

## **1 General / Scope**

**1.1** Our terms and conditions of purchase and payment apply only to business persons per § 14 BGB [German Civil Code]. We do not recognise any terms and conditions of the contractual partner that conflict with or deviate from our terms and conditions of purchase, unless we have expressly agreed to their validity in writing. Our terms and conditions of purchase shall also apply if we accept the delivery of the contractual partner without reservation in the knowledge of terms and conditions of the contractual partner that conflict with or deviate from our terms and conditions of purchase and payment.

**1.2** All agreements made between us and the contracting party for the purpose of executing this contract shall be set down in writing prior to the conclusion of the contract.

**1.3** Our terms and conditions of purchase and payment shall also apply to all future transactions with the contractual partner.

## **2 Order / Documents / Conclusion of Contract / Subcontractor**

**2.1** Orders, contracts, agreements and changes to such are only binding if they are placed or confirmed by us in writing; a fax or e-mail is sufficient to meet the written form requirement. Orders and commissions may be freely revoked by us at any time prior to their acceptance by the contractual partner.

The order shall be decisive for the scope of the content of the contract. The contractual partner is obliged to inform us of obvious errors and incompleteness of the order.

**2.2** A contract is concluded if the contractual partner accepts our order without reservation within a period of 5 working days by written confirmation by letter, fax or e-mail. Order confirmations received late shall be invalid unless we expressly acknowledge a conclusion of contract in writing.

**2.3** We reserve the property rights and copyrights 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 production on the basis of our order; after completion of the order they are to be returned to us on first written request. They must be kept secret from third parties; in this respect, the provisions of section 12.5 shall apply in addition.

**2.4** The contracting party shall carry out the work by its own qualified personnel. Insofar as the contractual partner for its part wishes to commission third parties („subcontractors“) in whole or in part with the provision of the commissioned deliveries and services, this shall require our prior express written consent. This shall apply accordingly to the change or involvement of further subcontractors.

## **3 Prices / Terms of payment**

**3.1** The price stated in the order shall be binding upon unconditional acceptance. Price increases or additional claims of any kind, also due to increases in procurement, wage or material prices as well as currency fluctuations, are excluded subject to the provisions of § 313 BGB (disruption of the basis of the business). In the absence of a written agreement to the contrary, the price includes delivery „carriage free“, including packaging, freight, postage, value insurance, transport insurance and value added tax, as well as customs clearance in the case of foreign deliveries.

**3.2** The contracting party shall immediately issue an invoice for each delivery. The invoice must meet the requirements of §§ 14, 14a UStG [VAT law]. The invoice shall be sent to our head office in a single copy and with a separate statement of the value added tax applicable in the period of delivery/performance. The invoice shall also contain, in accordance with the order, the order number, a description of the individual invoice items with a designation of the item numbers, the place of use, the net unit prices for the individual invoice items as well as the place and type of delivery and the EU VAT identification number. Insofar as we have agreed to bear transport costs in individual cases, the invoices must also be accompanied by the originals and copies of the waybills with full details of the route, wagon number etc. and the transport invoices; in the case of a collective delivery, these invoices must state the weight and the partial amount of the goods delivered. We are entitled to reject all invoices that do not comply with these specifications as not being in order and to refuse payment.

**3.3** Payment periods shall commence at the earliest on the day on which the verifiable, proper invoice corresponding to the order/contract and clause 3.2 is received at the invoice address specified by us, but not before receipt of the goods or acceptance of the work or provision of the service. In the event of the return of the invoice for a reason for which we are not responsible, any payment periods shall not commence before receipt of the invoice corrected by the contractual partner.

**3.4** Unless otherwise agreed in writing, we shall pay within 14 days, calculated from receipt of the goods or acceptance of the work or provision of the service, with a 3% discount or, insofar as the above conditions are met, net within 30 days of receipt of the invoice.

**3.5** The limitation period for payment claims of the contracting party is one year, beginning with the fulfilment of its main performance obligation, but not before the beginning of the payment period.

## **4 Retention of title / assignment / set-off**

**4.1** We only accept the simple retention of title of the contractual partner. Special forms of retention of title, in particular a forwarded, downstream and extended retention of title and group retention of title, are not accepted by us.

