

Applicable in the business transactions with companies, corporate bodies under public law and special funds under public law

### **§ 1 Scope of Application**

These Terms and Conditions of Purchase shall apply exclusively and in fact to all purchase contracts and contracts for labour and materials concluded with us and also in case of pre-contractual initial business contacts and in the framework of ongoing business relations; we accept suppliers' general terms and conditions to the contrary or ones that differ from our Terms and Conditions of Purchase only insofar as we have expressly agreed to them in writing. The acceptance of goods and/or services of the supplier (hereinafter also referred to as "subject matter of the contract") or their payment shall not imply approval.

### **§ 2 Conclusion of Contract**

1. Our orders can only be accepted effectively in writing (without this excluding transmission of acceptance by means of telecommunication) and only without content-wise deviations or limitations of the order within an acceptance period of 8 days from the date of the order.
2. Oral agreements and agreements made on the phone will only be binding for us if they are confirmed in writing or by email afterwards.

### **§ 3 Contents of Contract**

1. Our order including master contract or/and price agreement shall be binding for the contents of a contract and take precedence over all other integral parts of the contract.
2. The agreement concerning quality, industrial safety, environmental protection and social responsibility for suppliers (quality control agreement), the logistics manual and the delivery and packaging instructions of us are integral parts of the contract.
3. Drawings and other documents made available by us remain our exclusive property, and neither originals nor copies of them must be used otherwise or made accessible to third parties. After completion of an order, they have to be returned to us free of cost without delay and without this having to be requested by us.

### **§ 4 Prices**

1. Contract prices are fixed prices, any kind of price increases are excluded. The contract prices also cover all ancillary services that are necessary for the execution of the contractual performance. They will not be reimbursed separately or additionally.
2. Contract prices always comprise all packaging costs. Packaging material will only be returned at the supplier's request and expense. The prices always comprise the costs of delivery to the place of delivery determined by us (transport and dispatch costs, costs of transport insurance or other insurances for goods and services as well as other additional costs and charges), unless otherwise agreed.

### **§ 5 Place of Performance and Dispatch**

The location determined by us for the delivery of goods is the place of performance (supplier's obligation to provide). The passage of risk shall occur only upon handing-over at this place. Dispatch will be realised, unless collection ("ex works") has been agreed, always at the supplier's peril and risk. This shall also apply to services "free construction site".

Unless otherwise agreed in writing, all prices specified and deliveries made by the seller are specified and carried out based on the basis of DDP (specified place of delivery) (Incoterms 2010).

## **§ 6 Delivery and Performance Deadlines, Contractual Penalty**

1. Delivery and performance deadlines specified in the order shall be binding contractual deadlines and have to be complied with under all circumstances. The Supplier shall be responsible in case the goods required are not delivered to him in time. If delivery on call has been agreed on, it has to be carried out within 1 week after receipt of the call at the latest. In case of approximate periods of time that comprise a term calculated in weeks or months, the last day of the week or the month shall be the binding performance deadline. If the fixing of a deadline for performance or subsequent performance becomes necessary for further rights or claims according to the law after performance has become due, the period shall be one week unless the Supplier shows proof of the fact that a longer time period is adequate in the individual case.
2. Without prejudice to our rights in case of a default of performance, the Supplier shall always be obliged to inform us without delay in case he will not be able to adhere to delivery or performance deadlines even if this is only to be presumed. In this case, he shall be obliged to specify a new fixed date for performance at the same time, and guarantee that he will meet this deadline. No claim for deadline extension shall arise from this. If the altered deadline is accepted by us, the Supplier shall remain liable to pay damages for the delay and the resulting damage according to the law.
3. Partial performance shall only be allowed with our consent. Additional costs resulting from partial performance shall be paid by the Supplier.
4. In all cases of default on the part of the supplier with deliveries or services, we shall have the right to claim payment of a contractual penalty to the amount of 0.15% of the net order amount exclusive of value-added tax for every working day, but maximum 5% of the net order amount exclusive of value-added tax. If default in delivery or performance to be carried out based on several calls is limited to one call, the contractual penalty shall be calculated based on the value of this request.

