

General Purchasing Conditions*
(01/2005)

§ 1 General, Validity

- (1) Our purchasing conditions are valid for all deliveries supplied and services provided to us. They are valid exclusively; any supplier's terms and conditions that are contrary or supplementary to our purchasing conditions shall not be accepted and included, unless agreed otherwise in writing for that particular case. Our purchasing conditions shall also apply if we accept the supplier's delivery without reservations while being aware of the supplier's terms and conditions being contrary or supplementary to our purchasing conditions.
- (2) Orders, contracts, modifications and other declarations are not binding unless made or confirmed by us in writing. Transmission by means of telecommunication shall be deemed as 'in writing'. Machine-generated orders explicitly marked as such need not be made in writing. In the event that the supplier does not agree with individual terms and conditions of our order, he shall issue a separate written statement explaining his reasons. An order confirmation stating different terms shall not suffice to change the conditions contained in our order.
- (3) Any correspondence shall be held with the purchasing department. Agreements with other departments, in so far as they concern changes to the terms and conditions set forth in the contract, must be confirmed in writing by the purchasing department. This shall be done in the form of an amendment to the contract.
- (4) Our purchasing conditions only apply to persons concluding a contract in the pursuit of their commercial or free-lance activity (entrepreneurs).
- (5) Our purchasing conditions shall also apply to all future business transactions with the same supplier.

§ 2 Offer, Documentation

- (1) If the supplier does not accept our order within two weeks after receipt, we shall have the right to revoke it. Our orders, contracts, delivery calls shall be deemed accepted if the supplier does not object in writing within two weeks after their receipt.
- (2) Within the restrictions of equitableness, we shall have the right to request from the supplier by means of written notification changes, additions or modifications of the products, amounts, recipient(s), specifications, drawings, drafts and delivery times. The effects, in particular with regard to higher or lower cost, shall be agreed upon appropriately.
- (3) We shall have the right at any time to ask the supplier to surrender immediately and at no cost for us all models, moulds etc. and documents he uses to execute the order. They become our property if the order is placed. If the supplier is in delay, we shall have the right without extra permission to use those models, moulds and documents to achieve a completion of the order, to purchase additional equipment, for service and maintenance, for subsequent modifications and for the production of spare and replacement parts by us or third parties. If necessary, the supplier shall also provide us with other information that may be required to achieve a completion of the order.
- (4) The contractor shall treat the agreement confidentially. He shall not mention our name as a reference to third parties unless he has our written consent.
- (5) The contractor shall treat confidentially all information made available to him in connection with the conclusion and execution of the agreement, unless such information evidently is or becomes general knowledge.

§ 3 Price, Terms of Payment

- (1) The prices stated in the order are fixed prices. Unless agreed otherwise, they are free domicile, including all costs for packaging, labelling, dispatch and freight. If a price is agreed ex works or ex warehouse, we shall only bear the most favourable freight cost. All costs arising up to the transfer to the carrier shall be borne by the supplier. The pricing arrangements shall not affect the agreement on the place of performance.
- (2) A separate invoice shall be issued for each order. This invoice shall comply with the requirements of the country of destination and list all items performed in a clear, structured and comprehensible way. All delivery documents and invoices shall include the order number, item number of the order, product number and place of delivery. The omission of any such information shall give us the right to return the products and charge our extra costs to the supplier. If products are returned, we shall not be obliged to pay for the returned products. In so far as an acceptance of the product or service has been agreed, the acceptance protocol shall be enclosed with the invoice. The invoice shall be based on the amounts, volumes and numbers accepted by us. We reserve the right to accept excess or short shipments.
- (3) Unless otherwise agreed in writing, we shall settle the purchasing price at our discretion within 90 days after receipt of delivery and invoice without discount, within 14 days with 3% discount or within 30 days with 2% discount.
- (4) In the event that deliveries are accepted before they are due, the agreed delivery date shall be of essence for payment.
- (5) Payment shall not constitute any acceptance of the invoice details or the due date of the delivery.
- (6) The supplier shall not assign his claims against us or arrange to have them collected by a third party without our prior written approval.
- (7) We shall have the right to offset any claims the supplier has against us against all claims we or our affiliated companies have against the supplier. Upon the supplier's request we will disclose all companies included in this arrangement.

