



## General Terms and Conditions of Purchase (GTCPs), September 2008

**1 Application** All products, services and offers provided by our suppliers are governed exclusively by our GTCPs. They form part of all contracts that we conclude with our suppliers regarding the products or services that they offer. These terms and conditions apply even if not specifically referenced.

The supplier's or third parties' terms and conditions of business shall not apply, even if we do not object to them separately. They do not become part of the contract even if we accept delivery of the products or services.

If a quality assurance agreement is made with the supplier, it shall be made part of this contract.

**2 Order** The order confirmation must be provided in writing within 2 weeks of receiving the purchase order. We may cancel our order if we do not receive the order confirmation within this deadline. If the terms of the order confirmation are not identical to those of the purchase order, we shall only be bound if we consent to the change in writing. Purchase orders are only effective if made in writing or confirmed by us in writing. The supplier must keep its offer open for three months.

Offers shall be submitted at no charge or obligation for us. In the offer, the supplier shall conform to the inquiry or request for the offer as to the quantity, quality and implementation; any deviation must be expressly identified as such.

We may request modifications to the contract even after the contract is formed, provided they are reasonable for the supplier. The impacts of any contract modifications on both parties should be reasonably taken into account, particularly with respect to cost increases or decreases and delivery dates. Any price increases due to a change in performance must be communicated to us without unreasonable delay and may only be made with our written consent.

We do not reimburse or compensate the supplier for any costs or expenses of any kind that it may incur in issuing an offer, including, without limitation, the costs for preparation, support, travel, et cetera.

The supplier may not outsource our order in whole or in part and/or change the production process or location without our prior written consent. If we grant consent, the supplier shall remain liable for performance hereunder.

**3 Prices/payment** The prices quoted in the purchase order are firm, binding prices that include all delivery, carriage, packaging, and incidental costs.

The prices are deemed to be irrevocable until the contract is performed in full, is terminated and/or expires, unless prices decrease in our favor. If between the placing of the order and the expiration of the payment periods, the prices in the supplier's general price lists decrease, these price decreases shall also apply with respect to us. The supplier must notify us of the decreases and prove their amounts in case of a dispute.

Payment does not become due until we have taken full possession and ownership of the goods and a proper invoice is provided in duplicate.

Barring any special agreements to the contrary, we shall pay within 30 days net or within 14 days with a 3 % prompt payment discount after receiving the invoice and taking full possession and ownership of the goods. Our payment does not constitute acknowledgement that the goods are as contracted.

We have rights of set-off and retention to the extent allowed by law, even with respect to claims held by or against our affiliated companies. The supplier may only exercise a right of retention or set-off if its claims against us are undisputed or upheld by final and absolute judgment.

**5 Delivery time** Agreed-upon delivery times are binding.

Delivery times refer to the time at which possession is delivered at our specified receiving point. Partial or early deliveries are not allowed, unless we have expressly agreed to them in writing.

The supplier must notify us forthwith in writing of any possible delay in delivery. Our acceptance of a delayed delivery does not constitute a waiver of claims for damages.

If delivery is made early, we reserve the right to return the shipment at the supplier's expense. If delivery is made early and we do not return the shipment, we will store the goods at the supplier's risk and expense until the stipulated delivery date. If delivery is made early, we

furthermore reserve the right not to make payment until the stipulated due date.

If the delivery is delayed, we are entitled to demand compensation for the delay amounting to 1 % for each whole or partial week of the delay, this to total no more than 5 % of the value of the goods affected by the delay; this is without prejudice to other legal remedies and claims. The supplier is also entitled to prove that no or significantly lower damages were incurred.

Force majeure, strikes or other circumstances beyond the supplier's control that make performance hereunder impossible in whole or in part within the stipulated delivery time shall entitle us to withdraw from or suspend the contract in whole or in part without thereby making us liable to the supplier for any claims.

