



General Terms and Conditions of Purchase 02/08

The following Terms and Conditions of Purchase shall govern all contracts concluded with our suppliers and other contractors (hereinafter jointly referred to as "the Contractor"). Deviating terms and conditions of the Contractor shall not apply unless we have expressly agreed in writing to their application. These Terms and Conditions of Purchase shall exclusively apply towards companies in the meaning of § 14 Para. 1 BGB (German civil code) and legal entities under public law. If for particular orders specific conditions are agreed between the parties, the present General Terms and Conditions of Purchase shall apply with a subordinate and supplementary effect.

Inasmuch as in these General Terms and Conditions of Purchase the term "performance" is used it shall be deemed to comprise the entire subject matter of the contract including mere deliveries.

I. Orders

1. Our orders and other declarations shall only be binding when we have placed and made them in writing.
2. Any documents used by the Contractor in business transactions with us are always to specify: address, order number, delivery point, material and/or substance number, complete article text and/or object designation, quantities and quantity units as well as – when importing from the EU – the sales tax identification number.

II. Place of fulfilment

Place of fulfilment for the rendering of the performance is the place of receipt specified by us in the order or the place of performance indicated by us.

III. Time of fulfilment

1. The final deadlines and intermediate time limits agreed for the rendering of the performance shall be binding. Alterations of the performance dates specified in the order shall require a written agreement.
2. A performance delivery before the agreed dates shall entitle us to reject the performance until the due date is reached.
3. As soon as a failure to observe the time limits becomes evident, the Contractor is to notify us in writing immediately, that is within a period of no more than 3 days, specifying the reasons and the expected duration of his exceeding the deadline. Inasmuch as the reasons for the delay are not attributable to the Contractor, he may invoke them only if he observes the above-mentioned obligation to notify us accordingly. The Contractor shall be liable for any delay on the part of his subcontractors.

IV. Contractual penalty for delay

1. If the Contractor defaults in the rendering of his performance, he shall pay to us for each calendar day a contractual penalty to the amount of 0.1% of the re-

spective contract price up to an amount of maximally 5% of the contract price.

2. We reserve the right to enforce a forfeited penalty up to the settlement of the final account of the performances invoiced to us.
3. Additional claims for delay remain unaffected by the provisions above.

V. Scope of performance, changes

1. The Contractor shall render his contractually agreed performances according to the contract specifications, or else in commercial quality, and brand new at the stipulated date and in the stipulated place of performance. The performances shall come up to the state of the art available at the time of rendering the performances and comply with the statutory provisions applicable at the place of performance.
2. The scope of performance shall particularly comprise the granting of all rights of use required for the contractually presumed and intended use of the performances by us and/or by third parties designated by us. Insofar as it is required for the intended use, this shall include the delivery and utilization of all technical documents (incl. those of the subcontractors) taking into account potential patents, supplementary protection certificates, brands or utility models. Moreover, the scope of performance comprises – insofar as applicable – the delivery of microfilm-compatible technical documents including manufacturing drawings and parts lists. Insofar as the Contractor commissions subcontractors, he shall ensure by concluding corresponding agreements with them that he is entitled to grant to us and/or to third parties designated by us the rights of use according to the aforementioned provisions.
3. In case the Contractor develops an individual software for us, upon delivery/installation of the software he shall irrevocably grant to us the exclusive and – in terms of contents and time – unrestricted rights of use for all types of use known at the time of the conclusion of the contract as well as all inherent exploitation rights unless agreed otherwise in writing. In addition, we shall be entitled without restriction to transfer the rights of use for this software to third parties and/or to grant rights of use to third parties. Furthermore the Contractor shall hand over to us the complete program documentation, including the source code. Upon receiving it we shall acquire the title thereto.
4. Semi-finished or finished products manufactured according to our specifications, drawings, patterns, models or other documents (hereinafter jointly referred to as "the products") must exclusively be delivered to us and must not be made accessible to third parties in any case. All products are protected by copyright and remain our industrial and intellectual property. Unless agreed otherwise in writing, we possess the exclusive right of exploitation and use of the products. The products shall be treated confidentially by the Contractor. Copies or reproductions of the products may only be made after



having obtained our explicit written consent. Unless anything to the contrary has been agreed in writing in individual cases, immediately after completion of the order they shall be returned to us – without particular request to do so – along with all copies possibly made.

