

## Purchasing Terms and Conditions

### I. General

1. The following terms and conditions shall apply to all orders and purchase agreements concluded with our commercial customers.

2. To the extent that nothing to the contrary is confirmed by us in writing, any deliveries made to us and any works carried out for us shall be governed exclusively by the following terms and conditions. The general terms and conditions of sale of our suppliers shall not be taken into account. Neither a failure to notify any complaint nor the acceptance or payment for any goods shall be deemed to constitute an acknowledgement of the terms and conditions of a supplier.

### II. Offer/orders, prices and payment

1. Only orders and agreements which are in writing or are sent by fax shall be legally binding on us. An order must be accepted in the form in which it is issued by us and within a period of two weeks.

2. Deliveries shall be made on the basis of the agreed prices. Such prices shall be fixed prices and may not be modified in any way. To the extent that no prices are stipulated or agreed when the order is issued, they shall be notified by us prior to the execution of the order. Such prices shall not become binding until they are expressly confirmed by us in writing.

3. Deliveries shall take place DDP (Incoterms 2000, or for contracts which are concluded after 01.01.2011: Incoterms 2010), if in individual cases nothing is agreed in writing to the contrary. The price shall include in particular packaging and shipping. Any additional claims in respect of payment shall be excluded.

4. Should nothing be agreed to the contrary, we shall make payment at our discretion within 14 days from delivery and receipt of the invoice subject to a discount of 3%, within 30 days from delivery and receipt of the invoice subject to a discount of 2% or within 90 days at the full invoice price. The making of a payment shall not constitute a waiver of our right to bring any claims based on defects or warranties.

5. Our rights of set-off and retention shall not be limited.

### III. Delivery period and delivery

1. Any delivery dates which may be agreed shall be binding.

2. For the purposes of establishing whether or not a delivery date has been complied with, the goods must have been received in full and free from any defects and in the order volumes at the place of receipt or place of use stipulated by us.

3. Goods shall be shipped at the expense and at the risk of the supplier using the shipping method stipulated by us. In each case a copy of the delivery and/or dispatch notes containing precise information on the subject-matter of the delivery shall be included in the shipment, together with the order numbers of the shipment, or such documents shall be sent to us by post under separate cover.

4. Any damage which may be suffered by the goods on account of their defective packaging shall be the financial responsibility of the supplier. The supplier shall be obliged to recycle the packaging in accordance with the applicable statutory provisions. If an agreement is reached with the supplier in relation to the separate invoicing of the packaging, in the case of carriage-free return shipments the packaging shall be credited at its full value.

5. The acceptance of goods shall not be construed as an acceptance of performance. The goods shall only be construed as having been accepted in performance of the agreement at the time of their receipt if we have not notified any complaint in connection with the goods within a period of two weeks from the date of their receipt.

6. Delivery more than two weeks prior to the agreed delivery date shall only be permitted with our prior written consent. In the case of an early delivery without our consent, the goods shall be stored at our premises at the expense and risk of the supplier; payment periods shall not begin to run until

the agreed delivery date. Partial deliveries shall only be permitted once our express consent thereto has been obtained.

7. Deliveries which are less than or exceed the agreed delivery volumes shall only be permitted in the case of standard goods but shall require our approval should such variations in the volumes ordered exceed 10%.

### IV. Delay and force majeure

1. The supplier must inform us of any delays as soon as it becomes aware of them and must state the reasons for and the foreseeable duration of such delays. Any special measures which lead to extra costs being incurred in order to comply with the necessary delivery dates, which costs shall at all times be borne by the supplier, shall also be notified to us. Should delivery be delayed for reasons which are attributable to the supplier, we shall be entitled to demand compensation for any loss suffered from the date on which the delay commences.

2. Measures stipulated by the Government, uprisings, strikes, lock-outs, fires, machinery breakdowns, shortages in the context of the procurement of materials or energy, barriers to shipping and any other events beyond our control that may delay normal acceptance shall be deemed to be events of force majeure and shall entitle us to delay acceptance by a commensurate period; we shall be under an obligation to inform the supplier immediately of any such circumstances, once we become aware of them. In case a delayed performance of services is unacceptable for one party – due to the aforementioned events – that party is entitled to withdraw from the contract.

### V. Quality assurance, quality control and liability for defects

1. In order to ensure the quality of its deliveries, the Supplier must operate a quality management system and must be accordingly certified. Only those components which have been processed through such quality assurance system, which have been inspected and in relation to which it has been established that they comply with our dimensional specifications, quality and performance requirements shall be delivered to us. All inspection documentation shall be retained by the supplier in accordance with the statutory provisions.

2. The supplier ensures that the delivery shall be free of defects, that it shall comply with durability and quality guarantees and shall be fit for the purpose for which it is intended, that it shall comply with the state of the art and any applicable requirements which may be imposed by the authorities and specialist associations and that the delivery in no way infringes any rights of third parties.

