

# General Terms and Conditions of Business

## I. AREA OF APPLICATION

1. The General Terms and Conditions of Business set forth below are applicable to the entire business relationship with our purchasers. The purchaser acknowledges them as binding on the present contract and also on future transactions. Any diverging agreement shall be subject to our written acknowledgement. The purchaser shall not assert any terms and conditions of purchase of its own. Such terms and conditions will never become an integral part of contract, not even in case we should not object to them or perform our delivery.
2. Our terms of delivery and payment are only applicable to independent contractors as defined in section 14 of the BGB (Civil Code), public-law entities or public-law special funds pursuant to section 310 of the BGB. Independent contractors in the meaning of section 14 of the BGB are natural or juridical persons or partnerships with legal capacity acting in the exercise of their trade or self-employed professional activity when it comes to concluding the legal transaction.

## II. OFFER AND DELIVERY

1. Our offers are unbinding. Delivery in due time is subject to undisturbed manufacture and timely materials supply. If we are prevented from performing the contract in a timely manner due to disruptions of procurement, manufacture or supply - affecting ourselves or our suppliers - e.g. labour disputes, energy shortage, then the delivery period will be extended for the duration of the disruption, but not to exceed three months as of the agreed delivery date.
2. The purchaser may only withdraw from the contract if the purchaser sets a reasonable period of grace to us in writing after the expiration of the extended period. Withdrawal shall be made in writing, unless we duly perform within the period of grace.
3. If performance of the contract becomes impossible to us, as a whole or in part, we will to such extent be released from our obligation to deliver.
4. We will inform the purchaser immediately of any impediment pursuant to clause 2 above and of any such impossibility as set forth in clause 3 above.
5. If the purchaser is in default of payment of a previous delivery, we will be entitled to withhold deliveries without being obliged to provide compensation for damage caused, if any.
6. We are entitled to partial deliveries, unless the purchaser cannot be reasonably expected to accept partial delivery.
7. Tools and fixtures manufactured for the processing of purchase orders shall be paid by the purchaser on a pro-rata basis. We reserve title to such tools and fixtures.
8. Our delivery quantities may vary from the ordered quantities by +/- 5%. The relevant additional quantities must be accepted and paid by the purchaser. In the event of delivery of a relevant minor quantity it will not be possible to assert any claims.
9. In the event that materials are made available by the purchaser, the purchaser shall be responsible for delivering the material to us not later than two weeks prior to the start of production in an examined, identified, strapped condition and ready for use in an automat, and at its own expense. 2% additional material supply shall be taken into account. If part of the material quantities provided by the purchaser is missing requiring that machinery has to be prepared several times or if technical alterations to the products impede production, we will be entitled to bill the relevant additional cost to the purchaser.
10. Materials surpluses resulting from packaging units, minimum order quantities or changes to ordered items are chargeable to the customer where the material cannot be used elsewhere. On completion of an order with no subsequent follow-up order, we shall, without having received a prior order from the client, be entitled to invoice for such leftover material.

## III. PRICES

1. If in the event of make-and-take or forward orders only part of the agreed quantity is purchased within the agreed period, then we will be entitled to opt for either charging the price applicable to the relevant lot amount for the delivered portion, or delivering the quantity not yet requested and bill it accordingly.
2. If the order includes special technical features to which the purchaser did not point out to despite being aware thereof, and if we could not recognize such features at the time of submitting the offer, and if this will result in additional expense which is necessarily required in technical terms, then we will inform the purchaser thereof immediately and forward the additional expense incurred for that reason to the purchaser at cost price.

## IV. PRICE ADJUSTMENT

Due to possible material price fluctuations in the market we reserve the right to make price adjustments. For imported goods, e.g. electronic components, the prices are based on the dollar rate as at the offer date. We reserve the right in the event of dollar rate changes to adjust the prices to

the dollar rate applicable on the date of delivery and charge them accordingly.

## V. PAYMENTS

1. Our invoices are due for payment within eight days of the invoice date, unless agreed otherwise. For development services 30% will be due at the time of awarding the order, 40% when the first sample is delivered, and 30% once the order has been completed.
2. Non-recurring costs such as one-time order costs will be charged immediately upon receipt of the order. 50% of the materials costs will become due six weeks prior to the delivery of the components. In addition, we are entitled to bill material we bought ourselves to the purchaser in advance if the purchaser is responsible for the delay of production.
3. In the event of the purchaser's default of payment we are entitled to charge interest at a rate of 8 percentage points above the base rate of the Deutsche Bundesbank p.a. as applicable from time to time. We reserve the right to provide evidence of and claim higher default damages.
4. We expressly reserve the right to deny cheques or bills of exchange. Acceptance will only be made on account of performance ("erfüllungshalber").
5. We are entitled to assign our claims against the purchaser to third parties.
6. In the event of serious breaches of contract justifying an accelerated overall maturity of claims and for which the purchaser is to be held responsible, e.g. dishonoring of cheques, default of payment, insolvency or bankruptcy, we may claim the entire outstanding amount immediately.
7. Despite any provisions of the purchaser to the contrary, we are entitled to first allocate the purchaser's payments to its oldest debt.
8. The purchaser may assert a right of retention only if its counter-claim is based on the same contractual relationship. The purchaser will be entitled to set-off only if we acknowledged the counter-claim or if it is undisputed or has been recognized by declaratory judgment.

