

## **General Terms and Conditions for Purchasing and Ordering**

### **I. Key Conditions**

These General Terms and Conditions for Purchasing and Ordering apply to all business transactions with our contractual partners if they are suppliers or other contractors (hereinafter just called "supplier").

Provisions deviating from these conditions, especially business terms of the supplier, do not apply, even if we do not specifically contradict the validity of the General Terms and Conditions for Purchasing and Ordering of the supplier in an individual case or if reference is made by us to a supplier's letter containing the supplier's General Terms and Conditions for Purchasing and Ordering. We point out that special contractual conditions will be applied for special services which will be agreed upon in an individual contract and which may supplement or modify these General Terms and Conditions for Purchasing and Ordering.

### **II. Quotations and Conclusion of Contract**

The supplier must comply exactly with the inquiry stated in the quotation and in case of deviations the supplier must make explicit reference to these in writing. The quotation must be submitted to us non-binding and without charge.

### **III. Placement of Order**

1. An order will only be regarded as having been placed if it has been issued by us in writing and has been signed. Orders placed verbally or by phone only become binding for us if we have acknowledged them by subsequent confirmation in writing. Drawings issued by us in individual cases including indications of tolerances are binding. By accepting the order the supplier confirms having familiarised himself with the type of design and scope of supply by studying the drawings provided. We cannot be held responsible for any obvious typographical errors or calculations to be found in the documents, drawings and plans submitted by us. The supplier is obliged to inform us of such errors thereby enabling us to amend and resubmit our order. This also applies if documents or drawings are missing.

2. Acceptance of orders, as well as modifications of orders requested by us, are to be confirmed to us by the supplier, unamended in writing or by telefax (e.g. by signing the copy of the order placement) within two weeks of the date of the order placement letter / letter modifying the order. We are otherwise entitled to revoke the order.

3. Deviations in quantity and quality with regard to the text and contents of our order and subsequent modifications of contract will only be considered as agreed if we have explicitly confirmed them in writing. The same applies for partial deliveries.

4. Drawings, tools, samples, models, brands and designs or the like, as well as finished products and

semi-finished products which have been submitted by us or which are produced based on our order, remain our property and may only be supplied to third parties upon our explicit written approval. Unless subject to other individual arrangements, they are to be returned to us without specific request and without delay upon completion of the order. Products manufactured and/or marked with such manufacturing equipment, brands and designs may only be supplied to third parties upon our explicit written approval.

#### **IV. Delivery Dates**

1. The agreed delivery periods and dates are binding. They are calculated commencing from the date of order placement. Within the delivery period and/or by the delivery date, the goods must have arrived at the receival address indicated by us. If delays are anticipated the supplier must inform us immediately, stating the reasons for the delay and its probable duration and must obtain our decision as to whether the order is still valid or not. If the supplier fails to inform us about the delay, he cannot hold us responsible for the hindrance.
2. If the supplier delays the delivery we are entitled to submit a claim for a contract penalty of 0.1% of the net order value per working day, to a maximum of 5% of the net order value and/or to withdraw from the contract. The contract penalty may be claimed up until payment of the final invoice. The contract penalty paid will be set off against further damage claims, if any.
3. We are not obliged to accept shipments arriving before the agreed date.

#### **V. Delivery / Packing**

1. The delivery is effected at the supplier's cost and without charge to the point of receipt specified by us, unless an agreement to the contrary has been made. If we are liable to pay the freight according to prior agreement, the supplier must select either the mode of transport prescribed by us, or the mode of transport and type of delivery most suitable for us. A delivery note showing all order references issued by us must be attached to the delivery.
2. The risk in the goods only passes to us after acceptance of the consignment by our point of receipt.
3. Packing is included in the price. If, as an exception, another arrangement has been agreed, packing must be charged at cost price. The supplier must select the type of packing as prescribed by us and must ensure that the packing protects the goods from damage. If the goods are returned, at least two thirds of the packing charge must be credited. The delivery will also be accompanied by the CE compliance documentation in the requested language.

#### **VI. Acceptance**

A formal acceptance must be implemented unless considered disproportionate. The acceptance is made

jointly and is documented in a Minutes of Acceptance by us.

1. The required tests and measurements are to be implemented after prior agreement. Acceptance of the goods in question will take place after the supplier has provided evidence of the assured properties as well as of faultless operability and functionality of the object of contract as preconditioned in the order. If the object of contract comprises several units, the acceptance must be performed separately for each unit.

## VII. Documentation

1. Invoices, delivery notes and packing slips must be enclosed in duplicate for each consignment. These documents must contain:

- Order number
- Quantity and unit
- Gross, net and if applicable, calculated weight
- Article designation with our article number
- Quantity outstanding in case of partial deliveries.

2. In case of freight consignments a dispatch note must be sent to us separately on the day of dispatch.

## VIII. Prices

1. The price indicated in the order is binding (fixed price). In the absence of a written agreement to the contrary, the price includes free delivery to the stated dispatch address including packing. Should the supplier reduce his prices during the time period between order placement and delivery and/or improve the conditions, the prices and conditions valid on the day of delivery apply.

