

## Purchase Conditions

As of January 2017

### **1. Scope of Application**

1.1 These General Purchase Conditions of MOTHERSON ORCA PRECISION TECHNOLOGY GmbH ("purchaser") shall apply exclusively to the purchase and processing or reworking of parts, material and assemblies ("goods") based on orders from the purchaser. The purchaser shall not accept any General Terms and Conditions of the supplier and shall not be bound by them, unless their use was previously agreed in writing with the purchaser. Any other General Terms and Conditions shall not apply even if they were not expressly rejected in an individual case. In delivering his goods to the purchaser, the supplier shall accept these Purchase Conditions.

1.2 These Purchase Conditions shall apply both to the purchase of production material (for the purpose of the purchaser's own series production) and the purchase of spare parts or machines, tools and other products, unless the applicability of one of the following provisions of these Purchase Conditions is expressly limited to individual or certain types of goods.

### **2. Orders**

2.1 Inquiries sent by the purchaser to the supplier regarding the latter's goods and their delivery terms, or requests by the purchaser for the supplier to submit a quote shall not bind the purchaser in any way. The estimated quantities shown in a price inquiry or a request for a quote shall only be regarded as guideline values and shall then only become binding for the purchaser if he expressly requests fixed quantities as part of an order or a delivery call-off.

2.2 Orders from the purchaser shall only become binding when they are placed in writing. Oral or telephone orders shall not be binding and shall not constitute a contractual relationship. Oral agreements shall be confirmed in writing.

2.3 A valid and legally binding contract with the inclusion of these Purchase Conditions shall come about between the purchaser and the supplier through (i) the purchaser's written order sent to the supplier and (ii) express written acceptance by the supplier in the form of an order confirmation or (iii) the start of delivery of the ordered goods by the supplier. If the supplier does not send a different order confirmation to the purchaser or does not reject the purchaser's order within 3 days, the order shall also be deemed to have been accepted. Every order confirmation which is received late by the purchaser or differs from the purchaser's order shall represent a new purchase offer and shall be accepted in writing by the purchaser.

2.4 If the contract or framework order stipulates that the goods are to be supplied by means of a delivery call-off/individual order, these individual orders shall become binding 2 days after transmission to the supplier, unless the supplier or the purchaser rejected them in writing up to that point in time.

### **3. Dispatch, Packing and Delivery**

3.1 Unless otherwise agreed, the goods shall be sent carriage paid to the agreed delivery address during the purchaser's normal business hours according to the latest version of Incoterms DDU/DDP.

3.2 All goods shall be properly packed or shall be prepared for dispatch in another suitable way. Remuneration for packing, transport, cartons, boxes, crates, delivery or insurance shall not be permitted, unless it is shown in the order.

3.3 Containers and packaging shall be provided free of charge, but shall be returned, if necessary, at the supplier's risk and expense. The quantity of transport equipment (containers, racks, etc.) shall be shown on the transport documents/delivery notes.

3.4 The purchaser shall stipulate the delivery method in every order. In particular, this may involve the use of commercial clauses which are customary in the industry. If the order makes provision for the use of Incoterms, their version valid at the time of the order shall apply.

3.5 A delivery note showing the purchaser's order number, name, quantity and complete details (including material numbers/parts numbers) of the supplied goods shall be included with all goods consignments.

3.6 In accordance with the valid EU directives, the supplier shall be obliged to provide a Supplier's Declaration. A certified annual Supplier's Declaration (Long-Term Supplier's Declaration) shall be submitted and automatically extended at the latest at the time of delivery. Any change shall be notified immediately to the purchaser. At the request of the purchaser and if necessary, the supplier shall send a duly certified customs document for the supplied goods. If additional official documents relating to the use of the goods according to their specifications are required for export or import of the goods, the supplier shall send these documents to the purchaser or shall obtain them immediately.

3.7 Early deliveries shall not be accepted by the purchaser. The purchaser shall reserve the right to store all products, which are delivered before the date stipulated in the order, at his premises up until the due delivery date at the supplier's risk and expense.

