

## **II. General Terms and Conditions of Purchase (GTCP)**

### **§ 1 Scope of Application**

(1) The present General Terms and Conditions of Purchase subsequently referred to as GTCP apply to all our business relations with our business partners and suppliers (“Seller”). The GTCP only apply if the seller is an entrepreneur (§ 14 German Civil Code), a legal entity under public law or a special fund under public law.

(2) The GTCP apply in particular to contracts on the sale and/or the supply of movable items (“goods”) regardless of whether the seller produces the goods himself or buys them from subcontractors (§§ 433, 650 German Civil Code). Unless not otherwise agreed upon the GTCP apply in the version valid at the time the seller placed the order respectively in any case in the latest version notified in text form as a framework agreement also to similar future contracts without us having to refer to these again in each individual case.

(3) These GTCP are valid exclusively. Divergent, contradictory or supplementary General Terms and Conditions of the seller shall be only and in so far as we expressly give our written consent to their application. This approval requirement applies to every case for instance also if the seller refers to his GTCP within the framework of the confirmation of the order and we do not expressly object.

(4) Individual agreements (e.g. framework supply contracts, quality assurance agreements) and indications in our order confirmation take precedence over the GTCP. In doubt commercial clauses have to be interpreted according to the Incoterms<sup>(R)</sup> issued by the International Commercial Chamber in Paris in the version valid at the conclusion of the contract.

(5) Legally relevant declarations and notices of defect on behalf of the seller with respect to the contract (e.g. setting of a deadline, reminder, withdrawal) have to be notified in writing. Written form in the sense of these GTCP includes written- and text form (e.g. letter, e-mail, telefax). Legal form prescriptions and other evidence especially in doubts regarding the legitimation of the declarant remain unaffected.

(6) References to the validity of legal prescriptions have only clarifying significance. Therefore even without such a clarification the legal provisions apply insofar as they have neither been amended directly nor excluded expressly.

### **§ 2 Conclusion of the Contract**

(1) Our order shall be deemed binding earliest with the written submittal or confirmation hereof. The seller has to attract our attention to obvious errors (e.g. spelling or calculation) and incompleteness of the order including the order documentation for the purpose of correction respectively completion prior to the acceptance; otherwise the contract is deemed not to be concluded.

(2) The seller shall confirm in writing our order within a delay of 14 days or in particular by performing the shipment without reserve (acceptance).

(3) A delayed acceptance is deemed to be a new offer and requires the acceptance on our behalf.

(4) At the time the order is placed excess or short deliveries of 10 % customary in the trade and corresponding price equalisation shall be deemed as agreed upon.

### **§ 3 Delivery time and Delay in Delivery**

(1) The delivery time stated by us in the order is binding. If the delivery time is not stated in the order and not agreed upon otherwise it amounts to 12 weeks beginning with the conclusion of the contract. The seller is obligated to notify us immediately in writing if he probably cannot observe delivery times agreed upon – for whatever reasons there may be.

(2) In case the seller does not comply with the performance within the delivery time agreed upon or gets into delay our rights regarding withdrawal and compensation in damages are determined pursuant to the legal prescriptions. This does not affect the regulations in section 3.

(3) In the event the seller is in delay we can request a lump sum compensation amounting to 1% of the net price per completed week for the damage caused by the delay apart from further legal claims. In total however not exceeding 5% of the net price of the goods delivered in delay. We reserve the right to prove that a greater damage has occurred. The seller reserves the right to prove that no damage at all or only an essentially minor damage has been caused.

### **§ 4 Performance, Delivery Transfer of Risk, Default in Acceptance**

(1) Without our prior written consent, the seller is not authorized to have the performance owed by him carried out by third parties (e.g. subcontractors). The seller bears the procurement risk for his performances unless nothing to the contrary has been agreed upon in the individual case (e.g. limitation as to reserve).

(2) The delivery is carried out within the confines of Germany carriage free to the place indicated in the order. In case the place of destination has not been indicated and nothing else has been agreed upon the delivery has to be carried out to our registered office in Höhr-Grenzhausen. The respective place of destination is also the place of fulfilment regarding the delivery and a possible subsequent performance (fulfilment of the commitment).

(3) A bill of lading has to be enclosed, stating date (date of issue and dispatch) content of the delivery (part number, amount) as well as our order identification (date and number). In case of a missing bill of lading or its incompleteness we do not account for delays in processing and payment resulting therefrom. Separate from the bill of lading shipping documents (CMR) with the corresponding contents have to be sent to us.

(4) The risk of accidental loss and the accidental deterioration of the item shall pass to us with the transfer at the place of fulfilment. Unless an acceptance has been agreed upon it determinates the transfer of risks. Also for the rest the legal stipulations regarding work and services contracts shall apply correspondingly to an acceptance.

This is also true for the transfer respectively acceptance in the event we are in acceptance delay.

