

General Terms and Conditions of Purchase

Version 10/2009



I. Order and Confirmation of Order

1. All orders granted by the buyer shall be subject to the following terms and conditions of purchase, if not otherwise agreed in writing. Other general terms and conditions of business or regulations, irrespective of whether in the written form or not, shall not be applicable, even if same should not be expressly disclaimed by the buyer.
2. The supplier shall confirm the order in writing within two working days after receipt of order. In the event that the order should not be confirmed by the supplier within this time period, the buyer shall be entitled to cancel such order.
3. Changes, supplements or additions to the buyer's order shall not be binding upon the buyer, if a person authorised to represent the buyer has not accepted such changes, supplements or additions in writing.
4. Quotations or price estimates issued by the supplier shall be binding and free of charge, if nothing to the contrary has been agreed between the parties in writing before drafting such price quotation or price estimate.

II. Delivery of goods and services

1. Delivery dates and time periods agreed between the parties shall be binding. Irrespective of whether or which Incoterms clause has been agreed between the parties, the delivery dates and time periods, which relate to the delivery of goods, shall be deemed to be met at the earliest on the day of receipt of goods at the buyer's location as stipulated in the order or contract. Delivery dates and time periods, which relate to the delivery of goods including assembly and/or other services, shall be deemed to be met at the earliest on the day of final acceptance by the buyer.
2. In the event that the supplier should be obliged to procure material testing, test certificates, CE declarations or certificates of quality ("subsidiary documentation") in accomplishment of the order or in avoidance by applicable law, regulations and directives, the delivery of goods and/or services shall not be deemed as having been finalised before receipt / provision of all such subsidiary documentation.
3. In the event that delay in delivery and/or services should be expected, the supplier shall notify the buyer in writing immediately, by specifying the reasons and expected period of delay.
4. In the event that it should not be possible for the supplier to comply with the agreed delivery dates and time periods due to reasons attributable to the supplier, the buyer shall – irrespective of other claims it should be entitled to within the framework of these provisions and in terms of applicable law – be entitled to demand a contractual penalty totalling 1 % per week of delay, however a maximum of 10% of the value of goods/or services affected by delay; the contractual penalty actually paid to the buyer shall be set off against other claims for compensation of damages based on delay.
5. The buyer shall be entitled to reject goods delivered, which do not comply with the type, quantity and/or quality as specified in the buyer's order and to return same to the supplier at the costs of the supplier.

III. Passing of risk

1. Risk relating to the delivery of goods shall pass to the buyer in accordance with the Incoterms clause as agreed between the parties. Risk relating to services, shall pass to the buyer on the day of final acceptance by the buyer.
2. If nothing to the contrary has been agreed, the buyer and the supplier agree upon delivery per DDP (delivered duty paid – Incoterms 2000).
3. A package slip or delivery note has to be inserted into each shipment, which document shall stipulate the content and the order reference number of the buyer. The supplier shall notify the buyer without delay as regards dispatch, by giving the necessary data.

IV. Accounts

The buyer's order reference number and the quantities of all individual items have to be specified on all accounts. Accounts shall solely be payable after receipt of an account containing such complete details. Copies of accounts have to be identified as such.

V. Payments

1. If nothing to the contrary has been agreed, term of payment shall be 14 days minus 3 % discount or 30 days minus 2 % discount or 60 days net. In the event of extended retention of title, the buyer's consent for resale, machining or assembly of goods before payment shall be deemed as having been granted.
2. The payment deadline shall commence on the date of delivery when both conditions have been fulfilled in terms of Clause II. 1. above and receipt of duly issued account in terms of Clause IV. In the event of premature delivery, calculation of the payment deadline shall be carried out on the basis of the delivery date as specified in the order or contract and the deadlines specified in the order or contract.
3. Payments by the buyer shall not mean that the goods or services are deemed to be accepted and that such goods or services comply with contractual or statutory requirements.

VI. Guarantees and Warranties

1. The supplier guarantees that the goods and/or services delivered comply with the agreed specifications and the applicable statutory specifications and norms. In the event that defects in goods or services have been detected within the course of due and proper business conduct, the buyer shall notify the supplier thereof in writing within 14 working days (excluding Saturdays) as of detecting such defects. If the buyer should fulfil the above mentioned requirement, the supplier already here and now declares waiver of its rights to reject any claims based on belated notification of defect.
2. If nothing to the contrary has been agreed, the warranty period for goods and services shall amount to two years, calculated as of passing of risk in terms of Clause III. 1.
3. In the event that defects should be detected, the buyer shall be entitled to the following claims:
 - a) The supplier shall carry out sorting, repair or replacement of delivered goods or render due and proper services before commencement of production (machining or assembly) or before resale. In the event that the supplier should not be in a position or willing to carry out the foregoing duties without delay, the buyer shall be entitled to withdraw from the contract in this respect and return the goods at the costs and risk of the supplier. In urgent cases, the buyer shall be entitled to repair or replace defective goods or services itself at the costs of the supplier or instruct a third party to do so.
 - b) After commencement of production (machining or assembly) or after resale and under the proviso that the buyer has fulfilled notification requirements in terms of Clause VI. 1 sentence 2, the buyer shall – in addition to the claims as set forth under the before mentioned paragraph a) within the framework of a) above – as it may select, either be entitled to demand reduction of the purchase price as regards defective goods and/or services or compensation for costs (including labour costs) in respect of transportation and travel, disassembly renewed assembly and in respect of materials and products of the buyer or any third party, which can not be used towards the purposes intended by the buyer due to use, machining or assembly of defective goods or services by the supplier.
 - c) In the event of a defective series, the buyer shall be entitled to claim costs – in addition to the before mentioned claims within the framework of a) and b) above – which have accrued in respect of call-back, repair and/or replacement of the buyer's defective goods due to defective goods or services by the supplier. Furthermore, the buyer shall be entitled return to the supplier all goods of the same type as the defective goods at the costs and at the risk of the supplier and demand replacement of such goods or withdraw from the orders or contracts, as far as such orders or contracts relate to the returned goods. In the event that nothing to the

contrary has been agreed, serial defect shall mean occurrence of a defect rate of at least 5 percent in a product type delivered by the supplier to the buyer during a time period of 3 successive months.

