

## **General Terms and Conditions of Purchase**

### **§ 1**

#### **General Information – Scope of Validity**

- 1.1 These terms and conditions of purchase shall apply exclusively; AGRO (hereinafter also referred to as the "Ordering Party") shall not accept any conditions of the supplier which deviate or any conditions of the supplier which are different from the Ordering Party's terms and conditions of purchase, unless the Ordering Party has consented to their validity explicitly and in writing. The acceptance by the Ordering Party of deliveries and services does not include accepting any conditions of the supplier. These terms and conditions of purchase shall also apply if the Ordering Party accepts a delivery from the supplier without any reservations and with knowledge of different conditions of the supplier or of conditions of the supplier which deviate from the Ordering Party's terms and conditions of purchase. The supplier accepts these terms and conditions of purchase as binding when it accepts and/or executes an order or request, including for future deliveries and services of all types.
- 1.2 All agreements between the Ordering Party and the supplier for the purpose of executing an order must be made in writing.
- 1.3 These terms and conditions of purchase only apply for entrepreneurs. Entrepreneurs in the sense of these terms and conditions of purchase are natural persons or legal entities or partnerships with legal capacity who/which in the course of their commercial or independent professional activity enter into business relationships with the Ordering Party as well as legal entities under public law or special funds as defined in applicable law.
- 1.4 These terms and conditions of purchase exist in a German and an English version. In case of any inconsistencies the German version shall be authoritative.

### **§ 2**

#### **Offer – Offer Documentation**

- 2.1 The supplier must point out differences from the Ordering Party's request or differences from specifications, quality guidelines or descriptions which are forwarded to the supplier in connection with the Ordering Party's request. Details of the individual differences must be stated separately in the offer. The documentation, specifications, quality guidelines and descriptions which have been handed over shall otherwise be deemed as an integral component of the supplier's offer. Deviations from the order shall only apply if the supplier indicates this explicitly and they have been confirmed in writing by the Ordering Party.
- 2.2 The Ordering Party shall only accept the ordered quantities. Excess or short deliveries are only permitted after prior written confirmation by the Ordering Party.

- 2.3 Partial deliveries shall only be accepted on the basis of prior written agreement.
- 2.4 The supplier is obliged to accept the Ordering Party's order within a period of two weeks.
- 2.5 The Ordering Party is entitled to demand of the supplier in writing reasonable modifications in the construction and execution of the deliveries and services. The parties shall regulate amicably any effects caused by this, such as, e.g. additional or reduced costs, while adhering to the requirement for written form.
- 2.6 Passing orders on to third parties is not permitted. Excluded herefrom are subcontracts for partial processing or further processing of the ordered goods if made by entrepreneurs who correspond to the Ordering Party's quality requirements and for whom the supplier is fully liable.
- 2.7 Remuneration for expenditure in the offer and negotiation phases, in particular for visits, preparation of offers and projects, estimates for costs or drawings, shall only be granted to the supplier if this has been explicitly agreed in writing beforehand. The results of this advance performance are not binding on the Ordering Party.
- 2.8 The supplier must maintain confidentiality regarding the order and the conclusion of an agreement with the Ordering Party. References in advertising material to business relationships with the Ordering Party may only be made after prior written consent by the Ordering Party.
- 2.9 As soon and as far as the Ordering Party holds available a system of „Electronic Data Interchange“ (EDI) the supplier is obliged to participate in such a system. Details hereto will be agreed upon in a separate agreement.
- 2.10 The Ordering Party reserves its ownership rights and copyrights to its illustrations, drawings, calculations and other documentation; third parties may not obtain access to them without explicit written consent by the Ordering Party. They may only be used for the production on the basis of the Ordering Party's order; they must be returned to the Ordering Party after the order has been processed and without an explicit request having to be made therefore. They must be held confidential vis-à-vis third parties; insofar the regulation in § 10.4 shall also apply.

### **§ 3**

#### **Prices – Payment Conditions**

- 3.1 The price stated in the order is binding. If there is no other written agreement, the price is quoted “free domicile”, including packaging. A special agreement is required for the return of the packaging.
- 3.2 The statutory VAT is included in the price unless the parties have explicitly made a different written agreement.
- 3.3 The supplier shall handle the customs clearance at its expense. The agreed prices are fixed prices for the duration of performance of the agreement unless something else is arranged in the agreement.

