

# Purchasing terms, Zimmer GmbH Technische Werkstätten, 77866 Rheinau, Germany, valid from 1 December 2006

## Purchasing terms

These purchasing terms apply to business dealings with companies, legal persons and special estates under public law.

### 1. General

1.1 Our purchasing terms are applicable exclusively; general terms and conditions of the supplier conflicting with or deviating from our purchasing terms are only recognised insofar as we expressly agreed to their validity in writing. Our purchasing terms also apply if we, while being aware of the supplier's contradictory conditions which deviate from our purchasing terms, accept or pay for deliveries of products and supplier services (hereinafter referred to as subject of the contract).

1.2 Our purchasing terms also apply to all future deliveries and services provided by the supplier until our new purchasing terms take effect.

### 2. Conclusion and variation of contract

2.1 Orders, contracts and delivery schedules, as well as variations and supplements to the same, must be made in writing. Orders and delivery schedules may also take place by remote data transmission or fax.

2.2 Verbal agreements before or at the conclusion of contract require written confirmation of purchase to become valid.

2.3 Verbal agreements following conclusion of the contract, in particular subsequent amendments and supplements to our purchasing terms – including this requirement for the written form – as well as collateral agreements of any kind also require written confirmation of purchase to become valid.

2.4 Cost estimates are binding and free of charge unless otherwise expressly agreed.

2.5 If the supplier does not accept the order within two weeks of receipt, we are entitled to cancel the order. Delivery schedules are binding if the supplier does not disagree within five working days of receipt.

2.6 Quantities ordered must be adhered to; under- and overdeliveries are permitted only with our agreement.

2.7 If parts provided are damaged through processing/surface treatment or become defective, the contractor must pay for the resulting losses.

### 3. Delivery

3.1 Deviations from our contracts and orders are only permitted following our prior written approval.

3.2 Agreed deadlines and time limits are binding. Receipt of the goods by us shall be the deciding factor in determining adherence to the delivery date or period. If the delivery is not agreed ex works (DDU or DDP according to Incoterms 2000), the supplier must provide the goods in a timely manner taking into consideration the time for loading and shipping to be agreed with the carrier.

3.3 Legal regulations shall apply if agreed deadlines are not adhered to. If the supplier anticipates difficulties with regard to production, the supply of primary materials, adhering to delivery dates or similar circumstances which may prevent them from delivering on time or to the agreed quality, the supplier must inform our ordering department immediately.

3.4 The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims for compensation to which we are entitled due to the delay in providing the delivery or service; this applies pending full payment of the amounts owed by us for the delivery or service in question.

3.5 Partial deliveries are not permitted unless we have expressly agreed to this or we find it reasonable.

3.6 With regard to units, weights and dimensions, the values determined by us when inspecting the incoming goods shall be definitive subject to being proved otherwise.

### 4. Force majeure

Force majeure, industrial action, operational disruptions without fault, disturbances, measures taken by the authorities and other unavoidable events entitle us – without prejudice to other rights – to withdraw from the contract in whole or in part, providing these events are not of an insignificant duration and do not result in a considerable reduction in our requirements.

### 5. Notification of dispatch and invoicing

The information in our orders and delivery schedules shall apply. The invoice must be sent in duplicate to the relevant address quoting the order number and other identifiers; it must not be enclosed with the shipments.

### 6. Pricing and passage of risk

If no special agreement is reached, prices are delivered duty paid (DDP in line with Incoterms 2000), including packaging. Sales tax is not included. The supplier bears the material risk until the goods are accepted by us or our representative at the location to which the goods are to be delivered as ordered.

### 7. Payment terms

Provided that no special arrangement has been made, the invoice shall be settled either within 14 days less a 3% discount or with no deduction within 30 days from the demand for remuneration becoming due and receipt of both the invoice and the goods or performance of the service. Payment is subject to invoice verification.

### 8. Claims for defective goods and recourse

8.1 Acceptance is subject to examination for freedom of defects, in particular also for correctness, completeness and fitness. We are entitled to inspect the subject of the contract insofar as and as soon as this is feasible in the normal course of business; we will submit a complaint regarding any defects discovered without delay. Insofar the supplier shall waive objections of late complaints regarding defects.

8.2 The provisions of the statute on material defects and defects of title are applicable insofar as not otherwise provided for in the following.

8.3 We always have the right to select the type of supplementary performance. The supplier has the right to refuse the type of supplementary performance selected by us subject to the conditions given in Section 439 [2] of the German Civil Code.

8.4 In the event that the supplier does not commence rectifying the defect immediately after our request to remedy it, in urgent cases, especially to prevent acute danger or greater damage, we are entitled to undertake such rectification ourselves or to have it undertaken by a third party at the expense of the supplier. Claims for material defects are time-barred after two years unless the item has been used as intended for in a construction and has caused this to become defective. The period of limitation for claims for material damages starts with the delivery of the subject of the contract (passing of risk).

