

## § 1 Applicability of these International Terms and Conditions of Purchasing

- (1) The terms and conditions set out in these International Terms and Conditions of Purchasing, which form an integral part of the sales contract ("Contract"), shall apply if (i) the Seller's relevant place of business is not in Germany, and (ii) if the prevailing object of the Contract is the supply of goods.
- (2) These International Terms and Conditions of Purchasing apply exclusively to the Contract. We are not bound by the Seller's terms of business irrespective of whether they conflict with our International Terms and Conditions of Purchasing or whether they deviate from statutory provisions.

## § 2 Formation of the Contract

A Contract always requires a written order ("Order") and a written acceptance of the Order. However, the Seller may also accept our binding Order by delivering the goods within the time limits stated in the Order or – if no such time limit is stated therein – within fourteen (14) calendar days as of the date of the Order. If the Seller issues an order confirmation which deviates from our Order, then the conclusion of the Contract requires our written order confirmation.

## § 3 Applicable Law

The Contract and these International Terms and Conditions of Purchasing are governed by the United Nations Conventions of 11 April 1980 on Contracts for the International Sale of Goods (UN Sales Convention / CISG) in the English version and all legal questions beyond the scope of the CISG are governed by the Swiss law of obligations (Obligationenrecht). The CISG also applies to all agreements as to arbitral tribunals.

## § 4 Obligation to deliver, Passing of risk and title

- (1) The Seller has to deliver the goods stated in the Contract including a packaging that is suitable for the means of transportation. The Seller is obliged to take back the packaging. If requested by the Seller in writing, we will send the packaging back to the Seller on Seller's costs and risk or have the packaging disposed of at Seller's costs.
- (2) If no other Incoterms®-clause is agreed upon, delivery has to be made DAP Incoterms® 2020 at place of delivery indicated in the Order or – if no place of delivery is indicated therein - DAP Incoterms® 2020 at our premises in 33758 Schloß Holte-Stukenbrock/Germany. Furthermore, the Seller has to fulfil all the duties imposed on him by the Contract, these International Terms and Conditions of Purchasing, the rules of the ICC for the use of the agreed Incoterms®-clause as well as other statutory provisions.
- (3) The delivery date respectively the delivery period stated in the Order must be strictly complied with. Non-compliance with the agreed delivery periods or delivery dates constitutes a fundamental breach of contract. The Seller is hereby made aware of the fact that any non-adherence to agreed delivery dates and/or delivery periods can cause a stop of production at our facilities as well as expose us to severe damages and/or contractual penalties of our customers.
- (4) The Seller is obliged to give us a written notice of an imminent violation of the agreed delivery date or delivery period as soon as such a delay is identifiable for the Seller. Such written notice does not deprive us of the rights resulting from any late delivery.
- (5) To the extent we have to give specifications or have to comply with further obligations of cooperation, the Seller has to inform us thereof in writing and has to take into account reasonable response times from our side for the determination of the delivery period or delivery date.
- (6) Without prejudice to other obligations to inform, the Seller has to inform us in writing with a reasonable lead time of the forthcoming delivery.
- (7) The Seller is not entitled to make partial deliveries.
- (8) The passing of risk takes place with delivery in accordance with § 4 sec. 2 of these International Terms and Conditions of Purchasing. If by no fault of our own we are prevented from taking delivery of the goods, the temporary inability to take delivery shall not be considered as a breach of contract and we are not in default of acceptance. However, if installation and/or instruction have been agreed in the Contract, deviating from § 4 sec. para. 8 sentence 1 of these International Terms and Conditions of Purchasing the passing of risk takes place only as soon as these additional services have been performed by the Seller in full. Insofar as an acceptance in the sense of an inspection and confirmation of conformity with the contract by us has been agreed, this shall be decisive for the passing of risk, in deviation from § 4 para. 8 sentence 1 and sentence 2 of these International Terms and Conditions of Purchasing.
- (9) If the Seller fails to meet the agreed delivery date or delivery period, we are entitled to demand liquidated damages for our damage caused by the delay in the amount of 0.2% per calendar day of delay, up to a maximum of 5% of the net order value. Further legal claims remain unaffected and thus we reserve the right to prove that higher damages have been incurred. These liquidated damages will be offset against the damages caused by the delay to be compensated by the Seller. The Seller reserves the right to prove that no damage or only less damage has occurred.
- (10) Title to the goods and to the documents is transferred to us at the time of delivery.

