

General Terms and Conditions of Purchase of Stefan Pfaff Werkzeug- und Formenbau GmbH & Co. KG

§ 1 General – Scope

(1) Our entire business transactions with suppliers or other contractors (hereinafter jointly called "Suppliers") are governed exclusively by these Terms and Conditions of Purchase. We hereby object to the terms and conditions of sale and delivery as well as other terms and conditions of business of the Supplier. These shall not apply. This shall also be the case to the extent that the terms and conditions of sale and delivery or other terms and conditions of business of the Supplier contain provisions that extend beyond the provisions of these Terms and Conditions of Purchase. Our Terms and Conditions of Purchase shall also apply if we unconditionally accept the delivery or service of the Supplier in the knowledge that the terms and conditions of the Supplier conflict with or deviate from our own Terms and Conditions of Purchase.

(2) All agreements reached between us and the Supplier for the purpose of executing this Agreement must be made in writing in this Agreement in order to be valid.

(3) Our Terms and Conditions of Purchase apply only to entrepreneurs (Unternehmer) pursuant to § 310 Para. 1 of the German Civil Code ("BGB").

(4) Our Terms and Conditions of Purchase also apply to all future transactions with the Supplier. We are entitled to amend these Terms and Conditions of Purchase with effect for the entire future business relationship with the Supplier, following corresponding notification. The notification shall be made in writing. If the Supplier does not object to the amendments communicated in the notification within 6 weeks of receipt of the notification, he shall be deemed to have accepted the amended Terms and Conditions of Purchase. We shall draw the Supplier's attention to this legal consequence in our notification.

(5) If a framework agreement exists between the Supplier and us, these Terms and Conditions of Purchase shall apply to this framework agreement as well as to the individual orders, unless otherwise agreed in the corresponding framework agreement.

(6) Should any of the individual provisions of these Terms and Conditions of Purchase be or become invalid, this shall not affect the validity of the remaining provisions of the Agreement. The invalid provision shall then be replaced by the statutory provision. Under no circumstances shall the invalid provision be replaced by terms and conditions of business of the Supplier.

§ 2 Ordering – order documents

(1) An order shall be deemed to have been placed only if it has been issued by us in writing (including by fax or e-mail). Orders placed orally or by telephone shall be binding on us only if we subsequently confirm them in writing within the meaning of sentence 1. Enquiries on our part are non-binding and subject to confirmation when the Agreement is concluded.

(2) The Supplier is obliged to accept our order within a period of 2 weeks.

(3) By accepting the order, the Supplier acknowledges that he has been informed about the nature of the execution and the scope of the performance by inspecting the available documents. Obvious errors, spelling mistakes and miscalculations in the documents etc. submitted by us shall not be binding on us. The Supplier is obliged to draw our attention to any such errors, thus enabling our order to be corrected accordingly. This shall apply mutatis mutandis if documents are missing.

(4) We reserve ownership and copyrights to images, drawings, calculations and other documents. They may not be made available to any third party without our express written consent. They may be used only for production purposes on the basis of our order. Following completion of the order, they must be returned to us without being requested. They may not be disclosed to any third party; to this extent the provision set out in § 11 additionally applies.

(5) Upon accepting the order, the Supplier acknowledges the code of conduct for third-party companies on our company site or in our premises that he is required to enter to fulfil the order. When entering our company site or premises, the Supplier shall sign the corresponding guidelines, if these exist for the respective company site or premises.

§ 3 Prices – invoices – terms of payment – assignment

(1) The price specified in the order is binding. All prices are net prices plus statutory value added tax. Other ancillary costs such as customs duties, insurance premiums and similar shall be borne by the Supplier.

(2) Unless otherwise agreed in writing, the price includes delivery "free house" including packaging. Insofar as we are required to bear the shipping costs on an exceptional basis on account of a deviating written agreement, the Supplier shall select the mode of shipment specified by us or, alternatively, the most favourable one for us. Insofar as we are required,

on an exceptional basis, to bear the packaging costs on account of a deviating written agreement, the packaging costs shall be charged at cost price, whereby the Supplier shall select the type of packaging specified by us and ensure that the goods are protected from damage by the packaging.

