

Max Schlatterer GmbH & Co. KG

Terms and Conditions for the Purchase of Goods

1. Scope of Validity

Our standard terms and conditions for the purchase of Goods apply exclusively. Any conditional or different terms proposed by the supplier shall also then not apply if not objected by us explicitly. Modifications and amendments by the supplier require our written confirmation and shall apply only to the order subject to which they have been agreed upon.

Our terms and conditions also apply to follow-up orders in an on-going business relationship even if their applicability for future orders has not been explicitly agreed upon.

2. Offers, Quotation, Formation of Contract

2.1 The offers of the supplier shall abide by our enquiry; the supplier shall keep us informed on any modifications of his offer – in particular if the supplier is not able to abide by our enquiry in one or more points.

2.2 Our quotations shall only be binding if they are laid down in writing. Pre-quotations made verbally or by phone shall only be binding if they are confirmed in writing (including telefax or e-mail confirmations).

If the price has not yet been determined at the time of our quotation it shall be submitted together with the confirmation of our order. The Contract shall be deemed to have been entered into if we do not object within **7** working days after receipt of the confirmation of order.

2.3 The supplier shall send an acceptance in writing within 5 working days after the date of our order confirming the term of delivery and the price by reference to the number of our quotation. Our quotation shall be deemed to have been accepted if we do not receive a rejection within said period.

Any correspondence shall be with our purchase department. Staff members of other departments have no proxy to quote or modify quotations or contracts. Agreements with such staff members need the explicit confirmation in writing by our purchase department save to the extent that the proxy is recorded in the commercial register.

2.4 Should the supplier confirm our quotation with different terms statutory provisions shall prevail instead insofar as the contract may be deemed to be concluded.

2.5 Remuneration of the costs incurred by the technical and commercial quotation including costs of technical tests and estimates can be charged only if this has been explicitly been agreed upon. This also applies if no contract has been concluded.

3. **Pricing and transfer of risk**

3.1 If not determined otherwise prices are “DDP Incoterms 2010” (delivered to our point of destination duty paid) including packaging. VAT is not included. The supplier bears the risk of accidental loss, destruction or deterioration until the acceptance of the goods by us or our representatives at the point of delivery.

3.2

4. **Time of Delivery**

4.1 Our terms and dates of delivery determined in our quotation refer to the dates submitted by the supplier. An extension of such agreed upon dates of delivery shall be accepted by us for the next but one delivery only.

4.2 If no delivery date has been agreed upon the delivery shall occur immediately unless the circumstances indicate different.

- 4.3 The supplier shall inform us immediately if reasons came to his knowledge that the agreed upon date of delivery may not be kept, even then if the supplier is not responsible for such reasons.
- 4.4 If delivery can not be effected on due date for reasons neither the supplier nor we are responsible for, we are entitled to cancel the contract if the fulfillment of the contract due to the expected exceeding of the delivery date or the uncertainty of the eventual delivery date impairs our interest in the performance.
- 4.5 We do not accept any limitation or exclusion claimed by the supplier in the event of defaults.

5. **Invoices, Due Date**

- 5.1 Invoices have to be submitted to us at the date of delivery. Our order data shall be stated in every invoice. Excess- or short deliveries shall be stated separately.
- 5.2 Invoices on part deliveries shall include the state of performance and the number of the outstanding Goods. The supplier is responsible for all consequences which result from non-compliance with these obligations.
- 5.3 Invoices shall only be due after complete delivery or performance. In case that apart from the delivery and/or the performance of services the supplier is obligated to deliver acceptance documentation, material protocols or similar documentation the invoice shall be due only after complete submission of such documentation to us. Payment terms commencing with the due date shall be agreed upon separately.
- 5.4 Invoices for installation and assembly work which are paid by the hour require specific documentation for each staff member and shall be counter-signed by us.

5.5 We reserve the right of correction or repayment in case of incorrectness of the invoice or if objections may result. Payments do not imply acknowledgment of the delivery or acceptance of the services.

6. **No Assignment, Partial Deliveries, Packaging**

6.1 The supplier is obliged to perform our order himself. Without our prior written approval he shall not assign our order to third parties or subagents.

6.2 The delivery requires the attachment of the bill of delivery containing our order data.

6.3 The Goods shall be delivered in proper packaging. Packaging has to abide by all technical, legal or administrative provisions.

6.4 Should we-in exceptional cases-be obligated to pay for packaging we are entitled to send such packaging back which is in a proper condition and to claim remuneration of 2/3 of the costs of packaging free of carriage charges.

6.5 We are entitled to claim that the supplier shall take back the transportation packaging even if we have asked for the shipment to be in a transportation packaging. If the supplier fails to take the transportation packaging back in the course of the shipment or within a period of two weeks we are entitled to send the transportation packaging back or destroy it on the suppliers expense.

