

§ 1 **General:**

Our Terms of Purchase shall apply exclusively. Supplier's terms which conflict with or diverge from our own shall not be recognised; this also applies in the event of acceptance of delivery without reservation. Our Terms also apply to all future business transactions with Supplier, even if they are not expressly included anew.

§ 2 **Quotations, Requirements for Supplier's Documents:**

(1) Supplier is under obligation to accept our order within 14 days, unless any other binding deadlines are agreed in individual cases.

(2) The following must be given on all written documents: article number, date of order, reference, order number, Customer's item number, etc.

(3) Invoices and delivery notes must match the order with regard to terminology, order of text, and prices. Any extra or short performance must be specified separately in the documents.

§ 3 **Prices, Terms of Payment:**

(1) The price given in the order is binding.

(2) Said price includes statutory value added tax. Delivery "free destination" including lading and packaging is likewise included in the price.

(3) We are entitled to right of setoff and right of retention to the extent permitted by law.

§ 4 **Delivery Period, Default in Delivery:**

(1) The delivery period given in the order is binding.

(2) In the event of default in delivery, we are entitled to demand flat-rate default damages totalling 1.5% of the value of the delivery per full week; however, we may only demand a maximum lump-sum of 5%, whereby Supplier has the right to prove to us that no damage has been incurred, or that substantially smaller losses have been sustained. We reserve the right to assert further statutory or contractual claims (in particular damages for breach of duty).

(3) In the event of *force majeure* (war, unrest, natural disasters, and suchlike), labour disputes, government measures and other events which cannot be averted, we shall be entitled to rescind the contract, provided we are not responsible and provided we cannot reasonably be expected to uphold the contract, due to the delivery targets being substantially exceeded. Supplier shall notify us about the above circumstances without delay, stating the reasons and the anticipated duration of the interruption.

§ 5 **Inspecting for Defects:**

(1) The obligation incumbent upon ourselves to lodge complaints pursuant to German Commercial Code s. 377 is excluded. We undertake to make a minimum check on the basis of the delivery note, and to check for transport damage. Supplier undertakes to give the goods a final check, and shall reach an agreement with us on quality assurance.

(2) In the event that no quality assurance agreement exists, complaints filed by us shall be deemed in good time provided by are received by Supplier within 7 working days, counted as from the day on which the goods are received, or – in the case of hidden defects – from the day on which the defects are discovered.

§ 6 **Liability for Material & Legal Defects:**

(1) We are fully entitled to all the statutory rights in the event of material and legal defects. In particular, we are entitled in the event of defects to demand that the defect be remedied, or delivery of an item free of defects, at our own option; Supplier shall pay all the costs required for this purpose. Beyond this, we shall be entitled to the statutory claims for damages without restriction or limitation.

(2) The full statutory periods of limitation shall apply.

(3) If danger threatens, or in the event of particular urgency, we shall be entitled to remedy defects ourselves at Supplier's expense.

§ 7 **Reservation of Title:**

(1) We reserve title to any parts which we provide to Supplier.

(2) Our reservation of title shall also cover the products created when our goods are processed or re-formed, up to the full value of such goods, whereby such processing and re-forming shall be done on our behalf so that we are deemed the manufacturer. If a third party is entitled to reservation of title when our goods are processed or re-formed with said third party's items, then we shall acquire co-ownership in proportion to the objective value of said goods.

If our goods are mixed or combined with other items, then we shall likewise acquire co-ownership to the degree described above. In the event that processing is done in such a manner that Supplier's item may be regarded as the main item, it is agreed that Supplier shall assign *pro rata* co-ownership to us. The manufacturer shall store our property with all due care generally exercised in trade and industry.

(3) If the estimated value of our security exceeds the value of the receivables being collateralised by more than 50%, then the excess security shall be released. Which security is released shall be at our discretion.

§ 8 **Recourse:**

(1) If, due to a defect in the item delivered by Supplier, claims are asserted on us based on manufacturer's liability, product liability or other elements of liability, then Supplier shall indemnify us against the liability ensuing from the defect, insofar as it is responsible for such defect and is itself liable externally. Indemnification shall be granted on first request.

(2) In this context, Supplier shall also be under obligation to refund any costs in accordance with German Civil Code s. 683 and 670, or German Civil Code ss. 830, 840 and 426 which arise from or in connection with any re-call action. To the extent which is possible and may reasonably be expected, we shall inform Supplier without delay about the subject-matter and scope of any re-call action. Further statutory claims remain unaffected.

(3) If other claims are imposed on us due to a defect in the item delivered by Supplier, then we shall be entitled to full right of recourse vis-à-vis Supplier pursuant to German Civil Code s. 478; an exception to this shall only be made if we have been granted compensation beforehand that is equivalent to the right of recourse.

(4) To safeguard these claims, Supplier shall uphold an appropriate third-party liability insurance providing for coverage of at least EUR 10 million (lump sum) in each case of personal injury or material damage.

§ 9 **Protective Rights**

- (1) Supplier vouches that no third-party rights are infringed in connection with the deliveries it makes.
- (2) If claims are imposed on us by third parties for this reason, Supplier shall be under obligation to immediately indemnify us against such claims on first request. Without Supplier's consent, we are not entitled to reach any agreements (in particular settlements) with the third party.
- (3) This obligation to grant indemnification shall relate to all the costs necessarily incurred on us due to or in connection with a claim being asserted by a third party.
- (4) The period of limitation for such claims shall be ten years, and shall commence on execution of the respective agreement.
- (5) Construction drawings and similar business documents shall remain our property, and must be treated strictly confidentially at all times. Without our consent they may not be made accessible to third parties. If these obligations are violated, then Supplier shall be liable towards us to the full extent laid down by law.

§ 10 Joint & Several Liability:

Supplier's claims for whatsoever legal cause (in particular claims based on *culpa in contrahendo*, violation of cardinal duties and secondary obligations, compensation for expenses, tort, and other tortious acts) are excluded; this applies in particular to claims not ensuing from a defect in the purchased item.

We shall be liable in accordance with statutory regulations if we or those assisting us in performing our obligations or our legal representatives breach our duties deliberately or due to gross negligence; the statutory provisions shall also apply if we culpably breach a cardinal duty; provided we cannot be

accused of intent, our remaining liability shall be limited to the foreseeable damage typical for the type of contract. We shall also be liable in accordance with statutory regulations if we are held liable for injury to life and limb or for a health hazard. The same applies if we assume any guarantee or warrant any characteristic, in the event of our becoming liable for any defect covered by such guarantee or warranty. The foregoing shall apply *mutatis mutandis* in the event of compensation for damages. There is no intention of reversing the burden of proof.

§ 11 Place of Performance, Venue, Governing Law, Distribution of Burden of Proof

- (1) Place of performance for all our obligations (in particular payments) shall be the location of our registered headquarters.
- (2) Venue for all legal action shall be at the location of our registered headquarters. However, we are also entitled to bring action at other general or special places of jurisdiction that are allowed.
- (3) With regard to all the rights and claims under this agreement, the non-harmonised laws of the Federal Republic of Germany (Civil Code, Commercial Code) shall apply. CISG is expressly excluded.
- (4) None of the clauses agreed under these Terms shall alter the distribution of the burden of proof as laid down by law and in court rulings.

§ 12 Other Provisions:

- (1) Amendments to the contract only take effect by agreement with us.
- (2) If any of the provisions in these terms are invalid or null and void either in whole or in part, this shall not affect the remaining provisions. The contracting parties undertake to agree to an arrangement approximating the intents and purposes of the invalid or void provision in business terms.