

TERMS AND CONDITIONS OF PURCHASE

Last revised 2015/10/20

Applicable in business with companies, corporate bodies under public law and special funds under public law

1. General

Our Terms and Conditions of Purchase shall apply exclusively; any general terms and conditions of the supplier that are contrary to or inconsistent with our terms and conditions of purchase shall only apply with our express written consent. The acceptance of goods and services (hereinafter: object of the contract) or their payment shall not represent any agreement.

2. Conclusion and amendment of contract

2.1 General contracts and agreements, supply contracts, orders and call-offs as well as their acceptance, amendments and supplements are made in writing, by fax or electronic data transfer.

2.2 Verbal agreements of any kind – including subsequent amendments and additions to our terms and conditions of purchase – shall require written confirmation from us to be effective.

2.3 Our terms and conditions of purchase shall be deemed accepted in their entirety and without any changes by the supplier if the supplier accepts an order in writing or by means of electronic data traffic, or starts providing deliveries or services which are the subject of the order. Each accepted order or otherwise concluded contract concerning the delivery of goods shall be referred to as “supply contract” under these conditions.

2.4 Cost estimates shall be binding and cannot be compensated, unless expressly agreed otherwise.

3. Delivery and acceptance

3.1 If the supplier does not accept the order within two weeks of receipt, we shall be entitled to withdraw it.

3.2 Delivery schedules in the context of order and schedule planning shall be binding unless the supplier raises an objection within two working days of receiving said schedules.

3.3 We are entitled to request the supplier to make reasonable changes in the design and performance of the delivery item at any time. Initiatives for changing the delivery item can originate from both parties but only Scherzinger Pump Technology can demand a change. They are generally subject to our written authorisation and a detailed statement about the impact of the change on costs and deadlines from the supplier. Deliveries on the basis of the altered delivery item may only be undertaken if we have issued the written release or deviation permit to the supplier. The initiator of a change shall bear the necessary costs arising from this, and those of any other party, including the costs of the release process, unless the cause for the change can be ascribed to one party alone. Therefore, for example, the supplier alone shall bear the responsibility and thus also the costs if the contractual applicability of the delivery item is only achieved by means of a change. The applicability will be assessed, in terms of the delivery items which form part of the whole system, according to their suitability for overall functionality.

3.4 The supplier must not relocate the production site for the production of goods and parts thereof without prior express written consent from us.

4. Shipping and packaging

4.1 Logistics agreements and shipping and packaging instructions shall constitute part of the KANBAN agreements or our blanket orders.

5. Quality

5.1 The supplier must observe the customary codes of practice and be in line with the agreed technical data for all his deliveries. Changes to the delivery item shall require our prior written consent.

5.2 The supplier shall undertake to observe any standards, laws and any other safety instructions, such as claims from the trade supervisory board, VDE regulations for electrical parts or accident prevention regulations from professional associations, the End-of-Life Vehicle Directive and the Hazardous Goods Ordinance relevant to the delivery items. He must indemnify us against all claims under public and private law arising from a violation of these regulations. The supplier must supply all necessary test certificates and proofs without being asked.

He must also provide the necessary information for the systems relevant to the delivery items and which serve for observing the above regulations (e.g. the International Material Data System "IMDS").

5.3 With regard to the procedures for the quality assurance of his deliveries which must be observed by the supplier, our currently valid quality assurance policy, the so-called "QAA" from Scherzinger Pump Technology, shall apply (you can find it on the internet at www.scherzinger.de).

6. Delivery

6.1 Deviations from our deals and orders shall only be permitted once our prior written consent has been given.

6.2 Agreed dates and deadlines shall be binding. Receipt of goods on our premises is the crucial criterion for meeting the delivery date or the delivery deadline. If a duty paid delivery (DAP, DAT or DDP in accordance with Incoterms 2010) is not agreed, the supplier must provide the goods in timely fashion, taking into account the time for loading and shipping to be agreed with the shipping company.

6.3 If the supplier has undertaken the installation or assembly and if nothing else has been agreed, then the supplier, subject to any deviating regulations, shall bear all necessary additional costs, such as travel costs, provision of tools and releases.

6.4 If agreed deadlines are not met, then the legal regulations shall apply. If the supplier foresees difficulties with regard to the production, primary material supply, meeting the delivery deadline or any similar circumstances which could prevent on-time delivery or delivery of the products of the quality agreed, the supplier must notify our order department without delay.