**6 Delivery/passage of risk** Risk does not pass to us until we take possession of the goods at our stipulated receiving point; this also applies if we have agreed to a dispatch of the goods.

The supplier must comply with all legal requirements, including, without limitation, with regard to markings. If we order materials that have a DIN material safety data sheet, the supplier shall send it to us without being requested to do so.

If we have agreed to ex works pricing from the supplier's factory / distribution center, or if we agree to pay carriage, the shipment must be transported either at the lowest possible cost at the time or as set forth in the corresponding routing order.

Delivery notes must be provided to us in duplicate with our order number.

Deliveries of 5 pallets or more must be communicated 1-2 days prior to delivery.

We may reject deliveries at the seller's expense if they fail to meet the following requirements:

- Packaged on clean 800x1200 mm EURO pallets in "like new" condition, furnished with the necessary pallet stickers
- Pallets are secured (stretch- or shrink-wrapped) and packaged without any overhang
- Max. stacking heights: in Factory I (Max-Becker-Str. 6) 1300mm, in Factory II (Werner-Siemens-Str. 9) 1500mm
- When packaging several product types on a single pallet, the type with the largest footprint must be stacked at the bottom.
- The proper and complete shipping, freight and accompanying papers / delivery notes / packing lists and documentation, if appropriate, must be included
- Any samples must be labeled and added to the shipment in a conspicuous location

If the delivery fails to comply with the above requirements and is rejected, the delivery is deemed not to have been made. The supplier shall then become in default.

**7 Retention of title** We obtain clear and good title to all delivered goods and included documents upon delivery of possession. By delivering possession, the supplier represents that it is fully entitled to dispose of these goods and documents and that such goods and documents are not subject to third-party rights. The supplier must expressly advise us if this is not the case.

Pallets and means of transport provided by us remain our property and must be returned on request.

Goods are always processed or modified by / for us as the manufacturer; however, we shall incur no obligation thereby. If the goods are processed or inseparably mixed with another party's goods, we shall acquire co-ownership in the new thing proportionate to the value of our goods.

The materials must be specially marked, stored and managed separately for us, and insured, inter alia, against theft, fire and water damage. They may only be used to fill the order as ordered. We must be reimbursed for any loss or impairment in value.

We reserve the title or copyright in and to purchase orders and any technical and commercial documents, product descriptions, data sheets, sketches, samples, dummies, tools, design plans, software custom-made to our specifications (including the source code) and other documents provided and/or ordered by us.

If copyrights and/or industrial property rights accrue to the supplier, the supplier shall grant us a perpetual, exclusive, irrevocable right to use them.

Any and all documents provided shall be exclusively used to fill the order. The supplier may only copy, store or make them available to third parties if prior written consent is granted. After the order has been filled or the negotiations fail to result in a contract, the supplier must return all documents and copies to us and delete all stored data without being requested to do so.

The supplier shall hold our (co-owned) property in safe custody for us free of charge.

The supplier may only retain title in respect of our payment obligations for the relevant goods. A retention of title may not be expanded ["*erweitert*", covering other goods under an open balance] or extended ["*verlängert*", covering new goods manufactured from the supplier's goods].

**8 Defects** We can assert all statutory rights and remedies without limitation if the goods are defective.

The deadline for notifying the supplier of defects is 2 weeks from the date the possession of the goods is delivered at our specified receiving point, or from the date agreed upon in writing, whichever comes later. Accepting or approving samples or specimens does not constitute a waiver of any warranty claims.

The supplier shall deliver goods and services without any defects as to title or quality, including, but not limited to, consistently complying with relevant environmental standards and regulations and the current state of the art.

The supplier agrees to conform to the quality assurance requirements. The supplier warrants and represents that the goods/services will be of sound materials, design, construction and workmanship; will work properly; and will perform as specified under the stipulated conditions. The supplier warrants and represents that the goods/services shall conform to all technical data, specifications and quality standards set forth in our drawings and/or delivery instructions. The supplier shall furnish proof thereof free of charge on request.