(3) We are able to process invoices only if they – as specified in our order – state the Pfaff order number specified therein; the Supplier shall be responsible for all consequences arising from failure to comply with this requirement, unless he can demonstrate that he is not responsible for this. In all other respects, invoices must comply with the provisions of the German Value Added Tax Act ("Umsatzsteuergesetz").

(4) Unless otherwise agreed in writing and insofar as none of our rights conflict with this, we shall pay the purchase price within 14 days following proper invoicing with a 3 % discount or net within 30 days of delivery and proper invoicing. The discount period commences upon our receipt of the corresponding invoice. Invoices that do not contain the details specified under § 3 Para. (3) and/or contain incorrect invoice amounts shall be deemed to have been received by us only once we have received a corrected invoice.

(5) If the object of this Agreement is the rendering of a work performance, acceptance shall take the place of delivery.

(6) We shall be entitled to rights of set-off and retention to the extent permitted by law.

(7) The assignment of claims of the Supplier arising out of the contractual relationship with us is not permitted without our prior written consent. In the event that the Supplier has assigned a claim against us to a third party, we shall be entitled to pay the Supplier with discharging effect vis-à-vis the third party.

§ 4 Delivery deadlines

(1) The delivery deadline specified in the order is binding.

(2) We shall not be obliged to accept the goods before expiry of the delivery deadline.

(3) The Supplier is obliged to notify us in writing without delay if circumstances occur or become apparent to him which indicate that the agreed delivery deadline cannot be met.

(4) If the Supplier defaults on delivery for reasons for which he is responsible, we shall be entitled to charge the Supplier a contractual penalty of 0.1 % of the contractually agreed price per calendar day of delay, but not exceeding 5 % of the order value (excluding value added tax). We reserve the right to assert further claims for damages. Set-off by the Supplier against a forfeited contractual penalty is permissible only with counterclaims that have been finally determined by a court or acknowledged. We are entitled to assert the contractual penalty until payment has been made to the Supplier for the delivery affected by the delay. Insofar as we have agreed interim deadlines with our Suppliers, we make it clear that the contractual penalty shall always be based only on the contractually agreed final delivery deadline. The delivery date may also be the date of completion if a contract for work and services exists.

(5) Further statutory rights, such as withdrawal or compensation in lieu of performance, remain reserved.

§ 5 Transfer of risk – documents

(1) Unless otherwise agreed in writing, delivery shall be made "free house".

(2) The risk shall pass – also in the event of agreed delivery ex works or dispatch at our expense – when the delivery arrives at our premises or at the place of delivery specified by us.

(3) The following documents must be enclosed with the delivery of drawing parts: original drawings, order specifications or item lists. Otherwise the delivery shall not be deemed to be complete. In the event of repeated deliveries of the same parts, corresponding copies must be enclosed.

(4) The Supplier shall be obliged to state precisely our purchase order number, our order item, the part designation, the identification number and our job number on all shipping documents and delivery notes; if he fails to do so, we shall not be responsible for delays in processing.

§ 6 Inspection of defects – guarantee – liability for defects – quality assurance – REACH

(1) We are obliged to inspect the goods within a reasonable period for any quality and quantity deviations; a complaint shall be deemed timely insofar as it is received by the Supplier within 7 calendar days, calculated from receipt of the goods or, in the case of hidden defects, from the date of discovery.

(2) The goods to be delivered must be free of defects, correspond to the specifications specified by us, be developed and manufactured in accordance with the latest state of the art, be usable without restriction for the contractually presumed use and comply with the relevant legal and official protection regulations applicable in the Federal Republic of Germany.

(3) We are entitled to assert the statutory warranty claims for defects. We shall in any case be entitled to demand from the Supplier, at our discretion, either rectification of the defect or delivery of a new item. The right to compensation, in particular the right to compensation in lieu of performance, is expressly reserved.

(4) We shall be entitled to remedy the defect ourselves at the Supplier's expense if there is imminent danger or special urgency.

