

Conditions Of Purchase – January 2003

1. General

The following terms and conditions of purchase (“Conditions of Purchase”) apply exclusively to the entire relationship as between the Buyer and the Seller. Acceptance of all terms and conditions of purchase shall take place, at the election of Buyer, either by execution and return of the signed acknowledgement copy or by part performance of a purchase order made by Buyer. Any additional or different terms or conditions set forth in any acknowledgement, acceptance or invoice of Seller or in any similar communication are hereby rejected and shall not be binding or effective unless expressly assented to in writing by an authorized representative of Buyer. These Conditions of Purchase shall also apply to all future transactions with the Seller.

2. Conclusion of Agreement and Changes

(a) Buyer’s purchase order is Buyer’s offer to Seller to purchase the Products described herein and is not binding on Buyer until accepted by Seller.

(b) An acceptance of Buyer’s purchase order by Seller which differs from Buyer’s purchase order or a late acceptance of Buyer’s purchase order represents a new offer and must be accepted in writing by Buyer. Under no circumstances will silence by Buyer be taken as acceptance of such new offer by Seller.

(c) Buyer may at any time prior to shipment of Products by Seller, by written change order, change the design (including materials, drawings, and specifications), processing, method of packing and shipping, and the place of delivery, of the Products. If the change affects cost or timing, the purchase price and delivery schedules shall be adjusted equitably by mutual agreement.

(d) Seller shall not make any change in the design, processing, method of packing or shipping, or place of delivery of the Products without the prior written consent of Buyer.

3. Shipping Instructions and Releases

(a) See face of Buyer's purchase order. If Seller fails to follow shipping instructions due to its fault, Seller shall be responsible for all additional transportation charges arising from such failure.

(b) If delivery dates are not specified on the face of Buyer's purchase order, Seller shall ship Products only as authorized in a shipment release issued to Seller by Buyer, either in writing via mail or email, or by facsimile.

(c) Buyer may return over-shipments to Seller at Seller's expense. Buyer from time to time and with reasonable notice may temporarily suspend shipping schedules specified in Buyer's purchase order or shipment releases.

4. Delivery

(a) Delivery must be made within the time and at the specific quantity stated on the face of Buyer's purchase order or shipment release.

(b) Seller must immediately inform Buyer in writing of circumstances which may affect a punctual delivery as soon as it becomes aware of them; it must indicate the reasons for this delay and the possible duration thereof. In the event of exceeding the agreed delivery dates, Buyer reserves the right, upon unsuccessful expiry of a reasonable period set for the delivery to cancel the order. If Seller is responsible for the delay in such circumstances, Buyer may also claim damages instead of performance; alternatively, instead of setting such further period, Buyer may, following a reminder ("Mahnung") demand damages for default (Sections 280 Subsec. 2, 286 of the German Civil Code). Where Seller is in default of delivery, it is assumed that Seller is responsible for the delay; Seller is granted the right to offer evidence to the contrary. Acceptance by Buyer of a late delivery of either the whole or a part of the order shall not constitute a waiver of Buyer's claim for any damage that the late delivery may have caused. Products shipped to Buyer in advance of delivery schedule may be returned to Seller at Seller's expense.

(c) In the event of interruption of delivery due to unforeseeable and unavoidable events outside the control of the Seller and for which the Seller is not responsible, such as acts of God, war or natural catastrophes, the Seller is released from its obligation of delivery for the duration of the interruption and to the extent that this affects delivery. The parties are under an obligation to adjust their mutual obligations in good faith to the differing circumstances; this means that the Buyer may, for example, following the resolution of the interruption, waive the outstanding deliveries or may require a continuation of the deliveries on different terms and conditions, as determined by the Buyer.

