

General Terms and Conditions of Purchase

§ 1

General – Scope

1. Our General Terms and Conditions of Purchase (hereinafter referred to as "Terms and Conditions of Purchase") shall form an integral part of all contracts which we conclude with our suppliers for the deliveries or services offered by them. They apply exclusively; terms and conditions of the supplier that conflict with or deviate from our Terms and Conditions of Purchase shall not apply, even if we do not separately object to their application in individual cases. Our Terms and Conditions of Purchase shall also apply if we accept the supplier's delivery without reservation in the knowledge that the supplier's terms and conditions conflict with or deviate from our Terms and Conditions of Purchase. Even if we refer to a letter which contains or refers to the terms and conditions of the supplier or a third party, this shall not constitute an agreement to the validity of those terms and conditions of business.
2. Our Terms and Conditions of Purchase shall also apply to all future contracts and transactions with the supplier. With the first delivery to our terms and conditions of purchase, the supplier acknowledges their exclusive applicability also for all future orders, even if the applicability of our terms and conditions of purchase is not referred to once again.
3. Individual agreements (e.g. framework supply agreements, quality assurance agreements) and specifications in our purchase order shall take precedence over these Terms and Conditions of Purchase. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms issued by the International Chamber of Commerce in Paris (ICC) in the version applicable at the time of conclusion of the contract.
4. Our Terms and Conditions of Purchase shall only apply to entrepreneurs, legal entities under public law or special funds under public law pursuant to § 14 in conjunction with § 310 (1) of the German Civil Code (hereinafter referred to as "BGB").

§ 2

Offer - Offer Documents

1. Insofar as our offers do not expressly contain a binding period, we shall be bound by them for a period of two weeks after the date of the offer. The receipt of the declaration of acceptance by us shall be decisive for timely acceptance. The contract shall be concluded with the timely declaration of acceptance or the mutual signing of a written contract. If the supplier's declaration of acceptance deviates from our offer, it shall be deemed a new offer, which we are not obliged to accept.
2. The content and scope of the contractually owed performance and delivery times or periods shall be determined exclusively by our offer accepted by the supplier or, if such a contract exists, by the written contract signed by both parties.
3. We reserve the property rights and copyrights to illustrations, drawings, calculations and other documents; they may not be made accessible to third parties without our express written consent. They are to be used exclusively for production on the basis of our order; after completion of the order they are to be returned to us without being requested to do so. They must be kept secret from third parties; in this respect, the provisions of § 9 para. 4 shall apply in addition. If we have concluded a confidentiality agreement with the supplier, the provisions of that agreement shall apply in addition.

§ 3

Prices – Conditions of Payment

1. The price stated in our contract offer is binding and agreed as a fixed price. Unless expressly agreed otherwise in our contract offer or in the written contract signed by both parties, the price shall include delivery "free domicile", i.e. delivered and duty paid (Incoterms: DDP) to symex GmbH & Co. KG, Lengstraße 10, 27572 Bremerhaven, including packaging and transport, insurance and customs duties. The mode of transport may be unilaterally specified by us in the order. The return of packaging requires a separate agreement.
2. Prices are to be understood in euros. The statutory value added tax (VAT) is included in the price. If no prices are stated in the offer, the supplier's list prices valid at the time of conclusion of the contract shall apply. If prices are agreed by weight, the net weight determined by us after delivery shall be decisive.
3. Remuneration for visits or the preparation of offers, projects, etc. will not be granted.
4. Unless otherwise expressly agreed in accordance with our offer or in accordance with the contract signed by both parties, the purchase price shall be payable within 14 days, calculated from complete delivery and, if applicable, provision of an agreed certificate of material tests, and receipt of a correct invoice, with a 3% discount, within 21 days with a 2% discount, or net within 30 days of receipt of the invoice. In the case of bank transfer, payment shall be deemed to have been made in due time if our transfer order is received by our bank before expiry of the payment period; we shall not be responsible for any delays caused by the banks involved in the payment process.
5. We shall be entitled to rights of set-off and retention as well as the objection of non-performance of the contract ("Einrede des nicht erfüllten Vertrages") to the extent provided by law. In particular, we are entitled to withhold payments due as long as we are still entitled to claims against the supplier arising from incomplete or defective performance. The supplier shall only have a right of set-off or retention on the basis of counterclaims that have become res judicata or are undisputed.
6. The assignment of claims against us is only permissible with our written consent.
7. In the event of default in payment, we shall owe default interest in the amount of five percentage points above the base interest rate in accordance with § 247 BGB.

