

## I. Scope of application

1. We conclude contracts exclusively on the basis of our GTC valid at the time. Our GTC do not apply to consumers. Our GTC apply from the time the supplier has first received them, and that for all transactions henceforth concluded with the supplier. Revised or amended versions of these GTC apply from the time of receipt of our written notification of the revision or amendment.
2. Unless explicitly approved by us in writing in the specific individual case, we are not bound by conflicting, deviating or unilateral conditions of business of the supplier even if we do not explicitly reject them or if we accept deliveries or services without reservation regardless of such conditions of the supplier.

## II. Contract conclusion, written form ("Schriftform")

1. Our order is deemed binding upon our placing of the order in writing at the earliest or upon written confirmation of the order. Our order is solely decisive as regards the scope and contents of the contract. The supplier is obliged to advise us of any obvious mistakes or incompleteness of the order including the order documents before the order is accepted. Tools, models, drawings and other documents missing upon receipt of our order letter have to be requested in writing with the supplier's acknowledgement of the order at the latest.
2. The supplier is obliged to acknowledge our order in writing within 1 week or to execute our order without reservation in particular by dispatching the goods, otherwise we are entitled to cancel the order. Calls for delivery can also be made by means of remote data transmission.
3. Any preparation of quotations/offers or project planning by the supplier is not binding for us and at no expense to us.
4. We may to an extent reasonably acceptable to the supplier request changes to the goods to be delivered as regards their construction and design. The effects of such change requests in particular regarding excess or reduced costs and delivery times are to be mutually agreed between the parties in a reasonable manner.

## III. Prices, payment, set-off, assignment

1. The price stated in the order is binding. The price must not be raised in the time from the placing of the order until delivery. If the supplier should, in the time from the placing of the order until delivery, reduce his prices and introduce more favourable terms and conditions, such reduced prices or more favourable terms and conditions will apply.
2. The price stated in the order is free works or warehouse and inclusive of packaging, freight, postage, value assurance, transport insurance and valueadded tax, in the case of delivery abroad also inclusive of customs duties.
3. We pay the net invoice amount less 3 % discount within 14 days from receipt of the invoice and receipt of the complete delivery, otherwise within 60 days from receipt of the invoice and receipt of the complete delivery, net cash.
4. Payment is deemed effected in due time if the money transfer order is timeously received by our bank with our account showing sufficient cover.
5. The exchange rate is determined on the basis of the official selling rate according to the Frankfurt Fixing on the due date, unless otherwise agreed between the parties.
6. We are entitled to set-off and retention as is provided by law. The same applies with regard to the raising of defences ("Einreden"). The supplier is only entitled to set-off or retention if the supplier's counterclaims have been established by a final nonappealable court decision (res judicata) or if they have not been disputed by us.
7. The supplier is not entitled to assign his claims against us to, or have them collected by, a third party without our prior written consent which we are not allowed to withhold unreasonably.

## IV. Delivery time, fixed dates, interest, sub-contractors, replacement parts

1. The delivery time stated in the order is binding. The supplier is to make sure that he has sufficient material and replacement parts in stock to be able to satisfy his delivery obligations under the contract at any time.
2. The supplier is obliged to advise us in writing without undue delay ("unverzüglich") as soon as any circumstances occur or become foreseeable to him which lead to that the agreed delivery time cannot be complied with.
3. In the case of a delay in delivery, we are entitled to assert the claims provided by law. We are in particular entitled to claim compensation of damages in lieu of performance ("Schadensersatz statt der Leistung") and withdrawal after an adequate grace period has expired without result. If we claim compensation of damages, the supplier may provide evidence to prove that he is not responsible for the delay.
4. If we accept late delivery, such acceptance must not be deemed a waiver of the claims to which we are entitled due to the delay.
5. We are not obliged to pay interest from the due date ("Fälligkeitszinsen"). This is without prejudice to claims to default interest which does not exceed a maximum of 5 percentage points above the base interest rate valid at the time. We are not deemed to be in default without a prior written reminder.
6. The supplier will carry out any work and services through his own qualified personnel. The supplier may with our prior written consent also engage third parties (sub-contractors) to carry out such work and services.
7. The supplier is obliged to provide us with replacement parts at their respective prices valid at the time during a period of ten years from delivery, and that even if the business relation has already been terminated.

