

GENERAL PURCHASING TERMS & CONDITIONS

I. General Provisions, Scope, Application

- These Purchasing Terms & Conditions (Conditions) shall apply exclusively; Supplier's conditions opposed to or diverging from these Conditions will not be acknowledged unless otherwise declared by the Buyer in writing. In addition, the Buyer's Conditions shall apply in case he, however aware of the opposed or diverging conditions of the Supplier, accepts the delivery not expressly objecting the Supplier's Conditions. Any performance of the Buyer's orders shall be deemed as acceptance of our Conditions.
- Any agreements relating to deliveries and services of the Supplier shall be binding only if and insofar as concluded in writing.
- Any supplies of units, machinery and equipment shall be subject to the Buyer's Supplemental Purchasing Conditions for units, machinery and equipment; the latter shall apply senior to these Conditions.
- These Conditions shall also apply to all the Buyer's future orders.
- Unless the Buyer has given his prior written consent, the Supplier may not disclose his business relations to the Buyer in any promotion material/advertising material.

II. Offer, Offer Documentation

- As far as applicable to the particular subject matter of the offer, integral part of the Buyer's order resp. the proposal of the Supplier will be our Quality Management Guideline, Supply Specification Raw Material, our RM-Data Sheets; the Buyer will supply such documentation to the Supplier upon application. The aforementioned specifications reflect the contractual condition of the products agreed upon.
- Unless the Supplier accepts the Buyer's order in writing within ten days, the Buyer may, subject to his sole discretion, revoke such order.
- Any title and copyright regarding images, drawings, calculations, Supply Specification Raw Material, RM-Data Sheets and other contractual documentation, as well as all information contained therein, shall remain with the Buyer at any time. Unless consented by the Buyer in writing, the aforementioned documentation may not be disclosed to third parties and shall be used only for the performance of the Buyer's orders. Upon execution of our orders, such documentation shall be automatically returned to the Buyer without being requested; subject to Clause 11, No. 5, any documentation is to be kept strictly confidential vis-à-vis third parties.
- The Buyer may request the Supplier to change/amend the product according to his needs unless this would appear unreasonable. Changes/amendments of the product will entitle the Supplier to a higher purchase price only in case the Supplier had issued an estimate of costs and our Corporate Purchasing Management had agreed to such estimate.

III. Prices, Calculation of Prices, Costs for Packaging

- The prices agreed upon shall be regarded as a fixed price; any supplementary claims whatsoever shall be excluded. Unless otherwise agreed upon in writing, the price agreed upon includes deliveries DDP (including packaging, transport, duties, customs clearance). In case of a purchase "ex railway station", the costs for the transport of the product to the railway station will be to the Supplier's account, the costs of the rail freight to the Buyer's account.
- Unless otherwise expressly agreed upon, packaging costs will be to the expense of the Supplier. Without prejudice to statutory obligations, and unless otherwise agreed, packaging material shall not be returned to the Supplier.
- Travel allowances for installation work will be limited to the statutory extent according to the relevant fiscal provisions and regulations. Overtime premiums will be paid only in case of prior written agreement.
- Remunerations for visits and for the preparation of offers, projects, planning, etc. are excluded.

IV. Issuing of Invoices, Payments, Set-Off

- Invoices shall be issued separately and shall not be attached to the product. Any invoices not complying with the specifications of the Buyer's order, in particular not referring to the Buyer's order number, will be rejected. In such case, any liability for the non-performance of the corresponding payment obligation shall be excluded.
- In case of monthly deliveries, invoices shall be issued until the 3rd working day of the consecutive month. Invoices issued at a later date shall be settled within 30 days at the same conditions and without interest. Down payments and advance payments are carried out under the condition that the amount, quality and price of the delivery corresponds to the terms of the contract. Such condition shall also apply to advance payments effected under discount.
- If and insofar as the Buyer is in arrears for payments, the Buyer will be liable for interest not exceeding 3% points above the Basic Interest Rate acc. to Sec. 247 BGB (German Civil Code).
- Any payments shall be subject to the terms of payment in the Buyer's order. Payment periods shall begin with issuing of the invoice in proper form, however not before the product/the service of the Supplier is accepted.
- Subject to the statutory extent, the Buyer shall be entitled to set-off with his claims or with claims of the ZAPP Group, Ratingen, against the Supplier's.
- C.O.D. (Cash on delivery) will not be accepted. The Buyer assumes no liability for unsolicited product. The acceptance of unsolicited products shall not constitute any contractual obligations.