## § 5 Examination of the goods by the Seller

The Seller has to examine the goods prior to their handing-over to the same extent as we are obliged to examine them after taking delivery. The Seller is obliged to record the result of this examination in writing and provide us with such examination documents upon request.

## § 6 Specifications of the goods

- (1) The goods to be delivered have to conform to the agreed specifications and quality requirements. To the extent no specifications or quality requirements are agreed upon, the goods have to conform to the latest state of the art in science and technology as well as conform to any information contained in data sheets, product descriptions etc. Moreover, the goods only conform with the Contract if they are fit without restrictions for the purpose made known to the Seller or for the purpose for which goods of the same description are usually used for. The Seller is fully aware of the kind and method in which the goods are used.
- (2) All product descriptions of the goods which the Seller has prepared or to which he refers to, as well as product descriptions in our Order, constitute agreed specifications.
- (3) The goods must comply with the applicable rules for product safety as well as applicable DIN and EU standards and must be manufactured in accordance with them.
- (4) Without prejudice to § 6 sec. 6 of these International Terms and Conditions of Purchasing, the Seller warrants that the goods comply with all requirements that have to be respected when importing the goods and making them available on the market in Europe.
- (5) If the Order includes details of amounts, size and weight and/or the Order is accompanied by pictures, these are binding, unless they are expressly marked as approximate descriptions.
- (6) The Seller is fully aware of the fact that the goods – if applicable in a processed form – will potentially be used throughout the whole world. Therefore, without prejudice to our statutory rights, the Seller warrants that the goods are free from rights and claims of third parties, which could prevent the usability of the goods anywhere in the world. This applies in particular for those rights or claims based on title or industrial property.

## § 7 Delivery Note, Invoice and other documents

- (1) Irrespective of the Incoterms®-clause agreed, the Seller is under a duty to hand over at the agreed delivery date or within the agreed delivery period all documents necessary for the free export, transit or import of the goods into and within the European Union. Moreover, if the Seller has its place of business within the European Union he has to provide us with a supplier's declaration.
- (2) The Seller is obliged to clearly state the applicable customs tariff number on the delivery note which has to be enclosed to every delivery.
- (3) At our request, the Seller is obliged to provide to us in writing and free of charge requested certificates of origin and preference information.
- (4) The Seller must clearly state his tax number on his invoices and moreover issue the invoices in accordance with all legal requirements applicable in Germany.
- (5) The Seller is only entitled to exercise a lien or to suspend his performance if this is based on a due and undisputed or finally adjudicated counterclaim of the Seller.

## § 8 Obligation to pay the purchase price

- (1) We are obliged to pay the agreed purchase price to the bank account nominated by the Seller. The place of payment is 33758 Schloß Holte-Stukenbrock Germany. Banking fees accrued outside of Germany will be borne by the Seller. Unless otherwise agreed in writing, we will pay the purchase price within fourteen (14) calendar days with a 3% discount or within 30 (thirty) calendar days net, in each case calculated from the date of complete delivery and performance (including any agreed declaration of acceptance of the goods) and receipt of a correct invoice.
- (2) The agreed purchase price is a fixed price. An increase in the purchase price, for whichever reason, is excluded.
- (3) Payment of the purchase price does not imply a confirmation that the goods comply with the legal and/or contractual requirements and is made with reservation.
- (4) Our statutory rights to exercise a set-off against the purchase price and/or to suspend the performance of our obligations and/or to raise defences or counterclaims are not restricted by the provisions laid down in these International Terms and Conditions of Purchasing and we are entitled to these rights irrespective of any further statutory remedies. Our right to suspend the performance of our obligations shall specifically include our general right to withhold the payment of the purchase price to the extent of the non-conformity of the goods pursuant to § 6 of these International Terms and Conditions of Purchasing and the expected detriment. If the extent of the non-conformity cannot be easily ascertained, we have the right to withhold the whole remaining amount of the purchase price not yet paid for a reasonable time that is necessary to inspect the goods and to estimate the extent of the expected detriment.

