

## Terms and Conditions of Purchase

Our Terms and Conditions of Purchase (hereinafter "Terms") shall apply to business with business entities in terms of § 310 para. 1 German Civil Code.

Our Terms exclusively apply; we will only recognise the general terms and conditions of business of contractors/suppliers (hereinafter "CO/SUP") which conflict with or vary from our Terms if we have expressly consented to them in writing. Our Terms will also apply for future business with the CO/SUP even if we are aware of terms and conditions of business of the CO/SUP which conflict with or vary from our Terms and accept the delivery of the CO/SUP without reservation.

### 1. Offer and Conclusion of Contract

1.1 Orders, contracts and delivery instructions as well as their amendments and supplements must be made in writing.

1.2 Oral agreements of any kind – including amendments or supplements to our Terms made after conclusion of the contract – also require our written confirmation in order to be valid.

1.3 The written form is satisfied by electronic data transmission or telefax.

1.4 Cost estimates are binding and shall not be paid for unless otherwise expressly agreed.

1.5 If the CO/SUP does not accept the order within one week of receipt, we are entitled to revoke the order.

1.6 Delivery instructions in the context of order and on-call order planning are binding unless the CO/SUP objects to this within two working days of receipt.

### 2. Prices

2.1 The price set out in the order shall be binding. The prices are fixed prices exclusive of value added tax. They include the consideration for all of the deliveries and services and packaging provided by the CO/SUP on the basis of DAP (pursuant to Incoterms 2010, published by the International Chamber of Commerce Paris, ICC) at our production facility, unless otherwise agreed.

2.2 Price agreements shall also apply for future deliveries and shall remain valid until they have been replaced by new prices through express agreement.

### 3. Dates and Deadlines

3.1 Agreed dates and deadlines are binding. The receipt of the goods at our production facility shall be decisive for compliance with the delivery date or delivery deadline.

3.2 If it is recognisable that a delivery date will not be met, the CO/SUP without undue delay and unrequested shall inform us in writing of the reason and the anticipated duration of the delay. Irrespective of this, any deviation from the delivery date will trigger the consequences of delay. Our acceptance without reservation of the delayed

delivery or service does not constitute a waiver on our part of any compensation claims we might be entitled to as a consequence of the delayed delivery or service.

3.3 In the case of delayed delivery, irrespective of our other rights, we are entitled to a contractual penalty in the amount of 0,3 % per working day, not exceeding however in aggregate 5 % of the contract price of the order. The contractual penalty does not have to be reserved at the time of the acceptance of the delivery or service; it is sufficient when we assert this upon the settlement of the invoice of the CO/SUP. A contractual penalty which has already been paid will be set-off against any greater amount of compensation to be paid.

### 4. Despatch and Documents

4.1 The despatch shall be on the basis of DAP (pursuant to Incoterms 2010, published by the International Chamber of Commerce Paris, ICC) to our production facility unless otherwise agreed. All risks in connection with the goods shall be borne by the CO/SUP until our acceptance of the goods or acceptance by our instructed person in the place to which the goods are to be delivered according to the order.

4.2 Each delivery shall include two delivery notes as well as the bill of lading or waybill which must contain our order number, article number, the position number, the description of goods and the delivery date. Furthermore the CO/SUP is obliged to send to us and to the recipient designated by us, notice of delivery on the day of delivery.

### 5. Obligations of the CO/SUP

5.1 Within the period for delivery or service, the CO/SUP shall also deliver free of charge and if required in a copyable form and in a requested foreign language, all documents necessary for the acceptance, operation, maintenance and repair (test certificates, work certificates, drawings, plans, operating instructions etc.).

5.2 For deliveries and services on our premises or the premises of our customers our safety and administrative regulations or those of our clients must be adhered to which in this case will form part of the contract.

5.3 The CO/SUP shall be liable for compliance with the relevant statutory and official rules and regulations – also in particular the rules and regulations of Germanischer Lloyd or other classification societies – and stipulations for the performance of the contract. The delivery/service must comply with the valid relevant norms for safety, working protection, accident prevention as well as DIN standards, VDE directives and alike and other regulations including those of other classification companies. Necessary safeguards according to such regulations must always be supplied and are included in the agreed price.

5.4 The CO/SUP warrants, at least for the minimum normal period of use for the respective article supplied, that it will provide spare parts on usual market terms and prices.