(d) For each international shipment, Seller shall include a priced invoice with the master packing slip and upon request shall furnish all other required documents. The invoice shall include (i) the Seller's name, contact person, address, telephone, and facsimile number, (ii) the "sold to" address or billing address, (iii) the "ship to" address or destination address, including a contact person at the receiving location, (iv) the number of cartons and total number of pieces for each item, (v) the total net weight for each part number, (vi) the Buyer's part number, (vii) the specific description for the part in English (if multi-tool kits are being shipped, an attached breakdown with cost must be included. Value of consigned inventory must also be included on the invoice or in an attachment), (viii) the HTS Code, (ix) the country of manufacture/origin (country of origin is not determined by country of export, but by the country of manufacture), (x) the unit price for each component, (xi) the extended total (unit price multiplied by number of units/pieces), (xii) any freight or insurance incurred that is not included in the unit price, (xiii) the total value of the invoice, identifying the type of currency, (xiv) the total weight, including the weight of the outer packaging, and (xv) the terms of sale.

(e) Export credits shall belong to Buyer. Seller, upon request, shall furnish all documents required to obtain NAFTA qualification, export credits and customs drawbacks and shall identify the country of origin of the materials used in the Products and the value added thereto in each country. Seller shall ensure that the proper country of origin is marked on the Products and/or their container.

5. Price

(a) Price is to cover purchased Products in their entirety and, where purchase is by weight, net weight of material. No charges of any kind, including but not limited to charges for boxing, packaging, loading, bracing or cartage, transport and insurance as well as similar costs such as VAT will be allowed unless authorized by Buyer in writing.

(b) The parties agree that the payment obligations arising under the contracts are in US Dollars.

6. Discount and Settlement of Invoices, Payment Terms

(a) Unless otherwise agreed by Buyer and Seller, the payment terms hereunder shall be net 30 days, and Buyer shall be entitled to a 3% discount for payments that it makes within two weeks of its receipt of an invoice from Seller, or receipt of merchandise, whichever is later.

(b) If the payment due date, calculated in accordance with this Section 6, falls on a day other than a business day in the country of Buyer, Buyer shall make any payment due hereunder on the next business day in the country of Buyer, and such payment shall not be deemed to be late.

(c) Any adjustments in Seller's invoice due to shortage, late delivery, rejection or other failure to comply with Buyer's purchase order, shall be made before payment.

(d) Payments are made on the date that either a check is mailed to Seller by Buyer or an electronic wire of the payment is initiated by Buyer.

(e) Buyer shall only go into default upon having received a reminder for payment ("Mahnung") from Seller after the due date according to lit. (a) and (b) above.

(f) In the event that Buyer is in default according to lit. (e) above, Seller shall be entitled to demand default interest in the amount of up to 5 percent per annum.

(g) Buyer is entitled to set off against the claims of the Seller all those claims which Buyer has against the Seller.

7. Warranty and Indemnity

(a) Seller warrants that the delivered Products will conform with applicable drawings, specifications, samples, other descriptions given by Seller or have any other qualities agreed between the parties. Should no qualities be agreed between the parties, Seller warrants that the Products are fit for the contractually intended purpose, or their usual purpose and possess the qualities which can usually be expected from this kind of products and by Buyer.

(b) Buyer will immediately inspect the delivered Products to establish possible defects or quantity deviations. Obvious defects and quantity deviations will be notified in writing immediately, normally not later than one (1) week following receipt of delivery and hidden defects immediately, not later than one (1) week following their discovery. Buyer may, at its option, inspect the Products at the place of manufacture prior to their delivery upon prior agreement as to time and date.

(c) The warranty period is twenty four (24) months from delivery of the Products to Seller.

(d) With respect to defects raised within the warranty period, Buyer may, at its option, demand from Seller

- (i) to remedy the defect; or
 - (ii) to deliver a replacement product,
- both free of charge to Buyer.

(e) Should the removal of a defect by remedy or delivery of a replacement product pursuant to lit. (d) be unsuccessful, Buyer may demand, at its option, a reasonable reduction of the compensation or the cancellation of the contract for the Products in question unless the defect is insignificant.

(f) If the Seller is responsible for the defect, Buyer may, in addition to the remedies set out at lit (e) above, request any damages resulting from the defect of the Products. Seller agrees to indemnify and hold harmless Buyer from and against any and all damages incurred by Buyer resulting from or relating to any claim by any third party arising out of or in any way resulting from any defect for which Buyer is entitled to claim damages from Seller according to sentence 1 hereof.

(g) The warranty period does not run during the period of repair of any defective Products. Where replacements are delivered, an independent new warranty period according to Section (c) above starts running from the date of delivery.