- 3.4 The weight ascertained by the Ordering Party and/or its employee in the Ordering Party's factory receiving the goods is decisive for prices according to weight.
- 3.5 Costs, taxes, customs and other duties which take effect or are increased after an order has been made shall be borne by the supplier.
- 3.6 The Ordering Party shall only process invoices if, as detailed in the order, they indicate the order number shown in the order; the supplier is responsible for any consequences which are incurred if this obligation is not adhered to unless it provides evidence that it is not responsible for them.
- 3.7 Unless otherwise agreed in writing, the Ordering Party shall pay the purchase price with a 3 % cash discount within 21 days, counted from the delivery and receipt of the invoice, or net within 60 days following receipt of the invoice.
- 3.8 Within the statutory limits the Ordering Party is entitled to offset any counterclaims against the supplier's claims and/or to assert rights of retention to which the Ordering Party is entitled vis-à-vis the supplier.
- 3.9 Payments by the Ordering Party do not mean that the Ordering Party waives its right to assert claims based on defects.
- 3.10 The supplier is only entitled to assign claims against the Ordering Party with the prior consent of the Ordering Party unless the legal transaction underlying the claims is a commercial transaction for both sides.

#### **§ 4 Delivery Time**

- 4.1 The delivery time stated in the order is binding. The agreed dates for deliveries and services are an integral and material component of the agreement. Whether a delivery or service is made in due time shall be deemed by the time when the goods are received by the Ordering Party. If a delivery period is agreed, it shall begin with the date of the order confirmation.
- 4.2 As soon as the supplier has to assume that it cannot adhere fully or partially to an agreed delivery date, it must notify– irrespective of the causes of the delay –the Ordering Party thereof immediately stating the reasons and the foreseeable duration of the delay.
- 4.3 The Ordering Party is entitled to statutory claims in the event that a delivery is delayed. The Ordering Party is in particular entitled to damages instead of performance and to rescind the agreement after an appropriate grace period has unsuccessfully elapsed. If the Ordering Party requests damages, the supplier has the right to provide evidence to the Ordering Party that it was not responsible for the breach of duty.
- 4.4 If a delivery is made prematurely, the goods shall be stored on the Ordering Party's premises at the supplier's expense and risk until the agreed delivery date.

#### **§ 5 Passing of Risk – Documents**

- 5.1 The risk shall at any rate only pass on to the Ordering Party after the goods have been taken into the Ordering Party's charge at the destination's loading point.
- 5.2 The supplier is obliged to state the Ordering Party's order number exactly on all shipping documents and delivery notes; if it fails to do so, the Ordering Party shall not be responsible for delays in the processing procedure.
- 5.3 Deliveries to the Ordering Party must include a delivery note for each delivery describing the delivered goods as written on the order and also indicating at least the following details:
- Content/quantity and delivery,
  - Receiving factory,
  - Number and date of the order and
  - Ordering Party's article number (Ordering Party's order number) as well as
  - Supplier's production number.
- The supplier is liable vis-à-vis the Ordering Party for the fact that all deliveries subject to a duty of declaration are duly declared. The declaration must also be written on all the shipping documents. Notification of dispatch must be sent with the above details to the receiving factory.
- 5.4 The supplier can only refer to the Ordering Party not having provided essential documentation which it should have provided if the supplier sent a written reminder for the documentation and it did not receive the documentation within an appropriate period.

## **§ 6**

### **Inspection of Defects – Warranty of Defects**

- 6.1 The supplier warrants the following qualities of the goods:
- Deliveries and services are without material defects or defects of title,
  - Correct and appropriate design,
  - Production, construction and processing procedures which correspond to the state-of-the-art science and technology,
  - Proper assembly,
  - That services which are a prerequisite pursuant to the agreement and/or requested by the supplier are accomplished and that the delivered goods conform with the documentation on which the order is based or which is enclosed with the goods (drawings, specifications, descriptions) and that the delivered goods conform with the relevant legal provisions and regulations and guidelines of public authorities, professional accident prevention and insurance associations and specialist associations (in particular, national health and safety regulations, accident prevention regulations and generally recognized safety-related and occupational medical rules),