(5) The limitation period for material defects and defects of title is 3 years. It begins with the delivery of the goods or the acceptance of the service/goods by us. In the case of software installation services and the preparation of expert opinions, the limitation period is 4 years; it commences at the end of the year in which the delivery/acceptance took place. The limitation period for spare parts ordered at the same time as the principal item and designated as spare parts in the Agreement commences upon proper storage and commissioning of the spare parts. It ends at the latest 3 years following delivery of the principal item or receipt of the spare parts, insofar as these have not been delivered together with the principal item. In the case of repaired or newly delivered parts of the Supplier, the limitation period commences upon completion of the rectification or the new delivery.

(6) If the order includes the production of drawing parts, the following shall additionally apply: prior to production, the Supplier shall check the conformity of model and drawing as well as the casting feasibility and shall guarantee this. Subsequent objection to a faulty design is excluded.

(7) The Supplier undertakes to ensure constant quality assurance by means of suitable tests and checks, in particular before goods are dispatched. He must document these tests and checks. We shall be entitled to ascertain the type of quality assurance on site, if necessary also at subcontractors. In addition, we expressly reserve the right to conclude a quality assurance agreement with the Supplier.

(8) The Supplier undertakes to deliver to us only goods that fulfil all criteria of the EU Regulations (EC) No 1907/2006 ("REACH") and (EC) No 1272/2008 ("CLP Regulation"). These obligations include in particular the registration and information obligations pursuant to REACH as well as the classification, labelling and packaging obligations of the CLP Regulation. The Supplier shall provide us free of charge with the necessary safety data sheets for substances and mixtures upon request, in order to determine the suitability of the materials. The Supplier shall send us safety data sheets without being requested in good time before the first delivery and again free of charge as soon as relevant changes become necessary. Fulfilment of the registration obligation and the transmission of current and complete safety data sheets are regarded by us in particular as an essential basis for all deliveries. The Supplier hereby indemnifies us against all recourse claims brought by third parties in the event that the safety data sheets were not delivered, were delivered late or were delivered incorrectly. In the event of the delivery of articles as defined in REACH, the Supplier undertakes to deliver only articles whose content of substances of very high concern included in the Candidate List of the European Chemicals Agency does not exceed 0.1 % (w/w). The Supplier shall notify us if the goods contain a substance on the Candidate List – including below the 0.1 % limit.

§ 7 Product liability – indemnity – liability insurance

(1) Insofar as the Supplier is responsible for product damage, he shall be obliged to indemnify us upon first request against claims for damages brought by third parties to the extent that the cause lies within his sphere of control and organisation and he himself is liable externally.

(2) Within the scope of his liability for damage within the meaning of Para. 1, the Supplier shall also be obliged to reimburse any expenses pursuant to §§ 683, 670 BGB as well as pursuant to §§ 830, 840, 426 BGB arising out of or in connection with a recall measure conducted by us. As far as possible and reasonable, we shall inform the Supplier about the content and scope of the recall measures to be carried out and give him the opportunity to comment. Other statutory claims remain reserved.

(3) The Supplier undertakes to maintain product liability insurance with a cover sum of € 5 million per personal injury/property damage – lump sum – and to provide proof of this to us upon request. If we are entitled to further claims for damages, these remain reserved.

(4) If we should have ascertained the defect for which the Supplier is responsible and/or taken measures to avert damage, we shall only be liable to the Supplier for wilful intent and/or gross negligence on the part of our executive bodies, employees and vicarious agents.

(5) The Supplier shall refrain from asserting recourse claims against us in connection with product or producer liability. This exclusion shall not, however, apply in the event of wilful intent or gross negligence or negligent breach of material contractual obligations by us, or in the event of wilful or negligent injury to life, body or health caused by us.

§ 8 Property rights

(1) The Supplier shall be responsible for ensuring that no rights of third parties are infringed in connection with his delivery.

(2) If claims are asserted against us by a third party due to an infringement of his rights pursuant to Para. 1, the Supplier shall be obliged to indemnify us against these claims upon our first written request.

(3) The Supplier's obligation to indemnify relates to all expenses necessarily incurred by us as a result of or in connection with claims asserted by a third party.

