

Terms and Conditions of Purchase

Effective: 8-2006

1. GENERAL PROVISIONS

1.1 Unless otherwise confirmed in writing, all orders shall be placed exclusively subject to these terms and conditions. Other terms and conditions shall not become part of the contract even if they are not expressly objected to.

1.2 Even if delivery is accepted without express objection, it can under no circumstances be alleged that GUTSCHE accepted the delivery terms and conditions of contractor.

1.3 These general terms and conditions shall also apply to all future contracts with contractor.

1.4 GUTSCHE shall not pay any compensation or reimbursements for visits or the preparation of projects and plants, etc., even if no order is placed. Agreements to the contrary must be confirmed in writing.

2. ORDERS, CONTRACT PROCESSING, PROJECT DELAYS AND CANCELLATIONS.

2.1 Only written orders are binding. Oral orders or orders placed by telephone must be confirmed in writing to be valid. The same applies to oral side agreements and contract changes.

2.2 As a rule each order must be confirmed to GUTSCHE immediately with a binding delivery date on the attached confirmation form. If contractor does not accept the confirmation within 10 working days after receipt, GUTSCHE may revoke the order.

2.3 Services for which no written order has been placed are not binding for GUTSCHE and will not be paid by GUTSCHE, even if such services are performed upon the request of GUTSCHE personnel.

2.4 Contractor shall point out possible defects upon receipt of the offer, in particular regarding compliance with the state of the art of science and technology, with environmental provisions or technical practicality.

2.5 Contractor knows that GUTSCHE handles primarily project-related orders. Contractor knows that GUTSCHE has no control over the risks of service interruption, service delay and the premature termination of services by the main principal. GUTSCHE and contractor therefore agree that in case of service interruption by decisions of the main principal, GUTSCHE shall have the following rights regarding the implementation of the order:

2.5.1 After prior written announcement, GUTSCHE may have the performance of additional deliveries and services by contractor stopped until the service interruption caused by the main principal has been removed.

2.5.2 Contractor shall store the already processed and manufactured delivery and service items in such manner that they maintain their usefulness.

2.5.3 If contractor continues to manufacture in spite of the announced interruption this will be – in particular with a view to a possible final cancellation of the project pursuant to item 2.5.7 – at the sole risk of contractor.

2.5.4 As soon as the service interruption caused by the main principal has been removed GUTSCHE shall inform contractor. GUTSCHE and contractor shall agree as soon as possible about a schedule for additional deliveries that will consider the interests of the main principal as best as possible.

2.5.5 The agreements under 2.5.1 through 2.5.4 shall apply to every interruption.

2.5.6 Any damage claims by contractor vis-à-vis GUTSCHE are excluded in case of an interruption according to items 2.5.1 through 2.5.5. If GUTSCHE should be able to enforce claims against the main principal on account of the delivery interruption, GUTSCHE will pass them on to contractor pro rata to the respective service areas. Within the scope of the obligation to mitigate damages GUTSCHE and contractor shall attempt to minimize the effects of the service interruption.

2.5.7 In case of a service interruption for more than three months or the final cancellation of the project by the main principal, GUTSCHE is entitled to cancel the contract.

2.5.8 In case of cancellation on account of an event pursuant to item 2.5.7 contractor is not entitled to any damage claims vis-à-vis GUTSCHE unless GUTSCHE intentionally or gross negligently did not inform contractor about the cancellation of the entire project by the main principal. In case of willful misconduct and gross negligence damage claims are limited to the reimbursement of the added expenses of contractor. Contractor must present and prove the reimbursement claim to GUTSCHE taking into account the obligation to minimize damages. All other claims – such as reimbursement for lost profits, other damage claims of any kind beyond reimbursement of additional costs – are excluded in this case. GUTSCHE shall inform contractor in time and as soon as possible about the development of the project so that contractor may make contract-related arrangements.

2.5.9 If GUTSCHE shall be able to enforce claims against the main principal on account of the cancellation of deliveries, GUTSCHE shall pass them on to contractor pro rata to the respective service areas.

2.5.10 In view of the possible service interruptions pursuant to the above items, contractor shall in its own interest orient its production for GUTSCHE on the handling modalities of the main principal disclosed to it.

2.6 Principal may terminate the contract effective immediately if contractor cancels its deliveries/services or insolvency proceedings in its assets have been applied for. Upon request of principal contractor shall surrender to principal the completely or partially manufactured or purchased parts, materials etc. for the contract. Compensation shall be paid based on the agreed prices.

