

## ***Purchasing Conditions***

as of April 01, 2009



The World in Motion.

### **1. *General - Scope***

- 1.1 Our Purchasing Conditions shall exclusively apply to all transactions with suppliers or other contractors – referred to hereinafter as “Supplier”. Other purchasing conditions or conditions of the supplier deviating from our Purchasing Conditions are not accepted, unless we expressly agreed to them in writing. These Purchasing Conditions shall also apply to all future contractual relations with the respective Supplier, even if they are not expressly agreed in each individual transaction. Our Purchasing Conditions shall also apply, if we accept delivery or performance by the Supplier without reservation or make payments despite being aware of opposing conditions or conditions deviating from our Purchasing Conditions.
- 1.2 All agreements made between us and the Supplier with respect to a transaction must be made in writing or confirmed by us in writing for being legally effective.

### **2. *Quotation – Purchase Order – Documents***

- 2.1 The quotations of the Supplier are without engagement and free of charge for us.
- 2.2 Our purchase orders are to be confirmed by the Supplier immediately after receipt with legally binding effect. If the Supplier fails to accept a purchase order within one week after receipt, we are authorized to cancel the order. Any performance with regard to the purchase order by the Supplier, shall be deemed an acceptance of the order. Any deviation of the order confirmation from the purchase order requires our written consent.
- 2.3 Only the written purchase order and/or written confirmation of a verbal purchase order or purchase order made by telephone by us shall be binding. The transmission by fax or e-mail is deemed observance of the written form requirement.
- 2.4 Purchase orders are to be handled separately within the respective correspondence. The supplier has to indicate the number and the date of our purchase order on all documents referring to a purchase order. The Supplier shall be responsible for all consequences resulting from the non-observance of these obligations, unless it provides proof of the fact that the Supplier is not responsible for these consequences.
- 2.5 We reserve the title and copyright to all illustrations, drawings, calculations or other documents. They shall not be disclosed to third parties without our express written consent. They shall exclusively be used for the production due to our purchase order and shall be returned at latest after termination of the contractual relationship. They shall be treated as confidential towards third parties.

### **3. *Prices – Payment***

- 3.1 The price indicated in the purchase order shall be binding. If not agree in writing otherwise, the price includes delivery “free domicile”, packaging, transport insurance and other incidental costs.
- 3.2 The value-added tax is not included in the price, unless the turnover tax is shown separately.

- 3.3 Invoices can only be handled by us, if they include – according to the requirements in our purchase order – the number of the purchase order and the part numbers, the date of delivery as well as our article description, if known to the Supplier. Invoices shall be in compliance with legal requirements and auditable. The Supplier shall be responsible for all consequences resulting from the non-observance of this obligation, unless the Supplier furnishes proof that it is not responsible for these consequences.
- 3.4 Unless otherwise agreed to in writing, we pay the price on the 30<sup>th</sup> of the month for receiving the delivery and invoice from the 1<sup>st</sup> to the 15<sup>th</sup> of the respective month/on the 15<sup>th</sup> of the following month for receiving the delivery and invoice from the 16<sup>th</sup> to the 31<sup>st</sup> less 3 % cash discount or net on the 30<sup>th</sup> of the following month.  
The above requires faultless and complete delivery as well as receipt of a proper invoice according to clause (3). In case of acceptance of premature deliveries, the due date of the invoice shall depend on the agreed delivery time.
- 3.5 We are entitled to offsetting and retention as provided by law.
- 3.6 Effected payments shall not be deemed acknowledgement of due delivery or waiver of any claims towards the Supplier. Payments are always effected with the reservation of a claim for the return of payment, insofar as we are entitled to any such claim at the time of payment or if such a claim arises later.

#### **4. Delivery Time**

- 4.1 The delivery time indicated in the purchase order shall be binding. The date of the receipt of the goods at the place of performance or – in case of collection – the notice about readiness for shipment shall be deemed meeting the delivery time. We are not obliged to take delivery prior to the delivery date/delivery date. We are not obliged to accept partial or excessive deliveries.
- 4.2 The supplier undertakes to immediately inform us, if circumstances occur or are foreseeable which indicate that the agreed delivery time cannot be met.
- 4.3 In case of delay of delivery or failure to deliver or (partial) impossibility, we are entitled to legal claims. We are particularly entitled to claim damages instead of performance and termination after expiry of a reasonable period without results, unless this period can be waived according to legal provisions. If we claim damages, the Supplier is entitled to furnish proof that it is not responsible for the breach of obligation.
- 4.4 Upon occurrence of a delay in delivery, we are entitled to a contractual penalty of 1.0 % of the net order value per week for each delayed item of the purchase order, not exceeding 5 % of the net order value. The amount of the contractual penalty paid shall be credited against any claim for damages.
- 4.5 In case of premature delivery, we reserve the right to return the goods at the expense of the Supplier. If the consignment is not returned in the event of premature delivery, the goods are stored until the agreed time of delivery at the expense and risk of the Supplier.