6.6 We are entitled to send deliveries with supply failures back on the risk and expense of the supplier.

6.7 The supplier shall be liable for all damages resulting from a violation of the legal provisions relating to the traffic of goods.

7. **Incoming Goods, Inspection and Notice of Defects**

7.1 Deliveries containing a large number of identical pieces shall be inspected at random according to DIN 40080 and ISO 3951. The supplier waives the right

to raise an objection that we did not abide by our inspection obligation according to § 377 of the German Commercial Code.

- 7.2 In the event of an excession of the maximum permissible values we may either reject the delivery without further inspection or carry out a second inspection. The supplier shall bear the costs of a second inspection.
- 7.3 If delivery to a processor was agreed upon § 377 of the German Commercial Code shall apply under the proviso that the term of our obligation to inspect and the requirement to make complaints in respect of a defect starts to run when we shall have received the processed Goods.
- 7.4 In the course of an on-going business relation the supplier shall specify any modification of the product in writing. This applies also if the product has been inspected tested and released. Furthermore the supplier shall inspect the Goods on any modifications or deviations which may occur in the course of an on-going business relation or a delivery following product release after a change of the operational conditions, in particular after an exchange of manufacturing tools, machines or the implementation of new processing operations.

The provision of § 377 of the German Commercial Code shall not apply if a modification of the product generates a defect of the product.

- 7.5 Before shipment the supplier shall inspect the Goods if they abide by the order specifications and if they are free of defects. Any agreed upon measures of control shall be strictly adhered to; the supplier shall exercise and structure all necessary precautionary measures which may enable us and the supplier to minimize the expenses for quality control. In case of an infringement of his quality control obligations the supplier has no right to invoke the provision of § 377 of the German Commercial Code.
- 7.6 If the supplier fails to remedy the defect or to effect a substitute delivery we are no longer under an obligation to make a repeated notification of defects according to § 377 of the German Commercial Code.

8. **Quality Standard, Defects in Quality, Defect of Title Damages**

8.1 The Goods shall conform to all specifications in our order, drawings and other data. They shall also conform to the statutory provisions effective at the date of delivery, to safety features and equipment, to the applicable ordinances and guidelines of professional organizations, of the trade supervisory center, of the TÜV as well as of the latest guidelines of VDI, its subdivisions and the national and international engineering standards (e.g. DIN-, CEN- or ISO-standards) as amended.

8.2 Upon our request the supplier shall submit samples and/or data sheets. The quality of the sample and the specifications in the data sheets establish a warranty of appearance and workmanship. This applies also to specifications in work certificates. The supplier shall perform any quality controls required for process control and product warranty. Quality control measurements shall identified by the supplier on our request. Furthermore the supplier agrees to enter into a quality control agreement on our request.

8.3 Deviations from provisions, guidelines and technical standards need our prior approval in writing even if the modification provides for the same standard of security. Our approval shall not deemed as a release of the suppliers sole responsibility to deliver suitable Goods.

8.4 If we order the Goods to be manufactured in a special design the supplier shall raise eventual concerns in writing. If the supplier does not abide by this duty of information he shall be liable that the delivered items and services will be free from defects and suitable for the purposes intended.

Parts delivered by us or on our request by third parties have to be examined by the supplier regarding their suitability condition. Concerns have to be reported in writing. The aforementioned liability provision shall apply if the supplier fails to report his concerns.

8.5 Claims for defects and lack of title are subject **to a limitation period of two years** from the day of the passing of the risk if not otherwise determined in our order.

8.6 Any discharge from liability will be void. We are entitled to immediately demand the repair or a substitute good. In case of urgency or if the seller is in default with the repair we are entitled at our sole discretion to repair the Goods or have them repaired by a third party on the expense and risk of the supplier. In such cases the supplier shall compensate any necessary expenses. This does also apply if we may sustain exceptional high losses or if the estimated costs of the supplier are higher than the costs of our repair or the repair by third parties.

8.7 Any discharge from liability of our legal claims for damages is not accepted by us. This applies to the degree of negligence as well as of the scope of liability and the amount of damages.

9. **Product Liability, Release, Insurance Coverage**

9.1 If we are liable to third parties be it on the basis of negligence (§ 823 of the German Civil Code), according to the Statute of Product Liability or for violation of the aforementioned obligations, particularly the obligation to quality control, the supplier shall release us from such third party claims on our first demand insofar as the cause of damage originates from the suppliers responsibility for assembly or organization. Insofar as the main cause originates from the suppliers sphere he shall release us to the full extent. The supplier shall inform us also of any risks which may be caused by his product by way of improper usage.