§ 4 Packaging, Labelling, Shipment

- (1) The supplier shall pack, label and ship the goods in compliance with our packaging standards and any packaging standards that may be set by the shipping company. Our packaging standards are available on request. If he so requests, we shall support the supplier with regard to packaging, labelling and shipment, so that the supplier is able to achieve the most economical transport prices.
- (2) The supplier shall charge no additional costs for packaging, labelling and shipment, unless we agreed in writing to refund the supplier for those costs.
- (3) The supplier shall ensure that all shipments are furnished with the required shipping documents.
- (4) For each shipment, the supplier shall comply with customs and NAFTA requirements, requirements concerning denomination of origin and labelling, requirements of the country of destination with regard to invoicing and documentation and requirements with regard to value-added tax records. Unless agreed otherwise in writing in a particular case, the supplier shall obtain all necessary export licences and permits. If there is a different agreement, the supplier shall provide the information we require to obtain those licences and permits. Moreover, the supplier shall inform us immediately if a shipment is entirely or in part subject to export restrictions according to German or other law.

§ 5 Delivery Time

- (1) The delivery time stated in the order is binding.
- (2) The supplier is obliged to inform us immediately in writing if circumstances occur or come to his knowledge which mean that the agreed delivery time cannot be met. This information shall include details on the reason for the delay, the duration of the delay and measures the supplier is taking to keep the delay to a minimum. Nevertheless, the obligation to meet the agreed delivery time remains valid.
- (3) Acts of God, labour disputes, riots, public measures and other incidents that are beyond the supplier's control shall give us the right – notwithstanding our other rights – to cancel the contract partly or entirely, unless those events are of quite insignificant duration. Failure of a subsupplier or subcontractor of the supplier to meet his obligations shall not be regarded as an incident in the meaning of this clause.
- (4) In the event that delivery is delayed due to reasons supplier is responsible for, we shall have the right to claim lump sum compensation for the delay. It amounts to 1% of the order value for each full week of delay, however, not more than 10% of the order value. The supplier has the right to prove that the delay resulted in no damage or a substantially lower damage than the lump sum compensation amount.
- (5) We reserve the right to pursue any further statutory claims and the right to prove that higher damages have been caused.
- (6) Partial shipments are not allowed, unless explicitly approved by us.
- (7) The acceptance of a late delivery or service without reservation shall not constitute the waiver of any claims we may be entitled to as a result of the delayed delivery or service, in particular claims for compensation. Even actions or omissions after acceptance until full payment do not constitute an agreement that the delivery or service was in good condition.

§ 6 Quality

- (1) All deliveries and services must be free of material or legal defects, meet the latest state of technology and comply with the valid laws, regulations, standards and norms. If they do not meet those requirements, they are defective.
- (2) The supplier shall permanently adapt the quality of the products he supplies to the latest state of technology and inform us of possibilities for improvement and technical changes. The supplier shall comply with the quality control standards drawn up by our customers, with our inspection system and the inspection systems of our customers and all related standards and systems.
- (3) The supplier shall set up and maintain a quality assurance system that is appropriate in its kind and scope and meets the latest state of technology. He shall prepare records, in particular on his quality tests, and make them available to us on request.
- (4) The supplier herewith agrees to quality audits to evaluate the efficiency of his quality assurance system undertaken by us or an authorized third party, if need be with the participation of our customers.

§ 7 Warranty, Liability for Defects

- (1) In the event of material and legal defects of deliveries and services, the statutory provisions shall apply, provided that we shall have the right to choose the kind of supplementary performance for contracts of sale and purchase, contracts for work and material, and contracts for works and services. Subject to the provisions set forth in section 439 para. 3 BGB (German Civil Code), the supplier shall have the right to refuse the kind of remedy chosen by us.
- (2) We shall have the right to set an appropriate time for supplementary performance, unless such supplementary performance would be unreasonable for us. In addition to the statutory regulated cases, such unreasonableness can derive in particular from an impending undue delay or an uncertain event of completion for devices, equipment and installations that are relevant for safety or necessary for the conduct of business. Agreeing on a period for supplementary performance has the same legal effect as setting a unilateral deadline.