5. When contractually owed items are delivered we will acquire the respective title to them upon their receipt, including the ownership of all pertaining technical documents (incl. those of the subcontractors) as well as of other documents required for new manufacture, maintenance and operation. Above-mentioned documents shall be prepared in the German or English language and according to the international system of units SI.
6. The Contractor shall examine the intended type of execution, any material provided by us and preliminary work operations performed by us or other companies, each time without undue delay and according to the technical rules applicable at the time of examination and he shall do so with regard to the question whether they meet the customary requirements or the particular requirements to be specified for the individual cases. If necessary, he shall promptly report to us in writing indicating his potential misgivings.
7. If the Contractor deviates from the contemplated scope of performance, the Contractor shall only be entitled to higher demands or changes of the target dates, if this had been agreed with us in advance. If we request a change of the initially contemplated scope of performance, the Contractor shall investigate the effects of the change request in terms of target dates and price within a reasonable period of time specified by us and then submit a corresponding written supplementary offer to us.

In case the Contractor fails to observe his obligation to submit a supplementary offer within the fixed period of time, the Contractor shall have to accomplish the change request without charge. If requested changes might have a detrimental effect on the Contractor's performance, its technical data or the entire scope of performance, the Contractor shall have to point this out to us in writing within the reasonable period of time specified by us.

8. Any changes regarding the type or the composition of the material processed or changes in the performance design, when compared with previous Contractor performances of the same type and/or compared to previous catalogue data of the Contractor, which the Contractor had rendered or published, respectively, each within the last 10 years before our written order, shall be indicated to us by written notification without undue delay and prior to execution of our order. Such changes entitle us to unilaterally revoke our order.

VI. Quality

1. The Contractor shall implement and maintain a documented quality management system which is

suitable in terms of type and scope and which comes up to the latest state of the art. He shall keep records particularly concerning his quality inspections and provide them to us upon request.

2. Herewith, the Contractor gives his consent to quality audits for an assessment of the effectiveness of his quality management system which will be conducted by us or by a representative authorised by us. We have the right to raise objections to improper implementations and to reject parts, right at the outset, which have not been manufactured in accordance with a suitable quality management system.

VII. Delivery, packaging and marking

1. The following shipping addresses must be observed:

Postal items / lorry **D-20457 Hamburg,**
Hermann-Blohm-Straße 5
Steinwerder-Freihafen (freeport)

Business hours of the goods receiving department: Mon.-Fri. 7 a.m. to 2.45 p.m. If goods are to be delivered outside these business hours, the Contractor shall individually arrange such time with the employees of the goods receiving department well in advance and/or instruct the person entrusted with the delivery accordingly in order to ensure the proper receipt and unloading of the goods. If a prior individual arrangement is not possible, please inform the shift supervisor (Phone: ++49 (0) 174-909 1501).

2. Our company site is located in the freeport of Hamburg (duty free zone according to § 1, Para. 2, § 6, Para. 1, UStG./German VAT Act).

Dutiable goods – also from bonded warehouses and from duty free zones – may only be delivered to us after having obtained our consent. If dutiable goods are delivered, the delivery notes/advice of dispatch must evidence the country of origin and a completed customs treatment. Non-observance of these customs regulations can entail a customs fine, for which the Contractor shall be fully liable to us in case of non-observance.