§ 4 Delivery Time

1. The delivery time stated in the contract offer or in the written contract signed by both parties is binding. The supplier is obliged to inform us immediately in writing if circumstances have occurred or become apparent to him which indicate that the agreed delivery time cannot be met. However, this does not change the agreed delivery time.
2. In the event of a delay in delivery, we shall be entitled to the statutory claims. In particular, we are entitled to demand damages instead of performance and to declare withdrawal from the contract after the fruitless expiry of a reasonable grace period. The provision in § 4 No. 4 shall not be affected. If we demand damages, the supplier shall be entitled to prove that he is not responsible for the breach of duty. The supplier may only invoke the absence of necessary documents to be supplied by us if he has issued a written request for the documents in good time and has not received them within a reasonable period of time.
3. For each completed calendar week in which the supplier is in a culpable delay with the delivery, the supplier shall pay a contractual penalty to us in the amount of 1% of the contractual net price of the delayed goods, however, not more than a total of 5% of the contractual net price of the delayed goods. This does not affect our right to make further claims for damages; however, any contractual penalties paid shall be set off against such claims for damages. Notwithstanding § 341 para. 3 BGB, in the event of acceptance of the delayed delivery of the goods, we shall be entitled to declare the reservation of the contractual penalty within a period of 14 calendar days after acceptance of the delivery.
4. We are not obliged to accept delivery before the expiry of the agreed delivery date. In the event of early delivery, we reserve the right to return the goods at the supplier's expense. If no return is made in the event of early delivery, the goods shall be stored by us at the supplier's expense and risk until the agreed delivery date. In the event of early delivery, we further reserve the right to make payment only on the agreed due date.

5. All events and circumstances which were not foreseeable for the supplier taking into account the due care of a prudent businessman at the time of the conclusion of the contract and the occurrence and effects of which cannot be avoided by the supplier taking into account the due care of a prudent businessman ("force majeure") shall suspend the delivery period for the duration of their effect. If such events of force majeure result in our being prevented from acceptance or receipt, we may postpone acceptance or receipt accordingly without being in default of acceptance, provided that the event of force majeure was not foreseeable for us taking into account the due diligence of a prudent businessman at the time of the conclusion of the contract and we cannot avoid the occurrence and effects of the event of force majeure taking into account the due diligence of a prudent businessman.

If the events or circumstances of force majeure last longer than 3 months or if in an individual case it is not reasonable for one of the parties to adhere to the contract even before the expiry of this period, taking into account the mutual interests, both the supplier and we shall be entitled to withdraw from the contract with regard to the delivery quantity or (partial) performance affected by the disruption, excluding claims for damages. In the case of a transaction for delivery by a fixed date, however, we shall be entitled to withdraw from the contract immediately. A right to withdraw from the entire contract only exists if we have no interest in the partial performance rendered or not affected by the event of force majeure.

Until proven otherwise, the following events or circumstances shall be presumed to constitute force majeure within the meaning of this § 4 item 9. 9: (i) war (declared or undeclared), hostilities, attack, acts of foreign enemies, large-scale military mobilisation; (ii) civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy; (iii) monetary and trade restrictions, (partial) embargo, sanctions; (iv) lawful or unlawful official acts, compliance with laws or government orders, expropriation, seizure of works, requisition, nationalisation; (v) plague, epidemic, pandemic natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged breakdown of transportation, telecommunications, information systems or power supply; (vii) general labour disturbances such as boycotts, strikes and lockouts, go-slow, occupation of factories and buildings.

