

## Terms and Conditions of Purchase, Status 06/2011

### 1. Scope

- 1.1. For all orders, deliveries and services -- including those in the future -- in commercial transactions, only the Terms and Conditions of Purchase below are binding on us. Conditions of the supplier are binding on us only if and to the extent we recognize this in writing for the relevant contractual undertaking. Our general terms and conditions of purchase apply even if we accept the delivery of the supplier without reservation with knowledge of conditions of the supplier that contradict or differ from our terms and conditions of purchase.
- 1.2. If differing individual conditions are agreed for a given order, these general conditions of purchase have a subordinate and supplementary applicability. Changes and additions require written form.

### 2. Orders

- 2.1. Supply contracts (order and acceptance) and delivery calls as well as changes and additions require written form. Delivery calls can also be made by telecommunication.
- 2.2. If the supplier does not accept our order within 2 weeks after receipt, then we are entitled to revoke it. Delivery calls become binding if the supplier does not protest within 5 working days after receipt.
- 2.3. To the extent reasonable for the supplier, we can demand changes in design and execution of the object of supply. The effects thereof, in particular with respect to higher and lower costs, as well as delivery dates, are to be regulated appropriately by mutual consent.
- 2.4. The supplier assures that it will comply with the quality assurance verification level for development and design, production, assembly and customer service according to DIN ISO 9000 ff.

### 3. General and blanket orders

- 3.1. Dates and amounts specified in general and blanket orders are binding on us for a term of 2 months after the order or request date. For longer terms, the supplier is responsible for the availability of the requested amounts.
- 3.2. Should serious quality problems result, which are not remedied despite repeated negotiations, we reserve the right, after admonition and the setting of an appropriate extension deadline, to withdraw from the general order and the supply agreement without cost-sharing. The same applies if the price and the delivery date within the term of the contract no longer correspond to the agreed negotiations.

### 4. Bill of lading

On the date of shipment, an explicit bill of lading with (transit document), specifying the date, our item number and our order number as well as a precise listing of the contents, is to be sent in addition to the invoice.

### 5. Prices, risk transfer, documents

- 5.1. The agreed prices are solely applicable. Changes of price due to material costs and wage increases are reserved for new negotiations. The agreed prices are understood as net at the specified reception location, including, shipping, insurance, packing and subsidiary costs. Delivery not included in the price shall be undertaken by our own shipper, whose address can be requested from us.
- 5.2. Unless otherwise agreed in writing, the delivery is to be free to our door.
- 5.3. The wording of the supplier's invoice, in particular our order number, our item numbers, the bill of lading number and the order date, must exactly correspond to the designations specified in the order.

### 6. Delivery

- 6.1. Agreed delivery dates and deadlines are binding. An imminent delivery delay must be immediately reported to us in writing.
- 6.2. Partial deliveries require our consent.
- 6.3. Excess or short deliveries are allowed only within the typical commercial scope.
- 6.4. An early delivery undertaken without our consent does not affect the payment deadline linked to the stipulated delivery date.
- 6.5. If the goods are delivered early, we reserve the right not to accept the goods, to return them without cost on our part, or to charge the costs incurred for storage, at least 0.5% of the invoice amount per month in case of storage in our plant, and to reduce the payment for the invoice, taking into account the discount up to the agreed date of delivery.
- 6.6. We are entitled to statutory claims in case of delayed delivery. In particular, we are entitled, after unsuccessful expiry of an appropriate deadline period,

to demand damages in lieu of performance and to withdraw. If we demand damages, the supplier has the right to verify that it is not responsible for the breach of duty.

### 7. Contractual penalty

- 7.1. In case the agreed delivery date is not met – with the exception of force majeure – we reserve the right to deduct a contractual penalty in the amount of 0.5% of the order value for each week of delay, counted from the beginning of the week, up to a maximum of 5% of the order value. The penalty can be asserted up to the final payment.
- 7.2. The assertion of an additional claim for damages for all direct and indirect damages remains unaffected.

### 8. Declaration of origin

If the supplier makes declarations regarding the origin of the goods that were sold, the following applies:

- 8.1. The supplier is obligated to allow a review of the certificates of origin by the customs administration, to provide the necessary information and to provide any required certifications.
- 8.2. If the declared origin is not recognised by the competent authority due to erroneous certification or impossibility of verification, the supplier is obligated to compensate for damages. This liability is incurred, however, only in case of culpable behaviour by the supplier, or if assured characteristics are lacking.