**4.2** The assignment/collection of claims of the contractual partner against us requires – without prejudice to the assignment of a monetary claim per § 354a HGB [German commercial code] – our prior written consent.

**4.3** A set-off or the assertion of a right of retention by the contractual partner against us is only permissible with undisputed or legally established counterclaims.

## **5 Place of performance / delivery period / time of performance**

**5.1** The provision of deliveries and services shall be made to the place of receipt / shipping address designated by us in the order. If no specific place is named, our head office shall be deemed to be the place of performance.

**5.2** Unless a fixed date has been agreed at the time of conclusion of the contract, the deliveries and services shall be provided without delay. The delivery time stated in the order accepted without reservation is binding within the meaning of § 376 HGB.

The receipt of the defect-free object of performance at the place(s) of receipt / shipping address specified by us or at our head office or, insofar as the law on contracts for work and services applies, the acceptance of the delivery or performance or, if the law on contracts for services applies, the commencement of the performance of the service, shall be decisive for compliance with the delivery/service date or a delivery period.

**5.3** If the contractual partner recognises that an agreed deadline cannot be met by them, they must inform us immediately in writing, stating the expected duration of the delay. The obligation to meet the deadlines remains unaffected.

**5.4** We accept partial deliveries only after prior written agreement. In the case of agreed partial deliveries, the remaining quantity shall be listed on the associated shipping documents and delivery notes.

**5.5** In the event of a delay in delivery, we shall be entitled to the statutory claims. In particular, we are entitled to demand damages instead of performance and withdrawal after the fruitless expiry of a reasonable period. If we claim damages, the contractual partner shall be entitled to prove to us that they are not responsible for the breach of duty.

**5.6** Acceptance of delayed deliveries by us shall not constitute a waiver of claims based on delay.

**5.7** If the contractual partner fails to meet an agreed delivery/performance date for reasons for which they are responsible, we shall be entitled to a penalty of 0.5 percent of the agreed total remuneration per day of delay. Unless otherwise agreed, the penalty shall be limited to a total of 5 percent of the purchase price or remuneration for work/services. We expressly reserve the right to claim higher damages incurred as a result of the delay, including lost profits.

**5.8** If the delivery/performance date is exceeded as a result of force majeure, we may demand delivery/performance at a later date on the originally agreed terms or, after expiry of a reasonable grace period set, withdraw from or terminate the contract in whole or in part.

## **6 Packaging and shipping / Labelling / Environmental protection**

**6.1** The contracting party shall pack all products to be delivered in such a way as to avoid damage or loss under normal conditions. In principle, the contracting party must pack, label and ship hazardous products in accordance with national/international regulations. In addition to the hazard class, the accompanying documents must also contain the other information specified by the respective transport regulations.

The packaging must allow for forklift transport and stacking (max. 1.0 m high).

**6.2** The contractual partner shall, at our request, take back the packaging used by them in whole or in part at their own expense; in the case of subsequent deliveries, in an exchange procedure. The contractual partner shall dispose of the residual materials / waste produced independently and under their own responsibility in accordance with the waste disposal regulations, unless a different arrangement has been agreed with us in writing in advance in individual cases.

**6.3** As a manufacturer or distributor in the sense of the VerpackungsG. [German packaging law], they shall in particular be responsible for taking back transport packaging, unless otherwise agreed with us in individual cases. The return/disposal shall be carried out by them in accordance with the legal provisions in force at the time of the return. At our request, the con-

tractual partner shall provide us with certificates on the packaging materials used.

**6.4** The contractual partner undertakes to fully comply with their obligations as a manufacturer or distributor within the meaning of BattG. [German battery law], VerpackG. [German packaging law] and ElektroG. [German electrical waste law]. The contractual partner further undertakes to implement the requirements of LkSG. [German supply chain law] and to inform us promptly of the measures it has taken in this regard, e.g. the establishment of a management system in accordance with ISO 14001.

