

## TERMS AND CONDITIONS OF PURCHASE

TSUBAKI KABELSCHLEPP GmbH (Status: 02/2013)

### I. General

1. The following terms and conditions of purchase apply exclusively to the processing of our orders. We hereby expressly reject any terms and conditions of sale of the contractor that deviate from these.
2. Any changes in our terms and conditions requires written confirmation to be valid. Also no acknowledgement of the delivery conditions can be derived from the acceptance of a delivery or service. Order acceptance is to be confirmed.

### II. Order

1. Only written orders that have been signed are valid. Verbal orders or orders placed over the telephone require our written confirmation.
2. Our orders are to be confirmed in writing, with the explicit confirmation of prices and delivery dates, and in the case of call-off orders also with the delivery schedules and any deadline and quantity changes.

### III. Delivery quantities

1. The ordered quantity is to be delivered. Over/under deliveries can be accepted within usual commercial conditions; partial deliveries require our written consent.
2. In the case of framework orders or call-off orders, the specified quantities are binding as from the order date or call-off date for a period of two months. They also apply as non-binding advance order arrangements.

### IV. Prices

1. Agreed prices are fixed prices and apply until the order processing is complete. We do not recognise subsequent rises – even with reference to list prices. If the contractor reduces his prices in general before delivery, then he must base his invoice on the generally requested price on the date of delivery.
2. If the contractor has reserved the right to invoice at the respective daily price, then a price rise must be communicated in good time before the delivery takes place. In this eventuality we are entitled to withdraw from the contract.
3. All prices include freight, packaging and carriage costs.
4. Any price increase or decrease due to design changes for instance is to be notified to us immediately and in principle requires our written confirmation before delivery of the goods.

### V. Payment terms

1. Our payments are made within 14 days with 3% discount or within 30 days net.
2. Payments can be made, at our choice, in cash, bank transfer or by bankers draft. Invoices must be sent in duplicate and must include the date of the order and our order reference.
3. The valid receipt of the invoice is deemed to be the date of the goods-in on the delivery note (goods-in stamp) or the provision of the service.

### VI. Delivery deadlines

1. The delivery deadlines which are stated in our order and confirmed by the contractor must be complied with provided that they do not deviate from our order. A delivery deadline is only deemed as having been complied with when the delivery has been made to us on the specified date, therefore at the start of the week for weekly deadlines and at the start of the day for daily deadlines based on normal business hours.
2. If through no fault of our own, a faster delivery is required (express delivery), the contractor will assume any ensuing additional costs. The deadlines specified in framework or call-off orders are binding from the order date or call-off date for a period of two months. In addition, the delivery schedules apply as advance order arrangements.
3. The contractor has to notify us immediately, along with the anticipated delay period, if he is unable to comply with the agreed delivery schedules. If a delivery date is not complied with, even if this is not due to the fault of the contractor, we are entitled to withdraw from this contract.

#### TSUBAKI KABELSCHLEPP GmbH

TSUBAKI KABELSCHLEPP GmbH  
Daimlerstraße 2  
D-57482 Wenden-Gerlingen  
Postfach 12 63  
D-57474 Wenden

Fon: +49 (0)2762 4003-0  
Fax: +49 (0)2762 4003-220  
info@kabelschlepp.de  
kabelschlepp.de

Management:  
Kevin Powers  
Amtsgericht Siegen, HRB 1171  
Ust.-Id.-Nr.: DE 126565798

The Bank of Tokyo-Mitsubishi UFJ, Ltd., BLZ 300 107 00, Konto-Nr. 220 742, IBAN: DE79 3001 0700 0000 2207 42, BIC: BOTKDE33  
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4. If the contractor falls into default and this leads to damages being incurred by us, we are entitled to demand a fixed default compensation fee. This amounts to 0.5% for each full week of delay, but in total a maximum of 5% of the value of that part of the total delivery, which due to the delay cannot be used promptly or cannot be used in accordance with the contract.
5. The contractor may only invoke force majeure if he has notified us at the latest three days after the occurrence of such an event together with the details of the delay. If it becomes impossible or significantly more difficult for us to meet our contractual obligations due to force majeure, industrial disputes or any other operational disruptions at the contractor, we may withdraw from the contract in full or in part or demand the delivery at a later deadline, without the contractor having any entitlement to lodging claims against us as a result.