### 9. Force majeure

- 9.1. Force majeure, labour disputes, civil unrest, official measures and other unforeseeable, unavoidable and serious events exempt the contractual partner for the duration of the disruption and to the extent of their effect from the performance obligations. This does not apply in the case of defective or delayed deliveries by subcontractors for the aforementioned reasons.
- 9.2. The exemption from the performance obligation also applies if the events occur at a time at which the contractual partner concerned is in arrears. The contractual partners are obligated, within the framework of what is reasonable, to immediately give the information required and adapt their obligations in good faith to the changed circumstances.
- 9.3. Regardless of the effects previously mentioned, each party has the right to withdraw from the contract through written communication to the other party, if the cessation of contract fulfilment lasts for longer than 6 months.

### 10. Reservations of title by the supplier

- 10.1. With respect to possible rights of the supplier to reservation of title, these conditions apply with the proviso that the ownership of the object of sale is transferred to us upon payment, and accordingly the extended forms of the so-called current-account and group reservation do not apply.
- 10.2. The supplier shall release any sureties it holds to the extent that they amount to over 10% of the secured obligations.

### 11. Payment

- 11.1. In the absence of differing agreements or more favourable arrangements in the supplier's delivery conditions or invoices, the following delivery conditions apply:

The invoice will be settled within 14 days, with a discount of 3%, within 30 days with a discount of 2% or within 60 days without discount. The deadline periods run starting from receipt of invoice, but not before receipt of the goods or before acceptance in the case of service, and insofar as documentation or similar documents are part of the scope of supply, not before their transfer in accordance with the agreement. Time delays that result from incorrect or incomplete invoices do not affect any discount periods.

- 11.2. We are entitled to offset rights and retention rights within the extent allowed by law.
- 11.3. Payments are made by cheque or bank transfer. The payment is timely if the cheque was sent by mail on the due date or the transfer was authorized at the bank on the due date. We further reserve the right to pay by drafts without prior notification. We reject payment regulations by cash on delivery.

Down payments and partial payments are only rendered against an open-ended bank security/bank guarantee.

## 12. Liability for defects

- 12.1. The supplier shall provide the goods free of defects of quality and title. It must further ensure that its supplies conform to the recognized rules of good engineering practice and the contractually agreed properties and standards, as well safety, occupational safety, accident prevention and other regulations.
- 12.2. We must report defects in the supplied goods in writing to the supplier without delay, as soon as they are recognized under the conditions of proper business procedures. To that extent, the supplier renounces the objection of delayed notice of defects.
- 12.3. We are entitled in full to the claims for defects provided by law; in every case, we are entitled to demand that the manufacturer remedy the defect or supply a new item. The right to damages, in particular, damages in lieu of performance, is expressly reserved.
- 12.4. We are entitled to remedy the defect on our own at the expense of the supplier if there is imminent danger or a special urgency.
- 12.5. The period of limitation expires 36 months after the transfer of risk. Analogous conditions apply to remedies of defects and resupply of defective items.
- 12.6. Claims of liability for defects are independent of a defect already existing at the transfer. Rather, it is sufficient that the defect appears within the period of limitation.
- 12.7. The supplier already cedes to us – on account of performance – any claims to which it is entitled against its suppliers from and in connection with the delivery of deficient goods or from guarantees. For our assertion of such claims, it shall furnish us with all documents necessary therefor.

## 13. Product liability – exemption – liability insurance protection

- 13.1. Insofar as the supplier is responsible for a product damage, it is obligated to hold us harmless from claims for damages of third-parties at our first request, to the extent that the cause lies within its area of control and organization and it is liable externally.
- 13.2. In its liability for cases of damage in the sense of paragraph (1), the supplier is also obligated to recompense any expenses under §§ 683, 670 BGB (Civil Code) as well as under §§ 830, 840, 426 BGB that are incurred from or in connection with a recall action conducted by us. We will inform the supplier of the content and scope of the recall measures to be performed – to the extent possible and reasonable – and allow opportunity for comment. Other statutory claims remain unaffected.
- 13.3. The supplier is obligated to maintain a product liability insurance policy with a coverage amount of 10 million – all-inclusive – for personal injuries/property damage; if we are entitled to further claims for damage they remain unaffected thereby.

