

## **General Terms and Conditions of Purchase**

### **Scope**

The following purchasing conditions apply only to entrepreneurs within the meaning of § 310 para. 1 of the German Civil Code (BGB).

### **§ 1 Application**

- (1) Our purchasing terms and conditions apply exclusively; we do not recognize any conflicting or deviating terms and conditions of the supplier unless we have expressly agreed to their validity in writing. Our purchasing terms and conditions also apply if we accept the supplier's delivery without reservation, even if we are aware of conflicting or deviating terms and conditions of the supplier.
- (2) These purchasing conditions also apply to all future transactions with the supplier in ongoing business relationships, even if no express reference is made to them, provided that the supplier received them with a previous order from us.

### **§ 2 Offer, Acceptance**

- (1) The supplier is obliged to accept our order in writing within a period of two weeks after receipt.
- (2) All agreements made between us and the supplier for the execution of this contract must be set down in writing in this contract.
- (3) We reserve all proprietary and copyright rights to illustrations, drawings, calculations, and other documents; they may not be made accessible to third parties without our express written consent. They are to be used exclusively for the production of goods based on our order; after completion of the order, they must be returned to us without being requested. They must be kept confidential from third parties; in this respect, the provisions of Section 8, Paragraph 5 also apply.

### **§ 3 Prices - Terms of Payment**

- (1) The price stated in the order is binding. Unless otherwise agreed in writing, the prices include delivery "DAP Lennestadt Incoterms 2020" as well as all packaging, transport, insurance and all other delivery costs.
- (2) The statutory value added tax is included in the price unless otherwise agreed in writing.
- (3) We can only process invoices if they include the order number specified in our order, as per the requirements. The supplier is responsible for all

consequences arising from non-compliance with this obligation, unless they can prove that they are not at fault.

- (4) The choice of payment method is at our discretion. Unless otherwise agreed in writing, we will pay the purchase price within fourteen days of delivery and receipt of invoice, with a two percent discount, or within 30 days of receipt of invoice.
- (5) If advance payments are agreed upon, we will pay these to the supplier after he has provided an unconditional bank guarantee or has agreed upon a transfer of ownership and loan agreement with us in accordance with our templates.
- (6) We are entitled to set-off and retention rights under the law.

#### **§ 4 Delivery time / Delivery**

- (1) The delivery time stated in the order is binding. The decisive factor for compliance with this timeframe is the receipt of the goods at the specified delivery address.
- (2) The supplier is obliged to inform us immediately in writing if circumstances arise or become apparent to him that indicate that the agreed delivery time cannot be met.
- (3) If deliveries are made outside of agreed dates, we reserve the right to invoice the supplier for any resulting costs (e.g. demurrage, etc.) and to settle the invoice accordingly.
- (4) In the event of a delivery delay, we are entitled to claim liquidated damages of 1% of the delivery value per completed week, but not exceeding 5%; further legal claims (withdrawal from the contract and damages in lieu of performance) remain reserved. The supplier has the right to prove to us that no damage or significantly less damage has occurred as a result of the delay.
- (5) Events of force majeure, including strikes, lockouts, riots, official actions, and other events beyond our control, entitle us to postpone fulfilling our acceptance obligations for the duration of the impediment plus a reasonable preparation period. If performance of the contract becomes unreasonable for one party due to a foreseen event, that party may withdraw from the contract without the other party being able to derive any claims for damages from the postponement of the acceptance obligation or the withdrawal from the contract.
- (6) The supplier is obliged to manufacture the goods to be delivered according to the agreed specifications and, moreover, according to current, relevant standards, specifications and the state of the art.
- (7) The supplier is not entitled to make partial deliveries without our prior consent. Over-deliveries may be returned by us at the supplier's expense without prior notice, with a corresponding deduction from the invoice, or stored. In any case, we are only obligated to make payment on the agreed delivery date.
- (8) Unless otherwise agreed in writing, delivery will be made "DAP Lennestadt Incoterms 2020".  
For deliveries agreed upon under "EXW Incoterms 2020," shipping must generally be handled by our main freight forwarder. Readiness for shipment,

including all necessary information, must be reported by email to "einkauf@schnuettgen.com". Any agreed-upon special delivery instructions take precedence. The supplier must adhere to the standard goods receiving times; any deviations from these require prior agreement.

- (9) The supplier is obliged to state our order number exactly on all shipping documents and delivery notes; if he fails to do so, we are not responsible for any resulting delays in processing.

## **Section 5 Defect Investigation – Liability for Defects**

- (1) If a quality assurance agreement has been concluded between the supplier and us, its separate provisions apply with regard to our obligations to inspect and report defects. Otherwise, we are obligated to inspect the goods for any deviations in quality or quantity within a reasonable period; a complaint is considered timely if it is received by the supplier within three working days of receipt of the goods, or, in the case of hidden defects, within three working days of their discovery.
- (2) We retain all statutory rights regarding defects; in any case, we are entitled to demand, at our discretion, either rectification of the defect or delivery of a new item from the supplier. The right to damages, in particular the right to damages in lieu of performance, is expressly reserved.
- (3) We are entitled to carry out the rectification of defects ourselves at the supplier's expense if the supplier is in default with the subsequent performance.
- (4) The limitation period shall be 36 months from the transfer of risk, unless the mandatory provision of Sections 445b, 478 para. 2 of the German Civil Code (BGB) applies.
- (5) The remaining mandatory provisions of the supplier's recourse remain unaffected.