### 6. Tests at the CO/SUP

6.1 Our representatives and those of our customers are entitled to visit the premises of the CO/SUP during working hours to be informed of the contractual execution of the delivery/service, to participate in the factory acceptance tests and to carry out own tests.

6.2 Additional tests carried out by us due to defects which have previously been determined shall be at the expense of the CO/SUP. Tests shall not discharge the CO/SUP from its contractual obligations.

## **7. Supplies and Documents**

7.1 The CO/SUP shall be liable for loss or damage to property supplied as well as documents made available by us. The CO/SUP must inform us of legal or actual damage of such property/documents without undue delay.

7.2 Material in our ownership and supplied by us shall be worked on and processed for our order and shall remain in our ownership during the processing stage. Where our property is processed together with property which does not belong to us, we are entitled to co-ownership of the newly produced article in proportion to the value of our property supplied as against the value of all property used for the manufacture as well as the expenses of the CO/SUP for the processing. To this extent, the CO/SUP stores the property for us without consideration. The same applies for the blending and mixing of property supplied by us.

7.3 We reserve rights of ownership and copyright to all documents we make available to CO/SUP, in particular drawings, models and designs. The documents may only be used for the purpose of the respective contract and may only be made available to third parties with our prior written consent. On demand or following the settlement of our enquiry or after the execution of the ordered delivery/service, these must be immediately returned to us. The CO/SUP is obliged to absolute confidentiality. The CO/SUP undertakes when instructing sub-contractors to implement confidentiality obligations in relation to any such sub-contractors. The CO/SUP shall not make contact with any of our end customers without our prior written consent. If the CO/SUP breaches any of these obligations, it shall indemnify us against any resulting claims.

7.4 Documents relating to an offer or the placing of a contract shall be binding for the CO/SUP. The CO/SUP must carefully check our documents for any discrepancies and inform us in writing of any discovered or suspected errors without undue delay; the CO/SUP shall however remain solely responsible for drawings, plans and calculations it has prepared, even if these are approved by us.

7.5 Semi-finished and finished goods which are manufactured according to our documents may only be delivered to third parties with our prior written consent.

## **8. Implementation and Changes**

8.1 The CO/SUP may only transfer services to sub-contractors with our written consent. The consent does not discharge the CO/SUP from obligations owed to us.

8.2 The CO/SUP is obliged to ensure when placing sub-

contracts, that the sub-contractor is contractually bound to grant us the right to information and the opportunity to carry out testing to the same extent set out in clause 6.1 of these Terms. These tests will not discharge the CO/SUP from its contractual obligations.

8.3 The CO/SUP gives an assurance in the implementation of contracts to comply with all its obligations under the German Minimum Wage Act, in particular the obligation to pay its workers in Germany at least the minimum wage pursuant to § 1 German Minimum Wage Act (or pursuant to the temporary regulations of § 24 German Minimum Wage Act) at the latest on the respective due date. CO/SUP gives a further assurance that it will only engage such sub-contractors (including temporary work agencies) which for their part comply with their obligations under the German Minimum Wage Act, in particular the obligations to pay their workers in Germany at least the minimum wage pursuant to § 1 German Minimum Wage Act (or pursuant to the temporary regulations of § 24 German Minimum Wage Act) at the latest on the respective due date. These and all subsequent regulations for sub-contractors shall also apply for any chain of sub-contractors.

8.4 We are and remain entitled even after conclusion of the contract to require any changes to the nature of the delivery/service within the framework of the CO/SUP's technical capacity. Agreements on technical changes and their impact on prices, delivery time and other conditions must be made in writing.

8.5 Upon our demand, the CO/SUP shall immediately stop the implementation of a contract or carry it out in an amended form.

## **9. Assignment and Set-off**

9.1 The CO/SUP is not authorised, without our express consent, to assign claims against us or to assert rights of retention in relation to our claims, unless these relate to rights of retention of CO/SUP which are uncontested or which have finally been determined by the courts.

9.2 Setting-off with counter-claims of CO/SUP is only permissible to the extent these claims are acknowledged by us and are due or are finally determined by the courts.

## **10. Ownership of the Subject of Delivery**

We shall acquire unlimited ownership of the subject of the delivery/service latest upon handover; the same shall apply to the documents which are also delivered. In handing over, the CO/SUP gives a declaration that it is completely authorised to represent and that no third party rights exist in the respective goods.

