



General Terms of Purchase * (as of 01/2019)

§ 1 General

(1) Our Conditions of Purchase shall apply exclusively and shall be effective only in relation to corporations. Any conflicting conditions or those conditions by Supplier which deviate from our conditions shall not be accepted; this shall also apply for the unconditional acceptance of the delivery. We do not accept conflicting conditions even if we do not explicitly object to the same or if we make reference to the contractual partner's letter making reference to its conditions. They shall also apply for all future business with the Supplier, even if they are not once again explicitly included.

(2) In addition, statutory provisions (particularly BGB and HGB – German Civil Code and German Commercial Code) shall also apply. The latest versions of the regulations and guidelines cited by us shall be applicable. The Supplier can ask for our company standards and guidelines, which form the basis of the contract, at any time if these are not in its possession; their latest versions shall likewise be authoritative.

(3) These General Terms of Purchase shall be subordinate and supplementary should special conditions deviating from these conditions be agreed upon for a specific order.

§ 2 Order

(1) Supplier shall be obligated to accept our order within 14 days unless other binding periods are agreed upon in the individual case. Otherwise, we are no longer bound to the order.

(2) Call-offs can also be affected via data transmission.

§ 3 Prices and Payment Terms

(1) The price given in the order shall be binding.

(2) It shall not include statutory value-added tax, unless stipulated otherwise. Also, delivery „free domicile“ including loading and packaging shall be included. Charges for transport insurance are not to be invoiced because we are self-insured.

(3) We shall be entitled to rights of set-off and retention to the statutory extent.

(4) We shall pay within 14 days after the date of invoice, with a 3 % discount; in case of later payment of the invoice, we shall pay net. Payment deadlines and discount periods shall begin from the date of receipt of invoice, but not before the goods are delivered or the service is provided and accepted or all contractual documentation or other documents are handed over. The Supplier's payment terms shall apply if these are more favorable without the Supplier's General Terms of Business being otherwise accepted

(5) Interest after due date on amounts unpaid cannot be claimed. In any case, we shall be entitled to prove that any damage caused by delay is lower than that claimed by the Seller.

§ 4 Delivery Period and Default of Delivery

(1) The delivery period indicated in the order shall be binding.

(2) If circumstances occur or are identified which could result in a delay in delivery, the Supplier is obliged to inform us immediately in writing or in text form.

(3) In case of default of delivery, we shall be entitled to demand a flat-rate default damage in the amount of 1.5 % of the delivery value per completed week; however, we can only claim a maximum of 5 % as a flat rate. Supplier shall have the right to prove to us that no or a considerably lower damage has been incurred.

More far-reaching statutory or contractual claims (especially damages for violation of duties) shall be reserved.

(4) Every delivery must contain a delivery note and a packing slip (if shipped, the name/address of the shipping company and the name of the ship must be specified).

The order reference and the details regarding the unloading point provided by us must be fully cited in all documents (particularly invoices and delivery notes, dispatch notes, packing slips and consignment notes as well as on external packaging).

Hazardous substances and goods must be packaged, labeled and dispatched in accordance with national and international regulations. Information in accompanying documents must comply with the respective national regulations.

The Supplier is responsible for ensuring that its sub-contractors too comply with these duties.

It shall be liable for all damages and expenses incurred due to a violation of its duties.

Shipments that cannot be accepted due to a violation of these duties will be kept in storage at the Supplier's cost and risk. We shall be entitled to determine the contents and condition of such shipments.

(5) The unconditional acceptance of a delivery or service that is delayed does not imply the relinquishment of claims for damages owed to us, or any contractual penalty incurred, as a result of the delay in delivery or service. This shall apply till the fee owed to us for the concerned delivery or service is paid in full.

§ 5 Quality, Documentation

(1) The Supplier warrants that his deliveries are carried out in conformance with the generally accepted rules of technology (including the applicable DIN standards) , the safety instructions, the relevant legislative regulations and the agreed or ensured technical data (specifications).

(2) The supplier shall perform quality assurance procedures according to the appropriate nature and extent and according to the generally accepted state of technology and shall provide evidence for it upon our request. For all supplied goods, the Supplier shall perform a documented inspection of the goods before delivery with respect to the required characteristics which are essential for the correct function.

(3) In circumstances where the supplier notices that his deliveries do not meet the agreed requirements, neither in total nor in part, the supplier is obliged to inform us immediately in writing or in text form.

(4) In cases where the supplier intends to amend any details regarding the deliveries or production process, such as deviations from specifications, materials, dimensions, manufacturing methods, site of production, transfer of production to third parties etc, the supplier is obliged to inform us in writing or in text form before implementing these changes. Amendments and modifications by the supplier are at any time subject to our prior agreement in writing.

