



## **General Terms and Conditions** of Spilker GmbH

### **§ 1 Scope of application**

1. The deliveries, services and offers of the supplier will be based exclusively on these business terms, notwithstanding any existing purchase conditions of the orderer which are contrary to this clause.
2. The general business and delivery terms will also be applicable to future business relations, inasmuch as they have been entered into with business people.

### **§ 2 Offer and conclusion of the contract**

1. The supplier will be entitled to correct the prices indicated in his order confirmation, until the complete execution of the placed order, if the supplier explains to the orderer, that costs (such as increase of wages and salaries, material, general costs) on which his calculation had been based, have been increased in the period between the conclusion of the contract and the takeover of the merchandise. The orderer will then be entitled to withdraw from the contract, if the prices have increased by at least 5 % per year after the conclusion of the contract. The costs for materials and wages incurred by the supplier until then, will have to be paid for.
2. If the orderer is not a businessman, the price increase reservation will only be applicable if a delivery time of more than 4 weeks has been agreed in a contract.

### **§ 3 Terms of Payment**

1. The payment (net price plus legal value added tax) will have to be made within 30 days from date of invoice, with no deduction. The deduction of discounts will be granted only according to prior agreement.
2. Bills of exchange will only be accepted as payment on special agreement, whereby all collection and discount fees will be charged. If cheques or bills of exchange are transmitted, they will only be deemed as payment upon their discharge.
3. When the payment is delayed or when a respite in payment is granted, an interest rate which exceeds the then valid discount rate of the Deutsche Bundesbank by 4 % or a comparable 3-months-interest-rate of the European Central Bank will be payable for the delay or respite. The assertion of further indemnifications will be reserved.
4. If the orderer does not meet his payment obligations, and, in particular, if the financial circumstances of the orderer have deteriorated after the conclusion of the contract in such a way as to jeopardize the fulfilment of the outstandings to the supplier, then the supplier will be entitled to demand advance payment and the immediate settlement of all invoices, even of those which have not become due, retain the goods which have not yet been delivered and cease to execute current orders. In such a case the supplier will be also entitled to demand the furnishing of securities and to withdraw from the contract when a reasonable respite has passed, to demand an indemnification because of nonfulfillment, to prohibit the orderer the resale of the goods and to take back still unpaid goods at the orderer's charge. Furthermore the supplier will be entitled to demand advance payments or the furnishing of securities for all other contracts.
5. The orderer will not be entitled to exert a right of retention or to refuse payment, unless the counterclaims have been expressly accepted by the supplier or stated on a legally binding basis by the court.



#### **§ 4 Delivery**

1. If no delivery dates, but a delivery time has been agreed, it will start on the day when the order confirmation is dispatched; it will terminate on the day when the goods leave the factory or are stored as their dispatch has become impossible.
2. If the orderer demands changes in the order after the order confirmation which will influence the manufacturing time, a new delivery time will start when those changes have been confirmed.
3. In the case of Acts of God or other unforeseeable, extraordinary events incurred through no fault - such as war, difficulties in procuring materials, operating troubles, etc. - a new delivery date will be agreed by the contracting partners, even if such events occur at any subcontractors.
4. In case the supplier has delayed the services to be rendered by him, or cannot render the services due to his own fault, the orderer will be only entitled to claim for damages regarding the loss of profits, if the damage has been caused by the supplier in a voluntary or very negligent way.

#### **§ 5 Transfer of risks**

1. The dispatch will be made at the orderer's risk and account. The risk will be transferred to the orderer, when the consignment has been handed over to the carrier. If the dispatch is delayed by the orderer, the risk will be transferred to him when it is notified that the goods are ready for dispatch.
2. The supplier will be entitled to choose the way of dispatch and means of transport at his own discretion, unless otherwise agreed.
3. Transport insurances will only be executed by the supplier on the orderer's explicit instructions and at the latter's charge.

#### **§ 6 Acceptance**

1. In every case the orderer will have to check whether the goods supplied correspond to the contract.
2. If the orderer delays acceptance, the supplier will be entitled to enforce the rights of section 326 of the Civil Code. If the supplier exerts his right of withdrawal, he will furthermore be entitled to that indemnification which would become due, if he had relied on the validity of the business.
3. If the orderer does not accept delivery within a reasonable time from its manufacture or immediately after its dispatch, or if dispatch has been impossible for a longer period for reasons beyond the supplier's responsibility, the supplier will be also entitled to store the goods either on his own premises or on those of a carrier at the orderer's risk and account.