(5) As to the occurrence of a delay in acceptance on our behalf the legal stipulations shall apply. However the seller has to offer us also expressly his performance in the event a determined or determinable calendar time has been agreed upon for our action or our cooperation (e.g. procurement of material). If we get into acceptance delay the seller may in accordance with the legal stipulations demand reimbursement of his additional expenses (§ 304 German Civil Code). In the event the contract concerns non-fungible goods (made to specification) that are to be produced by the seller the seller shall only be entitled to further reaching rights unless we are committed to our cooperation and have to account for the failure in providing the cooperation.

## **§ 5 Prices and Terms of Payment**

(1) The price stated in the order is binding. Our prices are understood including legal VAT unless it is not stated separately.

(2) Unless nothing to the contrary has been agreed upon in the individual case the price includes all performances and secondary performances on behalf of the seller (e.g. assembly, installation) as well as all secondary costs (e.g. orderly packaging-, transportation costs including possible transportation- and liability insurance).

(3) The price agreed upon is due to payment within 30 calendar days beginning with the complete delivery and performance (including an acceptance possibly agreed upon) as well as receipt of an orderly invoice. In the event we perform payment within 14 calendar days the seller grants us 3% of discount on the net amount of the invoice. In the event of a bank transfer the payment has been performed in due time unless our transfer order is received by our bank prior to the expiration of the payment term; we are not responsible for delays caused by the banks involved with the payment transaction.

(4) We do not owe any maturity interests. The legal stipulations shall apply to the delay in payment.

(5) We are entitled to claim rights of offsetting and retention as well as objection to the unfulfilled contract within the statutory scope. We are in particular entitled to retain due payments subject to our claims resulting from incomplete or faulty performances with regard to the seller.

(6) The seller has only a right of offsetting and retention in case of counter claims confirmed as being lawful or undisputed.

## **§ 6 Obligation of Secrecy and Reservation of Ownership**

(1) As to illustrations, plans, drawings, calculations, executionary instructions, product descriptions and other documents we reserve the property- and copyright. Such documents may be used only for the contractual performance and have to be returned to us after the termination of the contract. Towards third parties these documents have to be kept secret thus even after the termination of the contract. The obligation of secrecy expires only if and in so far the knowledge contained in the entrusted

documents has become public knowledge. This does not affect particular secrecy agreements nor legal regulations regarding the protection of secrets.

(2) The aforementioned stipulation does also apply correspondingly to substances and materials (e.g. software, finished and half-finished products) as well as tools, template design and samples and other items we place at the disposal of the seller for the production. Unless such items are not processed they have to be kept safe separately at the expense of the seller and have to be insured against destruction and loss to a reasonable extent.

(3) A processing, mixing or combination (further processing) of the items manufactured by the seller is carried out for us. This shall also apply to further processing of the goods by us with the result that we are deemed to be producers and shall acquire property of the product pursuant to legal prescriptions at the latest with the further processing.

(4) The transfer of ownership of the goods to us have to be made unconditionally and regardless of the payment of the purchase price. In the event however we accept in the individual case an offer of transfer of ownership, made by the seller subject to the payment of the purchase price the reservation of property on behalf of the seller expires at the latest with the payment of the purchase price for the delivered goods. In the ordinary course of business we remain authorized to resell the goods even prior to the payment of the purchase price subject to an advance assignment of future claims arising therefrom (in the alternative validity of the simple reservation of property extended to resale). However all other forms of title regarding reservation of ownership are excluded, in particular the extended, transferred and that extended to further processing.

## **§ 7 Defective Delivery**

(1) Regarding our rights in case of defaults in quality or legal deficiencies (including false delivery and shortfall in delivery as well as improper assembly / installation or inadequate instruction) or other breaches of duty on behalf of the seller the legal prescriptions shall apply and exclusively in our favour the following completions and clarifications.

(2) Pursuant to the legal provisions the seller is in particular liable for the agreed upon quality of the goods at transfer of risk to us. In any case however those product descriptions which - in particular due to designation or reference in our order - are the object of the respective agreement or which were incorporated into the agreement in the same way as these GTCP are regarded as an agreement upon the property in each case. Therefore it makes no difference whether the product description comes from us, the seller or the producer.

(3) We are not obligated either to examine the goods or to special inquiries on possible defaults at the conclusion of the contract. Partly divergent from § 442 section 1 sentence 2 of the German Civil Code we are thus entitled to unrestricted deficiency claim even if the deficiency remained unknown to us at the time of the contract conclusion due to gross negligence.

(4) The same legal prescriptions shall apply to the commercial obligation of examination and notification (§§ 377, 381 German Commercial Code) with the following implications: Our obligation of examination is limited to deficiencies which become apparent under exterior assessment during our incoming goods inspection including the delivery documents (e.g. transportation damages, false delivery and shortfall in delivery) or during a quality control in sampling procedure. In so far an acceptance has agreed upon no examination obligation exists. Apart from that it is important to what extent an examination is appropriate in consideration of the circumstances in the individual case in accordance with the ordinary business course. This does not affect our obligation to complain about later detected deficiencies. Notwithstanding our examination obligation our complaint (notice of defects) is deemed however to be immediate and in time if it is dispatched within 15 working days from detection respectively in case of apparent defects from delivery.

