

Conditions of Purchase

for German entities of the Neumayer Tekfor Group, effective as of March 2009

Section 1 Applicable conditions

- (1) These Conditions of Purchase solely apply in relation to contracts with commercial enterprises within the meaning of Section 14 of the German Civil Code (BGB)
- (2) These Conditions of Purchase apply exclusively. Conflicting or general terms and conditions of the supplier that differ from these Conditions of Purchase will only be recognized on our part insofar as we have provided you with express commensurate written agreement; whereby acceptance of supplier goods or services, or payment for such, does not amount to agreement. Upon first-time supply under these conditions, the supplier accepts the exclusive legally binding validity hereof, including for future deliveries.

Section 2 Formation of contract and amendments

- (1) Our written order is exclusively definitive for all orders, transactions and call-off deliveries on our part.
- (2) Formation of contract is effected by way of order acknowledgement from the supplier, insofar as this does not differ from our order. The supplier is to notify us expressly of any variations; whereby variations from our order are only permissible subject to prior written agreement on our part.
- (3) We shall be entitled to cancel the order where the supplier fails to provide written acknowledgement thereof within a period of two weeks from receipt.
- (4) Call-off deliveries within the scope of an order and call-off plan are binding where the supplier does not oppose such within two working days from receipt.
- (5) Telephone or verbal agreements are subject to written confirmation. Commensurately, verbal agreements following formation of contract and any supplementary agreements require written form for validity. Verbal agreements will only have binding effect for us where effected on our behalf by a legal representative.
- (6) The requirement for written form will also be fulfilled where effected by data transmission or fax.
- (7) Preparation of offers, technical projects, preliminary studies etc. by the supplier will be without cost on our part and, in particular, does not place us under any obligation to place an order.

Section 3 Price and terms

- (1) Principally, the prices on which our order is based apply. Where the supplier is required to state a price in the order acknowledgement in individual cases, the stated price is subject to our express approval. All agreed prices are fixed prices and, in the absence of alternative agreement, apply including free delivery to the place of delivery; which, in turn, is the receiving center nominated on our part. Prices include packaging, unloading and any other incidental costs (insurance). All goods must be delivered to us fully duty-paid.
- (2) In the event of agreement for us to bear the cost of consignment and provided that we have not prescribed a specific means of transport, the goods are to be transported in the most cost-effective manner. Forwarding insurance to be borne by us may not be concluded (waiver customer). Where goods require customs clearance, the supplier is to provide the collecting forwarding agent with sufficient copies of all documents necessary for customs clearance, which are also to be faxed to us in advance.
- (3) Insofar as a supply price (including packaging) has not been agreed, the supplier may charge packaging at its net costs; whereby in the event of agreed return any such costs are to be credited to us in full.
- (4) We reserve the right to determine the nature and route of consignment, the method of transport and the type of packaging. We will not bear any additional costs incurred as a result of failure to comply with our consignment instructions.

Section 4 Terms of payment

- (1) In the absence of alternative agreement, settlement of invoice will occur either within 60 days with a 3% discount, or net 90 days from the due date of claim for payment and receipt of both invoice and goods and/or rendering of services. Payment is subject to checking and audit of invoices.

Section 5 Delivery

- (1) The supplier is to issue an order acknowledgement for each order and include a delivery note stating our order number with each delivery.
- (2) Receipt of goods on our part is definitive in terms of establishing compliance with a delivery date or a delivery period. Where delivery is not agreed as "free to place of delivery" in individual cases, the supplier is to

- present the goods promptly, taking into account the time required for loading and consignment to be agreed with the carrier.
- (3) The performance, nature and extent of delivery must be effected on time and in accordance with our order or delivery schedule. The delivery period stated in our order is binding upon the supplier; in the absence of such, the delivery period will commence on the date of order acknowledgement.
- (4) Where the supplier has undertaken installation or assembly and in the absence of alternative agreement, subject to alternative regulations the supplier will bear all necessary incidental costs such as, for example, travel costs, provision of tools and accommodation allowances.
- (5) In the event of failure to comply with agreed dates, statutory provisions will apply. The supplier is to notify our ordering department without delay wheresoever the supplier envisages difficulties in relation to production, primary material supply, compliance with delivery dates or other similar circumstances that could prevent the supplier from delivering on time or in the agreed quality.
- (6) Upon reference to standards, the supplier is to ensure that delivery is effected in accordance with the latest amendment of the standard.
- (7) Part or multiple deliveries are only permissible to the extent that we have expressly agreed to such or where they are reasonable for us; whereby we will not accept any associated additional costs.
- (8) In respect of unit quantities, sizes and weights, the details of such established during our incoming goods inspection will be definitive.
- (9) Components of deliveries effected on the basis of our order include all associated drawings, system and functional descriptions, operating instructions, circuit diagrams, general operating licenses, inspection reports, test and acceptance certificates, spare part lists and warranty conditions.
- (10) Where scope of delivery also includes software, we will be afforded a temporally unlimited right to use the software and its associated documentation to the statutorily permissible extent (Sections 69a et seq. of the German Copyright Act (UrhG)) and to the extent necessary to allow utilization of the goods according to contract. We may revise, copy or translate the software, convert the object code to the source code and also create back-up copies. We will also be entitled to grant our own customers commensurate user rights to the extent necessary to allow these customers to use and employ delivery items supplied to them on our part.

