

# General Terms and Conditions of Purchasing

## § 1 Area of application

(1) All deliveries, services and quotations of our suppliers shall be exclusively effected on the basis of these general terms and conditions of supply. These shall form an integral part of all contracts we conclude with our suppliers on the deliveries or services offered by them. They shall also apply for all future deliveries, services or quotations to the customer, even if they are not once more separately agreed upon.

(2) The terms and conditions of our suppliers or third parties shall not be applied, even if we do not contradict their validity in the individual case. Even if we refer to a letter containing terms and conditions of the supplier or of a third party or referring to such terms and conditions, this shall not constitute an approval of the validity of those terms and conditions.

## § 2 Purchase orders and orders

(1) Even if our offers do not expressly contain any period of commitment, we shall consider ourselves bound by them for one week after the date of the offer. Relevant for the timely acceptance shall be the receipt of the declaration of acceptance at our premises.

(2) We shall be entitled to change time and place of the delivery as well as the type of packaging at any time by means of written notification with a period of at least 7 calendar days prior to the delivery date agreed upon. The same shall apply to modifications of product specifications as far as these can be implemented within the scope of the supplier's normal production process without considerable additional expenditure, the period of notification in these cases according to the preceding clause amounting to at least 14 calendar days. We shall reimburse the supplier for the proven and reasonable additional costs arising as a result of the modification. If such modifications result in delays in delivery that cannot be avoided by means of reasonable efforts during the supplier's normal production and business operations, the originally agreed delivery date shall be postponed accordingly. The supplier shall inform us in writing of the additional costs or delivery delays to be expected according to careful estimation in good time before the delivery date, at the least however within 5 working days after receipt of our notification according to clause 1.

(3) We shall be entitled to terminate the contract at any time by means of written declaration stating the reason, if we can no longer use the ordered products in our business operations due to circumstances that have arisen after conclusion of the contract. In this case, we shall pay the supplier the partial performance rendered by the supplier.

## § 3 Prices, terms of payment, invoice details

(1) The price shown on the purchase order shall be binding.

(2) In the absence of a deviating written agreement, the price shall include delivery and transport to the address for shipment mentioned in the contract including packaging.

(3) As far as according to the agreement entered into the price does not include the packaging and the remuneration for the packaging – that has not only been made available to us on a loan basis – is not expressly specified, this shall be charged at the verifiable cost price. At our request, the supplier shall have to take back the packaging at his expense.

(4) Unless otherwise agreed, we shall pay the purchase price within 14 days with 3% cash discount or within 30 days net from delivery of the goods and receipt of invoice.

(5) Our order number, item number, the delivery quantity and the delivery address must be stated on all order confirmations, shipping documents and invoices. If one or several of these details are missing and processing by us is delayed within the scope of our normal course of business, the payment periods mentioned in paragraph 4 shall be extended by the period of the delay.

(6) In case of late payment we owe default interest to the amount of five percent above the prime rate according to § 247 BGB (German Civil Code).

## § 4 Delivery period and delivery, passing of the risk

(1) The delivery period (delivery date or time for delivery) stated on the purchase order shall be binding. Early deliveries shall not be permitted.

(2) The supplier shall be obliged to inform us in writing without delay if any circumstances occur or become noticeable due to which the delivery period cannot be adhered to.

(3) If the date on which the delivery has to take place at the latest can be determined on the basis of the contract, the supplier shall be in default on expiry of this day, without this requiring a reminder from us.

(4) In case of a delay in delivery, we shall be unrestrictedly entitled to the legal rights, including the right of withdrawal and the entitlement to damages instead of the performance after unsuccessful expiry of an adequate period of grace.

(5) In case of delays in delivery we shall be entitled after prior written warning vis-à-vis the supplier to demand for every commenced week of the delay in delivery a contract penalty amounting to 0.5%, maximum 5%, of the

respective order value. This contract penalty is to be deducted from the damage caused by delay to be compensated for by the supplier.

(6) The supplier shall not be entitled to make partial deliveries.

(7) Even if shipment has been agreed upon, the risk shall only pass to us once the goods are handed over to us at the agreed place of destination.

#### **§ 5 Protection of ownership**

(1) We reserve the title or the copyright in purchase orders and orders given by us as well as in drawings, illustrations, calculations, descriptions and other documents made available to the supplier. Without our express agreement, the supplier may neither make them accessible to third parties nor disclose them, use them himself or through third parties or duplicate them. At our request, he must return these documents and any possible copies to us in full if they are no longer required by him in the due course of business or if negotiations do not lead to the conclusion of a contract.

