

PÜBLICHUISSEN

General Terms and Conditions of Purchasing

1. General provisions

1.1 Our General Terms and Conditions of Purchasing shall apply exclusively. Opposed terms and conditions or purchasers' terms and conditions deviating from our terms and conditions of purchasing shall not be recognized without our consent in writing. Our terms and conditions of purchasing shall apply without separate agreement also to all future purchases and also if we accept the delivery without any reservations although we are aware of the Supplier's terms and conditions opposed to or deviating from our terms and conditions of purchasing.

1.2 All of the agreements between us and the Supplier for the purpose of execution shall require to be in writing or to be confirmed in writing.

2. Purchase order, quotation, documents

2.1. The Supplier shall have to accept purchase orders within 5 days of the ordering date by means of a written order acknowledgement.

2.2. We shall reserve all proprietary rights and copyright to information – also in electronic form – illustrations, drawings, calculations and other documents. The documents may be used exclusively for fabrication in accordance with our purchase order. They are to be kept secret and to be returned without solicitation after the execution of the order (cf. Nos. 10.03 and 16).

3. Prices, terms of payment

3.1. The price stated in the purchase order shall be binding without any regard given to any possible exchange rate fluctuations and in the case of domestic suppliers does not include statutory value-added tax. The prices agreed upon shall be maximum prices; price reductions during the period between the placing of the order and payment of the invoice shall be for our benefit. In the absence of any deviating written agreement, the price shall include delivery "free domicile" (In the case of import transactions "DDP Incoterms 2000") including packaging, transport and insurance. The Supplier must take care to ensure appropriate insuring of the goods. The return of the packaging shall require special agreement.

3.2. We can only process invoices if they state, corresponding to the data given in our purchase order, the purchase order No. and VAT ID No. shown there. The Supplier shall be responsible for all of the consequences arising from failure to comply with this obligation.

3.3. We shall, unless agreed otherwise in writing, pay the purchase price net cash within 90 days, counting from delivery and receipt of invoice. Payment shall be made subject to correct and due delivery and correct price and calculation. If a defect subject to warranty is discovered, we shall be entitled to withhold payment up to the meeting of the obligation under the warranty.

4. Delivery time, delay in delivery

4.1. The delivery time included in the purchase order shall be binding and is to be understood up to arrival at the place of performance.

4.2 Part deliveries shall only be admissible with our express prior approval.

4.3. In the event of a delay in delivery we shall be entitled to the statutory claims. We shall in particular be entitled, after the fruitless expiry of a reasonable additional period of time – to demand damages, observing the statutory exceptions, also without any additional period of time. In the event of a delay in delivery we shall, moreover, be entitled to demand damages in the amount of 0.5 % of the declared value of the goods for each full week of the delay, but not more than a total of 10 % of the declared value of the goods. We shall be entitled to claim the contractual penalty besides performance.

4.4. For numbers of items, weights and dimensions, the values determined by us during the incoming goods check shall be decisive subject to evidence to the contrary.

5. Passing of risk, documents, shipping

5.1 Delivery is, unless laid down otherwise in the purchase order or agreed elsewhere in writing, to be made free domicile; in the case of import transactions "delivered, customs duty paid, to 47269 Duisburg, Germany" (DDP Incoterms 2000) shall apply, including packaging, transport and insurance by the Supplier. In cases where customs clearance is required, the choice of forwarding agent is to be coordinated with us in good time. In the case of international transactions, the deviating clauses are to be agreed upon and interpreted according to Incoterms 2000 of the ICC Paris.

5.2. The Supplier shall be obliged to state our purchase order No. and article number exactly on all shipping documents and delivery notes; should the Supplier omit to do this, delays in processing, for which we shall not be held responsible, shall be unavoidable.

5.3. Our shipping addresses can be seen from the purchase order. Receipt of goods shall take place only from Mondays to Thursdays between 8:00 and 14:30 hrs and on Fridays between 8.00 and 11.00 hrs. Delivery is to be coordinated with us at least one working day beforehand.