1. The supplier will not grant us prices or terms that are less favourable than the prices and terms quoted to other buyers if, and in so far as they offer him the same or equivalent conditions in a specific case.

## IX. Invoice / Payment

1. Invoices are to be issued separately for each order. Payment will only be effected after receipt of all defect-free goods and/or complete and faultless execution and after receipt of the invoice. This provision similarly applies to partial deliveries. Delays caused by incorrect or incomplete billing have no effect on discount time limits.

We will pay by our preferred method by remittance within a fortnight after receipt of the Minutes of Acceptance in which no retentions shall have been entered, and after receipt of the supplier's invoice to us with 3% discount or within 30 days net.

1. Claims by the supplier to us may only be assigned to third parties with our consent. Payments will only be effected to the supplier. The supplier may only put forward setting off and rights of retention in case of undisputed or legally enforceable claims noted against us.
2. Progress payments may only be made on presentation of a German bank's or savings bank's unlimited primary liability of contract, if we have not received supply-parts property forming the basis of the progress claim.

## **X. Guarantee / Warranty / Complaints**

1. The supplier assumes the obligation that the goods will comply with our specifications including presentation and Auszeichnung? The supplier is responsible for the compliance of the delivery item with the legal and contractual quality requirements and that it has no defects. Above all, the delivery item must comply with the generally recognized rules of technology, the current requirements with regard to safety as well as with the environmental, workplace and accident prevention regulations.
2. In case of technical equipment it must additionally be proven and documented through written confirmation or test mark of conformity that the relevant legal regulations and DIN-standards have been sufficiently adhered to. Moreover, the supplier is obliged to inform us immediately about any officially prescribed measures according to § GPSE (German Device and Product Safety Act). In the latter case we can demand that the supplier - at our option - either repairs, exchanges or removes his products which are already located at our premises.
3. Deviations in quality and quantity are claimed in time pursuant to § 377 HGB (German Commercial Code), if we send a notification to the supplier within 12 working days (excluding Saturdays) following receipt of the goods. Hidden deviations pursuant to § 377 HGB (German Commercial Code) are claimed in time if the notification has been sent within 12 working days (excluding Saturdays) after their discovery.
4. If faulty goods are supplied or in case of faulty workmanship, the legal warranty regulations (§§ 437, 634 BGB) apply, in so far as nothing else has been agreed in writing in the individual case.
5. For the product manufactured by the supplier and/or for the order executed by him the warranty expires after 36 months from supply and acceptance, unless other agreements have been made.

## **XI. Producer's Liability**

For defects in the goods which the supplier is responsible for, he exempts us from the manufacturer's resultant liability in so far as he would be directly liable himself. He cannot claim for limitation of liability in time against us, as long as we cannot plead ourselves with regard to rights and duties as to third parties.

## **XII. Industrial Property Rights**

The supplier is liable for his supply and our use of it will not infringe any patents or other industrial property rights of third parties. He exempts us and our customers from all claims of the use of such industrial property rights. This does not apply if the supplier has produced the goods supplied in accordance with drawings, samples or equivalent other descriptions or instructions submitted by us and is not aware, or in connection with the products manufactured by him, cannot be aware that he is infringing any industrial property rights.

### **XIII. Force Majeure**

War, civil war, export restrictions and/or trade restrictions resulting from changed political conditions as well as from strikes, lockout, operational malfunctions, operational limitations and similar events at the contractual point of receipt or in Germany, making the fulfillment of contract to us impossible or unreasonable, are to be regarded as force majeure and release us for the duration of their existence from the obligation of punctual acceptance. The contracting parties are obliged to inform each other of the occurrence of such an event and to adjust their obligations to the changed conditions in good faith.

### **XIV. Safe Custody / Property**

Material delivered remains our property. As such, it must be stored separately and may only be used for our orders. The supplier is responsible for any impairment of value or loss, even if this was not his fault. All objects manufactured with material supplied by us remain our property in every state of fabrication. The supplier keeps these objects for us in safe custody, the contract price includes the costs for the custody of the objects and materials for us.

### **XV. Business Secrets / Data Protection**

The supplier is obliged to treat our orders and all related commercial and technical details as business secrets. He is liable without limitation for any damage resulting from violation of his duties of secrecy.

If personal or equivalent data are collected, processed or applied, the supplier will be obliged to process them according to the Bundesdatenschutz-gesetz –BDSG (German Federal Data Protection Law) and supplementary legal provisions and, above all, to only employ personnel who have been trained accordingly and have assumed an obligation according to § 5 of the German Federal Data Protection Law (§ 5 BDSG).

### **XVI. General Provisions**

1. If any provision in the General Terms should be, or become, ineffective or unfeasible, the other provisions will remain valid. In place of the ineffective and/or unfeasible regulation, the provision which best approximates the economic intentions of the parties shall apply.
2. German law is applicable. The laws governing the international purchase of movable assets and the conclusion of international purchase contracts for movable assets are excluded.
3. Place of performance is at the registered office of the principal. Another agreement can be made for the delivery.
4. The court of law in charge of legal proceedings in Rheinberg is the place of jurisdiction for suppliers, merchants, legal entities under private or public law or special public funds.

**SCHADE**  
AUMUNDGROUP