## V. Packaging, dispatch, passing of risk

1. The packaging shall be suitable for transport by forklift and stacking (in the case of piece goods of more than 30 kg) and is to be provided without charge and, upon our request, to be taken back at no expense to us. Pallets and containers have to be taken back by the supplier at no expense to us, in the case of follow-up deliveries by way of exchange of the old pallets/containers for the new ones.
2. Upon our request, the supplier is to hand over to us certificates regarding the packaging materials used.
3. Delivery and dispatch are executed at the supplier's risk.
4. The consignment needs to be accompanied by delivery notes stating the date (of issue and dispatch), the content of the delivery (item number and quantity) as well as our order code (date and number) and packing slips. In the case of dispatch by ship, the shipping documents and the invoice need to state the names of both the shipping company and the ship. The supplier is obliged to choose such transport means as are most favourable and suitable for us. The complete order codes prescribed by us as well as the entire information on the place of unloading have to be shown on each notice of dispatch, delivery note, packing slip, consignment note/ bill of lading, invoice as well as on each

outer packaging etc.

5. Generally, the supplier is obliged to pack, mark and dispatch hazardous goods in accordance with the applicable national/ international regulations. The accompanying papers need to state – besides the respective hazard class – also any and all further information required by the applicable transportation regulations.
6. The supplier is liable for any damages and costs incurred as a result of non-compliance with the preceding sections 5.1 to 5.5. The supplier is also responsible and liable for compliance of the aforesaid regulations by his sub-suppliers. Consignments which cannot be received on grounds of non-compliance with the regulations in sections 5.1 to 5.5, will be stored at the supplier's expense and risk. We are entitled to establish the content and condition of such consignments.
7. If and to the extent that formal approval and acceptance of the goods ("Abnahme") has been agreed, the risk will pass to us upon such formal approval and acceptance.

## VI. Non-compliance of goods with contract requirements

1. The supplier warrants that the item to be delivered does not show any defects impairing its value or usability, shows the agreed quality and is suitable for the use intended under the contract, complies with the generally recognized state-of-the-art standards, the latest regulations of the authorities and the German Act on Device and Product Safety ("Geräte- und Produktsicherheitsgesetz") as well as with the respective safety-related requirements valid at the time and the rules for safety at work and prevention of accidents.
2. To assure the quality of the goods to be delivered, the supplier is to conduct a quality inspection suitable in kind and scope. The fact that we may have approved of any initial samples does not release the supplier from his obligation to inspect the outgoing goods and does not either limit such obligation nor is such obligation of the supplier in any way affected by the requirements and specifications contained in the technical terms and conditions of delivery or specifications. Our obligation to inspect is limited to defects which clearly come to light during our outward inspection of incoming goods including the consignment papers or during the sampling procedure conducted in the context of our quality control (e.g. damage in transit, wrong/aliiud delivery or short delivery). If and to the extent that formal approval and acceptance ("Abnahme") of the goods has been agreed, there is no obligation to inspect the goods. For all other cases, the key aspect is whether and to what extent an inspection is deemed to be indicated in the due course of business in consideration of the specific circumstances of the individual case in question. Our notice of defect is deemed given in time if it is received by the supplier within 14 working days from receipt of the complete delivery or, in the case of hidden defects, from detection of the defect.
3. We are entitled to assert the statutory claims for defects without limitation. If the supplier fails to fulfill his obligation to provide subsequent performance ("Nacherfüllung") – which is, at our choice, either remedy of the defect ("Nachbesserung") or delivery of a defectfree item (substitute delivery – "Ersatzlieferung") unless the supplier proves that the option chosen by us would cause unreasonable costs and we would not incur any relevant disadvantage with the other alternative – within a reasonable grace period fixed by us, we are - without prejudice to any other rights - entitled to remedy the defect ourselves and claim from the supplier reimbursement of the expenses required for such remedy. Subsequent performance is deemed to also cover the costs of assembly and disassembly.
4. Notwithstanding § 442 subs. 1 clause 2 BGB (German Civil Code), we are also entitled to assert claims for defects without limitation if our failure to detect the defect upon conclusion of the contract is due to gross negligence.
5. The limitation period for warranty claims is 24 months from the passing of risk, unless the mandatory regulations of § 478 and § 479 BGB (German Civil Code) apply or the supplier grants a longer limitation period.
6. After remedy of the defect, the warranty period for the repaired or substituted products begins anew.