6. Examination of defects, warranty, quality requirements

6.1 The receipt of the goods delivered shall be carried out subject to an examination to ensure correctness and suitability for use. We shall examine the goods delivered within a reasonable period of time after the goods have been received by us solely with regard to identity, quantity and outwardly recognizable damage in transit. The complaint shall be deemed to have been made in good time if it is received by the Supplier within a period of 7 working days (outside of the European Union within 10 working days) after the discovery of defects. In urgent cases or in the case of imminent danger we shall be entitled to replace defective parts, to rework them and to rectify damage that has occurred or to have this done by third parties at the Supplier's expense.

6.2 We shall be entitled to the statutory warranty claims without any deductions. Irrespective of that we shall be entitled to demand from the Supplier, at our option, either removal of defects or subsequent performance. In this case, the Supplier shall be obliged to bear all of the expense necessary for the purposes of removal of defects or delivery of a replacement. The right to damages, in particular to damages in place of performance, shall be expressly reserved.

6.3. The warranty period shall be at least 12 months from delivery to the place of performance. If the statutory warranty period is longer, that shall apply.

6.4 At our request, quality assurance agreements / basic agreements for quality-relevant products are to be concluded.

6.5 In the absence of any other agreements, the Supplier must carry out its performance in accordance with the recognized rules of technology, environmental protection, accident prevention and other industrial safety regulations applicable in Germany as well as with the generally recognized rules of safety and industrial medicine.

6.6. We shall be entitled in connection with each case of complaint caused by the Supplier to additionally charge a claim lump sum of € 150.00 for administrative expense without any specific evidence.

7. Product liability, indemnification, liability insurance cover

7.1. If the Supplier is responsible for damage to a product, the Supplier shall to that extent have to indemnify us on first demand from and against any third-party claims for damages.

7.2. Within this scope, the Supplier shall also be obliged to refund any expenses which are incurred by or in connection with a recall campaign carried out by us. Concerning the contents and the scope of the recall measures to be carried out we shall inform the Supplier as far as is possible and reasonable and give the Supplier an opportunity to give its comments.

7.3. The Supplier shall undertake to maintain a product liability and recall insurance with an insured sum of at least 5 million euros per case of bodily injury and per case of material damage – lump-sum -; if we are entitled to any further claims for damages, they shall not be affected.

8. Force majeure, insolvency

8.1. Force majeure, industrial disputes, interruption of operations not caused by negligence, civil disorders, and other circumstances beyond our control shall entitle us to withdraw wholly or partially from the contract as far as they result in a considerable reduction in our requirements.

8.2. If a party to the contract ceases payment or if insolvency proceedings are initiated against its assets or in-court or out-of-court composition proceedings have been applied for, the other part shall be entitled to withdraw from the contract for the non-fulfilled part.

9. Property rights

9.1. The Supplier shall guarantee that the contractual products do not infringe any marks, copyrights or any other industrial property rights (including business secrets) of third parties. If claims are made against us by third parties because of the use or the ownership of the goods supplied, the Supplier shall be obliged to indemnify us from and to hold us harmless from and against such claims.

9.2. The Supplier's obligation to indemnify refers to all expenses which we incur of necessity in connection with the making of claims by third parties.

9.3. When we purchase intellectual services from the Supplier, the latter shall be obliged to transfer the exclusive right of use to them.

10. Reservation of title, items provided by the customer, secrecy, tools

10.1 If we provide the Supplier with parts we shall reserve title to them.

10.2 We shall reserve title to tools. The tools are to be identification marked accordingly. The Supplier shall be obliged to use the tools exclusively for the production of the goods ordered by us and to insure the tools belonging to us at replacement value at its own expense against fire, water damage and theft. Necessary maintenance work shall be carried out by the Supplier in good time at its own expense. In addition, the provisions stated under 15 shall apply.

10.3 The Supplier shall be obliged to keep strictly secret all illustrations, drawings, calculations and other documents received. They may be disclosed to third parties only with our express consent. The obligation of secrecy shall apply also after the handling of this contract and shall expire only when these documents and this information have become part of public knowledge.