#### **4. Right of Ownership and Passing of Risk**

4.1 Ownership of the goods shall pass to the purchaser when they are delivered. Any extended or increased reservation of title by the supplier to the goods shall hereby be excluded.

4.2 Any risk of loss (danger) shall remain with the supplier until the goods have been delivered in full to the purchaser.

#### **5. Late Delivery**

5.1 The agreed delivery date shall be binding. The incoming goods department at the purchaser's receiving office shall be responsible for compliance with the agreed delivery date.

5.2 The supplier shall immediately inform the purchaser in writing about all circumstances which prevent the former from complying with the agreed delivery date. The supplier shall stipulate the reason and the likely length of the delay. However, this communication shall not release the supplier from his obligation to deliver the goods on the agreed due date.

5.3 In the event of failure by the supplier to deliver the goods on time to the agreed delivery address of the purchaser, (i) the purchaser may cancel the order if he granted the supplier a reasonable period of grace to effect delivery and this period has expired without success, and the purchaser is not responsible for the event which caused the delay, (ii) the purchaser shall be entitled to full compensation for all the losses caused by the delay, provided the supplier culpably caused the delay in delivery and the purchaser sent the supplier a written warning about delivery after the onset of default in delivery (unless a fixed calendar date for delivery was agreed).

5.4 In the event of a delay in delivery due to reasons for which the supplier is responsible and irrespective of all other rights of the purchaser, the purchaser shall be entitled to demand for every working day of the delay a contractual penalty amounting to 3% of the net order value of the delayed goods, but at most 10% of the total value of the respective delivery. The contractual penalty shall be offset against any other enforced claim for compensation.

5.5 Unconditional acceptance of a late delivery shall not constitute a waiver of the claims accruing to the purchaser on account of late delivery. This provision shall apply until the final payment for the service in question has been received.

#### **6. Contractual / Technical Changes**

6.1 Changes to the contract, including changes to the quantities, the shipping method, packaging, delivery date and delivery address, or changes to the drawings or specifications shall be agreed jointly and recorded in writing by the contracting parties after taking account of the costs and the time expenditure.

The following provisions shall also apply to technical changes, especially to the purchaser's drawings or specifications:

6.2 The purchaser may request technical changes at any time. As soon as the supplier has received the change request from the purchaser, the former shall provide a cost estimate relating to the possible increase or reduction in

the costs, as well as information on time delays and impacts of the changes on the weight, function and quality. The supplier shall minimise the costs of the changes.

6.3 The supplier shall only carry out the requested changes as soon as the contracting parties have reached agreement regarding all the impacts on costs, dates or other changes relating to the weight, functionality or quality. The initial sampling procedure shall be repeated for all goods subject to technical changes.

6.4 If the supplier believes that technical changes are practical, he shall suggest this to the purchaser. In this case the supplier shall provide information regarding the impacts on the price, delivery dates, etc. The purchaser shall check these changes immediately and may not unreasonably reject their acceptance.

6.5 The technical documents, drawings and plans of the purchaser shall be checked by the supplier for completeness and accuracy before the start of processing, finishing or production. If the supplier regards these documents, etc. as incomplete or if they contain mistakes or defects, the supplier shall inform the purchaser immediately. All missing documents shall be requested immediately in writing.

## **7. Prices and Payment Terms**

7.1 The price shown in the order shall be a fixed price and shall include delivery to the delivery address mentioned in the order, as well as packing, freight, insurance and other similar costs. Statutory VAT shall not be included in the price and shall be shown separately.

7.2 If a credit note procedure / offsetting procedure was not agreed with the supplier, invoices may only be processed by the purchaser if they - in accordance with the corresponding order - contain the order number, the article number and, in the case of tools or capital goods, the corresponding project number.

7.3 Unless otherwise agreed in writing, payment shall be made - following delivery and receipt of the invoice - within 60 days or less 3% discount for payment within 30 days. Unless otherwise agreed, payment shall be made by means of bank transfer.