Events of force majeure shall not include impediments to performance as a result of the Corona/CoViD 19 pandemic or the Ukraine war and related sovereign measures, unless the party prevented from performance can prove that (i) the impediment to performance in its specific form did not yet exist at the time of conclusion of the contract and (ii) that this specific impediment to performance could not have been expected at the time of conclusion of the contract, taking into account the due care of a prudent businessman.

§ 5 Transfer of Risk – Documents

1. Unless otherwise agreed in writing, delivery shall be free domicile, i.e. delivered and duty paid (Incoterms: DDP) to symex GmbH & Co. KG, Lengstraße 10, 27572 Bremerhaven, including packaging and transport, insurance and customs duties. Unless otherwise agreed in our offer or in the contract signed by both parties, the risk shall only pass to us when the goods incl. delivery note and necessary documents are handed over to us at the agreed place of destination.
2. The supplier is obliged to state our exact order number on all shipping documents and delivery notes; if he fails to do so, we are not responsible for delays in processing.
3. The supplier is obligated to use environmentally friendly products and processes for the deliveries/services and also for subcontracted or ancillary services of third parties within the scope of the economic and technical possibilities. The supplier shall be liable for compliance with the statutory requirements, in particular with regard to the environmental compatibility of the products and packaging materials supplied and for all consequential damage resulting from the breach of the statutory disposal obligations. The supplier is obliged to hand over the respective safety data sheets applicable to the delivery with the delivery. The supplier shall indemnify us against all recourse claims by third parties in the event that the supplier fails to deliver the safety data sheets, or delivers them late or incorrectly, unless the supplier is not responsible for this.

§ 6 Defect Inspection - Liability for Defects

1. In addition to the factual and legal defect-free delivery, the supplier guarantees that all deliveries comply with the relevant legal provisions and the standards recognised in the industry as well as the regulations and guidelines of authorities, professional associations and trade associations.
2. In accordance with the statutory provisions, the supplier is liable in particular for ensuring that the goods have the agreed quality at the time of transfer of risk. In any case, those product descriptions which - in particular by designation or reference in our offer or the contract signed by both parties - are the subject of the respective contract or have been included in the contract in the same way as these Terms and Conditions of Purchase shall be deemed to be an agreement on the quality. It makes no difference whether the product description originates from us, from the supplier or from the manufacturer. Furthermore, product-specific requirements (e.g. raw material specifications), which the supplier has undertaken to comply with by separate agreement with us, shall be deemed to be an agreement on quality.
3. The statutory provisions §§ 377, 381 of the German Commercial Code ("HGB") shall apply to the commercial duty of inspection and notification of defects, subject to the following proviso: Our duty of inspection shall be limited to defects which become apparent during the incoming goods inspection by means of external examination including the delivery documents (e.g. transport damage, wrong delivery and short delivery) or which are identifiable during the quality control by means of random sampling. In all other respects, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later remains unaffected. Notwithstanding the duty to examine, a complaint ("notification of defects") by us shall be deemed to have been made without undue delay and in good time if it is sent within 5 working days of discovery or, in the case of obvious defects, of delivery.
4. We shall be entitled to the statutory claims for defects in full; in any case, we shall be entitled to demand from the supplier, at our discretion, remedy of the defect (insofar as possible due to the nature of the defect) or delivery of a new item within a reasonable period of time. We expressly reserve the right to claim damages, in particular damages in lieu of performance, withdrawal or reduction.
5. Notwithstanding our statutory rights and the provisions in § 6 Clause 3, the following shall apply: If the supplier fails to fulfil its obligation to provide subsequent performance in accordance with § 6 Clause 4 within a reasonable period of time set by us, we shall be entitled to remedy the defect ourselves and to demand reimbursement of the expenses required for this purpose or a corresponding advance payment from the supplier. If subsequent performance by the supplier has failed or is unreasonable for us (e.g. due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no deadline is required; we shall inform the supplier of such circumstances without delay.
6. Die gesetzlich bestimmten Aufwendungs- und Regressansprüche innerhalb einer Lieferkette (Lieferantenregress gem. §§ 478, 445a, 445b bzw. §§ 445c, 327 Abs. 5, 327u BGB) stehen uns neben den Mängelansprüchen uneingeschränkt zu. Wir sind insbesondere berechtigt, genau die Art der Nacherfüllung (Nachbesserung oder Ersatzlieferung) vom Lieferanten zu verlangen, die wir unserem Abnehmer im Einzelfall schulden. Unser gesetzliches Wahlrecht (§ 439 Abs. 1 BGB) wird hierdurch nicht eingeschränkt.
7. Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses pursuant to §§ 445a para. 1, 439 para. 2, 3, 6 p. 2, 475 para. 4 BGB), we shall notify the supplier and request a written statement, briefly explaining the facts. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the supplier shall be obliged to prove the contrary.
8. Our claims from supplier recourse shall also apply if the defective goods have been combined, mixed or otherwise processed with other products by us, our customer or a third party.
9. The limitation period is 36 months, calculated from the transfer of risk, unless the mandatory provisions of §§ 478, 479 BGB intervene or a longer limitation period applies by law. If acceptance is delayed through no fault of the supplier, the warranty period shall be 36 months after the delivery item has been made available for acceptance.
10. The provisions of §§ 478, 479 BGB remain unaffected.

