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Conditions of Purchasing

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WITTRONIC ELECTRONIC MANUFACTURING SERVICE

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1. Scope

1.1 Our Conditions of Purchase shall apply exclusively to all future legal relationships with the supplier. Conditions of the supplier that conflict with or deviate from our Conditions shall not be acknowledged, even if we do not object to them. This shall also apply to commercial letters of confirmation if these refer to divergent general terms and conditions of business of the supplier.

2. Conclusion of contract

2.1 Our order shall be binding and valid only in written form.

2.2 We are entitled to cancellation if the supplier does not accept the order within two weeks after having received the order. Order releases become binding if the supplier does not object within five working days after receiving the order.

3. Order, supplier and merchandise numbers

3.1 The correspondence connected with an order may be conducted only with the competent purchasing department, with the order number and other specif ied forms of identification being stated. In particular, the following information must always be provided in confirmations, invoices, delivery notes and other correspondence:
- the complete order number,
- the parts number of the manufacturer,
- the WITTRONIC parts number.

3.2 Invoices of the supplier that fail to comply with the conditions in Clause (1) shall be deemed not to have been drawn up. The invoice shall not be deemed to have been drawn up until the supplier has finally fulfilled the conditions. The ordering party need point out only once to the supplier that he has yet to fulfil the conditions.

4. Prices and terms of payment

4.1 The price stated in the order shall be binding.

4.2 If nothing to the contrary is agreed in writing, all other costs, such as those for packaging, shipment and insurance, are contained in the stated price. Our prices are exclusive of the statutory rate of value-added tax.

4.3 If nothing to the contrary is agreed in writing, invoices of the supplier shall be settled by us net on the 15th day of the month that follows the invoicing date, minus a 3% cash discount, or 90 days after invoicing.

4.4 Payment shall not represent an acknowledgement that the delivery is faultless.

5. Delivery period and place of performance; delay in delivery

5.1 The date of delivery indicated in the order shall be binding as the date of arrival at the specified places of receipt (place of performance).

5.2 If, prior to the date of delivery, the supplier realizes that he cannot comply with the agreed dates of delivery, he must notify us of this immediately in writing, stating the length of and reasons for the delay. He shall be obliged to send us proposed solutions as to how the delivery of conforming or compatible contractual subject matter can still be achieved and safeguarded at competitive prices and, if possible, unchanged specifications. Should delays in delivery result except by reasons of Force Majeure, the Seller shall pay an amount of 0,1 % of the purchase price for each work day the product is delayed up to an amount of 10 % of such price.
Additional claims arising from the delay in delivery shall remain unaffected by this.

5.3 If the supplier has to provide material tests, test records, quality documents or other documents, the delivery and performance shall also require the receipt of these documents to be complete.

5.4 The supplier shall fall behind schedule if he does not hand over the merchandise ordered at the place of receipt as agreed on the delivery date indicated, unless the supplier can prove that he is not responsible for the delay. His liability shall be regulated in accordance with § 276 and § 287, German Civil Code (BGB). If the supplier is behind schedule, we may either demand compensation instead of performance, default damages or compensation for futile expenditure, rescind the contract or reduce the purchase price. Our performance interest shall be dependent on the absolute compliance with the agreed dates of delivery. We may rescind the contract on these grounds in the event of a delay in delivery, even without setting a period of grace. In other respects, the legal stipulations shall apply.

5.5 The acceptance of a delayed delivery shall not represent a waiver of claims for default.

5.6 In the event of force majeure, natural disasters, wars or civil unrest, official acts, transport interference, strikes, lockouts or other serious operational disturbances in our enterprise or that of the supplier, the contracting parties shall be exempted from their performance obligations for the duration of the disturbance and for the scope of its effects. Damages claims of both parties shall be ruled out. The parties must inform each other immediately and in full about the situation and adjust their obligations in good faith, in so far as this is still possible and reasonable.