## VII. Liability

1. Claims of the supplier for compensation of damages, regardless of the legal cause, as well as claims for reimbursement of futile expenses are excluded unless the damage is caused by a grossly negligent or willful breach of duty or by an at least negligent breach of a contractual duty which endangers the attainment of the contract purpose (fundamental contractual duty - „wesentliche Vertragspflicht“); in the latter case, our liability is limited to the amount of the typical foreseeable damage.
2. The limitation of liability under the preceding sec. 7.1 also applies to the personal liability of our employees, representatives, agents, executive bodies („Organe“) and vicarious agents or other persons engaged by us in the performance of our obligations („Erfüllungsgehilfen“).
3. The limitation of liability under the preceding sections 7.1 and 7.2 does not apply in the case of personal injury, i.e. damages caused by an injury of the life, limb or health, in the case of liability under the „Produkthaftungsgesetz“ (German Product Liability Act) and in cases where we have, by way of exception, given a guarantee.

## VIII. Limitation

1. Notwithstanding § 195 BGB (German Civil Code), the regular limitation period for claims of the supplier, in particular for claims for compensation of damages and claims for reimbursement of futile expenses, is 24 months, unless a shorter limitation period is provided law.
2. The limitation period stipulated in the preceding sec. 8.1 does not apply in the case of a willful or grossly negligent breach of duty or a breach of a contractual duty which endangers the attainment of the contract purpose (fundamental contractual duty - „wesentliche Vertragspflicht“) nor in the cases specified in sec. 7.3; in these cases, the statutory limitation periods apply.

## IX. Protective rights (industrial property rights, copyrights etc.)

1. The supplier is liable for claims arising in the context of proper use of the delivered goods according to the contract from any infringement upon protective rights and applications for protective rights (protective rights) of which at least one right from the respective protective rights family has been published either in the supplier's home country or by the European Patent Office or in either of the Federal Republic of Germany, France, Great Britain, Austria or the USA.
2. The supplier indemnifies us and our customers upon first request from any and all claims arising from the use of such protective rights. We are not entitled to make any arrangements with the third party concerned without the consent of the supplier, in particular we are not entitled to enter into any settlement agreement with such third party. The supplier's obligation to indemnify pertains to all expenses necessarily incurred by us on

grounds of or in connection with the assertion of claims by a third party.

3. The contracting parties undertake to inform each other without undue delay („unverzögert“) of any threatening or alleged infringement of which they become aware and to give each other the opportunity to defend such claims by mutual agreement.

4. The supplier will inform us upon request of any use of published and unpublished own and licensed protective rights and protective rights applications regarding the delivered goods.

## **X. Product liability, indemnification, liability insurance**

1. If and to the extent that the supplier is responsible for a damage caused by a product, he is obliged to confirm to us in writing upon first request that he will indemnify us from any and all third-party claims for compensation of damages.

2. The supplier undertakes to maintain during the term of this agreement, i.e. until expiry of the limitation period for claims based on defects, an adequate product liability insurance with a standard flatrate cover of at least EUR 5,000,000.00 for each single personal injury/ damage to property. The supplier already now assigns to us any and all compensation claims against the insurer based on damages caused by a product and we hereby accept the assignment. The supplier is obliged to evidence insurance cover at any time upon our request by presenting a written confirmation from the insurer.

