

General Terms and Conditions of Purchase of Thom Metall- und Maschinenbau GmbH

§ 1 General, Scope of the Conditions

(1) The present General Terms and Conditions of Purchase (GTCP) apply to all business relationships with our business partners and suppliers (hereinafter called „Seller“). The GTCP apply only then if the Seller is a company (§ 14 BGB (German Civil Code)), a legal entity under public law or special assets under public law.

(2) The GTCP apply in particular for contracts for the sale and/or delivery of moveable goods (hereinafter called "goods"), irrespective of whether the Seller manufactures the product himself or buys from subcontractors (§§ 433, 651 BGB). The GTCP apply in their respective version as a framework contract also for future contracts for the sale and/or delivery of moveable goods with the same Seller, without us having to refer to them again for each individual case; we will inform the Seller immediately about changes to our GTCP in this case.

(3) These GTCP apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of Business from the Seller shall only then and insofar become part of the contract when we have expressly consented to them in writing. This requirement for consent applies in every case, for example also if we accept the Seller's deliveries unconditionally in the knowledge of his General Terms and Conditions of Business.

(4) In any case, individual contracts made with the Seller (including side contracts, supplements and changes) have in each case priority over these GTCP. A written contract or our written confirmation is determinative for the content of such arrangements.

(5) Legally relevant declarations and notifications that are to be given us by the Seller after the contract is concluded (e.g. setting deadlines, reminders, declaration of withdrawal) must be made in writing to be valid.

(6) Any references to the application of statutory provisions are made for the purposes of clarification only. Statutory provisions are valid even without such clarification, if they are not directly changed or expressly ruled out in these GTCP.

§ 2 Conclusion of Contract

(1) Our order becomes binding at the earliest when sent in writing. The Seller will inform us about obvious errors (e.g. writing and calculation errors) and incompleteness of the order including order documentation before acceptance, for the purposes of checking and completing; otherwise the contract is deemed as not concluded.

(2) The Seller is required to confirm our order in writing within a period of 5 calendar days or especially by the unconditional despatching of the goods (acceptance).

Any delay in acceptance represents a new offer and always requires our acceptance. Any other arrangement is valid only then, if the Seller has conclusively refrained from acceptance in the sense of § 151 BGB (German Civil Code).

(3) The content of the contract is realised as set out in our written order. If our order contains specifications for the original offer, these will be carried over accordingly into the order confirmation. If the Seller/Supplier does not agree with the specifications included by us in the order, he must refuse the order immediately. Otherwise, the content of our order is deemed to be contractually agreed, even if the order confirmation deviates from it.

§ 3 Quality Agreement

The goods must be delivered in the quality indicated in our order and according to the specifications contained in it. In particular, the goods must correspond to the appropriate technical norms and standards (e.g. the latest EC machinery directive).

The quality agreed upon includes delivery of instructions for use, industrial designs, operating instructions, and declarations of incorporation or CE Declarations.

§ 4 Delivery Date and Delay in Delivery

(1) The delivery date specified by us in the order is binding. If the delivery date is not specified in the order and was not agreed upon elsewhere, it will be 2 weeks from the time of the conclusion of the contract, whereby the delivery is made DDP according to the Incoterms® 2010, (loading on truck, export customs registration, transport to port of export, unloading of truck at port of export, loading fees at port of export, transport to port of entry, unloading fees at the port of entry, transport to destination, customs clearance, customs taxation). The Seller is obliged to inform us immediately in writing if it is likely that he cannot keep to agreed delivery dates – for whatever reason.

(2) Should the Seller fail to perform or does not provide the service by the delivery date agreed upon or delays delivery, our rights are determined by statutory provisions – especially regarding compensation and withdrawal. The provisions contained in paragraph 3 remain unaffected.

(3) If the Seller delays delivery, we can demand – in addition to further legal claims – flat-rate compensation for damages caused by the delay in the amount of 0.14% of the net price for each full day, however, no more than a total of 5% of the net price of the goods delivered too late. We are reserved the right to prove that we have suffered a higher amount of damage. The



Seller is reserved the right to prove that we have not suffered any or a much lower amount of damage.

§ 5 Performance, Delivery, Passing of Risk, Delay in Acceptance

(1) The Seller is not entitled to have the service performed by third parties without our previous written consent (e.g. subcontractors). The Seller carries the risk of procurement for his performance in each case if nothing else is arranged (e.g. sale of goods in storage).

(2) Delivery is made in accordance with clause DDP Incoterms® 2010 (loading on truck, export customs registration, transport to port of export, unloading of truck in port of export, loading fees in port of export, transport to port of entry, unloading fees in port of entry, loading on truck in port of entry, transport to destination, import customs clearance, import customs taxation) to the location specified in the order. If the destination is not specified and nothing else arranged, the delivery should be made to our business address in Verden (DDP Justus-von-Liebig-Str. 2, 27283 Verden, Germany, Incoterms® 2010). The respective destination is also the place of performance (obligation to provide).

