

# - General Terms of Purchase, Flaig und Hommel GmbH -

## 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.

## 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

1. Supply agreements (orders and acceptances) and supply requisitions, together with amendments and additions thereto, have to be made in writing. Orders, call-offs as well as their modifications, amendments and additions may - after prior written agreement - also be made by remote data transmission or by machine-readable media. Our order(s) must be accepted with in 2 weeks of receipt through a written order acknowledgement, stating a binding supply period and price. Supply calls will be binding if not protested within 2 weeks 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.

5. The assignment of contracts to third parties is not permissible without our consent and entitles us to rescind the contract or claim damages.

## IV. Supply Dates, Deadlines, Delay

1. Supply dates and periods in orders and call-offs are binding. The criterion for observance of dates and periods is the receipt of deliveries at our works. Partial deliveries are only permissible by agreement with us. If the Supplier encounters difficulties preventing the punctual supply of the goods in 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 in cases where the failure to perform on the part of the Supplier may be expected. In the event of rescission of the contract, partial supplies may be held back against a credit note. We hold the right to terminate the contract in cases of the Supplier's repeated or on-going missing of deadlines. In cases where the Supplier exceeds agreed deadlines through no fault of his own, we hold an extraordinary right of termination in events where the delay is substantial and where the urgency of the supply requires this action due to a deadline of our own.

2. In an event where 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 reasonably extended and there shall be deemed no default of acceptance. Damages claims based on culpable delayed acceptance shall always be limited to a maximum of 50% of the value of the consignment of which acceptance was delayed.

3. Where the Supplier is in default and a reminder has been issued, we hold the

right to demand payment of a contractual penalty amounting to 500% of the net order value and/or the delivery/service and/or the withdrawal from the contract. The contractual penalty paid will be credited to any damages claim. The right to demand payment of an agreed contract penalty will not be forfeited by the fact that the right to demand a contract penalty was not expressly reserved when the late delivery was accepted, provided it is claimed before final payment is made. We reserve the right to claim higher damages.

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

## V. Shipping, Transport, Transfer of Risk, Proof of Origin

1. Delivery will always be made "free to buyer's address". For any shipment the provisions of our general shipping terms shall apply. The supplier is required to meticulously quote our order number on all shipping documents and delivery notes. All delivered goods must be accompanied by the usual standard commercial documentation enabling the exact assignment and processing of the shipment at our premises. This particularly refers to delivery notes with the declaration of our order number, our product reference, quantity and type. In the case of import-deliveries, the shipment must be accompanied by the following relevant shipping documents - depending on shipping method and supplier country: Movement certificates (i.e. EUR 1, EUR 2), express parcel consignment notes (labelled T 1 or T 2, where required), consignment notes (labelled T 1 or T 2, where required), customs dispatch certificates (i.e. T 1 or T 2), certificate of origin and invoice. Any delays, additional costs and damages resulting from non-compliance with our shipping instructions will be the responsibility of the supplier. The supplier is required to use the packaging specified by us and to ensure, that the packaging protects the goods from damage. Where no specific packing requirements have been stated, goods are required to be packaged according to commercial standards. The goods to be delivered have to be packaged with our original packaging or any other specific packaging to our requirements on request. The supplier shall be liable for any losses and damages that occur during carriage, including unloading, up to acceptance at our premises. The supplier is therefore required to take out sufficient transport insurance for any shipment at his own cost. In exceptional cases, where transport costs are born by us, the cheapest shipping method, taking into account the safety of the consignment, shall be chosen.

2. The risk shall not transfer to us until delivery at the receiving location or once setting up and acceptance at our works has been completed. Goods are to be kept on behalf of us free of charge and at the Supplier's risk until dispatch.

3. Insofar as the goods manufactured by the Supplier on our behalf are required for export, the supplier is obliged, to make a written declaration concerning the customs origin of the delivery items. This declaration is to be forwarded to us with the first delivery at the latest.

4. The origin of newly included delivery items or a change of origin is to be declared immediately and without solicitation. The supplier shall be liable for all the losses sustained by Flaig und Hommel GmbH due to the incorrect or late submission of the declaration of origin. Where required, the Supplier is obliged to provide evidence of their declaration of origin of the goods by means of an information sheet confirmed by their customs office.

