

**General Terms and Conditions of Supply and Payment  
(October 2013)**

**1. Scope**

- 1.1 These terms and conditions apply to our deliveries of goods and services to entrepreneurs and enterprises, legal entities subject to public law and special assets subject to public law.
- 1.2 Our deliveries of goods and services are provided exclusively on the basis of these terms and conditions below. The business terms and conditions of the partner, unless expressly accepted by us, have no validity.
- 1.3 These terms and conditions shall also apply to any future deliveries of goods and services and contractual relationships between the partner and our company.
- 1.4 If an agreement, a contract or an order between us and our partner to which these terms and conditions apply contains provisions which are inconsistent with these terms and conditions, then those provisions in the agreement, contract or order shall always prevail.

**2. General Provisions**

- 2.1 Full details of any verbal agreements will be immediately confirmed in writing by the contracting partners.
- 2.2 Orders will not be binding until they are confirmed by us.
- 2.3 Information and illustrations contained in brochures and catalogues are, in accordance with usual trade practice, regarded as approximations unless they have been expressly described by us as binding.

**3. Confidentiality**

Each of the contracting partners will use all documents (which will also include samples, models and data) and information received by them under the business relationship only for the contractual purpose and maintain secrecy In respect of third parties with the same care as applied to their own documents and Information, where the other partner describes them as confidential or has an obvious interest in maintaining secrecy in respect of such documents or Information.

**4. Prices**

Our prices are in Euro, exclusive of VAT, packing, freight, postage and insurance.

- 4.1 Where a binding order quantity is not agreed, our calculation will be based on the non-binding order quantity expected by the partner for a specific period of time (target quantity). Where the partner purchases less than the target quantity, we are entitled to increase the unit price by an appropriate amount. Where the partner purchases more than the target quantity, we will reduce the unit price accordingly, provided that the partner has given notice of the surplus requirement not less than six (6) months before delivery.
- 4.2 In the case of supply contracts at call, unless otherwise agreed, binding quantities are to be notified to us by call not less than three (3) months before the delivery date.
- 4.3 Any additional costs caused by our partner through late calling or subsequent amendments to the call in respect of time or quantity are to be borne by the partner; in this respect our calculation will prevail, if the calculation of costs is reasonable.

## **5. Payment Terms**

- 5.1 All invoices are due for payment within thirty (30) days of the invoice date.
- 5.2 Where we have indisputably supplied goods which are partly defective, our partner is nevertheless obliged to pay for the non-defective part. In other respects the partner may only set-off payment against counter-claims which have been determined by final judgment or are not disputed.
- 5.3 If the payment terms are not met, we shall be entitled to bill interest on arrears at the rate charged to us by the bank for current account overdrafts, but in any event at a minimum of eight (8) percentage points above the applicable base interest rate of the European Central Bank.
- 5.4 In the event of any delay in payment we may, after giving notice in writing to the partner, suspend our obligations until payments have been received.
- 5.5 Bills of exchange and cheques will only be accepted where this has been agreed, and only on account of performance and on condition that they can be discounted. Discount charges will be calculated from the due date for payment of the invoice amount. A guarantee for presentation of bills of exchange and cheques at the due and proper time and for the lodging of a protest is excluded.
- 5.6 If it becomes apparent after conclusion of the contract that our claim to payment is at risk owing to the partner's lack of adequate financial capacity, we shall be entitled to refuse performance and to set the partner a reasonable deadline within which he must make payment or provide security simultaneously with our delivery. If the partner refuses to do so or the deadline expires without result, we shall be entitled to rescind the contract and claim damages.

