

Terms and Conditions of Purchase CHIRON Werke GmbH & Co. KG, Tuttlingen

§ 1 General - Scope of Application

- Our Terms and Conditions of Purchase apply exclusively; we will not accept conflicting terms or terms of the supplier which differ from our Terms and Conditions of Purchase unless we have given our express written consent thereto. Our Terms and Conditions of Purchase apply even if we accept delivery from the supplier without reservation, knowing that the supplier's terms and conditions differ from or conflict with our own.
- Any correspondence is to be conducted with the purchasing department placing the order. We will not treat agreements made with employees – other than authorized signatories (*Prokuristen*) – from other departments as binding unless they have been expressly confirmed in writing by the purchasing department placing the order or by our management.
- Our Terms and Conditions of Purchase shall only be applicable vis-à-vis entrepreneurs.

§ 2 Quotation – Quotation Documentation– Acceptance of Order

- Quotations shall be made free of charge. We can accept a quotation within 14 days.
- Where a confirmation of order is necessary, the supplier must accept our order within 4 working days of receipt by returning the order to us with the company stamp and signed in a legally binding manner.

§ 3 Prices – Terms of Payment

- The price stated in the order is a fixed price. Unless otherwise agreed, the price shall include free delivery (DDP Incoterms 2010) and proper packaging. The supplier shall take back packaging material, including transport packaging at the place of delivery, at its own cost within usual working hours. In all other respects, its obligation to take back packaging material shall be as provided for by statute.
- The supplier shall bear any customs duties, taxes, levies and import costs arising in connection with the order.
- Prices quoted are subject to value added tax at the applicable statutory rate.
- We can process invoices only if – as specified in our order – they indicate the order number. The supplier is liable for any consequences of failing to fulfil this obligation unless it proves it is not responsible for such consequences.
- Unless otherwise agreed in writing, our payment will be made within 14 days of receiving the consignment and invoice, with 3% discount, or net within 30 days of receipt of the consignment and invoice.
- The supplier may not assign its claims against us or allow them to be enforced by third parties without our express written consent.
- We are entitled to rights of set-off and retention to the extent provided for by statute. In particular, we have the right to withhold due payments as long as we have claims against the supplier from orders which have not yet been executed in full or which are defective. We also have the right to offset with claims of Scherer Feinbau GmbH and STAMA Maschinenfabrik GmbH.
- In the event of delays in delivery or performance, the agreed dates for payment shall be postponed accordingly. We have the right to charge interest for the duration of the delay on any advance payments which we have made of nine percentage points above the respective base interest rate unless the supplier is not responsible for the delay.

§ 4 Delivery

- The delivery time stated in the order is binding.
- The supplier shall notify us in writing without undue delay if circumstances occur or become apparent which mean that the agreed delivery time cannot be met. Such notification does not have the effect of extending the agreed delivery time.
- In the event of default, we may demand that the supplier render compensation for the loss caused by the delay in addition to supply. We also have the right to demand that the supplier pays a contractual penalty of 1.0% for each full or partial calendar week of default, but no more than 5% of the total contract value of the consignment. We expressly reserve the right to assert claims for further losses.
- Early deliveries, part-deliveries and over-deliveries, may only be made subject to our written consent. Where goods are not as ordered and where such differences have not been agreed beforehand, we reserve the right to return the goods at the supplier's expense
- Where goods are not supplied as agreed, we will make a charge of at least EUR 50.00 per item ordered, unless the supplier can prove that no costs were incurred or that any costs incurred were substantially lower than the charge.

§ 5 Force Majeure – Disruption and Defects

Force majeure, industrial action, disruptions to operation for which supplier bears no fault, civil unrest, official measures, economic conditions in the sales market and other occurrences beyond control release the contractual partner from its duties to perform for the duration of its existence. If such force majeure persists for more than two weeks or if the contracting parties agree after one week that the occurrences will persist for more than two weeks, they are entitled to withdraw from the contract in whole or in part. We are also entitled to withdraw if our requirements have fallen substantially because we were compelled to purchase from an alternative source. This also applies to framework, quantity and value contracts

§ 6 Passage of Risk – Documents

- Unless otherwise agreed in writing, delivery shall be delivered free (DDP Incoterms 2010) and in accordance with section § 3.1.
- The supplier shall be obliged to state our exact order number on all dispatch papers and delivery notes, otherwise we shall not be liable for any resultant processing delays.

