

# General Terms and Conditions of Purchase

for Gerresheimer Bünde GmbH (Last revised: December 2013)

## 1. Scope of validity

- (1) These general terms and conditions of purchase (GTCP) shall apply to all business transactions - including future transactions - between us (also referred to in the following as the "Purchaser") and the Supplier or other contractors (referred to collectively in the following as "Supplier"), even if no explicit reference is made to them in subsequently concluded contracts. The GTCP also apply if the Supplier makes reference to its own general terms and conditions, particularly in the case of order acceptance or order confirmation, or if we unconditionally accept deliveries from the Supplier in the awareness of Supplier terms and conditions which conflict with or deviate from our GTCP, unless we have expressly agreed to the Supplier's terms and conditions (particularly general terms and conditions of sale).
- (2) These GTCP are only valid for transactions with entrepreneurs pursuant to section 14, paragraph (par.) 1 and section 310, par. 1 of the German Civil Code (*Bürgerliches Gesetzbuch –BGB-*).

## 2. Orders

- (1) An order shall only be deemed to be placed if it is made out in writing and signed by us. Orders placed verbally or by telephone are only binding for us if we provide subsequent confirmation in the form of a written order. Any drawings which we enclose with orders in some cases (including tolerance specifications) are binding. The Supplier's acceptance of the order indicates that it has inspected the available plans and acquainted itself with the type of execution and the scope of the performance.
- (2) Documents, drawings and plans submitted by us which contain obvious mistakes, typing errors and incorrect calculations are not binding for us. The Supplier is required to inform us about such mistakes and errors so that our order can be corrected and revised. The same applies if any documents or drawings are missing.
- (3) The Supplier must confirm its acceptance of our order by signing the copy of the order and returning it to us within two weeks of order placement, otherwise we have the right to cancel it.
- (4) Deviations in quantity and quality from the text and content of our order and subsequent contract amendments are only regarded as agreed if we have expressly confirmed them in writing.
- (5) Dimensions and weights, quantities, prices, other descriptions and other data contained in our catalogs, circulars, advertisements or price schedules are merely approximate values and they are only binding for us if specifically included in the contract. These data, which are provided to the Supplier prior to contact conclusion, remain our exclusive property and may not be made accessible to third parties.
- (6) Drawings, tools, samples, models, markers and layouts or similar, as well as finished products and semi-finished products (collectively referred to in the following as: "Materials") which are provided or commissioned by us and which are invoiced to us by the Supplier, remain or pass into our property and may only be supplied to third parties with our express written consent. The Materials shall be designated as our property by the Supplier, stored carefully and separately from other goods, insured against damage of all types and used solely for the purposes of the contract or the execution of our orders. The Supplier undertakes to insure tools belonging to us at original value against damage by fire, water and theft. Furthermore, the Supplier assigns all claims under the aforementioned insurance policy to us and we herewith accept the assignment. Each party to the contract shall pay half of the costs for the maintenance and repair of the Materials unless otherwise agreed. If these costs are incurred due to defects in Materials produced by the Supplier or the improper use of the Materials by the Supplier, its employees or its vicarious agents, they shall be paid by the Supplier in full. The Supplier shall inform us without delay of all non-negligible damage to the Materials. Unless otherwise agreed in individual circumstances, the Materials shall be returned or handed over to us automatically and without delay upon completion of the order. Products which are manufactured or identified with such Materials may only be supplied to third parties with our express written consent.
- (7) The Supplier shall provide quotations free of charge and without obligation to the Purchaser.
- (8) If we are unable to use the ordered products in our business operations due to circumstances which occurred after conclusion of the contract, we are entitled to terminate the contract at any time in writing, stating the reason for doing so. In this case, we will pay the Supplier for partial performance rendered.

## 3. Delivery dates

- (1) The agreed delivery periods and dates are binding for the Supplier. The delivery period commences on the date of the order. The ordered goods must be delivered to the address stipulated by us within the delivery period or by the delivery date. In the event of a foreseeable delivery delay the Supplier shall notify us promptly in writing and await our decision as to whether we wish to continue with or cancel the order.
- (2) If delivery is not effected by the contractually agreed latest date, the Supplier is in default of delivery as of this date without any requirement on our part to send a reminder.
- (3) In the event that the Supplier defaults on delivery, we have unrestricted statutory rights, including the right to cancel the contract and the right to compensation for damages in lieu of performance if the Supplier fails to effect delivery within a reasonable subsequent deadline.