## **6. Samples, Workshop Facilities and Raw Material**

- 6.1 Manufacturing costs for samples and workshop facilities (tools, forms, stencils, moulds, templates etc.) will, unless otherwise agreed, be invoiced separately from the goods to be supplied. This also applies to workshop facilities which have to be replaced as a result of wear and tear.
- 6.2 Where, during the period of manufacture of samples or workshop facilities, the partner abandons or terminates the co-operation, all manufacturing costs incurred up to that time will be borne by that partner. The same applies in respect of the costs of raw material to the extent such raw material was purchased by us to manufacture the goods ordered by our partner and cannot be used otherwise by us; the scrap value of the raw material will be deducted from the costs to be borne by our partner. Upon the request and at the expense of the partner, we will store the raw material for a time period not exceeding one (1) year and use it for other orders of that partner. Alternatively, the partner may choose to buy the raw material against full payment of the costs of the raw material.
- 6.3 Even where the partner has paid for them, the workshop facilities remain in our possession at least until completion of the supply contract. Thereafter, the partner is entitled to reclaim the workshop facilities, where a mutual agreement has been reached in respect of the time of delivery and the partner has fully complied with his contractual obligations. If the partner has only partly financed the workshop facilities because they are used by us also for other customers, the workshop facilities will remain our property.

## **7. Delivery**

- 7.1 Unless otherwise agreed, we will deliver "ex works" (INCOTERMS 2010). Compliance with the delivery date or delivery period will be based on our notification of readiness for dispatch or collection.

- 7.2 The delivery period commences on dispatch of our order confirmation and will be extended as appropriate where the provisions of Clause 15 below apply.
- 7.3 Partial deliveries are permitted to the extent reasonable. The partner shall not refuse the acceptance of a partial delivery by us, unless such acceptance would infringe the partner's justified interest. Partial deliveries will be invoiced separately.
- 7.4 Production-related long or short deliveries are permitted within a tolerance of ten (10) per cent of the total order quantity. The total price will be adjusted accordingly.

## **8. Dispatch and Passing on of Risk**

- 8.1 Goods which are notified as being ready for dispatch are to be taken over immediately by the partner. We are otherwise entitled, at our own discretion, to dispatch them or to store them at the cost and risk of the partner. In the absence of any special agreement, we will select the transport method and routing.
- 8.2 The risk is passed on to the partner on handover to the railway, forwarding agent or freight carrier or on commencement of storage, but in any event not later than departure from the factory or warehouse; this also applies if we have undertaken delivery.
- 8.3 Any delivery services carried out by us shall be made in the name of the partner, who shall bear the risks and the responsibility connected with such services. The partner shall reimburse us for any and all expenses incurred in connection with such services, provided such expenses are appropriate and properly documented in the manner usually applied in such cases.
- 8.4 Insurance shall be taken only upon request of and at the expense of the partner.

## **9. Delay in Delivery**

- 9.1 In the event of delivery being delayed by one of the circumstances as set forth in Clause 15 below, or as a result of any action or omission of the partner, an extension of the delivery period will be granted appropriate to the circumstances.
- 9.2 The partner is only entitled to rescind the contract if we are responsible for the delivery date not being met and the partner has granted us a reasonable period of grace which has expired without result.

## **10. Intellectual Property**

- 10.1 All names, trademarks, designs, copyrights, patents, utility models, trade and/or business secrets, know-how (hereinafter referred to as "**Intellectual Property Rights**") in the goods and/or the sales documentation thereto is and shall remain our property and nothing in a contract or call order shall be deemed to grant to the partner a license or other right to use our Intellectual Property Rights, except the right to use them in the scope and for the purpose necessary for partner's own use of the goods.
- 10.2 We warrant that we are not aware of any older Intellectual Property Rights of third parties which could prevent the use of the goods. The warranty of the non-existence of such Intellectual Property Rights is, however, hereby expressly excluded.
- 10.3 The partner will not use any of our trademarks or names as part of the partner's corporate or trade names or permit any third party to do so without our prior written consent. The partner undertakes not to use our trademarks nor to use names possibly confusing with our trademarks themselves, nor to use them as registration name(s) for an internet domain.
- 10.4 The partner does not have the right to use Intellectual Property Rights made accessible to him under a contract or call order for the research in, production and/or the marketing of competing

products. Without limitation to the foregoing, any Intellectual Property Rights which the partner may, directly or indirectly, develop in violation of the preceding sentence that relates to the goods, or to the way they are used, shall be our property and is hereby assigned to us.