## **8. After-Market**

The supplier shall be obliged to deliver spare parts to the purchaser for a period of 15 years after EOP. These spare parts shall conform to the contractually agreed quality for series supply. This obligation shall also apply to materials, raw materials, supplier's parts or components which the supplier purchases from third parties.

## **9. Confidentiality**

9.1 The purchaser shall reserve all ownership rights and copyright to every document, product specification, diagram, drawing and calculation supplied in connection with the order, as well as to any other supplied documents. These documents, etc. may not be made accessible to third parties without the express written approval of the purchaser and shall be used solely to furnish the contractual services. After fulfilment of the contract or in the event of non-acceptance of an order, the documents shall be automatically returned to the purchaser; any copies shall be destroyed immediately.

9.2 The supplier shall be obliged to maintain confidentiality regarding all business, commercial, operational and technical matters of the purchaser which became or become known to the supplier in connection with the delivery of the goods. This provision shall continue to apply after the end of the contract as long as and if this information has not become public knowledge in any other way or the purchaser has waived confidentiality in writing.

9.3 Sub-suppliers of the contractor shall be obligated in accordance with § 9.1 and § 9.2.

## **10. Goods Inspection**

10.1 An incoming goods inspection shall only take place to check transport damage and the completeness and identity of the goods. These defects shall be notified to the supplier within 5 days after delivery; other defects shall be

notified within 5 days after their discovery. These other defects shall form the subject of the outgoing goods inspection by the supplier. The supplier shall therefore waive the defence of delay in the notification of defects.

10.2 Before delivery is made to the purchaser, the supplier shall inspect and test the goods in a suitable way, and shall provide the purchaser with a test certificate if so requested by the latter. The supplier shall grant the purchaser or his authorised representatives, after prior announcement and during normal business hours, unrestricted access to all areas of the supplier's business premises in which the goods are produced, stored or kept so that the purchaser or his authorised representatives can test the goods or check their conformity with the specification requirements of the purchaser. An inspection or a test by the purchaser according to this provision shall not constitute acceptance of the goods and shall under no circumstances release the supplier from his contractual or other liabilities and obligations.

## **11. Material Defects and Warranty**

11.1 The supplier shall warrant

- compliance with the specifications in the purchaser's documents, drawings and plans,
- conformity between goods and the initial samples approved by the purchaser,
- the existence of the characteristics stipulated in the signed initial sample test report,
- freedom from defects of the selected materials and/or supplier parts,
- freedom from defects of the goods in regard to their design, material and workmanship,
- conformity with the latest state of the art, and
- compliance with the agreed technical data / material properties.

11.2. The goods shall comply with all relevant health and safety requirements which apply to them both in regard to the delivered condition and the delivery form to the purchaser, as well as in combination with other goods. The supplier shall be responsible for familiarising himself with the purpose for which the goods are to be delivered. If machines, equipment or systems form the subject of the services, they shall also comply with the requirements in the special safety regulations for machines, equipment and systems applying at the time of fulfilment of the contract. These machines, equipment and systems shall bear a duly affixed CE marking, shall be accompanied by a Certificate of Conformity and shall have all necessary technical specifications.

11.3 If the purchaser discovers defective goods or parts of goods before the start of production, the supplier shall - at the choice of the purchaser - deliver perfect new products immediately or rectify the faults in the defective goods. Any necessary sorting work or other rework shall be carried out by the supplier in agreement with the purchaser at the latter's premises. All costs incurred in connection with the delivery of the defective goods (sorting, transport, costs for rectifying and testing the causes of the defects, etc.) shall be borne by the supplier.