### **VII. Delivery instructions**

1. Items over and above 25 kg are to be delivered without extra charge on lattice boxes or euro pallets which are exchanged immediately at goods-in.
2. If we provide the contractor with packaging, then this must be used. Otherwise the contractor selects the most cost-effective packaging with cardboard packaging and non-returnable packaging being avoided as much as possible. Packaging materials can be returned by us.
3. Goods or delivery notes and consignment notes on which our order numbers, contract numbers, ID numbers or drawing numbers, unloading point and storage location are not specified or not specified in full, do not have to be accepted. If they are accepted, the contractor assumes a fixed administration fee of €20.00. The delivery note is to be attached to the shipment on the outside so that it is clearly visible.
4. If the contractor commissions freight companies other than those prescribed by us, we reject any assumption of any costs so incurred. Unless otherwise expressly agreed, all deliveries are to be shipped to us uninsured. We forego forwarding and cartage cover insurance.
5. Forwarding invoices, even for small fees, are not paid in cash. We do not assume any processing fees for cashless payments. Should the freight forwarder of the contractor not be in agreement with this, we can refuse acceptance of the goods.

### **VIII. Transfer of risk, place of fulfilment**

1. Risk is only transferred to us after the confirmed handover by the freight driver of the contractor at the agreed delivery address.
2. Every received shipment receives a goods-in stamp. The place of fulfilment is the agreed delivery address.

### **IX. Guarantees and purchasers' rights**

1. The contractor guarantees that the delivered goods correspond to German Industrial Standards (DIN), if the order delivered is in accordance with German Industrial Standards. With a purchase based on a pattern or sample, the features of the sample pattern are to be considered as guaranteed.
2. Defect notices apply as having been raised in due time if visible defects are notified to the contractor within 14 days after use of the goods and concealed defects immediately upon their discovery. We are only under the obligation to carry out spot checks. 3. The statute of limitations for defect claims is 24 months. If the goods have been purchased by us for resale or for use in the manufacture of machines or products, then the statute of limitations begins with the start time of the statute of limitations for our goods equipped with the goods, at the latest however 6 months after delivery of the goods to us.
4. The statute of limitations for defect claims starts with the receipt of the declaration of the contractor that he rejects the defect claims.
5. Furthermore, the statutory rights of the purchaser apply in the event of defects.

### **X. Accident prevention**

1. The contractor assumes full responsibility for ensuring that all official safety regulations, in particular accident prevention regulations as specified by professional associations and the special provisions specified by factories adopted to protect operations are observed, provided that the latter have been made known to him through general or specific notifications. Individuals who carry out work in our factory in fulfilment of the delivery contract, are subject to the provisions of company regulations. The existing regulations for accessing premises are to be complied with. We are only liable for accidents which occur to these individuals in the event of proven gross negligence.

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2. If the contractor uses input materials, fillers or similar products which are under our ownership, in particular if they are used for further processing, the contractor assumes the obligation to ensure adequate customary insurance against damages by third parties or by the contractor. The contractor is liable to us, if no adequate insurance cover exists, and commits to exempt us immediately on request from all claims of third parties.

### **XI. Industrial property rights**

1. The contractor guarantees that any patents, property rights or other third-party rights are not infringed through the delivery and the use of the goods. If the use of the delivery item leads to the infringement of industrial property rights or copyrights, the supplier shall, at its own expense, make available to us the right of further use or shall modify the delivery item in a reasonable way in such a manner that the property right infringement no longer exists. If this is not possible at commercially reasonable conditions or in reasonable period, then we are entitled to withdraw from the contract. In the event of the aforementioned preconditions, the contractor also has the right to withdraw from the contract. In addition, the contractor will exempt us from any uncontested or legally determined claims of the relevant property rights holders.
2. All drawings and other documentation which we have made available for use by the contractor or where he is manufacturing according to our specifications, must not be used by him for purposes other than for the performance of the order, nor must they be duplicated or made accessible to third parties. These are all to be returned to us, unsolicited, together with all duplicate copies, immediately after the performance of the order. If no delivery is made then as soon as the contractor becomes aware of this, he must also return all documentation.
3. The contractor may not exploit or disclose to third parties any operational or business secrets entrusted to him or that he has become aware of in any other way during the negotiation or execution of the order.

