

Terms and Conditions of Purchase Status January 2017

1. General information, range of applicability

We order exclusively on the basis of our General Terms and Conditions of Purchase. We will not recognise conditions which conflict with, or deviate from, our Terms and Conditions of Purchase, unless we have agreed to these in writing.

2. Offer, conclusion of contract

2.1 Should the supplier fail to accept an order made by us within 2 weeks of receipt, we are no longer bound to honour the order.
2.2 Orders, contracts of all types and any changes or extensions made to these are only valid if made in writing, via remote data transmission or a machine readable data carrier.
2.3 Fulfilment of our order constitutes acknowledgement of our conditions.

3. Price, invoice, payment, assignment of claims, setting-off of accounts, right of retention

3.1 Unless agreed otherwise in the contract, the agreed prices are fixed prices and are deemed to include delivery to receiving plant, as well as packaging, transportation costs and transport insurance, plus the currently applicable statutory value added tax.
If stated otherwise by individual agreement, the designation of pricing is governed by the regulations of the Incoterms in the applicable version and the rules of the International Chamber of Commerce, Paris, for the uniform construction of contract clauses.
3.2 Payment is made either subject to a deduction of 3 % discount within 30 days of delivery/service rendered and receipt of an orderly invoice, as well as approval of the goods, or within 90 days in full.
3.3 The supplier is not entitled to offset alleged claims against our company without our prior agreement, unless the claim is undisputed or has been legally determined.
3.4 The enforcement of a right of retention on the part of the supplier as a result of counterclaims which have not been acknowledged or determined by legal means is excluded, to the extent that these claims are not based on the same contractual relationship.
3.5 Contractual claims against us, arising from or in connection with the order, lapse with the expiration of two years subsequent to the date of receipt of the delivery and the invoice.

4. Shipment, delivery, transfer of risk

4.1 All order symbols and order numbers are to be quoted in all papers related to our order (order confirmation, delivery note, shipping documents, invoices, etc.)
4.2 Delivery notes and invoices are to be issued in duplicate.
4.3 Commercial vehicle clearance only takes place Monday through Thursday from 7:30 until 15:00 and Friday from 7:30 until 12:00, or by special arrangement.
4.4 Increases in costs and expenses which are incurred due to deviations from the normal shipment procedure or due to a deviation from the form of shipping requested by us (road, rail, etc.) will only be honoured by us if they have been agreed in writing. This applies in particular to goods which have to be sent express as a result of a deadline having been exceeded.
4.5 All shipments are to be dispatched with carriage paid and no additional costs. Our respective shipping regulations are to be faithfully observed.
4.6 Shipment is made at the risk of the supplier. The supplier bears the risk for any deterioration, inclusive of accidental loss, up to the point of delivery to the delivery address requested by us or the place of use.
4.7 The supplier is liable for any consequences arising from an incorrect shipping declaration. A dispatch note is to be submitted immediately upon dispatch of each individual shipment. Any costs arising from an omission in the shipping papers of the point of receipt, department, Battenfeld item number, order number, reference or issue notice are born by the supplier.
4.8 Partial deliveries will only be accepted with prior written agreement. In the case of partial deliveries, the remaining portion of the delivery is to be fulfilled.
4.9 For deliveries made earlier than agreed we reserve the right to return the goods at the expense of the supplier. If goods delivered earlier than agreed are not returned they will be stored by us at the expense and risk of the supplier until the delivery date falls due. Payment of the invoice will be made within the time limit of the agreed due date.

5. Delivery dates, delivery default, contractual penalty, acceptance of goods, withdrawal

5.1 The agreed dates are binding. Decide for compliance with the delivery date or delivery time is the receipt of the goods in faultless quality at the delivery address cited by us or the place of use or successful acceptance in due time.
5.2 Should the supplier become aware that for any reason the agreed deadline cannot be met he is bound to inform us immediately in writing stating the reasons and the duration of the delay.
5.3 In case of late delivery we are entitled to demand a contractual penalty in the sum of 0.1 % of the value of the delivery per working day of the delay, not exceeding, however, 5 % of the value of the total value of the delivery.
We are entitled to notify the supplier of the contractual penalty proviso within 10 working days calculated from the receipt of the delayed delivery.