We may cure the defects ourselves at the supplier's expense in cases of imminent risk or where the supplier is in default in curing the defect. We are, however, under no obligation to do so.

If the supplier's bankruptcy occurs or appears imminent, we are entitled to retain fair and reasonable security for the duration of the relevant defect-curing periods.

The supplier guarantees that the manufacture and / or sale of the goods does not infringe on any third-party property rights.

The supplier shall hold us harmless of any third-party claims brought for infringement of industrial property rights. The supplier shall reimburse us for all necessary costs of such legal action.

We may obtain from the industrial property right holder the necessary permission to deliver, commission, use, resell, etc. the goods at the supplier's expense if this would cost significantly less than the damage incurred if the transaction were rolled back. We are, however, under no obligation to do so.

The supplier shall pay all necessary costs incurred to cure defects, including, without limitation, transportation, travel, labor and materials costs.

Our claims become time-barred within 36 months after the goods have been fully shipped.

The prescription period will be suspended during such time as the supplier attempts to repair the defective goods. This does not apply to goodwill gestures by the supplier or entirely insignificant defects. If defective goods are replaced, the prescription period shall start again.

**9 Product liability** If we are held liable in connection with the deliveries or under product liability laws, the supplier shall hold us harmless to the extent it would otherwise be directly liable. This is without prejudice to any other rights to remedies over.

The supplier shall bear all costs incurred in connection with recalls for which it is responsible (including, without limitation, selection costs). The supplier must maintain adequate liability insurance coverage. The supplier will obtain a reasonable amount of insurance coverage for all product liability risks, including the risk of recall. The supplier will furnish proof of such insurance at our request.

**10 Liability** The supplier is liable to us for any faults, including, but not limited to, negligence of any kind on the part of its agents, servants and delegates. It may not limit or restrict its liability.

**11 Nondisclosure** The supplier agrees to hold in strict confidence, and to only use for filling the order, all the contents of the contract,

including, but not limited to, prices, discounts, know-how and other business secrets, as well as all information, documentation, drawings or other documents that may have been provided. The foregoing does not apply to content which is publicly known without violating the nondisclosure obligation.

After the order has been filled, the supplier must spontaneously return all documents and copies to us and delete all stored data, unless it is required by law to retain them. In this case, it must return / delete the records after the retention period expires.

The supplier shall impose the same nondisclosure obligation on its employees and sub-suppliers.

The supplier may not refer to its business relationship with us, including, without limitation, for purposes of advertising, without our prior written consent.

We are solely and exclusively entitled to use and/or exploit these materials and related information. We are entitled to publish the results of any work prepared or performed for us. We may keep the documents provided to us by the supplier, and copy and use them for training, maintenance and other purposes.

The supplier agrees to pay liquidated damages in the amount of € 10,000.00 (ten thousand Euro) for each individual, culpable violation of the abovementioned obligations.

We reserve the right to claim further damage and assert other claims, including, without limitation, claims to forbearance.

**10 Final provisions** These provisions also apply to companies affiliated with the supplier within the meaning of German Stock Corporation Act § 15 [AktG]. The supplier shall bind its affiliated companies to observe these provisions.

The supplier is not entitled to assign rights granted hereunder to third parties without our prior consent. The foregoing does not apply to assignments of money claims.

Any modifications and amendments to the contract must be in writing to be effective.

These terms and conditions are governed by the laws of Germany, exclusive of the provisions of the UN CISG.

The place of our registered offices is the place of performance and exclusive place of jurisdiction for all disputes arising from the business relationship. We are also entitled to file suit against the supplier at the place of its registered office.

Only the German version of these terms and conditions of business shall control.

**Should provisions of these terms and conditions be or become invalid, the validity of the remaining terms and conditions will be unaffected thereby.**

September 2008