Section 6 Force Majeure

- (1) Force majeure, industrial action, stoppages not occasioned by us, unrest, public authority measures and any other events beyond our control will release us from our obligation for prompt acceptance for the duration of the occurrence. Without prejudice to other rights afforded to us, during such events and also within a period of two weeks from cessation of such, we will be entitled to wholly or partially withdraw from the contract insofar as the event in question is of significant duration and our requirements have been significantly reduced owing to a resultant need for alternative procurement.

Section 7 Passing of risk

- (1) Irrespective of the nature of consignment, the risk of accidental loss and accidental impairment of the goods will only first pass to us upon completion of unloading at the place of delivery.
- (2) Where services are provided, including assembly services etc., passage of risk will only first be effected upon formal acceptance on our part by means of a commensurate report or other written declaration. Definitive acceptance (final acceptance) will be effected following complete and proper performance of all contractual services; in the event of installation of equipment or facilities, upon successful operation thereof and evidence of achievement of agreed warranty values. Final acceptance is to be requested in writing by the supplier, who shall also send an authorized representative to complete acceptance. A report on final acceptance will be recorded and/or an acceptance certificate issued. Final acceptance may be refused on our part where substantial defects impairing the functioning of the delivery item become apparent. Should such substantial defects occur, final acceptance is to be repeated following elimination thereof.

Section 8 Warranty

- (1) The supplier guarantees that the goods have been manufactured from suitable and faultless materials; that processing has occurred in a careful and proper manner according to recognized technical standards, in particular, in accordance with DIN standards, VDE regulations and other standard regulations applicable at the time of acceptance; that the goods are unconditionally suitable for the contractually intended purpose, possess the assured quality, and meet the agreed standard of performance. The supplier also guarantees that the scope of its delivery, including de-

livery to us, complies with the requirements of technical equipment law (German Equipment Safety Act - *Gerätesicherheitsgesetz*), all health and safety at work inspection standards applicable at the time of order as prescribed by the German Federation of Institutions for Statutory Accident Insurance and Prevention (*Hauptverband der gewerblichen Berufsgenossenschaften*), the requirements of respectively applicable environmental regulations – particularly the relevant requirements of the German Federal Emission Control Act (*Bundesimmissionsgesetz*), as well as all pertinent regulations and directives of public authorities and trade or professional associations.

- (2) The guarantee also applies in respect of services pertaining to subcontractors and vicarious agents of the supplier as well as substitute deliveries, remedies and removal of defects.
- (3) The guarantee provided by the supplier will not be limited or precluded due to the inclusion in the scope of delivery of parts, systems, constructive solutions or processes proposed by us as the customer. The supplier is to notify us promptly wheresoever it considers any such proposals unsuitable.
- (4) Quality defects becoming apparent within six months of the passage of risk will be deemed to have been present at the time risk was transferred, save for where such an assumption is incompatible with the nature of the item or the defect.
- (5) Without request, the supplier is obliged to notify us promptly of any modification to its production and inspection conditions and will only deliver series production parts manufactured after the process modification following approval on our part.