(h) The acceptance of delivery and payment of the Products are not to be viewed as acceptance of proper delivery.

8. Product Liability

(a) Where the Seller is responsible for a product liability claim, the cause of which lies within its sphere of control and for which it is liable to third parties, it indemnifies and holds harmless the Buyer from and against any third-party claims brought against it for damages on first demand.

(b) The Seller is under an obligation to insure appropriately against product liability which may arise out of the risks associated with the Products delivered by it and must, upon demand, provide the Buyer with adequate proof of such insurance. Where the Seller does not provide within two weeks of a written request proof of such insurance, Buyer has the right to conclude such an insurance at the Seller's expense.

9. Confidential Information and Design Rights

(a) All drawings, specifications, technical information, pricing information, data, designs, and other information furnished to Seller by Buyer in connection with the purchase of Products covered by Buyer's purchase order shall remain the property of Buyer and shall be maintained in confidence by Seller. Seller may disclose such information only to its employees on a need-to-know basis, but except as required by law (and then only with prior written notice to Buyer) shall not disclose the same to any third party, or publish, release, duplicate or use it at any time in any manner, without the express prior written consent of Buyer.

(b) The obligations set forth in the immediately preceding subparagraph shall not apply to such information which Seller can establish by tangible evidence (a) was rightfully known or possessed by Seller at the time of its disclosure by Buyer to Seller, (b) is or becomes known to the public through disclosure in a printed publication without breach of Seller's obligations hereunder, or (c) is subsequently received by Seller from a third party having a lawful right to disclose it without restriction.

10. Buyer's Property

(a) Any raw material furnished by Buyer in connection with Buyer's purchase order shall be deemed to be held by Seller as bailee, and Seller agrees to pay for all such material spoiled or not otherwise satisfactorily accounted for due to Seller's fault. Buyer will, however, specify acceptable scrap allowance, if any, and any amount in excess of this will be paid for by Seller at Buyer's cost.

(b) All tools, gauges, patterns, dies, and other material and equipment furnished to Seller by Buyer shall remain the property of Buyer. It shall be plainly identified by Seller as "Property of [insert name of Buyer]" and shall be safely stored and not used except in filling Buyer's orders. The property, while in Seller's custody, shall be maintained in good condition at Seller's expense and shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost, with loss payable to Buyer. Seller shall furnish to Buyer a certificate of insurance evidencing Seller's compliance with the provisions of this Section 10. Buyer's property may be removed by Buyer at any time.

(c) Notwithstanding anything to the contrary in Buyer's purchase order, Seller shall not use any trademark, trade name or trade dress right of Buyer in any manner other than for the benefit of Buyer and only upon Buyer's prior written request and in strict accordance with Buyer's written instructions.

11. Transfer of Ownership

The ownership in the Products delivered by the Seller will only pass to Buyer once it has paid the full purchase price to the Seller. Any extended or prolonged reservation of ownership (*verlängerter oder erweiterter Eigentumsvorbehalt*) by the Seller shall be excluded.

12. Industrial Property Rights

(a) Seller warrants that the sale or use of the Products covered by Buyer's purchase order shall not infringe or contribute to the infringement of any patents, utility model registrations, design registrations, trademarks, or copyrights, or embody an unauthorized use of trade secrets, in the United States of America, the Federal Republic of Germany or in any other country, worldwide.

(b) If the sale or use of the Products purchased is enjoined due to any possible infringement pursuant to lit. (a) above, Seller at its own expense and at Buyer's option shall remove this enjoining by

- (i) procuring for the Buyer and its customers the right to continue using and selling the Products; or
- (ii) modifying the Products so as to be non-infringing; or
- (iii) replacing the Products with non-infringing Products.

(c) Should the removal of the enjoining pursuant to lit. (b) above be unsuccessful, Buyer may demand the cancellation of the contract for the Products in question.

(d) Seller agrees to indemnify and hold Buyer harmless from and against all claims arising from any alleged infringement according to lit. (a) above if the Seller is responsible therefor. In this case, Seller will, upon reasonable notice and request from Buyer, assume the defense of the Buyer against any such aforementioned suit, claim or demand.