(4) The limitation period is ten years, calculated from the date of conclusion of the Agreement.

§ 9 Retention of title of the Supplier

(1) Insofar as the delivered goods are goods that must be sold quickly by us due to their condition or intended use, the Supplier shall not be entitled to reserve title to the goods. We shall then acquire unrestricted title upon delivery of the goods to our premises or to the places of acceptance specified by us.

(2) A current account reservation as well as an extended retention of title of the Supplier pertaining to the goods delivered by him are excluded in all circumstances. Deviating provisions in general terms and conditions of business, order confirmations, delivery notes and invoices of the Supplier shall have no legal effect, even if we do not specifically object to them.

§ 10 Provision of parts – tools

(1) Insofar as we provide the Supplier with parts, we shall retain ownership of these. Processing or modification by the Supplier shall be performed on our behalf. If our reserved goods are processed with other objects that do not belong to us, we shall acquire co-ownership of the new object in proportion to the value of our object (purchase price plus VAT) to the other processed objects at the time of processing.

(2) If the object provided by us is inseparably combined with other objects that do not belong to us, we shall acquire co-ownership of the new object in proportion to the value of the reserved object (purchase price plus value added tax) to the other combined objects at the time of combination. If the combination takes place in such a way that the item of the Supplier is to be regarded as the principal item, it shall be deemed agreed that the Supplier transfers co-ownership to us pro rata; the Supplier shall hold the sole ownership or co-ownership in safe custody on our behalf.

(3) Insofar as the security rights to which we are entitled pursuant to Para. 1 and/or Para. 2 exceed the purchase price of all our reserved goods not yet paid for by more than 10 %, we shall be obliged to release security rights of our choice at the request of the Supplier.

(4) We retain title to tools; the Supplier is obliged to use the tools exclusively for the manufacture of the goods ordered by us. The Supplier is obliged to insure the tools belonging to us at his own expense at their replacement value against fire, water and theft. At the same time, the Supplier hereby assigns to us all claims for compensation under this insurance; we hereby accept the assignment. The Supplier is obliged to carry out any necessary maintenance and inspection work on our tools as well as all servicing and repair work at his own expense and in good time. He must notify us immediately of any malfunctions; if he culpably fails to do so, claims for damages remain unaffected.

§ 11 Confidentiality

(1) The Supplier is obliged to keep all images, drawings, calculations and other documents and information received from us strictly confidential. They may be disclosed to third parties only with our consent. The confidentiality obligation shall also remain in force after completion of this Agreement. The confidentiality obligation shall not apply if the images, drawings, calculations and other documents provided to the Supplier are publicly known at the time of handover to the Supplier. If the documents and information become publicly known at a later date, the confidentiality obligation shall expire at the time they become known. The confidentiality obligation shall also not apply if the documents/information become known to the Supplier lawfully from a third party or if the Supplier is obliged to disclose them on the basis of a court decision or official order.

(2) If the Supplier breaches his confidentiality obligation, he shall be obliged to pay us a reasonable contractual penalty, to be determined by us at our reasonable discretion, for each breach. The Supplier and/or we shall be entitled to have the amount of the contractual penalty reviewed by the competent court.

§ 12 Environmental management

The Supplier undertakes, when executing his deliveries and services, to apply the environmental management principles of the relevant standard DIN EN ISO 14001 or EMAS. Goods and services must be executed in an environmentally friendly and recycling-compliant manner at all times; prohibited substances may not be used. The Supplier warrants that he shall also comply with all laws and regulations relating to the environment when procuring and/or manufacturing the delivery item.

§ 13 Assignment

The rights and obligations arising out of this contractual relationship may be assigned to third parties only with our consent.

§ 14 Applicable law – place of jurisdiction – place of performance

(1) This contractual relationship is governed exclusively by the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG), even if the Supplier's registered office is located abroad or the delivery is made from abroad.

(2) The exclusive place of jurisdiction is our registered office, insofar as the Supplier is a merchant; we are, however, also entitled to sue the Supplier at the court of his registered office.

(3) Unless the order specifies otherwise, the place of performance is our registered office.