

General Terms and Conditions of Purchase of Dillinger Fabrik gelochter Bleche GmbH

§1 General Provisions

1. Our Terms and Conditions of Purchase set forth below shall be an integral part of this contract and shall apply exclusively.
2. We shall not acknowledge any conflicting, deviating or additional terms and conditions of the supplier even if we do not expressly contradict them. Our Terms and Conditions of Purchase shall apply exclusively even if we accept the delivery of the supplier without reservation while being aware of the supplier's terms and conditions which conflict with or deviate from or include additional provisions to our Terms and Conditions of Purchase; this does not imply that we accept the terms and conditions of the supplier.
3. No oral agreements beyond this contract have been made.
4. With the first delivery made under these Terms and Conditions of Purchase, the supplier acknowledges their exclusive application also for all further purchase orders.

§2 Offer of the Supplier

1. Any sampling carried out by or visits and offers made by the supplier are nonbinding and free of charge for us.
2. The supplier is obliged to strictly adhere to our written inquiry when submitting its offer. The supplier shall explicitly point out any deviations from our inquiry.

§3 Purchase Orders of the Buyer

1. Our purchase orders are only binding if they are issued in writing.
2. If we submit a written offer to conclude a contract in the form of a purchase order, the supplier is obliged to confirm this purchase order within 5 working days counted from the order date in writing. Should we not receive such confirmation within 5 working days counted from the order date, we shall no longer be bound to the purchase order.
3. The supplier shall check every purchase order immediately for completeness, identifiable errors and ambiguities as well as its suitability for the use specified by us and shall inform us of any necessary modifications or more detailed specifications without delay.

§4 Dispatch and Delivery

1. The supplier shall be responsible for complying with the binding delivery date. The delivery date stated in the order shall be applicable. It is deemed fulfilled if the goods are received with all accompanying documents according to Section 5, Para. 5 at the latest on the date of delivery within business hours at our place of business unless a different place of delivery has been agreed upon.
2. The supplier undertakes to notify us in writing without delay if circumstances occur or if it becomes aware of any circumstances which will result in its failure to comply with the agreed delivery deadlines. In such cases, we shall be entitled to either extend the delivery period or, after an appropriate period has elapsed and our interest in the delivery has declined significantly, cancel the contract in full or in part.
3. In the event of a default in delivery we shall be entitled to assert the claims as provided for by law. In particular, after a reasonable period has elapsed, we shall be entitled to claim compensation instead of delivery and to rescind from the contract. If we claim damages, the supplier shall be entitled to prove that it is not liable for the breach of obligation.
4. If the applicable purchase order is a sales contract with an absolutely fixed delivery date in accordance with Section 376 HGB (German Commercial Code), the supplier shall be liable according to the legal regulations.

5. All costs arising during transport, including cost for packaging, insurances, tolls and any other additional charges shall be borne by the supplier. Unless otherwise expressly agreed, the products shall be delivered DDP according to Incoterms 2010 to the place of fulfilment. The return of packaging material shall be subject to separate agreement.

§5 Quality and Receipt of Goods

1. The supplier shall ensure that the goods correspond to the submitted technical specifications, which shall be an integral part of the contract, the relevant standards, applicable rules and regulations as well as the state of the art at the time of conclusion of the contract.
2. We, as well as persons authorised by us, shall have the right to reject receipt of goods if we receive goods without shipping documents/delivery notes or without our purchase order and article number and if the supplier fails to prove that it is not responsible for such failure. 3. We shall inspect any goods and services received within an appropriate period of time and, in the event of any complaint, reserve the right to pass all cost arising from inspection and other cost related to the complaint on to the supplier. The notice of defects shall be deemed received in time if it is received by the supplier within 5 working days, calculated from the date of receipt of the goods or, in case of hidden defects, from the date of their discovery.
3. The values for dimensions, weights and quantities ascertained by us during inspection of goods received shall be applicable.
4. Any certificates, data sheets, inspection sheets or any other documents requested in the purchase order shall be delivered with the goods. The goods shall be deemed received according to Section 5, Para. 3 if all requested documents are on hand.

§6 Prices, Invoice and Terms of Payment

1. The price stated in our purchase order shall be binding. In the absence of a written agreement to the contrary, agreed prices shall include all cost according to Section 4, Para. 5.
2. Any additional changes relating to ongoing policies taken by (supra) national and/or international authorities, in particular charges for anti-dumping duties are excluded.
3. Prices are exclusive of any applicable statutory value-added tax. The amount of the statutory value-added tax as applicable on the day of invoicing shall be indicated separately.
4. We can only process invoices if these include the order number and article number set out in the purchase order. The supplier shall be responsible for any consequences arising from the non-compliance with this requirement, unless it can prove that it is not responsible for such non-compliance.
5. Unless otherwise provided for in writing, we shall pay the purchase price with 2% discount within a period of 14 days, starting from the date of delivery and receipt of invoice, or net within 30 days of receipt of invoice.

§7 Assignment and Offsetting of Receivables

1. We shall be entitled to the rights of offsetting and retention to the full extent provided for by law.
2. The supplier shall not be entitled to offset any amounts against receivables unless these are undisputed or have been established as final and absolute.
3. The supplier shall not be entitled to assign receivables arising from the contractual relationship to third parties without our prior written consent.

§8 Warranty

1. We shall be entitled to assert claims for defects to the full extent provided for by law. In any event, we shall be entitled to demand from the supplier, at our option, that the defect be remedied or a new item be delivered. The supplier shall be responsible for any expenses that might be incurred due to such defects, such as transport, shipping and handling, work and material cost. We expressly reserve the right to claim compensation, especially the right to claim compensation instead of specific performance.
2. The supplier's warranty for claims for defects shall be 36 months, calculated from the passing of risk, unless otherwise agreed upon in writing or if longer terms are provided for by law.