## **11. Invoices and Payments**

11.1 The claims of the CO/SUP will be paid by us 30 days after receipt of the goods and after the presentation of proper invoices pursuant to clause 11.2.

11.2 Invoices are to be sent separately in duplicate for each order after the provision of the contractual service. Every

invoice shall contain - in addition to the statutory requirements pursuant to §§ 14, 14a German Value Added Tax Act – an exact description of the goods delivered or service provided as well as the order number and date.

11.3 The CO/SUP shall confirm in every invoice that it and any sub-contractors instructed for the services invoiced have only engaged employees who have received the minimum wage pursuant to § 1 German Minimum Wage Act (or pursuant to the temporary regulations of § 24 German Minimum Wage Act). If this information is missing or incorrect, the provisions for delayed payment shall not take effect until clarification.

11.4 Invoices for partial delivery and down payments are only permissible upon prior written agreement and must be designated as such.

11.5 If the order is to be invoiced on a time and material basis, evidence of outlay must be attached to the invoice.

## **12. Place of Performance and Acceptance**

12.1 Place of performance for the CO/SUP is the place where the goods are to be delivered or where the service is to be provided in accordance with the contract.

12.2 Unless otherwise agreed, the acceptance of the delivery/service shall take place by signature of a written confirmation of acceptance.

12.3 The contract is performed if we have given such written confirmation of acceptance and if any defects or reservations listed in the confirmation of acceptance have been remedied. If we take receipt of deliveries/services without an express objection, it cannot be inferred from this that the delivery/service has been accepted by us.

## **13. Warranty**

13.1 The CO/SUP gives a warranty for the careful and proper performance of the contract, in particular compliance with specifications, drawings and other codes of practice corresponding with the latest available technology as well as the qualities and utility of the delivery/service corresponding with the anticipated use of the subject of the delivery/service, and special requirements in relation to material, construction and implementation and the documents attached to the delivery. The values and features given in our specifications constitute the agreed quality of the subject of the delivery/service.

13.2 The CO/SUP is also liable for ensuring that the delivery/service or use of the delivered item does not infringe any third party rights, in particular intellectual property rights. The CO/SUP indemnifies us from any third party claims based on protective rights.

13.3 The CO/SUP gives an assurance that it has entered into corresponding liability insurances. We shall be given the opportunity to inspect such insurance policies if we so request.

13.4 The CO/SUP must remedy defects at its own cost without undue delay. If remedy of defects is not possible, not usual or unreasonable, we can instead demand the immediate, free-of charge delivery of a non-defective

subject of delivery or the provision once again of the service.

13.5 If the CO/SUP does not immediately fulfil its obligations for remedy of defects or replacement delivery, or if it refuses performance of this obligation or if a replacement delivery is impossible, we can assert our statutory warranty rights without fixing a deadline. In urgent cases we are entitled, without serving prior notice on the CO/SUP, to repair a defective subject of delivery at the cost of the CO/SUP or obtain a replacement from a third party.

13.6 Unless otherwise expressly agreed, in the case of supplies to ships, the CO/SUP can first demand acceptance with its delivery to our customer, whilst in the case of deliveries/services for a plant where other suppliers are involved in its manufacture, acceptance can first be required with its operational start-up in the place of use.

13.7 For delivered replacements and rectifications, the statutory warranty period begins anew after the remedy of the defects. For delivered items which cannot remain in operation due to defects, the warranty period shall be extended by the duration of the interruption to operations.

## **14. Liability**

14.1 Unless we have culpably caused injury to life, body or health, claims for compensation against us or our employees – based on any legal reason – shall be excluded unless we or our employees have acted with intent or gross negligence.

14.2 The CO/SUP waives in relation to us any options for release pursuant to § 831 German Civil Code.

## **15. Rescission**

An important reason to justify our rescission of the contract or its termination would be if insolvency proceedings or court settlement proceedings are opened in relation to the assets of the CO/SUP or rejected for insufficiency of assets or if the CO/SUP does not simply temporarily suspend its payments.

## **16. Final Provisions**

16.1 The registered office of our company shall be the exclusive jurisdiction for both parties in all disputes arising directly or indirectly out of the contractual relationship as well as its coming into existence and validity – also disputes arising out of deeds, bills or checks.

16.2 The governing law is the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

16.3 If individual provisions of these Terms or respective contracts are or should become invalid, this shall not affect the validity of the remaining provisions.

Status: March 2015