Purchase Conditions (dated 01.11.2020)

1. General

1.1. The following purchase conditions apply for all orders from the orderer concerning deliveries and/or services. These purchase conditions apply subordinated and extending, provided special pre-formulated contract conditions and/or technical or other control mechanisms are mentioned in the order letters of the orderer. Conditions of the vendor, which are extending or deviating from these purchase conditions (where, in the following, also other vendors such as factory contractors, service enterprises etc. are designated) are non-binding, unless they are recognised by the orderer explicitly in writing. Deviating conditions do not oblige the orderer, without explicit written acknowledgement, even in the case where they are mentioned in the order acceptance. The same applies if the orderer completely or in part accepts the ordered goods and/or the ordered services or makes payments. At the latest, with initiation of the implementation of the order by the vendor, the following purchase conditions are recognised bindingly.

1.2. The following purchase conditions apply only to companies.

2. Scope of supply

2.1. Orders require the written form. If the vendor accepts the order, he has to immediately give us a written confirmation of order. If an on-going business relationship exists with the vendor, the order applies as being accepted, in accordance with the conditions of the order letter, if the vendor does not contradict it within eight calendar days after receipt of the order. If no other agreement has been made, the vendor has to make out the delivery note and invoice in duplicate and to submit them in time. Invoices or other declarations of intention must not be enclosed with the consignment in any case.

2.2. The vendor has to hand over, on request of the orderer, plans, design drawings, calculations, analyses and similar things, which relate to the supplied objects, for inspection and authorisation; the responsibility of the vendor remains unchanged by this. On request by the orderer, the vendor has to also supply spare parts' drawings for important spare parts, with sufficient information regarding procurement.

2.3. The security measures and equipment required according to official stipulations, as well as the Accident Prevention Specifications of the Trade Social Insurance against Occupational Accidents, are to be considered and supplied.

2.4. If the order explicitly, or in a concluding way, provides that the orderer must bear the costs of the tools and models, the orderer and vendor agree that the corresponding tools and models, for which the costs are borne by the orderer, are or become the property of the orderer. The vendor keeps the tools and the models in these cases for the orderer and provides free, proper safekeeping and maintenance, including sufficient insurance against fire, water and theft; the delivery to the orderer is replaced by that.

2.5. If the orderer supplies the vendor with objects or materials, the orderer reserves the ownership of these. Processing or amendment by the vendor are carried out on behalf of the orderer. If the Conditional Goods of the orderer are processed with other, non-associated objects, the orderer acquires co-ownership in the new object in the relationship of the value of his object to the other processed objects at the time of the processing. If objects or materials, provided by the orderer, are mixed inseparably with other, non-associated objects, or if they are connected with another object in such a way that they become significant components of an inseparable object, the orderer acquires the co-ownership in the new object in the relationship of the value of the conditional object to the other mixed objects at the date of the mixing. If the mixing or connection is implemented in such a manner that the object of the vendor is deemed to be the main object, then it applies as binding that the vendor assigns the orderer co-ownership proportionally and also safekeeps the object for the orderer. Materials made available are to be adequately insured by the vendor, at his own cost, against fire, water and theft and may be employed only as specified.

2.6. Partial deliveries are permissible only with written consent from the orderer.

2.7. Provided other packaging materials or types are not explicitly prescribed by the orderer, the goods are to be supplied in reusable containers or in reusable packaging. If the goods additionally require a special protective packaging, recycling-capable materials are to be employed exclusively by the vendor. The vendor will take back the reusable containers, the reusable packaging and the special protective packaging, on request by the orderer, within six months after receipt of the goods, free of all charges.

3. Delivery time

3.1. The delivery time indicated in the order is binding. If it must have been apparent to the vendor that the indicated delivery time and notice period cannot be adhered to, he has to communicate this immediatelyto the orderer, with provision of information of the reasons and the probable duration of the delay.