## VI. Price, Payment

1. The price quoted on the order is deemed to be the maximum price. It may be lowered but never increased.

Packaging is included in the price. In exceptional cases where a different agreement has been made, packaging shall be charged at cost price. In the event of a return of goods, a minimum of two-thirds of the amount charged is to be credited.

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

3. Invoices are to be issued separately for each purchase order. Due to the regularity of the invoicing we refer to our respectively applicable shipping instructions. Any payment shall be made once the entire and free of defects delivery has been received or the impeccable service has been provided and upon receipt of the invoice. When partial deliveries have been agreed this will apply accordingly. Delays resulting from incorrect or incomplete invoices do not adversely affect discount periods. In case of discount, payment shall be made according to the discount agreement but at least up to 14 days minus 3% discount and up to 30 days net. In the exceptional event that down payments have been agreed, they may only be made via bank guarantee and according to our terms. Definitive for this time limit shall be the date of delivery or subsequent billing. We shall not be deemed to be in default of payment in cases of simple negligence. In addition, any compensation claims will be limited to the damages typically incurred as a result.

4. The assignment of claims against us is fundamentally excluded. Claims by the supplier against us may only be ceded to third parties with our consent. Payments shall be made only to the Supplier

5. We shall be entitled to the full range of set-off and retention rights stipulated by law.

## VII. Invoicing, Documentation, Labelling

1. One copy of invoices, delivery notes and packing slips is to be included in all deliveries. Each invoice should refer to exactly one delivery note; free deliveries are also to be indicated with an invoice. The invoices must contain the following details: Our purchase order number, our part number, description of delivery or

service, delivery number, dispatch date, quantity, measuring unit, value of goods (price per unit and in total), free deliveries or services are to be labelled 'free of charge', pricing unit, currency unit, packaging costs (per unit of the goods), number of packages, weight (gross/net), shipping address/unloading location, percentage sales tax and in case of partial consignments the remaining quantities and articles still to be delivered.

2. In the case of freight deliveries, a separate dispatch-advice is to be submitted to us on the day of dispatch.

3. The Supplier shall label all deliverables in the manner prescribed by us or as previously agreed. Articles, which are marked with one of our registered trademarks or an equivalent feature or which are packed in our original packaging may only be delivered exclusively to us or to a third party designated by Flaig und Hommel GmbH. In cases where such marked goods are rejected as faulty, it is the Supplier's responsibility to render them unusable at his own cost. In the event of the breach of one of the aforementioned obligations, the Flaig und Hommel GmbH shall be entitled to withdraw from the contract or demand the surrender of that, which has been acquired from the breach or reimbursement of the damage incurred by us.

4. The Supplier shall provide details of the composition of the delivery items upon request wherever this is deemed necessary in order to comply with national and international regulatory requirements.

5. Where initial or type samples have been requested, the Supplier may not commence serial production of the delivery items until he has received our relevant approval in writing.

### **VIII. Quality and Quality Management**

For the deliveries, the Supplier is bound to the generally accepted rules for procedures and the agreed (technical) specifications, in particular quality regulations as well as relevant protection laws and other safety regulations. The Supplier is obliged to maintain a quality management system based on the international standard DIN ISO 9000 ff with the obligation of achieving a zero-fault target and ensuring the continued improvement of his performance. It is the Supplier's responsibility to ensure that his suppliers maintain a comparable quality management system, so that the fault-free nature of his purchased and/or externally processed parts may be guaranteed. Any details are to be specified by the parties in individually written quality agreements.

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

The Supplier shall supply the goods without any material defects. Statutory regulations shall apply where nothing to the contrary is agreed below. The Supplier is liable for any defects resulting from quality defects and any damages resulting therefrom. We are entitled to demand rectification from the Supplier, to withdraw from the contract or to reduce the purchase price. We may claim damages or compensation for futile expenditures in compliance with statutory regulations. Within the framework of rectification we are entitled to demand either remedial action or the delivery of fault-free items from the Supplier. All expenses incurred during remedial action, the replacement of goods or the elimination of damages – in particular costs for transport, travel, labour and material are the responsibility of the Supplier.