3. To the extent that no special provisions are agreed, all screws, nuts and threaded and preformed/moulded components, as well as any other connecting elements, shall be delivered in accordance with the technical delivery terms and conditions of the applicable EN/DIN/ISO standards.

4. In the event of a delivery of goods which cannot be accepted without reservation, we may at our choice demand either the delivery of new goods or that the defects in the already delivered goods be remedied, in accordance with the statutory provisions. Should any reasonably stipulated period expire without such a situation having been remedied, we may withdraw from the contract or demand a reduction in the contract price. Exceptionally the stipulated period may be dispensed with, subject to the statutory provisions. Our right to demand in addition compensation in respect of any failure to comply with warranties or in the event of the wrongful breach of contractual undertakings shall not be affected hereby. In emergencies we shall be entitled, once a reasonable period stipulated by us for remedying a defect or further deliveries has expired without result, and after having notified the supplier, take the necessary steps ourselves, at the expense and risk of the supplier, and without prejudice to the warranty obligations of the supplier. In the event that components are delivered new or are remedied in the context of a subsequent delivery by the supplier, the limitation period shall begin to run again.

5. All costs which are incurred in the context of the supplier's performance of its obligations in the context of its liability for defects, for example any costs or charges in connection with dismantling, assembly, freight, packaging,

insurance, customs and other fees payable to public authorities, inspections, including the costs of any expert and technical acceptance procedures, shall be borne by the supplier. This shall also apply if any additional costs arise due to the fact that the relevant item is no longer located at the original place of performance.

6. The place of delivery and inspection within the meaning of Section 377 of the German Commercial Code (§ 377 HGB) shall be the place designated by us. Notice of any defect which is received by the supplier within a period of two weeks from the date of receipt at the designated location shall be deemed to have been received in a timely manner. In the case of hidden defects, such period shall be two weeks from the date of the discovery of such defect.

7. On the basis of the quality assurance and control procedures of the supplier, our obligation to carry out inspections shall be limited, in accordance with section 377 of the German Commercial Code, to verifying whether the delivered goods correspond to the ordered volumes and the ordered type, and whether any externally visible damage has been suffered by the goods during shipping or whether such goods contain any externally visible defects.

8. Should the supplier discover after the dispatch of the goods any discrepancies between the actual characteristics of the goods and the characteristics of the goods specified by us, it shall immediately notify such fact to us and inform us of the remedial action which it intends to take.

9. Claims in respect of defects shall be prescribed on the expiry of a period of 36 months from the date of the transfer of risk. This provision shall not apply if the law stipulates a longer period.

10. The supplier shall indemnify us against any claims which may be brought against us by third parties – on any legal basis whatsoever – on account of any material defect or defect in title or any other defect in one of the products delivered by the supplier and shall reimburse to us the costs of any defence mounted by us in connection herewith.

11. In the event that any damage is suffered and if it is possible that such damage may be attributable to the delivered goods, the supplier shall be obliged to grant to us, our employees, any third parties who shall be obliged to give a confidentiality undertaking, and/or any authorities access to all product-related and process-related documentation, to the extent that such access may make it possible to obtain information on the cause of the damage and on any other hazards which may be caused by the goods. Furthermore, the supplier undertakes in such cases to grant to the persons named above unlimited access to production sites during standard business hours and subject to prior notice.

#### **VI. General liability and product liability**

1. The liability of the supplier shall be established in accordance with the statutory provisions. By way of a supplement to such statutory provisions, if our liability is alleged on the basis of any infringement of regulatory safety provisions or on the basis of domestic or foreign product liability laws on account of any defect in the products caused by the delivery of the supplier, the supplier shall be required to compensate us for any loss suffered as a result thereof, unless the defect is not attributable to the supplier.

2. Our suppliers have the obligation to us to conform to the German minimum wage law where applicable. In case of violation our suppliers are liable to us for any disadvantages incurred.

3. To the extent that any product defects are attributable to the deliveries made or services provided by suppliers upstream in the supply chain or sub-contractors of the supplier, such product defects shall be deemed to be defects attributable to the product of the supplier.

4. The supplier shall be liable for the environmental impact of the delivered products and packaging materials. The supplier shall be liable for any consequential damage which arises from any infringement by it of statutory waste disposal obligations, unless such infringement is not attributable to it.

5. Any additional or ancillary claims shall not be affected by the provisions of this paragraph.

6. At our request the supplier shall issue a quality certificate for the delivered goods.

#### **VII. Processing fees**

Processing costs are incurred in those cases in which incorrect volumes, incorrect goods or defective or damaged goods are delivered and when miscalculations and errors are made in the context of a delivery. Depending on the actual costs incurred, we may at our discretion decide to invoice such costs to the supplier in the amount of €30.00 to €130.00. We reserve the right to claim any greater sum or loss. The supplier shall be entitled to prove that lesser costs were incurred or a smaller loss suffered.

