

1 General

The following conditions of purchase shall form the contents of the contract between us as purchaser and the supplier and shall determine all future business. The general terms and conditions of the supplier, insofar as these are different to the terms set down in this document, are not recognised by us. Agreements derogating from the conditions of purchase as laid down in this document must be made in writing.

2. Orders

Orders and agreements shall be binding only when given or confirmed by us in writing.

3. Confirmation

Our orders require written confirmation by the supplier. Confirmation shall be made within 5 days of receipt of the order. Up until the point of confirmation, we reserve the right to cancel the order for any reason without further consequences.

4. Dates and Deadlines

The dates for supply and performance agreed with us shall be binding. On failure to comply, the supplier shall automatically be placed in default in accordance with § 286 s. 2 BGB and we shall be entitled to set an appropriate date for supplementary performance. Should delivery still not be made before this date, we shall be entitled, at our option, to the following remedies:

- a) To demand performance and damages for delayed delivery or
- b) To demand damages in place of performance and/or
- c) To rescind the contract

In all cases and notwithstanding other rights and the possibility of claiming for increased damages, we shall be entitled to claim a lump sum of 10% of the purchase price as damages for delay, unless the supplier can show the extent of damage is substantially smaller.

The supplier shall inform us of all foreseeable hindrance in supply and performance. Notification shall be made in writing and without delay and shall indicate the expected length of the hindrance. All additional costs incurred (e.g. express delivery) for the minimising of delay shall be carried by the supplier. The supplier shall bear the risk of damage or delay up until delivery at the named address and the acceptance of goods there. Partial deliveries require prior written agreement with us.

5. Packaging, Dispatch, Bill of Delivery, Insurance

On non-compliance with the agreed rules on packaging and dispatch or with our conditions of delivery,

we reserve the right to reduce the invoice total by the amount of the additional cost incurred as a result. Packaging costs shall not be remunerated by us additionally. The order number, article number, article description and number of articles shall be indicated in the bill of delivery. The risk of delay arising as a result of incomplete indications on the delivery bill and the omission to issue the necessary freight papers shall be borne by the supplier. On third party delivery, freight documents etc shall be demonstrated by way of duplication of the bill of delivery. Should the bill of delivery not be presented, storage of the consignment shall be paid by the supplier until such time as the bill is received. A policy of transport insurance shall be taken out by us. The supplier shall inform the carrier of this fact without delay.

6. Invoice

Invoices are to be sent in a single copy. They shall not be sent together with the goods. The invoice shall include exact reference to the description of goods made by us in our order and further include the order number, order date, name of recipient as well as the turnover tax number and tax number of the supplier. Should the invoice omit to make such indications, all delay resulting here from shall not fall to our account.

7. Payment

At our option, we pay on receipt of invoice within 90 days without deduction or by the 15th of the month following delivery with 3% trade discount. Should the goods be received after receipt of invoice, the payment period shall begin with delivery of the goods. All payments are made subject to our rights at law (e.g. for defects). Payment can also be made by way of the offsetting of claim against the supplier or companies affiliated to the supplier under §§ 15 et sqq AktG (companies act)

8. Receiving Inspection

All deliveries shall be accepted as regards number, weight and quality only in accordance with our appraisals. We shall be bound to carry out a receiving inspection in accordance with § 377 HGB only with respect to category of goods supplied, amount and manifest damage from transport and packaging. The period within which examination and notification of defect shall be made, shall be one month beginning the day following delivery, or in the case of hidden defect, beginning the day following discovery of the defect.

Should a sample of up to 50 units show at least one unit to be defective, we shall be entitled to assess the entire delivery for defects of the sort identified and to invoice the supplier accordingly.

Should the sample show so many defective units so that an 80% probability exist that at least 5% of the entire consignment be defective, we reserve the right to exercise the following remedies:

- a) We may reduce the price; and/or;

- b) We may return the goods and demand refund; and/or
 - c) We may demand a replacement delivery
- Further rights are not affected.

9. Liability for Defect

The statutory rights resulting to the buyer on receipt of defective goods shall be available to us in full. Costs to be made good by the supplier shall include the cost of finding the defect, installation and de-installation costs as well as lost profits.

Where statutory limits are not longer, claims for defects shall be barred on the expiry of 3 years. In the case of supplementary performance, the above defined limitation period shall begin for the replaced part anew.

The acceptance or endorsement of sketches, documents and technical descriptions provided by the supplier shall not represent a waiver of statutory rights applicable to defective goods. The supplier shall undertake to comply with accepted scientific and technical rules for its delivery and performance.

10. Product Liability

In the case of damage by the product, the supplier shall indemnify us from all third party claims. On request, it shall demonstrate the existence of appropriate insurance.

11. Work Materials

Insofar as the order is for the provision of models, patterns, production machines, tools, drafts or other documents and information – hereinafter “work materials” – it shall be agreed that full and uncharged ownership of the work materials shall be vested in us on conclusion of contract, or at the latest on manufacture, independent of whether the costs are paid separately or included in the price.

For the duration of its performance under contract, the supplier shall hold a lien on the property. Work materials are subject to a duty of confidence and may be used only for the completion of our contract tasks and may not be reproduced.

The work materials may not be relinquished to third parties, nor be used for the supply of third parties. The same shall apply where further contracts are not awarded. At its expense, the supplier shall hold the work materials on our behalf; shall close sufficient insurance against fire, water and theft and identify the work materials as our property. Further, the supplier shall inform us without delay, should a third party instigate proceedings for distraint on work materials. § 690 BGB shall not apply. The supplier shall have no right of retention as regards work materials.

Paragraphs 2 to 8 of this section (11) apply mutatis mutandis for work materials made available to the supplier by us.

Insofar as work materials are the property of the supplier, we shall have the right to purchase these materials by payment of cost price – where appropriate with appropriate reduction for depreciation and amortisation – and to proceed with these as desired. The supplier hereby transfers – subject to the condition precedent of the exercise of the aforementioned option to purchase – full and uncharged ownership of the relevant work materials.

12. Retention of Title

All supplies of goods made to us must be made free of charges on title. Should the confirmation or invoice nevertheless contain such charges on title, they shall be void without our first having to object to them. The acceptance of our order by the supplier shall also operate to confirm that the goods to be supplied are its property.

13. Confidentiality

The supplier shall be bound to treat our order and the confidential information provided with it as trade secret. This shall also apply following the termination of the contract relationship, unless such information already be generally known.

14. Insolvency

Should proceedings for insolvency be applied for or instigated against the supplier, or should the supplier cease payment or its company voluntarily or compulsorily be liquidated, independent of whether or not this would give rise to a duty to pay damages, we shall be entitled to rescind the contract. The right to rescind the contract shall also be available even where the obligations under contract have been completely or partially performed so long as the supplier remains liable for defects, or on transfer of the supplier's undertakings to a third party.

15. Jurisdiction

Place of jurisdiction for all disputes as regards supply and performance – also for claims arising from promissory notes and cheques – shall be Essen.

16. Applicable Law

Applicable law shall be the law of the Federal Republic of Germany excluding the Uniform Purchase Laws.