- 10.5 If the partner learns about an infringement of the Intellectual Property Rights committed by third parties, the partner shall inform us within ten (10) working days thereof. The partner shall send the notification by registered mail to our address. The partner is obligated to support us in a suitable manner in the defense of the Intellectual Property Rights if this is appropriate in the individual case. The partner is entitled to join any infringement action raised by us in order to claim compensation for partner's loss.
- 10.6 The parties shall inform one another if third parties proceed against us or the partner with the allegation that the use of Intellectual Property Rights infringes the rights of any such third party within ten (10) days of the receipt of such a claim. The partner shall send the notification by registered mail to our address given above. We shall send the notification to an address that has to be submitted by the partner within two (2) weeks after the contract became effective or the call order has been placed. If no address is submitted within the aforementioned period of time we shall send the notification to the place where the partner has his registered offices. The defense against attacks on Intellectual Property Rights shall be exclusively reserved for us. The parties are obligated to support one another in the appropriate manner in the defense against infringement claims if this defense is appropriate in the individual case.
- 10.7 We undertake to indemnify or compensate the partner within the parties' internal relationship against any and all claims by third parties based on the use of Intellectual Property Rights.

## **11. Reservation of Title**

- 11.1 We reserve the right of ownership in respect of the goods supplied until such time as all claims arisen in connection with the business relationship with the partner have been met.
- 11.2 The partner is entitled to sell, work or process these goods in the regular course of business, provided that he meets his obligations arising from the business relationship with us in good time. However, he may neither pledge the reserved goods nor transfer ownership of them as security. The partner is obliged to protect our rights if goods which are subject to reservation of title are resold on credit.
- 11.3 In the event a partner breaches his duties, in particular in the case of delayed payment, we shall be entitled, after a reasonable period of grace granted to the partner for performance has elapsed without result, to rescind the contract and take back the goods; this shall not affect the statutory provisions concerning cases where it is not necessary to grant a period of grace. The partner shall be obliged to surrender the goods. Our right to claim damages remains unaffected.
- 11.4 We shall be entitled to rescind the contract if an application is filed for insolvency proceedings to be instituted against the partner's assets.
- 11.5 With immediate effect the partner assigns to us as security all claims and rights deriving from the sale or any hiring (such hiring requires or prior written consent) of goods over which we have rights of ownership. We hereby accept the assignment. The security is limited to an amount equivalent to the price agreed between us and the partner plus a safety margin of ten percent (10%). Should the value of all security granted to us exceed our aggregate receivables against the partner by more than ten percent (10%) the partner shall be entitled to demand a release of security in the exceeding amount. The partner is entitled to collect receivables assigned to us in his own name as trustor. However, we may revoke this authorization and the right to resell the goods if the partner is in default of performance of material obligations, such as making payments to us. In this case, we are entitled to collect the receivables ourselves.

- 11.6 Any working or processing of the goods which are subject to reservation of title shall at all times be carried out by the partner on our behalf. If the goods which are subject to reservation of title are processed or inseparably mixed with other items not owned by us, we shall acquire joint ownership of the new product in the proportion of the invoice value of the goods which are subject to reservation of title to the other processed or mixed items at the time of processing or mixing.
- 11.7 If our goods are combined or inseparably mixed with other moveable items to form a single product and another item is deemed to be the principal product, the partner shall transfer joint ownership to us on a *pro rata* basis, as far as the principal product is owned by him. The partner shall maintain ownership or joint ownership on our behalf. In all other respects the same shall apply to the product created by processing or combination or mixing as to the goods which are subject to reservation of title.
- 11.8 The partner must inform us immediately of enforcement measures being taken by third parties in respect of the reserved goods, assigned receivables or other security by handing over to us the documents required for any intervention. This also applies to interference of any other kind.

