

Purchase Terms

As at: August 2002

1. General

- (1) Unless otherwise stipulated in our purchase orders, our Purchase Terms shall be exclusively applicable. Terms to the contrary of the supplier shall not commit us, even if we do not raise express objection to these terms or if we accept the delivery without reservation.
- (2) If individual provisions of these Purchase Terms are or become ineffective, then this shall not affect the validity of the other provisions.

2. Purchase order and confirmation of order

- (1) Our purchase orders shall only be binding if they are awarded by us in writing or by electronic means. If we do not receive the written confirmation of order within 2 weeks from the order date, we reserve the right to cancel the purchase order without obligation for us.
- (2) In the case of an order value under ? 100.00, the supplier's invoice shall be regarded as the confirmation of order, provided it corresponds to the purchase order.
- (3) Unless otherwise expressly agreed, estimates are binding and free of charge.

3. Framework orders and delivery schedules

For longer-term planning we award framework orders or delivery schedule contracts on the basis of rolling requirement forecasts which are sent to the suppliers on a cyclical basis. The order commitment results from separate framework agreements which are individually concluded with the suppliers and which are based on their production capacities, processing time and material procurement.

4. Order number, supplier number, article number

Our complete order number, purchase group, supplier number, material and drawing numbers must be quoted in confirmations of orders, invoices, delivery notes and other documents for each purchased part and each service, also in electronic transactions. If these details are not indicated, we reserve the right to reject deliveries and invoices.

5. Performance specifications

- (1) The supplier shall manufacture the contract product or shall render the agreed service in accordance with the respectively valid technical documents and/or other documentation.
- (2) The supplier shall be fully responsible for the production of tools, devices and other production equipment, in so far as such articles are necessary for the production of the contract product, even if it has such articles produced by third parties. The tools shall pass into our possession after payment in full for them. The supplier shall draw up complete tool documentation and shall put it at our disposal in a form which is to be agreed.
- (3) The documents forming part of the purchase order are binding for the supplier; however, it must expertly check them without delay for any discrepancies and must inform us immediately in writing of discovered or suspected errors.
- (4) All documents (sketches, drawings, samples, models, etc.) and information which are supplied or paid by us shall remain our property. They may not be surrendered or made accessible to third parties and may only be used with our written consent for third-party deliveries. Subcontractors are to be bound accordingly.

6. Compliance with statutory stipulations

- (1) With the acceptance of the order, the supplier undertakes to comply with all relevant statutory regulations which apply in the production and distribution country. This includes all safety and environmental protection provisions, including the handling of hazardous substances, electricity and electromagnetism.
- (2) If the supplier has the contract product or parts thereof manufactured by third parties, then the provisions in (1) shall apply mutatis mutandis.

7. Packaging

Unless otherwise agreed, necessary packing material shall be provided by the supplier on the basis of the packaging instructions sent to the supplier.

8. Delivery, passing of risk, acceptance point

- (1) Delivery shall be effected according to the mode of shipment stated in the purchase order.
- (2) Risk shall pass after the acceptance of the goods at the agreed place of performance.
- (3) The acceptance point is the incoming goods department of the plant stated in our purchase order.
- (4) A delivery note or packing slip, which must meet the requirements stated in Section 4., must be enclosed with every delivery. If such documents are not provided, we reserve the right to reject the delivery.

9. Prices, transport insurance and terms of payment

- (1) The prices are expressed as fixed prices plus the statutory rate of value added tax, carriage-paid to our acceptance point, including packaging and other ancillary expenses.
- (2) Transport insurance shall be covered by us.
- (3) Invoices are to be sent separately from the supplied goods immediately after delivery and separately for every purchase order in duplicate to our administrative department in Mulfingen.
- (4) Unless otherwise agreed, we shall make payment after receipt of the goods and receipt of the invoice within 14 days with 3 % promptpayment discount, within 24 days with 2 % prompt-payment discount or within 30 days net. Payment shall be made subject to checking the invoice and also delivery in full of the goods or performance in full of the service. The performance of the supplier's contractual obligations shall not be confirmed by our payment.
- (5) The supplier is obliged to reimburse overpayments to us, in which respect it cannot plead the statute of limitations or financial loss. The supplier is not entitled to assign its claims against us or to have them collected by third parties.