## VI. TERMINATION

Cancellation (termination) of the order is only possible in return for payment of the costs incurred up to such date and possible consequential costs (especially re-preparation costs for machinery; scrapping costs; idle time costs). The cancellation costs will be calculated on the basis of the actual expenses, unless other agreements have been made by way of individual contract.

## VII. EXTENDED RETENTION OF TITLE

The following Basic and Extended Retention of Title shall be agreed:

1. The items pertaining to the Supplies ("Retained Goods") shall remain the Supplier's property until each and every claim the Supplier has against the Purchaser on account of the business relationship has been fulfilled. If the combined value of the Supplier's security interests exceeds the value of all secured claims by more than 20%, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser; the Supplier shall be entitled to choose which security interest it wishes to release.
2. For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
3. Should Purchaser resell Retained Goods, it assigns to the Supplier, already today, all claims it will have against its customer out of the resale, including any collateral rights and all balance claims, as security, without any subsequent declarations to this effect being necessary. If the Retained Goods are sold on together with other items and no individual price has been agreed with respect to the Retained Goods, Purchaser shall assign to the Supplier such fraction of the total price claim as is attributable to the price of the Retained Goods invoiced by Supplier.
- 4.a) Purchaser may process, amalgamate or combine Retained Goods with other items. Processing is made for Supplier. Purchaser shall store the new item thus created for Supplier, exercising the due care of a diligent business person. The new items are considered as Retained Goods.
- b) Already today, Supplier and Purchaser agree that if Retained Goods are combined are amalgamated with other items that are not the property of Supplier, Supplier shall acquire co-ownership in the new item in proportion of the value of the Retained Goods combined or amalgamated to the other items at the time of combination or amalgamation. In this respect, the new items are considered as retained Goods.
- c) The provisions on the assignment of claims according to No. 3 above shall only apply to the amount corresponding to the value invoiced by Supplier for the Retained Goods that have been processed, combined or amalgamated.
- d) Where Purchaser combines Retained Goods with real estate or movable goods it shall, without any further declaration being necessary to this effect,

also assign to Supplier as security its claim to consideration for the combination, including all collateral rights for the pro-rat amount of the value the combined Retained Goods have on the other combined items at the time of the combination.

5. Until further notice, Purchaser may collect assigned claims relating to the resale. Supplier is entitled to withdraw Purchaser's permission to collect funds for good reason, including, but not limited to delayed payment, suspension of payments, start of insolvency proceedings, protest or justified indications for over indebtedness or pending insolvency of Purchaser. In addition, Supplier may, upon expiry of an adequate period of notice disclose the assignment, realize the claims assigned and demand that Purchaser informs its customer of the assignment.

6. The Purchaser shall inform the Supplier forthwith of any seizure or other act of intervention by third parties. If a reasonable interest can be proven, Purchaser shall, without undue delay, provide Supplier with the information and/or Documents necessary to assert the claims it has against its customers.

7. Where the Purchaser fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations the Supplier shall be entitled to contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by the Supplier; the statutory provisions providing that remedy period is not needed shall be unaffected. The Purchaser shall be obliged to return the Retained Goods. The fact that the Supplier takes back Retained Goods and/or exercises the retention of titles, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless the Supplier so expressly declares.

#### **VIII. PACKAGING AND SHIPMENT**

1. Shipment will be made ex works in returnable packaging ("Pendelverpackungen") or in packaging made available by the purchaser free of costs. Packaging will be made in accordance with technical requirements and as customary in trade. Where the packaging is provided, we will not grant any warranty for possible damages caused by defective packaging.

2. Special packaging and replacement packaging will be charged at cost price.

3. Shipment will be made at the expense of the purchaser.

#### **IX. TRANSFER OF RISK**

1. The risk of accidental loss and accidental deterioration of the goods shall pass upon its delivery, in case of shipment upon the delivery of the goods to the forwarder, carrier or other persons or institutions appointed for the execution of the shipment.

2. The same applies to returns, if any, by the purchaser.

3. Shipment insurance will be charged at a rate of 1‰ of the value of the goods. The insurance will only be taken out on the purchaser's request and at its expense.

#### **X. WARRANTY AND LIABILITY**

1. The goods will be manufactured and delivered in accordance with the quality guidelines as applicable from time to time.

2. Our deliveries shall be inspected upon receipt for their due condition. The purchaser shall guarantee an incoming goods control pursuant to AQL. Obvious defects may be notified in writing only within two weeks upon receipt of the goods. Otherwise, the assertion of rights for defects is barred. To meet the deadline it will be sufficient to send the notification in time. In any other respect section 377 of the HGB (Commercial Code) will not be affected.

3. If the testing of the functional features by way of an electric test (own manufacture level) has not been agreed on the basis of an individual contract, we will only be liable for the compliance with our workmanship standards upon inspection.