- (3) In the event of material defects, notwithstanding any statutory provisions, we shall have the right to rectify the defects ourselves and claim advances for the costs thereof after the fruitless expiry of a deadline set for supplementary performance according to section 637 BGB, even in case of contracts of sale and purchase or contracts for work and material.
- (4) In so far as statutory or contractual provisions give us the right to terminate a contract if the contract was not or not duly performed, the termination – in so far as it refers to the non-performance or ill performance of a separable part of performance – may be confined to that part of the contract, while the remainder of the contract remains in effect.
- (5) After execution of our termination right due to non-fulfilment or ill-fulfilment or in the event of claims for damages instead of performance, we shall have the right, notwithstanding any other statutory rights, to appropriate advance payments for the expected costs plus a safety margin of 20 percent if we have to place the order for the works or services or remaining works or services with a third party. In this case, we shall be obliged to obtain several offers only if this does not cause or threaten to cause substantial delays or disruptions of work, production or business. Work done for our own account shall be invoiced at common market prices as charged by third parties.
- (6) In so far as we are under the obligation to examine the performance and to make a notification of defects according to section 377 para. 1 HGB (German Commercial Code), we shall have 2 weeks from the date of delivery to do so. The notification of a defect that becomes apparent at a later stage is considered to be made in time according to section 377 para. 3 HGB, if made within 2 weeks after it was discovered.
- (7) If a material defect becomes apparent within 6 months after the transfer of risk, it is assumed that the defect already existed at the time the risk was transferred, unless that assumption is incompatible with the kind of object or defect.
- (8) The warranty period is 36 months from the date of delivery, unless stipulated otherwise in the contract, or if a longer period is foreseen by law.
- (9) For parts repaired within the warranty period, the warranty period starts anew from the date on which the supplier has completely fulfilled our claims for supplementary performance.
- (10) In the event that we take back products made and/or sold by us or that the our selling price was reduced or other claims (in particular claims for damages) were brought against us due to the supplier's defective delivery, we shall have the right of recourse against the supplier, whereby a deadline that would otherwise have to be set for claims due to material defects is not required.
- (11) Within the recourse according to section 7 para. 10, we shall have the right to claim from the supplier compensation for the damage caused to us and for the costs incurred by us, including the costs we bear in relation to our customer.
- (12) Irrespective of section 7 para. 8, our claims under sections 10 and 11 hereof shall become statute-barred at the earliest three months after the date on which we have met all claims of our customers against ourselves, however, not later than six years after delivery by the supplier.
- (13) In the event of recalls due to defective delivery, the supplier shall bear all costs and expenses.
- (14) In addition to the stipulations set forth above, the statutory regulations shall apply, in particular with regard to claims for compensation of costs and claims for damages.

§ 8 Product Liability, Indemnification

- (1) In so far as the supplier is responsible for a damage caused by a product, he shall be obliged to indemnify us from claims by third parties upon first request and shall refund the damage caused to us, provided that the cause lies within his sphere of influence and organization and that he himself is liable externally. In so far as the cause of the damage is within the supplier's sphere of responsibility, he shall bear the burden of proof.
- (2) In those cases, the supplier shall be obliged to bear all costs and expenses, including costs arising from or in relation with a recall initiated by us. Otherwise the statutory provisions shall apply. As far as possible and reasonable, we shall inform the supplier of the content and extent of the intended recall measures and give him the opportunity to make comments.
- (3) The supplier undertakes to entertain a sufficient product liability insurance and provide proof thereof upon our request. In the event that we are entitled to further compensation, that right shall not be affected.

§ 9 Industrial Property Rights

- (1) The supplier guarantees that his products and their use by us do not violate industrial property rights of third parties. The same applies to the procurement of accessory equipment, to maintenance and service, subsequent modifications and the production of spare and replacement parts by us or third parties.
- (2) Irrespective of our statutory rights, the supplier shall indemnify us from all claims by third parties and from all damages, costs and disadvantages arising in that context. In particular, this indemnification shall include disadvantages arising from any necessary modification of machines, plants, computer parts or software and from delays in the production process.
- (3) The supplier shall grant us a worldwide, non-exclusive and irrevocable licence for the production, repair and sale of the contractual products. The licence fee is included in the purchasing price for the supplied products. The licence includes the right to grant sub-licences.
- (4) The supplier shall assign to us the right to all inventions and industrial property rights made or obtained by him and/or persons employed by him in connection with the contractual relationship. With regard to the inventions of persons

employed by him, the supplier shall make sure that he is entitled to assign the right as set forth above.