3. MANUFACTURING DOCUMENTS

3.1 Models, testing devices, tools, moulds, samples, drafts, plans, projects, drawings and other manufacturing means or documents made available to contractor or produced based on GUTSCHE specifications remain or shall become the property of GUTSCHE and may not be used, copied or made available to third parties by contractor for other purposes than the performance of the order. They are subject to copyright and shall be returned to GUTSCHE without being requested to do so immediately upon delivery. Documents and production aids made available by GUTSCHE must be examined by contractor as it sees fit for usability.

3.2 Contractor shall provide drawings free of charge and, if applicable, general layout drawings for installations, appliances, machine parts and tools subject to wear and tear not manufactured in serial production. GUTSCHE shall receive the right to use these documents to manufacture spare parts, make changes on delivered items or have third parties do so.

3.3 All manufacturing material, manufacturing drawings, tools or other production aids provided by GUTSCHE for the performance of the order – even if they were provided to subsuppliers – remain the property of GUTSCHE and are subject to the confidentiality obligation. This also applies to articles provided to contractor for commission processing. Contractor is liable for damages, deterioration, destruction or loss even if contractor is not responsible for it.

4. CONFIDENTIALITY

4.1 Contractor agrees to consider all business or technical details not generally known to the public that become known to it as secrets and to treat them as confidential information. Subsuppliers shall be obligated accordingly.

4.2 The confidentiality obligation continues after the termination of the delivery agreement.

4.3 Inquiries or orders by GUTSCHE and other correspondence may not be used for advertising purposes without written consent.

5. CHANGES

5.1 GUTSCHE may request changes of the delivery item after the execution of the contract if this is reasonable for contractor. In contract changes the effects on both parties, in particular with regard to additional or lower costs as well as the delivery dates, must be considered.

5.2 Deviations vis-à-vis the order and changes are valid only if contractor indicates them and they have been confirmed by GUTSCHE in writing.

6. PROTECTED RIGHTS AND COPYRIGHTS

6.1 All deliveries/services by contractor must be free of third-party rights. Contractor is liable for all damages incurred by GUTSCHE from the use, installation or disposition of the delivered items by violating any third-party rights.

6.2 GUTSCHE shall have the exclusive copyright to any drawings, samples and other documents prepared by contractor in accordance with specifications by GUTSCHE.

6.3 Our claims for defects of title are subject to a three-year statute of limitations from the date we acquired knowledge or from the date of our gross negligent lack of knowledge of the violation of the underlying obligation.

7. QUALITY AND DOCUMENTATION

7.1 Contractor shall comply with the technical specifications that are recognized state of the art, the EU machine guidelines and the safety provisions. The same applies to separately agreed quality control agreements with GUTSCHE. If the type and extent of testing and the testing means and methods have not been agreed on between contractor and GUTSCHE, GUTSCHE shall upon request of contractor discuss with contractor the test within the scope of the findings, experience and potential possibilities to determine the required state of testing technique. In addition GUTSCHE shall inform contractor upon request about the applicable safety regulations. Instructions regarding technical data and testing regulations do not release contractor from delivering functional delivery items in accordance with the contract free from defects.

7.2 Contractor must continuously test the quality and, if applicable, inform GUTSCHE about possibilities for improving quality.

7.3 Type and extent of the quality tests shall be agreed on between the parties. It is assumed that contractor complies with production-specific testing methods customary in the industry.

8. PRICING

8.1 The agreed prices are net fixed prices and exclude additional claims. Price reservations by contractor are excluded with the exception of the statutory value added tax.

8.2 If contrary to 8.1 price reservations have been agreed on in writing, contractor shall immediately notify price changes for approval. In this case GUTSCHE and contractor agree that in case of price changes GUTSCHE is entitled to cancel the contract.

8.3 Additional claims that are asserted only at the time of the invoice are not binding on GUTSCHE.

8.4 If no prices were agreed on in the order GUTSCHE reserves the right to confirmation even if the implementation of the contract was already started. Pricing does not affect the agreement regarding the place of performance.

8.5 GUTSCHE only accepts the ordered quantities or number of pieces. Excess or short deliveries outside the tolerances customary in the industry are only allowed after prior agreement.

8.6 Costs, taxes, customs and other charges with the exception of value added tax that become effective after placing the order shall be payable by contractor.

