



## **Terms and Conditions of Purchase**

### **1. General Provisions**

All of our orders shall be governed exclusively by these Terms and Conditions of Purchase. This applies also to any future business relations, even if these conditions are not explicitly agreed upon again at the time.

Upon confirmation or execution of our order, these Terms and Conditions of Purchase shall be deemed to be agreed on. Any other terms and conditions, especially those of sellers or contractors, shall not become part of the agreement, even if we do not object to them explicitly.

In the event that we take delivery of goods or services without such explicit objection, this may in no way be construed as inclusion of the Contractor's terms and conditions of delivery in the agreement.

Unless otherwise agreed upon in writing, we do not grant remuneration or reimbursements for visits or the preparation of offers, projects, plans etc., even if these do not result in the placement of an order. Other agreements must be made in writing.

### **2. Conclusion of the agreement**

The Contractor shall confirm orders without undue delay, at the latest one week after having received the order. A belated confirmation or one that differs from our order shall be deemed to be a new offer and requires our explicit written acceptance.

If there is no such written acceptance and the Contractor delivers the goods or services in spite of this, we only accept them upon the terms stated in our order.

All agreements including changes and amendments thereto must be in writing. Oral agreements are only valid if confirmed in writing. This also applies to this clause on written form.

### **3. Price**

Delivery is made at the prices previously agreed upon. Unless otherwise agreed upon in writing, the price "franco domicile" shall include packaging. This applies also to agreements with shipment times of more than four months.

To the extent that prices were not stipulated in the order, only the Contractor's confirmation including a quotation of prices shall be considered as the offer. Upon receipt of such offer, we may decide whether to accept such offer, even if the Contractor has already begun to carry out the order.

The Contractor declares its willingness to carry out the order according to conditions granted to our affiliated group companies. Such conditions include price reductions and cash discounts in particular.

We can only process invoices which state - in accordance with the requirements in our order - the order number designated therein. The Contractor is responsible for all consequences arising from a failure to comply with this obligation.

We are entitled to set-off and a right of retention as and to the extent determined by statutory law.

#### **4. Delivery**

All deliveries shall be freight paid and with no additional packaging charge to the point of receipt or place of use designated by us. We are to be informed of the dispatch in writing and in such a way that specifications regarding the quantity, the measurements and weights are known to us prior to the arrival of the goods. This also applies to any applicable special regulations regarding the handling of the goods, in particular the unloading, transport and storage at our premises.

If it is expressly agreed that we are to bear the costs, we designate the carrier. The goods shall be declared in the consignment note in such a way that the lowest permissible freight rate will be charged for the shipment. To carry out the transport, the Contractor will give notice to the ordering party when the goods are ready for dispatch. In this case we will procure a transport insurance policy and bear the resulting costs. In this respect we are a so-called "forbidden customer" ("*SVS/RVS-Verbotskunde*") in the context of the shipping and cartage insurance ("*Speditions- und Rollfuhrversicherung*"). We will not bear any other insurance costs.

Unless the agreed price includes packaging, the packaging is to be calculated at cost, without deposit charges. We reserve the right to return bulky packaging materials, in particular cartons, barrels, cases etc., to the Contractor after they were emptied, regardless of any wear and tear caused by the shipment or otherwise. The return shipment shall be freight paid in return for a corresponding credit note. Any handling which deviates from the regulations arising from the German packaging ordinance ("*Verpackungsverordnung - VerpackV*") of June 12,1991 (Federal Law Gazette - "*Bundesgesetzblatt (BGBl)*" Part I pages 1234 et seq., in the version as of October 26,1993, BGBl. Part I page 1782 et seq.) requires our prior written consent.

Regarding the shipment and transport of hazardous materials within the scope of the German Act on the transportation of dangerous goods ("*Gesetz über die Beförderung gefährlicher Güter*") of September 29,1998 (BGBl Part I page 3114 et seq.) and any applicable regulations, the Contractor undertakes to comply with the statutory provisions.

Excess deliveries and over-deliveries will only be accepted if they were explicitly confirmed by us.

The Contractor shall include in the delivery all documents and materials necessary for the acceptance, operation, maintenance and repairs, in particular inspection records, factory records, drawings, plans, operating instructions and repair manuals free of charge and in a form suitable for duplication.

