

# Terms and Conditions of Purchase

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## § 1 Scope of application

- (1) These general purchase conditions apply to goods and services from your company to us, to the extent that other arrangements were not expressly made.
- (2) Differing conditions of the contractor which deviate from or conflict with our general conditions of purchase shall only apply if they have been confirmed by us in writing.
- (3) Other terms and conditions shall not apply, even if we have not expressly objected to them. If we accept the goods without express objection, this shall not be deemed to be acceptance or consent to the other terms and conditions in any case.

## § 2 Offers

- (1) Offers are to be submitted as binding and free of charge.
- (2) Regardless of whether or not an order is issued, no remuneration or compensation is paid for visits or for preparing offers, projects etc.

## § 3 Orders

- (1) Our purchase orders or modifications to purchase orders shall be made in writing and/or shall require written confirmation.
- (2) Orders issued verbally or by telephone are valid only following their written confirmation.
- (3) The writing requirement may only be waived in written form.
- (4) We are entitled to revoke our orders free of charge if they are not confirmed without modification within 2 weeks of receipt.
- (5) In the event the Supplier accepts our order with deviations therefrom, the Supplier shall clearly specify/advice such deviations for us in writing.

## § 4 Deadlines and consequences of overrun of deadlines

- (1) Agreed upon deadlines for the delivery of goods and the rendering of services shall be binding. If delays are expected or occur, you must inform us of this in writing immediately .
- (2) You do not deliver or perform within a grace period that we provide, we are entitled to refuse acceptance, withdraw from the contract or demand compensation for damages from failure to perform without giving prior notice. We are also entitled to withdrawal if you are not responsible for the delay. The added expenses that we occur due to your delay, especially those owing to a different sort of coverage made necessary by the delay, will be borne by you.
- (3) We reserve the right to demand an agreed-upon contractual penalty due to improper fulfilment (§ 341 BGB [German Civil Code]).

## § 5 Prices

- (1) The prices agreed are fixed and exclude additional claims of any kind.
- (2) They include all expenditures in connection with the deliveries or services to be provided by you.

## § 6 Procedure and Processing

- (1) Sub-contracts may only be awarded with our written consent, to the extent that they are not merely contracts for providing parts/services common to the market. Delivery calls are binding with respect to the type and quantity of goods called as well as the delivery deadline. Partial shipments require our approval.
- (2) Unless otherwise expressly agreed, the place of performance for the delivery commitment shall be the shipping address or point of use. For all other obligations of both parties Eschau-Hobbach is the place of performance. A delivery note is to be included with every shipment.
- (3) The Products shall be packed as is usual in the trade in common one-way standard wrapping. If returnable packaging is requested you shall provide the packaging on loan. Goods shall be returned at your expense and risk. Should we have agreed, in an exceptional case, to pay for packaging costs, this must be invoiced at proven cost- prices?.

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- (4) In the case of devices, a technical description and operating instructions will be provided in German or English, free of charge. In the case of software products, your obligation to delivery is only fulfilled when the complete documentation is also handed over. In the case of programs specially written for us, the program is also to be delivered in source code along with the complete documentation.
- (5) The shipment shall be carried out at your risk. The risk of deterioration including accidental destruction until delivery shall remain with you until delivery of the products at the agreed shipping address and/or place of use.
- (6) To the extent that services are performed on our premises, you shall comply with our applicable regulations directive „Instructions on Safety, Environmental Protection and Fire Control for External Persons" house rules we will provide on request.  
Your suspension mechanisms must be designed and fitted so as to ensure the safety of workers servicing them in accordance with appropriate rules and instructions.

## § 7 Billing, Statements and Payments

- (1) Billing statements that are to be sent to us under separate cover and must include our order number.
- (2) Your claim to remuneration is due 30 days after the receipt of goods and your billing statement, net, or, at our discretion, after 14 days with a 2% discount. The day on which payment is rendered is that day on which our bank receives the money transfer order.
- (3) Payments do not constitute an acknowledgement of the delivery or service as in conformity with the contract. In the case of defective or incomplete shipments or services, we are entitled, irrespective of other rights, to retain payments of claims deriving from the business relationship in an appropriate scope.
- (4) Cession of your claims against our business to third parties is excluded.