§ 7 Examination for Defects – Liability for Defects

- We will inspect the goods within a reasonable period and in the framework of the course of business to check whether the goods and the quantity match our order and whether there is any obvious transport damage. We will carry out a random check for other defects. Reports of such defects will be deemed to have been made in a timely manner, if they are made within 14 days of the goods being received. Any other defects will be deemed to have been made in a timely manner, if they are reported within seven working days of discovery.
- Where the goods are delivered directly to our customer (drop shipments), the above period shall be 14 instead of 7 working days.
- We are entitled to our full statutory rights; in any event, we are entitled to demand, at our discretion, that the supplier remedies the defect or supplies a new replacement item. Any costs arising from remedying the defect shall be borne by the supplier; this also includes removal/refitting costs.
- Where we have set a reasonable deadline for the defect to be remedied and if the defect has still not been remedied when the deadline expires, we are entitled to remedy the defect ourselves and demand compensation for necessary expenses, unless the supplier has justifiably refused subsequent performance. This shall apply accordingly, if the supplier's attempt to remedy the defect has failed.
- In all other respects, the statutory provisions shall apply.
- The limitation period shall be 36 months calculated from the passage of risk. This does not apply if the law provides for longer periods. The warranty period does not begin to run, until we or our customer are in possession of the full documentation (e.g. product description, instruction manual). Any Notification of the defect causes the limitation period to be suspended. The new start of the statute of limitation remains unaffected thereby. Likewise, there is no effect on the statutory limitation periods which supply to supplier's recourse (§§ 478, 479 German Civil Code).
- Our payment does not mean that we acknowledge that the goods delivered comply with the contract or that they are free of defects.
- Our approval of technical documentation and/or calculations carried out by the supplier do not affect the supplier's liability for defects.

§ 8 Product Liability

- If the goods supplied by the supplier cause injury or death to a third party or damage to a third party's property, the supplier shall be obliged to indemnify us at first request from all third-party compensation claims, including any consequential damages, or to give us compensation for all damages, including any consequential damages, to the extent that the damage was attributable to a defect within the meaning of the German Products Liability Act (*Produkthaftungsgesetz*) in the goods supplied by the supplier or that the loss is attributable to a breach of duty on the part of the supplier, unless the breach of duty does not lie within the supplier's responsibility. The supplier bears the burden of proof in this respect to the extent that the cause of the damage lies within its area of responsibility.
- In the cases described in 1., the supplier shall bear all costs and expenditure, including the costs of any legal action.
- In all other respects, statutory provisions shall apply.
- We shall notify the supplier ahead of any recall action, which is attributable in full or in part to a defect in the goods supplied by the supplier. The supplier shall provide us with appropriate support in connection with the recall. We will liaise with the supplier in order to ensure that the recall is carried out effectively, unless the need to act with a particular speed makes it impossible to notify or involve the supplier. Where a product recall is attributable to a defect in the goods supplied by the supplier, the supplier shall bear the costs of such product recall.
- The supplier shall take out product liability insurance with a cover of at least five million Euros per loss occurrence – regardless of the type of damage and maintain this throughout the term of the contract and for a period of 10 years thereafter. This shall not affect our right to assert compensation claims over and above this.

§ 9 Industrial Property Rights

- The supplier warrants that no third-party rights are infringed in connection with its supply of goods.
- If rights of third parties are infringed in connection with supply under this contract and if a claim is made against us by a third party on this account, the supplier shall indemnify us against these claims or reimburse us for all the losses, including consequential losses, at first written request, unless it was not aware of the property rights concerned and also could not have been aware of them, even if it had applied the due care of a prudent businessman.
- The supplier's duty to indemnify relates to any expenses arising of necessity for us from or in connection with the third-party claim.
- The limitation period is three years from supply.

§ 10 Reservation of Title – Confidentiality

- The parts, which we provide, or tooling and/or models, which belong to us, and any illustrations, drawings, calculations and other documents remain our property. They may only be used for their designated purposes in performance of the contract and must be returned to us when the contract comes to an end.