## 14. Performance of work

Persons who perform work on our plant premises in fulfillment of the agreement must abide by the provisions of the respective plant rules; the regulations for entering and exiting the plant facilities must be observed. Liability for accidents suffered by persons on the plant premises is excluded, insofar as this was not caused deliberately or in a grossly negligent manner by us.

## 15. Property rights

- 15.1. The supplier entirely releases us and our customers from all liability, including legal expenses, that may result from the violation of property rights and claims to property rights or allegations of property rights violations.
- 15.2. Upon request, the supplier will disclose to us the use of published and unpublished own and licensed property rights to the object of delivery.

## 16. Use and transfer of means of production and confidential information

- 16.1. Models, samples, drawings, tools and other means of production, as well as confidential information that were made available by us to the supplier, or were fully paid for by us, may be used only with our prior written consent for supplies to third parties.
- 16.2. We retain title and copyrights to models, samples, drawings and other production aids that were transferred to the supplier. The models, etc., must all be ensured by the supplier, so long as they are in its possession, against fire, damage, breakage and theft at its own expense.
- 16.3. The production, as well as the machining and processing of tools, models, drawings and other documents that the supplier produces at our order is done for us as the manufacturer, with the result that we retain title thereto.
- 16.4. Objects that we developed or further developed in cooperation with the supplier may be delivered only to us. Any delivery to third parties is prohibited even after the contract has been performed.

## 17. Confidentiality

- 17.1. The contractual partners are obligated to treat all non-public business and technical details that become known to them through the business relationships as business secrets

- 17.2. Sub-suppliers must be correspondingly obligated.

- 17.3. If orders are fulfilled based on designs, printing orders and drawings, the latter may not be used for other purposes or made accessible to third parties without our consent. The reproduction of such objects is permissible only within the scope of the operational requirements and copyright provisions.

- 17.4. The supplier may not advertise our business relationship without our prior written consent.

## 18. Reservation of title – provision

- 18.1. Insofar as we provide parts to the supplier, we retain title thereto. Processing or transformation by the supplier is undertaken for us. If our reserved goods are processed with other objects not belonging to us, then we acquire co-ownership of the new item in proportion to the value of our item (purchase price plus value-added tax) to that of other processed materials at the time of the processing.

- 18.2. If the item provided by us is inseparably mixed with other objects not belonging to us, then we acquire co-ownership of the new item in proportion to the value of our item (purchase price plus value-added tax) to that of other admixed materials at the time of the mixing. If the mixture is done in such a manner that the supplier's item is viewed as the main item, then it is considered agreed that the supplier will transfer proportional co-ownership to us; the supplier maintains the sole ownership or co-ownership on our behalf.

- 18.3. Insofar as the security interests under section (1) and/or section (2) to which we are entitled exceed the purchase price of all of our reserve goods not yet paid for by more than 10%, we are obligated to release the security rights in the manner we select upon request of the supplier.

## 19. General provisions

- 19.1. The law of the Federal Republic of Germany is applicable to the present business terms and conditions between the supplier and ourselves. The application of UN trade law is excluded.

- 19.2. Place of performance of the supply is Nordach, unless otherwise agreed.

- 19.3. To the extent permissible under § 38 of the Code of Civil Procedure, jurisdiction and venue is the domicile of our main branch. We can sue the supplier at its venue.

- 19.4. If any term stipulated in these business conditions, or a provision in other agreements, is or becomes invalid, this shall not affect the validity of the remaining terms or agreements. The contractual partners are obligated, however, to replace the invalid provision with an arrangement as similar as possible in its economic effect.

## 20. Shipping and delivery specifications

Reception location/station: Erwin Junker Maschinenfabrik GmbH, Junkerstraße 2, 77787 Nordrach, Germany

Our order code, our item number and our order number must always be provided for order confirmations, bills of lading and other documents.

Order confirmation: single copy

Bill of lading: single copy with the shipment

Invoice: single copy by mail

Deliveries: Monday - Thursday 7:00 - 15:30

Friday 7:00 - 11:30

Costs originating from disregard of the above specifications are your responsibility.