

## TERMS AND CONDITIONS OF PURCHASE

### 1. Application

These Terms and Conditions of Purchase shall only apply to entrepreneurs, legal entities under public law or special funds under public law within the meaning of § 310 (1) of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*).

Our orders and purchase orders shall be governed exclusively by these Terms and Conditions of Purchase. Any deviating, conflicting or supplementary terms and conditions of sale and/or delivery of the contractor/supplier are not accepted by us - even if we do not separately object to their application in individual cases - unless and to the extent that we have expressly agreed to them in writing. Even if we make reference to a document which contains or refers to the terms and conditions of the contractor/supplier or a third party, this shall not constitute an agreement to the application of those terms and conditions.

These Terms and Conditions of Purchase shall also apply to all future business transactions between us and the contractor/supplier and also if we accept the delivery item without reservation in the knowledge of deviating or conflicting terms and conditions.

References to the applicability of statutory provisions shall only have clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these Terms and Conditions of Purchase.

Individual agreements made with the supplier/contractor in individual cases (including ancillary agreements, supplements and amendments) shall take precedence over these Terms and Conditions of Purchase. Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative for the content of such agreements.

Where the English wording of these Terms and Conditions of Purchase is followed by a German legal term set in parenthesis and in italics, the German legal term shall prevail.

### 2. Contracts, orders

Contracts and orders on our part shall be deemed binding at the earliest upon written submission or confirmation. The contractor/supplier must inform us of obvious errors (e.g. spelling and calculation errors) and incompleteness of the order including the order documents for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not to have been concluded.

### 3. Acceptance/confirmation of contracts

The contractor/supplier is required to confirm our order in writing within a period of 14 calendar days from the date of the order (order acceptance). We are only bound by an order if we receive written confirmation from the contractor/supplier within the aforementioned deadline. A delayed order acceptance shall be deemed a new offer and requires acceptance by us.

### 4. Delivery dates

All delivery dates stated in the order or otherwise agreed are binding. The contractor/supplier is obliged to inform us without undue delay of any impending or actual failure to meet a delivery date, its causes and the expected duration of the delay. The occurrence of a default (*Verzug*) in delivery remains unaffected by this.

An overdue notice by us towards the contractor/supplier shall not be required in particular where a time is determined for the performance in accordance with the calendar or if the performance is preceded by an event and a reasonable time for the performance is determined in such a way that it can be calculated from the event in accordance with the calendar.

If the contractor/supplier is in default (*Verzug*), we may - in addition to any further statutory claims - demand flat-rate compensation for our damage caused by the default in the amount of 1 per cent. of the net price per completed calendar week, but in total not more than 5 per cent. of the net price of the delayed delivery. We reserve the right to prove that higher damage has been incurred.

The contractor/supplier explicitly retains the right to prove that we did not incur damage or that the damage incurred was significantly less than the above flat-rate compensation.

### 5. Warranty, acceptance

The statutory provisions shall apply to our rights in the event of material defects and defects of title of the delivery item (including incorrect and short delivery as well as improper assembly, defective assembly, operating or handling instructions) and in the event of other breaches of duty attributable to the contractor/supplier, unless otherwise stipulated below.

The contractor/supplier shall be liable in accordance with the statutory law in particular for the use of best defect-free material, appropriate implementation, defect-free installation and suitable construction

according to the contractually agreed or discernible use of the object of delivery as well as for the object of delivery having the agreed condition at the time of the transfer of risk to us. In any case, those product specifications which - in particular by designation or reference in our order - are part of the respective contract or have been incorporated in the contract in the same way as these Terms and Conditions of Purchase shall be deemed to be an agreement on the condition. It shall make no difference whether the product description originates from us, from the contractor/supplier or from the manufacturer.

The statutory provisions (§§ 377, 381 of the German Commercial Code (*Handelsgesetzbuch - HGB*)) shall apply to the commercial duty to inspect and give notice of defects with the following proviso: Our duty to inspect shall be limited to defects which become apparent during our incoming goods inspection under visual external appraisal including the delivery papers (e.g. transport damage, wrong delivery and short delivery) or which are recognisable during our quality control in the random sampling procedure. If acceptance (*Abnahme*) has been agreed, there shall be no obligation to inspect. In all other respects, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later remains unaffected. Notwithstanding our obligation to inspect, our complaint (notice of defect) shall be deemed to have been made without delay and in good time if it is sent within 2 weeks of discovery or, in the case of obvious defects, within 5 working days of delivery.

Otherwise, the statutory warranty periods shall apply.

The acceptance of the object of delivery or payment of the remuneration for work or purchase price shall have no influence on the persistence of any defect warranty rights.

In the event of a defective object of delivery the contractor/supplier is obliged to carry out repair, replacement or on-site repair according to our choice, regardless of other legal claims on our part. The contractor/supplier may refuse the chosen type of supplementary performance if it is only possible at disproportionate cost compared to the other type of supplementary performance. In urgent cases we have the right, after setting the contractor/supplier an appropriate deadline, to rectify the defect ourselves at the contractor's/supplier's expense, engage a third party to do this or otherwise obtain a replacement. The same applies if the contractor/supplier enters into default (*Verzug*) on the fulfilment of its warranty obligations. We explicitly retain the right to claim damages alongside this.

