

Terms and Conditions of Purchase (as of: Feb 2018)

§ 1 General – Scope

- (1) The general terms and conditions of business of the supplier shall become an integral part of the contract without written approval of SPANTEC only if such terms and conditions do not conflict with these Terms of Purchase and Delivery, even if they are used by the Contractual Partner at a later point in time. Conflicting general terms and conditions of business shall not affect the validity of the concluded contract. In the event of conflicting terms and conditions, statutory provisions shall apply.
- (2) In individual cases, individual agreements made with the supplier (including side agreements, amendments and modifications) always take precedence over these purchase conditions. The contents of any such agreement shall be governed and subject to proof and written confirmation.
- (3) Our terms and conditions of purchase only apply if the customer (§14 BGB), is a legal entity under public German law or a public-sector fund entrepreneur.
- (4) Unless otherwise agreed, the terms and conditions of purchase which apply are those communicated to the customer at time of order. The framework agreement applies for similar future contracts without us again having to refer to them in each individual case.

§ 2 Offer – Placing of order

- (1) The supplier shall prepare offers free of charge. Offers shall be submitted by the date named in the inquiry. The supplier must exactly adhere to the specification and wording of the inquiry made by SPANTEC. The supplier is obliged to expressly point out any deviations.
- (2) Purchase orders are binding only when submitted in writing and have been confirmed. The supplier must confirm the purchase order in writing within 14 calendar days (declaration of acceptance). A delay in accepting the purchase order by the supplier acts as a new offer and must be accepted by SPANTEC.
- (3) We retain title and copyright to all illustrations, drawings, calculations and other documents. They may not be made accessible to third parties without our express written consent and may only be used for production based on our order. After processing of the order they must be returned to us immediately and without prompting. The non-disclosure obligation applies for a period of 10 years after processing this order. It expires if and to the extent to which the production know-how contained in the said illustrations, drawings, calculations and other documents becomes generally known.
- (4) An assignment of the order to third parties is not-permitted without our consent.
- (5) Changes to products or the production process by the supplier that will lead to changes in specification, drawings or quality standards or have any other effect on the operations reliability and functioning of our products are only permissible with our prior consent.

§ 3 Prices – Terms of Payment

- (1) The prices shown in the order are fixed prices. Unless otherwise agreed in writing they include delivery and packaging. If reusable packaging is returned without processing, the supplier shall credit SPANTEC two-thirds of the amount invoiced for the packaging.
- (2) Changes in price after conclusion of the contract cannot be considered. This also applies if the cause for

price increases was unforeseen and/or serious for the supplier.

- (3) Quoted prices are excluding VAT, if these are not reported separately.
- (4) The agreed price must be paid in full within 30 calendar days after the delivery of goods or performance of services (including where appropriate the agreed declaration of acceptance) and receipt of a valid invoice. If payment is made within 21 calendar days, the supplier will apply a 3% discount to the gross amount of the invoice. Payments via bank transfers are considered punctual when the bank receives the transfer order before expiry of the payment period.
- (5) The invoice must show the order number, date and VAT identification number for cross border delivery within the EU, place of uploading, number and date of the delivery note and quantity of invoiced goods. The invoice may only relate to one delivery note. The supplier is responsible for any consequences arising from non-adherence to this obligation unless he can prove that he is not responsible.
- (6) Should a price not have been specifically agreed, a possibly existing framework contract is decisive. If there is no framework agreement the price of the last delivery of the same goods applies.
- (7) We are entitled to offset and withhold supplier's claims when the contract has not been fulfilled. In particular, we are entitled to retain due payment provided the contract has not been fulfilled or is deemed inadequate.
- (8) The supplier is only entitled to offset and withhold claims when the claim is under legal investigation or is undisputed.
- (9) Supplier's receivables from third parties may only be assigned or pledged with our written consent. We will not withhold consent without good cause.
- (10) Payments do not constitute a renouncement of possible damage claims and are not an acknowledgement of contractually correct fulfillment.

§4 Delivery / Performance

- (1) Delivery is made at the time recorded in the order.
- (2) Unless otherwise agreed the Incoterms 2010, CIP apply to the delivery.
- (3) In principle, cash on delivery is excluded and the acceptance of the dispatch at the expense of the supplier is refused.
- (4) The supplier is obligated to state the order date and number on all dispatch documents, delivery notes and other correspondence. Should he omit this we cannot be held responsible for any subsequent delays in processing. The supplier or third parties entrusted with this task by it shall make deliveries only during the opening hours of SPANTEC.