## **§ 7 Taking Over**

1. Goods and services will only be taken over at the place of performance. Unloading has to be carried out by the Supplier without delay and in a workmanlike manner making use of a sufficient number of workers to be made available. If this obligation is not adhered to, we shall have the right to take over unloading wholly or in part against reimbursement of the costs incurred by us as a result of that.
2. If goods are collected by us, the loading at the place of collection also has to be carried out by the supplier without delay and in a workmanlike manner making use of a sufficient number of workers to be made available. If this obligation is not honoured, the costs incurred by us in consequence of the resulting waiting periods shall be reimbursed to us. Further damage claims shall remain unaffected thereof.

## **§ 8 Defects and Warranty**

1. The Supplier is obliged to hand over the goods free from material defects and defects of title at the place of performance. Goods are free from material defects if they comply with the guarantees (see Section 2) and the guarantees of quality and are suited for the intended purpose required according to the contract. Insofar as quality and intended use do not become apparent from the contract, the goods must be suited for the usual purpose and must have the characteristics that are customary for this kind of goods and that we can expect based on the nature of the goods and based on the public statements concerning the goods as defined by § 434, I, 3 BGB [*German Civil Code*].

2. The Supplier shall provide guarantees of quality for the characteristics of the goods that are referred to as “guaranteed” or “promised” in the order. Furthermore the characteristics that have been verified according to the manufacturer’s specifications in the test certificate of an officially approved material testing agency, quality testing agency or similar institution for the respective product (especially fire resistance ratings F, G or T) shall be subject matter of a guarantee of quality of the supplier, und that even if the Supplier does not manufacture the products himself, but sells them as a distributor. Finally the descriptions of the subject matter of the contract which concern fire protection characteristics (building material class A or B 1 or 2) or the material quality (minimum yield strengths and minimum tensile strength as well as the minimum layer thickness of protective measures) are also subject matter of a guarantee of quality. Guaranteed characteristics have to be fully present during the entire term of the agreed period of time, and in case there is no agreement, at least for the duration of the warranty period. Furthermore guarantees of durability may also be agreed on in the order. Other descriptions of the contractual products do not represent any warranties as defined by law.
3. In case of defective delivery or service, our claims will be determined primarily by the terms below, and in other respects, by the statutory provisions of HGB [*German Commercial Code*] and BGB [*German Civil Code*] concerning the purchase contract. A limitation of warranty to claims that the Supplier has vis-à-vis his own suppliers shall be excluded in any case. Even in the absence of fault, the Supplier shall be responsible for the deliveries and services procured by him and for deliveries and services provided by him. Concerning all deliveries and services with the place of destination “works Arnstorf” or DDP (Arnstorf) (Incoterms 2010), we fulfil the examination and notification obligation in terms of commercial law pursuant to § 377 HGB. The examination and notification period is 5 working days from the transfer of risk onwards. If deliveries and service are made to the construction site, our examination obligation shall be limited to deviations with regard to type and quantity, damage in transit and packaging damage. The notification obligation shall be given in the same way as for deliveries to the works in Arnstorf.
4. In case of material defects, the Supplier shall be obliged to carry out supplementary performance, with us being entitled to choose between substitute delivery and subsequent improvement in any case. The Supplier shall not have the right to refuse substitute delivery on the grounds of disproportionate costs. Subsequent improvement will be deemed failed after the unsuccessful first attempt.
5. In case of failed or dispensable setting of a deadline for subsequent performance, especially in case of refusal or failure of subsequent performance, we shall be entitled to the rights to terminate the contract and to claim damages instead of full performance even in case of only insignificant deviation from the agreed quality or in case of only insignificant impairment of usability.
6. If we had to take back the goods as a consequence of their defectiveness - likewise if we had to take back products that we manufactured using the goods as a consequence of the defectiveness of the goods – or if our customer has reduced the payment, no setting of a deadline that would be necessary otherwise shall be required for our rights in case of defects (§ 437 BGB) vis-à-vis the Supplier on account of the of defects asserted by the customer with respect to us. We may also request reimbursement of the expenses necessary for the purpose of subsequent performance, in particular transport, travelling, labour and material costs we incurred in the relations with the customer if the defect asserted by the customer was already present at the time of passing of risk from the supplier to us.
7. A statutory period of limitation of 5 years and three months applies to our rights in case of defects if the deliverables are to be considered a building in the legal sense or if they have been used or otherwise integrated in a building and have caused its defectiveness, and for the rest, of three years and three months. Longer statutory periods of limitation shall remain unaffected thereof.
8. Insofar as the Supplier is responsible for product damage, he shall be obliged to save us harmless from third-party damage claims on first request insofar as the cause of the product damage falls