## § 8 Safety and Environment

- (1) Your deliveries and services must be in accordance with statutory regulations and provisions, in particular the safety and environment protection provisions including the directives pertaining to hazardous materials, the German Electrical and Electronic Equipment Act (ElektroG) and the safety recommendations by the responsible German professional bodies and groups or professional associations such as the VDE, VDI, and DIN. Any relevant certifications, testing reports and evidence must be furnished free of charge along with the goods and services.
- (2) You shall determine and adhere to the latest applicable guidelines and laws pertaining to the components with respect to substance restrictions. Prohibited substances must not be used for deliveries of goods. Dangerous and hazardous substances as defined by the valid laws and guidelines must be stated on the specifications. If applicable, safety data sheets (at least in German or English) have to be submitted already along with the offers or the delivery note of the first delivery. We must be immediately informed of any transgressions of substance restrictions and delivery of hazardous substances.
- (3) With respect to any goods or the provision of any services, you shall be solely responsible for adhering to the rules on accident prevention. According to these rules, the required safety provisions and any other manufacturers' guidelines must be furnished free.

## § 9 Import- and Export regulations, Customs

- (1) For deliveries and services which are rendered from an EU country outside of Germany, the contractor must indicate their EU-VAT-ID number.
- (2) Imported goods must be delivered duty-paid. The contractor is obliged to give explanations and information as required by Regulation (EC) No. 1207/2001 at his cost, to allow examinations by the customs, and to obtain possibly requested official certificates. The contractor is also obliged to enclose all necessary records to the import papers in order to utilize customs preferences.
- (3) The contractor is obliged to comply, in every respect, with the German, European and US American export and customs provisions as well as the export and customs provisions of the country of the origin of the goods and services. The contractor shall inform us about possible duties to obtain permits for (re-)exports in accordance to the German, European and US-American export and customs provisions as well as the export and customs provisions of the country of the origin of the goods and services, in particular, about the classification of the goods according to the EC Dual-Use Regulation as amended from time to time, comprehensively and in writing.

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## § 10 Transfer of Risk, Acceptance, Property Rights

- (1) Independent of the agreed-upon price, the risk transfers to us in case of delivery without set-up or assembly/ installation/ calibration on receipt at the delivery address given by us and in the case of delivery with set-up or assembly/ installation/ calibration with the successful completion of our acceptance. The declaration of acceptance is not replaced by operational start-up or use of the goods delivered.
- (2) Ownership of the delivered good transfers to us with payment. Any extended or expanded reservation of title is excluded.

## § 11 Defects and limitation periods

- (1) An inspection of incoming goods only takes place with respect to outwardly visible defects, transport damages and/or deviations in kind or quantity of the delivered goods. Other defects will be claimed as soon as they are discovered according to the conditions of the proper course of business. For defects which we report to you within fourteen days, you will waive the claim of late defect notification within warranty period.
- (2) If we return defective goods to you, then we will have the right, regardless of the amount of the expenses incurred, to charge the invoice amount plus a flat-expense charge of 5% of the price of the defective goods. We expressly reserve the right to provide evidence of higher expenditures. Proving lower expenses or none is your right.
- (3) Defective shipments reported during the warranty period, which also includes the failure to meet specified data and the absence of assured qualities, are to be replaced by you by shipments free of defect immediately without delay and at no cost (including ancillary costs) and defective services are to be repeated without defect without delay and at no cost (including ancillary costs). In the event of any development or construction errors, we shall be entitled to promptly enforce the rights set forth in Section 11.5.
- (4) In particular, you shall bear all costs incurred in connection with establishing and correcting the fault, even if they are incurred by us, especially inspection costs, de-installation and re-installation costs, labor and material costs as well as the transport costs and other costs of returning faulty and receiving good parts. This also applies if the costs increase as a result of the goods having been moved to a different location to the place of fulfillment.  
Remediation of defective shipment(s) or services requires our consent. During the time in which the object of the delivery or the service is not in our safekeeping, you bear the risk .
- (5) If you do not remedy the defect within a reasonable period of time provided to you, we can unilaterally withdraw from the contract or reduce the compensation and we may in each case demand additional compensation for damages.
- (6) In urgent cases (especially if operational safety is endangered or to prevent exceptionally high damages), to remedy slight defects as well as in the case that you delay in the remediation of a defect, we are entitled to remedy the defect and any damages it has caused ourselves or have them dealt with by a third party, after first informing your company and after a grace period that is of a brevity appropriate to the situation, at your cost. This also applies if you deliver late or perform late and we must immediately remedy defects in order to prevent a delay in delivery on our part.
- (7) The statute of limitations for asserting our claims deriving from any defects or deviations is 36 months from transfer of risk as specified in No. 10.1; Counting toward the statute of limitations will be suspended for the period that begins with the sending of our defect report and ends with the fulfilment of our defect claim.
- (8) If the delivery or service from your company proceeds corresponding to our plans, drawings or other specifications, the conformity of the delivery or service with the specifications is deemed expressly assured. If any deviations from these are identified, we are immediately entitled to the rights from 11.5..
- (9) You shall be entitled to claim the absence of any required documents and/or materials and samples to be submitted to us only if you have reminded us in writing to submit any such documents and/or materials and samples and if you have not received them within a reasonable period of time.