**Our receiving department is open: Monday - Friday 7:00 a.m.- 12:00 noon. Alternative arrangements are possible, but require prior consultation and our explicit written permission.**

**Express deliveries outside of delivery hours must generally be announced and delivered to our incoming department.**

## **5. Delivery Note**

Each shipment must include a delivery note in duplicate with a packing list stating the gross and net weights and all designations requested in our order, in particular order number, parts number or raw material number respectively and type designation. Partial and outstanding deliveries must be specially marked.

To make it possible to ascertain the content of a shipment without opening it, the delivery note must be inserted either under the adhesive label or under the packaging paper, with the indication "delivery note here".

## **6. Delivery Period**

The delivery dates and terms stated in the order shall be deemed as agreed unless the Contractor objects explicitly; in this case the delivery dates and terms are binding. Delivery terms begin on the date of receipt of our order. The arrival of the goods at our designated receiving point or place of use or the timeliness of a successful acceptance shall determine whether the delivery date or delivery term was complied with.

In the event of delays, the Contractor shall notify us in writing immediately upon recognizing the delay and before expiry of the delivery term and state the reasons for and probable duration of such delay. We will give notice of any change in arrangements required by the late delivery without undue delay; the Contractor shall comply with these new arrangements.

The Contractor is obligated to compensate us for all direct or indirect damages caused by the delay, unless it is not responsible for the delay.

If the Contractor is in default with a delivery, we are entitled to interest on our resulting claims for damages, starting with the due date, at a rate of 5 % above the respective statutory basic interest rate.

It does not constitute a waiver of our rights against the Contractor resulting from the Contractor's default with delivery if we accepted late deliveries unconditionally in the past.

A delivery which was made ahead of schedule without our consent does not affect the payment terms based on the agreed delivery dates.

## **7. Passing of Risk**

The Contractor bears the risk of the transportation of the ordered goods. Until the acceptance of the goods, the Contractor bears the risk of accidental loss, destruction or deterioration. Alternative agreements must be confirmed by us in writing.

## **8. Our Rights (Warranty), Notification of Defects**

As criteria of the condition of the delivered goods or other services, the Contractor guarantees that all of its delivered goods or rendered services are state-of-the-art and comply with the applicable legal provisions and the regulations and guidelines of public authorities, trade associations and professional associations.

Should deviations from these provisions be necessary in an individual case, the Contractor must procure our written consent. This consent does not affect the Contractor's warranty obligations.

The specifications and the company's own standards set forth in the agreement shall be deemed guaranteed data or guaranteed criteria of the condition of the subject matter of the delivery or service respectively.

If the delivered goods or any other services are defective at the time of delivery to us or acceptance by us or a third party designated by us at the designated place of acceptance or if these goods or services become defective within 2 years of their delivery or acceptance, we have the warranty rights defined by statutory law. The statutory warranty terms apply. The warranty term for damages to life, body or health is four years.

In case of replacement or repair of the defective goods by using spare parts, the warranty term for these replacements or spare parts shall start to run again.

In case of warranty recourse claims against us by our customers (§ 478 German Civil Code - "BGB"), the Contractor shall not be permitted to claim that our corresponding warranty claims against the Contractor have become statute-barred in the meantime for a period of 12 months, starting from the date when we satisfy our customer's warranty claims.

We will duly notify the Contractor in writing of any defects of the delivered goods or services as soon as they become apparent in the ordinary course of business, at the latest within one week from the discovery of the defect by us or the recipient. We will notify so-called hidden defects, which only become apparent later, at the latest within one week of their discovery. The expiration of the aforementioned terms is suspended during our annual vacation, provided that the Contractor was notified of the timeframe of the annual vacation in the order.

In urgent cases or if the Contractor is in default with the fulfillment of its warranty obligations, we are also entitled to remedy the defects ourselves, have them remedied or procure a replacement at the Contractor's expense. Should we choose this option, we will notify the Contractor accordingly. We will determine whether a case is urgent after a due assessment of the circumstances.

In the event that claims are brought against us concerning the violation of official safety regulations or domestic or foreign product liability regulations resulting from a defectiveness of our product which is attributable to the Contractor's goods or services, we are entitled to claim damages from the Contractor to the extent that its delivered products contributed to the damage.

The Contractor shall implement state-of-the-art quality control which is suitable with regard to its kind and extent and prove this to us in the event of product liability damages.