3.2. If the orderer accepts a partial delivery with written consent and if a not unimportant part of the order quantity is still outstanding for delivery, the orderer is then entitled, in case of delay with regard to the still outstanding partial delivery, to resign from the entire contract.

3.3. In case of delay in delivery, the orderer is entitled to demand damage caused by delay, consolidated as a lump sum, in the amount of 1% of the delivery value per expired week, however not more than 5%; further legal claims remain unchanged. The vendor has the right to verify that, as a result of the delay, no damage or only minor damage has arisen.

4. Prices and agreement of the Incoterms®2020

4.1. In the absence of a deviating agreement the DAP Incoterms®2020 shall be deemed as agreed with our different sites as place of destination. The prices are deemed including packaging, transport, applicable rate of value added tax and other duties. The orderer can determine the type of transport. If the list price of the goods on the day of the delivery is below the order price, the list price shall be deemed as agreed.

4.2. If a deviating calculation ex works or ex warehouse is agreed, dispatch must be at the lowest costs in each case, provided the orderer did not prescribe any definite transport type. Additional costs through failure to adhere to delivery instructions will be charged to the vendor.

5. Property and passage of risk

5.1. Retentions of title by the seller apply only in so far as they refer to the payment obligation of the customer for the respective product to which the supplier reserves title. In particular, extended or prolonged retentions of title are not admissible. If no valid retention of title by the seller applies as a result, title and title expectancy rights shall pass to the customer upon dispatch of the goods by the seller, whereby the seller hereby assigns henceforth in advance to the customer the entitlements to handover with respect to the freight forwarder, carrier or stock holder of the goods dispatched, and the buyer hereby accepts this assignment.

5.2. The vendor bears the risk of accidental damage or deterioration, up to the delivery of the goods to the orderer. Costs of the in-surance of goods will be born by the orderer only in the case where the orderer has confirmed this in writing.

6. Acceptance and buyer's complaint

6.1. As a deviation from § 377 Sect. 1 HGB, the orderer is obliged to test the goods for possible quality and quantity deviations within 10 calendar days. If a defect is detected during the investigation, the orderer has to notify the supplier of the defective nature of the goods. This notification must reach the vendor within 14 calendar days after delivery of the goods.

6.2. If a defect of the goods is detected only at a later date, in spite of compliance with the investigation obligation, the orderer must notify the supplier of the defective nature of the goods and the notification must reach the vendor within 10 calendar days after detection of the defect.

6.3. A later investigation deviating from that and/or notification of the defective nature is liable for consideration only if investigation and/or notification have been implemented after delivery of the goods and/or with „hidden" defects, after detection of the defective nature, without culpable delay.

7. Composition agreement

It is deemed as binding that the goods to be supplied by the vendor comply with the specifications and properties listed in the product data sheets of the orderer and in the order.

8. Liability for defects

8.1. The rights of the orderer with regard to redhibitory defects and defects in title depend on the legal specifications, provided no deviating agreements have been specified below.

8.2. In the case of redhibitory defects in objects, the orderer has the right to resign from the contract, to reduce or to demand claims for damages, without having to first wait for a subsequent fulfilment.

8.3 In every redhibitory defect or defect in title, a considerable violation of obligation is involved, so that, in the case of defects in an object, the resigning of the orderer from the contract is always possible.

9. Payment

Payment is implemented after complete and defect-free delivery. The orderer pays within 90 days after receipt of invoice, without discount. The payment applies as having been made in due time if the orderer has given the order of payment to the credit institute on the day of the due date of payment.

