

## General Terms and Conditions of Purchase

### 1. Scope

- 1.1 The following Terms and Conditions shall apply to any individuals, legal entities or private companies acting in pursuit of their commercial or independent professional activity (hereinafter the "Company"). Our (Waskönig GmbH, Sprockhövel, hereinafter in short referred to as "WAS") General Terms and Conditions of Purchase shall apply exclusively. Any contradictory terms or terms inconsistent with our Terms and Conditions of the Company's shall not be accepted, without any need for us, WAS, to expressly contradict any terms and conditions of sale or other terms of the Company's. Our General Terms and Conditions of Purchase shall also apply to any and all future business deals with the Business Client. By executing our order, the Company shall be deemed to accept our General Terms and Conditions of Purchase without restrictions.
- 1.2 Any terms other than those of our General Terms and Conditions of Purchase shall not apply unless agreed in writing in the relevant individual contract and confirmed by us in writing by mail, fax or e-mail. The same shall apply to the application and inclusion of any of the Company's terms of delivery.

### 2. Conclusion of Contract

- 2.1 All quotes shall be free of charge and deemed without engagement for us. Any quote issued by the Company upon an WAS enquiry shall strictly comply with our specifications as per our enquiry, any modifications of which must be expressly pointed out in writing by the Company.
- 2.2 Any orders, agreements, changes and oral understandings shall not be deemed binding, unless placed or confirmed by us in writing by mail, fax or e-mail.
- 2.3 If the Company has not accepted WAS's order within 10 working days of receipt thereof in writing by mail, fax or e-mail, the order shall be deemed expired. Any order by WAS shall be deemed received no later than 3 working days after having been sent. If WAS may produce a transmission report to prove it has sent a statement by fax or data telecommunication (including e-mail), such statement shall be deemed received on the same day.
- 2.4 WAS may request modifications of the items to be delivered even after the conclusion of contract provided such request may reasonably be complied with by the Company considering any additional or reduced costs as well as delivery dates.
- 2.5 The Company shall treat any orders and/or conclusion of contract with strict confidentiality.

### 3. Goods, Shipment

- 3.1 All delivered goods, products, materials, works and services shall accurately comply without fault tolerance with the specifications as per our order and any attachments thereto. They shall be in compliance with all regulations applicable in the Federal Republic of Germany (both under national and supranational law) and the generally accepted standards of technology (in particular the standards DIN, ISO, EN and/or ISO). In addition, the provisions of item 9 hereunder shall apply. Even the slightest modifications of the specified properties or the most insignificant impairment of serviceability shall not be accepted and be deemed non-performance.
- 3.2 The Company shall be liable without limitation – even without being at fault - for the procurement of the ordered goods and services (it assumes the full procurement risk). The Company has been made aware of the fact that WAS delivers supplies to the automotive industry just in time (jit) or just in sequence (jjs), which does not allow any default in delivery as to quantity or quality.
- 3.3 The Company shall immediately notify WAS in writing of any concerns as to the way of execution of an order as specified by WAS.

#### **4. Price**

- 4.1. The price specified in the order shall be binding and deemed to be a fixed price. Prices shall be quoted – including VAT as applicable – free application site including packaging and transportation charges. Unless expressly otherwise agreed in writing, delivery for shipments by rail shall be “free Bochum railway station”, for any other types of shipment “free Sprockhövel Works”.
- 4.2. Shipment shall be at the Company’s risk. The Company shall therefore bear any risk of accidental loss or deterioration until delivery at the delivery address and/or application site specified by WAS.
- 4.3. The goods shall be packed in a way as to avoid any damage during transport. Packaging materials should be environmentally compatible and should be used in the strictly minimum quantities required. The Company shall be responsible for the proper disposal of packaging materials at its own expense; any other take-back obligation for packaging materials shall be subject to the applicable laws and regulations. If WAS by way of exception is charged separately for packaging, we shall have the right to send back any reusable packaging materials freight paid to the Company and be reimbursed for 2/3 of the amount invoiced for them.