§ 6 Examination of Defects

(1) Excluded shall be an obligation of complaint on our part pursuant to § 377 HGB (German Commercial Code) for non-obvious defects. We shall be obligated to the minimum control on the basis of the delivery note and for transport damages; Supplier shall be obligated to perform final goods control and shall conclude a quality assurance agreement with us.

(2) In the event that no quality assurance agreement exists or in the event of obvious defects, our complaint shall be considered on-time if it is received at the Supplier's within 7 working days, counted from the date the goods are received or, in case of hidden defects, as of the time of detection. As far as in the individual case, the „immediate period“ under § 377 HGB should be longer than 7 working days, this longer period shall apply.

§ 7 Liability for Defects and Warranty of Title

(1) We shall be entitled to the full extent of all statutory rights in case of material defects and warranties of title.

In case of defects, we shall be entitled, in particular, to demand at our option a remedy of defects or the delivery of non-defective goods; Supplier shall bear fully the costs required for it. Furthermore, we shall be entitled to the statutory damage claims without reductions and unrestricted. The costs of subsequent performance to be reimbursed by the Supplier under §439 (2) BGB shall include the costs of locating the defect as well as sorting costs.

(2) A limitation period of three years as of delivery shall apply, unless longer periods are required by law. As far as the delivery object is newly delivered within the scope of subsequent performance, the period of limitation shall begin anew if it is considered an acknowledgement of the duty of subsequent performance. The same shall apply in case of subsequent improvement for the improved part of the delivery object.

(3) In urgent cases (pending danger or special need for speed), we shall be entitled to remedy the defects on our own at the Supplier's costs. An urgent case applies if it is no longer possible to inform the Supplier and to set him an (although short) period for subsequent performance.

§ 8 Reservation of Ownership

(1) As far as we provide parts at the Supplier's, we shall reserve ownership therein.

(2) The reservation of ownership shall also extend to the full value of those products which are created by processing or modification of our goods, with these actions performed for us so that we are considered the manufacturer. If the ownership right of third parties remains in existence during the processing or modification with their goods, we shall acquire co-ownership in relation to the objective value of these goods.

Upon mixing or combination of our goods with other objects, we shall also acquire co-ownership at the above described proportion. If the process occurs in such a manner that the product of the Supplier is to be considered as the principal thing, it shall be agreed that the Supplier assigns to us a proportional co-ownership. The manufacturer shall safeguard our property with the customary care in the industry.

(3) As far as the estimated value of our security rights exceeds the value of the secured claims by more than 50 %, the excess security rights will become free. We shall decide on their selection.

(4) As far as the Supplier's rights of reservation of ownership are concerned, the Supplier's conditions shall apply with the proviso that ownership to the goods will devolve on us on payment and accordingly, the extended forms of the so-called current account retention and multiple reservation will not apply.

(5) The Supplier can demand the return of goods on grounds of reservation of ownership only after it withdraws from the contract.

§ 9 Recourse

(1) If claims are lodged against us – due to a defect of the goods delivered by the Supplier – under manufacturer's liability, product liability or on the basis of other liability facts, Supplier shall release us from the liability resulting from the defect, as far as Supplier is responsible for the defect. In this case, release shall be provided upon first request.

(2) In this context, Supplier shall also be obligated to reimburse any expenditures which result due to or in connection with a recall action, according to §§ 683, 670 BGB or, respectively, §§ 830, 840, 426 BGB. Within the scope of reasonableness and possibility, we shall advise the Supplier immediately of the contents and extent of the action. More far-reaching legal claims shall be reserved.

(3) If claims are lodged otherwise against us – due to a defect of the goods delivered by the Supplier – we shall be entitled to the full extent of the recourse claim against the Supplier under § 478 BGB; an exception thereof shall only exist if we had been awarded beforehand an equivalent compensation for the recourse claim.

(4) Supplier shall take out a corresponding liability insurance to secure these claims, with a flat rate coverage sum of at least € 10 million per personal/material damage.

§ 10 Industrial Property Rights + Secrecy

(1) It shall be the Supplier's responsibility that no rights by third parties will be culpably breached in connection with his supply.

(2) If third parties lodge claims against us in this respect, Supplier shall be obligated to release us from these claims. The release shall be upon first request.

(3) This obligation of release shall also relate to all expenditures which we incur by necessity from or in connection with the claim by a third party.

(4) Unless a longer period is provided by the law, the limitation period for these claims shall be three years and begins with the delivery of the delivery item.