§ 5 Delivery delays

- (1) All the agreed delivery dates are binding. If the supplier is at fault for failing to meet a specific or determinable calendar date for delivery it shall be in default without any further reminder or without any additional period being granted. Where a fixed calendar date for delivery is stated, upon the expiry of that day; where a specific calendar week is stated, upon the expiry of the last workday of that week; where a calendar month is stated, upon the expiry of the last workday of that month. In the event of default by the supplier, a con-

Terms and Conditions of Purchase (as of: Feb 2018)

tractual penalty of 0.2 percent, but not more than 5 percent of the total net volume of the purchase order/contract/order placed shall be imposed for each workday by which the period is exceeded. We reserve the right to prove that a higher damage has developed.

- (2) Should the delivery be delayed due to force majeure or industrial action at the supplier's or our operation – and taking economic factors into consideration –, we are wholly or partially released from the obligation to accept the ordered goods if the goods are no longer usable or the delay of delivery is unacceptable.
- (3) If the delivery is earlier than agreed we retain the right to return the goods at the supplier's expense and risk or alternatively to store the goods at the supplier's expense and risk until the agreed delivery time. We charged a daily flat rate of 0.2%, but not more than 5 percent of the total order value for storage for the goods which delivered to early. We retain the right further claims and rights. On accepting early deliveries, payment date is dependent on the agreed delivery time.

§ 6 Inspection / Quality control / Parts requiring mandatory documents

- (1) The data we obtain during the receiving inspection with regard to quantity, mass, weight and quality is decisive. Acceptance is subject to examining the correctness and suitability and to our quality control conditions – as far as appropriate – that were handed to the supplier before conclusion of contract. Our control personnel and those from domestic and foreign authorities are entitled, after prior announcement and during working hours, to check the quality of the materials and/or the production process of the delivery goods and to be given insight into the quality records.
- (2) The supplier is obligated to maintain the best available technology. He is further obligated to establish and conduct appropriate control to ensure that the goods produced exhibit the agreed and specified quality characteristics.

§ 7 Liability for defects / Notice of defect

- (1) The statutory regulations shall apply in case of defects of quality and title of goods (including wrong and short delivery, improper installation, assembly and operation manual) unless agreed otherwise.
- (2) The supplier is responsible to ensure the goods are of agreed quality during transfer of risk as per statutory law. Object of the contract are or were involved in the same way as these purchase conditions in the contract - in particular by name or reference in our order - As regards the quality of at least those products that apply. There is no difference if the product description is from us, the supplier or the manufacturer.
- (3) Notwithstanding § 442 para. 1 sentence 2 of the German Civil Code (BGB) we are entitled to defect claims without restriction.
- (4) For the commercial examination and notification, the statutory provisions (§§ 377, 381 HGB) apply: Our obligation is limited to inspecting the product for defects which appear clearly within our incoming goods inspection under external evaluation including shipping documents, as well as our quality control in sampling methods (for example, transport damage). If acceptance has been agreed, there is no obligation for examination. Moreover, it depends on how far a study taking into account the circumstances of the case to

ordinary course of business is feasible. Our notification for defects discovered later remains unaffected. In all cases our objection (notification of defects) is considered immediately and in time, if it is received within 5 business days by the supplier.

- (5) The examining and subsequent rectification costs, even if later determined inaccurate, are incurred by the supplier (including any removal and installation costs) Our liability for damages remain unaffected; as far as we are liable only if we recognize or negligently failed to realize that there was no defect.
- (6) Should the supplier not rectify the defect or deliver substitute goods to resolve the defect within the time agreed then we have the right to resolve the defect and make the supplier responsible for the expenses. If the rectification failed via the seller or for us unacceptable to remedy (due to special urgency, operational safety is endangered or impending occurrence of disproportionate damage) no deadline will be set. In such cases, we will instruct the seller directly.
- (7) In addition, we are entitled to reduce the purchase price or to rescind from the contract if a material defect or legal defect according to legal regulations is discovered. We also are entitled to compensation and reimbursement as per statutory provisions.