#### **5. Terms of Payment**

- 5.1. Invoices shall be duly submitted in full, i.e. including all attached documents, after delivery was made. Payment shall be based on the actual quantities, weights or any other units delivered as well as on the agreed prices.
- 5.2. Payments shall be made as is customary in trade. Unless otherwise agreed in writing, WAS shall pay the purchase price with a 3% discount within 14 days of the full delivery or net after 60 days.
- 5.3. As far as any material testing certificates have been agreed, such certificates shall be deemed an integral part of the delivery and be sent to WAS along with the delivery. In any case, they shall be available to WAS no later than 5 days after the invoice was received. The time of payment shall be deemed to commence not before the receipt of any agreed certificate.
- 5.4. Payments shall not be deemed to be an acknowledgement of a correct invoice and/or the due performance of the service concerned under the contract. In case of faulty delivery, WAS shall have the right to withhold payment on a pro-rata basis until due performance, notwithstanding any other claims.
- 5.5. If WAS makes a down or advance payment on any of its orders, we shall have the right to request the Company at any time to establish and issue by way of security an appropriate directly enforceable guarantee of a major German bank, due and payable upon first request.
- 5.6. Unless otherwise agreed, in case of default on our part an annual interest rate of 5 percentage points above the base lending rate as provided in Section 247 of the German Civil Code [*BGB*] shall be applied. We shall have the choice to pay either by bank transfer or by cheque. Any payment shall be deemed to have been made on time if we can prove to have sent the transfer order or cheque by the date the payment was due.
- 5.7. We shall be entitled to offset any and all of the Company’s claims against us against any counterclaims WAS or any domestic companies directly or indirectly controlled by WAS may have against the Company.
- 5.8. Any assignment of Company claims against us arising hereunder to third parties shall be subject to our prior written consent. Any assignments due to prolonged reservation of title shall be deemed to be consented to on principle.

## **6. Delivery Dates, Default in Delivery, Force Majeure**

- 6.1. The delivery time specified in our order shall be binding. By missing any fixed delivery date the Company shall be deemed in default with the delivery of goods under the contract without the need for a reminder. The relevant date for compliance with the agreed delivery date of any goods to be delivered to us shall be the date of receipts of such goods at the point of receipt and/or application specified by WAS. If acceptance is required, the Company shall be deemed in default without reminder unless it has performed the service as of the date agreed in such a way that acceptance may not be denied (Section 640 subsection 1 clause 2 of the German Civil Code [*BGB*]).
- 6.2. If the Company becomes aware of any impossibility to comply with any agreed dates for whatever reason, it shall notify us without undue delay both orally and in writing of the non-compliance with the date as well as the expected period of delay.
- 6.3. If the Company is in default and a grace period of 5 working days fixed to the Company has expired without success, we shall have the right to withdraw from the contract as well as claim damages instead of performance. The grace period may be waived for cause, including but not limited to an imminent production stop at WAS clients. This clause shall apply without prejudice to any further legal claims shall.
- 6.4. WAS may also make covering purchases and invoice any additional cost incurred to the Company.
- 6.5. If the Company is in default with delivery, we shall be entitled to liquidated damages in the amount of 0.1% of the total order amount per working day of the delay of the delivery date, in any case no more than an aggregate 10% of the total order amount. WAS shall have the right to claim such liquidated damages until the final amount of settlement; in this respect, Section 341 subsection 3 of the German Civil Code [*BGB*] shall be deemed waived. Liquidated damages shall be deducted from any damage claim for delay. Liquidated damages are only the minimum value of indemnity.
- 6.6. The Company may not rely on the non-receipt of any necessary documents to be provided by WAS, unless it has sent a reminder about any such documents and has not received them within a reasonable period of time.
- 6.7. Any events of Force Majeure shall entitle either of the parties to delay the performance of any obligations under the contract, or if the performance of all or part of the contract may not reasonably be expected, to withdraw from the contract to any such extent without the right for the other party to claim damages.
- 6.8. Unless expressly agreed in writing WAS shall not accept any partial deliveries. If a partial delivery has been agreed, the Company shall deliver the remainder of the goods on time.

## **7. Liability**

Unless otherwise agreed in these General Terms and Conditions of Purchase, the Company shall be liable under statutory provisions for any kind of breach of contract.

## **8. Warranty**

- 8.1. The Company warrants that any delivery/service is in compliance with the most recent standards of technology applicable in the Federal Republic of Germany, the regulations on technical safety, the relevant laws, provisions and government and professional body regulations on occupational health and safety and environment protection, as well as with any specific provisions under the contract.