## § 9 Non-Conforming goods; freedom of rights and claims of third parties

- (1) Without prejudice to statutory provisions, the goods do not conform to the Contract if they do not conform to the requirements set out in § 6 sec. 1 to sec. 5 of these International Terms and Conditions of Purchasing. Furthermore, it does constitute a non-conformity if third parties have claims based on product liability law.
- (2) Without prejudice to statutory provisions, the goods are not free from rights or claims of third parties if the requirements set out in § 6 sec. 6 of these International Terms and Conditions of Purchasing are not complied with.

## § 10 Duty of examination and notification

- (1) We are only obliged to examine the goods in respect of typical deviations of a factual kind in type, quantity, quality and packaging. We are not obliged to conduct an examination that

requires the help of external third parties. An examination in relation to the freedom from any right or claim of a third party is not required.

- (2) The period for examination only starts at the moment we use or process the goods, however at the latest four (4) months after the goods have been delivered. However, this does not apply to very obvious non-conformities, for which no period of examination is applicable.
- (3) Notice of non-conformity has to be made within one (1) month. For very obvious non-conformities the period for such notification starts with the delivery of the goods (or, if deviating from § 4 sec. 2 of these International Terms and Conditions of Purchasing an E-, F- or C-clause of the Incoterms® 2020 is agreed, as soon as the goods reach the place of destination), in all other cases when we finally knew or ought to have known of the non-conformity of the goods. We are not obliged to give notice of non-conformity if the Seller knew or must have known the non-conformity based on his outgoing examination.
- (4) In the notice of non-conformity we do not have to reserve our rights in respect of the breach of contract. It is sufficient that we describe the non-conformity in general terms. In case the Seller needs further details, e.g. in order to rectify the non-conformity, he is obliged to ask us in writing.

## § 11 Limitation Period

- (1) Our claims in respect of the delivery of non-conforming goods become time-barred three (3) years after the statutory beginning of the limitation period. If the non-conformity of the goods also justifies product liability claims against us, then – in deviation from § 11 para. 1 sentence 1 of these International Terms and Conditions of Purchasing – the statute of limitations provisions of the product liability law shall apply to the recourse claim of us against the Seller insofar as these lead to a longer statute of limitations period than according to § 11 para. 1 sentence 1 of these International Terms and Conditions of Purchasing.
- (2) Deviating from § 11 sec. 1 of these International Terms and Conditions of Purchasing, the limitation period for the delivery of non-conforming goods is five (5) years if we are obliged to fulfill warranty rights vis-à-vis our customers and such warranty rights of our customers against us are not time-barred due to applicable legal provisions in the German Civil Code (in particular § 445b BGB).
- (3) The limitation period in respect of freedom of rights or claims of third parties is ten (10) years.

## § 12 Remedies in case of non-conforming goods and goods which are not free of rights or claims of third parties

- (1) Without prejudice to the statutory provisions, in case of delivery of non-conforming goods or goods that are not free from rights or claims of third parties, our right to avoid the Contract and/or require delivery of substitute goods does not require a fundamental breach of contract. It is sufficient that the breach of contract is not of only totally minor importance.
- (2) Deviating from Art. 46 para. 2 CISG, the right to require the delivery of substitute goods is – apart from the limitation period – not subject to any time limits.
- (3) Avoidance of the Contract needs to be declared within twelve (12) months in case of late delivery and the period to declare avoidance of the Contract starts in accordance with the statutory provisions. Avoidance of the Contract in all other cases of breach of contract must be declared until the end of the limitation period applicable for such breach of contract.
- (4) In the event we are obliged towards our customers to compensate expenses, the Seller is obliged to reimburse us in the same amount insofar as such expenses are attributable to the fact that the goods delivered by the Seller do not conform with the Contract or are not free of rights or claims of third parties. To the extent the claims for compensation of our customers are binding upon us because our customers or their customers have sold the goods in a supply chain to consumers, the time when the non-conformity has to exist in relation to the Seller is determined by the passing of risk to the consumer.
- (5) Apart from the aforesaid, the statutory provisions apply.

