



## **10 Conclusion of Contract**

- 1.1 Our orders shall exclusively be based on these terms and conditions. They are also deemed to be agreed if supplier refers to his own terms and conditions. The terms and conditions of the supplier shall only be valid when recognized by us in writing. This applies even if we accept the delivery at a later time and carry out payment later. Nothing can be interpreted as tacit acceptance or endorsement of other terms and conditions.
- 1.2 All agreements about specifics of this agreement have to be carried out in writing.
- 1.3 Our orders are to be confirmed in writing by returning a signed copy of the order, alternatively by e-mail. We are entitled to revoke our order if we do not receive the confirmation of the supplier within three working days. Our order will become non-binding after one week.
- 1.4 These terms and conditions are only applicable to commercial enterprises as defined in § 14 of the German Civil Code.

## **2.0 Property of Designs, Samples, Models etc.**

- 2.1 We reserve all property rights and copyrights if we pass documentation onto the supplier such as designs, samples as well as models. Third-parties are barred from any access to such documentations.
- 2.2 Such records and models are exclusively to be used to finalize this purchase order and have to be returned without notice.  
The obligation to maintain secrecy is in accordance with clause 11.2.

## **3.0 Prices Delivery and Packaging**

- 3.1 All prices are fixed prices and include the expenses for freight (DDU according to Incoterms 2000), postage and packaging. In case there is no indication of prices, the current prices of the supplier with the commonly accepted deductions apply. The current value added tax is added. Price arrangements do not influence the place of performance.
- 3.2 Supplier ships at his own risk. The deterioration including accidental destruction is at risk of supplier until full delivery at the requested address/location for further use.
- 3.3 All package material can be recycled to ensure an environmental-friendly disposal. Otherwise supplier will be charged for the additional costs of the disposal.

## **4.0 Time of Delivery, Delay**

- 4.1 The specified delivery time in the purchase order is binding. In order to determine whether delivery was on time, the physical arrival at the location or if agreed, taking the delivery of goods, is decisive.



- 4.2 If supplier bears the responsibility for a delay, a contractual penalty of 0,5% of the total value of the purchase order can be demanded for each full week of exceeding the agreed date of delivery, however limited to a maximum of 10 % of the total value of the purchase order. Customer is entitled to demand both fulfilment of the contract and penalty compensation. Customer is obliged to put forward the reservation of contractual penalties within ten working days when the late delivery was received or inspected. Customer reserves all further rights.
- 4.3 Supplier is obliged to inform customer about any noticeable delays immediately by estimating the probable time of delay. Delivery before the agreed time may only be carried out with our consent.

## 5.0 Terms and Conditions of Payment

- 5.1 The invoice should be sent at the same time as the delivery is carried out. The invoice has to be sent by separate mail. The invoice can only be reviewed, if the purchase order number of the purchase order is included. Supplier is responsible for all consequences of not observing this obligation, unless he presents documented evidence that he is not responsible. Any credits will be offset as of the day that customer possesses the merchandise and the invoice.
- 5.2 In case of deliveries within the European Union, the VAT identification number as well as the data of merchandise for statistical purposes (Intrastat) and all necessary additional data have to be entered both on the delivery note and/or the invoice.
- 5.3 We are entitled to effect payment as of delivery of the invoice and the merchandise within 30 days with 3 % cash discount, within 60 days with 2 % cash discount or net payment within 90 days. The time of payment is considered as the day of payment instruction to the bank. If the parties have agreed – different to these terms and conditions – a down payment, supplier is obliged to present a bank guarantee.

