

GENERAL PURCHASING TERMS AND CONDITIONS STABILUS GMBH (12/2009 EDITION)

(Translation of the German "Allgemeine Einkaufsbedingungen": In case of discrepancies, the German version shall prevail.)

- 1. Execution of the Contract**
- 1.1 The Contract between Contractor and Customer shall be based exclusively on these General Purchasing Terms and Conditions. Contractor's terms and conditions contradicting these General Terms & Conditions or deviating from legal regulations shall herewith be objected to.
- 1.2 Orders, purchase orders, agreements, and changes shall only be binding if issued or confirmed in writing by the Customer.
- 1.3 Any correspondence shall be conducted with the Purchasing Department. Agreements with other departments, to the extent that they concern arrangements that change the items agreed to in the contract, shall require the express written consent of the Purchasing Department in the form of an addendum to the contract.
- 1.4 Orders, purchase orders and delivery call-offs shall be considered accepted if the Contractor does not object to them in writing within 2 weeks from receipt.
- 1.5 The Contractor shall treat the contract confidentially. The Contractor may use the Customer as a reference for third parties only with Customer's written permission.
- 1.6 The Contractor shall treat any and all information and documents received in connection with the execution and performance of this contract confidentially, unless they are or become demonstrably known to the general public. The Contractor shall return to the Customer all documents received, including copies thereof, upon termination of this contract or upon Customer's request. In these cases, Customer shall delete all information received as electronic files and all copies thereof.
- 2. Prices**
- 2.1 The agreed-upon prices are firm prices and – unless agreed to otherwise – are deemed to be 'free location of use' including packaging and freight costs. If "ex works" or "ex warehouse" prices have been agreed upon, the Customer shall only pay for the lowest freight costs. All costs incurred up to the transfer to the freight forwarder, including loading but excluding haulage, shall be borne by the Contractor. The pricing arrangement shall not affect the agreement on the place of performance.
- 2.2 The Customer retains the right to accept over- or under-shipments.
- 3. Trade Clauses**
- For the interpretation of trade clauses, the INCOTERMS in their valid form at the time of execution of the contract shall apply.
- 4. Certificates of Origin, Proof for Sales Tax Purposes, Export Restrictions**
- 4.1 For Certificates of Origin requested by the Customer, the Contractor shall fill in all pertinent information and make the properly signed Certificate of Origin available immediately. The same shall apply to proof of sales tax for international deliveries and shipments within economic unions.
- 4.2 The Contractor shall notify the Customer immediately if a shipment or part thereof is subject to export restrictions according to German or other law.
- 5. Dates, Delays, Unconditional Acceptance**
- 5.1 If the Contractor can foresee that agreed-upon delivery dates cannot be met for whatever reasons, the Contractor shall notify the Customer immediately. This shall not affect his obligation to meet agreed-upon deadlines.
- 5.2 If agreed-upon deadlines are not met, the legal regulations shall apply.
- 5.3 Unconditional acceptance of a shipment or service shall not constitute a waiver of the Customer's claims due to late or defective delivery or service, in particular, rights to claims for damages. Any action or the refraining from action by the Customer after acceptance, in particular payment, shall not constitute acknowledgement of the propriety of the delivery or service.
- 5.4 Partial deliveries are not permitted, unless the Customer has expressly agreed to them.
- 5.5 Force majeure, workers' strikes, interruption of operations due to no fault of the Contractor, riots, government actions, and other circumstances beyond the Contractor's control shall entitle the Customer – notwithstanding Customer's other rights – to rescind the contract in full or in part, to the extent that these circumstances are not of negligible duration. An event in the meaning of phrase 1 shall not exist, in particular, if the cause is non-performance or late performance by the Contractor's supplier or subcontractor.
- 6. Quality**
- 6.1 The deliverables or service ("deliverables" hereinafter) shall be free of material and legal defects, comply with state-of-the-art technology, be fit for the intended purpose and conform to the pertinent laws, regulations, directives, and standards. If it does not fulfill these requirements, it shall be considered defective.
- 6.2 The Contractor shall continuously adapt the quality of the products to be delivered to the Customer to conform to state-of-the-art of technology and notify the Customer of opportunities for improvement and technical modifications. The Contractor and/or the deliverables shall conform to the Customer's quality assurance directive. The Contractor must ensure the traceability of its products.
- 6.3 The Contractor shall establish and maintain a pertinent, documented quality management system that is state-of-the-art and suitable for the type and scope of the deliverables. The Contractor shall keep records, in particular about its quality inspections, and make them available to the Customer upon request.