## **Section 6 Product Liability – Indemnification – Liability Insurance Coverage**

- (1) Insofar as the supplier is responsible for product damage, he is obliged to indemnify us against third-party claims for damages upon first demand, insofar as the cause lies within his sphere of control and organization and he is liable to third parties.
- (2) Within the scope of its own liability for damages as defined in paragraph 1, the supplier is also obligated to reimburse us for any expenses pursuant to Sections 683, 670 of the German Civil Code (BGB) or pursuant to Sections 830, 840, 426 of the German Civil Code (BGB) that arise from or in connection with a recall action lawfully carried out by us. We will inform the supplier of the content and scope of such a recall measure in a timely manner in

advance, insofar as this is possible and reasonable, and give the supplier an opportunity to comment.

- (3) We will, in coordination with the supplier, take care of the necessary notification of the relevant competent authority in accordance with the provisions of the Product Safety Act.
- (4) The supplier undertakes to maintain product liability insurance with a coverage of €10 million per personal injury/property damage claim – lump sum – for the duration of this contract, i.e. until the respective expiry of the limitation period for defects; any further claims for damages to which we are entitled shall remain unaffected.

Alternatively:

The determination of appropriate coverage amounts is product- and industry-specific; the details should be examined in each case, taking into account the resulting adequacy of the damage.

## **§ 7 Protective Rights**

- (1) The supplier warrants that in connection with and through the delivery of its goods, no rights of third parties within the Federal Republic of Germany are infringed.
- (2) If we are held liable by a third party in this respect, the supplier shall be obliged to indemnify us against such claims upon our first written request.
- (3) In the event of claims for damages by a third party, the supplier retains the right to prove that it was not at fault for the infringement of the third party's rights. We are not entitled to enter into any agreements with the third party – in particular to reach a settlement – without the supplier's consent.
- (4) The supplier's indemnification obligation extends to all expenses that we necessarily incur as a result of or in connection with a claim by a third party, unless the supplier proves that it is not responsible for the breach of duty underlying the infringement of intellectual property rights.
- (5) The limitation period for these claims shall be three years, beginning from the transfer of risk.

## **§ 8 Retention of title – Provision of equipment – Tools – Confidentiality**

- (1) If we provide parts to the supplier, we retain title to these parts. Processing or transformation by the supplier is carried out on our behalf. If our goods subject to retention of title are processed with other items not belonging to us, we acquire co-ownership of the new item in proportion to the value of our item (purchase price plus VAT) relative to the other processed items at the time of processing.
- (2) If the goods we provide are inseparably mixed with other items not belonging to us, we acquire co-ownership of the new item in proportion to the value of the goods subject to retention of title (purchase price plus VAT) relative to the other mixed items at the time of mixing. If the mixing occurs in such a way that

the supplier's item is to be regarded as the principal item, it is agreed that the supplier transfers proportionate co-ownership to us in the amount of the value of the goods we provided; the supplier holds the sole ownership or co-ownership in trust for us.

- (3) We retain title to the tools; the supplier is obligated to use the tools exclusively for the production of the goods we have ordered. The supplier is further obligated to insure the tools belonging to us at their replacement value against fire, water, and theft damage at their own expense. The supplier hereby assigns to us all claims for compensation arising from this insurance, and we hereby accept this assignment. The supplier is obligated to carry out any necessary maintenance and inspection work, as well as all repair and servicing work, on our tools in a timely manner at their own expense. They must notify us immediately of any malfunctions; if they culpably fail to do so, our claims for damages remain unaffected.
- (4) If the security rights to which we are entitled under paragraphs 1 and/or 2 exceed the purchase price of all our unpaid goods subject to retention of title by more than 10%, we shall, at the supplier's request, release the security rights at our discretion.
- (5) The supplier is obligated to keep all received illustrations, drawings, calculations, and other documents and information strictly confidential. They may only be disclosed to third parties with our express consent. This confidentiality obligation remains in effect even after the termination of this contract. However, it expires if and to the extent that the manufacturing knowledge contained in the provided illustrations, drawings, calculations, and other documents has become generally known or was demonstrably already known to the supplier at the time of disclosure as defined in sentence 1.

## **§ 9 Final Provisions**

- (1) The exclusive place of jurisdiction – including for international disputes – for all disputes arising from or in connection with this contract or concerning its validity is our registered office in 57368 Lennestadt, Germany. However, we are also entitled in all cases to bring an action at a place of performance or our registered office that deviates from Section 9 Paragraph 2 of these Purchasing Conditions, provided that such court is a court of an EU Member State or a Contracting State of the Lugano II Convention. Mandatory statutory provisions, particularly those concerning exclusive jurisdiction, remain unaffected.
- (2) Should one or more provisions be or become wholly or partially invalid, the validity of the remaining provisions shall not be affected. The same applies in the event of a gap in the regulations. The parties shall replace any invalid provision with a valid provision that most closely approximates the economic purpose of the invalid provision.

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HRB5913 District Court Siegen

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