## 6. Warranty

- 6.1 A correct fulfilment of the agreement requires that all delivered objects and all services performed are in accordance with the latest standard of technology, meet all legal requirements and all Regulations and Directives of the State Authorities, of Social Insurance for Employees or Accident's Insurance and observance of Rules of other Professional Associations. Appropriate certificates, if required or customary, are handed over to the customer.
- 6.2 Customer reviews the delivered merchandise within an appropriate time to detect any quality deficiencies or changes of quantity. The right to raise a claim for deficiency will be done in a timely manner, if carried out within three working days upon delivery or upon detection of the defect.
- 6.3 Warranties granted by law can be raised without any limitation. Customer may demand at his choice repair or replacement. Customer reserves the right to claim damages, in particular also as replacement of the goods. If the repair work is unsuccessful or if a dangerous situation is imminent or in cases of particular urgency customer himself may repair or have it done by third parties at the expense of the supplier. All these rights also apply if the delivered goods are composed of different goods, if parts of the total object turns out to be deficient.



- 6.4 The responsibility for product liability is defined as follows: Customer is entitled to be held safeguarded immediately from any damage claims of third parties, if the cause of such damage claims are within the scope of customer and includes a liability towards third parties. For the duration of this agreement supplier enters a product liability insurance covering for each case two million Euro as personal liability and one million Euro for property damages. Customer is entitled to raise further claims. Upon request supplier is obliged to assign such insurance claims to customer.
- 6.5 All claims due to deficiencies become statute-barred:  
- three years after taking over the merchandise as agreed  
or  
- all machineries and goods, that require records of acceptance in writing have been accepted on the date of acceptance.

## **7.0 Spare Parts**

- 7.1 Supplier is obliged to deliver spare parts for the probable time of a technical usage, however at least ten years after delivery date under appropriate conditions.
- 7.2 In case supplier does not produce any spare parts anymore, customer has to be informed about this decision. Customer also has to be informed about the ultimate deadline for further orders of spare parts. If requested, all details for producing spare parts such as technical information, descriptions, possibly certain installations, have to be handed over. The usu fructu of such material is for free.

## **8.0 Certificate of Orig ins**

- 8.1 At the beginning of each calendar year supplier sends a so-called "long time declaration" of supplier, which shows evidence of the original merchandise. If certain ordered goods do not match the requirements of such a certificate, the supplier is obligated to mark on the delivery note clearly "No certificate of Origin". In case there is no declaration of long term delivery on the delivery note, it is assumed that the goods come from within the European Union.
- 8.2 If supplier does not observe these rules he can be held liable for any damage. Such damage could be of civil law consequences, but could also be subject to administrative or criminal fines (for example further claims of foreign customs, penal customs, administrative fines etc.).

## **9.0 Place of Performance**

Place of performance for all deliveries and services is the agreed location, as far as payments are concerned, the place of performance is Waldenburg.

## **10.0 Assignment**

- 10.1 Any assignment of any claims we are confronted with is only permitted with prior consent of customer. Supplier hereby guarantees expressively that there are no liens of third parties on the delivered merchandise, in particular free of title of retention. If the delivered goods are not in accordance with this clause then a potential expectant right to pass the property is hereby agreed.



10.2 Supplier is liable for all damages as consequences of any rights and claims of third parties (legal fees, court costs, expenses for a procedure for preservation of evidence) damages and other disadvantages including losses of profits caused by the fact of not delivering the goods on time.

## 11.0 Clause of Confidentiality

11.1 In accordance with the Federal Data Protection Act (BDSG) customer saves and processes the contractual data for the purpose of this Agreement. All data are kept on a confidential basis.

11.2 Supplier is obliged to keep all information, designs etc. handed over to him as part of the purpose of this Agreement confidential. This obligation is no longer applicable if such information and material has fallen into the public domain.

## 12.0 Jurisdiction and Venue, Applicable Law, Invalidity Clause

12.1 The Courts of Stuttgart shall have jurisdiction and venue. Customer, however, is entitled to bring an action against the supplier at the courts with jurisdiction over the supplier.

12.2 The entire agreement is governed by German Law excluding the application of the UN Convention of the International Sale of Goods (CISG).

12.3 Should any provision in these terms and conditions be or become invalid this shall not affect the validity of all other provisions or contractual agreements.