## § 13 Right to use Software

In case the goods include software, with the delivery of the goods the Seller grants to us a worldwide, irrevocable, non-exclusive, royalty-free, transferable and assignable license to use the software with the goods purchased under the Contract. We are entitled to make backup copies.

## § 14 Confidentiality; provision of items; tools, retention of title to items, provided by us

- (1) We reserve all property rights and copyrights to all illustrations, drawings, calculations, product descriptions and other documents that we make available to the Seller. Such documents are to be used exclusively for the performance of the Contract and must be returned to us after completion of the Contract. These documents may only be disclosed to third parties with our express consent and must otherwise be kept strictly confidential, even after termination or fulfillment of the Contract. The Seller is prohibited from reverse engineering our products or items by observation, examination, dismantling, testing or similar processes and from obtaining, utilizing or imitating the confidential information embodied therein (so-called reverse engineering). The confidentiality obligation shall only expire if and to the extent that the knowledge contained in the documents provided has become generally known.
- (2) If we provide parts, materials, models, tools, etc. to the Seller, the Seller is obliged to check the parts and/or other materials provided by us for suitability, to handle them properly and to store them appropriately.
- (3) Parts, materials, models, tools, etc. that we make available to the Seller or that are manufactured for performance of the Contract and invoiced to us separately by the Seller shall remain our property or become our property. They must be marked by the Seller as our

property, stored carefully and protected against damage of any kind. The Seller is obliged to use the parts, materials, models and tools exclusively for the manufacture of the goods ordered by us.

## § 15 Spare parts

Insofar as the goods are not unprocessed raw materials, the Seller is upon our request obliged to sell to us spare parts for the goods delivered to us for a period of at least ten (10) years after the last delivery of the goods concerned.

## § 16 Other Provisions

- (1) There are no side agreements to the Contract.
- (2) Any amendments to a concluded Contract require our written confirmation, duly approved by signature.
- (3) The Seller is not entitled to assign his rights and obligations against us to a third party. In case the Seller purchases parts of the goods from third parties, he is liable for their behavior to the same extent as he would be liable for his own behavior.
- (4) The place of performance for delivery results from § 4 sec. 2 of these International Terms and Conditions of Purchasing, the place of performance for payment results from § 8 sec. 1 of these International Terms and Conditions of Purchasing. For all remaining obligations and irrespective of the agreement of a differing Incoterms®-clause, the place of performance is agreed to be 33758 Schloß Holte-Stukenbrock/Germany, including for a replacement delivery, for the rectification of non-conformities and for the restitution of the contractual obligations in case of avoidance of the Contract.
- (5) All communications, declarations, notices etc. (hereinafter collectively "Communications") are to be drawn up exclusively in German or English. Communications by means of fax or email or other electronic means fulfil the requirement of being in writing ("Schriftform"). A signature is not required, unless these International Terms and Conditions of Purchasing explicitly require a signature.

## § 17 Agreement on jurisdiction and arbitration

- (1) If the Seller's place of business is located within the European Union, Switzerland, Iceland or Norway, for all contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with a Contract and/or these International Terms and Conditions of Purchase, including its/their validity, invalidity, violation or cancellation, the state court which has jurisdiction for 33758 Schloß Holte-Stukenbrock/Germany shall have exclusive jurisdiction. Instead of bringing an action before the state court which has jurisdiction for 33758 Schloß Holte-Stukenbrock/Germany, we are also entitled to bring an action before the state court of the Seller's place of business.
- (2) If the Seller's place of business is located outside of the European Union, Switzerland, Iceland and Norway, all contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with a Contract and/or these International Terms and Conditions of Purchase, including its/their validity, invalidity, violation or cancellation, shall be finally resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules. The place of the arbitration shall be Zurich/Switzerland, the language used in the arbitral proceedings shall be English.

## § 18 Severability

If provisions of these International Terms and Conditions of Purchasing should be or become partly or wholly ineffective, the remaining provisions will continue to apply. We and the Seller are bound to replace the ineffective provision with a legally valid provision as close as possible to the commercial meaning and purpose of the ineffective provision.