11.4 If a defect is ascertained after the start of production, the following provisions shall also apply:

- (i) If a defect is discovered before the final products are delivered to the purchaser's customers, the supplier shall pay both the costs for rectifying the defects and the costs for dismantling, assembly and all rework (labour costs, material costs, costs for other necessary tools);
- (ii) If a defect is only discovered after the final products have already been delivered to the purchaser's customers, the supplier shall also pay part of the costs incurred for returning the final products and/or field measures which correspond to the partial responsibility or partial culpability of the supplier. The purchaser shall notify the supplier as soon as these defects occur and shall inform the latter about further action and the measures to be implemented.

11.5 The purchaser shall be entitled to personally rectify a defect or have it rectified by a third party, or obtain a replacement product from a third party if

- (i) the supplier is in default with the replacement delivery or rectification of the defect,
- (ii) the defect was discovered before the start of production and this is necessary in very urgent cases in order to prevent serious disadvantages, e.g. stopping the production line.

The supplier shall be informed immediately about this situation. The costs incurred in this respect shall be paid by the supplier.

11.6 Irrespective of and in addition to the legal remedies described in § 11.3 to § 11.5, the purchaser shall be entitled to the following additional legal remedies:

(i) The purchaser may cancel the order (i.e. withdraw from the contract) if he informed the supplier about the defects and granted a reasonable period of grace to rectify them, but this period lapsed without success. It shall not be necessary to grant this period of grace if

- the supplier rejects every legal remedy according to § 11.3,
- the attempt by the supplier to rectify the defect or deliver perfect replacement products has failed, or
- it is unreasonable for the purchaser, after taking account of all circumstances, to grant the supplier such a period of grace.

(ii) The purchaser may reduce the agreed purchase price that was invoiced by the amount through which the market value of the defective goods decreased in relation to the market value for the defective goods, provided the other requirements shown under (i) are fulfilled;

(iii) The purchaser shall be entitled to full compensation for all damage which he incurred due to the defectiveness of the supplied goods and which are the fault of the supplier.

## **12. Product Liability, Recall Actions, Liability Insurance**

12.1 If the supplier is responsible for a product defect (at fault), he shall be obliged at first request to pay compensation or release the purchaser from all third-party claims, provided the cause of the claim lies within the control and organisation of the supplier and the supplier would be personally liable towards third parties. If the purchaser is partially responsible or partially culpable, the supplier may enforce a claim in connection with this partial responsibility or partial culpability against the purchaser. In the relationship between the purchaser and the supplier the respective share of the compensation payments shall be based on the corresponding proportionate partial culpability/partial responsibility.

12.2 As part of his obligation to pay compensation, the supplier shall also be obliged to reimburse all expenses which arise from or in connection with a recall action carried out by the purchaser. The purchaser shall inform the supplier about the content and extent of the recall actions to be implemented and shall give the supplier the opportunity to make a statement in this respect. All other legal claims shall not be affected.

12.3 The supplier shall be obliged to take out and maintain company and product liability insurance containing the components of recall costs and an extended product liability obligation, and with a flat-rate amount of at least €5 million per insurance case for physical injury, material damage and financial losses covered by the extended product liability obligation and recall cost insurance, maximised twice for all insurance cases in an insurance year and during the term of the contract including the limitation periods. On request, the supplier shall provide the purchaser with documentary evidence in the form of an insurance certificate. If the supplier is unable to provide documentary evidence of the insurance policies within 2 weeks, the purchaser shall be entitled to conclude such an insurance at the expense of the supplier.

## **13. Performance of Work**

Persons who are present on the factory premises in order to perform contractual work shall comply with health and safety regulations and occupational safety regulations. Liability for accidents suffered by these persons on the factory premises shall be excluded, unless they were caused by an intentional or a grossly negligent infringement of an obligation by the legal representatives or agents of the purchaser.

## **14. Industrial Property Rights of Third Parties**

14.1 The supplier shall be responsible for ensuring that no intellectual property rights of third parties are infringed in connection with the delivery of his goods.

14.2 If, contrary to § 14.1, a third party enforces claims against the purchaser due to the infringement of intellectual property rights, the supplier shall release the purchaser from these claims.