6.5 If there are delays in delivery after prior written warning to the supplier, we are entitled to request a contract penalty in the amount of 0.5%, at most 5%, of the respective order value for each week of delay in delivery begun. The contract penalty must be set off against the damage caused by the delay, which is to be paid by the supplier.

6.6 The unconditional acceptance of the delayed delivery or service shall not contain any waiver of the claims for compensation due because of the delayed delivery or service; this shall apply up to full payment of the compensation owed by us for the affected delivery or service.

6.7 Partial deliveries shall generally not be permitted, unless we have expressly agreed to them or they are deemed acceptable to us.

- 6.8 The values determined by us during incoming goods inspections shall prevail in terms of quantities, weights and measurements, subject to other evidence.
- 6.9 We shall be entitled to use software which belongs to the scope of the product delivery, including its documentation, to the extent permitted by law (Sections 69a et seqq. German Copyright Act).
- 6.10 We shall be entitled to use software, including documentation, with the agreed features and to the extent necessary for contractual use of the product. We may also create back-up copies without express agreement.
- 6.11 The supplier's right to withhold performance and right of retention shall be excluded to prevent interruptions in the just-in-time supply chain.

7. Force majeure

Force majeure, industrial actions, equipment failure not resulting from negligence, unrest, official measures and other unavoidable events release us for the duration of their existence from the obligation to timely acceptance. During such events and for two weeks after they have ended, we are – notwithstanding our other rights – entitled to withdraw from the contract completely, or in part, provided that these events are not of negligible duration and our need is considerably reduced due to the necessity of procuring the items elsewhere because of this.

8. Dispatch note and invoice

The information contained in our orders and delivery schedules shall apply. One copy of the invoice must be addressed to the address printed out, quoting the invoice number and other unique identifiers; it must not be enclosed with the shipments.

9. Price setting and transfer of risk

If no special agreement has been made, the prices shall be Delivered Duty Paid (DDP in accordance with Incoterms 2010), including packaging. Value added tax shall not be included. The supplier shall bear the risk of accidental loss, destruction or deterioration until goods are accepted by us or our authorised representatives at the site at which the goods are to be delivered as per order.

10. Payment terms

Provided no special agreements have been made, settlement of the invoice is to be effected within 30 days deducting a 3% discount or within xx days (according to the agreement) without deduction from the due date of the payment request and receipt of both the invoice and the goods or provision of the service. The payment shall be made subject to invoice verification.

Offset rights and rights of retention as well as the defence of non-performance of contract shall be due to us within the limits of statutory regulations. We are particularly entitled to retain any payments due, so long as we still have claims from incomplete or defective services assigned to the seller.

11. Claims for defects and recourse

Acceptance shall be subject to an inspection to ensure that goods are free from defects, in particular also to ensure correctness and completeness, insofar as and as soon as this is feasible in the ordinary course of business. Defects shall be notified by us immediately on discovery. In this respect, the supplier forgoes the delayed notice of defects in accordance with Section 377 German Commercial Law. The supplier shall be obliged to align his QM system with this limited incoming goods inspection.

- 11.1 The statutory provisions for material defects and defects of title shall be used provided that no subsequent provision is made.
- 11.2 We shall be entitled in principle to choose the type of supplementary performance. The supplier can refuse the type of supplementary performance chosen by us if it is only possible with excessive costs.

- 11.3 If the supplier fails to commence rectifying a defect immediately after we have requested such rectification, then we shall be entitled to proceed with this ourselves or arrange rectification by a third party at the supplier's expense in urgent cases, notably in order to prevent serious risks or greater damage. This shall also apply if the supplier is in default with the rectification of defects.
- 11.4 In the case of defects of title, the supplier shall also indemnify us against any existing claims from third parties, unless he is not responsible for the defect of title.
- 11.5 Claims for defects shall expire by limitation, except in cases of fraud, within 3 years, unless the item has been used according to its customary use for building and has caused its defectiveness. The period of limitation shall commence upon delivery of the object of the contract (transfer of risk).
- 11.6 If the supplier fulfils his obligation of supplementary performance by making a replacement delivery, then the period of limitation shall begin to run in respect of the replacement item delivered, upon delivery of said item, unless the supplier has expressly, and where relevant, reserved the right for the supplementary performance only to make replacement deliveries as a gesture of goodwill to avoid disputes or in the interest of preserving the supplier relationship.
- 11.7 If we incur costs as a result of the defective delivery of the object of the contract, in particular costs for transport, travel, labour, material or costs for an incoming goods control over and above those normally incurred, then the supplier must bear these costs.