## **9. Acceptance**

Acceptance will take place in the due course of business immediately after receipt of the delivery or services, provided that they are as agreed in the contract. With bulk goods, we fulfill our obligation to examine the goods and notify any defects by spot checks during the general examination of incoming goods. This will be carried out according to statistical methods and in-house spot check schedules.

## **10. Payment**

On the day the goods are shipped, an invoice is to be sent in duplicate and for each order separately. The contents of the invoice have to match those of the delivery note and the dispatch note.

Unless otherwise agreed or noted in the order, payments shall be made within 14 days with a 3 % cash discount or net within 60 days. The time allowed for payment begins to run no earlier than at the date we receive the proper invoice, but in any case not before receipt and technical acceptance of the ordered goods or the service. The date of the receipt stamp shall determine the date of the invoice receipt.

We neither acknowledge interests payable from the due date nor any limitations of the right to refuse performance, the right of retention or the right to set-off. The payments do not affect our right to complain of defects or our guarantee claims and warranty claims against the Contractor.

Invoices which do not comply with our requirements, in particular if the order numbers are missing, will be immediately sent back to the Contractor. In this case, the cash discount period does not start to run before receipt of the amended invoice.

### **11. Force Majeure**

Cases of force majeure, strikes and lockouts free the contracting parties from their contractual obligations for the duration of the interference and to the extent of its effects. The contracting parties are obligated to immediately provide the necessary information that can reasonably be expected and to adjust their contractual obligations to the changed circumstances in good faith.

If the delivery date is delayed by more than 3 months for the reasons stated above, we are entitled to rescind the contract.

### **12. Intellectual Property Rights of Third Parties**

The Contractor warrants that the manufacturing, processing, use or resale of the goods or other services offered or delivered do not result in an infringement of any domestic or foreign intellectual property rights or copyrights of third parties.

The Contractor is obligated to indemnify and hold us or our customers harmless with respect to any claims for damages of third parties resulting from such legal relationships upon first written request. In case of a legal action resulting from this, the Contractor is obligated to join us in a pertinent court action at its own cost.

We are entitled to acquire the rights of use (license) from the holder of the rights at the Contractor's cost.

### **13. Our Intellectual Property Rights**

The Contractor acknowledges our claims to the trademarks, designations and package designs used for the contract products and undertakes not to claim any derivative rights to the future use of these trademarks, designations and package designs and not to reuse them or similar ones or let them be used by third parties, other than for the contract products to be delivered to us.

This obligation of the Contractor shall remain in force even after the termination of the agreement.

### **14. Documentation and Nondisclosure**

Models, samples, drawings and data sheets as well as tools that we make available to the Contractor remain our property. We can reclaim them at any time.

All models, samples and drawings are to be treated as confidential and are only to be used for the execution of our orders. The Contractor expressly undertakes not to duplicate our models, samples and drawings.

All products manufactured according to our specifications, drawings or models may only be submitted to us; under no circumstances may they be made available to third parties definitively or for inspection.

The Contractor is also obligated to treat as confidential all other information concerning quantity, volumes, prices etc. of which it becomes aware in connection with the placing and execution or the order as well as any other knowledge it acquires concerning our operational procedures and transactions. This obligation shall remain in force after the termination of business relations between the parties.

#### **15. Assignment**

The Contractor is not entitled to assign claims against us or have third parties collect the accounts receivable without our prior consent. We shall give such consent regarding assignment in good faith. In the event that the Contractor granted an extended retention of title to its supplier in the ordinary course of business, our consent shall be deemed as given.

#### **16. Set-Off**

We have a right to set-off with due accounts receivable against the Contractor which belong to one of our affiliated group companies.

#### **17. Place of Performance, Governing Law, Place of Jurisdiction**

In business dealings with entrepreneurs, public law entities or entities with special funds under public law, the place of performance for the delivery or other service of the Contractor is the address designated by us. Place of performance for our payment obligation is the registered office of our company.

The agreement is governed by the laws of the Federal Republic of Germany. The provisions of the UN Sales Convention do not apply.

Place of jurisdiction for all disputes shall be the place of our domicile; however, we reserve the right to file a lawsuit at the place of the Contractor's domicile.

#### **18. Data Protection**

Personal data which are received in connection with the contractual relationship will be stored for the purpose of data processing (§ 26 of the German Code on Data Protection- "*Bundesdatenschutzgesetz*").

Gaggenau, 1<sup>st</sup> October 2004