## **12. Characteristics, Warranty and Defects**

- 12.1 Our liability under the statutory warranty (sections 437 et seqq. or sections 633 et seqq. of the German Civil Code) is hereby expressly excluded, and the claims provided for in these general terms and conditions are the sole remedy of the partner in case of non-conformity of the goods with those characteristics as agreed in the underlying contract or call order.
- 12.2 The quality of the goods is determined exclusively by the agreed technical supply specifications. If the goods have to be supplied in accordance with drawings, specifications, samples and the like provided by our partner, the latter will take over the risk of fitness for the Intended use. The condition of the goods in accordance with the contract is determined as at the time of passing on of risk.
- 12.3 For the avoidance of doubt, statements in price lists, in brochures and catalogues, on webpages and other information material and/or other marketing materials, as well as good descriptions are no guarantee for the characteristics of the goods to be delivered unless they have been integrated in a contract as general sales and delivery terms that determine the condition of the goods or services. Any specific guarantees must be expressly agreed upon between the parties in writing.
- 12.4 We reserve the right to change the characteristics of the goods with regard to their construction, material and/or finish in a way which is not essential, but under no circumstances otherwise than is customary in the industry. The characteristics specifically agreed upon between the parties in writing must not be changed.
- 12.5 The partner shall inspect the goods upon delivery without undue delay, but in any event not later than two (2) weeks following the delivery. Where it is agreed that the goods are to be accepted in an acceptance procedure or that initial samples are to be tested, warranty claims for defects which could have been discovered by the partner during the acceptance procedure or by testing of initial samples are excluded.
- 12.6 We shall be released from the warranty claims of the partner, if the partner knew about the defects on the date of entering into the agreement.
- 12.7 The partner shall notify us of any defects and/or shortcomings in writing, quoting the number of the order, as stipulated on the confirmation order or the contract. Any such notice of defect shall be made without undue delay, but in any event not later than within one (1) week from the

discovery of the defect and/or shortcoming. Within two (2) weeks from the day of receipt of the notice of defect, we shall have the right to inspect and/or test the goods subject to the notice of defect. We may also demand that for the purposes of such inspection and/or test, the partner returns such goods (or their samples) to us; we will bear the transport costs where the notice of defect is justified. In the event of the partner failing to observe these obligations contained in this Clause 12.7, or carrying out modifications of the goods which are subject to the notice of defect without our consent, he will lose any warranty claims in respect of these goods.

- 12.8 We shall inform the partner whether we accept the warranty claims within one (1) month from the date of the receipt of the notice of defect. If we accept the warranty claim, we shall notify the partner, at our sole discretion, the remedies to be performed by us, in all cases free of charge to the partner (subsequent performance). To this effect, we may decide that subsequent performance is taken by (i) repairing the goods, or (ii) delivery of new goods. If the repair of the goods has failed, or if a rectification period for the repair set by the partner has expired unsuccessfully, the partner will have the right to rescind the contract or reduce the purchase price. There shall be no rescission right in the event of an insignificant defect.
- 12.9 The partner shall grant us a reasonable period of time for such subsequent performance. In case (i) the safety of the partner's operations is endangered, or (ii) a risk of a disproportionately great damage exists, or (iii) we are in default of our obligation to remedy the defects, despite being granted a reasonable period of time by the partner, the partner shall have the right, after having notified us accordingly, to remove the defects by himself or to have the defects removed by a third party. In such case the partner may demand repayment of the reasonable and documented expenses, he incurred in connection therewith.
- 12.10 Goods which have been replaced by us must be returned to us. Transport costs for those goods will be borne by us
- 12.11 We shall not be liable for (i) defects of the goods caused by unsuitable or improper use of those goods, (ii) defective assembly or operation by the partner or third parties, (iii) normal wear and tear, (iv) defective or negligent handling or (v) the consequences of unsuitable modifications or repairs undertaken by the partner or third parties without our approval, in particular, but not limited to, by non-observance of the relevant instructions or manuals, incorrect start-up installation by the partner, usage of unsuitable accessories or unsuitable spare parts, inappropriate repair works as well as unsuitable materials or defective construction designs prescribed by the partner to us. There shall be no warranty claims in respect of defects which only reduce the value of the goods or their fitness for their intended use in an insignificant manner.
- 12.12 The limitation period for the warranty claims shall be twelve (12) months from the earlier of (i) the date of delivery of the goods to the partner or (ii) the date we have notified the partner on the readiness of the goods for delivery and/or dispatch, in accordance with Clause 7.1 above. This shall not apply where German law prescribes longer periods of time as mandatory.