### **§ 7 Preservation of title and securities**

1. The delivered goods will remain the supplier's property until the complete payment of all deliveries and other claims, and until the payment of cheques and bills of exchange.
2. Prior to the payment of all claims of the supplier, or the payment of cheques and bills of exchange handed over for those claims, it will be prohibited to pledge the goods or to assign them for security without the supplier's consent. The total amount of all the claims of the orderer resulting from the resale of the goods delivered by the supplier, will be already now assigned to the supplier until the complete payment of all the claims of the supplier regarding delivered goods.
3. In case of justified reasons and on the supplier's request the orderer will be obliged to inform the third parties concerned about the assignment of payments to the supplier and to communicate the names and addresses of the orderers concerned.
4. A pledge will be put on all of the orderer's materials, tools, documents, etc. when handed over by the orderer, to secure all actual and future claims of the supplier resulting from delivered goods.
5. If the value of the securities furnished to the supplier exceeds his claims by more than 20 %, the supplier will be obliged to release the respective securities at the orderer's request.

### **§ 8 Notices of defects**

1. Notices because of obvious defects will be given immediately, but at the latest within a fixed term of 2 weeks from receipt of the goods. The supplier will have the opportunity to check the defects on the spot. Non-obvious defects which have not been immediately discovered, despite the immediate and careful check of the contractual object, will only be enforced against the supplier, if the supplier receives the notice of defect within 6 months from the date of acceptance.
2. Defects of a part of the supplied goods will not give the right to complain about the whole delivery, unless the rest of the delivery is useless to the orderer.
3. First the supplier will be entitled to repair or replace the delivery. In case of the delayed, non-executed, impossible or unsuccessful repair or replacement delivery, the orderer will be entitled to withdraw from the contract and to claim a reduction in settlement.  
A further guarantee and liability for damages, in particular because of faulty repairs, delayed or incorrect fulfillment of the repair obligations, as well as subsequent damages because of the defect (e.g. useless series or partial series) will be excluded, unless the supplier has acted wilfully or very negligently.
4. The supplier will be only liable for defects in the processed material, inasmuch as those defects of the materials would have been recognizable prior to their use, if they were adequately checked.
5. Tolerances in the size, quality, material, weight, and further execution due to technical reasons will give no right to complaints on the part of the orderer.



## **§ 9 Limitation of Liability**

Subject to other regulations in these terms, the supplier will only be liable if he has acted wilfully and very negligently.

## **§ 10 Provision of material, tools and copyrights**

1. The materials to be processed, as well as the tools and samples procured by the orderer are to be delivered franco destination to the supplier.
2. The objects, in particular, films, clichés, printing, cutting and embossing dies, etc. which are used by the supplier to manufacture the contractual product, will remain the supplier's property and will not be handed over, even if they are separately invoiced.
3. All the rights to his own sketches, designs, final copies, originals, films, printing, cutting and embossing dies, etc. for any process and purpose whatsoever, will remain at the supplier, unless expressly otherwise agreed in writing. It will be prohibited to copy, reproduce or imitate the designs of the supplier or to make them available to third persons.

## **§ 11 custody and insurance**

1. Raw materials, semi-finished and finished goods as well as other materials handed over by the orderer will be only kept in a safe place after the delivery date upon prior agreement or against a special remuneration. In such a case the supplier will only be liable for wilful and very negligent actions. If no agreement has been made and the objects have not been reclaimed by the orderer within 4 weeks from the execution of the order, the supplier will be entitled to store them at a carrier at the orderer's risk and account. If the stored objects have not been picked up by the orderer after a year in spite of the supplier's request, the supplier will be entitled to destroy the stored objects.
2. The before-mentioned objects will be handled with care until the date of dispatch, inasmuch as they have been handed over by the orderer. The supplier will only be liable for damages if they have been caused wilfully or very negligently.
3. If the above-mentioned objects are to be insured, the orderer himself will have to conclude an insurance.

## **§ 12 Writing**

Additional clauses, reservations, alterations or amendments to this contract will have to be confirmed in writing by the supplier to be valid.

## **§ 13 Arbitration**

All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the Rules.

## **§ 14 Miscellaneous**

The legal relations between the orderer and the supplier will be subject to German Law.