- (4) In the event of a delay in delivery and after providing due written warning to the Supplier, we are entitled to claim a contractual penalty of 0.5% of the net order value for each commenced week of delayed delivery, up to a maximum, however, of 5% of the net order value, and/or to demand delivery and/or to withdraw from the contract. The contractual penalty shall be deducted from any default damages to be paid by the Supplier. If a contractual penalty is agreed for delayed delivery or completion, we are entitled to enforce it unconditionally up until the final payment, despite acceptance of fulfillment.
- (5) We are entitled to refuse acceptance of goods delivered before the delivery date stipulated in the order, or deliveries which exceed the order volume and to return these at the Supplier's expense and risk, or to place them in storage with a third party.

## 4. Delivery / Packaging

- (1) Delivery shall be effected on a "carriage paid" basis or (in international contracts) "DDP" basis (INCOTERMS® 2010) to the address stipulated by us. If we are required to pay freight costs in exceptional cases, the Supplier shall use our chosen method of shipment or, otherwise, the most cost-effective method of shipment for us.
- (2) Even if delivery has been agreed upon, the risk does not pass to us until the goods are handed over to us at the agreed destination (our receiving point).
- (3) Packaging is included in the price. If otherwise agreed in exceptional cases, the Supplier shall charge the packaging at cost price. The Supplier shall use the type of packaging specified by us and ensure that it protects the goods against damage. If we return the packaging, no less than two-thirds of the amount charged shall be credited.
- (4) The Supplier is not entitled to make partial deliveries or engage sub-contractors to effect deliveries unless we have provided our written consent in advance.

## 5. Documentation

- (1) Invoices (if included with a consignment), delivery notes and packing slips must be enclosed in duplicate with each consignment. These documents must state:
  - the order number
  - quantity and unit of quantity
  - gross, net and, if applicable, charged weight
  - product or material designation with our material or product code
  - residual quantity in partial deliveries
  - delivery address / goods recipient
  - if applicable, statistical commodity code
- (2) When freight shipments are made, a shipment notification must be sent to us separately on the day of shipment.
- (3) If the Supplier fails to comply with the obligations set out in the above provisions, we will not be responsible for any processing delays.

## 6. Prices

- (1) Unless explicitly otherwise agreed, all prices are fixed prices, except when the Supplier generally reduces the prices in question. Any unit prices agreed in individual contracts shall apply even if deviations by up to 10% from the agreed delivery quantity occur. . Supplementary written agreements must be concluded if delivery quantities deviate by more than 10%.
- (2) The price stipulated in the order shall be binding and includes delivery on a "carriage paid" or (in international contracts) "DDP" (INCOTERMS® 2010) basis. The agreed purchase price shall include delivery, packaging and transport insurance, as well as VAT at the statutory rate.
- (3) 5% of the agreed remuneration (agreed price) for the order will be withheld until the expiry of the warranty period. The withheld amount will accrue interest in the Supplier's favor at the customary market rate. The Supplier is entitled, according to its discretion, either to demand payment of the withheld amount in return for a bank guarantee for the same amount at first request, or to demand that the amount be transferred to a joint blocked account.

## 7. Invoices / Payments

- (1) Invoice issue, Payment  
The Supplier shall issue a verifiable invoice in single copy in respect of the total order volume to the Purchaser. Calculations of quantities, drawings and other documents which are necessary to verify the type and scope of the delivered goods or services must be included with the invoice. Order amendments and supplements must be specifically designated as such in the invoice and invoiced separately upon request.  
Unless otherwise agreed, payments shall be effected
  - less 3% discount within 14 days
  - net within 30 days.The aforementioned payment periods commence on the date of invoice receipt, but not before the goods or services are delivered or rendered.  
Receipt of our payment order by our bank suffices as proof of timely payment.  
If the Purchaser is required to make a downpayment in advance of order execution, the Supplier shall take out a bank guarantee in the amount of the downpayment from a bank which is licensed to operate in the European Union with a term of validity extending to the fulfillment of all contractual obligations. The downpayment is not