- 8.2. Technical or other contract specifications of any deliverable or performance shall be deemed to be an agreed property in each case; this shall also apply to any description of scope of delivery as well as any drawing. Any modification of agreed specifications must be made by mutual agreement and in writing.
- 8.3. The Company undertakes to use environmentally acceptable products and processes as far as possible in terms of economy, technology and quality for its deliveries /services as well as for subcontractor supplies or third-party incidental services. In this regard, we shall be liable for the environmental compatibility of the products delivered and packaging materials used as well as for any consequential damage caused by any failure to comply with its statutory disposal obligations. If requested to do so by WAS, the Company shall issue and provide us with a related quality certificate for the goods supplied.
- 8.4. WAS will check the goods supplied for any damages in transit within 10 working days of delivery and notify the Company without undue delay of any such damage found.
- 8.5. We shall be entitled to statutory warranty claims without restrictions. We reserve the right to choose between the options of supplementary performance – remedy or replacement – also in case of contract for work and labour, unless the Company has a right to refuse supplementary performance or it would be unreasonable in individual cases to expect the Company to comply with WAS's request for supplementary performance. The right to claim damages, including but not limited to damages instead of performance, shall be expressly reserved.
- 8.6. Should the Company fail to set about supplementary performance immediately after a request to do so, in urgent cases, specifically for averting an imminent danger of significant damage, WAS shall – without prejudice to the statutory right of self-remedy as provided in Section 637 of the German Civil Code [BGB] – the right to proceed itself to or cause supplementary performance to be carried out by third parties at the Company's expense. In any such case, having goods or works free of defects be delivered by third parties shall not be permitted, unless such delivery seems justified considering the interests of both parties.
- 8.7. Warranty claims for defective delivery shall become time-barred after 24 months as from the passing of risk. Warranty claims for defective spare parts and for trading goods specified as such in the contract shall become time-barred after 24 months after commissioning or after delivery to the customer, in any case no later than 3 years after delivery to us. In case supply parts had to be checked for defects or defects in supply parts had to be removed and the parts concerned could therefore not stay in production, the time bar for warranty claims shall be deemed extended by the duration of business interruption. For any repaired or newly supplied parts, the aforesaid period of time bar for warranty claims shall be deemed to run anew as from the time of completion of the repair and/or the new supply.
- 8.8. To the extent to which we are obliged to perform the check, delivery, service and to give notice of defect in commercial dealings under Section 377 subsection 1 of the Commercial Code [HGB], the check and notice of defect shall be deemed to have been performed or given on time if performed or given within 10 working days of delivery. The notice of any defect becoming known subsequently shall be deemed to have been given on time in terms of Section 377 subsection 3 of the Commercial Code [HGB] if given within 10 working days of detection of the defect.
- 8.9. If the goods at the time of being purchased by WAS are flawed by a defect of title, the Company shall indemnify and hold harmless WAS from and against any third parties' claims. Warranty claims for defect of title shall be deemed time-barred 3 years after the end of the year in which the claim arose and WAS became aware, or should have become aware but for gross negligence, of the circumstances justifying the claim and of the person liable, regardless of the awareness or grossly negligent unawareness 10 years after they arise.

## **9. Product Liability**

- 9.1. If WAS is sued for non-compliance with any government safety regulations or on grounds of any national or international product liability laws due to a defect in the product caused by any goods supplied by the Company, WAS shall be entitled to claim damages if and to the extent to which any damage was caused by the goods supplied by the Company. Such damages shall also include any costs incurred for a necessary recall. If a defect occurs in any part supplied by the Company, the Company shall be assumed to be solely responsible for the origin of any such defect.
- 9.2. The Company shall be obliged to implement quality assurance action which is appropriate as to type and extent and state-of-the-art and to provide WAS with documentation of such action whenever requested to do so. As far as deemed necessary by WAS, the Company shall sign a quality management agreement to this effect with WAS.
- 9.3. The Company shall take out adequate insurance to cover any and all product liability risks including the recall risk and provide WAS upon the latter's request with the relevant certificate of insurance for inspection.

