

## 1. General information – scope – applicable law

- 1.1 Our Terms of Purchase shall apply exclusively. This shall also apply if we accept the delivery of the supplier without reservation in the knowledge of contradictory terms and conditions of the supplier or terms and conditions which deviate from our Terms of Purchase. We shall only recognise contradictory terms and conditions of the supplier or terms and conditions which deviate from our Terms of Purchase if we have approved their validity in writing. These Terms of Purchase shall also apply if the contract is carried out with the supplier without reservation in the knowledge of contradictory or deviating terms and conditions of the supplier.
- 1.2 The supplier's signature of consent which is envisaged in our orders is not a pre-requisite for the validity of the contract, but exclusively serves for purposes of proof. These Terms of Purchase shall be recognised to an unlimited extent with the execution of the order.
- 1.3 Our Terms of Purchase shall only apply towards entre-preneurs, i.e., natural persons and legal entities or partnerships, who or which act while performing a commercial or self-employed professional activity (see § 310 I BGB [Civil Code]).
- 1.4 Our Terms of Purchase shall also apply to all future business with the supplier.
- 1.5 Special agreements in our written orders and their annexes shall have precedence over the regulations of these Terms of Purchase.
- 1.6 Insofar as not otherwise determined in these Terms of Purchase the statutory provisions of German law shall apply. The provisions of the UN Convention on the International Sale of Goods (CISG) shall not apply. Insofar as not deviating from German law and stipulated as mandatory the purchase contract law of the EU shall apply in addition.

## 2. Offer – Offer documents

- 2.1 All offers and cost estimates are free of charge and non-binding for the orderer. Orders, delivery schedules and other declarations as well as their changes and supplements are only binding if they are placed or confirmed by the orderer in a text form.
- 2.2 All oral orders or secondary agreements of persons of the orderer who have no signing authorizations will only be valid if they are approved/confirmed in writing by authorized representatives of the company or employees of the purchasing department of the orderer.
- 2.3 Insofar as the supplier does not accept the order within 5 workdays

since the receipt the orderer is entitled to revoke the order without the supplier being entitled to claims for damages from this revocation.

- 2.4 Until the acceptance of the delivery the orderer can request changes and supplements to the order at all times at its reasonable discretion and by taking the interests of the supplier into consideration. The supplier undertakes to propose changes to the orderer, which it considers necessary and useful with regard to a successful satisfaction of the contract. It shall also carry out these changes after the written consent by the orderer.

## 3. Prices – terms of payment

- 3.1 The price shown in the order is binding. In the absence of deviating written agreement the price includes delivery "free place of receipt", including packaging, loading costs, loading fees, insurance, taxes and customs duties (DDP according to Incoterms 2000). The supplier has to take back and dispose of the packaging at its costs insofar as the orderer does not have any concrete possibility for use for said packaging.
- 3.2 All invoices are to be submitted to the orderer in duplicate and must comply with the requirements of the Value Added Tax Act and the value added tax implementation regulations. In case of a necessary corrective issue of an invoice according to the statutory stipulations the payment deadline shall only begin after the receipt of the correct copy.
- 3.3 The supplier undertakes to state our project name and insofar as notified project number on all invoices, shipping documents and delivery notes; if it fails to do this, then delays in the processing are unavoidable, for which we will not have to assume responsibility. A separate invoice is to be issued for each delivery to a place of receipt or building site.
- 3.4 We shall pay, insofar as not otherwise agreed, the purchase price at our choice within 14 days, beginning from delivery and receipt of the invoice, with 3 % cash discount or within 30 days after receipt of the invoice net.
- 3.5 We shall be entitled to rights to offset and rights of retention in the statutory scope.

## 4. Delivery time

- 4.1 The delivery time stated in the order is binding. In the event of the delay in delivery we are entitled to demand a conventional penalty of 0.1 % of the order value for each calendar day of the delayed delivery

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up to a maximum amount of 5 % of the order value from the supplier without further proof; in addition by offsetting the conventional penalty the compensation of all direct and indirect damages on default can be asserted.

- 4.2 The supplier undertakes to inform us immediately in writing by stating the reasons and the expected duration of the delay if circumstances occur or become recognisable to it, from which it can be seen that the conditional delivery time cannot be adhered to. However, this notification does not mean any agreement on our part to a postponement of the date, but only serves to minimise the damages.

## 5. Passing of risk, transports, customs clearance, insurance

- 5.1 The delivery has, insofar as not otherwise agreed in writing, to be carried out free the stated place of receipt. We shall only accept partial deliveries after an explicit agreement.
- 5.2 We have concluded final transport insurance ourselves. Therefore, deliveries have to be made not insured. We are a renouncing customer within the meaning of SLVS. Premiums may not be charged for transport insurances. Possible invoiced amounts shall be for the account of the supplier.
- 5.3 If deliveries are based upon cross-border import business transactions either from third countries or also countries of the EU the supplier shall bear the sole responsibility for the proper customs declaration, customs processing and value added tax declaration and sufficient transport insurance. With suppliers which belong to the EU the value added tax identification numbers (ID-No.) are always to be stated. If preference and trade agreements exist between the Federal Republic of Germany and the country of origin of the goods certificates of origin, confirmed by the responsible authorities are to be enclosed with the deliveries.

