personal injury / damage - flat rate.

### **§ 9 Liability for damages**

1. Our liability is limited to acts of culpable negligence and intent. This applies also to breach of duty of our official representatives and vicarious agents.
2. In cases of simple negligence we shall only be liable regarding infringement of major contractual obligations; the amount of possible claims for damages being limited to the extent of typical and anticipated damage.
3. The limitations of liability stated hereinbefore shall not apply to claims due to injuries of life, body or health.

### **§ 10 Obligations of protection and consideration**

The supplier shall be entitled to enter claims for damages or to withdraw from the contract in such cases only where we fail to comply with our protection and consideration duties according to § 241 section 2 BGB (German Civil Code) and where these are not directly linked with the delivery of the items and where we received a written announcement of such breach of duties. This shall not apply where we, our representatives or vicarious agents are charged for intent or culpable negligence or in relation with injuries to life, body or health.

### **§ 11 Rights of third parties, product liability**

1. The supplier shall ensure that delivery of the items does not affect any copyrights or other rights of third parties. If in spite of this third

parties enter claims with us the supplier shall release us of any kind of claims immediately after we informed the supplier accordingly. This shall also apply to claims entered with us from countries other than the Federal Republic of Germany.

2. Furthermore, the supplier shall release us on demand of such claims which are entered by others due to defects of the supplied items under product liability or producer's liability. Costs arising from actions to be taken to avert possible claims due to defects of the supplied items, especially those costs arising from recalling procedures, shall also be covered by the supplier.

### **§ 12 Ownership, tools, secrecy**

1. All document pertaining to the order (such as patterns, models, drawings, calculations and similar information of tangible or intangible nature) provided to the supplier remain in our ownership and shall not be presented to third parties, particularly not for competitive purposes. These documents shall be used exclusively for production according to our order and shall be returned after completion of order without further notice. If the contract is rescinded the documents shall be returned free of charge. The supplier shall not be allowed to copy or retain any document.
2. The documents listed under No. 1 are strictly confidential. The supplier shall present information, which we marked as confidential or documents which imply confidentiality, to third parties only with our written consent. The period of secrecy shall be extended to the time after completion of the contract and shall not end before the information contained in figures, drawings, calculations, etc. has been made public.
3. We shall remain proprietor of any tools, fittings or similar facilities which we provided to the supplier for production purposes. The supplier is obliged to use the tools exclusively for production of the items ordered by us and shall not allow others to use these tools without our explicit consent. He is obliged to handle and store these tools carefully and shall effect insurance against damage from fire, water and theft at his own expense. Simultaneously the supplier assigns all claims for damages from this insurance to us and we herewith expressly accept the assignment. The supplier is obliged to perform all necessary works for maintenance, inspection, upkeep and repair of our tools at his own expense and within due time. The supplier shall inform us immediately about

failures or malfunction. Should he not inform us by fault this shall not affect claims for damages.

4. Where we provided the contractor with materials for production of the items such material shall remain in our proprietorship. If these materials are connected, processed or mixed with other materials to form a new item we shall claim ownership of this new item to the extent to which our materials are contained in relation to the other materials at the time of connection, processing or mixture.

### **§ 13 Limitation of action**

Pending action due to claims between the contracting parties shall extend the limitation period. Limitation of action shall be extended up to 6 months after the latest written declaration of one of the parties with reference to the claims pending, unless one of the parties gives written notice to waive the claim.

### **§ 14 Miscellaneous regulations**

1. German Law shall be applied. Application of UN-Sales terms shall be excluded.
2. Where a particular clause of these General Terms of Business should completely or in parts be void this shall not affect the validity of the other clauses or parts of them. Instead of the void clauses the regulations according to German law shall be applied.
3. Exclusive venue of action is our place of business. According to our wishes, we may bring an action against the supplier to the court at the supplier's place of business or venue. Place of performance is our place of residence.
4. The data necessary for processing orders shall be saved and stored centrally by us.

Espelkamp, May 2006