

Terms and Condition of Purchase



1. Scope

Our terms and conditions of purchase shall apply exclusively to all future legal relationships with the supplier. Any terms and conditions of the supplier, which conflict with or diverge from our terms and conditions, will not be recognized regardless of any failure on our part to raise any objections to them. This shall also apply to commercial letters of confirmation provided that these refer to divergent general terms and conditions of business of the supplier.
Individual contractual agreements take precedence over the applicable terms of purchase.

2. Conclusion of the Contract

- 2.1 Our order shall be deemed as binding and valid only if it is in written or electronic form.
- 2.2 If the supplier fails to inform us of any objection to the order within five working days following the receipt of such order, our order shall be accepted as effective. We must receive a written / electronic confirmation of order within 5 working days of the receipt of the order.
- 2.3 In the event that the supplier diverges from the acceptance of the order, the supplier must explicit give a written notice of each individual divergence within the receipt period according to item 2.2. The supplier's divergent confirmation shall be considered as a new offer. If we do not raise any objection to this offer within the receipt period of five working days, the contract containing this divergent declarations shall become effective.

3. Order, Supplier and Article Numbers

- 3.1 Any correspondence connected with an order shall be conducted only with the responsible ordering department and upon specification of the purchase order number and other listed identification numbers. With regard to confirmations, invoices, delivery notes and other correspondence, it is particularly important to always provide the following information:
 - the complete order number,
 - the parts number of the manufacturer,
 - the SUMIDA parts number.
- 3.2 The invoices of the supplier, which do not comply with the conditions stipulated under item 3.1, shall be considered as not checkable. The invoice shall be considered as checkable only if the supplier has complied with all the conditions correctly.

4. Prices and Terms of Payment

- 4.1 The price stipulated in the order shall be binding.
Unless otherwise stipulated in writing, all other costs such as packaging, shipping and insurance costs are included in the stipulated price. Taxes, particularly the statutory value-added tax, are not included therein.
- 4.2 Unless otherwise stipulated in writing, the net amount of the supplier's invoices minus the 3% cash discount will be paid on 30 days after the receipt of a checkable invoice, or the net invoice amount will be paid 60 days after the receipt of a checkable invoice.
- 4.3 Any payment shall not constitute an acknowledgement that the delivery is free of defects.

5. Delivery Period and Place of Performance; Default in Delivery

- 5.1 The delivery date stated in the order shall be binding as the date of arrival at the specified places of receipt (place of performance).
- 5.2 If the supplier realizes prior to the date of delivery that it cannot comply with the stipulated delivery date, the supplier must immediately notify us in writing and state the duration of and reasons for the delay. The supplier is under obligation to provide us with proposed solutions on how the delivery can still be realized and guaranteed through the delivery of conforming or compatible contract goods and after due consideration of the competitive prices and possibly unchanged specifications. The claims arising from the default in delivery shall remain unaffected therefrom.
- 5.3 If the supplier is required to provide material tests, test reports, quality documents or other documents, the receipt of these documents is also a prerequisite for the completeness of delivery and performance.
- 5.4 The supplier shall be in default if it fails to deliver the ordered goods at the specified place of receipt in accordance with the contractual date of delivery; unless the supplier can prove that it is not liable for the default in delivery. The liability of the supplier shall be regulated in accordance with statutory provisions.
Our performance interest shall depend on absolute compliance with the stipulated dates of delivery. The acceptance of a delayed delivery does not constitute a waiver of claims arising from default.
- 5.5 In the event of force majeure, natural disasters, wars or civil-war-like unrests, government measures, transportation disturbances, strikes, lockouts or other serious operational breakdowns in our business sector or that of the supplier, the contracting parties shall be exempted from their performance obligations for the duration of the disturbance and to the extent of its consequences. Any damage claims from both parties shall be excluded. The parties must immediately and extensively inform themselves about the matter at hand, and adjust their obligations in accordance with the requirements of good faith insofar as this is possible and reasonable.