3. Delivery notes are to be presented in triplicate accompanying the goods. The delivery note must contain the following details:

- our order number,
- product number according to order,
- precise designation of the delivery item,
- indication of the delivery quantity,
- other additional details requested in the order

Material test certificates and other test documents requested in the order shall be delivered along with the goods.

The shipping documents (rail or lorry) shall contain the note: "Umsatzsteuerfreie Beförderung nach der Zollfreizone Hamburg-Freihafen gemäß § 1 in Verbindung mit § 4 UStG" (VAT-free delivery to the duty free zone of Hamburg Freeport according to Section 1 in conjunction with Section 4 of the German VAT Act).

4. Unless a deviating stipulation is agreed in writing in the



individual contract, the packaging and marking of the goods by the Contractor shall be effected as follows:

The ordered goods are to be packed such that an identification and counting check will be possible without having to repack the goods beforehand. The particular articles shall be clearly and permanently marked with the product number mentioned in the order. The product number shall accordingly be indicated on at least one piece per order item. One delivery note is to be issued for each order. If goods pooled from several orders are transported as a collective consignment, additional packages shall be marked with the delivery note number. Any partial deliveries of an order shall be marked as such. All delivery notes are to be provided with the details listed under subparagraph 3 above.

If deliveries do not meet the respective marking requirements, the increased checking and handling expenditure shall have to be borne by the Contractor.

5. The Contractor or his authorised representative shall have our respective goods receiving department or person confirm that all consignments have been properly received.

VIII. Transport, transfer of risk

1. Unless expressly agreed otherwise in writing in the individual case, the goods shall be delivered free goods receiving department on our premises in Herrmann-Blohm-Straße 5, Steinwerder-Freihafen, 20457 Hamburg/Germany. The Contractor is obliged to provide the consignment in good time and unloaded condition at the goods receiving department. The complete expenses in connection with the transportation of the goods up to that point, particularly shipping fees and receipt follow-up fees, packing costs, accessory charges and other dues shall be borne by the Contractor.
2. We will not bear any packing costs, rental fees or deposit charges for the packing material. If, according to the relevant order, the Contractor is entitled to the return of the packing material, he shall provide a clearly visible note in that respect on each and every shipping document. With regard to the regulations of the currently applicable version of the packaging ordinance the Contractor is obliged to use only such material as complies with such ordinance and which can be returned to a recirculation system. If the above-mentioned instructions are not observed, we will be entitled to dispose of the packing material at the expense of the Contractor or return it to sender freight forward. In the former case the Contractor's claim for return of the packing material shall expire.
3. The Contractor shall bear the entire risk of loss or damage to the goods up to the point in time when they are properly delivered according to subparagraph 1 above (transport risk). For the coverage of transport risks the Contractor shall take out a respective transport insurance at his own expense.

4. If for the rendering of his performance the Contractor needs to store items on the premises of the client, this may only be done on assigned storage areas. The Contractor shall bear the full responsibility and risk for these items until the transfer of risk has been effected.

IX. Assignment, transfer of the execution of contract

1. Without our prior written consent the Contractor is neither entitled to transfer the execution of the contract nor his contractual claims – whether wholly or partially – to any third parties. This does not apply to the assignment of pecuniary claims. Subcontractors of the Contractor shall be named to us upon our request.
2. Where we entrust the Contractor with the processing and/or transformation of an item owned by us, we will be deemed to be the manufacturer of the new chattel at all times during the processing/transformation. An acquisition of ownership by the Contractor is ruled out.

X. Termination, rescission

1. In case of a contract for work and labour concluded with the Contractor as well as in case of a contract for the delivery of non-fungible items we are entitled to terminate the contract with the Contractor wholly or partially without giving reasons. In such a case we are obliged to pay all deliveries and/or performances made up to that time and to adequately remunerate any material procured and work performed. The Contractor, however, shall agree that in such case we will deduct the expenses he saves owing to the contract termination or the earnings he obtains by utilizing his manpower capacity elsewhere or which he refrains from obtaining with malicious intent.
2. In case of breaches of contract which the Contractor is responsible for and which he does not eliminate within a reasonable period of time specified by us, in particular as regards delay, poor performance or violation of material accessory obligations, we will be entitled to wholly or partially rescind the contract and to claim damages. The same applies where it is obvious that because of the prevailing circumstances the Contractor will not be able to render the owed performance in accordance with the contract.
3. At any time we may demand a temporary stoppage (suspension) of the performance. Suspensions of up to 6 months will be free of charge to us. On Contractor's request a time limit for the suspension can be agreed.



