

## **Terms and Conditions of Purchasing** (09/2013)



These Purchase Terms and Conditions apply for business transactions between **MAT Foundries Europe GmbH** (plants D-66539 Neunkirchen and D-17373 Ueckermünde) and its business partners, including incorporated and unincorporated entities of any other form of legal entity or person.

### **1. General Provisions**

1.1 These Purchase Terms and Conditions shall apply on the exclusive basis; any general terms and conditions of suppliers, which contradict with or vary from our conditions are invalid and disregarded by us, unless we expressly agree to their validity in writing in advance. Our Purchase Terms and Conditions shall also apply to cases where, being aware of supplier's conditions conflicting with or differing from ours, we accept supplies of products and services from the supplier (hereinafter: the subject matter of agreement) or make payment for them.

1.2 All agreements made between us and the supplier for the purpose of executing this contract are to be laid down in writing in this contract.

1.3 Our Purchase Terms and Conditions shall also apply to any and all future transactions with the supplier.

### **2. Conclusion and Modification of the Agreement**

2.1 Any and all orders, conclusion of agreements, and recalls of supplies or any changes or amendments hereto require a written form (see also section 1.2). These may also be conducted by means of data transmission or telefax.

2.2 The cost quotations are binding and are not paid by us, unless otherwise expressly agreed upon in writing.

2.3 Should the supplier fail to accept any order within two weeks of delivery thereof, we are entitled to recall such order. Invitations to supply become binding if not contested by the supplier within four working days of delivery of the invitation.

### **3. Delivery**

3.1 Any agreed terms and deadlines are binding. The arrival date of goods to our company or services have been performed in the assigning plant is decisive for compliance with the term of delivery or delivery date.

3.2 If the agreed deadlines are not met, the statutory provisions shall apply. The supplier is committed to inform us immediately in writing should be any circumstances arise or become perceptible to him which make it impossible for him to adhere to the stipulated delivery period.

3.3 The unconditional acceptance of any late delivery or service shall not constitute a waiver of claims for compensation to which we are entitled owing to a late delivery or service; this shall apply until we make the payment in full of any outstanding amounts for the applicable delivery or service.

3.4 As a matter of principle, any partial deliveries are inadmissible, unless we grant our express written consent thereto or unless these may be equitably required from us.

3.5 Subject to any other evidence, the values established by us during the entry inspection of goods shall be governing for numbers of items, for weight and dimensions.

3.6 We shall receive all technical documents from the supplier which are pertinent to the delivery, in particular documentation, drawings, structural analyses and other calculations both as paper copies and in digital form. These technical documents shall be transferred to our proprietorship. We reserve the right to use these documents for our own purposes. The supplier shall therefore grant us exclusive rights to use the technical documents without limitation of space, time or content. We shall receive the technical documents from the supplier in German language. The price stated in the order shall also be remuneration for the aforementioned granting of rights and usage.

3.7 In respect of any software that forms part of any delivery, including any documentation thereon, we shall have, in addition to the right of its use to the extent admissible under the law, also the right of its use in accordance with the agreed features of performance and to the extent necessary for the contractual use of the product. We are also entitled to create a back-up copy without any express agreement.

### **4. Force Majeure**

As a result of any force majeure events, strikes, operational breakdowns at no fault of ours, insurrections, official measures and other unpreventable events, we become entitled - in addition to our other rights - to a partial or full rescission of the agreement.

### **5. Dispatch Notification and Invoicing**

5.1 The information in our orders, contract conclusions and delivery call-off schedules shall apply.

5.2 The invoice showing the invoice number and other prerequisites including order number, supplier number is to be sent in one counterpart to the plant which initiated the order, contract conclusion or delivery schedule. Invoices must not be enclosed with consignment.

5.3 The supplier shall bear the responsibility for all consequences resulting from failure to adhere to these obligations unless he can prove that the responsibility does not lie with him.

### **6. Price, Determination and Passage of Risk**

6.1 The prices agreed with the supplier are binding. The cover everything which the supplier requires in order to effectuate the obligations which he has taken on. In the absence of any written agreement stating otherwise, the price shall therefore, in particular, include delivery "carriage paid" including packaging. Sales tax shall not be included. The supplier shall bear the risk of damage to the goods until the acceptance of goods by us or by a person empowered by us at the place to which the goods are to be delivered pursuant to the order.