10. Delivery date and default

- (1) Agreed delivery dates are binding. The supplier must inform us without delay in writing of any delays in delivery, duly indicating the reasons and the duration.
- (2) If the agreed delivery dates are not met, then we can at our option demand damages instead of performance, withdraw from the contract or claim for every full week of the delay a contractual penalty in the amount of 0.5 %, at the most, however, 10 % of the order value, unless the supplier is not responsible for the delay. Default by the supplier's own suppliers shall come under the supplier's sphere of risk. If the delayed delivery is accepted, no express reservation of the contractual penalty shall be necessary. It is not necessary to issue a reminder for deliveries in order to put the supplier in default. Our statutory claims due to the default in delivery shall remain unaffected. The incurred contractual penalty shall be set off against a claim for damages due to breach of contract.
- (3) Additional expenses which are necessary for the accelerated transportation to meet delivery dates must be borne by the supplier and must be recorded at the end of every calendar year. The total costs must be notified to us within 4 weeks.
- (4) Force majeure, industrial disputes, stoppages for which we are not responsible, official measures and other circumstances beyond our control shall entitle us – without prejudice to our other rights – to withdraw from the contract in whole or in part, in so far as these disturbances last for some considerable time and result in a considerable reduction of our requirements.

11. Quality, production and product release procedures

- (1) The supplier is obliged to secure the quality and the materials and preliminary materials necessary for the production of the contract product by suitable measures according to the QM standard ISO/TS 16949 or comparable QM standards (QS 9000, VDA 6.1).
- (2) The supplier shall produce the contract products which are to be supplied to us according to the QM standards indicated in (1), including the Guidelines for Suppliers sent to and accepted by the supplier, whose acceptance must be confirmed by the supplier in writing. It shall be responsible without exception for the quality, even if we offer or afford the supplier support.
- (3) All manner of alterations may only be effected with our written agreement.
- (4) If demanded by us, initial samples from series tools with all necessary documentation must be submitted to us for appraisal by the supplier in due time within the scope of the product release procedure according to the QM standards in (1).

- (5) If more than two samples are necessary due to reasons for which the supplier is responsible, we reserve the right to withdraw from the contract.
- (6) The supplier's quality management system can be audited on the spot by us and/or by our customers.
- (7) In addition, the supplier must comply with the latest accepted engineering standards, the safety regulations and also the agreed technical data for its deliveries and performance. The contractor shall hand over with the offer a safety data sheet which has been completed in full according to DIN 52900 and an appropriate accident leaflet (transportation) for materials which have to be specially packed, transported, stored, used or disposed of due to laws, ordinances, other provisions or due to their composition or their effect on the environment. In the case of alterations to the materials or the legal position, the contractor shall provide us with updated data and leaflets without being requested to do so.

12. Provision of articles

- (1) The supplier shall be liable for the loss, damage or misuse of provided articles. If provided parts or materials are not processed in accordance with the contract, then the supplier, without prejudice to other claims, must not just reimburse us the costs of the provided parts and their procurement, but rather the value of the finished contract product, unless it proves that we have only suffered a lesser loss.
- (2) We reserve extended reservation of title to provided parts and means of production, e.g. tools, moulds and other capital goods, and also to services. This also includes means of production and services which the supplier procures itself for the production of the contract product or service, but which are paid by us. Products and services shall remain our property in all treatment and processing stages.
- (3) The supplier shall produce the articles which are to be supplied on our behalf and for us. We are accordingly the manufacturer as defined by law. We shall be entitled to title to these articles in all production stages. The supplier shall hold the articles in safekeeping for us free of charge. In the case of processing with other articles belonging to third parties, we shall be entitled to co-ownership of the newly produced article in proportion to the value of our provided articles to the value of all articles used for production and also the expenses incurred by the supplier.
- (4) Means of production owned by us are exclusively intended for our use and are to be held in safekeeping and maintained at all times in a usable condition by the supplier and also insured at its expense at their value when new against fire and water damage and theft.