11. Other liability

To the extent that this is not expressly defined in these terms and conditions, all other contractual or legal claims against us, in particular for damages of any type, including indirect or consequential damage, shall be excluded. We shall, however, in any case accept liability for gross negligence and in the event of the breach of essential contractual obligations, but only for the damage/loss/injury typically occurring, for negligent injury to life and limb and impairment of health, for guarantees assumed, in the case of fraudulent intent or in other cases of mandatory statutory liability.

12. Place of performance, place of jurisdiction, applicable law

12.1 The place of performance shall be the registered head office of our works in 47269 Duisburg, Germany.

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12.2 All disputes arising from or in connection with contracts on these terms and conditions are to be decided by the state courts competent for our registered head offices in Duisburg, Germany.

12.3 In the case of disputes with suppliers which have their registered head offices outside of the European Union or the European Free Trade Area (EFTA – in particular Iceland, Liechtenstein, Norway, Switzerland), in place of the state courts stated under No. 12.2, an arbitration tribunal constituted in accordance with the rules of conciliation and arbitration of the International Chamber of Commerce in Paris shall make a final and binding award. The place of arbitration shall be Wuppertal, Germany.

12.4 We shall in any case also be entitled to have recourse to the state courts competent for the Supplier's registered head office.

12.5 All of the contracts concluded on these terms and conditions shall be subject to German law. The UN Convention on the International Sale of Goods of 11.04.1980 shall apply with priority in the case of international contracts.

13. Miscellaneous

13.1 Contractual rights and duties of the parties shall not be transferable without prior consent.

13.2 The Supplier shall have rights of offsetting or withholding only as regards undisputed claims or claims which have been the subject of a claim recognized by declaratory judgment.

13.3 A contract concluded on the basis of these terms and conditions shall otherwise remain binding even in the event of the ineffectiveness of individual terms and conditions.

13.4 Amendments, additions and other collateral agreements on these terms and conditions or on contracts concluded shall be required to be made in writing.

13.5 To the extent that the above terms and conditions do not include any provisions, the statutory provisions shall apply.

14. Spare parts

The Supplier shall be obliged to supply spare parts for the period of probable technical use, but after delivery for at least a further 15 years.

If the Supplier ceases production of the spare parts, it shall be obliged to write to us to give us an opportunity to place a last order and/or to hand over to us on request all of the devices and documents necessary for the production of the spare parts and to permit us to use them free of charge.

15. Terms and conditions of purchasing for tools

15.1 In addition to the above terms and conditions, the provisions of Nos. 15.1 to 15.5 shall apply if for our present or future orders the Supplier uses tools for which we pay the production costs as agreed. Tools within the meaning of these terms and conditions are tools of all kinds in particular punching and cutting tools, injection moulds, extrusion dies, ingot moulds, patterns, forging dies etc.

15.2 The tools shall become our property after acquisition or production by the Supplier. All of the manufacturing drawings necessary for production of the tools shall be integral parts of the scope of supply. Delivery shall be replaced by the Supplier preserving the tools free of charge for us. No. 15.5 shall apply accordingly. Together with the property, the right shall pass to us to withdraw the tools at our discretion.

15.3 The Supplier must maintain the tools at its own expense and if necessary replace them during the period of technical use. With regard to the replaced tools, No. 15.2 shall apply accordingly.

15.4 Without approval in writing, the Supplier must neither pass on the tools to third parties nor use them for its own or third-party purposes.

15.5 The Supplier shall in all cases be liable for the observance of the diligence of a prudent businessman.

16. Secrecy

16.1 The parties to the contract shall agree to keep secret all of the economic and technical details of their mutual business relationship, as long as these have not become public knowledge and the public knowledge situation is not attributable to an infringement by the party to the contract obliged to secrecy. The obligation to secrecy shall also apply to the things stated in No. 10.3, which must not be copied or disclosed to third parties or made accessible to third parties in any other way.

16.2 The parties to the contract shall impose on their upstream suppliers the same secrecy obligations as described in No. 16.1.

17. Data processing, earlier general terms and conditions of purchasing

17.1 We and companies affiliated to us shall be entitled to store and process, in compliance with the German statutory provisions, any data in connection with business transactions.

17.2 Any earlier general terms and conditions of purchasing are hereby cancelled.

Status: as of October 2010

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