12. Product liability and questions of liability

- 12.1 In the event that a claim is made against us in account of product liability, the supplier shall be obliged to indemnify us against such claims, if and insofar as the damage has been caused by a defect in the object of the contract that has been delivered by the supplier. However, in cases of fault-based liability, this shall only apply if the supplier is at fault. If the cause of the damage lies within the area of responsibility of the supplier, the onus lies with him in this respect.

The supplier shall be obliged to take out appropriate product liability insurance.

- 12.2 The supplier shall bear all costs and expenses, including the costs of any prosecution, in the cases mentioned in subparagraph 12.1.
- 12.3 In all other respects, the statutory provisions shall apply.
- 12.4 As part of his obligation to indemnify, the seller must, in accordance with Sections 683, 670 BGB (German Civil Code) reimburse expenses which arise from or in connection with claims made by third parties, including recalls carried out by us. We will instruct the seller about the contents and scope of recalls – as far as is possible and feasible – and give him an opportunity to comment. Further statutory claims shall remain unaffected.
- 12.5 If we have made claims against the supplier for reimbursement of expenses and/or indemnity of up to an amount of 5,000 €, each time resulting for example from delay, substitute performance, direct or indirect consequential losses and deviations from quantity specifications, the supplier shall forgo itemizing the expenses / damages. The supplier must notwithstanding show us evidence that the damage was not so great. Claims above this amount are subject to the usual obligations to produce proof.

13. Trade mark rights

- 13.1 The supplier shall be liable for all claims which arise from the violation of intellectual property applications in the case of contractual use of objects of the contract.
- 13.2 The supplier shall indemnify us and our customers against all claims from the use of such trade mark rights.

- 13.3 This shall not apply insofar as the supplier has manufactured the objects of the contract according to drawings, models or other descriptions similar to these handed to them by us or information that has come from us, and does not know, or, in connection with the products developed by us, does not need to know that trade mark rights have been infringed as a result.
- 13.4 The supplier shall, at our request, advise us of the use of published and unpublished personal and licenced trade mark rights and intellectual property applications concerning the objects of the contract.
- 13.5 Notwithstanding the above subparagraph s11.1 and 11.2, the contractual partners shall undertake to immediately acquaint themselves with any emerging violation risks and alleged loss of injury and to give themselves the opportunity to counteract corresponding claims amicably.

14. Execution of work

Persons who perform work at the factory premises in fulfilment of the contract must observe the provisions of the respective work regulations. Liability for accidents which befall these persons on the factory premises shall be excluded insofar as they were not caused by intentional or grossly negligent violation by our legal representatives or agents.

15. Provision

Materials, parts, containers and special packing provided by us shall remain our property. They may only be used for their intended purpose. Materials shall be processed and parts assembled on our behalf. It is agreed that we shall be co-owners of the products manufactured from our materials and parts according to the ratio between the value of the supplies stored by the supplier on our behalf for this and the value of the whole product.

16. Documents and confidentiality

- 16.1 All business or technical information made accessible by us (including features which can be gleaned from items, documents or software provided, and other knowledge or experience) must, as long as and insofar as it is not obviously in the public domain, be kept secret from third parties and may only be provided in the supplier's own firm to such persons as have to be enlisted necessarily for the purposes of the delivery to us and who are also sworn to secrecy; such information shall remain our exclusive property. Without our prior written consent, such information – except for deliveries to us – must not be reproduced or used commercially. All information that has come from us (where applicable, including any copies or records) and loaned items shall be returned to us immediately or in full on request, or destroyed. We reserve all rights to such information (including copy right laws and the right to register industrial property rights, such as patents, utility models, semiconductor protection etc.). Provided these have been made available to us by third parties, this reservation of rights shall also apply in favour of said third parties.
- 16.2 Products which are made according to documents, such as drawings, models and similar drafted by us, or according to our confidential information or with our tools or recreated tools, must neither be used by the supplier himself, or offered or delivered to third parties. This also applies mutatis mutandis to our print orders.

