

Terms and conditions of purchase of diff speed engineering GmbH

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§ 1 General, scope of validity, applicability

1. Our terms and conditions of purchase shall apply exclusively. We hereby reject all suppliers' terms and conditions that deviate or differ from these terms and conditions of purchase unless expressly acknowledged in writing. Our terms and conditions of purchase also apply in the event that we execute the supplier's delivery without reservation and accept the supplier's deviating or differing terms and conditions of purchase. The execution of the order shall in any event apply as recognition of our conditions.
2. All agreements relating to supplier goods and services must be made in writing.
3. These conditions shall also apply to all future transactions with the supplier.
4. The supplier may only start to include details of our commercial relationship in advertising materials once we have issued written approval to do so.

§ 2 Offers, offer documents

1. As far as content on the subject of the order applies, the main components of our order or the supplier offer are, for example, data sheets and other documents and information, which are made available to the supplier on request. The agreed quality of the supplier item shall match these specifications.
2. If the supplier fails to accept our order in writing within 10 working days of receipt, we shall be entitled to cancel.
3. We shall retain ownership and copyright of all illustrations, drawings, calculations, wiring diagrams in each form and other contractual documents, including any information contained within these documents; these must not be made accessible to third parties without our express written consent. They must be used exclusively for the execution of our order; once the order has been completed then the contractual documents must be returned to us without any further request. All related information must be kept secret from third parties to the extent as stated in the regulation pursuant to § 11 (4.).
4. We shall be entitled to request changes to the supplier item that are deemed to be reasonable for the supplier. Should this result in extra costs being incurred, a cost estimate shall be submitted to our purchasing department; this shall require our written confirmation.

§ 3 Prices, pricing, packaging costs

1. The agreed prices are fixed prices and shall exclude additional charges of any type. In the absence of a written agreement, the agreed price including duty paid for the receiving plant shall apply (including packaging, transport, customs and formalities relating to customs). Provided that the goods are purchased from the supplier station, all costs that are incurred in shipping them to the loading station shall be borne by the supplier, with the result that only the lorry freight costs shall be borne by us.
2. Packaging shall only be paid for if remuneration for this has been expressly agreed. The return of packaging shall require a separate agreement. Legal obligations to return items remain unaffected.

3. We shall only pay for travel expenses in relation to assembly in line with the tax regulations and guidelines. Hourly rates may only be calculated in accordance with prior written agreements.
4. Expenses for visits or the development of offers, projects, drafts and samples shall not be reimbursed.

§ 4 Invoicing, payment, offsetting

1. The invoice must be issued separately. It shall not accompany the delivery. In accordance with the provisions stated in our order, we shall only process invoices if they contain the requested information, in particular the order number. Failure to comply with this requirement shall absolve us of any liability.
2. For monthly deliveries, the invoice shall be issued no later than the 3rd working day of the following month. Invoices that are sent later than the 3rd working day of a given month shall be paid up to 30 days later without any changes to the conditions and shall not be subject to the addition of late payment interest. Payments on account and advances may be allowed subject to reservation as regards quantity, quality and pricing levels. This shall also apply to payments using applicable discounts.
3. In the event of a default on our part we shall pay interest at a maximum of three percentage points above the relevant, applicable base rate as defined in § 247 German Civil Code (BGB).
4. The payment terms stated in our order shall apply. Payment credit terms shall commence upon receipt of a proper invoice, but no later than the acceptance of a delivery or service.
5. We are entitled by law to offset against any supplier debt claims with any of our own debt claims.
6. COD shipments shall not be accepted. We accept no liability for unsolicited goods. Accepting such goods shall not constitute the conclusion of a contract.

§ 5 Delivery times

1. The agreed deadlines are binding.
2. If the supplier recognises that an agreed deadline cannot be met for whatever reason, it must notify us immediately in writing stating the reasons and the expected duration of the delay.
3. If the supplier is delayed, we shall be entitled to make statutory claims. Should a reasonable period of grace stipulated by us expire without any successful result, we shall then be entitled to demand compensation in lieu of the service and terminate the contract. Even without a reasonable period of grace, we shall be entitled to terminate or to claim damages in lieu of the service if, as a result of the supplier delay, we are no longer interested in fulfilling the contract. Should the reasonable period of grace stipulated by us prove to be fruitless, we shall then be entitled to procure a replacement from third parties at the expense of the supplier.

4. In the event of force majeure, disruption to operations, strikes, lockouts, breach of contract by our customers or other circumstances which are beyond our control, we shall then be released from our performance and acceptance obligations for the duration of the disruption and the extent of its effect for a maximum period of three months. This shall apply even if these events occur at a time at which we are in default. Should this be the case, the supplier shall be required to reasonably adjust the contractual regulations in line with the changing conditions.