- due until the Supplier has furnished the aforementioned security. This shall not affect agreed delivery and/or completion deadlines.
- (2) A separate invoice shall be issued for each order. Payment shall be effected after receipt of all ordered goods in a defect-free condition or complete performance of a defect-free service and after receipt of the invoice. This applies correspondingly to partial deliveries. Delays due to incorrect or incomplete invoices do not affect the discount periods.
  - (3) If we pay late, we agree to pay default interest of five percent above the base rate pursuant to section 247 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*).
  - (4) We have the statutory rights of set off and retention.
- 8. Quality / inspection of defects / liability for defects**
- (1) The Supplier undertakes to ensure that the goods, their presentation and labelling are compliant with our specifications and that they have the contractually agreed quality characteristics.
  - (2) We undertake to inspect the goods for quality defects and quantity deviations within a reasonable period of time. Notification of clearly evident and otherwise visible defects is deemed to have been provided in due time if it is received by the Supplier within 14 working days of goods receipt and defect identification. In cases of hidden defects, the defect notification period is 14 working days commencing upon the discovery of the defect. When defects are hidden, we are not under obligation to provide notification of defect if we have a quality assurance agreement with the Supplier which only requires us to perform a limited incoming goods inspection (e.g. minimum checks to ascertain the identity and quantity of goods and any visible transport damage or external visible defects). The Supplier undertakes to perform a comprehensive quality inspection. Our inspection and notification obligations do not exempt the Supplier from the obligation to perform such a quality inspection.
  - (3) We are entitled to assert defect claims to the full statutory extent, unless the provisions of section 8 of these GTCP stipulate otherwise. We are entitled to withdraw from the contract and demand compensation for damages in lieu of (complete) performance even if the goods or services only deviate insignificantly from the agreed quality or even if their usability is only insignificantly impaired. In any event we are entitled to request the Supplier either to remedy the defect or supply a defect-free replacement item. We expressly reserve the right to demand compensation for damages, particularly compensation for damages in lieu of performance.
  - (4) The acceptance or approval of designs, drawings, calculations and other technical documents by the Purchaser does not exempt the Supplier from its obligation to provide warranty [warranty of quality].
  - (5) We are entitled to remedy the defect ourselves or commission a third party to remedy the defect at the Supplier's expense in cases of exigent circumstances or special urgency. The Supplier shall pay all costs incurred in this connection.
  - (6) If the Supplier is not able to remedy the defect or supply a replacement item, or fails to do so within the requested reasonable time period, we are entitled - without prejudice to our other statutory rights - to return the goods at the Supplier's risk and expense and to procure them elsewhere.
  - (7) The period of limitation for defect claims is 36 months as of the date of the passing of risk. Supplier's receipt of our written notification of defect(s) suspends the statute of limitation. When replacement items are supplied or defects remedied, the limitation period for the replaced or remedied items recommences upon the conclusion of subsequent performance and with respect to the defects entailing such subsequent performance, unless we must assume on the basis of the Supplier's actions that Supplier did not feel under obligation to subsequent performance, but supplied a replacement item or remedied a defect only on a goodwill basis or for a similar reason. Longer statutory periods of limitation remain unaffected, as do other statutory provisions on suspension of expiration of statutory limitation, and on the suspension and recommencement of time limits.
  - (8) Unless otherwise specified in the foregoing provisions, statutory warranty shall apply.
- 9. Manufacturer's liability / Indemnification / Liability Insurance**
- (1) If the goods have defects for which the Supplier is responsible, it shall indemnify us upon first demand from the resulting manufacturer's liability to the extent that it would be liable in external relationships with third parties.
  - (2) Within the scope of its liability for damages as set out in par. (1), the Supplier also undertakes to reimburse and pay any costs pursuant to sections 683 and 670 of the German Civil Code (BGB) and pursuant to sections 830, 840 and 426 of the German Civil Code (BGB) which are incurred as a result of, or in connection with any recall campaign that we implement. We will inform the Supplier of the content and scope of the recall activities to be implemented and - if feasible and reasonable - offer it the opportunity to make a statement. This does not affect other statutory rights.
  - (3) The Supplier undertakes to take out product liability insurance with coverage of (at minimum and as a combined single limit) € 10 million for personal, property and financial losses. If we are entitled to further damages, these remain unaffected.
