

# Conditions of Purchasing

## 1. General

- (1) Our General Terms of Sale apply exclusively. Conflicting General Terms and Conditions of the Supplier are not binding on us even if we fail to explicitly reject such Terms and Conditions or accept a delivery without reservations.
- (2) If individual provisions of the present General Terms of Sale should be or become ineffective, the validity of the remaining provisions shall in no way be affected.

## 2. Order and Order Confirmation

- (1) Our orders are binding only when issued in writing or via electronic means. We reserve the right to cancel our order without any further obligations if the supplier fails to explicitly accept our order in writing within two weeks after having received the order.
- (2) For orders totalling less than 100 Euro, the invoice of the Supplier is deemed an order confirmation provided it corresponds to the order.
- (3) Cost Estimates are binding and are not to be compensated for unless other provisions are expressly agreed upon.

## 3. Frame Purchase Agreements and Delivery Schedules

In order to allow long-term scheduling, we issue Frame Purchase Agreements or scheduling contracts on the basis of rolled-over demand forecasts forwarded periodically to the Supplier. These Frame purchase agreements and scheduling contracts also govern the validity of our orders and forecasts taking the supplier's production capacity, plant throughput times and material procurement into due account.

## 4. Order No., Supplier No. and Item No.

Order confirmations, invoices, delivery notes and other documents must quote full order no., purchasing department, supplier no., material and drawing nos. for each part or service purchased, also when forwarded electronically. Missing data entitle us to reject deliveries and invoices.

## 5. Specification of Products and Services

- (1) The Supplier undertakes to manufacture the contract products or to supply the agreed services in accordance with the technical documentation and/or other specifications applicable at the time of delivery.
- (2) The Supplier is exclusively responsible for the manufacture of tools, devices and other means of production required for the manufacture of the contract product, even when these are manufactured by a subcontractor. The supplier shall store and utilize the tools for us and in accordance with our instructions. The tools become our property on their full payment. The Supplier shall draw up the complete tool documentation and submit it to us in a format to be agreed upon.
- (3) Documents and data which are part of the order are binding on the Supplier. They must, however, be checked professionally and promptly for possible inaccuracies and any errors, actual or suspected, have to be reported to us in writing without delay.

## 6. Compliance with Legal Requirements

- (1) With the acceptance of the order, the Supplier undertakes to comply with all relevant legal requirements which are in force in the countries of manufacture and sale. This includes all safety and environmental protection provisions including those on the handling of hazardous materials, electricity and electromagnetic fields.
- (2) If the Supplier subcontracts the contract product or parts thereof, the provisions of Subitem (1) shall apply correspondingly.
- (3) We expect from our suppliers that they do not cause or foster child labour neither by their subcontractors or in their own plants.

## 7. Packing

All required packing materials shall be provided by the Supplier in line with the Packing Ordinance (VO) submitted to the Supplier except when agreed otherwise.

## 8. Delivery, Transfer of Risk, Point of Acceptance

- (1) Delivery shall be made by the means of transport quoted in the order.
- (2) Transfer of risk takes place on acceptance of the goods at the agreed place of delivery.
- (3) The point of acceptance is the incoming goods department of the plant designated in the order.

## 9. Pricing, Transport Insurance and Payment Terms

- (1) Prices must be fixed, exclusive of statutory value-added tax, on basis freight paid to point of acceptance and include packing and other ancillary costs.
- (2) Transport insurance will be borne by us.
- (3) Invoices shall be submitted separately from the goods to our St. Georgen office in twofold immediately following delivery and separately for every order.
- (4) If not agreed otherwise, payment of invoices shall be made with a discount for cash payment of 3 percent as follows: on the 15th of every month for invoices received from the 21st of the past up to the 5th of the current month and on the 30th of every month for invoices received from the 6th to the 20th of the current month or net without deduction within 60 days from due date and receipt of invoice and full delivery of the goods respectively, or after the complete performance of the contracted service.
- (5) Payment is made on proviso of invoices being correct. Payments by us do not constitute a confirmation that the contractual obligations of the Supplier have been met. The Supplier undertakes to repay any excess payments and not to invoke statutory limitations or section 818 para. 3 BGB.

## 10. Delivery Date and Late Delivery

- (1) Agreed delivery dates are binding. Possible delays in delivery shall be notified by the Supplier to us promptly in writing quoting the reason and expected duration of the delay.
- (2) If agreed delivery dates are not met, we shall be entitled to a contractual penalty of 0.5 % of the order value for every full week of delay up to an accumulated maximum of 5 % of the order value. This does not apply when the delay is not attributable to the Supplier. Delays by subcontractors of the Supplier are the responsibility of the Supplier. The reservation of a contract penalty may be declared also in that the agreed contract penalty can be deducted at the time of the next payment from payables owed. Our legal claims to damages for late delivery remain unaffected. The contractual penalty may be set off against damages for late delivery.
- (3) Extra costs for faster means of shipment required to observe the delivery date must be borne by the supplier if this is required to prevent greater damage from delay. The extra costs must be totaled up effective to the end of a calendar year and advised to us within 4 weeks.
- (4) Acts of God, labor disputes, operational disruptions no due to our fault, unrest, government measures and other unavoidable events entitle us – notwithstanding our legal rights – to withdraw from the contract in whole or in part, as long as they are not only of inconsiderable duration and result in substantial reduction of our procurement need.

## 11. Quality, Production and Product Release Procedures

- (1) The Supplier undertakes to safeguard the quality of materials and input products required for the manufacture of the contract product by adopting suitable measures as per QA Standard ISO/TS 16949 or comparable QA Compendia (QS 9000, VDA 6.1).