(2) Tools, equipment and models which we make available to the supplier or which are produced for contractual use and are separately charged to us by the supplier remain our property or ownership in them passes to us. The supplier has to mark them as our property, store them with care, safeguard them against any kind of damage and only use them for the purposes of the contract. In the absence of a different agreement, the contracting parties shall each bear half of the costs for maintenance and repair of these objects. However, as far as these costs can be ascribed to defects of such objects produced by the supplier or to the improper use on the part of the supplier, his employees or other vicarious agents, they shall be borne by the supplier alone. The supplier shall inform us without delay of any damage to these objects that is more than negligible. At our request he shall be obliged to release these objects to us in a proper condition once they are no longer required by him to perform the contracts concluded with us.

(3) Reservations of title by the supplier shall only be valid as far as they refer to our payment obligation for the respective products in which the supplier reserves the title. Expanded or extended reservations of title shall in particular be inadmissible.

#### **§ 6 Warranty claims**

(1) In case of defects, we shall be unrestrictedly entitled to the legal claims. However, differing from this, the warranty period shall amount to 36 months.

(2) Notifications of deviations in quality and quantity shall by all means be considered to have been effected in due time if we advise the supplier of these within 15 working days from receipt of the goods at our premises. Notifications of hidden defects in quality shall by all means be considered to have been effected in due time if notification to the supplier is effected within 15 working days after discovery.

(3) We do not waive our warranty claims by the acceptance or approval of prototypes or samples submitted to us.

(4) The receipt of our written notification of defect at the supplier's suspends the limitation of warranty claims. In case of substitute deliveries and rectification of defects, the warranty period for substituted and repaired parts shall begin anew, unless we had to assume on the basis of the supplier's behaviour that he did not consider himself obliged to effect this action, but has only effected the substitute delivery or the rectification of defects as a gesture of goodwill or for similar reasons.

#### **§ 7 Product liability**

(1) The supplier shall be responsible for any claims raised against us by third parties due to personal injuries or damage to property, which can be ascribed to a defective product delivered by him and he shall be obliged to exempt us from the liability resulting from this. If we are obliged to effect a product recall vis-à-vis third parties due to a defect of a product delivered by the supplier, the supplier shall bear all costs associated with the recall campaign.

(2) The supplier shall be obliged to maintain at his own expense a third party liability insurance and a product liability insurance including an extended product liability insurance with an insured sum of at least 2.5 million EUR, which need not cover the risk of recall or criminal prosecution or similar damages, unless otherwise agreed in the individual case. The supplier shall at our request send us at any time a copy of the third party liability insurance policy.

#### **§ 8 Trade mark rights**

(1) The supplier shall avouch that no third party trade mark rights in countries of the European Union, North America or other countries in which he manufactures the products or has them manufactured, are being violated in connection with his delivery.

(2) The supplier shall be obliged to exempt us from any claims raised against us by third parties due to the violation of industrial property rights mentioned in paragraph 1 and from all necessary expenses in connection with such a claim. This entitlement shall exist regardless of any fault on the part of the supplier.

### **§ 9 Spare parts**

(1) The supplier shall be obliged to stock spare parts for the products delivered to us for a period of at least 10 years after delivery, unless the ordinary service life of the delivered products is shorter, in which case the stockkeeping period shall correspond to this service life.

(2) If the supplier intends to suspend the production of spare parts for the products delivered to us, he shall inform us of this immediately following the decision with regard to the suspension. Subject to paragraph 1, this decision must be taken at least 3 months before production is suspended.

### **§ 10 Secrecy**

(1) The supplier shall be obliged to keep the conditions of the purchase order as well as any information and documents made available for this purpose (with the exception of publicly accessible information) secret for a period of 3 years after conclusion of the contract and to only use them for performing the purchase order. He shall promptly return them to us at our request upon the completion of enquiries or after the processing of purchase orders.

(2) Without our prior written approval, the supplier may not allude to the business connection in advertising material, brochures, etc. and may not exhibit delivery items produced for us.

(3) The supplier shall commit his subsuppliers in accordance with this § 10.

### **§ 11 Assignment**

The supplier shall not be entitled to assign his claims arising from this contractual relationship to third parties. This shall not apply as far as these are monetary claims.

### **§ 12 Effectiveness**

If any of the above provisions should be ineffective, this shall not affect the effectiveness of the remaining provisions. In such a case, a provision that comes closest to the commercial meaning of the ineffective provision shall be considered agreed.

### **§ 13 Place of performance, jurisdictional venue, applicable law**

(1) Place of performance for both sides and exclusive jurisdictional venue for any disputes arising out of the contractual relationship shall be our place of general jurisdiction.

(2) Contracts concluded between us and the supplier shall be subject to the law of the Federal Republic of Germany excluding the Convention on Contracts for the International Sale of Goods.

GeWeTe GmbH & Co. KG

As at: October 2008