Section 9 Claims for defects and recourse

- (1) Acceptance of goods deliveries is subject to inspection for absence of defects, particularly with respect to correctness, completeness and suitability. We are entitled to inspect the goods at the earliest convenience and insofar as expedient according to the ordinary course of business. The supplier hereby waives objection to delayed complaints of defects.
- (2) Insofar as not otherwise regulated below, statutory provisions pertaining to quality defects and legal deficiencies in title apply.
- (3) We are principally afforded the right to select the method of remedy. In accordance with the requirements of Section 439 (3) of the German Civil Code (BGB), the supplier may reject the method of subsequent performance/remedy selected on our part.
- (4) Should the supplier fail to commence rectification of the defect immediately following a request for such on our part, in urgent cases and/or to prevent acute risks or avoid greater damage, we will be entitled to remedy the defect ourselves or facilitate such by third-parties at the cost of the supplier.
- (5) The supplier hereby indemnifies us from any third-party claims arising from legal deficiencies in title, save for where the supplier is not responsible for the defective title. A limitation of actions period of 2 years from the transfer of risk applies in respect of any such legal deficiencies in title.
- (6) Except in cases of intention to deceive, claims for defects are barred by limitation after 3 years, save for where the item in question has been used in the manner of its usual application within a building structure, and has thereby rendered the structure defective. The period of limitation commences upon delivery of the subject of the contract (passing of risk)
- (7) Any costs incurred by us as a result of defective goods, particularly transport, travel, labor, material or accommodation costs, are to be reimbursed by the supplier.
- (8) The acceptance without reservation of a late delivery or service will not include any waiver of claims for compensation to which we are entitled as a result of the late delivery or service.

Section 10 Product liability

- (1) The supplier is obliged to indemnify us in respect of any claims asserted on the grounds of product liability, provided that and insofar as the commensurate loss results from a defect in the subject of the contract delivered by the supplier. In cases of liability based on fault, this shall only apply were the supplier is indeed at fault. The burden of proof will be incumbent upon the supplier where the cause of loss lies within the supplier's area of responsibility.
- (2) In cases as stated in (1) above, the supplier will be responsible for all costs and expenses, including the cost of any litigation.
- (3) Within the scope of its liability, the supplier is also obliged to reimburse us for all costs and expenses pursuant to Sections 683, 670 BGB and Sections 830, 840, 406 BGB incurred on our part in connection with a recall implemented by us. Insofar as reasonable and possible, we will notify the supplier of the content and extent of any such recall and provide the supplier with an opportunity to submit a comment. The assertion of additional statutory rights remains without prejudice herefrom.
- (4) Statutory provisions apply in remainder.

Section 11 Performance of work

- (1) Persons carrying out work on the company premises within the scope of contract performance are required to observe the provisions of all respectively applicable work regulations. Liability for accidents suffered by such persons on company premises is precluded, insofar as not resulting from a deliberate or grossly negligent breach of obligations on the part of our legal representatives or vicarious agents.

Section 12 Industrial property rights

- (1) The supplier hereby guarantees that the supply and use of the goods will not intentionally or negligently infringe third-party industrial property rights.
- (2) Upon initial written request, the supplier is obliged to indemnify us in respect of any commensurate third-party claims asserted against us; whereby the obligation for indemnification incumbent on the supplier shall extend to all expenses necessarily incurred by us as a result of and in connection with any third-party claim.

Section 13 Secrecy

- (1) We reserve all proprietary rights and copyrights pertaining to all images, drawings, documentation, samples, models, materials, components, know-how etc. provided to the supplier, including in the form of diskettes or CD-ROMs, and hereafter referred to under the generic term "information".
- (2) Information provided to the supplier by us pursuant to Section 13 (1) above may not be disclosed to third parties and may only be made available to persons within the supplier's own company who are required for the purpose of effecting supply to us and who are similarly obliged to maintain secrecy. An obligation to maintain secrecy may lapse insofar as the above-stated information has demonstrably entered the public domain, whereby the commensurate burden of proof is incumbent upon the supplier. Upon initial request on our part, all information provided is to be returned to us in full and without delay, or destroyed at our request; whereby this also applies to any copies or records that may have been created. Without request, the supplier is to return all information provided to it as soon as the respective information is no longer required for execution of the order. In respect of all such information, we reserve all rights, including copyright and the right to register industrial property rights such as patents, utility-model patents etc. Insofar as commensurate information etc, has been provided to us by third parties, this reservation will also apply for the benefit of the third parties in question.
- (3) Insofar as the supplier manufactures products based on any documentation, drawings, models or suchlike prepared by us, or deriving from our confidential specifications, or using our tooling or reconstructed tools, or through the use of information within the meaning of Section 13 (1) above, the supplier may not personally use, or offer or supply such products to third parties.

Section 14 Offsetting

- (1) Rights of set-off and rights of retention are afforded to us within the scope of statutory provisions. The supplier is not entitled to assign its accounts receivable against us to third parties, with the exception of instances pursuant to Section 354 of the German Commercial Code (HGB).

Section 15 Retention of title

- (1) In the absence of alternative agreement, any right of retention on the part of the supplier is precluded.