- 6.4 The Contractor herewith agrees to quality audits conducted by the Customer or its representative, possibly with the participation of the Customer's customer, to evaluate the effectiveness of Contractor's quality management system during usual business hours.
- 6.5 Notwithstanding other agreements, the Contractor shall perform a thorough outgoing goods inspection of its products prior to shipping. Products that do not pass this inspection must not be shipped. The Customer shall only inspect the products after delivery for their type (identity inspection), quantity, as well as transportation damage and other obvious damage. The Customer is not obligated to perform any further inspections.
- 7. Warranty**
- 7.1 The warranty period is 36 months from delivery, unless a longer statute of limitations has been provided by applicable law. In divergence from phrase 1, the statute of limitations for legal defects shall be 5 years. In cases pursuant to Section 438 (1) 1 BGB (German Civil Code), the legal statutes of limitations shall apply in lieu of the statutes of limitations specified in item 7.1 above.
- 7.2 The Customer has the right to choose the type of supplemental performance, while the Contractor shall, for sales contracts, have the right to refuse the type of supplemental performance chosen by the Customer pursuant to the conditions of section 439 paragraph 3 BGB (German Civil Code). If defective deliverables are returned, these returns must be considered open shipments for the respective order and in the delivery schedules. The Contractor will therefore receive a reminder for these deliveries, and they will also be considered in the delivery schedules. Therefore, these amounts shall not be deemed supplemental orders, but indicate only an unsettled complaint.
- 7.3 If the Customer is entitled to supplemental performance by the Contractor, the Contractor shall also reimburse any additional costs incurred by the Customer because of the defective shipment, such as for inspections, repairs, rework and/or other activities on the part of the Customer. The Customer is entitled to charge the Contractor €15 per full quarter hour for such costs.
- 7.4 For parts repaired or delivered under warranty, the statute of limitations of 24 months shall restart from the time the Contractor has fulfilled Customer's claims for supplemental performance in full; however, if the original, remaining statute of limitations is longer, it shall apply. However, the statute of limitations shall not restart in cases where the repair of a defect was performed as a good will gesture or where the scope, duration and costs of the defect remedy are minor.
- 7.5 If a notification of defect is brought on by the Customer within the statute of limitations, this shall suspend the statute of limitations until the Customer and Contractor agree on the remedy of the defect; however, the suspension ends at the latest six (6) months after the final rejection of the notification of defect by the Contractor.
- 7.6 In the event that buyers in the further production chain seek recourse against the Customer due to defective shipments and the defective shipment concerns products of the Contractor, the Customer may seek recourse against the Contractor pursuant to Sections 478, 479 BGB, without the special conditions of a consumer goods purchase having to be fulfilled.
- 7.7 In the event of defective deliverables, the Contractor shall also reimburse the Customer for inspection and sorting costs for (partially) fault-free deliverables of the same product group, if these were performed to check whether these deliverables are also defective. If the share of defective deliverables exceeds 5%, the Customer shall have the right to reject the entire shipment as defective.
- 7.8 Notwithstanding other rights of rescission, the Customer shall have the right to rescind the contract in full or in part, (i) if insolvency proceedings have been started against the Contractor or against the assets of the Contractor, (ii) a major deterioration in the financial situation of the Contractor has occurred or (iii) if the Contractor unjustifiably does not meet major obligations towards the Customer.
- 7.9 In addition to the provisions in the above paragraphs, the legal regulations shall apply. In particular, the legal regulations regarding claims for reimbursement of expenses and for damages shall apply.
- 8. Product Liability**
- 8.1 Notwithstanding other claims and rights of the Customer, the Contractor shall, upon first demand, indemnify the Customer against all third party claims for damages, in particular those arising from product and manufacturer liability, to the extent that they are brought against the Customer based on a cause within the control and organizational realm of the Contractor, and that said third party could reasonably bring action against the Contractor instead of the Customer; such indemnification shall, in particular, also include the rejection of unfounded claims.
- 8.2 In these cases, the Contractor shall bear any and all costs and expenses, including the costs of a possible lawsuit and/or product recall and/or (other) field actions. Likewise, the Contractor shall bear the costs and expenses if the Customer must take preventive measures because of a cause within the control and organizational realm of the Contractor. To the extent possible and reasonable, the Customer shall notify the Contractor about the content and scope of recall measures.
- 8.3 Furthermore, the legal regulations shall apply.
- 9. Property Rights**
- 9.1 The Contractor shall grant the Customer a worldwide, non-exclusive, and irrevocable license to manufacture, repair, and sell the products covered by the contract. The licensing fee is included in the purchasing price for the products delivered under the contract. The license includes the right to grant sub-licenses.