XI. Invoicing, payment

1. The prices agreed upon are fixed prices. They cover everything the Contractor is required to effect in order to fulfil his contractual obligation to perform.
2. The invoice shall be submitted separately in duplicate indicating our order and product numbers and with enclosed documents required for the verification. **When the Contractor transports or forwards a consignment to the shipping address Hermann-Blohm-Straße 5, 20457 Hamburg/Germany, or to our railway feeder track, this is a VAT-free export delivery pursuant to §§ 4 No. 1, 6 Para. 1 No. 3 UStG (German VAT law) supplied to a duty free zone pursuant to § 1 Para. 2 UStG. For this reason the invoice issued for such delivery shall not show the value added tax. The same applies for performances rendered on our premises pursuant to §3a UStG.**
3. Payment is effected according to a separate agreement, otherwise according to subsequent subparagraph 4. A performance rendered by the Contractor or his subcontractors or by other third parties before a stipulated date or prior to the expiration of stipulated periods of time may be rejected by us up to the stipulated time of performance and it does not affect the due payment date linked to this date or period.
4. Unless agreed otherwise, the invoice will be paid within 14 days from the date of receipt at our offices less 3% cash discount or within 30 days from the date we received the invoice without any cash discount deduction. The respective period allowed for payment shall be deemed to be observed by us when we have presented the relevant payment order to our bank before expiration of that time limit.

XII. Set-off, right of retention

1. We are entitled without restrictions of any kind to set off all our accounts receivable from the Contractor against the Contractor's receivables.
2. The Contractor may only set off receivables that are indisputable or have become res judicata.
3. The Contractor is not entitled to retain or refuse his performance due to potential counterclaims, neither from the order concerned nor from other transactions of a current business connection. The stipulation pursuant to subparagraph 2 above, however, applies accordingly.

XIII. Claims for defects

1. The Contractor warrants and represents that his performance has the contractually agreed properties and condition, is not encumbered with any rights of third parties and that it is suitable for the intended use to the full extent.
2. The Contractor shall warrant for the compliance with legal requirements, particularly regarding occupational health and safety as well as environmental pro-

tection, the Specific Conditions at the place of performance and the state-of-the-art technology, and he shall be liable for any consequence arising from a violation of these instructions.

3. We shall be entitled to the statutory claims for defects provided that the supplementary performance shall be deemed to have failed at the latest when the second attempt was to no avail.
4. The Contractor shall remedy all defects complained of within the period of limitation at our option either by subsequent improvement or by substitute delivery within a reasonable period so that the client will not incur any expenses. The costs incurred by the correction of defects or the substitute delivery including any accessory charges (e.g. freight rates, dismantling and mounting, providing access to the defective part) shall be borne by the Contractor.
5. If the supplementary performance by the Contractor fails and/or if he fails to render it in time or if such performance is earnestly refused by the Contractor, we shall be entitled to remedy the defect ourselves at Contractor's expense or to have this done by third parties, provided that we have granted the Contractor a reasonable period of time for supplementary performance.
6. The right of substitute performance shall also be available to us in cases of imminent danger. In such a case we will immediately notify the Contractor about the substitute performance.
7. The legal rights of rescission, abatement or damages remain unaffected.
8. The limitation period of claims based on material defects and/or deficiencies in title shall commence only upon the delivery of the performance object effected according to the contractual stipulations in a complete and proper condition free of defects or, if an acceptance had been agreed, upon acceptance by the client.
9. The Contractor renounces the right to raise an objection for late notice of defects for any defects that are not apparent.
10. Where no deviating stipulation has been agreed, a period of limitation for claims based on defects of 36 months applies calculated from the delivery being handed over or accepted; if any such stipulation has been made, it shall apply insofar as no longer terms are provided by law.
11. For parts repaired or replaced during supplementary performance the period of limitation starts to run anew after successful completion of the Contractor's subsequent improvement or substitute delivery.
12. If a defect that the Contractor is responsible for or its correction lead to a temporary shutdown of the performance object, the period of limitation for the entire performance of the Contractor shall be prolonged by the duration of the temporary shutdown. The legal provisions regarding the suspension and interruption of the running of the period of limitation shall remain unaffected by this clause.
13. Provided that his performance is used as contractually agreed, the Contractor shall be liable for all claims arising



