

## **General Purchase Terms**

### **1. Area of application**

These purchase terms apply to all business transactions with the supplier or other contractor (both subsequently named "Supplier"), even if future contracts do not mention them separately. The terms also apply if, particularly when orders are accepted or confirmed, the supplier refers to his own terms and conditions of business, unless these have been expressly agreed upon.

These terms also apply to all other wording to be regularly used by the supplier, irregardless of the documents in which they appear, and in particular whether or not they are described as "General Purchase Terms" or in a similar manner.

However, we agree to customary retention of title clauses, with the exception of expanded proprietary rights.

### **2. Orders**

- a.) An order is not considered to have been placed until we have written and signed it. Verbal orders or those placed by telephone are only binding on us if we later confirm such orders in writing.
- b.) Individual drawings with our specifications, including tolerance data, are binding. Accepting the order means that by examining the plans on hand, the supplier is aware of the type of design and scope of supply. In the event of obvious errors, clerical errors and miscalculations on our part in documentation, drawings and plans, these are not considered binding. The supplier is obligated to inform us of such errors so that we may correct and repeat the order. This applies to missing supporting documents or drawings as well.
- c.) Order information is to be confirmed within two weeks by signing the copy of the order. If confirmation is not received in time, we are entitled to cancel the order.
- d.) Differences in quantity and quality in comparison with the text and content of our order and subsequent contractual changes are not considered agreed until we have expressly confirmed this in writing.

### **3. Released supporting documents and materials**

Drawings, tools, samples, models, trademarks and make-up, illustrations, calculations, weights and measurements, plans and other technical documents or similar records, as well as finished and semi-finished products released by us or manufactured on our order remain our property and may only be transmitted, used, copied or otherwise reproduced for use by third parties with our express written authorisation. Such use is limited strictly to the purposes stated in the contract. We reserve all copyrights as well.

Supporting documents and materials are to be returned either as soon as the order has been completed or on our express request, including all copies or other reproductions which have been made. Such manufacturing resources, trademarks and make-ups which have been manufactured or priced products may be delivered to third parties only with our express approval.

### **4. Delivery dates**

- a.) Agreed delivery terms and dates are binding. They begin on the day the order is placed. The article must have been received at the destination point specified by us within the delivery period or by the delivery date. If delays are anticipated, the supplier must inform us immediately and request a decision regarding whether the contract will be maintained.
- b.) If the supplier is delayed, we are entitled to demand a contractual penalty of 1.0% of the net order value for each week begun, a maximum of 5% of the net order value and/or to cancel the contract.
- c.) The contractual penalty will be credited toward any claims for compensatory damage. In particular, we are also entitled to charge the supplier for cover purchases intended to secure needs for necessary parts.
- d.) We are not required to take delivery before the end of a delivery date.

### **5. Delivery**

- a.) Delivery costs are the responsibility of the supplier, and are to the destination point we have specified. If, as an exceptional measure, we pay for shipping, the supplier must select the method of transport we have specified; otherwise the manner selected must be for transport and delivery at least expense to us.
- b.) Risk is not transferred to us until we have received the merchandise.
- c.) Packaging is included in the price. If, as an exceptional measure, another agreement has been made, packaging is to be calculated at original cost. The supplier is to select the packaging we have specified and to ensure that the packaging protects the article from damage.
- d.) The quantities specified are to be adhered to exactly. Smaller and larger delivery quantities are permitted only with our express agreement.
- e.) The supplier has full responsibility for procuring supplies needed for his performance – without incurring debt – and thus in this regard assumes procurement risk.

### **6. Documentation**

- a.) Invoices, delivery notes and packing slips are to be enclosed in duplicate with each shipment. These documents must include the following information:
  - Order number
  - Quantity and unit of quantity
  - Item designation, including the Rexxon material number
  - Remainder pending in the case of partial deliveries
- b.) For freight shipments, a delivery note is to be sent to us separately on the day of shipment.

### **7. Prices**

- a.) The agreed prices are set prices, provided the supplier does not reduce the affect prices overall.
- b.) The supplier will not set us prices and terms less favourable than those for other buyers, if and in so far as in specific cases these other buyers are offering the same or equivalent conditions.

### **8. Invoice/Payment**

- a.) Invoices must be clearly understandable.
- b.) Payment is made once the entire quantity of flawless merchandise has been received or upon completely flawless performance and following receipt of the invoice. This applies correspondingly to partial deliveries. Delays resulting from incorrect or incomplete invoices do not adversely affect discount periods.
- c.) The discount period begins the day the goods are received.
- d.) Payment within 14 days is discounted 3%; there is no penalty for payment made within 30 days.
- e.) Payment claims from the supplier require our agreement to be transferred to third parties. Payments may only be made to the supplier.

### **9. Balancing of accounts**

We are entitled to set off outstanding or not yet outstanding claims with claims owed us. Retention of goods or a set-off claim against us may only be made with claims which have been determined to be either undisputed or legally valid. Should reciprocal payment claims exist, the supplier declares himself in agreement with us in setting off his claims and commitments.

### **10. Incoming inspection**

To perform an incoming goods inspection in accordance with §377 HGB [German commercial code], we are only obligated in terms of the category of merchandise, quantity and obvious transport and packaging damage. However, we are entitled to carry out comprehensive random sampling as desired.

A complaint in accordance with §377, Section 1 of the German commercial code must be sent by us as necessary within 14 days following shipment. This complaint may also be oral, by telephone or by data transfer.