10. Liability

10.1. The vendor is liable according to the legal specifications.

10.2. As far as the vendor is responsible for product damage, he is obliged to exempt the orderer from claims for compensation of third parties on first call, as the cause is assigned to his controlled organisational area and he is liable himself in the rights and duties as to third persons. Within this framework, the vendor is also obliged to reimburse possible expenditures in accordance with § 683, 670 BGB, which result from, or in connection with, a recall action carried out by the orderer, provided that the claim does not follow from § 830, 840 BGB, in association with § 426, 254 BGB. The orderer will inform the suppliers with regard to content and extent of the recall measures to be carried out - as far as is possible and reasonable - and give the supplier the opportunity to comment. The vendor also assumes further liability for the fact that the supplied goods are free from commercial rights of third parties in Germany, in countries of the European Union, in U.S.A. and in Canada. In the case of infringement of such industrial property rights, the vendor is obliged to recompense the orderer for all damage arising from that, for their period of validity. The orderer is also entitled in this case to obtain, at the expense of the vendor, the necessary permit for the delivery, commissioning, use, further sale etc. of the goods from the holder of such industrial property rights.

10.3. The Seller confirms that the provisions for all substances, mixtures and articles covered by the REACH Regulation (Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18.12.2006 concerning Registration, Evaluation, Authorization and Restriction of Chemical Substances (REACH) and subsequent regulations) are observed. The Seller guarantees for the supply of such substances, substances in mixtures and substances in articles that these are registered or preregistered in accordance with the REACH Regulation. The Seller undertakes in the event of any contravention, to comprehensively indemnify the Buyer from and against any claims by third parties, including governmental bodies, arising from it and/or to compensate the purchaser for any disadvantages arising from it. The Seller also gives the assurance that it will not supply to the Buyer any substances, substances in mixtures and substances in articles which are listed in Annex XIV to the REACH Ordinance and which require authorization, without the Buyer's prior written approval.

10.4. The seller undertakes to comply with the existing statutory obligations for the classification, labelling and packaging of the ordered goods. In any case a clear product designation has to be on the packaging, which enables the identification of the goods.

11. Resigning from the contract and notice to quit

The orderer can resign from the contract completely or in part or quit the contract with instant effect if the vendor ceases his payments or if insolvency proceedings are instituted with regard to his assets. The same applies if the orderer is in possession of information about the unfavourable financial situation of the vendor on the part of a credit institute, a credit commercial agency or due to own knowledge, which establish considerable doubts about the economical performance capability of the vendor. In the case of issuing notice to quit, the vendor will hand over completely or partially to the orderer - if requested by the orderer - the goods produced or bought for this order. Invoicing of goods delivered either completely or partially is based on the prices agreed in the order. If no prices are agreed for components, the purchase price of the vendor, plus 5% administrative expense surcharge is binding, unless, the vendor can verify that his administrative expenses are higher. In the latter case, the verified higher administrative expense surcharge is then binding. Other legal rights and claims of the orderer remain unchanged. Claims for compensation of the vendor based on the protection of rights are excluded.

12. Drawings and specifications

Information provided by the orderer and drawings created by the orderer or the vendor, on the basis of such information or analyses etc., may be employed or utilised in another way only with written approval of the orderer. The vendor has to consider the order and the works resulting from that as a trade secret and to handle these with the corresponding confidentiality. All drawings, analyses etc. made available are to be returned immediately to the orderer after executing the order. The same applies in case of non-execution of the order. The vendor can exercise a right of retention in this regard.

13. Compliance

The contractual partners are obligated to adhere to all existing laws and regulations. This applies in particular to adherence to domestic and foreign provisions for fighting corruption.

14. Final clauses

14.1. The seller is not entitled to assign its receivables from the contractual relationship to third parties. This shall not apply insofar as it concerns monetary claims.

14.2. The orderer may use the data gathered about the vendor within the framework of the existing business connection according to the determinations of the German Federal Data Protection Law, regardless of whether this data originates from the vendor himself or is known to the orderer from a third party.

14.3. Provided that the vendor is a businessman, a public-legal special fund or a legal entity under public law, Borken is exclusively the place of jurisdiction. The orderer is entitled, however, to also sue the vendor before the courts of the vendor's general place of residence.

14.4. The relationships between the vendor and the orderer are subject exclusively to the law of the German Federal Republic, in particular in the case of legal relationships with foreign vendors. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.