6. Environmental protection and accident guidelines

The supplier is obliged to take all necessary precautions in respect of environmental protection and the prevention of accidents related to the contents of the delivery and to take into account all official and statutory requirements. We are entitled to demand confirmation from the responsible employer's liability insurance association verifying that all regulations for the prevention of accidents have been complied with.

7. Specification, Guarantees, liability

7.1 The supplier guarantees that at the time of delivery all goods delivered by him and all services rendered are in compliance with state of the art in technology, the applicable statutory regulations and the regulations and guidelines of the authorities, employer's liability insurance association and professional associations. If deviations from these regulations are required in individual cases the supplier is obliged to obtain our written agreement. The guarantee or warranty liability of the supplier remains unaffected by this agreement.

7.2 As a fundamental rule we shall have the right to choose the form of the subsequent fulfilment even with contracts for work and services. § 439 BGB (Civil Code) shall apply accordingly.

7.3 In the event of a defect of the product delivered or of the work prepared then following unsuccessful expiration of a specific period of grace set by us for subsequent fulfilment we can remove the defect ourselves and demand compensation for the expenditure necessary if the supplier does not justifiably refuse subsequent fulfilment. In this respect the statutory ruling on self performance with a contract for work and services § 637 BGB (Civil Code) shall apply accordingly for the contract of sale. In urgent cases, in particular for fending off acute danger of major damage, then without prejudice to the statutory ruling we can remove the defect ourselves at the expense of the supplier without laying down a deadline for subsequent fulfilment.

7.4 If as a result of a defect of the item delivered by the supplier or of the work delivered we have had to take back the item delivered by the supplier or the work delivered, accept a reduction in the selling price or in the remuneration or provide our customer with compensation for damages or for expenses there shall be no requirement of any setting of a deadline that may otherwise be necessary for the assertion of our warranty claims against the supplier (§§ 437, 634 BGB (Civil Code) as a result of the defect claimed against us by the customer.

7.5 We can demand from the supplier reimbursement of expenses that we have to bear with respect to our customer for the purpose of the subsequent fulfilment (in particular the transport, travelling, work and material costs incurred) if the defect claimed by our customer was already present at the time of the passing of the risk to us.

7.6 The warranty period is 24 months unless anything to the contrary has been explicitly agreed. This shall begin with the handing over of the delivered item to us or to the third party nominated by us at the point of reception or use prescribed by us. If acceptance is envisaged either by law or by contract the warranty period shall begin with successful acceptance. Should the acceptance of a delivered item be delayed without negligence of the supplier the warranty period shall begin at the latest 12 months following availability of the delivered item for acceptance.

7.7 Should a defect occur in the first 12 months of the warranty period it shall be suspected that this defect was already in existence at the time of the passing of risk unless this suspicion is incompatible with the nature of the item or of the defect.

7.8 All claims arising from defects and statutory warranty stated above shall fall under a period of limitation of 24 months after notification of a defect within the warranty period provided no longer period is applied to by the law or the contract. The period of limitation shall, however, not end before the end of the warranty period. The period of limitation for the above mentioned claims arising from defects and statutory warranty claims shall end at the earliest two months following the moment at which we have fulfilled any rights of recourse of our customers as a result of these defects. This rolling of the period of limitation shall end at the latest five years after the supplier has delivered the item to us or we have accepted the work.

7.9 Should the supplier fulfil his obligation to subsequent fulfilment through removal of defect the period of limitation shall start to run anew following acceptance of the defect removal work. Should the supplier fulfil his obligation to subsequent fulfilment through replacement delivery the period of limitation for the product/work delivered as replacement shall start to run anew following its delivery/acceptance.

7.10 In the event of legal defects the supplier shall indemnify us against any claims of third parties that may exist. For legal defects the period of limitation shall be three years. This period of limitation shall begin with the conclusion of the year in which the claim has arisen and we have gained knowledge of the circumstances justifying the claim and of the person of the liable party or should have gained knowledge without gross negligence without consideration of knowledge or grossly negligent unawareness in ten years from its occurrence.

7.11 If the supplier has reservations regarding the form of performance desired by us or if he should detect errors in our documents or drawings he is obliged to notify us without delay in writing.