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8.7 The risk of price changes shall transfer to GUTSCHE only after transfer of the goods at the unloading place of the destination.

9. DELIVERY DATES, DELIVERY DELAY, FORCE MAJEURE

9.1 The agreed delivery dates are binding. Determinative for compliance with the delivery date or the delivery period is the receipt of the merchandise at the place of destination named by GUTSCHE or the timeliness of successful acceptance.

9.2 If contractor realizes that irrespective of the cause of delay an agreed date cannot be kept, contractor shall immediately notify this in writing stating the reasons and the foreseeable duration of the delay. If contractor omits the timely notice, contractor cannot refer to an impediment.

9.3 Contractor shall reimburse GUTSCHE for all direct and indirect default damages.

9.4 If the agreed delivery date is not kept due to a circumstance for which contractor is responsible GUTSCHE may, after the unsuccessful expiration of a reasonable grace period set by GUTSCHE, cancel the contract.

9.5 Contractor can only refer to not having received essential documents to be delivered by GUTSCHE, if contractor asked for the documents in writing and did not receive them within a reasonable period.

9.6 Force majeure and labor unrest release the contract party from its contract obligations for the duration of the disturbance and to the extent of its effect. The contract parties shall, within the scope of what is reasonable, immediately provide the necessary information and adjust their obligations in good faith to the changed circumstances. GUTSCHE shall be freed in whole or in part from its obligation to accept the ordered delivery/service and shall be entitled to cancel the contract if the delivery/service can no longer be used on account of the delay caused by force majeure or labor unrest taking into account economic viewpoints.

9.7 In case of delivery earlier than agreed GUTSCHE reserves the right to return the merchandise at the expense of contractor. If the merchandise is not returned in case of early delivery, the merchandise will be stored by GUTSCHE at the expense and risk of contractor. In addition GUTSCHE reserves the right to make payment at the agreed due date in case of early delivery.

9.8 Partial deliveries will be accepted only after express agreement. In case of agreed partial deliveries, the remaining quantity must be listed.

10. PURPOSE

Contractor knows the purpose of the contract service. It is liable for defects of quality that impair the use of the service for the intended purpose. Unless agreed otherwise, the best quality and workmanship is deemed agreed on.

11. SHIPPING REGULATIONS

11.1 Unless otherwise agreed in writing, delivery shall be free place of delivery including packaging, freight as well as custom formalities and customs. In case of delivery free place of manufacture or place of shipment, all expenses and drayage fees incurred before transfer to the main freight forwarder shall be paid by contractor. GUTSCHE shall pay only the freight.

11.2 Shipment is at the risk of contractor. The risk of any deterioration including accidental destruction shall stay with contractor until delivery to the above delivery address. The obligation to take back packaging is governed by the statutory provisions. The merchandise shall be packaged in such manner that damage during transportation is avoided. If on account of a special agreements packaging is invoiced, it shall be credited upon return free of charge at the full invoice amount. Unless otherwise agreed, the CE mark must be clearly attached; the conformity

declaration and risk analysis must – if applicable – be sent simultaneously.

11.3 The obligation to take back the packaging is governed by the statutory provisions. The merchandise must be packaged in such manner that transportation damage is avoided. If on account of a special agreement packaging is invoiced, it shall be credited upon return free of charge at the full invoice amount.

11.4 Each shipment must be sent with delivery slip with the following information: GUTSCHE or contractor order number, accurate description of merchandise, measurement, weight gross/net, material/EDP number, possible plant from which shipped. In addition the required plant certificates must be added to the shipment. GUTSCHE reserves the right to reject acceptance of shipments with incomplete delivery documents and it may return them at the expense of contractor. If contractor assigns the order to a subcontractor, contractor is responsible for subcontractor's compliance with the shipping instructions. Subcontractor must state its principal in all documents.

12. INVOICING AND PAYMENT

12.1 Invoices must be submitted in duplicate separately and in proper form stating the order and material number. The invoice copies must be clearly marked as such. Improperly submitted invoices shall be deemed received only after having been submitted in proper form.

12.2 If the weights or item numbers stated in the invoice deviate from the determination by GUTSCHE at the receiving place, the latter is determinative.

12.3 Unless otherwise agreed, payment shall be made optionally

- a) on the 25th of the month following delivery
- b) at a 3% discount within 14 days after invoice or merchandise receipt. GUTSCHE shall pay using the selected payment method.