13. Cancellation Provisions

(a) Either party shall have the right to cancel Buyer's purchase order in the event that the other party files or has filed against it any petition for the opening of insolvency proceedings in relation to its assets under the insolvency laws or becomes insolvent.

(b) In addition to all of the other rights which Buyer may have to cancel Buyer's purchase order, Buyer shall have the further right, without assigning any reason therefor, to terminate any purchase hereunder, in whole or in part, at any time. Upon receipt of a notice of

termination, Seller shall, unless the notice otherwise directs, immediately discontinue all work on the purchase order. Buyer will not be liable to Seller for any costs, if the costs were incurred more than four (4) weeks prior to the delivery date stated on the face of the order. If Buyer cancels prior to the delivery date stated on the face of Buyer's purchase order and if the parties cannot agree within a reasonable time upon the amount of fair compensation to the Seller for the termination, (a) Buyer shall pay the contract price for all articles completed in accordance with Buyer's purchase order and not previously paid for, (b) Buyer shall pay a fair and proper portion of the contract price for articles in process, and (c) Buyer shall pay Seller's costs for all materials acquired or contracted for by Seller for the purpose of fulfilling Buyer's purchase order that Seller is unable to cancel or return. If Buyer so desires, cancellation charges shall be subject to Buyer's audit.

(c) With Buyer's consent, Seller may sell or retain at an agreed price any completed articles, materials, work in process, or other things, payments for which, in whole or in part, by Buyer is provided for in the preceding paragraph, and Seller shall credit or pay Buyer the amounts so agreed or received. Any Products, materials, work in process, or other things not so retained or sold shall be transferred and delivered by Seller in accordance with Buyer's directions. Appropriate adjustment shall be made for delivery costs or cost savings. The provisions of this paragraph shall not limit or affect the right of Buyer to terminate Buyer's purchase order as set out in Section 4 para. 2 of these Terms and Conditions of Purchase.

14. Compliance with Law

(a) Seller shall comply with all applicable legal regulations.

(b) Seller represents and warrants that (i) Seller and all suppliers, subcontractors and agents involved in the production or delivery of goods and services purchased pursuant to Buyer's purchase order strictly adhere to all applicable legal regulations of the Federal Republic of Germany and all countries in which the goods and services are produced or delivered with respect to the operation of their production facilities and their other business and labor practices, including laws, regulations and prohibitions governing the working conditions, wages, hours and minimum age of the workforce, (ii) the goods and services have not been and shall not be produced or manufactured, in whole or in part, by child labor or by convict or forced labor, and (iii) the goods and services shall not have been transhipped for purposes of avoiding compliance with labor laws. Seller further agrees to furnish such documentation as may be required by Buyer to evidence compliance with the foregoing. Buyer or a third party designated by Buyer shall have the right, at any time while Seller is supplying goods or services to Buyer, upon reasonable notice, to inspect Seller's and its subcontractors' and agents' production facilities to verify the representations and warranties in this paragraph.

15. Applicable Law; Place of Jurisdiction

(a) Buyer's purchase order shall be governed by the laws of the Federal Republic of Germany, without regard to that country's or state's rules regarding private international law or conflict of laws, excluding, however, the UN Convention on Contracts for the International Sale of Goods (CISG).

(b) The place of jurisdiction of all litigation arising out of or in connection with Buyer's purchase order shall be Frankfurt, Federal Republic of Germany; this also applies to all actions in proceedings relating to bills of exchange and cheques. Nevertheless, Buyer shall be entitled to sue the Seller in any other applicable court.

16. Final Provisions

(a) Seller may not assign any of its rights or delegate any of its duties hereunder without Buyer's prior written consent.

(b) Seller agrees that any credit balance will be paid in cash to Buyer upon written request. If Buyer terminates its relationship with Seller, all balances due to Buyer shall be paid in cash to Buyer within 10 days of notification to Seller of such termination.

(c) The invalidity of certain provisions of these Conditions of Purchase does not affect the validity of the remaining provisions. The parties agree that, in this case, the invalid provisions are to be replaced with those valid provisions which are closest to the commercial purpose of the invalid provisions.

(d) Amendments and additions to the contract and/or these Conditions of Purchase as well as side agreements must be in writing.