

# - Microtherm GmbH, General Terms of Purchase -

## I. Governing Terms

In supplementation of individual contractual agreements, solely these Terms of Purchase apply to all business transactions with Suppliers or other contractors (hereinafter jointly called „Supplier“) until our new Terms of Purchase take effect. In the event of permanent business relations or skeleton agreements, they also apply to all future supply contracts. No different terms of business will become the subject of a contract either through unreserved acceptance of supplies or services or by payment of the same by us. Any amendments or additions to any contractual agreements must be recorded in writing and approved by us. If the credit standing or supply capability of the Supplier deteriorates to an extent endangering contractual performance or if the Supplier discontinues payment or if insolvency proceedings are commenced in relation to his assets, we shall hold a right of rescission, which can also be exercised in part. Assignment of contracts to third parties is not permissible without our consent and entitles us to rescind the contract or claim damages. No assignment of debts which we owe is permitted.

## II. Tender

In the tender, there must be express indication of any deviations from the invitation to bid. The Supplier is bound by his tender for at least one month. He will produce a sample of the product which he intends to supply. Both the tender and the sample must be provided free of charge. Prices must be quoted to domicile in euros plus value-added tax, including packaging and insurance. We reserve all rights of ownership and all copyrights to the documents with which we provide the Supplier for preparation of his tender. They are to be returned to us immediately free of charge if no tender is submitted or, respectively, after completion of the order.

## III. Order

Our order(s) must be accepted within 14 days of receipt through a written order acknowledgement, stating a binding supply period and price. Supply calls will be binding if not protested within a week of receipt. Skeleton agreements only constitute authorisation for procurement of the required amount of semi-finished produced material. The manufacture of parts for call orders is only permitted after receipt of a call. If the Supplier changes drawings or forms, he shall bear the risk of non-acceptance of goods and all defects and damages caused thereby.

2. Any deviations from the wording and content of our order in terms of quantity and quality and any subsequent contractual amendments are not deemed to have been agreed until we have expressly confirmed them in writing. Before performance of an order, we are entitled to require changes in design, supply quantity and supply schedule in agreement with the Supplier. The effects of changes are to be regulated in a reasonable way and by mutual agreement. If no agreement can be reached, we have a right of termination. In such a case, the Supplier will receive reasonable compensation for expenses. Without consulting us, the Supplier has no right to make any changes in design or execution in comparison with previous similar consignments and services.

3. Any drawings, tools, samples, models, marks and presentation designs or similar, together with any finished products and semi-finished products, which we may provide or which are produced on our behalf, shall remain or become our property and may only be supplied to third parties subject to our express written consent. Subject to any provisions to the contrary agreed in individual cases, the above are to be automatically returned to us immediately when the order is completed. Any products manufactured or, respectively, identified using such production aids, marks and presentation designs may only be supplied to third parties subject to our express written consent.

## IV. Supply Dates and Periods, Default

1. Supply dates and periods in orders and call-offs are binding. The criterion for observance of dates and periods is receipt of deliveries at our works.

Partial deliveries are only permissible by agreement with us. If the Supplier encounters difficulties preventing punctual supply of the goods with the required quality, he shall notify us immediately and obtain our decision on continuation of the contract. Said Supplier is liable for notifications not made or made too late. We hold statutory claims in the event of default in supply. The prescription of an additional period is unnecessary if precluded by our own time schedule because our customer can be expected to refuse performance of the contract. No exclusion or limitation of liability by the Supplier is permissible. In the event of rescission of the contract, we can keep partial supplies in return for crediting the same. We hold a right of termination of the contract if the Supplier repeatedly or permanently exceeds the prescribed supply periods. If the Supplier exceeds prescribed supply periods through no fault of his own, we hold an extraordinary right of termination if the delay is substantial and if such termination is necessary due to the urgency of supply under our own schedule commitments. If we cannot effect acceptance of goods in due time as a result of force majeure or other obstacles affecting acceptance of goods which are unforeseen or beyond our control, the acceptance period shall be lengthened to a reasonable extent and there will be deemed to be no delay in acceptance.

Damages claims based on culpable delayed acceptance shall always be limited to 50% of the value of the consignment of which acceptance was delayed.