12.4 GUTSCHE is entitled to offset with accounts receivable of a GUTSCHE affiliate that are due. This also applies if the maturities of the mutual claims are different.

12.5 Payments by GUTSCHE do not constitute a waiver of claims for defective delivery.

12.6 In case of defective delivery, GUTSCHE is entitled to withhold the pro rata amount for the defect from payment until proper performance.

12.7 In case of advance payments contractor shall, upon request, provide an adequate surety, e.g., a guarantee.

12.8. Without the prior consent of GUTSCHE, contractor may not assign accounts receivable against GUTSCHE or have them collected by third parties. GUTSCHE shall consent to an assignment based on the principles of good faith. In case contractor has granted its suppliers retention of title in the course of regular business, the consent is deemed given.

12.9 Invoices that do not comply with the above requirements will be immediately returned by GUTSCHE to contractor. In this case the discount period starts from the receipt of the revised invoice.

13. PROPER PERFORMANCE OF CONTRACT, RECOURSE

13.1 Unless otherwise agreed or provided for in these terms and conditions, liability including liability for defects of quality is governed by the statutory provisions. The objection of late notice of defect and acceptance without reservation is excluded. In urgent cases GUTSCHE is authorized to replace or repair defective parts and to remove damages at the expense of contractor. In case of new delivery or removal of damages the statute of limitations for the respective defective parts will restart.

13.2 If GUTSCHE is charged for violation of official safety regulations or for other legal reasons according to domestic or foreign law, GUTSCHE may demand from

contractor reimbursement of its damages in accordance with the applicable law (liability principles) taking into account the principle of good faith to the extent its delivery or conduct was defective and caused the damages unless contractor proves that the damages were unavoidable or unforeseeable. In cases in which recourse is to be expected, GUTSCHE is willing to inform contractor about the claims raised against GUTSCHE and the measures taken by GUTSCHE.

13.3 The claims of GUTSCHE pursuant to this item 13 are subject to a two year statute of limitations starting with the acceptance of the delivery unless a longer period has been agreed on or is provided for in the statutes.

13.4 Recourse claims by GUTSCHE against contractor for defects of quality pursuant to §§ 478, 479 BGB remain unaffected. GUTSCHE may assert these claims even if the end user is not a consumer but a manufacturer.

13.5 By acknowledging receipt of delivery and by acceptance or approval of submitted drawings GUTSCHE does not waive claims for defects of quality and other rights.

14. PLACE OF PERFORMANCE AND VENUE

14.1 Unless provide otherwise, place of performance for the delivery is the place of delivery or place of use requested by GUTSCHE; for all other obligations by both parties it shall be Fulda.

14.2 Venue is Fulda. GUTSCHE may however sue contractor at its place of business.

15. INSOLVENCY

15.1 If contractor stops payments or if insolvency proceedings are instituted against its assets GUTSCHE may cancel the contract in whole or in part. If the contract is cancelled on account of a contract violation for which contractor is responsible, the services performed up to that time are only invoiced at the contract price if they could and can be used by GUTSCHE in accordance with the intended purpose. The damages caused to GUTSCHE will be considered in the accounting.

15.2 If there is a substantial change in the legal form, management, the participations or the financial situation of contractor that is suitable to substantially change the results GUTSCHE could expect from the implementation of the contract, GUTSCHE may – without incurring any costs – cancel the order.

15.3 If the participations of contractor change, GUTSCHE may enter into negotiations about the continuation of the order with GUTSCHE.

16. PARTIAL INVALIDITY, APPLICABLE LAW

16.1 If individual provisions or parts of these purchasing terms and conditions are or shall become invalid or impossible to perform, are declared invalid or partially invalid by a court or public agency decision, this shall not affect the validity of the remaining provisions. The invalid or impossible provision shall be replaced by a valid and possible provision that comes closest to the economic intent of the parties.

16.2 German law shall apply. The application of the United Nations Convention on the International Sale of Goods of 4-11-1980 is excluded.

16.3 The contract language is German. If the contract partners use an additional language, the German wording shall govern.

17. OTHER

17.1 Any right to offset or assert a right to withhold by contractor is excluded.

17.2 Contractor may not without the prior consent of GUTSCHE assign the order and essential parts thereof to third parties.

17.3 Person-related data that occur in connection with the contract are stored for the purpose of data processing (§ 26 Federal Data Protection Act).