#### **VIII. Retention of title and confidentiality**

1. All of the models, samples, designs and specifications provided to the supplier for the purposes of contractual performance shall remain our property and shall after the processing of the request or order be returned to us in perfect condition without it being necessary for us to so request. All models, samples and designs shall be treated as confidential information and may only be used for the processing of requests and orders. The supplier undertakes explicitly not to duplicate such models, samples and designs and not to make them available to other undertakings and to destroy at our request any equipment which is produced for the purposes of the manufacture of the delivered goods. The supplier shall be liable to us for any loss which arises as the result of any infringement of such duty, unless such infringement is not attributable to it.

2. The fact that we may approve designs, calculations and other technical documentation shall not affect the warranties and guarantees of the supplier in relation to the delivered goods. This shall also apply to any suggestions and recommendations which we may make.

3. The Supplier shall be obliged to treat as strictly confidential any illustrations, designs, calculations and other documentation and information which it may receive. It shall furthermore ensure that it uses such documentation exclusively for the purposes of processing our order and not in the context of any other projects. The supplier shall take all of the appropriate and necessary steps to prevent any third parties familiarising themselves with and using such documentation. The supplier undertakes to ensure that any information made available is kept confidential with at least the same degree of diligence with which it endeavours to ensure that its own confidential information is protected. Agents and employees of the company shall be separately bound by a duty of confidentiality, to the extent that they are not already bound by such a duty pursuant to their employment contract, both during and after the expiry of their employment relationship. The supplier is obliged to make informations declared confidential accessible to third parties with our explicit prior written consent only.

4. The Supplier undertakes not to duplicate any documentation which it receives from us in the context of its collaboration with us, and at the end of our co-operation to return such documentation, including any copies which may have been made thereof, without being requested to do so. Any information and copies thereof shall be deleted from all media or destroyed. This shall not apply to the extent that any legal provisions require the retention of such documentation.

5. The obligation to observe confidentiality shall not apply to information which is generally known. Furthermore, it shall not cover the technical and commercial know-how of the supplier from the moment such information becomes officially known, without such fact being attributable to any contractual breach committed by the supplier. Furthermore, such obligation shall not apply to developments which are already obvious and therefore no longer confidential.

6. This duty of confidentiality shall continue to be applicable if the planned contract is not concluded or is terminated. The supplier shall have the burden of proof in respect of generally known information and the obvious nature of any information. Furthermore it must prove that any technical and commercial know-how has entered the public domain and that such entry is not attributable to it.

## **IX. Penalty, Antitrust Violations**

1. In every case of a wrongful breach of the duty of confidentiality in accordance with sub-paragraphs VIII 3-6 above, the supplier must pay a contractual penalty which shall be stipulated by us at our absolute discretion. In the context of the exercise of our discretion, the significance of the breached duty, the prejudice which has been or may be suffered by us and the degree of the responsibility of the supplier shall in particular be taken into account. Any exercise of our discretion shall be fully judicially reviewable. Any supplementary claim for damages, against which the contractual penalty shall be set off, shall not be affected hereby. No contractual penalties accrue if the violation in question is not the fault of the Supplier or its vicarious agents.

2. The supplier undertakes to only offer prices and conditions that are not subject to cartel restrictions. Irrespective of this, the supplier undertakes to comply with all provisions of cartel law. If the supplier has agreed sales prices or other conditions pertaining to the products supplied to us with a third party, or if it has entered into other relevant agreements with such third party, including agreements on the division of territory or of customers, then it shall be obliged to pay us a contractual penalty in analogous application of sec. IX 1 above. No contractual penalties accrue if the supplier's conduct is permissible pursuant to the German Act Against Restraints on Competition (Gesetz gegen Wettbewerbsbeschränkungen [GWB]) or to the Treaties of the European Union, or if the violation in question is not the fault of the Supplier or its vicarious agents.

## **IX. Place of performance, place of jurisdiction and applicable law**

1. The place of performance for all of the obligations which arise out of this contract shall be Hamburg.

2 If the supplier is domiciled in the EU or in the European Economic Area, the following applies:

The sole place of jurisdiction shall be Hamburg if the supplier is a businessperson (merchant), a legal entity under public law or a special fund or if the supplier has no general place of jurisdiction in Germany.

If the supplier is domiciled outside the EU or European Economic Area, then the arbitral court of the Deutsche Institution der Schiedsgerichtsbarkeit e.V. (DIS) (German Institution of Arbitration) shall have sole jurisdiction over all and any disputes arising from and in connection with contracts concluded based on these Terms and Conditions, and shall decide definitely on such disputes to the exclusion of ordinary legal recourse. The defendant is entitled to assert a counter-complaint before the arbitral tribunal. The place of arbitration shall be Hamburg. The language of the case shall be German. The proceedings, in particular the taking of evidence, shall be conducted pursuant to the Rules of the Court of Arbitration of the DIS and the rules of Book 10 of the German Code of Civil Procedure (Zivilprozessordnung). Procedural principles from common law, including, in particular so-called document production do not apply either directly or mutatis mutandis..

3. The contractual relationship shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.