2. If the Supplier is in default and a reminder has been sent, we hold the right to require payment of a contractual penalty amounting to 0.5% of the net order value per week or part of a week, this totalling not more than 5% of the value of the net order and/or consignment, and/or we have the right to rescind the contract. The contractual penalty paid will be credited to any damages claim.

3. We have no obligation to accept the goods before the end of the supply period.

## V. Shipment and Passage of Risk

1. Supply will always be made "free to domicile". The Supplier must put our order data on all shipment papers and delivery tickets. Any delays, additional costs or damages occurring through failure to observe our dispatch regulations will be payable by the Supplier. The Supplier must use the packaging which we specify and ensure that it protects goods from being damaged. If we do not make any specifications on packaging, the goods shall be packed to customary commercial standards. The Supplier is liable for any losses and damage incurred during shipment, including unloading, until the goods have been accepted at our works. Thus the Supplier shall take out adequate transportation insurance for his consignments. If we are responsible for paying transportation costs in exceptional cases, the type of transportation which is least expensive for us shall always be chosen, giving due consideration to transportation safety.

2. The risk does not pass to us until delivery to the shipment address or until erection and acceptance at our works. Goods shall be kept for us free of charge and at the Supplier's risk until they are dispatched.

## VI. Prices, Payment

1. The price quoted in the order is deemed to be the maximum price. It can be lower but not higher. Value-added tax is included in the price but must be shown separately. Packaging is included in the price. If an agreement has been made to the contrary in exceptional cases, packaging shall be charged at cost price. The Supplier must use the packaging which we specify and ensure that it protects goods from being damaged. In the event of return, no less than two-thirds of the amount charged are to be credited.

2. The Supplier will not grant us prices and terms less favourable than those granted to other customers if and inasmuch as such customers offer him the same or equivalent conditions in a specific case.

3. Invoices shall be issued separately for every order. Payment will not be made before complete receipt of defect-free goods or, respectively, complete defect-free performance and receipt of the invoice. This applies accordingly if partial deliveries are permitted. Time delays resulting from incorrect or incomplete invoices will not prejudice discount periods. When a discount is allowed, payment will be in accordance with the discount agreement but there will be no less than deduction of a 3% discount for payment within 14 days or less, net payment in up to 30 days. The criterion for assessment of this period is the day of supply or invoicing if later. We will not be deemed to be in default in payment if due to simple negligence. In addition, any compensation claims will be limited to the damage typically incurred as a result.

4. Any claims against us held by the Supplier can only be assigned to third parties subject to our consent. Payments will only be made to the Supplier.

## VII. Documentation

1. Invoices, delivery tickets and packaging slips are to be attached to every consignment in duplicate. These documents must include: the Supplier's and our number of order, quantity and quantity unit, gross, net and, if applicable, calculation weight, the Supplier's and our item designation with item numbers, residual quantity if partial consignments are permitted.

2. For freight shipments, we must be sent a separate dispatch notification on the day of dispatch.

## VIII. Protective laws, quality, quality management

1. In relation to all products, services, works and supplies, the supplier shall observe the recognised rules of engineering and the agreed (technical) data, in particular quality regulations and relevant protective laws and other safety provisions. In particular, the supplier warrants that his products do not contain any of the hazardous substances named in the directive 2002/95/EC of the European parliament and of the council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) and in all similar subsequent directives and in the national laws and ordinances based on the same. Such dangerous substances could be, for example, mercury, cadmium, lead, chromium VI or PBB and PBDE.

2. Moreover, the supplier has an obligation to maintain a quality management system based on the international norm ISO 9000 et seqq., et seqq. with an obligation to set a zero-defect target and improve performance on an ongoing basis.

3. The supplier must ensure that his own suppliers maintain a comparable quality management system that warrants the perfect quality of his purchased parts, services, works and supplies and of parts that are externally finished or processed in some other way.

Further details will be settled between the parties in individual agreements relating to quality, which should be recorded in writing if possible."