## 6. Examination of defects – warranty

- 6.1 With the acceptance of the order and the delivery of the goods the supplier assures the existence of the properties stipulated according to the DIN standards and in addition required in the order. Irrespective thereof the supplier assures that it has subjected the delivered goods to an official quality protection test required for it in DIN standards or otherwise envisaged (own and third party monitoring). The supplier further assures that the delivered goods comply with the German building regulations, with deliveries to a country of the European Commu-

nity, the building regulations applicable in said countries, insofar as the orderer has referred to the use in said country within the framework of the order. Depending on the type and scope of the delivery the supplier shall fix a more specified quality assurance agreement with the orderer.

- 6.2 Our inspection obligation is limited to the sight check of the material as well as the examination whether the description of the delivered goods according to imprints on goods, banderoles, labels etc. correspond with the ordered goods. The obligation for the partial processing or destruction of the goods using random samples for the purpose of examination is excluded unless this is explicitly ordered by the supplier against remuneration of material and work wage for this. For the defects which are recognisable when the goods are accepted the complaint is deemed on time insofar as it is received within 7 workdays after acceptance by the supplier. Incidentally the complaint owing to justified defects can be made by us at all times until the expiry of the warranty period. Payment of the goods also in the knowledge of the defects does not mean any acceptance of service in line with the contract.
- 6.3 We are entitled to the statutory claims from warranty and damages in full. We are entitled to request remedy of defects or substitute delivery from the supplier at our choice, remedy of defects however only if our contractual partner is in the position to provide the independent subsequent improvement. In this case the supplier undertakes to bear all expenses which are necessary for the purpose of remedying the defects or the substitute delivery. The right to damages, in particular to damages owing to non-satisfaction, is explicitly reserved. If the supplier on its part uses components suppliers to satisfy its delivery obligations and if there is a defect in the scope of responsibility of its supplier it tacitly assigns purely as a precautionary measure its contractual claims for reimbursement to us for the event of its subsequent insolvency; we hereby already accept the assignment as collateral.
- 6.4 The warranty is, if not otherwise agreed, five years and three months. The start of the warranty is counted from the last partial delivery of the order.

## 7. Product liability

- 7.1 Insofar as the supplier is responsible for a damage to the product it undertakes to indemnify us accordingly from claims for damages of third parties at first request if the cause lies in its scope of control and organisation and it is liable itself in the external relationship.

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7.2 The supplier undertakes to keep sufficient product liability insurance in reserve and to inform us at all times immediately upon request with which sum insured per physical injuries/property damages it has concluded product liability insurance with which insurance. As a purely precautionary measure it tacitly assigns its claims for compensation according to the insurance contract to us for the event of its subsequent insolvency. We hereby already accept the assignment as collateral.

## 8. Property rights – licensing rights

8.1 The supplier shall be responsible that no rights of third parties are infringed in connection with its delivery. If a claim is asserted against us by third party then the supplier undertakes to indemnify us from these claims at first request. The obligation for indemnification of the supplier refers to all expenses necessarily incurred to us from or in connection with the assertion of a claim by a third party insofar as it was responsible for the infringement of the property right.

8.2 The supplier assigns in case of co-delivered software including its documentation to the orderer the further assignable or saleable right of use in the scope as permitted by law (§§ 69a ff. UrhG [Copyright Act]) and in the scope which is necessary for a use of the product as per contract.

8.3 All business or technical information, made accessible by the orderer to the supplier of a written, oral, illustrative, graphical or data-related type is, insofar as it is not known publicly as proven, to be kept secret towards third parties and may not be reproduced or used commercially without the consent of the orderer – except for deliveries to the orderer. It shall remain the sole property of the orderer and is to be returned hereto or destroyed immediately and in full at the request of the orderer.

## 9. Right of retention and offsetting of the supplier – ban on assignment

9.1 A right of retention of the supplier owing to possible claims is excluded unless the right of retention is based on the same contractual relationship.

9.2 An offsetting of the supplier against claims to which we are entitled is only permitted to the extent that they are offset against a claim, which is undisputed, i.e. has been recognised in writing or declared final and binding.

9.3 The assignment of the purchase price claim of the supplier without our explicit consent is excluded with the exception of the assignment to the house bank of the supplier or its credit insurance institution.

## 10. Partial invalidity

Should individual provisions of these Terms of Purchase be invalid in full or in part this shall have no effect on their validity on the whole. The invalid provision shall be replaced by the statutory regulation.

## 11. Place of jurisdiction – place of performance

11.1 The place of jurisdiction for all disputes due to the business for which these Terms of Purchase apply albeit owing to contractual or non-contractual claims, is D-36211 Alheim-Heinebach. We are however entitled to also file an action against the supplier at its registered seat, the registered seat of its responsible branch or at the court of the place of performance.

11.2 Insofar as not otherwise derived the place of performance is the registered seat of our company in D-36211 Alheim-Heinebach.

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