2. If any goods, which we own are processed or modified (e.g. assembled parts), this shall be deemed to have been carried out for us. If the supplier acquires sole title in the new item created by such processing or modification using our parts, the supplier shall be deemed to have agreed that the purchaser will transfer title therein to us in the ratio of the value of goods, which we own to the value of the processing and the transfer or the modification. We hereby accept this transfer / transfer of title. The supplier shall hold goods thus created in which we have sole or co-title for us free of charge.
3. If the supplier combines or mixes any parts in which we have title with other items, to form a new single item in such a way that one of the new items must be regarded as the principal item, we shall have pro rata (co-)title in the new item thus created, such (co-)title being the ratio of the value of the goods (co-)owned by us to the value of the combined or mixed items at the time of such combining or mixing, and the supplier shall transfer title and possession therein to us here and now. We hereby accept this transfer / transfer of title. The supplier shall hold the item created by combination or mixing for us free of charge.
4. If any parts or tools and/or models, which we have provided, are seized or otherwise subject to other interventions by third parties, the supplier shall notify us in writing without undue delay so that we can initiate legal proceedings pursuant to § 771 Code of Civil Procedure (*Zivilprozessordnung*) in order to prevent the execution of a court order. Where the third party is not able to reimburse us for costs incurred in and out of court in action pursuant to § 771 German Code of Civil Procedure, the supplier shall be liable for our loss.
5. Title in the goods shall be transferred to us unconditionally and without prejudice to payment of the price unless in a specific case we have consented to an offer made by the supplier, which is conditional on payment of the purchase price. In this case, reservation of title lapses at the latest when the purchase price is paid. We also have the right to resell the goods in the proper course of business. We herewith assign any claim we may acquire against our customer from such resale to the supplier. All other forms of reservation of title, particularly extended or prolonged reservation of title, are excluded.
6. The supplier shall keep any illustrations, drawings, calculations and other documents as well as any information which it receives strictly confidential. They may only be disclosed to third parties with our express written consent. They may only be used for manufacturing based on our order and must be returned to us unrequested or – if we request their return – without undue delay after the order has been executed. This confidentiality obligation also continues to apply after this contract has been executed; it lapses if and to the extent that the manufacturing know-how contained in the illustrations, drawings, calculations and other documents provided becomes generally known.

§ 11 Social Responsibility and Environmental Protection

The supplier shall comply with applicable statutory regulations in its dealings with members of staff, environmental protection and safety at the workplace and shall endeavour to reduce any adverse effects that its activities may have on human beings and the environment. For this purpose the supplier shall, as far as possible, establish and evolve a management system in accordance with ISO 14001. The volume of packaging shall be reduced as far as possible. Packaging material must not contain additives, which preclude it from being recycled. Furthermore, the supplier shall observe the basic product principles of the UN Global Compact Initiative. This essentially concerns protection of international human rights, the right to collective pay bargaining, abolition of forced labour and child labour, eliminating discrimination in staff appointments and at the workplace, responsibility for the environment, and preventing corruption. Further information on the UN Global Compact Initiative can be obtained at www.unglobalcompact.org.

§ 12 Executing Work

People who work on our premises in fulfilment of the contract shall observe the terms of current company regulations. We do not accept liability for accidents suffered by such people on factory premises unless they are caused by wilful or grossly negligent breach of duty by our legal representatives or vicarious agents.

§ 13 Jeopardy to Performance

1. If, during the period of the order, the supplier's economic position deteriorates in a manner, which seriously endangers performance of the contract, if the supplier ceases payments (even temporarily) or if an application is filed for insolvency proceedings or judicial or out-of-court composition with creditors, we have the right to withdraw from the portion of the contract, which has not yet been fulfilled. We may cancel completely if part performance is of no interest to us.
2. Where we have a duty to pay in advance, we may also withdraw from the contract if it becomes apparent after the contract has been concluded that our claim is in jeopardy due to the contractor's inability to perform and if we have set the supplier a reasonable period for providing a security.