13. Warranty and notification of defects

- (1) The supplier shall be liable according to the statutory provisions for the supplied articles. It guarantees the careful and correct performance of the contract, especially the compliance with the stipulated specifications and other performance regulations according to latest scientific knowledge and the state of the art, and also the quality and suitability of the delivery regarding material, construction and design and of the documents accompanying the delivery (operating manual, drawings, plans, etc.). The stipulated specifications shall be regarded to be guaranteed characteristics of the delivery or performance.
- (2) If the supplied article has a material defect, then we shall be entitled to select between subsequent performance and repair within the scope of the statutory subsequent performance claim. After the expiry of the deadline set to the supplier for subsequent performance or rejection of the subsequent performance claim by the supplier, we shall be entitled to select freely between a reduction of the purchase price, withdrawal from the contract and damages without prejudice to the more extensive rights to which we are entitled, for example due to consequential losses caused by a defect.
- (3) Complaints shall be regarded to be raised in due time if externally visible defects are raised or notified within 3 weeks after receipt of the goods, hidden defects within 2 weeks after discovery by us or after notification by our customers. Defects which cannot be discovered by spot checks shall be regarded to be hidden defects.
- (4) If the rectification of the defect or the substitute delivery fails, then we shall also be entitled, in addition to the statutory claims and the claims mentioned above, after the expiry of a reasonable period to rectify the defect ourselves at the supplier's expense to avert acute dangers or avoid greater losses.
- (5) The return of rejected goods shall in principle be effected on a carriage-unpaid basis against the reimbursement of the charged value of the goods.
- (6) Claims due to material defects shall become statute-barred after 24 months from the passing of risk, or for supplied articles which according to their customary use were used for a building resulting in its defectiveness, 5 years from the passing of risk. If the law makes provision for a longer limitation period for warranty claims, then the statutory limitation period shall be applicable. The limitation period for parts of the delivery which are replaced or repaired due to claims based on defects shall commence anew at the time when the supplier has met our claims to subsequent performance in full.
- (7) In the case of defects of title, the supplier shall indemnify us against any existing third-party claims. A limitation period of 10 years shall apply to defects of title.

14. Secrecy

Drawings, models, sample tools and production equipment put at the supplier's disposal or produced by it according to our instructions must be kept secret and may only be put at the disposal of third parties following our prior written consent. The contracting parties undertake to treat all information from their mutual business relationship in confidence. The supplier may only publicise the business relationship with us with our express consent.

15. Third-party industrial property rights

- (1) The supplier shall be liable that in connection with the delivery and the use of the contract product no domestic or foreign third-party rights, especially industrial property rights such as patents, trademarks, copyrights or utility models, are infringed.
- (2) If the supplier has industrial property rights which concern the use of the contract product supplied by it, then it shall grant us a right of joint use free of charge of its industrial property rights in the scope of the supplied contract product.

16. Liability, product liability, indemnification

The supplier shall be liable for all losses which we or a third party suffer when using the supplied article, unless the supplier did not culpably cause the defect. Liability according to the German Product Liability Act shall remain unaffected. If the supplier is responsible for a product defect, then it shall accordingly indemnify us against third-party claims for damages. The supplier is also obliged within this scope to reimburse any expenses according to Articles 683 and 670 of the German Civil Code which result from or in connection with a product recall ordered by us. We shall inform the supplier without delay of the contents or scope of the recall or service measures which are to be undertaken if such circumstances arise.

17. Assignability, withdrawal from the contract

- (1) The assignment of rights and obligations from the contractual relationship shall require our prior written agreement. The supplier shall inform us without delay if the assignment of the claims arising against us becomes necessary due to extended third-party title rights. In other respects, reference is made to Section 9 (5).
- (2) We are entitled, without prejudice to other termination or withdrawal rights, to terminate the contract or to withdraw from the contract in whole or in part if the supplier's creditworthiness or ability to effect delivery deteriorates to such an extent that the performance of the contract seems to be in jeopardy, if the supplier ceases its payments and/or if insolvency proceedings are instituted against it or the institution of insolvency proceedings is rejected due to a lack of assets.

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

Place of performance for the delivery is the delivery address stated in our purchase order. Place of jurisdiction is at our option Mulfingen or the supplier's place of jurisdiction. The terms of business and the complete legal relations between the contracting parties shall be exclusively governed by and construed according to the law of the Federal Republic of Germany with the exception of the conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG). INCOTERMS in their respectively valid version shall apply to the interpretation of delivery clauses.

19. Delivery address:

Plant I and Plant III, ebm-papst Mulfingen GmbH & Co. KG, Bachmühle 2, D-74673 Mulfingen
Plant II, ebm-papst Mulfingen GmbH & Co. KG, Austrasse 10, D-97996 Niederstetten