

# Terms and Conditions of Purchase

of WORK Microwave GmbH  
dated 01 December 2011

## 1. General

- a) Our Terms and Conditions of Purchase apply exclusively; we do not acknowledge any terms of the Supplier that conflict with or deviate from our Terms and Conditions of Purchase unless we have expressly agreed in writing to their application. Even if we accept a delivery or make payment against a delivery without attaching any conditions, this cannot be construed as an acceptance of any business terms that conflict with or deviate from our own.
- b) Agreements between the Supplier and us must be made in writing. Agreements that are concluded by e-mail meet the above requirement for the written form. Agreements made verbally or by telephone of any kind, including any subsequent alterations or additions, are binding only if we confirm the same in writing. Any alteration of the requirement for the written form must also be agreed in writing. We are nevertheless free to enter into individual agreements with the Supplier. These must be agreed in the written form as specified above.
- c) Our Terms and Conditions of Purchase apply to companies only as per sec. 310 German Civil Code (BGB).
- d) Our Terms and Conditions of Purchase also apply to all future transactions with the Supplier, if similar kinds of transactions are involved.

## 2. Quotations and Quotation Documents

- a) The Supplier is obliged to accept the order within 14 days. In the absence of acceptance, our purchase order loses all validity. Order releases under blanket purchase orders become binding if the Supplier does not object within three working days of receipt.
- b) Unless expressly agreed otherwise, quotations and cost estimates are binding and free of charge. Unless otherwise agreed in the individual case, we accept no costs and pay no remuneration for visits, planning and other preparatory services provided by the Supplier in connection with the submission of quotations.
- c) We reserve all rights of title and copyright to illustrations, drawings, calculations and other documents that we have forwarded to the Supplier together with our order. These documents may be made accessible to third parties only with our express written consent. They must be used in accordance with our order. Such documents must be returned to us without delay on receipt of our written request. Unless the Supplier accepts the order within the period specified in Article 2 a), the documents must be returned to us without delay. They must be kept secret from third parties. Furthermore, the Supplier is obliged to give us written confirmation without delay that documents provided have been deleted or destroyed.

## 3. Delivery

- a) Agreed delivery dates and delivery periods are binding. The timeliness of delivery is determined by the time of receipt at our notified reception point (or time of acceptance for work performed). If goods are delivered earlier than agreed, we reserve the right to send back the goods at the Supplier's expense. If we do not return goods delivered early, we take them into stock at the cost and risk of the Supplier until the delivery date.
- b) If a delay in delivery or performance is recognisable, or if circumstances occur that indicate that the stipulated delivery period or agreed delivery date cannot be adhered to, we must be notified in writing without delay of the reasons for and the probable duration of the delay; moreover, we must be asked for our decision. This does not affect our right to withdraw from the contract or to claim damages as appropriate.
- c) If the Supplier is in default, we may require payment of a contractual penalty of 5% of the order value for each week commenced, however, a maximum of 20% of the total order value. We may demand the contractual penalty even if we accept the delayed delivery without attaching any conditions.
- d) If we accept the delayed delivery or service without attaching any conditions, this does not constitute any waiver of the claims to compensation accruing to us by reason of the delayed delivery or service. This applies until we have made payment in full of the remuneration for the relevant delivery or services.
- e) We accept part deliveries only by express agreement. In the event of agreed part-deliveries, the amount of the back order must be shown. In the event of excess deliveries that exceed the usual commercial volumes, we reserve the right to return the excess goods delivered at the expense of the Supplier.
- f) The Supplier may only invoke the absence of necessary documents to be supplied by us, if the Supplier has sent us a written reminder regarding the documents but failed to receive them within a reasonable period of time.
- g) For all goods to be delivered and services to be provided, the Supplier must comply with the relevant applicable requirements of national and international export law, customs law and foreign-trade law. Unless the applicable foreign-trade law requires the Buyer or a third party and not the Supplier to apply for any necessary shipment or export permits, the Supplier must obtain these permits.
- h) If we have informed the Supplier of the intended purpose of the deliveries or services, or if the intended purpose is evident to the Supplier even without this express notification, the Supplier is obliged to notify the Buyer without delay if the deliveries or services of the Supplier are not suitable for this intended purpose.
- i) The Supplier must notify us without delay in writing of any changes in the composition of the materials processed or in the design or workmanship compared to deliveries and services of a similar nature provided up to that date. Changes of this kind require our written consent. In the absence of such consent, deliveries and services by the Supplier are deemed to be defective.