#### **5. Force Majeure and Labour Disputes**

Cases of force majeure, strike and lock-out during labour disputes, governmental actions or other unforeseeable, inevitable occurrences exempt us from all obligations to take delivery and any claims for damages throughout the term of the disturbance and to the extent of their effects.

## **6. Delivery – Passing of Risk**

- 6.1 Unless otherwise agreed in writing, the goods are to be delivered to the place of performance indicated in our purchase order free from freight, packaging and other incidental costs.
- 6.2 The risk will be passed to us only upon our acceptance of the goods at the agreed place of performance.
- 6.3 If, in an exceptional case, we pay the freight charges, our defined mode of transport is to be adopted, otherwise the transport and delivery we consider most cost-effective is to be chosen.
- 6.4 If contrary to the § 3 of these conditions, we pay the packaging costs, the cost price for the packaging is to be charged. The Supplier has to make sure, that the packaging protects the goods against damages during transit. This shall also apply, if the type of packaging is prescribed by us.
- 6.5 The Supplier undertakes to precisely indicate in all delivery notes our order and part number, as well as quantity or weight of the delivered goods. All containers or packaging units are to be provided with a packing slip/parts ident card indicating the respective content including quantity/weight as well as our article description and part number. In case of failure to observe the above, we accept no responsibility for delays caused during further handling. § 3 paragraph (3) shall apply correspondingly. In case of non-observance of our shipping conditions, we reserve the right to offset extra expenditure arising therefrom against receivables of the Supplier.

## **7. Examination of Defects – Liability for Defects**

- 7.1 The Supplier warrants the conformity of the delivered goods with the specimens, samples and descriptions submitted by the Supplier. The goods to be delivered are to be manufactured from faultless material suitable for the purpose, must have the agreed or customary properties and satisfy our specifications as well as the legal requirements and/or acknowledged technical standards. The information given by the Supplier in contractual negotiations and in catalogues, advertisements, public statements, data sheets and other product descriptions shall be deemed agreed properties of the goods. Any deviation from the above is considered a defect, the Supplier is responsible for.
- 7.2 We are entitled to any and all legal claims for elimination of defects; in any case, it is at our discretion to demand from the Supplier elimination of the defect or delivery of a new part. Any expenses incurred by us in this respect such as transport, travel, labour and material costs or expenses for receiving inspection exceeding the usual scope shall be borne by the Supplier. We are in particular entitled to the compensation of costs we incur as a result of the contractual relation with our customers. The right to damages and in particular the right to damages instead of performance shall exclusively be reserved.
- 7.3 In case of defects caused by the Supplier, we are authorized to eliminate the defect ourselves in case of imminent danger or in urgent cases or, if the Supplier failed to meet a deadline to eliminate the defect.
- 7.4 If in the course of the first six months after the passing of risk a defect occurs, it will be assumed that this defect already existed at the time of passing of risk, unless the contrary is evidenced by the Supplier.
- 7.5 The Supplier shall be liable for any form of fault, insofar as provided by law, in particular also for any negligence of the Supplier's executive staff, employees or other party performing a service for the Supplier.
- 7.6 The limitation periods provided by law shall apply, at least however 24 months, unless expressly agreed otherwise. The limitation period recommences, when the Supplier effects subsequent performance or accepts the claims for elimination of defects.

7.7 The Supplier shall also be liable for defect of title which is not caused due to the Supplier's fault. We are entitled to claim damages. The limitation period for our claims with respect to defect of title shall be 10 years after delivery.

## **8. Quality Assurance – Selection of Material**

8.1 The Supplier shall ensure by an effective quality management system, to be evidenced on request, that the deliveries effected by the Supplier are in accordance with state-of-the-art technology, applicable standards, directives and regulations and that they are free from defect.

8.2 In case of initial sampling, mass production shall not start before the samples have been approved in writing.

8.3 We are entitled to audit the effectiveness of the quality management system at any time during normal business hours.

8.4 The Supplier shall document its quality management in an appropriate and controllable manner and present such documentation on request. This documentation is to be retained for a period of 10 years.

8.5 Any changes in the selection of material, production process or production facilities require a new sampling of the respective parts, as well as our written approval.