§ 8 Product liability / Indemnity / Insurance cover

- (1) If the supplier is responsible for a product defect he is obligated to release us from damage claims from third parties on the first demand insofar as the cause falls within his sphere of control or organization and he is liable in external relations.
- (2) In line with this liability for damages in terms of paragraph (1) the supplier is further obligated to refund possible expenses according to §§ 683, 670 BGB or according §§ 830, 840, 426 BGB incurred by us from or in connection with product recall. We shall inform the supplier – as far as possible and reasonable – on the content and extent of the necessary recall measures and give him an opportunity to comment. Other legal claims remain unaffected.
- (3) The supplier commits himself to maintain product liability insurance with a cover amounting to a flat rate of € 5m for each personal damage / property damage and provide proof of this on request. In individual cases a different amount may be agreed upon. Any additional damage claims that we may be entitled to remain unaffected.

§ 9 Retention of title / Tools

- (1) Any parts that we consign to the supplier remain our property. The supplier always effects processing and transformation for us. The supplier is obliged to clearly mark the material provided as such and to store it separately, especially so that no mingling/combination occurs. The supplier undertakes to use the material entrusted to it only for the production planned under the contract. In the event that we loss of ownership occurs for SPANTEC though processing, the supplier hereby assigns to SPANTEC its rights of ownership arising therefrom.
- (2) We retain to title to all tools; the supplier is obligated to use the tools exclusively for the production of goods ordered by us. The supplier is obligated to insure our tools at replacement value against fire and water damage and theft at his expense. At the same time the supplier assigns all compensation claims from this insurance policy to us; we accept the assignment. The

Terms and Conditions of Purchase (as of: Feb 2018)

supplier is obligated to perform any necessary service and inspection work on our tools as well as do all maintenance and repairs on time and at his expense. He must inform us immediately of any cases of disruption. If he fails to do so culpably, any damage claims remain unaffected.

- (3) If the security rights that we are entitled to according to paragraph (1) and/or paragraph (2) exceed the purchase price of all our unpaid retention goods by more than 10%, we are obligated to release the security rights accordingly at our choice.
- (4) We may acquire the supplier's share of production materials partially paid by us at the end of the supply at current market value. The supplier may sell items that were developed by us and/or carry our trademark and/or our part number to us exclusively. The supplier further commits himself not to offer these parts in catalogues or other advertising or sales documents.

§ 10 Non-disclosure and data protection

- (1) The contractual parties commit themselves to treat all non-public commercial and technical details that have become known through the business relationship as business secrets.
- (2) The supplier may not use the fact of the business relationship for purposes of advertising or public relations without consent. Sub-suppliers must also be committed to this condition.

§ 11 Spare parts

The supplier is obligated to continue filling orders for spare parts and consumables for at least 5 years after the last delivery and ensure sufficient availability of such spare parts.

§ 12 Limitation

- (1) The mutual claims for both parties become time barred as per legal provisions insofar no other agreement has been made to the contrary.
- (2) Notwithstanding § 438 para. 1 no. 3 BGB, the general statute of limitations from the passage of risk is 3 years. The 3-year period begins at date of acceptance. The 3-year time period also applies to claims for legal defects although the right to surrender claims of third party (§ 438 Abs. 1 Nr. 1 BGB) stay unaffected. Rights from legal defects do not become time barred so long the third party still has the right to claims.
- (3) The limitation periods of commercial law including projecting extension apply - the legal extent - for all contractual claims for defects. Non-contractual claims for damages due to defects follow, the normal statutory limitation period (§§ 195, 199 BGB), unless the application of limitation periods of commercial law in the case leads to a longer limitation period.

§ 13 Covenant against assignment / Place of jurisdiction / Place of performance

- (1) Without the separate written approval of SPANTEC, the supplier is not permitted to transfer, assign or pledge the delivery commitment or the payment claim under the contract between the supplier and SPANTEC in part or in whole to third parties.
- (2) All disputes that may arise out of or in connection with the performance of supplies and/or services by the supplier shall be subject to German law. Applicability of the UN Convention on Contracts for the International Sale of Goods shall be expressly excluded.

- (3) Venue for all contractual and non-contractual disputes shall lie in the city in which our registered office is located, if the customer is an entrepreneur. However, we are entitled to also bring suit against the supplier in the court of the city in which its registered office is located.

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