§ 14 Import and Export Regulations, Customs Duties

1. You must state your VAT identification No. for supplies and services, which originate from an EU Member State other than Germany.
2. Imported goods must be delivered duty-paid. The supplier must provide any statements and information required under Council Regulation (EC) No 1207/2001 at its own cost, consent to examination by the customs authorities and provide any necessary official confirmation.
3. The supplier must inform us of any permits required for (re-)exports pursuant to German, European and US export and customs regulations and export and customs regulations of the country of origin.

§ 15 Technical Documentation

1. Unless otherwise agreed, the supply of Technical Documentation and all required records shall be a constituent part of the main consignment. The technical documentation and the records must comply with the Technical Documentation for Components applicable at the date the contract, which has been published on our website
2. Unless otherwise agreed, the Technical Documentation shall be supplied as follows: A4 and A3 format in digital form as data carrier (e.g. CD Rom). Larger formats and special formats (e.g. large plans) in paper form. Digital data must be supplied in an unprotected form. If the "Adobe PDF" format is used, no data protection measures may be activated which prevent it from being incorporated in our overall documentation. All fonts used must be embedded in the document.
3. Owing to the complexity of the documents, it is possible that defects are not ascertained until the equipment is in operation. For this reason, a defect will be deemed to have been reported in a timely manner if it is reported within fourteen working days of discovery.
4. The Technical Documentation must be prepared in conformity with the current EC Machinery Directive and DIN ISO 62079 and must accord with all generally recognised rules of technology.
5. The fact that the documents provided have been technically integrated into the overall Chiron documentation does not release the supplier from the liability for its documents being complete and correct.

§ 16 Software

1. Software must be provided to us on standard commercial data carriers in machine readable code and together with a user documentation.
2. Software, which is specially developed for us, must also be provided in source coding with manufacturer's documentation. Copies of source coding and manufacturer's documentation must be provided on acceptance and must correspond to the program version at the end of the test phase.
3. For warranty purposes, the supplier must incorporate any modifications to the software into the source coding and the manufacturer's documentation without undue delay and provide us with a copy of the respective updated version without undue delay.

§ 17 Rights of Use

1. Where some or all the supplies or services provided by the supplier are protected by copyright (e.g. software), the supplier shall grant us, to the extent permitted by the German Copyright Act (*Urhebergesetz*), an exclusive, irrevocable right, unlimited in time and territory, to use the goods, especially the right to reproduce, distribute, exhibit, modify and edit as well as the right to grant third-parties a non-transferable right of use.
2. If the supplier has purchased the software from a third party and if its contracts with those third parties preclude it from granting a right of use as set out in the previous paragraph, the supplier shall grant us the rights of use possible under the agreements with the third party, at least however these rights of use, which are necessary for the subject to be used in accordance with these contractual conditions.
3. Supplier shall remain authorised to continue to use standard programs, program components, tools and the know-how introduced by supplier that were used in the development of the performance result, even for third-party orders. The supplier may not reproduce, edit or otherwise use the results of the work and solutions produced for us in whole or in part.
4. The supplier may only publish results of work produced for us – including parts thereof – with our written consent

§ 18 Data Protection

1. The supplier may only process personal data in compliance with statutory provisions.
2. All personal data will be processed in strict observance of the respective statutory provisions.

§ 19 Place of Jurisdiction – Place of Performance – Applicable Law

1. The place of jurisdiction is Rottweil, Germany. We reserve the right to bring action at the supplier's general place of jurisdiction.
2. Unless otherwise stated or implied in the order, the place of performance shall be the place of receipt or, in the alternative, our registered office.
3. The law of the Federal Republic of Germany, excluding the collision rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall apply.
4. The supplier shall comply with all statutory regulations.

§ 20 Miscellaneous

1. If individual provisions of these terms and conditions or of the contract between us and the supplier should be invalid in whole or in part, this shall not affect the validity of the other provisions.
2. The parties shall then agree to a new provision, which reflects as far as possible the economic intent of the invalid provision.
3. We are only released from our duty to deduct tax pursuant to § 48 b (1) Income Tax Act (*Einkommensteuergesetz*) if the supplier provides us with a valid tax exemption certificate (*Freistellungsbescheinigung*) issued in its name for the tax authority, which is competent for the supplier. It is sufficient for the supplier to provide a tax exemption certificate in copy provided that the certificate was not issued in relation to a specific contract.