V. Dates of Delivery

- All dates of delivery shall be binding to the Supplier.
- In case the Supplier become aware of his incapacity to comply with a date of delivery, he shall immediately inform the Buyer of the anticipated delay in writing by giving the reasons for the delay.
- If and insofar as the Supplier defaults in delivery, the Buyer shall be entitled to his statutory rights. In such case, after a reasonable grace period set to the Supplier has elapsed, the Buyer shall have the right to claim damages for non-performance and to withdraw from the contract. Should, due to the Supplier's default in delivery, the Buyer have lost any interest in the Supplier's further performance, the Buyer may claim damages for non-performance and withdraw from the contract without setting a reasonable grace period. Should the reasonable grace period set to the Supplier have elapsed we may, at the expense of the Supplier, surrogate the Supplier's product/service by third parties' products/services.
- Any case of force majeure, hold-ups, strikes, lock-outs, breaches of contract of the Buyer's customers or other incidents outside his responsibility shall, for its duration and in subjects to its impact, relieve the Buyer from his contractual obligations, at most for a period of three months. The same shall apply should the aforementioned incidents arise at a time when the Buyer has exceeded the agreed time of performance agreed upon. In such a case, the Supplier shall replace the contractual provisions in question by provisions which duly reflect the modified circumstances unless this would appear unreasonable.

VI. Dispatch, Documents of Dispatch

- Unless a special mode of dispatch has been requested by the Buyer, he shall bear the lowest possible dispatch rates only. Deliveries can be effected from Monday through Friday during normal trading hours. No discharge/unloading on weekends.
- Freight rates will not be paid cash to the bearer, but only by bank transfer upon presentation of the freight invoice.
- The documentation of dispatch shall be issued in accordance with the Buyer's Supply Specification Raw Material. In case the documentation is not in compliance with the Buyer's specifications, all costs resulting thereof, in particular demurrage, conversion fees etc., will be to the expense of the Supplier.
- Any notice of delivery, conforming to the Buyer's Supply Specification Raw Material, shall be issued in duplicate at the latest three days before dispatch.
- Excess deliveries, short deliveries or partial deliveries will be accepted only in case of prior agreement thereto.
- Unless otherwise agreed, postal deliveries or deliveries of similar service providers shall be dispatched "ex works"; postage costs shall be prepaid and included in the sales-invoice.

VII. Passing of Risks

The Buyer shall not bear the risks of accidental loss and accidental deterioration until the product is passed to the Buyer or until the service is accepted by the Buyer.