We shall be entitled to withdraw from the contract and to claim for damages instead of performance, should the supplier fail to eliminate the defect or to arrange for a replacement delivery within a reasonable time to be determined by us or should the remedial action prove to be impossible or end in failure. In urgent cases or in case of risk of delay, we are authorised to perform subsequent improvements ourselves at the Supplier's expense or to have remedial actions performed by third parties. If the same goods are repeatedly supplied in a defective state, we are entitled to cancel the agreement for the remaining scope of the delivery in writing following a further defective delivery.

2. Where no provisions have been specified in quality management agreements, the consignment will be checked for obvious faults, damages from transit and identity of the goods by ourselves or the recipient within a reasonable period relative to regular business operations. A notice of defects is deemed to have been made in due time if received by the Supplier within a period of 10 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. In this case the Supplier waives the objection of delayed complaint. In case of transitory transactions, the decisive factor is the customer's complaint. In the event of complaints, we reserve the right to charge any costs incurred in association with the notification of defects to the Supplier. The Supplier will bear the costs and risk of returning the defective items supplied.

3. For any products manufactured or supplied by the Supplier or any contracts performed by the Supplier, our defect claims are subject to a time limitation of 36 months after shipping any Flaig und Hommel products made with said items provided to us by the Supplier - or no later than 5 years after delivery of said items 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 case of defects in title, the supplier shall additionally indemnify us against any third-party claims.

5. For any part of the shipment restored or repaired within the statute of limitation for defect claims, the statute of limitation shall re-commence at the time when the Supplier has fully complied with our claims for post-fulfilment.

6. In the event when we take back any products manufactured and/or sold by us as a result of the deficiencies of contract merchandise provided by Supplier, or if our sales price was reduced because of said deficiencies, or other claims have been raised against us because of said deficiencies, we shall reserve the right to recourse

against Supplier. In such cases an otherwise required notice is not needed to assert our warranty claims.

7. We are entitled to demand compensation from the Supplier for all expenses incurred from our clients due to the delivery of deficient products. This includes compensation for the expenditure necessary for the purpose of rectification, especially transport, travel, work and material costs.

8. Irrespective of the provisions under point 4, prescription in the case of point 6 and 7 will take effect at the earliest 2 months after the time when we have performed the claims directed against us by our customer, but at the latest 5 years after delivery by the supplier.

9. If a material defect becomes apparent within 6 months of the passing of risk, then it shall be assumed that the defect already existed at the time of the passing of risk, unless this assumption cannot be reconciled with the nature of the material or the defect.

### **X. Product Liability/Insurance Cover**

The supplier agrees that we shall be exempt from all liabilities resulting from defects in goods, as well as any consequential damage resulting from this, that occur at our place or third parties, to the extent as the cause originated in his domain or organisation. The Supplier agrees with his business liability insurer that this time limitation is to be included in his business liability insurance. The Supplier shall release us from claims from third parties in respect of responsibility for product damage, to the extent that the cause resides in his area of control and organisation. He is obliged to reimburse expenses for any recall action carried out in order to avoid personal injury and which has become necessary on account of the product defects caused by the supplier. The supplier is obliged to maintain company and product liability insurance with a cover of at least 2 million Euros as a lump sum for personal injury and material damage as well as a recall insurance for automotive parts and non-automotive parts with a cover of at least 3 million Euros. Notwithstanding section 4 subsection 1 clause 3 terms and conditions, cover shall also apply to damages occurring abroad. The supplier shall notify Flaig und Hommel of exclusions in respect of cover for the USA/Canada. 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 08/2002 (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, production of rejects by machines under No. 4.5 ProdHV and inspection and sorting 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 Euros. On request, the Supplier shall provide Flaig und Hommel with an appropriate certificate of insurance.