(5) Part of the subsequent performance shall also be the removal of the faulty goods and the renewed installation provided that prior to the detection of the fault the goods have been installed in another item or attached to another item in accordance with their nature and their purpose of use; our legal claim to reimbursement of correspondent expenses (removal and installation costs) is unaffected by this. The expenses required for the purpose of examination and subsequent performance in particular transport-, travelling-, labour- and material costs as well as possibly necessary removal and installation costs are assumed by the seller, even it is revealed that actually no deficiency was present. Our liability for compensation in damages in the event of unjustified claim for remedy of deficiencies is not affected; in so far we are only liable however in the event we recognized or did not in gross negligence that no deficiency was present.

(6) Notwithstanding our legal rights and the regulations in section 5 the following applies: In the event the seller does not comply with his obligation to provide subsequent performance – at our option by rectifying the deficiency (subsequent improvement) or by supplying a faultless item (substitute delivery) – within an appropriate deadline set by us we can rectify the deficiency ourselves and require from the seller reimbursement of the here necessary expenses respectively demand a corresponding advance. In the event the seller failed in the subsequent performance or this is unacceptable to us (e.g. due to special urgency, jeopardizing the operational safety or threatening occurrence of unproportional damages) no setting of a deadline is required; we shall inform the buyer immediately about such circumstances – if possible previously.

(7) Apart from that we are entitled to reduce the purchase price in the event of a material or a legal defect or to withdraw from the contract. Furthermore we are entitled to compensation in damages and expense in accordance with the legal provisions.

## **§ 8 Supplier Regress**

(1) Besides the claims for defects we are entitled without any restrictions to our legally determined claims for reimbursement of expenses within a delivery chain (supplier regress according to §§ 478, 445a, 445b respectively §§ 445c, 327 section 5, 327u German Civil Code). We are particularly entitled to demand from the seller the type of subsequent performance (subsequent improvement or substitute delivery) we owe to our customer in the individual case. This does not restrict our legal option right (§ 439 section 1 German Civil Code).

(2) Prior to our approval of a claim for defect asserted by our customer or to our compliance with it (including reimbursement of expenses in accordance with §§ 445a section 1, 439 sections 2,3,6 sentence 2, 475 section 4 German Civil Code) we shall inform the seller in writing, setting out the facts briefly and demand a written comment. Unless a substantiated comment has not been made within a reasonable delay and unless no amicable solution has been presented the actual claim for defects granted by us shall be considered as owed to our customer. In this case the seller shall be committed to prove the contrary.

(3) Our claims resulting from supplier regress shall also apply in the event the faulty good was combined with another product or processed otherwise by us, our customer or a third party e.g. by means of mounting, attachment or installation.

## **§ 9 Producer Liability**

(1) In case the seller is responsible for a product damage he has to indemnify us against claims of third parties in so far as the cause lies within his sphere of control and organisation and he is liable himself in the external relationship.

(2) Within the framework of his duty as to indemnify the seller has to reimburse costs in accordance with §§ 683, 670 German Civil Code, arising out of or in connection with any recourse taken by third parties including recall campaigns carried out by us. With regard to content and the scope of recall campaigns we shall inform the seller – unless possible or acceptable – and provide him with the opportunity to state his position. Further legal claims remain unaffected.

(3) The seller shall provide and maintain a product liability insurance with a flat rate coverage sum of at least 10 Mio. EUR per personal injury or property damage.

## **§ 10 Prescription**

(1) The mutual claims of the contractual partners are statute barred pursuant to the legal prescriptions unless subsequently nothing to the contrary has been stipulated.

(2) In derogation of § 438 section 1 no. 3 German Civil Code the general prescription period regarding claims for default amounts to 3 years beginning with the transfer of the risk. Unless an acceptance has been agreed upon the prescription period begins with the acceptance. The 3 year prescription period also applies to claims resulting from legal deficiencies whereas the statutory prescription period for in rem claims to return of third parties (§ 438 section 1 no. 1 German Civil Code) remains unaffected; claims resulting from legal deficiencies are in no case statute barred beyond this in so

far as the third party is entitled to make other claims against us in particular in the absence of prescription.

(3) The prescription periods of the purchase right including the above mentioned extension shall apply - to the statutory extent – to all contractual claims for defects. In so far as we are entitled to extra contractual claims for defects the regular statutory prescription period shall apply (§§ 195, 199 German Civil Code) unless the application of the prescription period of the purchase right does not lead to a longer prescription period.

### **§ 11 Applicable Law and Place of Jurisdiction**

(1) For these GTCP and the contractual relationships between us and the seller the law of the Federal Republic of Germany shall apply, excluding International Uniform Right in particular that of the UN sales law.

(2) In the event the seller is a businessman in the sense of the German Commercial Code, a legal entity under public law or a special fund under public law the exclusive – also international - place of jurisdiction for all disputes arising from the contractual relationships shall be our registered office in Höhr-Grenzhausen. The same shall apply if the seller is an entrepreneur in the sense of § 14 German Civil Code. However we are in all cases entitled to initiate actions at the place of fulfilment as to the obligation to deliver in accordance with these GTCP respectively a primary individual agreement or at the general place of jurisdiction of the seller. Primary statutory prescriptions in particular regarding exclusive competences remain unaffected.