§9 Product Liability – Exemption – Liability Insurance Protection

1. To the extent that the supplier is responsible for product damage, it shall be obliged to indemnify us, upon first request, against any claims for compensation asserted by third parties insofar as the cause of damage is within its area of control and organisation and it is liable vis-à-vis third parties.
2. Within the framework of its liability in cases of damage as defined under Para. 1, the supplier shall also be obliged to reimburse any such expense pursuant to Sections 683, 670 BGB (German Civil Code) or Sections 830, 840, 426 BGB
3. (German Civil Code) as is incurred by or in connection with any recall measures we may take. We shall notify the supplier of the content and scope of the recall measures to be taken – insofar as this is reasonable and possible – and shall give it the opportunity to comment on the matter. Any other statutory rights in this respect shall remain unaffected.
4. The supplier undertakes to take out and maintain product liability insurance with coverage of € 10 million per case of personal injury/damage to property; our entitlement to any further claims to compensation shall remain unaffected.

§10 Reservation of Title – Supply of Parts – Tools – Confidentiality

1. Any materials and parts provided by us to the supplier shall remain our property. Any processing or modification work carried out by the supplier shall be undertaken for us. If our goods that are subject to reservation of title are processed together with other items not belonging to us, we shall acquire co-ownership with regard to the new item in proportion of the value of our goods (purchase price plus VAT) to that of the other items processed at the time of processing.
2. In the event that the goods provided by us are inseparably mixed with other items not belonging to us, we shall acquire co-ownership with regard to the new item in proportion of the value of the goods subject to reservation of title (purchase price plus VAT) to that of the other items mixed at the time of mixing. Should the mixing work occur in such a way that the supplier's item is considered the main product, the parties agree that the supplier shall transfer co-ownership to us on a pro rata basis; the supplier shall keep the item of that we are the exclusive owner or co-owner on our behalf.
3. Any tools provided by us shall remain our property; the supplier shall be obliged to use the tools solely for the manufacture of goods ordered by us. The supplier shall further be obliged to insure the tools belonging to us at their new value against damage by fire, water and theft. Simultaneously, the supplier already assigns all claims for compensation resulting from this insurance to us, which we hereby accept. The supplier undertakes to timely carry out all necessary maintenance and inspection work as well as all service and repair work on our tools at its expense. It shall notify us of any incidents immediately; if it culpably fails to do so, claims for damages shall remain unaffected.
4. The supplier is obliged to keep all pictures, drawings, calculations and other documents and information received strictly secret. Disclosure of these to third parties shall be subject to our explicit consent. The confidentiality obligation shall remain valid even after this contract has ended.

5. Where the value of any security rights we are entitled to in accordance with Paragraphs 1 and/or 2 exceeds the total purchase price of all goods subject to retention of title by more than 10%, we shall be obliged to release, upon the supplier's request, said security rights at our own discretion.

§11 Documents

1. We reserve the property rights and copyrights with regard to pictures, drawings, calculations and any other documents; disclosure of these to third parties shall require our explicit written consent. They may solely be used for the manufacture of the goods ordered by us; after the order has been processed, the supplier shall promptly return these to us. They shall be kept confidential from third parties; the provision of Section 10, Para. 4 shall additionally apply in this regard.
2. The supplier shall be obliged to indicate our order and article numbers in all shipping documents, delivery notes, invoices and any other documents; if the supplier fails to do so, we shall not be responsible for any delays in processing these.

§12 Origin of Goods

1. The delivered goods must fulfil the conditions with regard to the country of origin as specified in the preferential agreements of the EEC, unless where anything deviating from this is specified in the order confirmation.

§13 Data Protection

1. The supplier agrees that any personal data revealed to us shall be filed, stored and further used in relation to the order in compliance with statutory regulations.

§14 Energy efficiency

1. We take account of energy efficiency in selecting our suppliers. This applies in particular for suppliers of products, equipments and services with a significant influence on our energy-related contribution.

§15 Patent Rights and Property Rights of Third Parties

1. In the event that any claim is asserted against us by a third party because the delivery and/or use of the delivered items is/are in violation of a patent or any other statutory property right of a third party, the supplier shall be obliged to indemnify us, upon first written request, against these claims unless it proves that it is not responsible for such infringement.
2. The supplier's indemnification obligation shall also extend to all necessary expenses we incur in connection with the claim asserted by a third party and the corresponding defence.
3. We shall not be entitled to make any arrangements with such third party – without consent of the supplier – with regard to such claims, and shall in particular not be entitled to agree on a settlement.
4. The statute of limitation for rights of indemnification is 36 months, starting from the date of risk transfer.

§16 Applicable Law

1. The contractual relationship between us and the supplier shall be subject to the laws of the Federal Republic of Germany, excluding all bilateral and/or multilateral agreements governing the sale of movable goods, in particular excluding the UN Convention on the International Sale of Goods of 11 April 1980.

§17 Place of Jurisdiction and Place of Fulfilment

1. Place of jurisdiction for deliveries and payments (including bounced cheque claims) as well as for any disputes arising from the contract between the supplier and us shall be the location of our registered offices, insofar as the supplier is considered a merchant pursuant to the German Commercial Code (HGB). We shall be entitled to file an action against the supplier also at the latter's place of jurisdiction.
2. The language of negotiations shall be German.
3. Unless where anything to the contrary is specified in our order, the location of our registered office is deemed to be the place of fulfilment.

§18 Final provisions

1. Should individual provisions of these Terms and Conditions of Purchase be or become invalid, this shall not affect the validity of the other provisions and the contract itself. For such case, the parties agree to replace any invalid provision by a new clause that comes closest to the original intent of the invalid provision.