8.6 The Supplier covenants, with binding force, compliance with the requirements of EC Directive 2002/95/EC with respect to the material of all products supplied to us.

## **9. Product Liability**

9.1 The Supplier shall indemnify us from any claims for damages asserted by third parties on first request, insofar as the cause is in the Supplier's domain of control and organisation. This shall in particular apply to manufacturer's liability and/or product liability claims resulting from the defectiveness of the goods of the Supplier or its sub-suppliers.

9.2 Within the scope of liability for damages pursuant to clause (1), the Supplier also undertakes to reimburse any expenses, arising from or in connection with a recall effected by us. We will notify the Supplier about the terms and scope of the recalls to be effected – insofar as possible and reasonable – whilst the Supplier will be given the opportunity to comment on this matter. Other legal claims shall not be affected thereby.

The Supplier undertakes to maintain a product liability insurance with a lump sum coverage of at least € 2.5 m for each personal injury /property damage and, at our request, furnish proof of such coverage; in case we are entitled to further claims for damages, they shall not be affected thereby.

## **10. Protective Rights**

10.1 The Supplier shall be responsible that no rights of third parties are infringed in connection with the delivery, neither at home nor abroad.

10.2 Should third parties assert a claim against us with respect to infringing any protective rights, the Supplier undertakes to exempt us, upon the first written request, from any such claims.

10.3 The Supplier's declaration of exemption refers to all expenditure accordingly incurred by us from or in connection with the assertion of a claim by a third party.

10.4 Limitation period shall be 10 years after delivery.

10.5 The above provisions shall not apply, insofar as the Supplier has manufactured the supplied goods according to our drawings, models or other similar specifications or instructions and is not aware or, in connection with the products manufactured, cannot be aware that protective rights have been infringed thereby.

## **11. Reservation of Title – Provision- Tools - Confidentiality**

11.1 Insofar we order parts from the Supplier, we reserve the title in these parts. Processing or transforming is effected for us by the Supplier. In case of processing our reserved goods in combination with other items not belonging to us, we become co-owner of the new item in relation of the value of our item (purchase price plus VAT) to the other processed items at the time of processing. This also applies to containers and packaging material provided by us.

11.2 Should the item provided by us be mixed with other items not belonging to us and if they cannot be separated, we become co-owner of the new item in relation to the value of the reserved property (purchase price plus VAT) to the other mixed items at the time of mixing. Is the combination effected in a way that the Supplier's item is to be deemed the main object, it is agreed that the Supplier conveys proportional co-ownership to us; the Supplier shall keep the goods held in sole ownership or co-ownership in custody for us.

11.3 The material provided by us is to be clearly labelled as our property and to be stored separately from identical or similar material. Upon our request, the Supplier is obliged to conduct an inventory control at its own expense. The Supplier shall be liable for any recognized deviating quantities falling below the defined quantities.

11.4 We reserve the title in the tools we have paid for. The Supplier undertakes to use the tools solely for the manufacture of the goods we ordered. The Supplier agrees to insure the tools we own at nominal value against fire, water damage and theft at its own expense. Simultaneously, the Supplier assigns to us all claims of compensation out of this insurance already upon agreeing with these Purchasing Conditions. We hereby accept the assignment. The Supplier is obliged to timely execute any required servicing and inspection, as well as any maintenance and repair work on our tools at its own expense. The Supplier shall immediately inform us about any failures. If the Supplier fails to do so negligently, it shall be liable for any damage arising therefrom. Tools we own in whole or in part, shall durably bear our name.

11.5 The Supplier's reservation of title in the goods delivered shall only be binding if agreed in writing.

11.6 The Supplier agrees to treat all illustrations, drawings, calculations and other documents and information strictly confidential. They shall only be disclosed to third parties upon our express written consent. This obligation to confidentiality shall also apply after expiration of this contract.

## **12. Final Provisions**

12.1 Any claims asserted to us can only be assigned upon our prior consent.

12.2 If either party stops payment or insolvency proceedings or composition proceedings have been applied, in or out of court, the other party has the right to withdraw from the contract.

12.3 The law of the Federal Republic of Germany shall be applicable. The application of the Convention on International Sale (CISG) of the United Nations is excluded.

12.4 Place of jurisdiction shall be the place of our business. We have however the right to choose the Supplier's place of residence as place of jurisdiction.

12.5 Unless not stated otherwise in the purchase order, the place of performance shall be Wermelskirchen.

12.6 We point out that personal data about the Supplier are saved in accordance with § 33 BDSG (German Data Protection Act).

12.7 Should any provision hereunder be or become ineffective, the effectiveness of the remaining provisions shall not be affected thereby.