## **10. Intellectual Property Rights**

- 10.1. The Company warrants and represents that its delivery of goods does not imply any infringement of third-party rights within the Federal Republic of Germany, except for any infringements which may be documented by the Company to be beyond its reasonable control. If and to the extent to which the Company is aware of the fact that its products are sold by WAS also in countries other than the Federal Republic of Germany, the foregoing shall apply also to any such countries.
- 10.2. If WAS is sued by a third party for infringement of intellectual property rights, the Company shall be obliged upon our first written request to indemnify and hold us harmless from and against any such claims. We shall not have the right to conclude any agreements, including but not limited to a settlement, with any such third party without the Company's consent.
- 10.3. The Company's obligation to indemnify shall cover any expenses necessarily incurred by WAS in the wake of an action brought against it by a third party, unless the Company may prove that it is not responsible for any such expenses.
- 10.4. WAS shall have the right to cause the authorisation for the use of the supplies and services in question to be issued by the entitled party at the Company's expense considering the merchant's due diligence requirements.

## **11. Reservation of Title – Drawings – Items to be Added– Tools**

- 11.1. We reserve all rights as to drawings and items manufactured to our specifications as well as processes developed by us.
- 11.2. Any and all execution documents, devices, tools, models etc. provided to the Company shall remain WAS's property. The Company shall use any such tools solely for manufacturing the goods ordered by WAS. The Company shall further carefully store and insure at replacement value against fire, water and theft damage any tools belonging to us at the Company's expense throughout the term of contract. The Company shall perform any maintenance and inspection work required in due time and at its own expense. The Company shall notify us of any failures without undue delay; if it fails to do so by negligence, claims for damages shall be reserved. Such tools may only be used for the purposes agreed under the contract and be made available to third parties only for any such purposes.
- 11.3. Tools and other manufacturing equipment paid for by WAS shall neither be scrapped nor made available to third parties, in particular for manufacturing purposes, without our written consent.

- 11.4. If and to the extent to which WAS provides the Company with any items to be added, we reserve the property of any such items. Processing or transformation of such items by the Company shall be on our behalf. If our reserved items are processed with any other items not owned by us, we shall acquire joint ownership of the newly created item at the ratio of the value of our item to that of the other items processed at the time of processing.
- 11.5. If the item added by us is inextricably combined with any other items not owned by us, we shall acquire joint ownership of the newly created item at the ratio of the value of the reserved item to that of the other items combined at the time of combination. If the combination is such that the Company's item is to be considered the main item, it is agreed between the parties that the Company shall assign to us joint ownership on a pro-rata basis; the Company shall store any sole property or joint property items for us.

## **12. Trade Clauses**

Unless otherwise agreed, the trade clauses shall be construed subject to the INCOTERMS defined by the International Chamber of Commerce as amended.

## **13. Certificate of Origin, Export Control**

- 13.1. The Company shall provide us without undue delay with any certificates of origin we may request, which must contain all required information and be duly signed.
- 13.2. The Company shall inform us if all or part of any deliverable is subject to export control under German or any other foreign trade laws.

## **14. Applicable Law**

- 14.1. In addition to the provisions under the contract, any and all legal relationships between us and the Company shall be solely governed by the laws of the Federal Republic of Germany as applicable to legal relationships between domestic parties to the exclusion of any foreign legal systems. The standardised United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 14.2. The language of contract shall be German. If and to the extent to which the parties use any other language besides German, the German wording shall prevail.

## **15. Non-Disclosure**

The Company undertakes to keep any illustrations, drawings, calculations and other documents and information provided by us strictly confidential. Any such documentation or information must not be disclosed to any third parties other than with our express consent. Any subcontractors shall be made to sign appropriate engagements. This non-disclosure obligation shall apply beyond the termination of this contract; it shall be deemed expired when and to the extent to which the manufacturing know-how contained in any such illustrations, drawings, calculations and other documents provided by us has become public knowledge.

## **16. Place of Performance, Partial Invalidity, Jurisdiction**

- 16.1. The place of performance for deliveries and services shall be the site of application, for payments WAS company headquarters in Berne.
- 16.2. The Company shall not have the right to assign any order or material parts thereof to third parties without prior written consent by WAS.
- 16.3. WAS will treat any personal supplier data subject to the provisions of the German Federal Data Privacy Act.

- 16.4. This agreement is the entire agreement and supersedes any oral or side understandings. Should any of the provisions of these General Terms and Conditions of Purchase be invalid, the validity of the contract as a whole as well as of the remaining provisions shall remain unaffected.
- 16.5. The place of jurisdiction shall be the WAS company headquarters in Berne. WAS shall however also have the right to bring any action against the Company at the latter's general place of jurisdiction or any other place of jurisdiction permitted by law. This shall also apply to any liabilities related to bills and cheques.

Sprockhövel, 15.05.2014