4. Rights for defects will be excluded if the purchaser or a third party has conducted alterations to the delivered goods, unless the purchaser should prove in connection with the notification of defect that the alterations were not the cause for the defect. Claims for defects will also be excluded if the purchaser should fail to immediately meet our request to return the complained about object to us.

5. In the event of a justified complaint we will remedy the defects as we deem fit either by subsequent improvement (removal of the defect) free of charge or by replacement supply (delivery of an object free of defects). In such a case we will pay the costs for e.g. shipment, travel, work and materials required for the subsequent performance. Should the subsequent improvement or the replacement delivery prove abortive, the purchaser may opt for either reducing the purchase price or withdrawing from the contract.

6. The shipment of the complained about goods must be made in a workmanlike manner. As for the payment of costs clause 5 above will apply.

7. Upon written agreement with us, only, the purchaser will be entitled to remove the defects itself and claim reimbursement of the expenses incurred therefore from us.

8. Subsequent improvement is excluded if there is no notification of defects as required in section 377 of the HGB as well as in section X. clause 2 above. Any still performed subsequent improvement is made without warranty.

9. If the performed subsequent improvement is defective, the purchaser shall notify this fact in writing, in the event of obvious defects not later than within two weeks upon the receipt of the subsequently improved goods, or in case of hidden defects within one year. Otherwise the assertion of further warranty claims will be barred. To observe the period it will be sufficient to send the notification in time. In any other respect section 377 of the HGB will not be affected.

10. Subsequent improvement of the delivered goods will neither suspend the original warranty periods, nor will they start from the beginning.

#### **XI. EXCLUSION OF LIABILITY/LIMITATIONS OF LIABILITY**

1. The purchaser's claims for defect compensation or reimbursement of expenses — regardless of the legal ground therefore — are excluded, provided that the damage is not attributable to a breach of duty committed willfully or with gross negligence, or the breach of a material contractual obligation by us, our legal representatives or agents. Material contractual obligations are such the fulfilment of which is strictly necessary to allow the performance of the contract in the first place, especially our duty to deliver the goods to be manufactured, as the case may be, including the surrender of the goods and the procurement of title and possession thereto.

2. The purchaser shall bear all fees, costs and expenses incurred in connection with each legal action taken outside of Germany against the purchaser which is legally successful.

3. The damage claims of the purchaser are limited to damages typical to the contract and foreseeable, provided that we, our legal representatives or agents may be held responsible for slight negligence.

4. Exclusion and/or limitation of liability pursuant to clauses 1 and 2 above will not be applicable to claims under product liability. They will further not be applicable to damages resulting from the injury of life, limb or health of the purchaser based on a negligent breach of duty by us or on a willful or grossly negligent breach of duty committed by any of our legal representatives or agents. Likewise, they will not be applicable to the extent in which we concealed the defect with malicious intent or granted a guarantee for the quality of the object.

#### **XII. PRESCRIPTION**

1. The prescription period is

a) for claims for repayment of the remuneration due to withdrawal from the contract or reduction of the contract price: one year as of the delivery of the goods, but not less than three months of the issue of an effective statement of withdrawal or reduction for duly notified defects;

b) for other claims based on material or legal defects: one year;

c) for other claims for compensation of damages or expenses incurred in vain: two years starting from the date when the ordering party became aware of the circumstances constituting the claim, or should have so become aware in the absence of gross negligence.

Prescription will become effective not later than upon the expiration of the maximum periods established in section 199 of the BGB.

2. For compensation of damages and expense in the cases below, however, the statutory prescription period will always apply: claims under product liability; claims for the injury of life, limb or health of the purchaser attributable to a negligent breach of duty or to a willful or negligent breach of duty of any of our legal representatives or agents; moreover, claims based on the fact that we concealed a defect with malicious intent or granted a guarantee for the quality of the object.

3. Subsequent improvement of the delivered goods will neither suspend the original warranty periods, nor will they start from the beginning.

#### **XIII. PROPRIETARY RIGHTS**

For goods manufactured according to the purchaser's specifications we will not be liable to the purchaser in the internal relationship if third party proprietary rights are violated. We reserve the right to assert recourse claims against the purchaser. This is also applicable if we participated in the development or developed the goods in accordance with the purchaser's specification.

#### **XIV. EFFECTIVENESS**

If any of the provisions of the contract with the purchaser, including these General Terms and Conditions, should be or become invalid, as a whole or in part, that will not affect the validity of the remaining provisions. The content of the contract is subject to the legal regulations. In the absence of legal regulations, the entirely or partly invalid regulation shall be superseded by a regulation which reflects as closely as possible the economic success envisaged by the invalid provision.

#### **XV. GOVERNING LAW, PLACE OF PERFORMANCE AND VENUE**

1. The law of the Federal Republic of Germany shall govern. The provisions of the UN Sales Convention shall not be applicable.
2. Place of performance for delivery and payment shall be Suhl (Germany).
3. Venue for all the disputes arising under the contractual relationship, directly or indirectly, shall be Suhl (Germany).

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