6.2 The trade stipulations shall be interpreted in accordance with the applicable version of INCOTERMS in each case.

### **7. Payment Terms and Conditions**

7.1 As long as there is no specific agreement to the contrary, invoices will be settled within 14 days with a discount of 3 % or within 30 days with a discount of 2 % or within 60 days without deduction from the date at which the invoice as well as the goods or service were supplied. Payment shall be made subject to checking of the invoice for correctness.

7.2 We are entitled to rights of offsetting and retention within the limits of statutory regulations.

### **8. Cancellation**

8.1 We reserve the right to cancel the contract for extraordinary reason according to § 314 of the German Civil Code, in particular if a petition for legal insolvency proceedings is filed with regard to the assets of the supplier or he ceases to carry out payments.

8.2 Furthermore, we reserve the right to cancel contracts partially or completely for reasons of opportunity. If we should cancel a contract for reasons of opportunity, we shall be obliged to pay for all deliveries and/or services provided until that point in time as well as to provide appropriate recompensation for any materials procured or work delivered and/or performed; in addition, § 649 section 2, 2. of the clause in the German Civil Code shall apply accordingly in this case. Any further claims by the supplier are excluded.

8.3. In the case of cancellation, we have the right to take over material products and/or semi-finished products including any special means of production at appropriate conditions.

### **9. Claims Based on Defects and Recourse**

9.1 The acceptance of a delivery is made subject to the review of the faultlessness, as well as correctness, completeness and fitness of the delivery. We are entitled, to the extent and as soon as practicable during the due business operation, to review the subject matter of agreement, and we will claim any defects discerned without any delay after having detected the same. The supplier shall in so far waive the objection to delayed notification of defects (§§ 377, 381 section 2 of the German Commercial Code) for defects which are not obvious.

9.2 The statutory provisions on factual and legal defects apply in their unabridged form, unless otherwise regulated below.

9.3 We have the exclusive right to select the type of claim based on the defects in the deliveries. The supplier shall be entitled to refuse the claim selected by us provided that such refusal can be based upon § 439 section 3 of the German Civil Code.

9.4 Should the supplier fail to commence removal of defects immediately after having been demanded by us to remove the same, we shall have the right, in emergency cases, in particular in order to avert imminent danger or preclude occurrence of larger damage, to remove such defects by ourselves or through third parties, all of that at the supplier's costs. The warranty period for defects of quality shall be three years and shall begin upon delivery of the goods.

9.5 In respect of legal defects, the supplier shall release us from potentially existing third party claims.

9.6 In respect of parts of delivery repaired or maintained during the period of time for enforcing our claims based on defects, the period for enforcing our claims based on defects shall newly commence at the time the supplier has fully satisfied our claims arising from the defective performance unless supplier has satisfied our claims for accommodation reasons.

9.7 If we incur any costs as a result of any defective delivery of the subject matter of agreement, in particular costs for installation and deinstallation, transportation, travel expenses, costs for work, materials or costs for entry inspection beyond the customary scope, such costs shall be borne by the supplier.

9.8 We are entitled to request from the supplier the compensation for any expenses we bear in relation to our customer, since our customer has a claim against us for compensation of expenses necessary for additional performance, in particular costs for installation and deinstallation, transportation, travel, work and materials costs.

9.9 Claims for defects shall become time-barred after 36 months. The time limitation period for claims for defects shall commence with delivery of the subject of the contract (transfer of risk).

### **10. Product liability and Recourse**

10.1 If any claims arising from product liability are enforced against us, the supplier shall be obliged to release us from such claims, if and to the extent such damage was caused by a defect in the subject matter of agreement which was delivered by the supplier. If the cause of damage falls within the supplier's liability, the supplier shall bear the burden of evidence to that extent.

10.2 In such cases, the supplier shall assume any and all costs and expenses, including any potential attorney fees or fees for withdrawal of the product. We shall inform the supplier – to the extent that this is possible and reasonable – with regard to the subject matter and scope of any recall measures to be carried out and will offer him the opportunity to issue a statement. Other matters are regulated by the statutory provisions.

### **11. Property Rights**

11.1 The supplier shall warrant that no rights of third parties within the Federal Republic of Germany are violated in connection with the delivery and/or service which he performs.

11.2 If any claims should be made against us by third parties, the supplier is committed to release us from these claims on first request in writing; we are not entitled – without the approval of the supplier – to make any agreements with the third party, in particular, with regard to making a compromise settlement.