## 4. Acceptance of Deliveries and Services

- a) Circumstances, which were unforeseeable at the time of placing the order, release us from our obligation to accept the goods for the duration and to the extent of their effects, if we are unable to avert these circumstances by taking reasonable action.

- b) In the event of force majeure, the contractual parties are released from the obligation to performance for the duration of the disturbance and to the extent of its effects. The contractual parties are obliged to provide the requisite information without delay as far as reasonable and to adapt their obligations to the changed circumstances in good faith. We are released wholly or partly from the obligation to accept the delivery or service ordered and entitled to withdraw from the contract to this extent if, because of the delay caused by force majeure, the delivery or service ordered – giving consideration to commercial aspects - is no longer of any use to us.

## 5. Passing of the Risk and Shipment

- a) In the case of deliveries involving erection and assembly and for services, the risk passes at the time of acceptance; for other deliveries, the risk passes on receipt at our notified reception point.
- b) Unless otherwise agreed, goods shall be delivered duty paid (DDP), Incoterms 2010®. The items for delivery must be properly packaged and shipped, in which case the statutory provisions of the German Packaging Regulation (*Verpackungsverordnung*) at least must be complied with. If the price applies EXW, the goods must be shipped by the freight-forwarder we have appointed. This also applies to general cargo, unless the Supplier delivers using its own vehicles. We reserve the right to issue routing orders. The Supplier must pay the extra costs incurred due to failure to comply with a shipping or packaging regulation or costs for a faster mode of transport necessary to meet a delivery date.
- c) The advice notes, delivery notes and invoices for each delivery must always show our purchase-order number, item number and reference number. Deliveries made to our contractual partners directly by the Supplier must be made in our name. We must be notified of such shipment on the date of shipment.
- d) Part-deliveries and back orders must be described as such in the shipping documents. The Supplier pays the additional costs incurred for making part deliveries out of complete units representing functional groups without receiving our release order. The Supplier is also liable for all costs that we incur due to the Supplier's failure to comply with the aforesaid regulations or due to the Supplier using an incomplete or wrong address for the delivery.
- e) We shall not accept the costs of insuring the goods, in particular freight-forwarding insurance. Please note that we expressly waive the liability insurance of the General Terms and Conditions of German Freight Forwarders (ADSp) of 15/02/2010. This cost agreement does not contain any instruction to the Supplier not to obtain insurance. We prohibit the freight-forwarder from obtaining insurance on our behalf.

## 6. Export Control

The Supplier must provide the Buyer as soon as possible, however, no later than 2 weeks before the delivery date, with all information and data in writing that the Buyer requires in order to comply with the applicable foreign-trade law in the event of export, shipment and import and in the event of resale after re-export of goods and services, in particular for each good and for each service:

- the Export Control Classification Number (ECCN) according to the U.S. Commerce Control List (CCL), if the good is governed by the U.S. Export Administration Regulations;
- all applicable export-control classification numbers (if the good is not governed by any export control classification number, this must be rendered as "AL:N");
- the statistical product reference number according to the current classification of foreign-trade statistics and the HS (Harmonized System) code;
- the country of origin (non-preferential origin) and,
- If the Buyer so requests, supplier declarations on preferential origin (for European suppliers) or preference certificates (for non-European countries), (EXPORT CONTROL AND FOREIGN-TRADE DATA)

In the event of changes in origin, in the properties of the goods or services or in the applicable foreign-trade law, the Supplier must communicate the export-control and foreign-trade data as soon as possible, however, no later than 1 week before the delivery date and notify the Buyer in writing. The Supplier pays all expenses and damages suffered by the Buyer due to the absence of or the erroneous nature of export-control and foreign-trade data.

Performance of the contract by the Buyer is always conditional on there being no obstacles to performance by reason of national or international foreign-trade law or embargos (and/or other sanctions).

## 7. Invoices

One original invoice must be submitted for each order. They must show our purchase-order number, item number and reference number. Value-added tax must always be shown separately.