## **15. Property Rights of the Purchaser to Tools or Parts**

15.1 All drafts, tools, samples, drawings, information or other equipment, which are provided by the purchaser or purchased by the supplier at the purchaser's expense and relate to the production of the goods or are used for that purpose, shall remain or become the exclusive property of the purchaser. The supplier shall expressly agree that these items shall not be used for production or design for the account of others without the prior written permission of the purchaser.

15.2 The supplier shall be obliged to carry out all the necessary service and test work for the purchaser's property, as well as all maintenance and repair services at his own expense. The supplier shall immediately inform the purchaser about all failures.

15.3 The supplier shall keep the purchaser's property separate and apart from any property of other persons and shall clearly mark it as such. The purchaser's property shall not be removed from the company premises of the supplier without written instructions from the purchaser except for the purpose of fulfilling the contract. Any property of the purchaser shall be returned to the purchaser at the end of the contract, unless he indicates otherwise in writing.

15.4 The purchaser shall hereby be issued with an irrevocable power of attorney to allow his employees or representatives to enter the company premises of the supplier or other sites on which the purchaser's property is located in order to take possession of the purchaser's property and (if necessary) dismantle it from anything to which it is attached.

15.5 The supplier shall compensate the purchaser for the loss of or damage to the latter's property during the period in which this property is in the supplier's possession, in his safekeeping or under his control. During this period the supplier shall suitably insure the purchaser's property in the name and for the account of the purchaser and at the supplier's expense against loss or damage (for whatever reason) at its replacement value. This insurance cover shall be obtained from a renowned insurance company. On request, the supplier shall submit to the purchaser these insurance policies and shall provide documentary evidence of the payment of the corresponding insurance premiums.

15.6 The supplier shall keep the purchaser's property free of all liens, encumbrances, rights in rem or other burdens and shall ensure that every security on the property of the purchaser is discharged.

15.7 If the purchaser provides the supplier with parts or material ("parts"), the former shall hereby reserve title to these parts. These parts shall be processed or changed by the supplier in the name of the purchaser. If the reserved parts of the purchaser are processed together with other parts owned by third parties, the purchaser shall acquire joint ownership of the new product in the ratio of the value of the purchaser's parts and the other processed parts at the time of processing.

15.8 If the parts provided by the purchaser are inseparably mixed with other parts not belonging to the purchaser, the purchaser shall acquire joint ownership of the new product in the ratio of the value of his reserved parts and the other mixed parts at the time of mixing. If mixing is carried out in such a way that the supplier's parts are regarded as main parts, it has been agreed that the supplier shall proportionately transfer joint ownership to the purchaser; the supplier shall protect (joint) ownership of the purchaser in the name of the latter.

## **16. Force majeure**

Events which are unforeseeable and unavoidable, lie outside the supplier's sphere of influence and for which the supplier is not responsible, e.g. force majeure, war, natural disasters or industrial disputes (e.g. strikes, lockouts), shall release the supplier for the duration of this event from his obligation to supply the goods or services punctually. Agreed periods shall be extended by the duration of this disruption; the purchaser shall be suitably informed about the occurrence of this disruption. If the end of this disruption is not foreseeable or it lasts more than a month, each contracting party shall be entitled to revoke/cancel the contract.

## **17. Final provisions**

17.1 The contractual relations between the purchaser and the supplier shall be subject to German law to the exclusion of the UN Convention on the International Sale of Goods (CISG).

17.2 The sole place of jurisdiction for all claims arising from and in connection with this contract shall be the Local Court or Regional Court responsible for Bad Dürkheim. However, the purchaser shall also be entitled to enforce judicial claims against the supplier at the place of jurisdiction for his head office.

17.3 If one of the clauses of these Purchasing Conditions or other concluded agreements are or become invalid, illegal or unenforceable, the validity of the other clauses shall not be affected. The contracting parties shall be obliged to replace the invalid clause by a clause which comes as close as possible to the invalid clause in terms of its economic purpose.

17.4 The place of performance shall be the delivery address shown in the order.