within his territory and organisational area and he is liable himself in relation to third parties. In this framework, the Supplier shall also be obliged to reimburse any expenses that result from or in connection with a product recall carried out by us. We will inform the Supplier – insofar as possible and reasonable – about the contents and the scope of the product recall measures to be carried out, and give him an opportunity to make a statement. A supplier who is a manufacturer or is considered a quasi-manufacturer or importer as a manufacturer pursuant to §4 ProdHaftG [*German Product Liability Law*] undertakes to maintain a product liability insurance with a limit of liability of at least 500,000.00 EURO per personal injury and 250,000.00 EURO per material damage; this does not involve a limitation of contractual and statutory claims on the part of the ordering party.

### **§ 9 No Retention of Title**

Ordered goods shall become our actual property upon handing over in all cases.

### **§ 10 Right of Retention, Offsetting and Assignment**

1. In case of deficiency of deliveries and services, we shall have a right of retention until complete and flawless performance. This right of retention shall also cover receivables from other contracts.
2. We shall have the right to offset contested counter-claims and counter-claims that have not been legally established as well.
3. The assignment of claims against us to third parties shall be excluded without our written consent.

### **§ 11 Payment, Discount**

1. Payments shall be made at the agreed conditions. However, we shall always have the right to make payments by cheque as well. The risk of transmission of the invoice amount shall be borne by the Supplier.
2. For settlement, invoices have to be presented in a verifiable form and always in duplicate, with value-added tax having to be reported separately.
3. In case of payment within 14 days from the due date of the invoice and goods and invoice receipt by us onwards, we shall have the right to deduct a discount of 3%. Otherwise payment shall be made within a period of payment of 30 days without deduction. For compliance with the deadlines mentioned above, it shall be sufficient if we post a cheque or enter a bank transfer on the last day of the deadline.

### **§ 12 Use of Reference Data and Other Information, property rights**

1. The Subcontractor / Supplier undertakes to obtain the client's/Lindner's consent before publishing or reporting on the construction project. Publication shall in particular also include photographs, radio, and television recordings. This shall apply accordingly to every public communication concerning the building or cooperation with the client / Lindner, especially in the framework of advertising efforts, and the specifying of references by the Subcontractor / Supplier.
2. The Supplier warrants that the delivered goods and/or their use do not violate any industrial property rights or other third-party rights. Furthermore the Supplier shall be obliged to hold us harmless concerning third-party claims resulting from industrial property rights.

**§ 13 Place of Jurisdiction, Applicable Law**

German law shall apply exclusively to all contracts or agreements and other pre-contractual liabilities.

The UN Convention on Contracts for the International Sale of Goods shall not apply.

The exclusive place of jurisdiction for all disputes arising from or in connection with contracts, agreements or pre-contractual liabilities entered into by us for whatever reason shall be Munich, also as far as proceedings based on a bill of exchange or a cheque or other proceedings restricted to documentary evidence are concerned.