d) In the event that, in addition to delivering defective goods or services, the supplier should have culpably violated further contractual obligations in connection with the delivery of defective goods (for example information, feedback, testing), the buyer shall be entitled – in addition to claims within the framework of a) to c) above – to claim compensation for damages as regards other consequential damages caused by delivery of defective goods.

With the exception of asserting damages based on personal injury and damages, the buyer shall be entitled to solely assert further going claims relating to expenses and payments in compensation of damages, which are based on the defects to goods and services delivered by the supplier, if this has been agreed between the parties.

VII. Force Majeure

In the event of acts of God, industrial conflict, such as e.g. industrial action, unrest in the country, acts by governments or other authorities and other unpredictable inevitable and serious occurrences, the contractual parties shall be temporarily released from performing their duties for the duration of time that such occurrences should continuously hinder one of the parties from performing its contractual obligations under the proviso that the relevant party has informed the other party in writing with regard occurrence of force majeure without delay after incidence thereof. In the event that at least one of the parties should be released from performing its contractual obligations within the framework of this Clause for a period of 4 or mere successive weeks, each party shall be entitled to withdraw from the orders or contracts immediately without giving notice.

VIII. Granting sub-contracts to third parties

It shall not be permitted to grant sub-contracts to third parties without the prior written consent of the buyer; such consent may not be denied by the buyer without appropriate reason.

IX. Materials and documentation supplied by the buyer

1. Materials made available by the buyer for purposes of manufacture of goods by the supplier or goods that have been fully paid, shall remain in the unrestricted possession of the buyer and shall be stored separately, be identified as property of the buyer and stored free of charge. It shall be obligatory that the materials be exclusively used for purposes designated to fulfil the orders and contracts of the buyer. The supplier shall ensure that adequate insurance cover as regards the stored materials is maintained and shall compensate the buyer for any damages to the buyer's materials.
2. The supplier shall prefabricate or machine the materials on behalf of the buyer, who shall acquire part-ownership to the new or machined object in accordance with the value of the buyer's materials in proportion to the new or machined object. The new or machined object owned by the buyer shall be deemed to be materials made available to the supplier by the buyer.
3. Tools, models, product samples, models, patterns, illustrations, standards, moulds, documentation and templates, etc. and copies thereof made available by the buyer as well as objects manufactured therewith or on the basis thereof may not be passed on to any third party without the written approval by the buyer and also not used for any purposes other than the purposes stipulated under the contract. Such objects have to be treated as strictly confidential and safeguarded against unauthorised access or use. Irrespective of any further rights, the buyer shall be entitled to demand return thereof if the supplier should violate this clause.
4. The supplier shall not be permitted to make information, which it has received from the buyer, to any third party if such information should not be of general nature or publicly known or if such information should in any other way have been in the justified possession of the supplier.

X. Intellectual property rights

1. The supplier shall be held liable for each claim, which should – through use of the goods in compliance with the provisions and purpose of the contract – arise from and in connection with violation of intellectual property rights granted or applied for or existing within the framework of applicable law and indemnify and hold harmless the buyer and its customers with regard to any liability arising from and in connection with such intellectual property rights.
2. The provision mentioned hereinbefore shall not be applicable if and to the extent that violation of intellectual property rights should be caused:
 - i) through use of the goods delivered, which the supplier has manufactured in terms of illustrations, models or similar specifications by the buyer,
 - ii) through change or variations of the goods by the buyer after delivery by the supplier.

XI. Assignment of receivables

The supplier shall not be entitled to assign its receivables to any third party and shall also not be entitled to have such receivables collected by third parties without the prior written approval by the buyer; however, such approval may not be rejected without appropriate reason.

XII. Miscellaneous

1. In the event that any one of the parties should cease payments or if application for insolvency proceedings or application for extra-judicial composition should be filed, the other party shall be entitled to withdraw from orders or contracts, if such party has not yet received any goods or services or payment. However, withdrawal can also include goods, services or other contractual objects, which have already been delivered, if the receiving party should have no use for such partial delivery.
2. In the event that any provision set forth under these General Terms and Conditions of Purchasing should be invalid or become invalid, this shall not affect the validity of the remaining provisions hereunder. Such invalid provision shall be replaced by the parties with a valid provision, which comes as close as possible to the legal and economic purpose of the invalid provision.
3. Any changes or supplements to these General Terms and Conditions of Purchasing have to be in the written form in order to become valid and effective. This shall also apply to changes to this Clause XII. 3.

XIII. Venue of jurisdiction, applicable law

1. Venue of jurisdiction shall be the headquarters of the buyer.
2. The prevailing law at the headquarters of the buyer shall be applicable. Applicability of the United Nations Convention on Contracts for the International Sale of Goods shall be precluded.