**6.5** If harmonised European regulations are relevant for a contractual product, the contractual partner shall carry out the conformity assessment procedure in accordance with the European directives and include the declaration of conformity in its technical documentation. Furthermore, they undertake, insofar as this has not already been done by the manufacturer, to mark the products purchased from them in conformity with the directive (CE mark). If the contracting party is only a reseller or distributor within the meaning of the law, it shall ensure that the equipment sold bears an appropriate manufacturer's mark or that the manufacturers are registered within the meaning of the law.

**6.6** The contractual partner is obliged to inform us on request whether products to be delivered contain PCB or halogen and to stipulate which products are affected. As far as technically possible, the contractual partner shall refrain from using/supplying these materials.

## **7 Transfer of risk / documents**

**7.1** Delivery and dispatch shall be at the risk of the contracting party.

**7.2** The contracting party shall send a detailed dispatch note for each consignment on the day of dispatch, separately from the goods and invoice. The delivery shall be accompanied by a delivery note and packing slip stating the date (issue and dispatch), the content of the delivery (item number and quantity), our order identifier (date and number), the customs tariff number as well as the country of origin per commercial law. In the case of transport by ship, the name of the shipping company and the ship must be stated in the shipping documents and invoice. The contracting party must always choose a suitable means of transport. Among equally suitable ones, they have to choose the most favourable one. In all dispatch notes, delivery notes, packing slips, waybills, invoices on the outer packaging, etc., the order references and details of the place of unloading prescribed by us must be stated in full.

**7.3** The contracting party shall be liable for damages and shall bear the costs arising from the non-observance of the above clauses 6.1 and 7.2. They are also responsible for the compliance of their subcontractors („Subcontractors“) with these shipping regulations. All consignments which cannot be accepted due to non-compliance with clauses 6.1 and 7.2 shall be stored at the expense and risk of the contracting party. We are entitled to determine the content and condition of such consignments.

**7.4** Tools and equipment shall not be loaded together with delivery items.

**7.5** Insofar as an acceptance is prescribed or agreed by law, this shall be decisive for the transfer of risk.

## **8 Acceptance**

Every performance under a contract for work and services requires formal acceptance with a record of such. If the contractual partner has provided the service, they shall notify us or the customer named in the order, if any, in writing of the acceptability. Acceptance by conclusive behaviour, e.g. by the physical acceptance, use or commissioning or economic use within the scope of a trial operation or payment, shall not be deemed to be acceptance. § 640 para. 2 BGB remains unaffected.

## **9 Warranty**

**9.1** Insofar as the contractual partner provides quality or other information about goods/products or other delivery or service which positively exceeds the usual, presumed or agreed quality, this information shall also be deemed to be the agreed quality within the meaning of the law. All deliveries and services must also comply with the relevant laws, regulations, directives and standards, in particular the generally recognised rules of technology as well as the relevant regulations of occupational health and safety, environmental protection and fire protection at the place of delivery and the REACH Regulation (EC) 1907/2006 (Registration, Evaluation, Authorisation and Restriction of Chemicals) and the RoHS 2 Directive 2011/65EU (Restriction of Hazardous Substances 2011/65EU). The contractual partner shall in particular ensure compliance with the norms and standards generally applicable at the time of delivery/service provision in accordance with the technical specifications (e.g. in accordance with DIN, VDE, ETSI, ITU-T, EMC, CE, etc.) and shall inform us of which norms and standards are complied with. The contracting party shall provide us with any proofs of origin requested by us with all the necessary details and duly signed without delay.

**9.2** If the contracting party fails to fulfil their obligation of subsequent performance - at our discretion by remedying the defect (subsequent improve-

ment) or by delivery of a defect-free item (replacement delivery), unless they prove that the subsequent performance variant chosen by us would cause disproportionate costs and no significant disadvantages arise from the other subsequent performance variant - within a reasonable period set by us, we may remedy the defect ourselves and demand reimbursement from the contracting party of the expenses required for this, without prejudice to other rights.

In particular, further legal claims for withdrawal, reduction and/or damages shall remain unaffected by this provision.

**9.3** Notwithstanding § 442 (1) para. 1.2 of the BGB, we shall also be entitled to unlimited claims for defects if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.