§ 6 Shipping, shipping documents

1. Unless the method of shipping is specified by us, it must be carried out in the most cost-effective manner in terms of freight costs. The delivery of goods may only take place during normal business hours, Monday to Friday. It shall not be possible to unload goods at weekends.
2. The freight costs will not be paid in cash direct to the bearer, but shall instead always be paid by bank transfer upon presentation of the freight invoice.
3. Shipping documents shall also be issued. Failure to provide appropriate information as to how costs were incurred, such as demurrage, conversion fees and the like shall result in the charges being borne by the supplier.
4. The notification shall be submitted twice and no later than three days before dispatch.
5. Over/short shipments and part deliveries shall only be accepted by prior arrangement.
6. Deliveries to us via post and via similar services must be delivered duty paid and any costs incurred shall be debited in the invoice, unless otherwise agreed.

§ 7 Transfer of risk

The risk to us shall only be deemed to have passed once the delivery has been transferred to us or we have accepted the service.

§ 8 Defective delivery

1. We are obliged to inspect the goods within a reasonable period of time for any defects; the complaint shall be justified in terms of timescales provided that it is submitted to the supplier within a period of five calendar days following delivery for obvious defects or, if the defect was not found even after a proper investigation, within a period of five calendar days following its discovery. We expressly reserve the right to recognise multiple deliveries in accordance with the contract. If the supplier fails to remedy any defective goods that are in existence, then the obligation to examine and notify defects pursuant to § 377 German Commercial Code (HGB) for the purpose of remedial action by the supplier for services rendered shall be null and void.
2. Equipment, apparatus, machinery, vehicles, equipment and other delivery items must correspond to the designated use that is stipulated in the contract or is recognised, and must also be in accordance with the current state-of-the-art. Furthermore they must also be accident-proof within the meaning of the applicable safety regulations of the relevant trade associations and correspond to the various VDE provisions.

3. The supplier shall be liable for ensuring that all goods and services are state-of-the-art, conform with the various relevant legal requirements and the provisions and guidelines of authorities, trade associations and professional associations and do not exhibit any material or legal defects within the meaning of §§ 434, 435 German Civil Code (BGB). If a deviation from these provisions is required in individual cases, the supplier must therefore obtain our written approval. Its liability for defects will not be restricted by this approval. If the supplier has any concerns regarding the nature of the performance required by us, it must notify us immediately in writing. The supplier undertakes to use environmentally-friendly or ecological products and procedures within the boundaries of financial and technical capabilities for its supplies/services and for the subcontracted supplies or ancillary supplies of third parties. It shall be responsible for the environmental performance of any products delivered and any damage caused by the violation of its statutory disposal requirements. It shall be required to present the necessary delivery documents when making the delivery. The supplier shall indemnify us against all third party claims in the event that it does not provide us with the appropriate documents, or provides them late or incorrectly. The same shall apply to any future amendments.
4. Defects to supplies/services reported during the warranty period, including the failure to achieve guaranteed data or parameters and the omission of promised characteristics, must be remedied by the supplier immediately when requested by us and free of charge, including all ancillary costs, either by subsequent performance or replacement of the defective parts or redelivery/reproduction at our discretion. After the expiry of a reasonable period of grace stipulated by us to either remedy or replace the defective items, we shall then be entitled to the statutory withdrawal and price reduction rights. We reserve the right to make claims for damages in all cases. The same shall apply in the event that the remedy or replacement fails. A failure shall be any attempt where the remedy or replacement fails to ensure that the service carried out by the supplier is sufficiently free of defects. Our claim for performance shall continue to exist up to the point of a written or judicial claim for damages. If the supplier fails to meet its obligations with regards to liability for defects within an appropriate period set by us, we may carry out the necessary measures at its expense and risk or arrange for a third party to carry out such measures. In urgent cases, we can take remedial action ourselves or arrange for a third party to provide remedial action as agreed with the supplier. Minor defects may be remedied by us without prior agreement, in accordance with our obligation to limit damage or in accordance with any agreements made in this respect, without in any way limiting the supplier's obligations with regards to liability for defects. We can then charge the supplier for the necessary expenses. The same shall apply if there is an unusually high risk of damage. If we ourselves as a supplier have to engage a buyer due to a defective supply, we may request our supplier to pay for any expenses that we have to pay to our buyer for the subsequent remedial work. The warranty period shall be two years unless otherwise agreed. This shall commence on handover of the delivery item to us or to the third parties appointed by us at the point of receipt or use stipulated by us. In the case of equipment, machines and installations the warranty period shall commence on the date of acceptance as stated in our written statement of acceptance. If acceptance is delayed without culpability on the supplier's part, the warranty period shall be three years from the date of provision of the delivery item for acceptance. The warranty period for buildings and building materials is based on the statutory provisions; for spare parts this shall be two years from the date of installation/operation and shall end four years following delivery. As long as the justification of our complaint is being negotiated, the warranty period for the installation/parts of the installation affected shall be restricted from the date of reporting the malfunction to the conclusion of negotiations, or until repair work is complete and acceptance has taken place. For repaired or alternatively supplied parts, the warranty period

shall begin upon the end of negotiations or, if acceptance is agreed, upon the start of the new acceptance. Acceptance must be applied for from us in writing as necessary. If we are approached by customers using the delivered item as a result of a defect, and this defect was caused during delivery, then the limitation period for claims arising due to defects shall apply two months after the date on which we have answered the claims of our customer. This limitation expiry shall end no later than three years after the date on which the item has been delivered to us by the supplier.