## 8. Prices and Terms of Payment

- a) The prices shown in the purchase order are binding.
- b) The period for payment begins as soon as the delivery or service has been provided in full and the duly issued invoice has been received. However, the period for payment does not begin before the agreed delivery date.
- c) Where the Supplier is obliged to provide test reports, quality documents, documentation or other records, the receipt of these documents is a precondition for the completeness of the delivery and service. Another precondition for the completeness of the delivery and service is the elimination of existing defects, unless fewer than 50% of deliveries are affected by defects. In this event, we may retain five times the amount of the foreseeable costs of improvement.
- d) Unless statutory provisions provide otherwise and/or no other term of payment has been agreed in writing, we pay the selling price within 14 days with 3% discount or within 21 days with 2% discount or within 30 days net, counted from the date of delivery and receipt of invoice. We may deduct discount also when setting off.
- e) Place of performance for payments is the registered office/seat of WORK Microwave GmbH.
- f) Payments cannot be construed as confirmation that deliveries or services are in conformity with the contract.
- g) Unless otherwise agreed in writing, we do not pay any travelling expenses or accommodation expenses for fitters of the Supplier.

## 9. Liability for Defects

- a) The deliveries or services must conform to the specifications and other details, such as standards and other documents. The deliveries and services must in each case conform to the generally recognised rules of technology, statutory and official safety regulations and environmental-protection regulations that apply in Germany or have already been passed with a period of transition.
- b) A goods-received inspection takes place only in respect of obvious defects, transport damage, completeness and to identify the goods. We shall notify any such defects within a reasonable period of time. We reserve the right to perform a more extensive goods-received inspection. Moreover, we shall notify any defects as soon as they are discovered in the course of normal business operations. To this extent, the Supplier waives the defence of delayed notification of defect.
- c) The statutory rights in the event of defects are available to us without restriction. We have the right in each case to require the Supplier, at our discretion, to eliminate the defects or deliver a new item. We expressly reserve the right to claim compensation for damages, in particular damages in lieu of performance.
- d) If we incur costs due to the defective delivery of the contractual subject matter, including but not limited to, transport costs, travelling expenses, labour costs, material costs or costs for a goods-received inspection that goes beyond the usual extent, the Supplier must pay these costs.
- e) If the Supplier does not begin to eliminate the defect without delay after our demand for elimination of the defect, then, in urgent cases, in particular to avert acute dangers and/or to avoid disproportionately greater damage, we have the right to eliminate the defect ourselves at the expense of the Supplier or have this done by third parties.

## 10. Limitation Periods

- a) Unless a longer period is provided by statute or contract, the limitation period for material and legal defects is 3 years from the date of passing of the risk. Claims for subsequent performance or compensation for damages or refund of wasted expenditure especially become time-barred after 3 years.
- b) If the Supplier meets its subsequent-performance obligations by delivering replacements, the limitation period for the replacement goods delivered begins anew after their delivery unless the Supplier expressly and appropriately reserved the right, at the time of subsequent delivery, to make delivery only on goodwill grounds or in order to avoid disputes.
- c) The limitation period is suspended if, and for as long as, we are negotiating with the Supplier on the claim or about the circumstances giving rise to the claim. Suspension ends if either the Supplier notifies or we notify any refusal to continue negotiations in writing. Limitation occurs at the earliest 3 months after the suspension has ended. The recommencement of negotiations regarding the elimination of the defects has the effect of suspending the limitation period anew. Otherwise the limitation period is suspended in the cases provided by statute.

## 11. Spare-Parts Provision

The Supplier is obliged, subject to reasonable terms and conditions, to deliver spare parts for the customary period of technical use, however, for at least 10 years from the date of the last delivery of the relevant delivery item. If the Supplier ceases to deliver spare parts after expiry of the aforementioned period, or ceases to deliver the relevant delivery item during this period, we must be given the opportunity to place a last order or to receive the relevant manufacturing documents free of charge.

The Supplier must notify the Buyer of EXPORT-CONTROL AND FOREIGN-TRADE DATA also for the spare parts within the periods specified in Article 6. The Supplier pays all expenses and damages suffered by the Buyer due to the absence or erroneous nature of EXPORT-CONTROL AND FOREIGN-TRADE DATA.

## 12. Product Liability

- a) If the Supplier is responsible for damage caused by a product, the Supplier is obliged to indemnify us against claims for damages brought by third parties on first demand. Where the Supplier is liable, the Supplier is also obliged to refund any expenses under secs. 683, 670 Civil Code (BGB) and under secs. 830, 840, 426 BGB arising from or in connection with any recall action that we undertake. As far as possible and reasonable, we shall notify the Supplier of the subject matter and extent of any recall actions to be undertaken and give the Supplier an opportunity to make a statement.
- b) The Supplier undertakes to maintain product-liability insurance with a lump-sum cover amount of €5 million per personal injury/property-damage claim. This does not affect any claims to damages that we may have that exceed this amount.