9.2 Within such limits and scope the supplier shall reimburse any expenses caused by or in connection with a recall. We shall inform the supplier on the contents and scope of the intended measures – as far as possible and reasonable – and shall give him an opportunity to comment.

9.3 The supplier shall provide a product liability insurance with adequate coverage at his expense for all damages caused by him, his staff or his representatives for the performance of services or delivery of goods. The amount covered per occurrence of any damage shall be submitted to us on demand.

10. **Right of retention and Set-Off, Assignments**

- 10.1 In case of defects we are entitled to withhold our payments insofar as this does not contravene the principles of good faith.
- 10.2 The assignment of claims against us needs our prior written approval.
- 10.3 Any restriction to our legal right to set-off and retention is not accepted.

11. **Delivery of Production, Non-Disclosure Equipment, Drawings, Certificate of Origin**

- 11.1 We reserve our property rights to production equipment, drawings and parts, in particular tools which have been delivered to the supplier; the supplier shall use such production equipment, drawings and parts exclusively for the manufacturing of the quoted items. The supplier shall effect an insurance coverage (reinstatement value) on his expense against fire, water and theft.
- 11.2 The parties agree that the property on any production equipment in particular tools, which are manufactured by the supplier or by third parties on our requests passes to us, insofar as we reimburse the production costs. If the costs for the tools are shared between the supplier and us the supplier agrees to grant us fractional co-ownership. The fraction of the ownership is determined by the proportion of the cost share. It is already agreed by now that the supplier holds the production equipment which he has manufactured on our request in custody on our behalf.
- 11.3 The supplier shall return all production equipment to us free of charge after completion of our order.
- 11.4 We retain the copyright for any of our drawings which have been delivered to the supplier. After completion of the delivery or on our request they have to be returned to us including any copies. The same applies for drawings and documentation which have been produced by the supplier according to our specifications; the parties agree that the property to such documentation passes to us and that the documentation is deposited in his custody on our behalf.

- 11.5 The supplier shall treat confidentially any commercial and technical material which came to his knowledge in the course of our business relationship and shall not to disclose it to any third party. This does not apply to material which is available to the public.
- 11.6 Insofar as the supplier provides access to Goods, tools or documentations with our approval to third parties, e. g. subcontractors, he shall impose the same obligations on them.
- 11.7 The supplier shall be liable for any damages caused by faulty handling on our parts delivered to him.
- 11.8 The supplier shall provide a certificate of origin on our request. This applies also in case that the production of such certificate is not mandatory according to provisions of customs law.
- 11.9 The supplier shall be liable for any infringements of the above mentioned obligations.

12. **Retention of Title**

- 12.1 The supplier is entitled to sell the Goods with reservation of ownership until payment of purchase price. We do not agree to extended clauses of reservation of ownership or to group retentions of title.

13. **Industrial Property Rights**

- 13.1 The supplier warrants that all items delivered under this agreement will be free from patent rights, trademark rights and copyrights of third parties.
- 13.2 The supplier shall indemnify and hold as harmless against and from any claim of third parties which arises from the infringement of such industrial property rights on our first demand. All expenses which may arise from or in connection with such third party claims shall be reimbursed to us.

Furthermore we are entitled to the following remedies:

Obtaining (cost free) of the necessary approval of the title owner; insofar as this approval is not obtainable, modification of the Goods which prevents an infringement and which conforms to the specifications of our quotation or return of the infringing Goods together with a refund of our payments.

13.3 The supplier provide us with all rights and licenses which are required for the use and the distribution of the products/services and for the use of our rights within the scope of our quotation.

13.4 Otherwise our claims based on lack of title are determined in Section 8 above.

14. Place of Fulfillment, Legal Venue, Applicable Law, Partial Nullity

14.1 The headquarters of our company shall be the place of fulfillment for both parties for all rights and obligations involving from the suppliers deliveries and services.

14.2 The Amtsgericht Stuttgart shall be competent for legal disputes concerning business transactions with entrepreneurs that fall under the competence of the municipal courts. The Landgericht Stuttgart (regional court) shall be competent for legal disputes that fall under the relevant competence of the regional court.

14.3 The contractual relationship is subject to the law of the federal of Republic of Germany. Application of UN purchase law (CISG) is excluded.

14.4 We have the right to bring a claim before a court at the buyers principal place of business at our discretion before any other court being competent according to any national or international law.

14.5 If any provision of this agreement or its obligation to any party or circumstance is restricted, prohibited or unenforceable, such provision shall be in effective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provision hereof and without effecting the validity or

enforceability of such provision in any other jurisdiction or its application to other parties or circumstances.