

General Terms and Conditions for the Purchase of Machinery and Equipment

§ 1

Applicability

- 1.) All supplies, services and offers of the supplier shall be provided on the basis of these General Terms and Conditions of Purchase as amended from time to time. These Terms and Conditions form an integral part of all contracts concluded by us with our suppliers for the provision of supplies and services offered by them. They shall also apply to all future supplies, services or offers provided to us, even if their applicability is not agreed upon separately again.

- 2.) General terms and conditions of the supplier shall not apply, even if we do not explicitly object to their applicability in an individual case, and even if we or our customers accept deliveries from the supplier without reservation despite knowledge of general terms and conditions of the supplier that differ or deviate from our General Terms and Conditions of Purchase.

§ 2

Orders

- 1.) The obligations owed are determined by the order documents signed by us and the supplier (confirmed offers, specifications or the like). Deviations from orders signed by us are subject to our explicit written confirmation. The same applies to verbal agreements which deviate from contractual documents signed by both parties.

- 2.) The supplier shall inform us, in writing, in advance of any changes in the production of goods. Such changes may not be made without our prior written consent.
- 3.) All drafts, calculations, project models etc. of the supplier shall be provided free of charge and shall not be binding on us, even if such services or supplies are usually provided against payment.

§ 3

Prices, Payment Conditions, Assignments

- 1.) Unless otherwise agreed, the price shown in the order shall be deemed to be in EURO. The price is binding. It includes free delivery including packaging, transport costs, unloading, installation, and insurance up to the agreed point of installation and acceptance. For imported goods the price shall be deemed to include customs, taxes and, where applicable, inspection costs.
- 2.) Delivery notes and invoices must indicate the order number shown in the order. The supplier shall be liable for all consequences resulting from the failure to comply with this obligation, unless the supplier proves that it is not responsible for these consequences. No goods will be accepted without a delivery note and without an indication of the order number.
- 3.) Unless it is agreed to the contrary in writing, we will pay the purchase price within 14 days of the date of delivery and receipt of the invoice with a 3% discount, or net within 30 days of receipt of the invoice.
- 4.) If, in individual cases, we agree to make advance payments, the supplier shall furnish an absolute and irrevocable guarantee for the maximum amount of the advance payment. The guarantee shall be issued by a bank licensed in Germany or an insurance company which is subject to supervision by German insurance control. It must contain waivers of the defence of failure to pursue remedies, the defence of voidability and the right to deposit the guarantee amount. The costs of the guarantee shall be borne by the supplier.

- 5.) We reserve all rights of set-off or retention provided by applicable law. We may also off-set claims of our affiliates which were assigned to us.
- 6.) Claims against us may not be assigned, unless the assignment is made within the scope of an extended reservation of title.

§ 4

Delivery, Passing of Risk, Acceptance

- 1.) The delivery time (date or period of delivery) specified in the order is binding.
- 2.) In case of default in delivery we shall be entitled to all statutory rights, in particular the right to rescind the contract and claims for damages, including consequential damages, futile expenses and loss of profits, if the respective requirements are satisfied. Without prejudice to any other rights that we may have, the supplier shall pay liquidated damages at a rate of 0.1% of the delivery value per day up to a maximum of 5 % of the order value. The supplier may prove that no damage or a substantially lower damage has been caused by the delay.
- 3.) Partial deliveries are not allowed.
- 4.) The provision of installation services, the basic conditions to be observed in the performance of such services as well as the remuneration thereof are, in any event, subject to individual agreements. We expressly point out, that any general terms and conditions of the supplier for the supply and installation shall not become part of any agreement made.
- 5.) The acceptance of plant, machinery and equipment takes place at the installation site after installation and test operation. Acceptance will be recorded in an acceptance protocol, which has to be signed by the supplier and us. Upon acceptance of the parts supplied, risk of loss of and damage passes to us. If, in individual cases, no acceptance has been agreed

upon, risk shall pass to us at the time the goods are handed over to us at the agreed place of destination, even in case of a sale by dispatch.

- 6.) Upon our request, the supplier shall, at its own cost, take back packaging of all kind, in particular transport packaging. If a return of multi-way packaging (pallets, boxes etc.) has been agreed, we will return packaging of the same type and quality.
- 7.) The supplier shall bear all travel and living expenses incurred by all of its employees and agents involved in the installation, acceptance and test operation.
- 8.) The supplier shall, at its own cost, provide all tools and hoists required for delivery and assembly.