7.12 The inspection of the goods for any deviations in respect of quality or quantity is deemed to have been duly carried out when it takes place within 10 working days after delivery. Reprove is deemed to be issued in due time if received by the supplier within 10 days of deficiency being discovered.

7.13 Acknowledgement of receipt of delivered goods and acceptance or approval of submitted drawings does not constitute any waiver of warranty claims or other rights.

7.14 Fictive acceptance regulated in § 640 paragraph 1 sentence 3 BGB (German Civil Code) is excluded.

7.15 Acceptance by means of certification of completion within the meaning of § 641 a BGB (German Civil Code) is excluded.

8. Documents related to the order, objects of the order

8.1 If the supplier produces moulds, models, engraved plates, etc. in accordance with our directions or design documents, the documents and samples made available by us for this purpose are to be returned, unsolicited, to us within 10 working days of completion of the contractual work.

8.2 The supplier undertakes the express obligation not to show or make available the documents, samples and objects made available to him by us to third parties without our written permission and not to hand over the objects manufactured in accordance with these to third parties without our approval.

8.3 Upon full payment of the moulds or equipment these become our property. The transfer of the moulds to us is replaced by the compulsory safe custody of the supplier and the moulds lent to the supplier for the purpose of fulfilling the contract.

8.4 The supplier is liable for any and all damage which occurs as a result of loss, damage or improper use of the moulds or equipment. The supplier also bears the risk of destruction.

9. Product liability, indemnification

9.1 If claims are made against us arising from the defectives of our product, as a result of official safety regulations, or due to product liability regulations at home or abroad which can be attributed to a product of the supplier, we are entitled to demand compensation

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for this loss to the extent that it has been occasioned by his product. The same applies to measures taken against us as a consequence of product safety law.

9.2 The supplier is obliged, within the framework of his product liability, upon the first request to release us from compensation claims made by third parties. Within this framework the supplier is also obliged to reimburse all expenditures which are occasioned by, or in connection with, the recall of products.

10. Proprietary rights

10.1 The supplier guarantees that all deliveries are free from proprietary rights on the part of third parties and, in particular, that the supply and use of the delivery objects in no way contravenes the patent, licence or other proprietary rights of third parties within Germany. To the extent that the supplier is aware that his products will also be distributed by us in certain countries, the above mentioned applies equally to those countries.

10.2 The supplier releases us and our customers from any claims lodged by third parties arising from the infringement of proprietary rights and bears all costs incurred by us in this respect.

10.3 In accordance with the duty of care of a responsible businessman, we are entitled to allocate permission for use of the delivery objects and services in question by entitled parties at the expense of the supplier.

11. Miscellaneous, place of jurisdiction, place of fulfilment, disclaimer

11.1 Assembly is additionally subject to our special assembly conditions.

11.2 Supplier drawings of machine parts, etc. which are subject to wear and tear, as well as overview drawings and similar documents are to be made available to us free of charge. We are, thereby, granted the right to use these drawings for the production of replacement parts, to make alterations and similar adaptations ourselves or to have them made by third parties. Claims arising from an infringement of the rights of the supplier are excluded in all cases.

11.3 No remuneration will be granted for any visits for the purpose of planning or similar purposes. The submission of offers is always free of charge.

11.4 To the extent that the supplier is a businessman, a legal entity or the holder of special property under public law, the place of jurisdiction is the court responsible for our head office or the branch where receipt of the delivery is effected. We are, however, also entitled to bring action against the supplier at his own general place of jurisdiction. The same applies if the supplier has no general domestic place of jurisdiction, has transferred his residence or customary residence outside domestic territory subsequent to having concluded the contract or his residence or customary residence is unknown at the time legal action is introduced.

11.5 To the extent that it is not expressly agreed otherwise, the place of fulfilment for the delivery obligations is the place of receipt or use designated by us.

11.6 Should any individual part of these general terms and conditions prove or become ineffective, the validity of the remaining conditions remains unaffected.

11.7 In extension the law of the Federal Republic of Germany shall apply exclusively subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11.04.1980.

11.8 The language of the contract is English. Should the contracting partners make use of another language in addition the English wording shall have priority.