(3) A delivery note specifying the date (issuance and despatch), content of the delivery (article number and quantity) as well as our order reference (date and number) is to be enclosed with the delivery. If the delivery note is missing or incomplete, we are not responsible for delays in processing and payment arising from this.

A corresponding despatch note is to be sent to us separately from the delivery note with the same content.

(4) The risk of accidental loss and accidental deterioration of the goods passes to us at the place of performance. If takeover is arranged, this is determinative for the passing of risks. Furthermore, the statutory provisions of the law on contracts also apply accordingly for takeover. Handover or acceptance shall be deemed effected if we delay acceptance.

(5) Statutory provisions apply in case of our delay of acceptance. The Seller must expressly offer us his performance also then if a determined or determinable calendar date is arranged for an action or cooperation from our side (e.g. provision of materials). Should we delay acceptance, the Seller can, according to statutory provisions, demand reimbursement of his additional expenditure (§ 304 BGB). Should the contract involve a non-fungible item to be manufactured by the Seller (one-off product), the Seller is further entitled only when we have obligated ourselves to cooperate and must take responsibility for failure to cooperate.

§ 6 Prices and Conditions of Payment

(1) The price specified in the order is binding. All prices include legal VAT, if this is not shown separately.

(2) Insofar as not otherwise agreed in an individual case, the price includes all the Seller's services and ancillary services (e.g. assembly, fitting) as well as all additional costs. The Seller shall take back all packaging material at our request.

(3) The price arranged is due for payment within 60 calendar days after complete delivery and performance is made (including any arranged takeover) as well as receipt of a proper invoice. Should we make payment within 30 calendar days, the Seller will grant us 3% discount on the net invoice amount. For bank transfers, payment is made on time when our transfer order is received by our bank before the payment deadline has expired; we assume no responsibility for delays caused by payment procedures at the banks involved.

(4) We do not owe default interest. Default interest is in the amount of 5 percentage points yearly above the base lending rate. Should we default, the statutory provisions apply, whereby, if applicable, deviating from this in each case, a written reminder is required from the Seller.

(5) We have statutory rights of offset and retention and the right to object to unfulfilled contracts. We are particularly entitled to hold back payment due as long as claims for incomplete or defective performance on the part of the Seller are still outstanding.

(6) The Seller shall only have the right of offset or rights of retention in the event of legally determined or undisputed counterclaims.

§ 7 Confidentiality and Retention of Title

(1) We reserve proprietary rights and copyrights to images, plans, drawings, calculations, application instructions and product descriptions and other documentation and information in physical and non-physical form – also in electronic form. Such documentation is to be used exclusively for the contractual performance and is to be given back to us after the contract is fulfilled. The documentation is to be kept confidential from third parties also after termination of the contract. The obligation to maintain confidentiality lapses until and to the extent that the information contained in the documentation has become public domain.

If the furthering of drawings etc. described under no. 1 is necessary for the fulfilment of the order, the furtherance requires our consent.

(2) The above regulation applies accordingly for substances and materials (e.g. software, finished and semi-finished products) as well as for tools, templates, samples and other objects that we provide to the Seller for manufacturing. Such objects are – as long as they are not processed – to be stored separately at the cost of the Seller and to be insured against destruction and loss appropriately.

(3) Processing, mixing or combining (further processing) by the Seller of objects provided will be



carried out for us. The same applies to further processing of the goods delivered by us, so that we are regarded as the manufacturer and can take ownership of the product when further processing begins in accordance with statutory provisions.

(4) The assignment of the goods to us shall be made unconditionally and regardless of the payment of the price. In an individual case, should we accept an offer for assignment from the Seller due to the payment of the purchase price, the Seller's retention of title lapses at the latest when the purchase price for the goods delivered is paid. In the proper course of business, we remain authorised to resell the goods also before payment of the purchase price, whereby advance assignment of the claim arising from this is agreed. Excluded in any case are all other forms of retention of title, especially the expanded retention of title, furthered retention of title and the retention of title extended for further processing.

§ 8 Defective Delivery

(1) With regard to our rights for defects of quality and title of the goods (including wrong and short delivery, as well as improper installation, faulty instructions for installation, operation or use, declaration of incorporation or CE declaration) and other breaches of duty by the Seller, the statutory provisions apply, unless agreed otherwise in the following.

(2) According to statutory provisions, the Seller is liable in particular for the goods being of the quality agreed upon when the risk passes to us. In any case, those product descriptions that are the object of the respective contract or included in the contract in the same way as these GTCP – in particular descriptions or references in our order – shall be valid as an agreement for quality.

(3) Deviating from § 442 paragraph 1, sentence 2 BGB, we are entitled to unrestricted claims for defects also then when the defect remained unknown to us when the contract was concluded due to gross negligence.