§ 5

Scope of Delivery, Quality

- 1.) The goods ordered are free from defects if they comply with our specifications and all other information provided, and if they are fit for the purpose for which they are intended, as can be identified under the contract.
- 2.) Changes in the composition or labelling of products or in the design of the packaging as compared to the order require our prior written consent.
- 3.) The supplier shall take all measures with regard to the goods supplied that are necessary with regard to environment protection and accident prevention. In addition, it shall comply with all requirements set by the authorities or provided by applicable law – in particular the ordinance regarding hazardous working material. We are entitled to request submission of a certificate from the competent employers' liability insurance association certifying that all provisions on the prevention of accidents have been complied with. The supplier agrees to comply with the Conventions of the International Labour Organization (ILO), the UN Universal Declaration of Human Rights, the UN Conventions on the

Rights of the Child and on the Elimination of All Forms of Discrimination against Women, the UN Global Compact and the OECD Guidelines for Multinational Enterprises.

4.) All machinery and parts thereof shall be state-of-the-art and appropriate for the intended use. All standards that may exist with regard to the goods supplied and / or parts thereof shall be complied with. This applies in particular to the following standards, as amended from time to time:

- ISO, IEC, EN, DIN, VDE and technical regulations established by other regulators,
- VBG regulations for the prevention of accidents,
- Law on technical work equipment ([German] Equipment and Product Safety Act - *Geräte-/Produktsicherheitsgesetz*),
- Directive 2006/42/EC, Machinery Directive,
- Safety of machinery DIN EN 292 and DIN EN 294,
- DIN EN 60204-1 Electrical equipment of machines,
- DIN EN 50081 and DIN EN 50082 Electromagnetic compatibility,
- 9th [German] Machinery Ordinance (GPSGV),
- [German] Food Hygiene Regulation (LMHV),
- VDMA-guideline on Food Hygiene,
- Regulation (EC) 1935/2004 (on materials and articles intended to come into contact with food).

If, in individual cases, deviations from a standard are necessary, the supplier shall obtain our prior written consent. The giving of such consent does not release the supplier from any of its warranty obligations.

The essential health and safety requirements relating to the design and construction of machinery laid down in applicable EC machinery directives, as well as essential requirements relating to hygienic machine design, must be met.

The supplier shall provide evidence of compliance with the applicable provisions on accident prevention by means of the „GS“-mark or the „CE“-mark, together with a declaration of conformity in accordance with EN 45014.

- 5.) Unless agreed to the contrary, the supplier's scope of delivery includes reliable performance of the machinery, the preparation of maintenance plans, wirings diagrams and operating instructions in German, the preparation of cleaning instructions and spare parts lists in German - two copies each -, easy access for operating, cleaning and maintenance, a low wear operation of the machine, as well as the use and usability of machine parts and materials that are suitable for both chemical and wet cleaning.
- 6.) All documentation, declarations, tests and marking required in this respect are included in the scope of delivery.
- 7.) All software required for the operation of the machine (e.g. control) is included in the scope of delivery. The supplier shall provide us with all rights of use to the software required for the software application. These rights of use shall be unlimited in time. In case of a resale of the machine we are entitled to transfer the rights of use to the software to the purchaser of the machine. The corresponding licenses and rights granted shall be covered by the purchase price.
- 8.) The supplier warrants that it will keep the spare parts, which are listed on the spare parts list included in the scope of delivery, in stock for a period of at least 10 years following delivery.
- 9.) Unless agreed to the contrary, the supplier shall provide at the machine location any spare parts required within a period of 24 hours, and any technicians required within a period of 12 hours following our request.
- 10.) In order to ensure a constantly high and consistent quality, the supplier shall provide any information and details requested by us and such information and details shall be true and complete. The supplier shall at all times keep such information and details up to date and immediately, and on its own initiative, inform us of any changes thereto.
- 11.) We may, at any time during normal business hours carry out inspections and quality controls (supplier audits) at the supplier's business or other premises, or arrange for such inspections and quality controls to be carried out.

- 12.) The supplier shall bear, and reimburse for, any and all consequential costs (e.g. costs of tests or recalls) caused by deviations in quality for which the supplier is responsible.

§ 6

Warranty; Intellectual Property Rights

- 1.) If no acceptance has been agreed, we will examine incoming goods for deviations in quality or quantity within a reasonable period of time.
- 2.) Any notice of defect is deemed to have been given in time if given within 5 business days after receipt of the goods or, in case of hidden defects, within 5 business days after discovery of the defect.
- 3.) We reserve all rights and remedies resulting from defects of quality or title provided by applicable law.

Recoverable damages include the costs incurred by us due to the fact that, in terms of food law, the goods supplied are not free of defects or do not function properly, as well as all costs resulting from product analyses and laboratory tests that have become necessary as a result thereof.

- 4.) As soon as our written notification of defect reaches the supplier, the statute of limitations shall be suspended with regard to those warranty claims that are based on the defects covered by the notification. In case of removal of defects or replacement the warranty period for any items repaired or replaced will recommence, unless we had to conclude from the supplier's behaviour that the supplier did not consider itself to be under an obligation to remedy the defect or deliver a replacement but carried out the measure as an accommodation only or for similar reasons.
- 5.) The Supplier shall be liable for the fact that neither the goods (including software) supplied by him nor their use, onward supply or processing by us violate any intellectual property rights of third parties, in particular utility models, patents or licenses. The

supplier shall indemnify and hold us harmless from and against any claims brought by third parties based on the infringement of intellectual property rights and shall bear all costs incurred in this respect. In the case of conflicting third party rights, the Supplier shall, at its own expense, obtain from the holder of the rights, also for the benefit of us, the approval or license to supply, process and use the goods.