6. Delivery and passing of risk

6.1 The delivery quantities stated in the order are binding. A part-delivery that was not agreed shall not bring about the fulfilment of a contract.

6.2 Delivery and shipment costs, together with additional costs incurred in the fulfilment of delivery dates, shall be borne by the supplier. He shall also bear the costs of transport insurance.

6.3 There shall be no entitlement to payment until the merchandise is handed over at the place of performance. The delivery is an obligation to be performed at the creditor's place of business, irrespective of whether the supplier operates the transport by means of in-house or external transport staff.

7. Acceptance of the delivery

7.1 The merchandise must be free of material defects or defects of title; i.e. it must, in particular, correspond to the agreed conditions and to the samples approved by us. The supplier shall provide the warranty that the merchandise is of the agreed quality. If this is not the case, we can refuse to accept the delivery and return the merchandise to the supplier at his cost and risk. The warranty claims shall remain unaffected by this.

7.2 The acceptance of the delivery shall not represent an acknowledgement of its faultlessness.

7.3 If we are impeded in our acceptance of the merchandise as a consequence of the occurrences stated under Item 5.6, sentence 1, or if we can accept the merchandise only under unreasonable conditions, the supplier shall store the merchandise in a proper manner at his own cost, provided that we have agreed with the supplier that the merchandise should be taken delivery of later, in accordance with Item 5.6, sentences 1 and 3.

8. Notice of defect

8.1 Provided that nothing to the contrary was agreed in individual cases, the regulations in the following subsections shall apply.

8.2 We shall be obliged to check the merchandise for its identity, quantity and externally discernible damage (transport and storage damage) within a reasonable period of time. A sampling procedure shall be carried out for this purpose; this process shall be agreed in individual cases or specified by us freely after a due assessment of the circumstances. .The regulations of §§ 377, 378, German Commercial Code (HGB) shall be ceded.

8.3 If the merchandise does not reveal a defect until later, the not ice of defect shall be deemed to be timely if it reaches the supplier within a period of five working days. The period shall commence one working day after the discovery of the defect.

8.4 We shall be bound by no formal requirements pertaining to the examination of the delivered merchandise and the notification of obvious or hidden defects.

9. Faulty delivery and warranty

9.1 The warranty shall be in accordance with the legal stipulations, provided that these Conditions do not stipulate anything to the contrary.

9.2 Material damage shall be present if the merchandise is not of the agreed quality when the risk is passed (in accordance with the standards of § 434, German Civil Code (BGB)). The supplier shall, in particular, also guarantee that his merchandise corresponds to the latest technological developments and complies with all of the obligatory legal stipulations, regulations, ordinances and guidelines. The supplier shall give third parties no undertakings concerning attributes, e.g. in the form of advertising, for his products if we are not provided with the same warranty.

9.3 If a claim is made against us by a third party on grounds of defective products from the supplier, we can have recourse against the supplier. This shall apply particularly if the contractor takes rec ourse on the basis of the regulations on the purchase of consumer goods (§ 478, German Civil Code (BGB)).

9.4 In the event of a defect, we can demand either the rectification of the defect or the delivery of a faultless article. The supplier must bear the costs that were necessary for the purpose of subsequent fulfilment. If the legal conditions are met, we shall have the right to reduce the purchase price or rescind the contract and to demand compensation or the replacement of the futile expenditure. Compensation in this context shall also include the costs that were incurred in the examination and sorting of defective merchandise. If we do not ascertain the defect until the handling, processing or first use of the merchandise, we can demand compensation for the costs incurred up to that point from the supplier. Compensation shall also include the claims that are enforced against us by a third party.