(4) For the commercial duty of inspection and to give notice of defects, the statutory provisions of (§§ 377, 381 HGB) are applicable subject to the following conditions: our duty of inspection is limited to defects which are evident during our incoming goods control using an external examination including delivery papers and our quality control using random tests (e.g. transport damages, wrong or short deliveries). If takeover is arranged for, there is no duty of inspection. The extent to which an inspection is feasible is dependent upon taking into account the circumstances in individual cases in the proper course of business. Our obligation to give notice of defects remains unaffected for defects detected later. In all cases, our notification (notification of defects) is considered immediate and timely if the Seller receives it within 10 calendar days.

(5) The expenses incurred by the Seller for inspection and repair (including any costs for dismantling and assembly) will also be borne by him if it becomes apparent that there was no defect. Our liability for damages remains unaffected when a request to remedy a defect is unjustified; to this extent, we are only liable when we recognised or due to gross negligence did not recognise that there was no defect.

(6) Should the Seller not fulfil his obligation for supplementary performance – according to our discretion by remedying the defect (subsequent improvement) or with the delivery of an item free of defects (substitution delivery) – within a reasonable deadline set by us, we can remedy the defect ourselves and demand from the Supplier compensation for the necessary expenditure or a corresponding advance. Should the Seller's subsequent improvement fail or be unacceptable for us (e.g. due to particular urgency, endangering of operational safety or impending occurrence of excessive damage) no deadline needs to be set; we will inform the Seller immediately of such circumstances, if possible in advance.

(7) In case of defect of quality or title, we are entitled, according to statutory provisions, to a reduction in the purchase price or to withdraw from the contract. Otherwise, according to statutory provisions we can claim compensation for damages and expenditure.

§ 9 Supplier Recourse

(1) We are entitled to unrestricted legally determined rights of recourse within a supply chain (supplier recourse in accordance with §§ 478, 479 BGB) in addition to claims for defects. We are especially entitled to demand from the Seller exactly that type of supplementary performance (subsequent improvement or substitution delivery) that we owe to our customer. Our statutory right to choose (§ 439 paragraph 1 BGB) is not restricted by this.

(2) Before we recognise or fulfil a claim for defects asserted by our buyer (including reimbursement of expenses according to §§ 478 paragraph 3, 439 paragraph 2 BGB), we will inform the Seller and after providing a brief statement of the facts request a written answer. Should the answer not be provided within a reasonable period and no mutually agreed solution is found, the claim for defects we actually granted shall be regarded as owed to our buyer; counter evidence in this case shall be incumbent upon the Seller.

(3) Our claims from supplier recourse apply also then when the goods were further processed before their sale to a user, by us or by one of our customers, e.g. by being assembled in another product.

§ 10 Manufacturer Disclaimer of Liability



(1) Should the Seller be responsible for product damage, he will indemnify us against third party claims to the extent that the cause is within his field of control and organisation and if he himself is individually liable to third parties.

(2) Under his obligation to indemnify, the Seller will reimburse any expenses in accordance with §§ 683, 670 BGB, arising out of or in connection with any recourse taken by third parties including recall actions carried out by us. We will inform the Seller of the content and scope of the recall measures to be performed - to the extent possible and reasonable - and allow him opportunity for comment. Further legal claims shall remain unaffected.

(3) The Seller shall take out and maintain product liability insurance with a flat-rate cover amount of at least 5 million EURO per person/material damage.

§ 11 Period of Limitation

(1) The reciprocal claims of the contractual parties shall become time-barred according to statutory provisions, unless agreed otherwise in the following.

(2) Deviating from § 438 paragraph 1 no. 3 BGB, the general period of limitation for claims for defects is 3 years as from passing of risk. If takeover is arranged, the period of limitation begins with takeover. The 3-year period of limitation applies accordingly also for claims arising out of defects in title, whereby the legal period of limitation for the restitution of property of third parties (§ 438 paragraph 1 no. 1 BGB) remains unaffected; Claims arising out of defects in title shall on no account be time-barred, as long as the third party can still assert the right against us – particularly in the absence of a period of limitation.

(3) Periods of limitation for sales law, including the above extension, apply – to the extent of the law – to all contractual claims for defects. If due to a defect we are also entitled to non-contractual claims for damages, the regular statutory period of limitation applies for this (§§ 195, 199 BGB), unless in an individual case the application of the periods of limitation for sales law leads to a longer period of limitation.

§ 12 Applicable Law and Jurisdiction

(1) These GTCP and all legal relationships between us and the Seller are regulated by the law of the Federal Republic of Germany. The prerequisites for and the effects of the retention of title are subject to the law of the respective location of the item, if, under that law, the choice of German law would be inadmissible or invalid.

(2) In as far as the seller is a businessman in the sense of the German Commercial Code, or a legal entity under public law or special assets under public law, the place of jurisdiction for all disputes arising from the contractual relationship is exclusively – also internationally – our place of business in D-27283

Verden. We are however also entitled to bring actions in the place of fulfilment for the delivery commitment.

§ 13 Language of the Contract

The parties to the contract agree that the German language will be the language of the contract for all legal relationships and that the German-language version of these General Terms and Conditions of Purchase shall be applied should further versions in other languages exist.

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