

General Terms and Conditions of Purchase of Ebmeyer Werkzeugbau GmbH

§ 1 Conclusion of contract, Terms of contract

(1) Supplier accepts these General Terms and Conditions of Purchase of Ebmeyer Werkzeugbau GmbH (hereinafter referred to as: EBM) as sole basis of the order as well as of any future contracts and business relations by confirming uncontractedly the order in writing or executing it after having received the order by EBM in writing in which it is expressly referred to the General Terms and Conditions of Purchase as printed overleaf. Any other or special conditions of Supplier shall only be valid if these are accepted in writing by EBM at the conclusion of contract. For any claims resulting from or in connection with the purchase between EBM and Supplier German law shall apply as a basic principle. If as an exception German law is not applicable the UN Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1980 in its valid version shall apply.

(2) EBM's order shall be conveyed to Supplier by telefax or e-mail and shall contain the order number, the date of delivery in calendar weeks or the date, the type, number and volume of the products ordered, the price plus VAT, export duties and/or import tariffs, if applicable, the type of transport as well as any additional specifications (order data). Supplier shall be obliged to send to EBM an order confirmation indicating EBM's order number and any other order data by telefax or e-mail within three workdays after receipt of the order at the latest. If the order confirmation deviates from EBM's order data Supplier shall notify this explicitly in writing. If an agreement can thereupon not be reached between the parties EBM shall not be liable to accept and pay the goods or to refund Supplier's possible expenses.

§ 2 Shipment of goods, Passing of risk, Property rights

(1) If not otherwise agreed upon, Supplier commits himself to deliver the goods ordered free to EBM's place of business at Gütersloh. It shall be considered as place of performance. The goods must be loaded and shipped at Supplier's charge in a way that any damage cannot occur. All necessary documents pertaining to the goods, the shipping and the customs must be attached so that the goods can be allocated to the relevant order between EBM and Supplier and the applicable customs regulations are observed. Upon shipment of the goods Supplier shall confirm immediately to EBM by telefax or e-mail the due shipment stating the date. Any delays in transportation must be notified immediately to EBM in writing. Supplier shall bear export duties, EBM shall bear import duties for the goods delivered.

(2) Until the goods ordered are duly delivered Supplier shall bear the risk of a random destruction, damage, deterioration of quality, unlawful privation by third parties, confiscation or of any other reason of destruction or deterioration. Such risk shall be covered by him by means of transportation insurance in favor of EBM at an insurance amount of the net order price of the goods for each transport. Evidence on the conclusion of such insurance shall be provided unrequestedly after placing of order.

(3) After payment the property in the goods delivered shall pass on to EBM. If Supplier reserves the property in the goods delivered until payment is effected completely this shall become integral part of the contract only in case the reservation of title expires upon payment of the prices agreed upon for the reservation and EBM will be authorized for resale and processing in the due course of business. Any further reservation of title by Supplier shall be excluded.

§ 3 Delivery periods

(1) Possible delivery periods agreed upon are binding. If a delivery period cannot be met and the Supplier is aware of this he shall inform EBM immediately by telefax or by e-mail stating the reasons and the estimated delay. If Supplier informs about the delay in due form the delivery period can be extended by EBM by 1 week at the utmost. An extension of the delivery period beyond this shall only be valid if it is confirmed by EBM in writing.

(2) If the goods are not delivered upon EBM's extension of time granted in writing EBM shall be entitled without assertion to refuse receipt of the goods, to withdraw from contract and/or to request compensation for damages on account of non-performance.

§ 4 Delay in delivery, Penalty

(1) Supplier's delay in delivery starts as soon as he exceeds the delivery period according to § 3 (1) and he does not observe the date of handover stated therein.

(2) In case of delay in delivery Supplier shall be obliged to pay to EBM a penalty in the amount of 0.3% of the gross contract sum agreed upon for each workday of delay, not exceeding 5% of the gross contract sum agreed upon. The declaration of a reservation of penalty at the receipt of goods is not required. EBM shall be entitled to set-off both the purchase price claim of the delayed order and the purchase price claims of other orders of the parties against the penalty. Without prejudice to penalty the refund of further damages shall remain reserved for EBM in accordance with the legal provisions.

§ 5 Prices, Invoicing, Conditions of payment

(1) The prices agreed upon are fixed prices and include all expenditures of Supplier related to the delivery of goods and/or other services.

(2) Upon handover of the goods at the earliest Supplier shall submit to EBM for each order a due invoice indicating the EBM order number. If any other mode of payment is not agreed upon in writing the purchase price shall be paid to Supplier within 30 days after receipt of invoice by EBM. EBM shall be in default only after expiry of the term of payment stated above. The date on which EBM's bank receives the transfer order or on which the check is posted shall be considered as the workday of payment on the due date. Payments do not imply any acceptance of the delivery or service as according to contract. Notwithstanding any other rights EBM shall in case of faulty or incomplete delivery or service be entitled to retain payments for claims from the business relationship at a reasonable amount until the contract is duly fulfilled.