9.5 The supplier shall be liable for measures taken to prevent damages (e.g. callback campaigns etc.), provided that he is legally obliged to be liable. We may ourselves take all of the steps that are necessary to prevent damages being incurred by the supplier, at his cost, if similar defects which can lead to danger to life and limb or to other substantial damages, including pecuniary loss for third parties, occur with increasing frequency during the guarantee period or within a period of two years after the expiry of the guarantee period. We shall be obliged to inform the supplier of this immediately. Both sides undertake to find a solution jointly, to remove the dangers arising from the defective contractual subject matter as quickly as possible and at the lowest possible cost. In other respects, the liability of the supplier according to the Product Liability Act (ProdHG) and according to the contractual provision as per Item 10 shall remain unaffected.

9.6 The guarantee period shall comprise 24 months from the passing risk, provided that nothing to the contrary is agreed in individual cases. In the case of substitute delivery or rectification of defects, the period shall commence with, respectively, the passing of risk for the replacement merchandise or the complete rectification of the defects in the original merchandise. We can receive the defence to actions for breach of quality in the form of a notice of defect.

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10. Product liability

10.1 If a claim is made against us on grounds of the violation of official safety regulations or on grounds of domestic or international product liability provisions as a consequence of defectiveness in our product that is attributable to a product from our supplier, we shall be entitled to demand compensation for this damage from the supplier in so far as the damage was caused by his defective products. If the damage results entirely from the defective product of the supplier, we can demand exemption from the liability for compensation if claims are made by third parties. In both cases, the supplier shall exempt us from claims of third parties if we choose.

10.2 The supplier shall be obliged to conclude a product liability insurance policy for a reasonable amount. He must provide us with proof of this insurance on request.

11. Property rights

11.1 All of the objects that belong to us and are relinquished to the supplier shall remain our property and must be labelled as such. If there is no written agreement to the contrary, these items that are provided may be used solely to manufacture the products ordered by us.

11.2 Process descriptions, drawings, drafts, models, tools and similar items that the supplier manufactures according to our specifications shall pass into our ownership. The handing over shall be replaced by the supplier holding the merchandise in safekeeping for us free of charge. During the period of safekeeping, the supplier must insure the manufactured merchandise against fire, theft, etc. at his own cost.

11.3 Software that is developed for us, either separately or in connection with hardware, shall pass into our ownership. This shall also include the handing over of the coding and documentation that are necessary for their use and maintenance. In the case of software that was developed especially for us, we shall be entitled to grant licences.

11.4 In the case of merchandise produced by third parties on our account, the supplier may call off the merchandise only at his own address or the address specified by us. When the merchandise is handed over to the supplier, we shall acquire the property directly from the third party. The supplier shall merely be the owner of the merchandise.

11.5 If property rights are infringed, we can demand compensation and/or rescind the contract.

12. Secrecy

12.1 The supplier undertakes to keep all of the information that becomes known to him and does not refer to the general state of technology secret and to refrain from making it accessible to any third parties. This shall also apply to all other information about new developments and projects relating to market strategy. Employees and subcontractors must also be committed to secrecy. This shall not apply if we have specifically given our prior written consent to the disclosure.

12.2 Process descriptions, drawings, drafts, samples, models, tools and such like, together with other specifications that we relinquish to the supplier for the purpose of executing the order, may not be used for other purposes or passed on to third parties without our prior written agreement. This shall also apply to processes, drawings, drafts, samples, tools and models that the supplier manufactures in accordance with our specifications. These, together with all of the copies and reproductions, must be returned without delay to the exclusion of a right of retention.

12.3 The supplier shall not be permitted to supply parts to other companies if these parts comply exactly with our specifications or show only slight divergences. This shall also apply to parts that we had to return on the grounds of faulty delivery.

12.4 If these provisions are infringed, we shall be entitled to demand compensation and/or rescind the contract.

13. Non-assignability and transferability

13.1 The supplier undertakes to refrain from assigning any rights or claims on third parties existing vis-à-vis ourselves, unless we have given our prior written consent to that assignment. A subsequent authorization on our part cannot make the inadmissible assignment effective. The sentences 1 and 2 shall not apply if the supplier has concluded agreements with his trade creditors concerning the extended reservation of title; the supplier must inform us of this immediately in writing.