## 13. Industrial Property Rights and Other Third-Party Rights

- a) The Supplier is liable for ensuring that the delivery items are delivered free of rights of third parties and that no proprietary rights of third parties are infringed in connection with the delivery.
- b) The Supplier indemnifies us against all claims brought against us for breach of an industrial property right or other third-party rights and pays the costs of preserving the rights if these claims are based on a culpable breach of duty by the Supplier. We shall notify the Supplier without delay in the event of a claim being brought.

## 14. Title to Customer-Supplied Items

- a) We retain title to the models, designs, manufacturing equipment, tools, gauging and testing equipment, materials supplied, drawings, factory-standard sheets, print copy and similar that we have supplied. Any order-related manufacturing equipment and tools made by the Supplier are made on our behalf. The Supplier shall store these items with the care of a prudent businessperson free of charge and separately from other items in its possession, mark them as our property and use them only for the purpose of providing deliveries and services to us. The Supplier pays the costs for the care, maintenance and renewal of parts of manufacturing equipment, which were provided by or manufactured for us. This manufacturing equipment may only be modified with our prior written consent. We may require the surrender of the manufacturing equipment if:
  - this has been agreed in a tooling contract

- the Supplier becomes unable to supply the parts made with the manufacturing equipment,
- the Supplier suffers financial collapse, in particular if insolvency proceedings are instituted on its assets or
- an application for the opening of such proceedings has been made or
- the business relations have ended.

The Supplier is obliged to insure the tools belonging to us, on request, for their new value at its own expense against damage by fire, water and theft. The Supplier already now assigns to us all indemnity claims to damages arising from this insurance and we accept this assignment.

- b) If the Supplier processes or transforms materials we have provided, this work is done on our behalf. We will become the direct owner of the items thereby produced. If the materials we have supplied are processed with other goods that do not belong to us, we acquire a co-ownership share in the new item in the proportion of the value of our item (cost price plus statutory VAT) to the other items processed at the time of processing.
- c) If the item supplied by us is inseparably combined or mixed with other goods that do not belong to us, we acquire a co-ownership share in the new item equal to the proportion of the value of our items (cost price plus statutory VAT) to the other items combined or mixed at the time of combining or processing. If combining or mixing occurs in a way that items not owned by us are regarded as the principal item, it is deemed to have been agreed that the Supplier assigns a pro-rata share of title to us. The Supplier keeps the sole title or shared title safe on our behalf.
- d) Where the value of security rights accruing to us exceeds the selling price for all reserved-title goods still unpaid by more than 20%, we are obliged, if the Supplier so requests, to release security rights at our discretion.
- e) In the event that the Supplier breaches the prohibition of unauthorised use, we are entitled, without prejudice to other rights, to withdraw from the contract or terminate the contract and claim damages.

## 15. Preservation of Secrecy/Prohibition of Advertising

- a) The Supplier is obliged to maintain secrecy about all information received, whether recorded in writing or given verbally or embodied in the objects given into the Supplier's possession. The obligation to maintain secrecy continues even beyond completion of this contract and extinguishes only if, and to the extent to which, the manufacturing expertise contained in the information provided becomes generally known.
- b) Any reference to our business relations made by the Supplier for advertising purposes requires our express consent.
- c) Any subcontractors must be obliged to give the same undertakings.

## 16. Assignment of Receivables/Set-Off

- a) The Supplier requires our consent to assign accounts payable by us.
- b) The Supplier may only exercise set-off against undisputed and/or final and non-appealable claims.

## 17. Additional Set-off Possibilities

We are entitled to set-off our own accounts payable or those of companies affiliated to us as defined in Section 15 Stock Corporation Act (*Aktengesetz*) against receivables of the Supplier, independently of their due dates.

## 18. Place of Performance, Governing Law and Place of Jurisdiction, Miscellaneous

- a) Place of performance for deliveries and services is the place of destination. Otherwise, place of performance is our registered office (seat).
- b) The law of the Federal Republic of Germany applies exclusively. The application of the UN Convention (Vienna Sales Convention) on contracts for the international sale of goods is excluded.
- c) Place of jurisdiction is the registered office (seat) of WORK Microwave GmbH.
- d) We notify the Supplier of the storage of the Supplier's personal data in accordance with Section 26 Federal Data Protection Act (*Bundesdatenschutzgesetz (BDSG)*).
- e) Any invalidity of individual provisions of these Terms and Conditions of Purchase does not affect the validity of the remaining provisions. The parties undertake in this event to replace the invalid provision by a valid provision that comes as close as possible to the economic purpose of the invalid provision.