§ 10 Retention of Ownership, Provision of Materials, Documentation, Tools

- (1) In so far as we provide parts to the supplier, we retain the ownership therein. Any processing or modification by the supplier is made on our behalf. If our provided material is processed with other items that do not belong to us, we shall acquire co-ownership in the new product in the ratio of the value of our material to the other processed materials at the time of processing.
- (1) If the product provided by us is mixed inseparably with other items not belonging to us, we shall acquire co-ownership in the new product in the ratio of the value of our material to the other processed materials at the time of mixing. If the mixing is done in such a way that the supplier's material must be regarded as the main component, it shall be agreed that supplier transfers to us prorated ownership; the supplier shall guard the sole ownership or co-ownership on our behalf.
- (2) Documents (e.g. drawings, calculations, sketches), patterns (models, moulds, installations), tools and other production means provided to the supplier shall remain our property. The supplier shall use those items only for the production of the items ordered by us. The supplier must not make those items accessible to or surrender them to third parties or dispose of them. For the duration of the execution of the order, the supplier shall at his cost store, maintain and repair the items. Moreover, the supplier shall insure at his own cost the items belonging to us at reinstatement value against fire, water and theft. He shall notify us immediately of any problems; if he omits doing so at his own fault, any claims for damages shall remain unaffected.
- (3) We reserve all rights to drawings, products etc. made according to our instructions and to the methods and procedures developed by us.
- (4) For the duration of 15 years after the end of serial production of the respective product, the supplier shall be obliged to supply the customer with service and spare parts at suitable prices if and when requested by the customer.

§ 11 Secrecy, No Advertising

- (1) The supplier shall treat as business secrets all commercial and technical information that is not common knowledge and that he becomes aware of as a result of the business relation. Drawings, models, templates, samples, tools and any other documents, production means and information must be kept strictly secret. They must not be disclosed to third parties without our express written consent. The secrecy obligation survives the expiry of this agreement. It expires if and to the extent that the production know-how contained in the documents and information has become common knowledge.
- (2) The use of our requests, orders or other documents for advertising purposes is prohibited. Even the business relation as such must not be used for advertising purposes without our consent.
- (3) The supplier shall inform us in writing of all third parties to which he grants subcontracts as part of his order, stating the details of those subcontracts. The supplier shall make sure that those third parties are subject to the same terms and conditions as he himself as part of this order.

§ 12 Offset and Retention by the Supplier

- (1) The supplier shall have the right to offset only with undisputed or final and non-appealable claims.
- (2) He shall only have retention rights in so far as they are based on the same agreement.

§ 13 Final Provisions, Severability, Jurisdiction, Applicable Law

- (1) In the event that an application for insolvency proceedings or similar proceedings is filed for the supplier's property or there are sufficient indications that the prerequisites for initiating such a procedure exist, we shall have an immediate extraordinary right to terminate the contract without any compensation claims from the supplier.
- (2) Data arising in connection with the business relations will be stored in files by the companies of Schmitter Group and transmitted between them. The supplier herewith grants his consent.
- (3) In the event that some parts of this agreement should be or become legally invalid, the remaining provisions shall remain valid and binding.
- (4) The court in Würzburg, which is generally competent for the SchmitterGroup AG, Thüngen, shall have exclusive jurisdiction for any legal disputes between the parties. Nevertheless, we shall also have the right to sue the supplier at his general place of jurisdiction.
- (5) Unless otherwise contractually agreed, the place of performance for deliveries and services is the address stated in our order form under "Versandanschrift" (delivery address) or if no address is given, the place where the items are used. The place of performance for payments is our principal place of business.
- (6) Trade terms shall be interpreted according to the Incoterms in the version valid at the time of execution of this agreement.
- (7) All legal relations in context with this agreement are exclusively subject to the laws of the Federal Republic of Germany for legal relations of domestic parties.

* Translation of the German "Allgemeine Einkaufsbedingungen". Only the German text is authentic. In case of discrepancies the German version shall prevail.