6. Delivery and Passage of Risk

- 6.1 The delivery quantities stated in the order shall be binding. A part-delivery, which was not stipulated, shall not bring about the fulfillment of a contract.
- 6.2 The supplier shall bear the delivery and shipping costs as well as the additional expenses incurred in order to comply with the delivery dates. The supplier shall also bear the costs of transport insurance.
- 6.3 The passage of risk shall take place upon delivery of the goods at the place of performance irrespective of whether the supplier carries out the transport by means of internal transport staff or external transport agents.

7. Acceptance of the delivery

- 7.1 The merchandise must be free of material defects or defects in title; i.e. in particular, it must conform to the stipulated quality and our approved samples and be complete. The supplier shall provide the guarantee that the merchandise possesses the stipulated quality.
- 7.2 If this is not the case, we shall have the right to reject the acceptance of the delivery and return the merchandise at the expense and risk of the supplier. Other warranty claims shall remain unaffected therefrom.
- 7.3 The acceptance of the delivery does not constitute an acknowledgement that the merchandise is free of defects.
- 7.4 If we are deterred from the acceptance of the merchandise as a result of the reasons stated under item 5.5, or if we are able to accept the merchandise only under unreasonable conditions, the supplier must properly store the merchandise at its own expense, provided that our agreement with the supplier stipulates the subsequent acceptance in accordance with item 5.5.

8. Notice of defect

- 8.1 We are under obligation to check the identity, quantity and externally recognizable damages (transport and storage damages) of the merchandise within the normal course of business. A sampling procedure shall be conducted for this purpose; this procedure shall be agreed upon in individual cases or stipulated by us after a due assessment of the circumstances.
The provisions set forth in sections 377, 378 of the German Commercial Code (HGB) shall be subject to the disposition of the parties.
- 8.2 If any defect of the merchandise is revealed only at a later time, the notice of defect is deemed to have been given in due time if such notice is conveyed to the supplier within the prescribed period of five working days. The prescribed period shall commence one working day after the discovery of the defect.

9. Defective Delivery and Warranty

- 9.1 The warranty shall comply with statutory provisions, unless otherwise provided in these conditions.
- 9.2 The merchandise is deemed to have a material damage if the aforesaid merchandise does not conform to the stipulated quality when the risk is passed. In particular, the supplier shall also guarantee that its merchandise corresponds to the present state of the art and that all of the obligatory statutory provisions, requirements, regulations and guidelines have been complied with.
The supplier shall not issue any warranties to third parties with regard to the quality of its products, e.g. in the form of advertising, if we are not given the same warranty by the supplier.
- 9.3 If a third party asserts a claim against us on grounds of the defective products from the supplier, we shall have the right of recourse against the supplier. The compensatory damages will be determined in accordance with statutory regulations. In this case, compensatory damages shall also include the costs incurred by us or by a third party for the examination and sorting out of defective merchandise. If we discover the defect only during the handling, processing or initial use of the merchandise, we can demand compensation from the supplier for the expenses incurred up to that point.
; In particular for the installation and removal and/or for no longer usable materials that were connected or mixed with the deficient part. Furthermore, the compensation shall also include the claims that are asserted against us by a third party.
- 9.4 The supplier shall be liable for measures taken to prevent damages (e.g. recall action) provided that the supplier is under legal obligation to assume such liability.
In these cases, we may implement all the necessary measures for the prevention of damages on behalf of and at the expense of the supplier, if similar defects, which can lead to danger to life and limb or to other substantial damages, including economic losses by third parties, occur with increasing frequency during the warranty period or within two years after the expiration of the warranty period.
We are under obligation to immediately inform the supplier in this regard. To eliminate the dangers arising from the defective contract goods, both parties shall undertake to collectively find a solution as quickly as possible and at the lowest possible cost.
In other respects, the liability of the supplier pursuant to the Product Liability Act and pursuant to the contractual arrangement under Item 10 shall remain unaffected.
- 9.5 The warranty period shall be 24 months, commencing from the time of passage of risk, unless otherwise stipulated in individual cases.
In the case of substitute deliveries, the warranty period shall start anew from passing of risk of the substitute goods, unless the substitute

delivery is caused by a minor defect which may be eliminated without the need for substantial expenditure. We can receive the defence to actions for breach of warranty of quality or title in the form of the notice of defect.