## § 12 Repeated default

- (1) If, after written warning, you repeatedly provide deliveries or perform services that are essentially the same or similar either defectively or with delay, we are entitled to immediate withdrawal. Our right to withdrawal in this case also encompasses such deliveries and services that you are yet required to provide us from this or another contractual agreement in the future.

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## § 13 Release from Material and Legal Defects

- (1) You release us from all claims that third parties assert against our business— regardless of legal ground— on the basis of a material or legal defect or other type of defect of a product you deliver and you will compensate our business for the necessary costs of our legal proceedings in this matter, in and out of court at home or abroad. This also applies to claims deriving from copyright infringement by your company.

## §14 Technical Documents, Tools, Production Materials

- (1) Any technical documents, measurement equipment, software, etc. provided by our company remains the property of our company; all copyrights, trademarks and other protected rights also likewise belong to us. They are to be returned to us unsolicited immediately after the order is completed, including any duplicates that may have been produced. To that extent you are not entitled to assert any right of retention. You may only use the objects named to carry out the order and you may not leave them with third parties or otherwise give third parties access to them. Duplication of the objects named is not permitted, unless it is necessary to carry out the order.
- (2) If the contractor produces for us the things mentioned in paragraph 14. sentence 1, in part or in whole, at our costs, then paragraph 14.1 shall apply accordingly, and we shall become the (co-) owner at the time of the production, in accordance to ratio of the production costs contributed. You carefully keep and store such production means free of charge. We are entitled, at any time, to acquire the rights of the contractor with regard to the object by compensating the contractor for any expenditure which have not been written off yet, and require the hand-over of the object .
- (3) You are obliged to care for, maintain the above mentioned items and remedy normal wear & tear thereon free of charge. If a sub-contractor is engaged to manufacture of tools and samples for the execution of our order, any claims against the sub-contractor for the transfer of ownership of the tools and samples shall be assigned to us.

## § 15 Material Supply

- (1) Material we supply remains our property and you are to store it free of charge and with the due diligence of a proper businessman separately from your other items and mark it as our property. Such material may only be used to fulfil our orders. You will compensate for any damages to material supplied.
- (2) If you process or re-shape the material supplied, this activity is performed on our behalf. We become the direct owner of the new items created by this. If the material supplied makes up only a portion of the new items, we obtain co-ownership of the new items corresponding to the proportional worth of the supplied material to the worth of the new items.

## § 16 Confidentiality

- (1) You are obligated to treat as confidential and not share with third parties all non-public commercial and technical detailed information that becomes known to you through this business relationship.  
Subcontractors are to be bound accordingly. Employees entrusted by you with the execution of our order must also be bound to secrecy in an appropriate manner. You may only indicate business relations with us in advertising material if we have granted written consent for the particular individual case.
- (2) Production for third parties, display of products especially made for us, especially according to our plans, drawing or other specifications, publications concerning the order and performance as well as reference to this order to third parties requires our prior written consent.
- (3) Let us point out here that we store data that is related to our business relationship with you. These data can also be shared with companies affiliated with us.
- (4) This confidentiality clause shall remain in force even after contract termination, and shall not expire until all such illustrations, drawings, calculations and other techniques or procedures contained in any of the documents have become common knowledge.

## § 17 Miscellaneous

- (1) Provided you are a businessman, legal person under public law or legal entity under public law, or you do not have any general place of jurisdiction in the Federal Republic of Germany the court of jurisdiction is the headquarters of our business. We are however entitled to bring legal complaints against you at your headquarters.

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- (2) German law applies under exclusion of U.N. Convention on the International Sale of Goods and the Rules of Conflict of Law for German International Private Law.
- (3) Should single clauses of these General Terms of Business be wholly or partly ineffective this will not affect the effectiveness of the other clauses and/or of the other parts of such clauses; in lieu of this the legal stipulations will apply.

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