§ 7

Product Liability - Indemnification - Liability Insurance Coverage

1. Insofar as the supplier is responsible for product damage, the supplier shall be obliged to indemnify us against claims for damages by third parties upon first request insofar as the cause lies within the supplier's sphere of control and organisation and the supplier itself is liable in relation to third parties, in particular from the point of view of product and producer liability. Further claims for indemnification in accordance with statutory provisions shall remain unaffected. The supplier shall label all delivered items in such a way that they are recognisable as his products.
2. Within the scope of the supplier's liability for damages within the meaning of paragraph 1, the supplier shall also be obliged to reimburse any expenses, e.g. pursuant to §§ 683, 670 BGB or pursuant to §§ 830, 840, 426 BGB, which result from or in connection with a recall action carried out by us. We shall inform the supplier about the content and scope of the recall measures to be carried out - as far as possible and reasonable - and give him the opportunity to comment. Other statutory claims remain unaffected.
3. The supplier shall carry out state of the art quality assurance which is suitable in terms of type and scope and shall provide evidence thereof upon request, even if the contracting parties have not concluded a quality assurance agreement. If a quality assurance agreement is concluded, its provisions shall take precedence.
4. The supplier is obliged to properly dispose of all accumulating materials, e.g. packaging, chemicals, oils, etc., at its own expense or to recycle/reuse them and to provide corresponding proof of this. In the event of a breach of this obligation, the supplier shall indemnify us against all claims and legal disadvantages in the event that a claim is made against us, unless the supplier is not responsible for the breach.
5. The supplier is obliged to maintain product liability insurance at its own expense with a sum insured of at least EUR 3,000,000.00, which, unless otherwise agreed in individual cases, does not need to cover the recall risk or criminal or similar damages. This does not imply a limitation of the supplier's liability towards us in terms of amount. The supplier shall send us a copy of the liability policy at any time upon request.

§ 8

Property Rights

1. The Supplier warrants that no rights of third parties are infringed in connection with the supplier's delivery in countries of the European Union or other countries in which the supplier manufactures the products or has them manufactured.
2. If claims are asserted against us by a third party due to infringement of property rights, the supplier shall be obliged to indemnify us against such claims upon first written request. In such a case, we shall also be entitled to obtain the necessary authorisation from the owner of the right at the supplier's expense if and to the extent that the supplier fails to procure such authorisation within a reasonable period set by us. In the event of claims for damages by the third party, the supplier reserves the right to prove that he is not responsible for the infringement of the third party's rights. Our further legal claims due to defects of title of the products delivered to us remain unaffected.
3. The supplier's indemnification obligation relates to all expenses necessarily incurred by us as a result of or in connection with a claim by a third party, including the necessary costs of legal advice and representation.
4. The limitation period for claims arising from infringements of property rights is 10 years, calculated from the conclusion of the contract.

