

# Terms of Purchase

## Witzenmann GmbH

January 2006

### 1. Scope

1.1 These General Sales and Delivery Conditions apply for any and all business transactions (Goods and Services) with our suppliers, even then when these General Sales and Delivery Conditions have not been explicitly mentioned in any business correspondence or agreements. We do not agree with any opposing or deviating sales and delivery conditions stipulated by our suppliers unless we have explicitly agreed to the validity of such general sales and delivery conditions. Even if we have accepted or paid for goods and services this does not imply that we have agreed to our suppliers' general sales and delivery conditions.

1.2 Our General Sales and Delivery Conditions apply only to companies that comply and adhere to paragraph 14 of the German Civil Code (BGB).

### 2. Order Award Procedure

2.1 The submission of quotations and project related work will be made free of charge and is not legally binding.

2.2 If during order award or contract agreement there should be errors that were not caused by us, but are due to transmission or explanation errors, misunderstandings etc. any compensation for damages in accordance to paragraph 122 German Civil Code (BGB) will be explicitly excluded.

### 3. Prices

The contractually agreed prices are fixed prices and include freight, packaging and any other ancillary cost to the point of delivery until the finalisation of order processing stipulated by us. Any increase of prices after the contractual agreement has been concluded, irrespective of what reasons, are excluded, unless we have explicitly agreed to such price increases.

### 4. Payment

4.1 Payments will be made twice a month (on either the 10th or 25th of each month).

4.2 Any transfer of payments does not imply the contractually agreed acceptance of the delivered goods and services.

4.3 The Supplier agrees to payment after the goods have been received and will accept payment per cheque or any other payment mode of our choice, this also includes electronic payment. Payment terms are: payments within 14 days with a reduction of 3% discount (early payment discount); payments within 30 days with a reduction of 2% discount (early payment discount); and payments within 60 days are paid net.

### 5. Delivery, Packaging and Risk Transfer

5.1 Partial, surplus, less than ordered and advance deliveries may only be made after they have been agreed by us. If not explicitly agreed otherwise, deliveries have to be made ex works.

5.2 Any risk liability will only be transferred to us after the goods have been accepted by us at the delivery site stipulated by us or in case of the assembly of the delivered goods with our acceptance of the goods at the site stipulated in the order. The shipping of the order will in any case be made at the risk of the supplier.

### 6. Delivery Times and Delivery Delays

6.1 The delivery dates stipulated in the order are binding and have to strictly be adhered to. The goods have to arrive at our premises or at the agreed or stipulated delivery site within the stipulated delivery period.

6.2 As soon as our supplier is able to estimate that there may be a delivery delay, the said supplier has to inform us immediately and report the reasons for the delay. This does not change or alter the legally binding contractually agreed delivery period. Due to operational reasons, we reserve the right to change the volume or quantity of the scheduled delivery or to request to temporarily halt any scheduled or planned deliveries.

6.3 If the supplier is delayed in the delivery of the contractually agreed goods, we are entitled to charge a contractual penalty fee of 0.5% and a maximum of 5% of the order value for each start of the week the goods are delayed. Further we are entitled to make use of the necessary reservations in accordance with paragraph 341, section 3 German Civil Code (BGB) until the goods have been fully paid. The contractual penalty fee does not eliminate any other claims for any other damages caused.

### 7. Goods Acceptance Procedure and Fault Claims

7.1 The Supplier will only ship goods that have been thoroughly checked and been authorised to be fit for shipping. Due to this WI will not carry out a detailed goods acceptance procedure. We will check the accepted goods as soon as our operational conditions allow this and will report any faults as soon as they have been discovered. Due to this the Supplier will waive his rights with regards to delayed fault claims in accordance with paragraph 377 German Trading Code (HGB).

7.2 Wrong deliveries or different deliveries will not be accepted by us at all times. Hence we do not have to make any special claims with regards to such deliveries.

### 8. Quality and Legal Faults

8.1 The Supplier carries full responsibility that the supplied goods and services will comply with all and any statutory and authority regulations in their planned distribution and application and that the supplied goods and services do not violate any business protection rights or any other rights of third parties. The supplied goods and services have to be comply with the latest or in future foreseeable technical standards applicable at any given delivery period and also have to fulfil any other statutory conditions, technical testing regulations and accident prevention regulations. Especially any DIN standards and VDE regulations have to be adhered to.

8.2 We fully reserve our statutory rights entitlement with regards to any quality and legal faults. Furthermore we fully reserve the right to choose the type of completion of delivery (removal of fault or substitute delivery). The Supplier has to carry all and any cost for any necessary arrangements in order to either

remove the fault or arrange a substitute delivery. If the Supplier does not fulfil his duty to remove the fault or arrange substitute delivery within a reasonable period of time, or if this is not done to our full satisfaction or if due to an urgent reason a fault removal has to be carried out immediately, we are entitled to have the fault removed either by a third party or by ourselves at the cost of the Supplier, or we may arrange substitute deliveries from third parties at the cost of the Supplier.