- Other qualities agreed in the respective order.
- 6.2 If the supplier has doubts about the type of design requested by the Ordering Party, it must inform the Ordering Party of this in writing and without delay.
- 6.3 The supplier is obliged to use environmentally friendly products and processes for its deliveries/services as well as for third-party supplies or ancillary services as far as it is economically and technically possible. The supplier is liable for the environmental compatibility of the delivered products and packaging materials and for all consequential damage which is incurred through the infringement of its statutory duties of disposal. Upon request of the Ordering Party, the supplier will issue a certificate of quality for the delivered goods.
- 6.4 Any rights of the Ordering Party based on defects also cover the parts purchased by the supplier from its subcontractors.
- 6.5 If the Ordering Party is required to make a complaint in respect of a defect immediately on receipt of the goods, such requirement shall be fulfilled by a notification of a defect within 14 days as of discovery of the defect and/or incorrect/excess/short delivery.
- 6.6 Subject to the following provisions the statute of limitations for claims based on defects – also for spare parts – amounts to 24 months following initial operation, use or delivery. Defects, particularly material defects, which due to their nature only transpire after the delivered goods have been processed or taken into use can also be asserted after the end of the statute of limitations or after the further processing, assembly or installation within 12 months after their discovery; in this respect, the supplier waives the defense of the statute of limitations. A statute of limitations which is underway is extended by the length of a business interruption for delivered parts which could not be taken into operation during the inspection of the defect and/or removal of the defect. In case of essential defects, the statute of limitations shall recommence at this time for corrected parts or parts which are delivered as a substitute; in this respect, the supplier waives the defense of the statute of limitations.
- 6.7 The supplier shall bear all expenses and costs which the Ordering Party incurs hereby. The right of the Ordering Party to claim damages shall remain unaffected. The supplier is furthermore liable for any damage which the Ordering Party incurs due to a defective delivery or service even if such damage did not occur on the goods or service itself. The supplier must refund material or wage costs which the Ordering Party paid in vain before a hidden defect was discovered or which the Ordering Party has to reimburse to a third party.
- 6.8 Minor defects can be removed by the Ordering Party itself with prior consultation without the other rights of the Ordering Party based on defects being affected hereby. The supplier must bear the expense incurred here. After the setting of a reasonable grace period the Ordering Party is furthermore entitled to carry out the removal of the defects itself at the supplier's expense if there is imminent danger (*periculum in mora*) or a particular need for urgency.

## **§ 7**

### **Product Liability – Indemnity – Liability Insurance Cover**

- 7.1 In the event that a customer or another third party asserts a claim vis-à-vis the Ordering Party – on whatever legal basis – due to and/or in connection with a damaged product and/or its effects, the supplier is obliged to indemnify and hold the Ordering Party harmless from such claims insofar as it is responsible for the cause of the damage and/or the supplier is directly liable to the customer or other third party – on whatever legal basis. § 478 German Civil Code (Bürgerliches Gesetzbuch – BGB), shall in particular apply. The supplier therefore undertakes to pay all costs and expenses, including the costs of a possibly precautionary recall or legal action, which costs and expenses are asserted due to the damage for which the supplier is responsible.
- 7.2 Within the context of its liability for cases of damage in the sense of § 7.1 the supplier is also obliged to reimburse any expenses pursuant to § 683, § 670 BGB, or pursuant to § 830, § 840, § 426 BGB, which result from or are in connection with a recall carried out by the Ordering Party. The Ordering Party shall – as far as is possible and reasonable – inform the supplier of the content and extent of the recall measures to be carried out and give it the opportunity to make its comments. Other statutory rights shall remain unaffected.
- 7.3 The supplier must carry out quality assurance which is appropriate in its type and extent and which corresponds to the state-of-the-art of technology and provide evidence of this to the Ordering Party if requested to do so. The supplier shall conclude a corresponding quality assurance agreement with the Ordering Party should the Ordering Party believe this to be necessary.
- 7.4 The supplier shall take out adequate insurance for all risks arising from product liability, including the risk of a recall, and submit the insurance policy to the Ordering Party for its inspection if requested to do so.

## **§ 8**

### **Defects of Title, Third-Party Intellectual Property Rights**

- 8.1 All the supplier's deliveries and services must be free from third-party rights. The supplier is liable to the Ordering Party for any damage which the Ordering Party incurs due to the infringement of third-party rights based on the use, installation or sale of the delivered goods.
- 8.2 The supplier guarantees that the use of the delivered goods by the Ordering Party or its customers does not infringe any existing third-party intellectual property rights and applications for third-party intellectual property rights (hereinafter collectively “Intellectual Property Rights”).
- 8.3 The supplier must indemnify and hold the Ordering Party harmless from all claims which may be asserted by third parties against the Ordering Party or its customers due to the infringement of such Intellectual Property Rights. The supplier is obliged to support the Ordering Party or its customers in any legal

dispute which is commenced against the Ordering Party or its customers due to an infringement of such Intellectual Property Rights, including in particular entering into such a legal dispute at its own expense. If the Ordering Party receives information that Intellectual Property Rights are infringed by the delivered goods, the Ordering Party is entitled to rescind the agreement and request damages instead of performance.

- 8.4 The statute of limitations for claims by the Ordering Party based on defects of title as well as in the event that third-party Intellectual Property Rights exist amounts to two years counted from conclusion of the agreement.