§ 9

Retention of title - Provision - Tools - Non-disclosure

1. Insofar as we provide objects, items, substances or product components to the supplier, we shall retain title thereto (reserved goods). Processing or transformation by the supplier shall be carried out for us as manufacturer within the meaning of § 950 BGB. If our reserved goods are processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of

the value of our item (purchase price plus VAT) to the other processed items at the time of processing.

2. If the item provided by us is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the item subject to retention of title (purchase price plus VAT) to the other mixed items at the time of mixing. If the mixing takes place in such a way that the supplier's item is to be regarded as the main item, it shall be deemed as agreed that the supplier transfers co-ownership to us on a pro rata basis; the supplier shall keep the sole ownership or the co-ownership for us.
3. We retain ownership of tools that we have provided; 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 replacement value against fire, water and theft damage at his own expense. At the same time, the supplier hereby assigns to us all claims for compensation arising from 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 maintenance and repair work in good time. In the absence of an agreement to the contrary, the contracting parties shall each bear half of the costs of their maintenance and repair. The supplier shall notify us immediately of any malfunctions. If he fails to do so, claims for damages shall remain unaffected unless he is not responsible for the failure to do so.
4. The supplier is obliged to keep all illustrations, drawings, calculations and other documents and information received strictly confidential. They may only be disclosed to third parties with our express written consent. The obligation to maintain secrecy shall also apply after the execution of this contract; it shall expire if and to the extent that the production knowledge contained in the illustrations, drawings, calculations and other documents provided has become generally known.
5. Insofar as the rights of security to which we are entitled pursuant to para. 1 and/or para. 2 exceed the purchase price of all our goods subject to retention of title which have not yet been paid for by more than 10 %, we shall be obliged, at the request of the suppliers, to release the rights of security at our discretion.

§ 10 Export Controls

1. The supplier is obliged to inform us in its business documents of any authorisation requirements for (re-)exports of its goods in accordance with German, European, US export and customs regulations as well as the export and customs regulations of the country of origin of its goods. He is further obliged to provide us with all foreign trade data on his goods and their components in writing and to inform us immediately in writing (before delivery of corresponding goods affected by this) of all changes to the above data.
2. The supplier is obliged to send us the necessary export control declarations completely filled out, with the necessary documentation and signed. The order shall not become effective until the fully signed declarations have been sent. Products which are subject to special export conditions must be reported in advance with details of the list in which they are included (German export list, the European Annex I, the European Annex IV to the EC Dual-Use Regulation or other relevant export lists). The supplier guarantees that the information provided in the export control declarations is complete and correct. Should changes occur in the future with regard to the delivery items which change the export control classifications of the goods, the supplier shall inform us of this change without delay.
3. The supplier shall indemnify us against all claims or other sanctions arising from violations of export control law in connection with the delivery items.

§11 Place of Jurisdiction - Place of Performance

1. If the seller is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, our registered office in Bremerhaven, Germany, shall be the exclusive - also international - place of jurisdiction. The same shall apply if the supplier is an entrepreneur within the meaning of § 14 BGB. However, we are also entitled to sue the supplier at his general place of jurisdiction. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.

2. These Terms and Conditions of Purchase and the contractual relationship shall be governed by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
3. Unless otherwise stated in our offer or the contract, our registered office in Bremerhaven, Germany, is the place of performance.
4. Amendments and supplements to the contract, including these Terms and Conditions of Purchase, must be made in writing. This also applies to the amendment or cancellation of this clause.
5. Should individual provisions of the contract, including these Terms and Conditions of Purchase, be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision whose economic purpose comes as close as possible to that of the invalid provision. The same shall apply in the event that the contract, including these Terms and Conditions of Purchase, should contain a regulatory gap.

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