VIII. Defects of the Delivery

- The Buyer shall inspect the product with regard to possible defects within reasonable delay; any notification of defects shall be deemed in time within five calendar days from delivery. In case of defects which, even upon proper inspection, cannot be discovered upon delivery, the Buyer may notify the Supplier within five calendar days from the discovery of the defect. The Buyer expressly reserves the right to accept excess deliveries as conforming to the contract. Should the Supplier fail to remedy a defect of the product, the Buyer has no obligation under Sec. 377 HGB (German Commercial Code) to inspect the product delivered as a surrogate nor to advise the Supplier of any defects thereto.
- Any unit, machinery, equipment, vehicle and other related products must conform with the contractual application intended by the parties and comply with the state-of-the-art. Any product must be safe according to the applicable provisions of the accident prevention regulations of the Employer's Liability Insurance and shall comply with the latest state-of-the-art technology (DIN, VDI, VDE, CE).
- The Supplier shall be liable for any delivery or service not corresponding to the state of the art, the applicable legal provisions or the provisions and regulations of public authorities, associations and industrial unions. The Supplier shall also be liable for any defect, including legal defects pursuant to Art. 434, 435 BGB (German Civil Code). Unless otherwise declared by the Buyer in writing, inevitable divergences from the aforementioned provisions will not be accepted. Any consent to inevitable divergences shall not reduce the Supplier's liability for defects. Should the Supplier deem the particular specification required by the Buyer inappropriate, he shall immediately inform us thereof. Any deliveries/services, including deliveries or services of sub-contractors of the Supplier shall be, within the realm of technical and commercial possibility, subject to environment-friendly products and methods. The Supplier shall provide for environmental compatibility of his deliveries and shall be liable for any consequential damages resulting of his failure to comply with statutory disposal obligations. Moreover, for each delivery, the Supplier shall present the Buyer the relevant product safety data sheet. The Supplier shall defend and indemnify the Buyer from any and all third parties' claims resulting of his failure to present him, or to present him without delay, the relevant safety data sheets. The same shall apply to all amendments/alterations of the product safety data sheets.
- Should the Buyer have, within the liability period, notified the Supplier of defects in the product/service or his failure to comply with the guaranteed data, parameters or warranted characteristics, the Supplier shall, upon our demand, remedy or replace the defective parts or deliver a new product without delay and to his own expense and bear all additional expenses related thereto. The Buyer shall have the right to withdraw from the contract or to reduce the purchase price if and insofar as the Supplier fails to repair the product or to deliver a new product within a reasonable grace period. In any case, the Buyer shall be entitled to claim damages from the Supplier. The same shall apply should the Supplier be unable to repair the product or to deliver a new product. Should the Supplier try to repair the product or to deliver a new product, his inability to remedy the defect shall be assumed after the first unsuccessful attempt. In the aforementioned case, however, the Buyer may insist on the Supplier's performance until the Buyer claims damages either in writing or by filing a suit against the Supplier. If and insofar as the Supplier fails to comply with his obligations resulting out of the delivery of defective product, the Buyer may, upon expiry of a reasonable grace period, carry out the appropriate remedies or have the appropriate remedies carried out by third parties at the expense of the Supplier. Without prejudice to the Supplier's liability for the defective product, the Buyer may, subject to our obligation to mitigate losses, remedy minor defects without prior coordination with the Supplier. In such case, the Buyer may demand reimbursement of his expenses. The same applies should our instantaneous intervention be necessary to avoid exorbitant damages. In case of Buyer own customer's claims resulting of the delivery of defective product, the Buyer may demand reimbursement from the Supplier for any costs arising out of and in connection with his obligation to remedy the defective product. Unless otherwise agreed upon any contractual claims shall fall under the warranty obligations within a period of two years. Such period will begin with at the point of time when the product is passed to the Buyer or to a third party nominated by him at the place of delivery/application specified by the Buyer. In the case of appliances, machines and installations, the warranty period shall begin at the date of acceptance specified in our written minutes of acceptance. Should the acceptance be delayed for reasons not attributable to the Supplier, the warranty period shall

begin with the allocation of the product for the purpose of acceptance. The warranty period for claims resulting from defective constructional works or defective construction material shall be the statutory warranty period; the warranty period for replacement parts shall be two years upon assembly/start-up, such period will end at the latest four years after delivery. During negotiations having as subject the Buyer's entitlement to claims regarding the delivery of defective installations, the warranty period for such installations is suspended from the notice of disturbance/breakdown until the end of the negotiations. The warranty period for repaired or replaced parts shall begin at the end of the negotiations or, if agreed upon, with formal acceptance of the parts. Any formal acceptance is subject to a written application of the Supplier. In case of claims against the Buyer having as subject defects of goods produced of the Supplier's products, provided that these defects result of defects of the products, the Buyer own claims against the Supplier shall be time-barred at the earliest two months after the date on which the Buyer has satisfied his customer's claims. This suspension of expiration of the warranty period ends at the latest three years after the time when our supplier delivered the product to the Buyer.