## IX. Defect Rights, Defect Inspection, Time Limitation, Recourse

1. The Supplier shall supply the goods without any material defects. Statutory regulations shall apply if nothing to the contrary is agreed below. The Supplier undertakes to accept liability for all defects and damages consequential to defects if they result from a lack of qualities. We have the right to require the Supplier to render subsequent performance or we can rescind the contract or reduce the purchase price. We also have a right to require damages or compensation for futile outlay in compliance with statutory regulations. If the Supplier renders subsequent performance, we can require, at our discretion, either the remedying of defects or supply of a perfect item. The Supplier is under obligation to pay all expenses necessary for remedying defects, providing replacements or repairing damage, especially costs of transportation, travelling, labour and material. If the Supplier fails to remedy a defect or provide a replacement within a reasonable period that we specify or if such action is unsuccessful, we are entitled to rescind the contract and claim damages instead of

performance. In urgent cases, especially if danger is imminent or to prevent acute risks or avoid greater damage, we can remedy defects ourselves or through third parties at the Supplier's expense.

2. If no provisions have been specified in quality management agreements, we will inspect consignments for obvious quality or quantity deviations within a reasonable period. A notice of defects from us is deemed to have been made in due time if received by the Supplier within a period of 15 working days, starting from the day of receipt of the consignment or, in the event of concealed defects, starting from the date of discovery of the same. To this extent, the Supplier waives the defence of delayed notification of defects. For transitory transactions, the decisive factor is the customer's complaint. In the event of complaints, we reserve the right to charge to the Supplier the costs incurred in association with notification of defects. The Supplier will bear the costs and risk of returning the defective items supplied.

3. For the product manufactured or supplied by the Supplier or, respectively, for the contract performed by the Supplier, our material defect claims are subject to a time limitation of 36 months after delivery of our products made using the Supplier's items or no more than 5 years after delivery to us. The Supplier shall agree with his business liability insurer that this time limitation is to be included in his business liability insurance.

4. In the event of deficiencies in title, the Supplier will hold us harmless in relation to claims of third parties. For deficiencies in title, a time limitation of 10 years applies.

5. For parts of the consignment which are remedied or repaired within the time limitation applying to our defects claims, the time limitation period will start anew when the Supplier has complied in full with our claims for subsequent performance.

6. If we accept return of products which we have made and/or sold for reason of defects in the contractual item supplied by the Supplier or if the purchase price paid to us is reduced for the same reason or if other claims are made against us for the same reason, we reserve the right to take recourse to the Supplier, with no time limitation applying to our defect rights in this case, although otherwise necessary.

7. We have the right to require the Supplier to reimburse the expenses which we incur in our dealings with our customer if the latter has a claim on us for reimbursement of the expenses necessary for subsequent performance, especially costs of transportation, travelling, labour and material.

8. Without prejudice to the provisions under no. 4, the time limitation period will not take effect in cases under nos. 6 and 7 until at least 2 months after the time at which we have complied with the claims made against us by our customers, this being, however, no more than 5 years after delivery by the Supplier.

9. If a material defect is found within 6 months of passage of risk, it will be assumed that this defect already existed on passage of risk, unless this assumption is not compatible with the type of defect.

#### **X. Product Liability, Insurance Coverage**

For defects in the goods and damages resulting therefrom which occur in our range or in those of third parties, the Supplier shall hold us harmless in relation to resulting liability. The Supplier shall arrange with his insurer for coverage of this indemnification as part of his business liability insurance policy. As regards responsibility for product damage, the Supplier shall exempt us from the claims of third parties to the extent that the cause is located in his area of control and organization. Said Supplier has an obligation to reimburse the costs of a recall campaign instigated to avoid personal injury if made necessary by product defects caused by the Supplier. The Supplier undertakes to maintain a business and product liability insurance policy with lump-sum coverage amounting to at least 2 million € for personal injury and property damage. The scope of this insurance policy must include the coverage types of so-called extended product liability insurance including coverage for pure financial losses and completed operations or coverage in terms of the German Produkt-Haftpflicht-Modell 03/2000 or 07/2002 (ProdHV), including insurance of personal injury and property damage due to a lack of warranted qualities of the supplied item, No. 4.1 ProdHV; combination, mixing and incorporation of supplied products, No. 4.2 ProdHV; further processing and incorporation under No. 4.3 ProdHV; installation and removal costs under No. 4.4 ProdHV, spoilage production by machines under No. 4.5 ProdHV and inspection and assorting costs under No. 4.6 ProdHV. The insured amount for pure financial losses or for losses under Nos. 4.1 - 4.6 ProdHV must also be no less than 2 million €. On request, the Supplier will provide the purchaser with an appropriate certificate of insurance.