(3) For payments made within 14 days after receipt of invoice Supplier shall grant to EBM a discount of 3 % of the gross contract sum. If not agreed upon otherwise any discount shall not be deducted in EBM's favor thereafter.

§ 6 Retention, Set-off

(1) For EBM's contractual and/or legal claims Supplier shall not be entitled to rights of retention for claims from other contracts of the parties. Supplier's rights of retention from the same contract vis-à-vis EBM's claims are excluded unless these are uncontested and established as final and absolute.

(2) Supplier's set-off of counter claims against contractual and/or legal claims of EBM shall only be admissible in case of uncontested counter claims or which are established as final and absolute.

§ 7 Part-deliveries, Excess deliveries or Short deliveries

Part-deliveries or partial performances are subject to EBM's previous written approval. If these are accepted without previous approval this shall not cause any premature due date of payments or approval of taking charge of additional transportation costs. EBM reserves the right to accept excess deliveries or short deliveries in individual cases. If any excess delivery occurs without previous written consent EBM shall be entitled to store it at Supplier's expense or to return it.

§ 8 Notice of defects, Warranties, Indemnity

(1) Supplier's goods shall be considered as faulty if these do not meet the quality agreed upon in the relevant order. If another product or a lesser quantity than agreed upon is delivered this shall be considered as defect. A defect is also on hand in case third parties can assert rights in the goods towards EBM. An incoming inspection shall be effected by EBM at random only with regard to externally visible damages and externally visible deviations of identity and quantity. The period allowed for examination and sending notice of an obvious defect amounts to 2 weeks on the whole calculated from the day of handover at EBM's plant. Obvious defects shall be notified to Supplier in writing. Moreover, EBM also notifies on hidden defects as soon as these are determined under the circumstances of normal course of business.

Supplier shall renounce on the objection of delayed notice for hidden defects.

For obvious defects the dispatch of the notice of defect shall be sufficient in order to comply with EBM's warranty rights. If Supplier keeps quiet about a defect fraudulently a notice of defect at a later time without observance of a period for examination and sending notice shall be sufficient in order to comply with the warranty rights.

(2) EBM shall be entitled to warranty rights in accordance with the legal provisions. These include in particular damages to persons, damages to property as well as rights of withdrawal of EBM's contractual partners if these are caused by a faulty quality of the goods supplied. EBM shall be entitled to set off the purchase price claim against all claims for damages and/or reduction of the current order or any other orders of the parties. Any rights of retention shall not result thereby for Supplier. If not agreed upon in writing otherwise with Supplier the statute of limitations for EBM's defect claims towards Supplier shall amount to 3 years from passing of the risk.

(3) Supplier shall ensure that EBM does not infringe any copyrights, patents or any other property rights of third parties by the contractual use/processing/sale of his deliveries and/or services. Supplier shall indemnify EBM from all claims which are raised to EBM for the infringement of an industrial property right. He shall bear the costs for protecting the rights if these claims are caused by a culpable breach of duty of Supplier. EBM shall inform Supplier immediately in case of claiming.

(4) Supplier shall indemnify EBM from all claims for product liability if these can be attributed to a defect from a supply and/or service performed by him. In compliance with the same requirements he shall also be liable for damages arising for EBM by reasonably adequate and necessary provisions, e.g. by warnings or recalls. EBM's right to assert her own claim for damages towards Supplier shall remain unaffected thereby. Supplier shall commit himself to insure the relevant risks at an adequate amount on EBM's request and to provide evidence by submission of his insurance policy.

§ 9 Confidentiality

Supplier shall commit himself to treat as a business secret any non-obvious commercial and technical details that he will become aware of by the business relationship for the duration of 5 years beyond his business relationship with EBM. Any production for third parties, the presentation of products manufactured especially for EBM, in particular in accordance with EBM's schedules, drawings or other special requirements, publications relating to orders and services as well as the reference to such order towards third parties must be previously agreed upon in writing by EBM.

§ 10 Final provisions

(1) Without EBM's written consent Supplier shall not be entitled to the assignment and/or pledging of his claims from the contractual relationship or the contractual relationships of the parties. Any verbal agreements of the parties must be confirmed in writing by EBM to become legally effective. If there are any legal disputes before foreign courts Supplier shall be obliged to bear the legal costs, in particular EBM's lawyer's fees, in accordance with his share of defeat.

(2) Place of jurisdiction for all disputes shall be at EBM's place of business. If any individual provision of these General Terms and Conditions of Purchase is or becomes ineffective this shall not affect the effectiveness of these Terms and Conditions for the rest. The ineffective provisions shall be replaced by provisions coming nearest to the economical purpose and the parties' actual intention.