IX. Product Liability, Release from Liability, Quality Assurance

- If and insofar as the Supplier is liable for product damages, the Supplier shall, upon request, release the Buyer from any third parties' claims for damages which originate of his domain and for which the Supplier himself is liable.
- In this context, the Supplier shall also, pursuant to §§ 683, 670 BGB (German Civil Code), reimburse the Buyer for any and all costs resulting of or in connection with product call-backs carried out by him or by his customers. The Buyer will – as far as this is possible and reasonable – inform the Supplier of the content and extent of the product call-back and will ask the Supplier for his comments.
- The Supplier shall provide for a state-of-the-art system for quality assurance which is appropriate in type and volume; he shall demonstrate such system upon the Buyer's request. If and insofar as this is deemed appropriate by the Buyer, the Supplier shall enter into a quality agreement with the Buyer. Moreover, the Supplier shall provide for adequate insurance cover for any risks of possible product liability, including the risk of having to call-back certain products; upon our demand, the Supplier shall allow the Buyer to review his insurance policy.

X. Industrial & Intellectual Property Rights

- The Supplier represents and warrants that no third party's industrial & intellectual property rights will be affected by – or in connection with – the delivery.
- The Supplier warrants that no delivery will be subject to third party's or person's industrial property rights and that the use and delivery of the product will not infringe patents, licences or other industrial property rights or applications for a patent of any third parties. The Supplier shall release the Buyer and his customers from any third parties' claims based on possible violation or infringement of industrial property rights. The Buyer shall be entitled to secure the right of utilization of the delivered products and services in question from the party or parties owning the property rights at the expense of the Supplier.
- The obligation of the Supplier to release the Buyer from third parties' claims is relevant to any and all necessary expenditures resulting of or in connection with the third parties' claims.

XI. Retention of Title; Provision of Material, Tools, Confidentiality

- Any retention of title shall be valid only until the Buyer has settled the invoice for the product/service in question. Supplier's terms covering any extended forms of retention of title shall not apply even if the Buyer has not expressly objected to such terms.
- Should the Buyer provide the Supplier with material, the Buyer reserves the property of such material. With regard to processing or manufacturing of the Buyer's material, the Buyer shall be deemed to be manufacturer. Should the Supplier processes or combine the Buyer's material with other goods not in the Buyer's property, the Buyer shall obtain co-ownership of the new goods in proportion of our material to the other goods at the time of the processing.
- If the Supplier inextricably mixes the Buyer's material with other goods not in the Buyer's property, the Buyer shall obtain co-ownership in the new goods to the proportion of his material to the other goods at the time of the mixing. Should the Buyer's material be mixed with the Supplier's goods in such a way that the Supplier's goods are considered as principle component, the Supplier shall proportionally transfer the property of the new goods to the Buyer and keep them in safe for the Buyer.
- The Buyer reserves the property of any tools confined to the Supplier; the Supplier shall apply such tools exclusively for the production of products ordered by the Buyer. The Supplier shall, at his own expense, insure these tools at their replacement value against fire, water and theft, and shall, where required, attend and inspect the tools from time to time. If the Supplier, deliberately or by negligence, default to immediately inform the Buyer of any disturbances and break-downs, the Buyer may claim damages from the Supplier.
- The Supplier shall keep the Buyer's images, drawings, calculations, Quality Management Guideline for Suppliers, Supply Specification Raw Material, RM-Data Sheets and any other contractual documentation and/or information relevant to the Buyer's order strictly confidential. Unless the Buyer has given his prior written consent, the aforementioned documents/information may not be disclosed to third parties or persons. The Supplier's shall continue to keep the aforementioned documents/information confidential after fulfillment of the contractual obligations; this obligation shall expire if and insofar as the know-how contained therein has, through no fault of the Supplier, become known to the general public. Should one of the parties become aware that confidential information has become accessible to non authorized third parties or confidential documentation has been lost, he shall immediately inform the other party thereof.

XII. Written Communication

Any written communication relating to the performance of the Buyer's order shall be addressed to our Corporate Purchasing Management who has given the order. Divergences from the original contract/order – e.g. regarding the price, invoicing, payment conditions, terms of delivery etc. – indicated in dispatch notes, delivery, notes and invoices will not be accepted since such documentation is not handled by our Corporate Purchase Management. The Supplier shall not use dispatch notes, delivery notes and invoices for general communication.