## **§ 9**

### **Reservation of the Right to Rescind the Agreement**

In the event of natural disasters, unrest, official measures, walk-outs ((deterrent) strikes and lock-outs), unforeseeable business disruptions and business restrictions and similar circumstances which result in a reduction of the consumption of the Ordering Party or its customers or which prevent the Ordering Party from removing or taking the ordered goods into its charge, the Ordering Party shall be released from its obligation to accept the goods within the extent of the effect of such circumstances and for the duration of the above circumstances or – in particular when it is no longer possible for the Ordering Party to exploit the delivery/service due to the delay caused by the force majeure and taking the economic circumstances into consideration – to rescind the agreement. If the removal of the goods is prevented or it is not possible for the Ordering Party to take them into its charge, the supplier must store the goods in a suitable manner at its expense and risk if requested to do so by the Ordering Party. In these cases any claims by the supplier for a service in return cannot be asserted during the term of the aforementioned events.

## **§ 10**

### **Retention of Title – Provision of Material – Tools – Confidentiality**

- 10.1 If the Ordering Party provides parts to the supplier, the Ordering Party shall retain the ownership thereof. Processing or conversion is carried out by the supplier for the Ordering Party. If the retained goods are processed with other goods which do not belong to the Ordering Party, the Ordering Party shall acquire co-ownership of the new product in the ratio of the value of the Ordering Party's product (purchase price plus VAT) to the other processed products at the time of processing.
- 10.2 If the product which is provided by the Ordering Party is combined inextricably with other products which do not belong to the Ordering Party, the Ordering Party shall acquire co-ownership of the new product in the ratio of the value of the retained product (purchase price plus VAT) to the other combined products at the time of combination. If the combination is made in such a way that the supplier's product is to be considered as the main product, it is

agreed that the supplier shall transfer proportionate co-ownership to the Ordering Party; the supplier shall maintain the sole ownership or co-ownership for the Ordering Party.

- 10.3 The Ordering Party retains the ownership of tools; the supplier is obliged to use the tools solely for the production of the goods ordered by the Ordering Party. The supplier is obliged at its own expense to insure the tools belonging to the Ordering Party at replacement value against fire and water damage and theft. The supplier herewith assigns any claims for compensation arising from this insurance to the Ordering Party; the Ordering Party herewith accepts the assignment. The supplier is obliged to carry out any necessary maintenance and inspection work as well as all repairs and preservation work to the Ordering Party's tools at its own expense and in due course. The supplier is obliged to carry out any necessary maintenance and inspection work as well as all repairs and preservation work to the Ordering Party's tools at its own expense and in due time. It must notify the Ordering Party of any disruptions without undue delay; if it is to blame for a failure to do this, claims for compensation shall remain unaffected hereby.
- 10.4 The supplier is obliged to maintain strict confidentiality regarding all illustrations, drawings, calculations and other documentation and information it receives. Such documentation and information may only be disclosed to third parties with the explicit consent of the Ordering Party. The confidentiality obligation shall also apply after the end of this agreement; it expires when and if the manufacturing information included in the illustrations, drawings, calculations and other documentation which have been handed over has become general knowledge.
- 10.5 Should the security interests granted to the Ordering Party pursuant to § 10.1 and/or § 10.2 above exceed the purchase price of all the as yet unpaid retained goods by more than 10 %, the Ordering Party is obliged to release the security interests at its discretion if requested by the supplier to do so.

## **§ 11**

### **Jurisdiction – Place of Performance**

- 11.1 The factory placing the order shall be the place of performance, fulfillment and effect for the Ordering Party's claims. The place of performance for the supplier's payment claims shall be the Ordering Party's registered office.
- 11.2 The Ordering Party's registered office shall be the exclusive place of jurisdiction, whereby the Ordering Party may also at its discretion take legal action before the court which has jurisdiction for the supplier's registered office.

## **§ 12**

### **Salvatory Clause – Applicable Law**

- 12.1 Any previous general terms and conditions of purchase for the Ordering Party herewith expire.



- 12.2 Should individual provisions or parts of provisions of these terms and conditions of purchase be or become invalid, incomplete or unenforceable or be declared invalid by a court or otherwise official decision, the validity or enforceability of the other provisions shall not be affected hereby. Instead the invalid, incomplete or unenforceable provision shall be deemed as replaced by a valid and enforceable regulation which corresponds as closely as possible to the parties' intent as expressed in the agreement.
- 12.3 The law of the Federal Republic of Germany shall apply, excluding the United Nations Convention on Contracts for the International Sale of Goods from April 11, 1980.