Installation and operating instructions for all objects of delivery must be sent to us in a timely manner, otherwise the contractor/supplier shall be liable to us and our customers for all damages resulting from incorrect use due to unawareness of the installation and operating instructions.

### 6. Liability

The contractor/supplier undertakes to take out liability insurance to cover all compensation claims which may arise in connection with the provision of performance, and to maintain it for as long as performances are provided.

The contractor's/supplier's liability for damages falling within its responsibility is not thereby limited to the insured amounts.

This insurance must also cover the personal liability of persons involved in the provision of performances on behalf of the contractor/supplier.

It is also the contractor's/supplier's responsibility to protect itself against risks by taking out construction, installation and transport insurance at sufficient insurance coverage.

### 7. Scope of liability

The contractors/suppliers shall be liable to us and to our customers in an unlimited amount for direct and indirect damage due to default (*Verzug*), warranty for guarantee, material or legal defects, unlawful acts, breach of contractual and pre-contractual duties, including cases where its vicarious agents are responsible, in accordance with statutory law.

### 8. Accident prevention

All machines, apparatus and technical devices must correspond to the requirements of the relevant accident prevention regulations and other legal provisions applicable at the time of delivery. If this is not the case, it shall be deemed a material defect, which we may claim for at any time. We have no auditing duty with regard to compliance with accident prevention regulations and other legal provisions.

### 9. Legal defects, retention of title

The contractor/supplier warrants that third-party rights do not obstruct the appropriate use of the object of delivery, and in particular that third party property rights are not violated. If, however, we are subject to a claim arising from a possible violation of third-party rights, e.g. copyright, patent rights and other property rights, the contractor/supplier shall indemnify us against this claim and against any payments in connection therewith upon first request.

Retentions of title by the contractor/supplier shall only apply insofar as they relate to our payment obligation for the respective object of delivery to which the contractor/supplier retains title. In particular, extended or prolonged reservations of title are not permitted. We hereby expressly object to any reservations to the contrary on the contractor's/supplier's forms.

**10. Place of fulfilment, transport**

The place of fulfilment is the receiving address given in our order. Unless otherwise agreed in writing overleaf, all deliveries must be free of transport and packing costs. If we assume transport costs, the contractor/supplier is obliged to choose the most economical delivery method.

The contractor/supplier shall be liable for proper delivery and for appropriate and professional packaging.

**11. Transfer of risk**

Risk of accidental loss and accidental deterioration shall be transferred to us as soon as the delivered good is at the relevant goods station if transport is by rail or on the premises if forwarding services are used, and has been handed over. If acceptance (*Abnahme*) has been agreed, this shall be decisive for the transfer of risk. If we are in default of acceptance (*Annahmeverzug*), this shall be deemed equivalent to handover or acceptance (*Abnahme*).

**12. Payment**

We reserve the right to choose freely among all common means of payment, whereby the issuing of cheques and bills of exchange requires a separate agreement between us and the contractor/supplier. Payment shall be made on the agreed dates and in accordance with the other terms and conditions to the paying agent supplied by the contractor/supplier.

Unless otherwise agreed, the payment shall be made according to our choice after delivery and receipt of invoice within 8 days at a 3% discount, within 14 days at a 2% discount, or within 30 days net. We generally reject cash on delivery.

**13. Assignment of claims**

Assignment or pledging of claims against us requires our prior written consent to be effective. The contractor/supplier may only offset with undisputed or legally established claims.

**14. Drawings and models**

The models, drawings and calculations submitted for the fulfilment of our contract remain our property and must be returned after the contract has been carried out.

**15. Place of jurisdiction**

The exclusive place of jurisdiction for disputes arising from agreements on the basis of our contracts and orders is Dollbergen. The law of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods is hereby waived.

**16. Severability clause**

Should any provision of these Terms and Conditions of Purchase be or become invalid/void or unenforceable in whole or in part pursuant to §§ 305 to 310 BGB, the statutory provisions shall apply.

Should any present or future provision of the contract be or become invalid/void or unenforceable in whole or in part for reasons other than the provisions concerning the law of general terms and conditions of business pursuant to §§ 305 to 310 BGB, this shall not affect the validity of the remaining provisions of the contract, unless the performance of the contract - also taking into account the following provisions - would constitute an unreasonable hardship for one party. The same shall apply if a gap requiring supplementation arises after conclusion of the contract.

The parties shall replace the invalid/void/unenforceable provision or gap requiring filling for reasons other than the provisions relating to the law of general terms and conditions of business pursuant to §§ 305 to 310 BGB with a valid provision which corresponds in its legal and economic content to the invalid/void/unenforceable provision and the legal purpose of the contract. § 139 BGB is expressly excluded. If the invalidity of a provision is based on a measure of performance or time (period or deadline) established therein, the provision shall be reconciled with a legally permissible measure that comes closest to the original measure.