ing from the infringement of registered and pending property rights and he releases us from all claims based on the infringement of such property rights.

XIV. Prohibition of advertising, confidentiality

1. Any use of inquiries, orders and related correspondence furnished by the client or of individual pieces of information taken out of such documents for advertising or other purposes shall require the explicit written prior approval of the client.
2. At all times, even after having submitted the respective offers and/or completion and termination of the contract with the client, the Contractor is obliged to maintain vis-à-vis third parties the confidentiality of all operational procedures, equipment, plants, records, documents, patents, know-how and other items worth of protection at the client and his customers which became known to him in connection with his activities for the client. In addition, the Contractor is obliged to impose on his subcontractors, vicarious agents and/or persons employed by him in the performance of his obligations the corresponding duty to observe secrecy. The Contractor shall be liable to the client for any damage arising from a violation of the incumbent duty to observe secrecy.

XV. Severability, written form

1. Should individual provisions of the present Terms and Conditions of Purchase be or become fully or partially invalid or unenforceable or should a gap be found in these term and conditions, the validity of the other provisions and stipulations as well as the effectiveness of the contract concluded with the client shall remain unaffected thereby.

The provision being invalid or unenforceable shall be replaced by a provision that will in terms of its resulting effect come as close as possible to the economic purpose of the provision being invalid or unenforceable, provided this is legally allowed. This shall apply only, where the provision concerned is not replaced by statute law.

2. Amendments and additions to the contract concluded with the Contractor require the written form. This applies also to the requirement of the written form itself.

XVI. Place of jurisdiction, applicable law

1. Subject to the special regulation in paragraph XIV. the exclusive place of jurisdiction for any disputes in connection with existing contractual relationships shall be Hamburg, provided that the Contractor is a merchant within the meaning of the commercial code. We reserve the right, however, at our discretion to raise claims against the Contractor at the court of his place of general jurisdiction.
2. All legal relationships between us and the Contractor are subject to the law of the Federal Republic of Germany excluding the United Nations Convention dated 11th April 1980 on contracts for the Interna-

tional Sale of Goods (CISG) as amended from time to time.

XVII. Arbitration

For contracts concluded with a Contractor headquartered outside the territory of the European Union all disputes arising from or in connection with the existing contractual relationships shall be settled by arbitration proceedings which are to take place in Hamburg according to the rules of arbitration of the "German Maritime Arbitration Association" (GMAA). The awards of the arbitration tribunal shall be binding for both parties. The arbitration tribunal consists of three arbitrators who are appointed according to the GMAA's rules of arbitration.

XVIII. Data protection

The client advises the Contractor pursuant to § 33 BDSG (German Federal Data Protection Act) of the fact that he will record personal data of the Contractor in accordance with the Federal Data Protection Act. These data will be processed and used as required by the legal provisions for the purpose of the execution of contracts and for our administrative purposes unless there is a reason to assume that an interest worth protecting of the person concerned outweighs such an inclusion in the processing or use of personal data.