- 6.) The period of limitation for all warranty claims shall be 24 months from the passing of risk. The period of limitation for all claims with regard to intellectual property rights shall be 10 years from the passing of risk.

§ 7

Product Liability; Other Claims for Damages

- 1.) If any claim or suit is brought against us based upon product liability, the supplier shall indemnify and hold us harmless from and against all claims, that are based on a defect of the supplied contract products and that are brought against us under the product liability laws of Germany, any EU member state or third country, if and to the extent that the cause of the damage originates from within the sphere of responsibility of the Supplier. The same applies to recourse claims of third parties who have satisfied claims for damages brought by any person who has suffered damage. The foregoing does not apply in cases of fault-based liability to the extent that no fault can be attributed to the supplier. In such cases the supplier shall indemnify and hold us harmless from and against all costs, including expenses for necessary product recalls, costs incurred by us as a result of official sampling and investigations as well as reasonable legal expenses.
- 2.) We will notify the supplier of any claims that are brought against us in respect of the supplied products and will also make all necessary documents available to the supplier. The supplier shall declare within 10 business days from receipt of these documents if we are to admit or reject such claims.
- 3.) The supplier shall maintain product liability and recall insurance with coverage of at least € 5,000,000.00 for any one occurrence and shall, even after complete fulfilment of all ob-

ligations under the contract, maintain such insurance coverage for a period of ten years after the processed goods are placed on the market by us. We may at any time request the supplier to provide current proof of proper insurance.

- 4.) All further claims for damages and compensation of expenses remain unaffected – regardless of their legal basis. We are fully entitled to make such claims if the statutory requirements are met. In case of fault of the supplier or its vicarious agent, the supplier shall also be liable for consequential damages caused by defects.

§ 8

Retention of Title, Provision of Items, Tools

- 1.) We retain title to all goods and parts that we provide to the supplier. Any processing or transformation of such items by the supplier will be carried out on our behalf. If any reserved goods are processed together with other items that are not owned by us, we will acquire a joint right of ownership of the new thing, in the proportion that the value of the reserved good(s) bear(s) to the other items processed at the time of processing.
- 2.) If goods or parts provided by us are culpably damaged or destroyed while in the supplier's sphere of responsibility, the supplier's liability shall also extend to the repair or replacement of such parts or goods provided.
- 3.) We retain title to all tools paid or provided by us. The supplier undertakes to use the tools solely for the manufacture of the goods we ordered. The supplier shall treat and store all tools owned by us that are located at the supplier's factory with the diligence of a prudent businessman. In addition, the supplier shall, at its own cost, insure these tools at replacement value against the risks of fire, water and theft. At the same time, the supplier hereby already assigns to us all compensation claims it may have under this insurance policy and we hereby accept the assignment. The supplier shall, in good time and at its own cost, perform any necessary maintenance and inspection of our tools as well as all necessary repairs. The supplier shall immediately notify us of any incidents which may occur.

§ 9**Secrecy**

- 1.) The supplier agrees to keep secret all information gained in the context of the cooperation, unless such information is in the public domain, has been lawfully obtained from a third party or developed independent of a third party; and further agrees to solely use such information for the purposes of this contract. The proprietary information includes, in particular, technical data, illustrations, drawings, calculations and other documents, purchased quantities, prices and information on products and product developments, on current and future research and development projects and all of our business data.
- 2.) If necessary, the supplier shall impose a corresponding secrecy obligation on its sub-suppliers.
- 3.) At any time at our request, any in any event at the latest when the contract ends, all information originating from us (including any copies or records made) and items lent to the supplier shall be immediately returned to us in full, unless these are still required by the supplier for the performance of its contractual obligations. We reserve all rights to such confidential information, including copyrights, industrial property rights, patents, utility models etc.

§ 10**Final Provisiosn**

- 1.) Orders may not be subcontracted by the supplier without our prior written consent.

- 2.) As soon as the Supplier ceases to make payments or if a provisional insolvency administrator is appointed or insolvency proceedings are opened, we are entitled to rescind the contract, in whole or in part.
- 3.) The contractual relationships shall be exclusively governed by the laws of Germany, to the exclusion of its conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG, UN-Sales law).
- 4.) The place of jurisdiction shall be 33378 Rheda-Wiedenbrück, Germany. In addition we are also entitled to bring an action at any other permissible place of jurisdiction.
- 5.) The place of performance for all obligations arising from the supply agreement shall be our registered office.
- 6.) Should any part of these General Terms and Conditions of Purchase be invalid, the validity of the other provisions shall not be affected thereby.