### **13. Liability**

- 13.1 We shall be liable to pay damages – irrespective of the legal reason – in the event of intentional misconduct or gross negligence. In the event of slight negligence we are only liable for
- (i) harm to life, body or health,
  - (ii) damage due to the infringement of a significant contractual obligation (an obligation that must be fulfilled to ensure the orderly implementation of the contract and which the contractual partners can rely upon to be regularly fulfilled – so-called cardinal obligations). In this case, our liability is limited to compensation for the typical and



reasonably foreseeable damage. Indirect loss and consequential damages due to defaults in the delivered object are only subject to compensation if such damage can be typically expected and when the delivered object is used in conformity with its intended purpose.

- 13.2 The limitations of our liability included in Clauses 12 and 13.1 shall not apply
- (i) if we have deceitfully concealed a defect;
  - (ii) in case of absence of guaranteed characteristics, if and to the extent the purpose of the guarantee was to cover the partner against losses other than those deriving from the supplied goods themselves; or
  - (iii) in case of our liability under the German Product Liability Act.
- 13.3 Unless otherwise specified herein (in particular in Clauses 12, 13.1 and 13.2), any additional or more extensive claims of the partner against us are excluded. This shall apply in particular to claims for damages for a breach of duties or from unlawful acts. We are therefore not liable for any damage not deriving from the delivered goods themselves. We shall not be liable for any loss of profit or other financial losses by the partner or indirect or consequential damages
- 13.4 Insofar as our liability is excluded or limited, this also applies to the personal liability of our legal representatives, employees or vicarious agents.
- 13.5 The legal provisions relating to burden of proof are not affected by the regulations contained in this Clause 13.
- 13.6 The partner shall take all reasonable measures to mitigate any damages and/or losses.

#### **14. Product Liability**

Should the partner sell the goods or products manufactured using the goods to any third party, he shall indemnify and hold us harmless from any product liability claims of any such third party (or other parties, as the case may be) if and to the extent such third party claims are based on reasons we are not responsible for.

#### **15. Force Majeure**

Acts of god, war, natural disaster, labour or industrial disputes, strike, lock-out, disturbances, industrial action, riots, official measures, lack of or delayed supplies by our suppliers and other unpredictable, unavoidable and serious events will release the contracting partners from their duty to perform for the duration of the disturbance and to the extent of their effect. This is also applicable where these events occur at a time when the contracting partner concerned is in default, unless the delay is caused intentionally or gross negligently. The contracting partners are obliged, so far as is reasonable, to provide the necessary information immediately and in good faith to adjust their obligations to the changed conditions.

#### **16. Place of Performance, Place of Jurisdiction and Applicable Law**

- 16.1 Unless otherwise indicated in the order confirmation, the place of performance is our principal place of business in Lünen.
- 16.2 The place of jurisdiction for all legal disputes, including any action relating to payment bills of exchange or cheques, is our principal place of business. We are also entitled to bring an action at the place of business of the partner.
- 16.3 The contractual relationship is exclusively subject to the laws of the Federal Republic of Germany.

16.4 Application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG – "Vienna Sales Convention") is excluded.

**17. Final Provisions**

17.1 Amendments and supplements to these general terms and conditions must be made in writing. The same shall apply to the amendment of this written form clause.

17.2 If a provision of these terms and conditions is fully or partly invalid, the validity of the remaining provisions remains unaffected.