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

1. The Supplier accepts responsibility for the fact that the delivered item and its packaging comply with the provisions that exist for the operation or use of such items, irrespective of whether these provisions are based on European law, statute, official regulations or commercial customs. He shall indemnify us against any claims under public or private law resulting from infringements of these regulations. The supplier warrants that no rights of third parties are infringed in conjunction with the supply of the contracted item. The supplier shall be liable for claims concerning violation of patents and patent applications (intellectual property rights) resulting from contractual use of the supplied products, if at least one of the family of intellectual property rights is published in the home country of the supplier, by the European Patents Office or in one of the following states: Federal Republic of Germany, France, United Kingdom, Austria or the USA.

2. Where a third party makes a claim against Flaig und Hommel on this account, the supplier is obliged to indemnify us against such claims upon first request. Where property rights of third parties are applied in compliance with licensing contracts made by the supplier, the latter must ensure that use of the supplied products is permitted in all countries in which such property rights apply. Flaig und Hommel holds a right of free joint use of all industrial property rights applying to the supplied products. The supplier's duty of indemnification relates to all expenses, which accrue to Flaig und Hommel as a result of or in connection with the third party claim. Upon request, the Supplier shall provide information about all industrial property rights and applications of such rights used in connection with the deliverable or already delivered goods.

### **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 and Retention of Ownership**

1. If the order includes the payment of tool or model costs, it is agreed that tools

and models will be our property. Models, dies, templates, specimens, tools and other means of production as well as confidential data either placed at the Supplier's disposal by Flaig und Hommel or paid for in full by Flaig und Hommel may be used for deliveries to third parties only with the prior written consent of Flaig und Hommel. Manufacturing equipment provided to the Supplier or produced according to our specifications may not be copied or sold, transferred by way of security, pledged or otherwise passed on or used in any way for third parties without our expressed written consent. The same shall apply for the goods produced using this equipment. The Supplier is obliged to use such equipment exclusively for the production of our orders. Furthermore, our special terms and conditions shall apply to the manufacture, maintenance and upkeep, use and storage of the manufacturing equipment.

2. The Supplier is obliged to insure all equipment belonging to us at replacement value against fire, water and storm damages, against vandalism and theft at his own cost. At the same time, the Supplier already now assigns all claims for compensation from this insurance to us; we hereby accept such assignment. The Supplier is under obligation to perform any necessary service and inspection work on our tools, as well as all repair and maintenance work on the same, in good time and at his own cost.

3. Where we provide the Supplier with parts or other materials, we reserve the ownership of them. Contractually agreed incorporation or alteration by the Supplier is performed on our behalf. In the event our product is processed, combined or mixed with other products not belonging to us, then we acquire the co-ownership on the new product in the ratio of the value of our products to the other processed products at the time of processing, combining or mixing. Where processing, combining or mixing is carried out in a way that the Supplier's product is to be considered the main part, it shall be deemed agreed that he transfers the proportionate co-ownership to us. This rule shall also apply if we refuse acceptance due to late or defective delivery, or if we have to refrain from further orders. In such cases the provided articles shall be made available to us free of charge. Any set-off is excluded.

4. In as far as our entitlement of these rights to security according to subsection 3 exceeds the unpaid purchase price of all our conditional goods by more than 20 %, we shall release part of our rights to security at the request of the supplier.

5. We will not recognise any expansion or extension of reservation of ownership going beyond the supplier's simple reservation of ownership of the supplier's unprocessed product stored with us, in particular after processing, combination or mixing with other goods and after sale of the Supplier's product.

#### **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. Reproduction is only permitted within the framework of operational requirements and the copyright stipulations. Any disclosure to third parties may only be made subject to our written consent. It is the Supplier's responsibility to guarantee that his sub-suppliers are committed accordingly. The contracting parties may only use their business connection for advertising purposes with our prior written consent.

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

1. The place of jurisdiction is our registered place of business in Aldingen. We may also sue the Supplier before the court that is competent for the latter's registered office. The place of performance is our place of business, unless otherwise stipulated in the order.

2. All legal issues arising between the buyer - including when the buyer's registered office is located abroad - and the Seller shall solely be governed by the laws of the Federal Republic of Germany to the exclusion of any conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

3. If any stipulations are invalid this shall not affect the remaining validity of the contract. The invalid provision shall be reinterpreted or supplemented so that the intended economic purpose is achieved.

4. The German version of these General Terms of Purchase is legally binding.