## **XI. Provision of material, tools, rights of use, non-disclosure**

1. Any processing or redesign by the supplier of parts provided by us (goods delivered subject to retention of title) is deemed to be carried out for us. If the goods provided by us subject to retention of title are processed with other items which are not our property, we will share title to, and become co-owner of the new item in the proportion of the value of our item (purchase price plus VAT) to that of the other processed items at the time of processing. If the item provided by us is inseparably mixed with other items which are not our property, we will share title to, and become co-owner of the new item in the proportion of the value of the item provided subject to retention of title (purchase price plus VAT) to that of the other mixed items at the time of mixture. If the items are mixed in such a way that the supplier's item is to be deemed the principal item, the parties are deemed to have agreed that the supplier transfers to us co-ownership of the new item on a prorata basis. The supplier is deemed to retain for us the item held by us in sole ownership or co-ownership.

2. We retain all property rights and copyrights to illustrations, drawings, calculations, molds, models, tools and other documents; they must not be made available to third parties without our explicit written consent. They must not be used for any purpose other than the manufacture of goods according to our order. After execution of the order, they have to be returned to us without request. They must not be disclosed to third parties. The supplier is obliged to take out at his own expense a standard replacement value insurance (covering the cost of acquisition of a new item) for any tools, molds and models which are our property against damage through fire, water and theft. The supplier hereby assigns to us all compensation claims against the insurer and we hereby accept the assignment. The supplier is obliged to carry out in due time any required maintenance and servicing work as well as any upkeep and repair work relating to our tools at his own

expense. Marks and labels applied to our tools identifying them as our property must not be changed or modified and have to be maintained by the supplier at his own expense.

The supplier is obliged to immediately inform us of any failure or disturbance in writing.

3. Title to any molds, models, tools, films, drawings etc. which have been produced by the supplier for the purpose of executing the order is transferred to us upon payment even if the supplier retains possession of them. They are to be marked as our property by the supplier.

4. The supplier is to hand over to us any illustrations, drawings, calculations, molds, models, tools and other documents which are our property upon request but no later than upon delivery of the last consignment, with the supplier not being allowed to raise or assert any defense.

5. We are granted, for the term of use, a non-exclusive, transferable and gratuitous right to use the products delivered by the supplier. Patent rights and other intangible property rights are retained by the supplier.

6. The supplier is obliged to treat any and all non-obvious commercial and technical information and details of which the supplier becomes aware in the context of the business relationship as business secrets. They may only be disclosed to third parties with our explicit written consent; such third-party sub-suppliers then have to be committed to secrecy in accordance with the provisions hereof. The non-disclosure obligation continues in force even after performance of this agreement; it expires as soon as and to the extent that the production know-how contained in the illustrations, drawings, calculations, tools and other documents provided to the supplier has become generally known. In the event of an unauthorized delivery to third parties or an unauthorized use for third parties, we are entitled to withdraw from all ongoing orders and claim compensation of damages.

## **XII. Exclusion of retention of title**

We recognize any simple retention of title on the part of the supplier. We do not recognize any prolonged or extended retention of title („verlängerter / erweiterter Eigentumsverbehalt“) including in particular any retention of title for the purpose of securing also the claims of all group companies („Konzernvorbehalt“).

## **XIII. Place of jurisdiction, place of performance („Erfüllungsort“), choice of law, references**

1. If the supplier is a merchant, the place of jurisdiction is that of our registered office; we are however also entitled to sue the supplier at his domicile.

2. Unless otherwise stipulated in the order, our registered office is the place of performance. The law of the Federal Republic of Germany applies. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG – „Vienna Sales Law“) does not apply.

3. Any reference by the supplier to the business relations with us, in particular for advertising purposes, requires our written consent.

## **XIV. Severability**

If any individual provisions of these terms and conditions or the delivery contract are or become invalid in whole or in part, this is without prejudice to the validity of the remaining provisions or remaining parts of such invalid provisions.