#### **XI. Industrial Property Rights, Release from Liability**

The Supplier guarantees that the supplied item and its presentation design comply with the regulations applying to operation or use of such items, irrespective of whether these regulations are based on European law, German law, public-authority rulings or commercial usage. Said Supplier will hold us harmless in relation to all public-law and private-law claims resulting from a breach of these regulations. The Supplier is liable for there being no breach of industrial property rights of third parties in association with his supplied items. If claims are made against us by a third party for this reason, the Supplier shall hold us harmless on first demand. If industrial property rights of third parties are used on the basis of licensing agreements made by the Supplier, the latter must ensure that use of the supplied products is permitted in all countries in which appropriate industrial property rights apply. We hold a right of free co-utilization of his industrial property rights applying to the supplied products. The Supplier's obligation to hold us harmless includes all costs which we incur as a result of or in association with claims made by a third party.

#### **XII. Force Majeure**

War, civil war, export restrictions or trade restrictions resulting from a change in political conditions, together with strikes, lock-outs, operation stoppages, operation restrictions and similar events which make contractual performance impossible or unreasonable for us, are deemed to be force majeure.

Force majeure release us from the duty of due acceptance for as long as they last. The contracting parties have an obligation to adapt their obligations to the changed contractual circumstances in all good faith. If the force majeure lasts for a not insignificant time, i.e. has continued for at least 2 weeks without interruption, we have the right to rescind the contract, inasmuch as the force majeure produces a considerable reduction in our requirement. This applies, in particular, if our requirement is reduced by more than 30%.

#### **XIII. Provision of Tools, Materials**

If the order includes the payment of tool or model costs, it is agreed that tools and models will be our property. The Supplier is only allowed to use these items for production of the goods we have ordered. He has an obligation to insure the items belonging to us at their new value against damage by fire, water, storm and tempest, theft and vandalism, this being at his own expense. At the same time, the Supplier hereby assigns to us the compensation claims under such insurance and we hereby accept this assignment. He has an obligation to perform any necessary servicing and inspection work and all maintenance and repair work to our property at his own expense and in due time. If we provide items ourselves, we reserve the ownership rights to the same. Contractually agreed incorporation or conversion by the Supplier is performed on our behalf. If the items to which we hold ownership rights are incorporated, combined or mixed with other items not belonging to us, we will acquire co-ownership of the new item in the proportion of the value of our property to that of the other items at the time of incorporation, combination or mixing. If incorporation, combination or mixing are performed in such a way that the Supplier's item is to be considered as the principal item, it is deemed agreed that said Supplier will assign us proportional co-ownership. This ruling also applies if we refuse acceptance because of delayed or defective supply or if we fail to place any further orders. In such cases, the provided items are to be surrendered to us free of charge. No offsetting will be allowed.

#### **XIV. Business Secrets**

The Supplier has an obligation to treat our orders as confidential, together with all commercial and technical details associated therewith. The Supplier must keep the documents and information secret even after completion of this contract. Any disclosure to third parties may only be made subject to our written consent

#### **XV. Place of Jurisdiction, Place of Performance, Miscellaneous**

1. The place of jurisdiction is at the court having jurisdiction for our seat of business in Pforzheim. We can also sue the Supplier at the court having jurisdiction for his seat of business. If nothing to the contrary is stipulated in the contract or acknowledgement of order, our seat of business is also the place of performance.

2. Solely the law of the Federal Republic of Germany shall apply to all legal issues arising between the purchaser and ourselves, even if said purchaser has his seat of business abroad. Private international law and the United Nations Convention on the International Sale of Goods (CISG) are excluded.

3. If any single provisions in these Terms of Supply are void, the other provisions are not affected thereby. Void provisions are to be adapted to achieve the financial purpose for which they were intended.

Pforzheim, September 2004