17. Retention of title

Ownership of the delivered goods shall pass over to Scherzinger Pump Technology on full payment. Any prolonged or extended retention of title by the supplier shall be excluded.

18. The supplier's tools

- 18.1 The supplier shall grant us the irrevocable option of acquiring possession and ownership of tools which are necessary and specifically intended for manufacturing the goods ("Necessary tools") against payment of its current value minus the amounts which we have already paid to the supplier or which are amortised over the commodity price. This option does not exist if the supplier needs the necessary tools for manufacturing his other standard products.

18.2 The supplier shall equip us with all technical information which we need for installation, assembly and alternative use of the necessary tools. Technical information shall contain design, assembly and installation drawings and other technical documentation, test protocols and results, data and other information which relate to goods and tools. Technical information may be used and published by us without limitation, subject to the supplier's patent and trade mark rights. Design and production information which is subject to the supplier's intellectual property rights may be used by us only for our own purposes.

19. Export control and customs

The supplier shall be obliged to inform us in his business documentation of any licensing requirements in the event of (re)exports of his goods in accordance with German, European, US export and customs regulations as well as export and customs regulations in the country of origin of his goods. The supplier shall specify at least the following information in his tenders, order confirmations and invoices in the case of the commodities:

- the export list number in accordance with the export list appendix for the German foreign trade regulations or similar listing in the relevant export lists,
- for US goods the ECCN (Export Control Classification Number) in accordance with US Export Administration Regulations (EAR),
- the normal commercial origin of his goods and the components of his goods, including technology and software,
- whether the goods were transported by the USA, made or stored in the USA, or were made using US technology,
- the statistical commodity code (HS code) of his goods, as well as
- a contact person in his company able to clarify any queries for us.

The supplier shall be obliged at our request to notify us in writing of any other foreign trade data in respect of his goods and their components and to inform us immediately (prior to delivery of the relevant goods) in writing of any changes to existing data.

20. The contractual partner's right of withdrawal or termination; duty to inform

20.1 Scherzinger is entitled to terminate supply contracts or parts thereof at any time and without giving reasons by means of a written statement within a reasonable period (usually thirty (30) days). The contractual partners shall then negotiate appropriate compensation with the aim of reimbursing the already agreed bulk price for already completed goods minus saved expenses as well as direct costs for unfinished products and raw materials which the supplier has manufactured or ordered in accordance with binding delivery schedules. Both parties must minimise the costs here, e.g. by alternative use of materials.

20.2 In the event of violation of major contractual obligations which are not remedied by the other contractual partner within a reasonable period despite written warning, each contractual partner is entitled to terminate the supply contract without notice or withdraw completely or in part from the supply contract. In our case this may be the supplier having a considerable number of missed deadlines immediately following on from each other as well as repeated, significant violations against our quality specifications.

30.3 We are also entitled to terminate the order without notice in the following cases:

- in the event of the occurrence of a significant deterioration of the supplier's financial position, suspension of payments, filing for bankruptcy (by the supplier or a third party if the application is not filed in a way that misapplies the law) or in the commencing of bankruptcy proceedings or dismissing a bankruptcy filing due to lack of assets;

- when a significant change in the ownership structure or shareholder's portions in the supplier's company takes place due to which a continuation of the supply contract by us cannot reasonably (e.g. competitive context) be expected;
- when and insofar as a customer of ours ends the supply contract concerning the product in which the goods are integrated.

The supplier shall be obliged to inform us immediately in writing of the occurrence of any one of the events mentioned here.

21. Place of performance and place of jurisdiction

- 21.1 The place of performance shall be the place to which goods are to be delivered or where the service is to be provided.
- 21.2 The place of jurisdiction for all legal disputes arising directly or indirectly from contractual relationships on which these terms and conditions of purchase are based shall be Donaueschingen. We shall be further entitled to bring actions against the supplier at our discretion in a court in the place of performance.

22. General provisions

- 22.1 In the event that a provision in these terms and conditions or any other agreements reached shall be or shall become ineffective, then the validity of the remaining provisions shall not be affected. The contractual parties shall be obliged to replace the ineffective provision with one that most closely reflects the economic purpose of the original one.
- 22.2 German law, with the exception of conflicts of law and the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall apply exclusively to the contractual relationships.