8.3 If not agreed otherwise, any warranty and compensation rights caused by quality or legal faults and deficiencies will remain valid for a period of 36 months from the date of the risk transfer. This period will be extended by the period necessary for the Supplier to either remove the fault or arrange for substitute deliveries after the Supplier has received our claim to the date the Supplier will declare completion of any action required or if the Supplier rejects any further fault removal or substitute supplies.

8.4 If due to the fault of the delivered goods, we will have to afford costs, especially for transport, moving, labour and material or cost that exceed the normal scope of our goods acceptance or checking procedure, the Supplier will have to compensate us for the cost that has arisen.

8.5 The right to recall goods from the company in accordance with paragraphs 478 and 479 German Civil Code (BGB) will remain intact against our suppliers, even then when we have not acquired any consumable goods and deliveries.

8.6 If a fault is detected within six months from the date of risk transfer, it will be assumed that this fault was already present at the time of risk transfer, unless this assumption cannot be matched with the type of fault discovered.

### 9. Product Liability and Quality Assurance

If due to the Product Liability Act or any other regulations and laws claims will be raised against us due to a product fault or if in connection with a supplied faulty good, we will experience or suffer any other damage, especially due to a necessary product recall, re-fitting etc., the Supplier has to keep us free of any damages and has to arrange substitute delivery to replace the faulty good, if the damage was caused due to a fault ascribable to the Supplier. In cases of fault dependant liability this will only apply, if the Supplier was the cause of the fault. If the cause of the fault is ascribable to the responsibility of the Supplier, he will be responsible for the proven evidence. In such a case the Supplier will have to pay all and any cost, including any legal cost. The Supplier is obliged to enter a sufficient product liability insurance.

### 10. Protective Rights, Documents, Confidentiality

10.1 The Supplier will guarantee that the goods supplied by him will not violate any national or foreign company protection rights and also warrants to us the full liberty and copyright rights to use the goods either on our home markets or markets abroad. In the case of legal steps undertaken by third parties with regards to the violation of national or foreign copyrights with regards to the goods supplied, the Supplier has to keep us free of any claims made against us and has to compensate any resulting damage.

10.2 Any tools, moulds, models, profiles, drawings, standard specifications, printed matter, manuals or any other documentation will remain our property and may not be given to third parties or may not be used for the supplier's own benefit without our prior explicit agreement. Such documents have to be protected by the Supplier against any unauthorised viewing or use and if not agreed otherwise, have to be returned to us at the latest after completed delivery in an orderly condition. The Supplier may also not retain any copies. There is no right of document retention.

10.3 The Supplier has to keep confidential all and any technical data and other obvious business and technical details that the Supplier learned during our business relationship. The data may only be used for the completion and execution of our orders and may only be given to the staff that is necessary for the execution of the order.

10.4 If the Supplier arranged to have tools, drawings or any other production means made at our expense, it has been mutually agreed, that such production means will become immediately our property as soon as they have been made. In cases where we will only partially carry the cost, we will have the co-ownership in proportion of the share of costs of such means. The Supplier has the revocable right to carefully keep and store such production means free of charge. We obtain any and all copyrights to solely use the production means. The Supplier is not entitled to use such production means outside the scope of the order without our approval and authorisation. The Supplier is entitled and obliged to the revocable right of storage and keeping of the production means. The Supplier has to mark the production means in such a way that our ownership is also documented to any third party. The Supplier does not have any retention rights to these production means.

### 11. Liability Limitation

We will be liable for any intentional and careless undertakings. We will only be liable for slight carelessness, if any major contractual obligations have been violated that result from the nature of the contract or if such violation will endanger the completion of the contractual objectives. Even in such cases compensation for any foreseeable damage will remain limited. Furthermore in cases of slight carelessness any compensation claims made by the Supplier, regardless of whatever legal reason, are excluded. The before mentioned liability limitation does not apply if there was a harm of life, body or health.

### 12. Place of Fulfilment, Place of Jurisdiction, Applicable Law

12.1 The place of fulfilment for any contractual obligations, especially delivery and payment, will be the registered seat of our company or the place of fulfilment named by us.

12.2 The place of jurisdiction for all and any contractual matters and their origin and fulfilment regarding legal conflicts is for both trading partners the applicable court at the registered seat of the company. We may depending on our choice also raise court action at the company seat of our Supplier.

12.3 The contractual agreement is subject to German law and jurisdiction. The UN-Acquisition Code (CISG) is not applicable.