XIII. Miscellaneous

- In case of Supplier's cessation of payments, the appointment of an insolvency administrator, the inauguration of insolvency proceedings on Supplier's assets or acts of protest regarding a bill or cheque of the Supplier, the Buyer may, without becoming subject to claims of the Supplier, entirely or partially withdraw from the contract.
- Rights and obligations arising from the contract may only be transferred to third parties in case of the Buyer's prior written consent.
- The contractual language is German. In case of multi-lingual contractual documentation, the contractual documentation in German shall apply.
- The place of fulfillment for deliveries or services of the Supplier shall be the reception work. The place of jurisdiction shall be at the seat/place of business of the Buyer or – subject to our discretion – at the Supplier's place of general jurisdiction.
- All legal relationships between the Buyer and the Supplier shall be governed by the laws of the Federal Republic of Germany, excluding the provisions of international private law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG), and any other international conventions regarding sales contracts or contracts for services, notwithstanding their transmission to national German law, shall be excluded.
- On our request, the Supplier shall provide the Buyer free of charge with a supplier's declaration pursuant to the EC-regulation in question.

As of: October 2004

Sec. 247 BGB (German Civil Code): Basic rate of interest

- The basic rate of interest is 3.62%. It changes on 1 January and 1 July each year by the percentage points by which the reference rate has risen or fallen since the last change in the basic rate of interest. The reference rate is the interest rate for the most recent main refinancing operation of the European Central Bank prior to the first calendar day of the six-month period concerned.
- The applicable basic rate of interest is announced by the Deutsche Bundesbank in the Bundesanzeiger immediately after the dates referred to in subsection (1), second sentence, above.

Sec. 434 BGB (German Civil Code): Defects as to quality

- The thing is free from defects as to quality if, upon the passing of the risk, the thing is of the agreed upon quality. Should the quality have not been agreed, the thing is free from defects as to quality.
1. Should it be fit for the use specified in the contract, and otherwise
2. should it be fit for the normal use and its quality be such as is usual in things of the same kind and can be expected by the Buyer by virtue of its nature. For the purposes of sentence 2, No. 2, above, condition includes features which the Buyer may expect by virtue of public statements concerning the thing's features that are made by the Supplier, the producer (§ 4 (1) and (2) of the Product Liability Act) or persons assisting him, in particular in advertisements or in connection with labelling, unless the Supplier was not aware of the statement nor ought to have been aware of it, or at the time of the conclusion of the contract it had been corrected by equivalent means, or it could not influence the decision to purchase the thing.
- (2) There is a defect as to quality also where the agreed assembly of the thing has not been properly performed by the Supplier or persons employed by him for that purpose. Moreover, there is a defect as to quality of a thing intended to be assembled should the assembly instructions be defective, save where the thing has been assembled correctly.
- (3) Delivery by the Supplier of a different thing or of a lesser amount of the thing is equivalent to a defect as to quality.

Sec. 435 BGB (German Civil Code): Defects of title

The thing is free from defects of title if third parties cannot assert against the Buyer, in relation to the thing, any rights or can assert only such rights as are assumed in the sales contract. Entry in the land register of a right that does not exist is equivalent to a defect of title.

Sec. 670 BGB (German Civil Code): Reimbursement of expenditures

Should the agent, for the purpose of attending the order, incur expenditures which he, subject to the respective circumstances, may deem appropriate, he may claim reimbursement from the principal.

Sec. 683 BGB (German Civil Code): Reimbursement of expenditures

Should the agency corresponds to the interest and the actual or presumed will of the principal, the agent may claim reimbursement of his expenditures. In the cases of Sec. 679, the agent may claim such reimbursement notwithstanding the fact that the agency is in opposition to the will of the principal.

Sec. 377 HGB (German Commercial Code): Reimbursement of expenditures

- Where the sale is a commercial transaction for both parties, the Buyer must examine the goods promptly following delivery by the Supplier insofar as this is practicable in the proper course of business, and should a defect become apparent, promptly advise the Supplier.
- Should the Buyer fail to advise the Supplier, the goods are deemed to have been approved, unless there is a defect which was not apparent during the examination.
- Where such a defect becomes apparent at a later time, notice must be given promptly following the discovery; otherwise, the goods are to be deemed approved, also with regard to this defect.
- The timely dispatch of notice suffices to preserve the Buyer's rights.
- Where the Supplier has maliciously concealed the defect, he may not assert these provisions.