- 9.2 The Contractor shall assign the Customer the right to all inventions and property rights that are made within the contractual relationship at the Contractor and/or at Contractor's agent. Regarding the agents' inventions, the Contractor shall ensure that the right is assignable pursuant to the foregoing phrase. The remuneration for these obligations shall be deemed included in Contractor's remuneration agreed in the contract.
- 9.3 For development orders, the Contractor shall provide the Customer with the results (all findings which have been gained during the analyses, evaluation and execution of the work) including all documents and data files. The Customer shall obtain the exclusive rights to these results free of charge, including the rights in patentable inventions. All other conditions of these General Purchasing Terms and Conditions shall apply accordingly to development orders.
- 9.4 The Contractor shall ensure that no third party property rights will be violated in connection with the delivery of Contractor's products. At first request, Contractor shall indemnify the Customer from any third party claims based on a patent infringement brought against the Customer, or claims against which the Customer must indemnify its own customers.
- 10. Drawings, Performance Documentation, Tools, After-series Shipments**
- 10.1 Drawings and other documentation, fixtures, models, tools, and other production equipment that is on loan to the Contractor shall remain the property of the Customer and shall be permanently marked as such by Contractor. The ownership in tools and other production fixtures that were paid by the Customer shall be governed by the agreements made in a separate Tool Contract.
- 10.2 The aforementioned objects shall neither be scrapped nor made available to a third party – for example, for the purpose of manufacture – without the Customer's written consent. They shall not be used for other purposes than agreed-to in the contract – e.g., for delivery to a third party. The Contractor shall store them at its own expense for the Customer during the performance under the contract.
- 10.3 The Contractor shall service, maintain, and replace said objects at its own expense. Contractor shall notify Customer immediately of any malfunction incidents.
- 10.4 The Customer retains the rights to drawings or products manufactured according to its instructions, as well as processes developed by the Customer.
- 10.5 The Contractor shall give the Customer permission to forward to third parties drawings for products that are the subject of this contract made by the Contractor or its agents. Regarding drawings by its agents, it is the responsibility of the Contractor to obtain agent's permission. The contractually agreed-upon remuneration of the Contractor shall also cover these obligations.
- 10.6 For 15 years following the end of series delivery of the respective product, the Contractor shall provide service and spare parts to the Customer at reasonable prices according to the Customer's delivery call-offs.
- 11. Order Documentation, Payment**
- 11.1 All delivery documentation and invoices shall reference the purchase order number, line item number of the order, item number, and delivery location. In the case of missing information, the Customer shall have the right to return the goods and charge for additional costs incurred. If goods are returned, the obligation to pay for the respective shipment shall be waived.
- 11.2 The Contractor shall refrain from sending a written order confirmation, if the Contractor disagrees with individual conditions of the order, Contractor shall state so separately in writing, providing a reason. A diverging order confirmation is not sufficient to change the conditions of an order.
- 11.3 An invoice that diverges from the order without prior written agreement with the Customer's purchasing department shall entitle the Customer to reject the invoice or debit the Contractor.
- 11.4 Notwithstanding deviating agreements, the Customer agrees to pay within 14 days from complete delivery of the goods and receipt of proper invoice with a discount of 3%, or net by the second working day of the second month following the receipt of the goods. Bank fees and expenses shall be borne by the Contractor. However, in the event of acceptance of early deliveries, payment shall be due no earlier than on the agreed-upon delivery date.
- 11.5 Payments made by the Customer shall not constitute an acknowledgment of the invoice or the propriety of the delivery.
- 11.6 For the Contractor to assign claims arising from this contract to a third party, the Customer's written consent shall be required.
- 11.7 The Customer shall have the right to offset any and all of Contractor's receivables due from Customer against all receivables the Customer or an affiliated company has due from the Contractor. Upon request, the Customer shall notify the Contractor in detail of the companies covered by this rule.
- 12. Place of Performance, Severability, Venue, and Applicable Law**
- 12.1 The place of performance for deliveries shall be the location of use; for payments, it shall be the seat of the Customer's business.
- 12.2 Should one or more provisions of this contract become invalid or unenforceable, this shall not affect the others.
- 12.3 The exclusive venue shall be the court of the Customer's general jurisdiction. The Customer shall, however, have the right to sue the Contractor in Contractor's court.
- 12.4 In addition to the contractual agreements, the laws of the Federal Republic of German governing legal relationships between domestic parties shall apply exclusively.