## **11. Guarantee/warranty/complaints**

- a.) The supplier guarantees that the article meets our specifications, including make-up and pricing. Our order is to be carried out in an expert and proper manner in accordance with the current state of technology.
- b.) We reserve the right to withdraw from the contract and the right to compensatory damages in place of the entire performance in the event of any deviation from the quality standard agreed upon, no matter how negligible, or impairment of utility, no matter how negligible.
- c.) If defective articles are delivered, the supplier will be given a subsequent opportunity to fulfil his obligation. We will decide whether this later fulfilment is to be through correcting the fault or by delivering a flawless article. If the subsequent fulfilment fails, if the supplier refuses to carry it out, or if this fulfilment is either unacceptable to him or if he is clearly not in a position to implement it, we are entitled to either withdraw from the contract, reduce the remuneration agreed upon and/or demand compensatory damages as well as the replacement of futile expenditures. The same applies if the supplier is unduly delayed after a reasonable time period has been set for fulfilment.
- d.) Improvement is considered to have failed following the first unsuccessful attempt.
- e.) We are also entitled to charge the supplier for costs incurred if we correct the defect ourselves or if a third party corrects the defect, even if the defect is minimal or if waiting is unacceptable because operating safety is endangered or to prevent disproportionate damage or other significant shortcomings.  
The costs to be reimbursed by the supplier may include but are not limited to: lost profits, installation and disassembly costs, costs for error search, recall costs and costs for stopping production. Our wider legal claims are not affected.
- f.) Depending on the warranty claim, the supplier will be billed a minimum of € 50 to compensate for the additional expenditure.
- g.) In each case, the supplier bears responsibility, even without negligence, for all supplies and performances he has procured, just as for his own. This particularly applies to defects.
- h.) If deliveries are in part defective, we are entitled to apply the claims above either to the entire delivery or to part of it.
- i.) The statutory period is 2 years for our claims and rights regarding defects in deliveries and performances, provided no other period has been agreed on in an individual contract. Longer legal statutory periods remain unaffected, as well as provisions regarding commencement of the limitation period, suspension of the running of a period, suspension of the statute of limitations and starting statutory periods once again.

## **12. Mitigation of damage through safeguards against third-party claims**

If one of our customers claims compensatory damages on grounds that parts obtained from the supplier – whether installed, not installed, or processed – are defective, our relationship to the supplier does not require us to invoke a plea from §377 of the German commercial code (HGB) or objection on grounds of statutes of limitation within the scope of mitigation of damage as against our customer, provided notification of a defect was made within two weeks of the warranty claim and the statute of limitation began no later than three months earlier. If the customer is a company responsible for 20% or more of our earnings in the previous calendar year for that product area, we are still not obligated to recognise this objection if the conditions listed above have not been met, provided only a refusal to compensate for damages could seriously impair our business relationship with the customer.

## **13. Observance of safety regulations and occupational protection regulations**

To the extent that the supplier obtains the order from us to plan, manufacture, modify or repair equipment, to deliver technical equipment or work materials, or plan or organise operating procedures, the supplier must set up systems, regulations and measures to prevent industrial accidents. These must correspond to the supplier's own safety regulations, generally recognised safety engineering and occupational medicine rules and the requirements of other legal provisions.

The supplier releases us from any claims by third parties, in particular claims by persons entrusted with executing the commissioned work; any damage resulting from non-compliance with these regulations must be compensated by the supplier where he bears responsibility.

## **14. Industrial property rights**

The supplier is held liable for ensuring that no third-party patents or other industrial property rights are infringed through his delivery and use of the merchandise. He releases us and our customers from all claims arising from the use of such industrial property rights. This does not apply if the supplier has manufactured the article according to our drawings, models or equivalent descriptions or instructions, and he does not know or – in terms of the products he has manufactured – cannot know that industrial property rights are being infringed.

## **15. Acts of God**

War, civil war, export limitations or trade limitations resulting from political changes as well as strikes, lock-outs, stoppages, production cuts and similar events which make it either impossible or unreasonably difficult to fulfil contracts are all considered acts of God and release us from timely acceptance until the given situation has ended. The contract partners are obligated to inform one another of such events and to adapt their commitments to changed circumstances in good faith.

## **16. Safe custody/Property**

Supplied material remains our property. As such, it is to be stored separately and may only be used for our orders. The supplier is responsible for reduction in value or loss even by default. The articles which have been produced with materials we have supplied remain our property in each phase of production. The supplier keeps these items for us; the purchase price includes costs for the items and materials which have been stored for us.

## **17. Trade secrets**

The supplier is obligated to treat our orders and all related commercial and technical details as a trade secret. He is responsible for effectively imposing the same obligation on any of his own suppliers or third parties who have access to this information.  
If the supplier violates this obligation, a contractual penalty of € 200.000 will be demanded for each occurrence. A continuation of the offence is excluded. The contractual penalty will be credited toward any claims for compensatory damage.

## **18. General terms**

- a.) Should a given provision of these terms be null and void or become null and void, the validity of the remaining provisions is not affected. The contracting parties are obligated to conclude an agreement which is as reliably close as possible to the invalid provision.
- b.) Even if the supplier is headquartered in another country, German law applies to all legal relations between the supplier and our company, excluding laws regarding international purchase of moveable objects.
- c.) The place of performance is Kiel. Another location may be agreed upon for delivery.  
The sole jurisdiction is the court with overall authority for our headquarters (Kiel). However, we are also entitled to take legal action at the court with overall authority for the supplier's headquarters.