- (2) The Supplier agrees to manufacture the contract products for our order in line with the QA standards quoted in Subitem (1) duly observing the guidelines for suppliers submitted to and accepted by him and to confirm their acceptance in writing. He shall be exclusively responsible for the quality regardless of any support possibly offered or extended by us.
- (3) Changes of any kind may be made only with our written consent.
- (4) Except when specified otherwise by us in writing, the Supplier shall submit to us in good time and in accordance with the QA standards quoted in Subitem (1) production samples from mass production tools with accompanying documentation as part of the product release process.
- (5) If more than two production samplings are required for reasons attributable to the Supplier, we reserve the right to withdraw from the contract.
- (6) The quality management system of the Supplier may be inspected by us and/or our customer at the point of production

## 12. Co-Supplied Products

- (1) The supplier is liable for any loss, abuse or damage to supplied products attributable to him. co-supplied products or materials are not processed as per the contract, the Supplier is required to compensate us notwithstanding our other legal rights for the costs not only of co-supplied parts and their procurement but also for the value of the finished contract products. This does not apply if the supplier can prove that we suffered a lesser damage.
- (2) We reserve the extended right of ownership to co-supplied parts, means of production such as tools, moulds and other investment assets as well as to services. This includes all means of production and services procured by the Supplier for the supply of the contract product or services for our account. Products and services remain our property in any processing or manufacturing stage.
- (3) When co-supplied products owned by us are processed, we shall be entitled to co-ownership in the new product at the ratio of the value of our supplies to the value of all items used in processing plus the Supplier's costs.
- (4) Our co-supplied products and means of production must be used exclusively for our manufactures, maintained in operating state and serviced by the Supplier at all times and insured by the Supplier and at his expense at their replacement value against damage from fire, water and theft.

## 13. Claims based on Defects and Notification of Defects

- (1) In line with the legal provisions, the supplier is liable except when agreed otherwise below! The Supplier warrants the careful and professional performance of the contract, in particular the observation of contract specifications and other manufacturing instructions as per the latest state of science and technology as well as the quality and utility of his deliveries in term of material, construction and workmanship including all documentation (operating instructions, drawings, plans etc.) accompanying the shipment. All features of the products or services mentioned in the relevant specifications constitute implied warranties of the supplier.
- (2) We have the right to inspect the incoming goods. Externally visible defects shall be reported to the supplier within six working days after the arrival of the goods whereas concealed defects shall be reported within six working days after their detection by us or our customer. Defects which cannot be detected by random sampling are deemed concealed defects. To this extent the supplier waives the objection of a delayed notification of defects.
- (3) In the event of an unsuccessful repair or substitute shipment by the supplier, we shall after an adequate grace period be entitled – in addition to our legal rights – to undertake such repairs ourselves or have them carried out by a third party at the expense of the supplier in order to ward off imminent risks or to prevent major damages.
- (4) Return shipments of rejected goods will be made freight unpaid and by debiting the invoice value.
- (5) Claims based on product defects lapse in 3 years except when section 438 para. 1, no. 2b BGB applies. With respect to parts of the delivery that were reconditioned or repaired within warranty, the warranty period starts anew at the moment the supplier has completely satisfied our claims for performing a fulfilment measure.
- (6) In the event of a title defect, the supplier shall keep us free from possible claims of third parties. This does not apply if the supplier is not at fault. Title defects shall also be subject to a limitation period of three years.
- (7) In relation to our suppliers the regulations in sections 478, 479 BGB also apply if the parts delivered by the supplier are the cause of failure or defects of the parts and products manufactured by us.

## 14. Confidentiality

All drawings, models, samples, tools and means of production supplied by us to the Supplier or produced by him in accordance with our data shall be kept confidential and no access to them be given to a third party except with our prior written consent.

## 15. Third-Party Intellectual Property Rights

- (1) The Supplier shall ensure that no domestic or foreign intellectual property rights of a third party, in particular such as patents, trademarks, copyrights or industrial design rights, are infringed in connection with the supply and use of the contract products. This does not apply if the supplier is not at fault.
- (2) If the Supplier holds intellectual property rights the object of which is the use of the contract product supplied by him, he shall grant us free of charge the right to co-use these rights to the extent they affect the object of the delivery.

## 16. Liability, Product Liability and Exemption

- (1) In the event a product liability claim is asserted against us, the supplier agrees to hold us harmless from such claims if and to the extent the damage was caused by a defect of the supplies or services. However, in cases of liability based on fault, this only applies if the supplier is at fault. The suppliers liability under the Product Liability Act remains unaffected. In the above cases the supplier assumes all costs and expenses, including e.g. the costs for any legal action or a recall campaign.

## 17. Assignability and Withdrawal from Contract

- (1) The assignment of rights and obligations under the contract requires our prior written consent. The Supplier shall inform us promptly of the assignment of claims against us that may become necessary due to extended property rights of a third party.
- (2) Regardless of other rights to termination or withdrawal, we are entitled to terminate or withdraw from the contract in whole or in part if the creditworthiness or delivery capacity of the Supplier deteriorates such that his contract performance is in jeopardy, the Supplier suspends payments or insolvency proceedings against him are instituted or if the opening of such proceedings is denied due to a lack of asset mass.

## 18. Place of Performance, Place of Jurisdiction, Governing Law

The place of performance is the delivery address quoted in our order. The place of jurisdiction is at our choice either Villingen-Schwenningen or the legal forum of the Supplier. The laws of the Federal Republic of Germany shall exclusively apply with the exception of the law on the Conflicts of Law and the UN – Convention on the International Sale of Goods (CISG). The interpretation of delivery clauses shall be governed by the INCOTERMS, latest version.

Version of April 2008

ebm-papst St. Georgen GmbH & Co. KG.  
78112 St. Georgen