10. Product Liability

- 10.1 If a claim is asserted against us due to the violation of official safety regulations or on grounds of domestic or international product liability provisions resulting from a defectiveness in our product that is attributable to a product from our supplier, we shall have the right to demand compensation from the supplier up to the extent of the damage caused by its defective products. In the event of third-party claims, we can demand from the supplier to grant us release from the liability for damages, if the damage is caused entirely by the defective product of the supplier. At our option, the supplier shall release us from third-party claims in both cases.
- 10.2 The supplier is under obligation to take out a product liability insurance, which covers a reasonable insurance sum. If requested, the supplier must provide us with proof of such product liability insurance.

11. Proprietary Rights

- 11.1 All objects, which are owned by us and transferred to the supplier, shall remain our property and must be labeled as such. In the absence of a written consent to the contrary, the use of these furnished goods shall be solely limited to the manufacture of the products ordered by us.
- 11.2 Process descriptions, drawings, drafts, models, tools and other similar items, which the supplier manufactures according to our specifications, shall pass into our ownership. The delivery is replaced by the fact that the goods are held for us by the supplier without any charge. During the period of safekeeping, the supplier must insure the manufactured goods against fire, theft, etc and bear the costs of such insurance.
- 11.3 Any software, which is developed for us (either separately or in connection with hardware), shall pass into our ownership. This shall also include the transfer of the coding and documentations required for the use and maintenance of the software. We shall have the right to grant licenses in the case of software developed especially for us.
- 11.4 With respect to merchandise produced by third parties for our account, the supplier may send the merchandise only at its own address or at the address specified by us. We shall directly acquire the ownership from the third party upon delivery of the merchandise to the supplier. The SUPPLIER is responsible for ensuring that we acquire absolute ownership. The supplier is merely the holder of the merchandise. The SUPPLIER is only holder and/or bailee of the goods.
- 11.5 In the event of any infringement of proprietary rights, we shall have the right to demand compensatory damages and/or to rescind the contract within the limits imposed by statutory provisions.

12. Maintenance of Secrecy

- 12.1 The supplier shall undertake to observe secrecy regarding any information which does not form part of the state of the art and which becomes known to the supplier through business relations, and to ensure that such information is not disclosed to third parties. This shall also apply to all other information about new developments and projects relating to market strategy. Employees and subcontractors must also be bound to observe secrecy. This shall not apply if our prior written consent to the disclosure is given in each individual case.
- 12.2 Process descriptions, drawings, drafts, samples, models, tools and similar items as well as other specifications, which are transferred to the supplier for the purpose of executing our order, may not be used for other purposes or passed on to third parties without our prior written consent. This shall also apply to processes, drawings, drafts, samples, tools and models manufactured by the supplier in accordance with our specifications. If requested, the aforesaid items together with all of the corresponding copies and reproductions must be immediately surrendered to the exclusion of any right of retention.
- 12.3 The supplier shall not be permitted to supply parts to other companies if these parts are manufactured according to our specifications or display even the slightest deviations. This shall also apply to parts that were returned by us due to defective delivery.

13. Non-Assignability and Transferability

- 13.1 The supplier shall undertake to refrain from assigning any of our existing rights or claims against third parties, unless we have given our prior written consent to the assignment. The prohibited assignment cannot come into force through a subsequent approval on our part. Sentences 1 and 2 shall not apply if the supplier has concluded agreements with its trade creditors regarding the extended reservation of title; if this is the case, the supplier must immediately inform us in writing.
- 13.2 In accordance with civil law provisions under sections 1273 ff. or 1279 ff. of the German Civil Code (BGB), the supplier may not pledge any rights or claims against us to third parties. If any rights or claims against us are pledged by virtue of judicial enforcement, the supplier must immediately notify us in writing.
- 13.3 The complete or partial passing-on of orders or licenses to third parties shall require our prior written consent.