**9.4** In the event of a serial defect, the contracting party is obliged to immediately inspect all identical products – including those possibly affected by the serial defect – at its own expense. If they do not comply with our written request to inspect the goods within a reasonable period of time, we shall be entitled – without prejudice to further claims – to withdraw from all current contracts which could be affected by the serial defect. A serial defect exists if the same or comparable defects occur in at least 5% of the products concerned, in particular as a result of faulty development or series production and as a result of material defects.

**9.5** The limitation period for warranty claims is 36 months, calculated from the transfer of risk, unless mandatory provisions of § 437 BGB in conjunction with § 445a BGB and 445b BGB intervene or the contractual partner grants a longer period.

**9.6** After rectification of defects, the warranty period for the rectified or replaced products shall start again.

## **10 Product liability / indemnification / liability insurance cover**

**10.1** Insofar as the contracting party is responsible for product damage, they shall be obliged to indemnify us against claims for damages by third parties on first written demand, insofar as the cause lies within their sphere of control and organisation and they are themselves liable in relation to third parties.

**10.2** Within the scope of its liability for cases of damage within the meaning of clause 10.1, the contracting party shall also be obliged to reimburse us for any expenses per §§ 683, 670 BGB and §§ 830, 840, 426 BGB arising out of or in connection with a recall action carried out by us. We will inform the contractual partner – as far as possible and reasonable – about the content and scope of the recall measures to be carried out and give them the opportunity to comment. Other statutory claims to which we are entitled shall remain unaffected.

**10.3** The contractual partner undertakes to maintain a product liability insurance policy with a sum insured of € 10 million per personal injury / property damage – lump sum – for the cases of clause 10.1 to cover any instances of damage due to a claim against our company arising from product liability and to prove the existence of such an insurance policy to us upon first written request by written confirmation of the insurer. The contractual partner hereby assigns to us all claims for compensation due to the aforementioned product damage from this insurance, and we hereby accept the assignment.

## **11 Property rights**

**11.1** The contracting party guarantees that no rights of third parties within the European Union are infringed in connection with their delivery.

**11.2** If a claim is made against us by a third party for this reason, the contractual partner shall be obliged to indemnify us against these claims upon first written request; we shall not be entitled to make any agreements with the third party – without the consent of the contractual partner – in particular to conclude a settlement.

**11.3** The indemnity obligation relates to all expenses necessarily incurred by us or in connection with a claim by a third party.

**11.4** The limitation period for the claims referred to in Clause 11.2 shall be ten years calculated from the conclusion of the contract.

## **12 Provision of equipment – Tools – Confidentiality**

**12.1** If we provide parts to the contractual partner, we retain ownership of these. Any processing or transformation by the contractual partner shall be carried out for us. If goods owned by us are processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of our item (purchase price plus VAT) to the other processed items at the time of processing.

**12.2** If an item owned by us and provided by us is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the item subject to retention of title (purchase price plus VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the contractual partner's item is to be regarded as the main item, it shall be deemed agreed that the contractual partner transfers co-ownership to us on a pro rata basis; the contractual partner

shall keep the sole ownership or the co-ownership for us.

**12.3** We retain ownership of tools provided by us. After processing the corresponding order or the corresponding order, they are to be returned to us without request and without objection, unless expressly agreed otherwise in writing. Markings on our tools referring to our ownership may not be changed. The contractual partner is obliged to use the tools exclusively for the manufacture of the goods ordered by us. The contractual partner is also obliged to insure the tools belonging to us at replacement value against fire, water, vandalism and theft damage at their own expense and to prove the existence of such insurance to us upon first written request by written confirmation of the insurer. At the same time, the contracting party hereby assigns to us all claims for compensation arising from this insurance; we hereby accept the assignment.

The contractual partner is obliged to carry out any necessary maintenance and inspection work on our tools as well as all maintenance and repair work at their own expense and in good time.

They shall notify us immediately of any malfunctions; if they culpably fail to do so, claims for damages shall remain unaffected. Further details may be agreed by the parties in a separate loan agreement to be concluded.

**12.4** Moulds, models, tools, films, drawings, etc. which have been produced by the contractual partner for the purpose of carrying out the order are produced for us and become our property upon production. They are to be marked as our property by the contractual partner. Insofar as industrial property rights arise for these objects, these shall be established for us upon creation and shall be settled with the payment of the respective remuneration owed for the order or the respective job. This applies even if they remain in the possession of the contracting party.