### **XII. Product liability**

1. If we are subject to a claim due to the infringement of official safety regulations or due to domestic or foreign product liability regulations due to a defect in our products, which is attributable to a good belonging to the contractor, we are entitled to demand compensation for this damage from the contractor to the extent that the damage is caused by the products delivered by him. This also applies to the costs of a precautionary exchange or recall action.
2. The contractor shall commit himself, and at his own expense, to conclude a general operational and product liability insurance with worldwide applicability with a minimum cover amount of €5 million for personal injury and property damage and €100,000.00 for financial losses. An insurance confirmation is to be sent to us on request.
3. Unless otherwise agreed, the contractor is under the obligation to label his delivery items in such a way so that they are permanently recognisable as his products.
4. The contractor will implement a state-of-the-art quality assurance procedure that is appropriate in its type and scope and shall provide evidence of this upon request. If we consider it to be required, the contractor shall conclude an appropriate quality assurance agreement with us.

### **XIII. Substances in production**

The supplier shall guarantee that he adheres to the requirements of the EU Chemicals Regulation REACH (Regulation (EC) No. 1907/2006 from 30.12.2006) in its currently applicable version - henceforth designated as the REACH-Regulation, in particular that the substance registration has been carried out. We are not under the obligation within the scope of the REACH Regulation to obtain an authorisation for the goods delivered by the supplier. The supplier further guarantees not to deliver any products which contain substances in accordance with

- a) Appendices 1 to 9 of the REACH-Regulation in its currently applicable version,
- b) Council Decision 2006/507/EC (Stockholm Convention on persistent organic pollutants its currently applicable version)
- c) EC-Regulation 1005/2009 on ozone-depleting substances in its currently applicable version,
- d) The Global Automotive Declarable Substance List (GADSL) in its currently applicable version (at [www.gadsl.org](http://www.gadsl.org))
- e) RoHS (2002/95/EC) for products according to their area of

application.

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Should the delivered goods contain substances which are listed on the "Candidate List of Substances of very High Concern" ("SVHC-List") according to REACH, the supplier is under the obligation to notify this immediately. This also applies, if for ongoing deliveries, substances not listed to date are now incorporated onto the list. The currently applicable list can be viewed on the Internet. In addition, products must not contain any asbestos, biocides or radioactive materials. Should these substances be included in the products delivered to us, then this must be notified to us in writing before the delivery by stating the substance and the identification number (e.g. CAS) and a current safety data sheet of the product to be delivered. The delivery of these products requires a separate approval by us. The supplier is under the obligation to exempt us from any liability in connection with the non-compliance with the aforementioned regulations by the suppliers or to compensate us for any damages which arise for us from the non-compliance with the regulations by the supplier or which are connected with it.

#### **XIV. Miscellaneous**

1. If the contractor applies for insolvency proceedings, we are entitled to withdraw from the contract. We reserve the right to demand compensation instead of withdrawal.
2. We are entitled to process any data obtained about the contractor in relation to the business relationships and in connection with these, irrespective of whether these originate from the contractor himself or from third-parties, as defined by the Federal German Data Protection Act. Neither the orders awarded to the contractor nor our name may be used for promotional purposes.
3. Legal domicile is Siegen. The place of fulfilment is Wenden-Gerlingen, unless another receipt centre is specified by us. Our contractual conditions are subject to the substantive law of the Federal Republic of Germany. The regulations of the UN purchasing law (CISG) are excluded.

**Wenden, 20.02.2013**

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