8.5 In the case of defects of title, the supplier also indemnifies us from any claims which may exist from third parties. With regard to defects of title, there is a period of limitation of 10 years.

8.6 For parts of the delivery which have been repaired or maintained within the period of limitation relating to our claims for defective goods, the period of limitation starts to run anew at the point in time at which the supplier has fulfilled our requirements of supplementary performance.

8.7 If any costs are incurred by us as a result of the defective delivery of the subject of the contract, in particular transport, travel, labour or material costs or costs of a receiving inspection exceeding the normal scope of the control, such costs shall be borne by the supplier.

8.8 If we take back any products manufactured and/or sold as a result of the defectiveness of the subject of the contract supplied by the supplier, or if the purchase price paid to us is reduced because of this or claims have been made against us in any other way for this reason, then we retain the right of recourse against the supplier, whereby it is not necessary for a time limit to be set pertaining to our warranty claims which would otherwise be necessary.

8.9 We are entitled to claim reimbursement from the supplier for expenses which we had to bear in relation to our customer because the customer has a claim against us for compensation of the expenses incurred due to supplementary performance, in particular transport, travel, labour and material costs.

8.10 Notwithstanding the terms in section 8.5, statutory limitation does not occur in the cases under sections 8.8 and 8.9 until at the earliest two months after the point in time at which we have fulfilled the claims our customers have made against us, at the latest however five years after delivery by the supplier.

8.11 If within six months of the passing of risk a material defect appears, then it is assumed that the defect already existed before the passing of risk, unless this assumption is inconsistent with the type of goods or defect.

### 9. Product liability and recalls

In the event of us being claimed against on the basis of product liability, the supplier is obliged to indemnify us from such claims, providing and inasmuch as the damage was caused by a fault in the subject of the contract supplied by the supplier. In cases of liability independent of fault however, this only applies if the supplier is liable. Provided that the cause of loss is in the supplier's area of responsibility, then they bear the burden of proof in this respect.

The supplier shall bear all costs and expenses in these cases, including the costs of any prosecution or recall action. Legal provisions shall apply in other respects.

### 10. Performance of works

Persons required to perform works on the premises to fulfil the contract must observe the relevant site rules. Liability for accidents happening to these persons on the business premises is excluded providing this is not caused by wilful or grossly negligent breaches of duty on the part of our legal representatives or agents.

### 11. Provision of material

We retain ownership of materials, parts, containers and special packaging provided by us. These may only be used for the purpose intended. Materials are processed and parts are assembled on our behalf. There is an agreement that in relation to the value of the materials provided against the value of the final product we are co-owners of the products manufactured using our materials and parts insofar as they are being kept safe for us by the supplier.

### 12. Documents and non-disclosure

12.1 All commercial or technical information made accessible by us (including features which can be taken from objects, documents or software provided, and other knowledge or experience) shall be kept confidential from third parties, as long as and insofar as demonstrably not public knowledge, and may only be provided to such persons within the supplier's own operations who need to use them for the purposes of fulfilling the delivery and who are likewise bound to confidentiality; we retain exclusive ownership thereof.

Such information must not be duplicated or used for commercial purposes without our prior written agreement – except for deliveries to us. At our request, all information originating from us (including any copies or recordings made if applicable) and loaned objects shall be returned to us immediately in full or destroyed. We retain all rights to such information (including trademark rights such as patents, registered designs, semiconductor protection, etc.). Insofar as these are made accessible to us by third parties, this legal reservation also applies in favour of these third parties.

12.2 Products manufactured according to documents drafted by us, such as drawings, models or similar, or according to our confidential information or using our tools or copies of our tools, must not be used by the supplier themselves, or offered or delivered to third parties. This also applies to our print jobs.

### 13. Place of fulfilment

The place of fulfilment is the location to which the goods are to be delivered as ordered.

### 14. General provisions

14.1 Should any terms of these conditions and the other agreements reached be or become ineffective, this shall not affect the validity of the conditions in other respects. The contracting parties undertake to replace the ineffective term by one which comes closest to attaining its desired economic success.

14.2 The place of jurisdiction for all legal disputes which result directly or indirectly from contractual relationships based on these purchasing terms is the domicile of the purchasing company. However we are entitled to take the supplier to court as we see fit at the court of the supplier's domicile or the supplier's branch or at the court of the place of fulfilment.

14.3 German law applies exclusively to the legal relationships arising from contracts. Conflict of laws and the terms of the UN Convention on Contracts for the International Sale of Goods (CISG) are ruled out.

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