(5) Design drawings and similar company documents shall remain our property and shall always be treated strictly confidentially. They may not be made accessible to third parties without our consent. They may only be used for the contractually specified purpose. In case of a breach of these obligations, Supplier shall be liable to us in the full extent, in accordance with the statutory regulations.

(6) Paragraph 5 shall apply analogously for samples, parts provided and similar corporate goods.

§ 11 Proof of Origin, Documents Referring to Value Added Tax and Export Restrictions

(1) Upon our request, the supplier shall provide all documents referring to proof of origin, including all details, duly signed and free of charge. The same applies to documents referring to Value Added Tax in the case of foreign or intra-Community supply.

(2) Where a delivery (in part or in total) is subject to export restrictions according to German or any other law, the supplier shall inform us immediately.

(3) Suppliers from member states of the European Union are obliged to provide a long-term supplier's declaration according to the valid European Regulations within 30 days from the day of order acceptance and after this each time within the first two months of subsequent calendar years in an unsolicited manner. In circumstances where this cannot be carried out for a single batch of supplied goods, the supplier shall provide certificates of origin no later than the time at which the invoice is issued.

§ 12 Rescission and Joint and Several Liability

(1) Supplier's statutory right of rescission shall be neither excluded nor restricted. In the same manner, any statutory or contractual rights or claims to which we are entitled shall neither be excluded nor restricted.

(2) We shall be liable to the Supplier without restriction only for intent and gross negligence (also for our legal representatives and vicarious agents) as well as for injury of life, limb and health. We shall as well be liable without restriction when issuing guarantees and warranties if it is precisely a defect covered by them which causes our liability. There shall also be no restriction with regard to strict liability.

(3) In case of any other culpable breach of major contract obligations (cardinal obligations), our remaining liability shall be limited to the contract-typical foreseeable damage.

(4) Otherwise, liability shall be excluded for whatever legal reason (especially claims due to the breach of main or secondary contractual obligations, illicit acts, as well as other tortious liability).

(5) The same (exclusions, limitations and exceptions thereof) shall apply for claims under culpa in contrahendo.

(6) In case of repayment of expenses this provision § 12 shall apply analogously.

(7) Any exclusion or limitation of our liability shall also apply for our legal representatives and vicarious agents.

(8) Any reversal of the burden of proof shall not be intended. Cardinal obligations shall be essential contractual obligations, i.e. such obligations which characterize the contract and which the contracting partner can rely on; it is a matter of essential rights and obligations, which are preconditions for execution of contracts and are essential to attain the scope of the contract. Essential to the contract are the duty to deliver on time and the freedom of goods from defects that impair their functioning or usability more than insignificantly as well as the duties to provide advice, protection and care that aim to protect the Purchaser or its personnel from material damage.

(9) The liability of the Supplier is regulated in the provisions §§ 6, 8 and 9 as well as in the law.

§ 13 Place of Performance, Place of Jurisdiction, Applicable Law and Distribution of the Burden of Proof

(1) Our business seat shall be the place of performance for our obligations (especially for our payments). The place of performance for delivery and for our payments will be our business seat, unless stipulated otherwise.

(2) Our business seat shall be the place of jurisdiction for all court actions as far as the Supplier is a business person, a legal entity under public law or special assets under public law, if Supplier has his seat abroad or moves it there after contract conclusion. However, other allowed general or special places of jurisdiction shall also be open to us.

(3) With regard to all claims and rights under this contract, the non-harmonized law of the Federal Republic of Germany shall apply (BGB, HGB – German Civil Code, German Commercial Code). Explicitly excluded shall be the validity of the UN Purchase Right (CISG).

(4) The statutory or case law distribution of the burden of proof shall not be changed by any of the clauses stipulated in these conditions.

§ 14 Other Provisions

(1) Any changes of the contract can only become effective in agreement with us.

(2) Should individual provisions of these conditions be entirely or partly invalid or void, the remaining provisions shall remain unaffected thereby. The contracting partners shall be obligated to agree to a regulation by means of which the intent and purpose will largely be reached which the invalid or void provision had aimed at in the economic area.

(3) We shall handle all of the Supplier's data exclusively for the purpose of the business transaction and according to the requirements of the respectively valid provisions on the privacy of data. All terms and definitions used shall be neutral in gender; otherwise as well, no breach shall be intended regarding the Allgemeine Gleichbehandlungsgesetz (AGG) (German General Law of Non-Discrimination).

* translated from the original Terms of Purchase in German ("Einkaufsbedingungen")

Micro-Epsilon

Koenigbacher Strasse 15
94496 Ortenburg / Germany

Tel. +49 8542 168-0
Fax +49 8542 168-90

info@micro-epsilon.com
www.micro-epsilon.com

Y9761159-C011128SGO