11.3 The supplier's obligation to release us from such claims is valid for all applications where claims are made against us by or in connection with a third party.

11.4 The time limitation period is 36 months, calculated from the transfer of risk.

### **12. Performance of Work**

Persons who carry out work on the company premises and land in fulfillment of the agreement must observe the provisions of the respective company organisational rules.

### **13. Provision of Materials and Reservation of Proprietary Rights**

13.1 Materials, parts, containers and special packaging provided by us remain our property. These may only be used in accordance with the purpose of their use. Any processing, alteration or assembly of substances and/or parts shall be carried out for us. It is agreed that in relation of the value of the parts provided by us to the value of the entire product we become a co-owner of the products manufactured with our materials and parts which will be kept safe for us by the supplier.

13.2 We shall retain proprietorship of tools; furthermore, the supplier is committed to use the tools exclusively for the manufacture of the goods ordered by us. The supplier is obliged, at his own expense, to take out insurance against fire, water and theft for the tools which belong to us at their replacement value as new. At the same time, the supplier shall even now assign any rights to compensation resulting from this insurance to us; we herewith accept the assignment. The supplier is obliged to carry out any required servicing, inspection work as well as all maintenance and repair work on our tools at his own expense and in a timely manner. He must inform us immediately in the event of any fault; if he culpably fails to do this, claims for compensation for damages shall remain unaffected.

13.3 We reserve the proprietary or intellectual property rights to all images, drawings, calculations and other documents; third parties must not be granted access to these unless we have given our explicit approval in writing. They are exclusively to be used for the processing or manufacture of our order. Subsequent to development, they are not to be disclosed to third parties, the provisions of section 14.1 apply in addition in this respect.

### **14. Documentation and Confidentiality Obligation**

14.1 Any and all business, manufacture or technical information (including features that can be found in the handed over items, documents or software, and other knowledge or experience) made accessible by us shall be kept confidential towards third parties, unless provably publicly known, and may only be made available in the supplier's premises to those persons who must be involved in co-operation for the purpose of supplying to us and who must also be bound to maintain confidentiality; the information remains our exclusive property. Without our prior written approval, such information - except for deliveries to us - may not be duplicated or exploited commercially. At our request, all information originating from us (including any copies or recordings made, if applicable) and lent items must be immediately returned to us completely or destroyed. We reserve all rights to such information (including copyright and the right to file for industrial property rights such as patents, utility models, trademarks, semiconductor protection, etc.). In the event this information was provided to us by third parties, this reservation of rights also applies in favour of these third parties.

14.2 Products built on the basis of documentation, such as drawings, models and the like, prepared by us or based on our confidential information or our tools or tools modelled on our tools may neither be

used by the supplier itself nor be offered or supplied to third parties. This also applies to our print orders correspondingly.

### **15. Energy Management**

Within the framework of the energy management system according to standard ISO 50001, it is to be ensured that the procurement process is carried out in accordance with our energy policy. We examine energy aspects when procuring and purchasing products, facilities and services which have significant energy relevance. In doing so, the evaluation of energy-related performance as well as the expected serviceable life of the energy-consuming products, facilities and services to be procured are taken into account. In cases where offers are the same, companies with a certified energy management system according to standard ISO 50001 will be given preference.

### **16. REACH Clause**

For all substances, preparations and products delivered or provided to us, the specifications and measures resulting from the REACH regulation must be fulfilled by the supplier. The supplier is committed to inform us immediately with regard to any relevant changes to the product, the supply availability, possible applications or quality resulting from the REACH regulation and, in individual cases, to agree on measures with us. The same applies as soon as and in so far as the contractual partner recognizes or should have recognized that such changes could come about. There is no obligation on our part (downstream user) to carry out (pre)registration with regard to the product delivered.

### **17. Place of Performance**

The place of performance is the place to which the goods are to be delivered respectively the service performed in accordance with the order/agreement.

### **18. Miscellaneous Provisions**

18.1 The venue for any administrative disputes that arise is Saarbrücken/Germany. We have further the right to initiate legal action, at our sole discretion, against the supplier at a court with jurisdiction according to the supplier's registered office or place of business or at a court with jurisdiction over the place of performance.

18.2 The contractual relationships shall be exclusively governed by German law, while excluding the conflicting provisions of the international private law and of the United Nations Convention on Contracts for the International Purchase of Goods.