14. Industrial Property Rights

- 14.1 Within the limits imposed by statutory provisions, the supplier must guarantee that when the delivery items are delivered or used in accordance with the contract, industrial property rights, copyrights or other rights of third parties are not impaired as a result of items manufactured by the supplier or by third parties. The supplier shall release us from all claims in the event of any assertion of claims.
- 14.2 Within the limits imposed by statutory provisions, the supplier shall be liable to us for all the damages that we may sustain due to the

infringement of a right. The supplier must inform us that there are existing foreign industrial property rights applicable to export goods. This shall not apply to the infringement of foreign industrial property rights if and as long as the supplier does not know that the merchandise will be delivered to the country in question.

- 14.3 If the supplier holds industrial property rights whose subject matter is the application of the products delivered and produced by the supplier for a specific use, then the supplier shall grant us the right to jointly use its industrial property rights unrestricted, royalty-free and transferable within the scope of the delivered products.

15. Delivery of Replacement Parts

- 15.1 The supplier of such merchandise, which are sold in processed or unprocessed form or passed on in some other form by us, shall undertake to execute repeat orders or orders for replacement parts even during the subsequent period.
- 15.2 If the supplier intends to stop production, the supplier must inform us in writing twelve months before the actual production stop in order to enable us to stock up and cover our last stock requirements.
- 15.3 The concluded agreements shall also apply to the new replacement parts.

16. Termination of Contract

We may terminate the contract and/or alternatively a single order without prior notice, either wholly or in part, or we may rescind the unfulfilled part of the contract, and such right of termination or rescission shall apply especially to the following cases:

- if the creditworthiness of the supplier deteriorates to such an extent that the fulfillment of the contract appears to be jeopardized according to our viewpoint,
- if there are cheque or bill protests lodged against the supplier,
- if we consider the supplier to be threatened by insolvency, unless the supplier can refute this presumption through appropriate means,
- if insolvency proceedings or similar legal or official proceedings are instituted against the supplier,
- if the opening of insolvency proceedings is rejected for lack of assets,
- if the supplier persistently violates contractual obligations despite being called upon to refrain from or omit this act of infringement within the allotted grace period.
- if there are significant changes in the ownership and participating interests of the supplier.

17. Prevention of Accidents

The entire order must be executed in such a way that the agreed and national standards and technical specifications, which are valid at the time of the deliveries, are duly complied with. This shall apply to deliveries of machinery as well as deliveries of other products. If the execution of an order in our company (as so-called "outside firm") is necessary for the processing of an order, this work must be coordinated with us in order to prevent possible mutual jeopardy. In these cases, the supplier shall ensure that one of its responsible employees establishes contact with our current safety officer before the work commences. In matters of safety, the supplier is required to comply with the instructions of our safety personnel. The supplier shall assume full liability for its employees within the limits imposed by statutory provisions. In other respects, the provisions of BGV A1 shall apply. These form part of the terms and conditions of purchase. A copy of this BGV A1 will be furnished to the supplier upon request.

18. General Provisions

- 18.1 Unless otherwise agreed in writing, our conditions apply to all orders.
- 18.2 Place of Fulfillment
Unless expressly specified otherwise, the place of fulfillment for the obligation to deliver is the shipping address or site of use requested by SUMIDA as mentioned in the purchase order.
- 18.3 Jurisdiction
The contractual relationship and the resulting interpretations and disputes are subject exclusively to German law excluding international principles on conflicts of law and the UN Convention on International Sale of Goods. The sole place of jurisdiction for deliveries, services and payments, including bills of exchange, as well as for all disputes between the parties is Dresden. We also reserve the right to bring action against our suppliers in an alternative court of jurisdiction, according to § 12 ff. ZPO (German Code of Civil Procedure).
- 18.4 Individual Contract
All clauses of the contractual relation were discussed in detail between the contracting parties. Both contracting parties confirm by way of signature that all agreements reached have been negotiated in full. Should any part of any provision be or become null and void, the validity of the remaining provisions hereof shall in no way be affected. The contracting parties jointly undertake to replace the void provision with valid provision coming as close as possible to the sense and purpose of the void provision.
- 18.5 Requirement for written form
No amendments and modifications relating to the contractual relationship are valid unless made in writing. That also applies to the clause waiving the requirement for written form.