- 10. Industrial property rights**
- (1) The Supplier is liable for ensuring that the supplied goods or services and the use thereof do not breach any patents of other third party rights (including industrial property rights). At our first written request Supplier shall indemnify us and our customers from all claims asserted in connection with the use of such industrial property rights. However, this does not apply if the Supplier manufactured the goods in accordance with drawings, models or other similar descriptions or instructions provided by us and was not aware or could not have known that the manufactured goods breached industrial property rights. We will inform the Supplier upon request of the countries to which the goods are supplied.
  - (2) Unless explicitly otherwise agreed, the Supplier shall transfer any copyrights or other industrial property rights to ordered and supplied goods to the Purchaser, including all rights of use and exploitation, without restriction on time or location.
  - (3) The Supplier shall ensure that the execution of individual contracts of purchase does not breach any rights and, in particular, that it does not contravene any laws, directives or other official regulations.
  - (4) The Supplier shall ensure that it has full ownership of all items covered by purchase agreements and such ownership is not precluded by any third party rights (such as rights of lien, other creditor positions due to the assignment of receivables, or rights associated with factoring, hire purchase, conditional sale etc.).
- 11. Force majeure**
- War, civil war, export restrictions or trade restrictions due to changes in political circumstances, strikes, lock-outs, production stoppages, operational restrictions and similar incidents which make execution of the contract impossible or unreasonable are deemed to be force majeure and exempt us from our duty of timely acceptance until they have ended. Each party undertakes to provide prompt notification to the other party of any such constraint and to adapt their obligations to the changed circumstances in good faith.
- 12. Safekeeping / Ownership**
- We retain ownership to any Materials which we provide. Furthermore, the provisions of section 2.6 apply. The Supplier shall be liable for value deterioration or loss, even when not at fault. We retain ownership to all items which are manufactured with Materials provided by us in all stages of production. The Supplier shall keep these items on our behalf. The purchase price includes the costs of storage of items and Materials which are kept on our behalf. If a simple retention of title for the Supplier is agreed in respect of the item to be supplied or unilaterally declared by the Supplier, the Purchaser is entitled to dispose of the goods within the framework of ordinary business operations (in particular to process and resell them). Ownership to the supplied goods shall be transferred to the Purchaser upon payment in full of the purchase price. Prolonged or extended (expanded) retention of title on the part of the Supplier is excluded.
- 13. Business secrets**
- The Supplier undertakes to treat our orders and all associated commercial and technical information as business secrets. In particular, the Supplier undertakes to maintain the strict confidentiality of any images, drawings, calculations, formulae and other Materials, documents and information which it receives from us. Such items and documents may only be disclosed to third parties with our express consent. The undertaking to maintain confidentiality remains effective after the termination of the contract. It ceases to apply if and to the extent that the supplied images, drawings, calculations, formulae and other Materials and documents, and the manufacturing know-how contained therein, become public knowledge. The Supplier shall obtain a corresponding confidentiality undertaking from its employees and suppliers.
- 14. Assignment**
- We are entitled to assign our rights in connection with orders and supply contracts to third parties. The Supplier may only assign receivables due from the Purchaser to a third party with the prior written consent of the Purchaser, unless monetary receivables are involved.
- 15. General provisions**
- (1) If any provision of these GTCP should be or become void the remaining provisions hereof and the provisions of any other contractual agreements which have been concluded shall remain valid.
  - (2) All legal relationships between the Supplier and us shall be governed by the laws of the Federal Republic of Germany including the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG), even if the Supplier has its registered office in a country other than Germany.
  - (3) Unless otherwise specified in the order, our registered office is the place of performance.
  - (4) The municipal or regional courts at the place where the Purchaser has its registered office shall be the sole –and even international- legal venue for all disputes in connection with the contractual relationship. However, we are also entitled to bring action against the Supplier at the court with jurisdiction over the Supplier's domicile. This also applies to legal action in connection with proceedings restricted to documentary evidence, bills of exchange or cheque proceedings.