13.2 The supplier may not pledge any rights or claims against us to third parties under civil law in terms of §§1273 ff. and 1279 ff., German Civil Code (BGB). If rights or claims against us are pledged under enforcement law, the supplier must notify us of this immediately in writing.

13.3 The complete or partial passing on of orders of licences to third parties shall require our prior written agreement.

13.4 If the supplier infringes an obligation arising from Clauses I - III, he shall be liable for all of the damage that arises as a result.

14. Industrial property rights

14.1 The supplier must guarantee that when the merchandise for delivery is delivered or used in conformity with the contract, industrial property rights or copyright or other rights of third parties will not be prejudiced as a result of items that are manufactured by himself or by third parties. The supplier shall exempt us from all claims in the event of a recourse.

14.2 Besides the statutory claims, the supplier shall be liable vis-à-vis ourselves for all damages that we incur as the result of the infringement of a right . The supplier must inform us that foreign industrial property rights apply to export goods. This shall not apply to the infringement of foreign industrial property rights provided that, and so long as, the supplier does not know that the merchandise is being delivered to the country in question. In this respect, the supplier shall be liable only to the extent specified by law.

14.3 If the supplier has industrial property rights whose subject matter is the application of the products delivered by him and created for a special use by him, he shall grant us a right to use his industrial property rights jointly at no charge for the scope of the delivered products.

15. Delivery of replacement parts

15.1 The supplier of such merchandise as is sold in processed or unprocessed form or passed on in some other way by us undertakes to carry out subsequent orders and/or spare parts orders in the following period.

15.2 If the supplier intends to cease production, he shall inform us of this in writing twelve months before the actual cessat ion so that we can still take covering precautions.

15.3 Our Conditions of Purchase shall also apply to the new spare parts.

16. Termination

We can cancel all or part of the order without notice, particularly in the following circumstances:

- if the creditworthiness of the supplier deteriorates to such an extent that we regard the fulfilment of the contract as endangered,
- if bills or cheques of the supplier are being protested,
- if we consider that the supplier is threatened by insolvency, unless the supplier can refute this supposition by suitable means,
- if insolvency proceedings or similar legal or official proceedings are initiated against the supplier,
- if the institution of insolvency proceedings is rejected for insufficiency of assets,
- - if the supplier is responsible for a sustained violation of contractual obligations, or
- - if the ownership and participatory interests of the supplier change substantially.

17. Prevention of accidents

The entire order must be executed in such a way that the in-house and national norms and technical specifications that are valid at the time of delivery are observed. This shall apply to deliveries of both machinery and other products. If the execution on our premises (as so-called “outside contractor”) is necessary for the handling of an order, this work must be coordinated with us to avoid possible mutual hazards. In such cases the supplier undertakes to ensure that one of his responsible employees establishes contact with our current safety officer before the work commences. In matters of safety, the supplier must comply with the instructions of our safety staff. The supplier shall assume full liability for his employees.

18. General provisions

18.1 If nothing to the contrary is agreed in writing, our Conditions of Purchase shall also apply analogously for the ordering of services.

18.2 Furthermore, the conditions recommended by the Central Electrical Industry Federation (ZVEI) shall apply to quality assurance agreements.

18.3 Contracts of all kinds, and supplements and alterations to those contracts, must be made in writing. Oral agreements shall be binding for us only if they have been confirmed by us in writing.

18.4 Should individual provisions of our Conditions of Purchase be ineffective or invalid, this shall not affect the effectiveness of the remaining prov isions. We shall be entitled to replace the ineffective provisions with provisions that come closest to the purpose that we are striving for.

18.5 The place of performance shall be the place of receipt indicated by us in the order.

18.6 Bochum shall be agreed as the place of jurisdiction for all legal disputes. If our Conditions of Purchase are not relevant, German law and higher European law, to the exclusion of UN law on the international sale of goods, shall apply.