**12.5** With regard to illustrations, drawings, calculations, moulds, models, tools and other documents which are our property and which are also subject in particular to industrial property rights, including copyright, the contractual partner is obliged to keep all documents and information received strictly confidential. They may only be disclosed to third parties with our express consent. The obligation to maintain secrecy shall also apply after the execution of the respective individual contract. It shall expire with regard to the illustrations, drawings, calculations and other documents provided if and to the extent that the manufacturing knowledge contained therein has become generally known.

**12.6** Insofar as the security rights to which we are entitled in accordance with section 12.1 and/or section 12.2 above exceed the purchase price of all our reserved goods not yet paid for by more than 10%, we shall be obliged to release security rights of our choice in the corresponding amount at the request of the contractual partners.

### **13 Restrictive agreements**

We are entitled to terminate a contract without notice or to withdraw from it if the contractual partner has demonstrably participated in agreements restricting competition to our detriment.

In the event of termination without notice, the contractual partner shall only be entitled to a part of the agreed remuneration corresponding to the scope of delivery and services already provided free of defects. The right to terminate for other good cause remains unaffected. In the event of withdrawal, the statutory regulations shall apply.

### **14 Change in production / cessation / discontinuation**

Insofar as the contractual partner intends to change or discontinue their production, they shall be obliged to notify us of this without delay. In the event of a change/discontinuation of production, the contractual partner shall ensure that the materials previously delivered to us are still available for delivery for at least 36 months after their notification of discontinuation to us to the extent of the volume ordered in the calendar year preceding the discontinuation.

We are entitled to replace this delivery obligation with an offer of a return free of charge for us in return for a credit note for materials still in our possession. A corresponding offer must be submitted to the contractual partner within 60 days of receipt of the notification of the cessation of production by us.

### **15 Export checks / customs**

**15.1** The contracting party shall be obliged to inform us in its business documents of any authorisation requirements for (re-)exports of the contractual products in accordance with German, European, US export and customs regulations as well as the export and customs regulations of the country of origin. For this purpose, the contracting party shall provide the following information at least in its offers for the relevant contract product items:

- The export list number per Annex 1 Appendix AL (Export List) to the AWW [German foreign trade and payments ordinance] or comparable list items of relevant export lists,
- The export list number per the Annexes to Regulation (EU) 2021/821,
- For US contract products, the ECCN (Export Control Classification

Number) of the CCL (Commerce Control List, if the goods are subject to the status EARR99 (U.S. Export Administration Regulation),

- The commercial contractual origin of its goods and the components of its goods, including technology and software,
- Whether the goods were transported through the US, manufactured or stored in the US, or manufactured using US technology,
- The statistical contract product number (commodity number / HS code) of the contract products,
- All other information and data which we require for export and import and, in the case of resale, for re-export of the goods; and
- A contact person in their company to clarify any queries from us.

**15.2** At our request, the contracting party shall be obliged to provide us with all further foreign trade data relating to the contractual products and their components in writing and to inform us in writing without delay of any changes to the above data.

### **16 Place of jurisdiction / choice of law**

**16.1** The place of jurisdiction for disputes with the contractual partner is the location of our head office. Furthermore, we are entitled to bring an action against the contractual partner at their general place of jurisdiction.

**16.2** The law of the Federal Republic of Germany shall apply exclusively, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG, „Vienna Sales Convention“).

**16.3** The contractual language is German.

### **17 Miscellaneous**

**17.1** The contractual partner may only refer to our business relationship to third parties, in particular for advertising purposes, with our written consent.

**17.2** Verbal ancillary agreements shall not be valid. All declarations concerning or in connection with the contract as well as the agreement of binding deviations from the provisions of these terms and conditions must be made in writing (letter, fax or e-mail). This also applies to the waiver of the written form requirement.

**17.3** If individual provisions of these terms and conditions or of the delivery transaction are or become invalid in whole or in part, the validity of the remaining provisions or other parts of such clauses shall not be affected thereby.