§ 9 Product liability, indemnification and quality assurance

1. Provided the supplier is responsible for product damage, it shall be required to indemnify the extent of damages and claims of third parties at the first request when the cause is within its domain and it is liable in relation to third parties.
2. In this context the supplier shall also be required to reimburse any expenses pursuant to §§ 683, 670 German Civil Code (BGB) that arise in connection with product recalls either carried out by us or by our customers. We shall notify the supplier, as far as possible and reasonable, regarding the content and scope of the recall measures being carried out and shall give it the opportunity to comment.
3. The supplier must carry out corresponding quality assurance that is appropriate in terms of nature and scope and the state-of-the-art, and must provide proof when requested. It must conclude a corresponding quality assurance agreement with us if we deem this to be necessary. In addition, the supplier shall take out insurance against all risks arising from product liability, including taking out appropriate cover against the risk of recall, and shall provide us with a copy of the insurance policy upon request for inspection purposes.

§ 10 Industrial property rights

1. The supplier shall be responsible for ensuring that no third party rights are violated in connection with the delivery.
2. The supplier shall be responsible for ensuring that all supplies are free of third-party industrial property rights and in particular that the supply and use of the delivery items does not in any way infringe patents, licenses or other industrial property rights of third parties. The supplier shall indemnify us and our customers against claims by third parties for any infringement of industrial property rights and shall bear all costs incurred by us in this context. We shall be entitled to obtain approval for the use of the delivery items and services concerned from the authorized parties at the expense of the supplier.
3. The supplier's indemnity obligation covers all expenses incurred by us in relation to a claim by third parties.

§ 11 Retention of title, provision, confidentiality

1. A simple retention of title shall only be accepted by us for payment of the invoice for the service in question. Prolonged or extended retention of title shall be excluded even without our express objection.
2. If the parts are made available at the supplier's premises, we shall retain the title to these. Processing or modification shall be performed by the supplier on our behalf. If our retained

goods are processed alongside other objects not belonging to us, we shall acquire joint ownership of the new objects in the ratio of the invoice value of our goods to the value of the other objects at the time of processing.

3. If the goods supplied by us are amalgamated with other objects not belonging to us, we shall acquire joint ownership of the new objects in the ratio of the invoice value of the retained goods and the other objects at the time of amalgamation. If the amalgamation is carried out in such a way that the supplier's objects are considered to be the main objects, it is understood that the supplier shall assign proportional joint ownership to us; the supplier shall hold sole or joint ownership for us.
4. The supplier shall be required to treat all of our images, drawings, calculations, documentation and manuals, other contractual documents and contract-related information as strictly confidential. They may only be disclosed to third parties with our express written consent. The confidentiality agreement shall survive the termination of this contract; it shall only expire when and if any knowledge contained within this contract has become generally known without culpability on the part of the supplier. If one of the contracting parties becomes aware that information to be kept secret has been passed to an unauthorized third party, or a document to be kept secret has been lost, it will inform the other contracting partner about this immediately.

§ 12 Correspondence

Correspondence resulting from the completion of our orders shall be directed exclusively to the purchasing department that has issued the order. Any deviations from the agreements made originally that were specified in the order in shipping notices, delivery notes and invoices - whether they are in regard to pricing, invoicing, delivery conditions etc. – shall not be binding for us and shall not be recognized by us as these documents shall not pass through the purchasing department. Shipping notices, delivery notes and invoices shall not be used for other types of communication.

§ 13 Miscellaneous

1. If the supplier suspends payments, a temporary administrator shall be appointed to initiate bankruptcy proceedings in relation to its assets, or if bills of exchange or protested cheques exist against it, we shall be entitled to withdraw from the contract or to terminate the contract in whole or in part with immediate effect without notice, and without the possible derivation of any claims against us as a result of this.
2. No rights or obligations under the contract may be transferred either in whole or in part to third parties without our written permission.
3. The language of the contract shall be German. The German language shall prevail in the case of the multilingual compilation of contractual documents.
4. The delivery or service shall be performed at the receiving plant. The place of jurisdiction shall be the registered office of the buyer or customer. However, we are authorised to take action against the supplier at its general place of jurisdiction.
5. The laws of the Federal Republic of Germany shall apply to the entire legal relationship between us and the supplier with the exception of international civil law rules. The UN

Convention on Contracts for the International Sale of Goods (CISG) and other intergovernmental agreements on laws concerning the sale of goods and labour contracts shall not apply, even if implemented in German law.

6. The supplier shall be required to freely exhibit the supplier declaration upon request according to EC regulations.

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