

# Terms and conditions of Purchase

of Asentec GmbH – Edition January 2007

## § 1 Scope of application

Our Terms and Conditions of Purchase apply exclusively; general business terms and conditions of the supplier conflicting with or deviating from our Terms of Purchase are only recognised insofar as we expressly agreed to them in writing. Acceptance or payment of goods and services from the supplier (hereinafter referred to as Products) does not constitute agreement.

## § 2 Modifications and additions to the Contract

Orders, contracts and order releases as well as modifications and supplements thereto must be placed and made in writing. Orders placed by facsimile or e-mail are valid as well. Oral agreements of any kind – including subsequent modifications and supplements to our Terms and Conditions of Purchase – must be confirmed by us in writing to become effective. The written form requirement is also deemed complied with if communications are sent by remote data transmission or facsimile transmission. Cost estimates are binding and are not to be compensated unless otherwise expressly agreed. We are entitled to cancel the order if the supplier does not accept the order within two weeks of receipt thereof. Order releases within the framework of order and order release planning become binding if the supplier does not object within two working days of receipt thereof.

## § 3 Deliveries

The date of delivery (date of arrival) given in the order shall be binding. The Supplier undertakes to inform us in writing without delay if any circumstances arise or are discernible to him that make it impossible for the agreed delivery date to be met. Punctual compliance with the delivery periods and delivery dates is determined by the date of receipt of the goods by us. Unless "Delivered Duty Unpaid" or "Delivered Duty Paid" is agreed (DDU or DDP Incoterms 2000), the supplier shall make the goods available in good time, taking account of the time for loading and shipment to be agreed with the forwarder. Deliveries deviating from our contracts and orders are only admissible if given our prior written approval. The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims to which we are entitled due to the delayed delivery or service; this applies pending full payment of the amounts owed by us for the delivery or service in question. In the event of late delivery, we shall be entitled to advance all claims provided for by law. In particular we shall be entitled, once an appropriate period has elapsed without avail, to demand compensation in lieu of performance and rescission of the contract.

## § 4 Prices and Terms of Payment

The price given in the order shall be binding; in the case of domestic suppliers, it is exclusive of statutory value-added tax. Unless otherwise agreed, the prices are "Delivered Duty Paid" (DDP Incoterms 2000) including packaging. Value added tax (VAT) is not included. The supplier bears all risks of loss or of damage to the goods until the goods are received by us or by our representative at the location to which the goods are to be delivered in accordance with the contract. Settlement of an invoice does not represent waiver of any claims for defect in respect of the goods supplied, and shall be without prejudice to any such later claim. Unless otherwise agreed, we settle invoices with 3% discount within 14 days, calculated from the date of delivery and receipt of the invoice, or net within 30 days after receipt of the invoice.

## § 5 Claims or defect

The supplier warrants that the goods supplied fulfil the specifications agreed in the order, are manufactured from the agreed material, are free of material, manufacturing and/or design defects in accordance with the latest state of technology and of any defects that render the goods unsuitable or less suitable for their normal or contractually agreed use or render the goods supplied worthless or reduce their value, and that the goods comply with all the statutory provisions applicable in Germany. Acceptance is effected subject to the reservation of an examination for faultlessness, in particular also including accuracy and completeness, insofar and as soon as this is pertinent in the ordinary course of business. We will give notice of any defects found immediately after their discovery. To this extent the supplier waives the objection to delayed notification of defects. The provisions of statute relating to defects as to quality and defects of title apply except insofar as otherwise provided herein below. In principle we have the right to select the type of supplementary performance. The supplier may refuse the type of supplementary performance we selected if it is only possible at disproportionate expense. In the event that the supplier does not commence rectifying the defect immediately after our request to remedy it, in urgent cases, especially to ward off acute danger or to prevent greater damage, we are entitled to undertake such rectification ourselves or to have it undertaken by a third party at the expense of the supplier. In case of defects of title, the supplier shall also hold us harmless from any third party claims possibly existing, unless the supplier is not accountable for the defect of title. The limitation period for claims based on defects is 3 years – except in cases of fraudulent misrepresentation – unless the thing has been used in a building construction in accordance with its customary use and caused the defectiveness thereof. The limitation period commences when the Product is delivered (passing of risk). If the supplier performs its obligation to effect supplementary performance by supplying a substitute product, the statute of limitations of the goods delivered in substitution shall start to run anew after delivery thereof unless, when effecting the supplementary performance, the supplier explicitly and appropriately made the reservation that the substitute delivery was effected purely as good will, to avoid disputes or in the interests of continuation of the delivery relationship. Should we incur expenses as a result of the defective delivery of the product, in particular transport, carriage, labour costs, costs of material or costs of incoming goods control exceeding the normal scope of the control, such costs shall be borne by the supplier.

#### **§ 6 Product liability**

Where the supplier bears responsibility for any loss or damage arising in relation to a product, he shall be obliged to indemnify us at first request against any claims for compensation raised by third parties, to extend that the cause lies within his area of control and organisation and he himself is liable in the external relationship. Insofar as the cause of the damage falls within the area of responsibility of the supplier, the supplier shall have the burden of proof to that extent. The supplier assumes all costs and expenses, including the costs of any legal action. The costs of the recall action shall be borne by the supplier insofar as a recall action is due to a defect in a Product supplied by the supplier.

#### **§ 7 Models, drawings, moulds, provided parts etc.**

The supplier shall keep confidential with respect to third parties all business and technical information made available by us (including features which may be derived from objects, documents or software provided and any other knowledge or experience) as long and to the extent that it is not proven public knowledge, and it may only be made available to those persons in the supplier's business facility who necessarily need to be involved in the use thereof for the purpose of delivery to us and who are also committed to confidentiality; the information remains our exclusive property. Without our prior written consent, such information must not be duplicated or exploited commercially – except for deliveries to us. Products manufactured on the basis of documentation drafted by us such as drawings, models and the like, or based on our confidential information, or manufactured with our tools or with tools modelled on our tools, may neither be used by the supplier itself nor offered or supplied to third parties. This also applies analogously to our print orders.

#### **§ 8 Place of performance and jurisdiction, applicable law**

The exclusive place of jurisdiction for any disputes arising out of or in connection with this contractual relationship shall be our place of business. Notwithstanding this provision on place of jurisdiction, we shall also be entitled to initiate legal action against the Supplier before any other court that has jurisdiction under applicable law. Except where otherwise stated in the order, place of performance shall be our place of business. The contractual relationships shall be governed exclusively by German law excluding the conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).

#### **§ 9 Miscellaneous**

If one of the provisions of these Terms and Conditions and of additional agreements reached should be or become ineffective, this shall not affect the validity of the Terms and Conditions in other respects. The English version of these Terms and Conditions of Purchase shall be for convenience purposes only. In case of any inconsistencies the German version shall prevail.

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