

## Terms and Conditions of Purchase

As of: 2017 (BN\_LT\_09725\_Rev. B)

### § 1. Application

(1) These Terms and Conditions of Purchase shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing.

(2) These terms and conditions of purchase shall also govern all future similar transactions between the parties in the version valid at the order date, in any case in the latest version communicated to the seller in text form. They shall also apply if we accept delivery despite our knowledge of differing or contrary terms.

### § 2. Form of orders

Only orders in writing are considered binding.

### § 3. Order confirmation and correspondence

The order confirmation including the price and delivery time has to be addressed to us. All correspondence including the confirmation and invoices relating to our order must include the complete order number.

### § 4. Application of order document

In regard to the prices, the pricing, shipping and payment conditions and the guarantees, the specific provisions of our order document apply in addition to these conditions.

### § 5. Prices and passing of risk

(1) Prices include delivery to our facilities or other agreed place, the respective statutory VAT and any and all costs for packaging, except as otherwise expressly agreed upon.

(2) The risk of loss or damage to the goods passes to us upon delivery at the agreed place of delivery.

### § 6. Payment

Payment shall be made within 14 days with a 3 % cash discount, within 30 days with a 2 % cash discount or after 60 days net of the receipt of the invoice without discount, but not before the receipt of the goods and, insofar as documentation and test certificates are part of the scope of services, not before their contractual transfer to us.

### § 7. Assignment prohibition, offsetting, right of retention

(1) The seller is not allowed to assign any claims against us to a third party.

(2) We reserve all rights to offset or retain payment provided by applicable law.

### § 8. Invoicing

Invoices must be created in duplicate, separately for each order.

### § 9. Return of packaging materials

Return obligations or return possibilities for packaging materials must be noted in the delivery documents.

### § 10. Transport insurance costs

Costs for transport insurance are only covered by us, if this is required from us in writing. Domestically, we are a SVS prohibition customer.

### § 11. Delivery dates

(1) All delivery dates stated in the order or otherwise agreed upon are binding.

(2) The seller shall immediately inform us of any threatening or existing delay in delivery, the reasons for such delay and the anticipated duration of such delay. The foregoing shall not affect the occurrence of a default in delivery.

(3) In case of default in delivery we reserve all rights under applicable law.

### § 12. Liability for defects, warranty

(1) For the rights in case of defects as to quality and defects of title of the goods and in case of other breaches of duty by the seller, the statutory provisions apply, unless agreed otherwise in the following. In particular, in case of defects we are entitled, at our sole discretion, to opt for repair of the defect or replacement by non-defective goods, and/or damages.

(2) In very urgent cases we are entitled to undertake repair of the defect at the cost of the seller. In such cases we will inform the seller about these activities as soon as possible, if possible prior to the repair.

(3) The commercial duty to examine and to notify defects shall be governed by the statutory provisions with the following provisos:

a) Our duty to examine is limited to defects that are obvious upon visual inspection of the incoming goods, including the delivery documents (e.g. transport damage, wrong deliveries and short deliveries), or upon spot checks during quality control procedures. Apart from that, the duty depends on the extent to which examination is expedient according to proper business procedures, taking into account the circumstances of the particular case. Our duty to report any defects discovered subsequently remains unaffected.

b) Regardless of our duty to examine, in all cases our notification of defects shall be deemed timely and without delay, if it is sent to the seller within 5 working days from discovery of the defect or – in case of obvious defects – from the delivery.

(4) The repair and the replacement include a removal of defect goods and their new installation, if the goods have been in accordance with their intended purpose installed into another object. The costs spent by the seller for the purposes of testing and rectification, including possible costs of removal and new installation, shall be borne by the seller, even if it turns out that there was in fact no defect. Our liability in the case of unjustified demands to remove defects shall remain unaffected; however, we shall only be liable if we recognized or were grossly negligent in failing to recognize that there was no defect.

(5) Warranty claims shall be time-barred after 36 month of the passage of risk.

(6) The seller warrants that the goods are free from rights of third parties and that delivery of the goods does not violate any rights of third parties. The seller shall indemnify us, upon first demand, from any claims of third parties in this regard.

(7) Claims based on defect in title shall be time-barred pursuant to para. 5 above.

### § 13. Product liability, insurance

(1) The seller shall, upon first demand, indemnify us and hold us harmless from and against any and all liability or claims of third parties based on the manufacture, delivery, storage, or use of the delivered goods. The above indemnification shall not apply if the claim is based on our intentional or grossly negligent breach of duties.

(2) The seller shall, at all times during the term of this contract, maintain product liability insurance with an adequate minimum insurance amount of 10 million EUR for each single occurrence of personal and property damage. Further damages shall remain unaffected.

### § 14. Confidentiality and contractual penalty

Semi-finished and finished goods that were manufactured according to our information, drawings, samples, models or other

documentation may not be made available to third parties. The supplier is obliged to keep all knowledge confidential that he gained in relation to the order. A contractual penalty of 5% of the total invoice for the affected products but at least in the amount of 1,000 Euro incurs for each violation.

#### **§ 15. Documents**

All documents, especially samples, models, drawings remain our economic and intellectual property and must be handed over to us at our request.

#### **§ 16. Place of performance**

The place of performance for delivery is the agreed place of destination, for the payment Kassel.

#### **§ 17. Jurisdiction**

The courts competent for Kassel shall have exclusive jurisdiction over any disputes arising from the contractual relationship. We may, however, also bring legal action in the courts of the seller's place of general jurisdiction. Compulsory statutory regulations, in particular such providing for exclusive court competence, shall remain unaffected.

#### **§ 18. Applicable law**

These Terms and Conditions of Purchase as well as the contractual relationship between us and the seller shall be exclusively governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).