

## Terms of Purchasing and Payment

### § 1

#### General - Scope of Validity

- (1) Our Terms of Purchasing and Payment shall apply exclusively for all dealings with the supplier, unless otherwise agreed in writing. The terms and conditions of business of the supplier shall not apply without our express written consent. Our Terms of Purchasing and Payment shall also apply even if we unreservedly accept the supplier's deliveries in the knowledge that the supplier's terms and conditions of business contradict or deviate from our Terms of Purchasing and Payment.
- (2) All agreements made between us and the supplier must be confirmed in writing.
- (3) Our Terms of Purchasing and Payment shall also apply to all future transactions with the supplier.

### § 2

#### Quotation - Quotation Documents

- (1) The supplier is obliged to confirm our purchase orders in writing without delay. If an order confirmation is not received within a period of two weeks from the date of the order, we have the right to cancel the order without the supplier deriving claims from this cancellation.
- (2) We reserve rights of ownership and copyright for all illustrations, drawings, calculations, samples, models and other information provided by us; these must not be made available to third parties without our express written consent. These documents are to be used exclusively for the fulfillment of our purchase order; on completion of the order they must be returned to us immediately upon request. Strict confidentiality must be observed with respect to third parties.
- (3) The supplier may refer to this business relationship with us in his publicity only after obtaining our written consent.

### § 3

#### Prices - Conditions of Payment

- (1) The agreed price shall be binding. Price reductions of the supplier which become effective after our binding order but before delivery to us, shall already apply for these ordered but not delivered goods.
- (2) Unless otherwise agreed upon in writing, the price is inclusive of freight, postage and packing charges. We provide insurance coverage of the goods ourselves. Therefore, the supplier is not entitled to invoice insurance charges. We return products which are the subject of a complaint with insurance cover, but freight being payable by the supplier.
- (3) The prices must be shown by the supplier exclusive of value added tax (VAT).
- (4) The supplier's invoice can only be processed if - in accordance with the requirements stated in our order - it shows the purchase order number, material code number(s) and purchase order item(s).
- (5) Should it be possible to obtain tax or other concessions, the supplier is required to provide us with all necessary documents and certificates for this purpose at the time the corresponding invoice is submitted.
- (6) The payment terms for all orders placed by us are: 14 days with a cash discount of 3%, or 60 days net, unless alternative payment terms of the vendor have been specifically accepted. The payment period starts on the date of receipt of an invoice which corresponds with § 3 (4) and with the complete receipt of the goods as per agreement and receipt of the documents stated in § 6 (2). We are free to choose the method and means of payment at our discretion.

**§ 4****Delivery - Acceptance**

- (1) The agreed delivery periods or dates are binding and refer to the date of receipt by us. If a set period or a set date is specified for delivery, we are not obliged to accept delivery of the goods before this date or before this period begins.
- (2) The supplier is obliged to inform us in writing without delay should circumstances arise or be foreseen which are likely to prevent the delivery of the goods within the agreed period.
- (3) The supplier may withhold deliveries only in those cases in which claims are uncontested, recognized, or legally binding.
- (4) Should there be a delay in delivery we have the right to demand a contractual penalty of 0,5 % of the agreed total price of the delivery for each completed week of delay, but not more than a total of 5 % of this total price. Further legal rights remain unaffected. The supplier is free to prove that damages are less than this contractual penalty.
- (5) If we are prevented from fulfilling our obligations due to unforeseeable or unavoidable circumstances beyond our control (for example: stoppage, strike, lockout, pandemic etc.), the period of time in which we shall fulfill our obligations shall be deferred by the duration of such circumstances. If, due to such circumstances, acceptance is not possible for more than six months, we shall be entitled to withdraw from the contract without being subject to claims on the part of the supplier.
- (6) We are not obliged to accept part-deliveries upon which have not been agreed.
- (7) Any acceptance or test regulations submitted by us to the supplier shall be regarded as an integral part of the purchase agreement. In the event that the agreed permissible quality limits or AQL values are exceeded, we shall be authorized, without prejudicing any other claims, to carry out 100% testing at the expense and risk of the supplier, and to demand the replacement of the parts found to be defective.

**§ 5****Packaging**

- (1) We may choose the means of disposing of the packaging used in shipping. We may obligate the supplier to pick up the packaging from the place of delivery at the supplier's expense. We also have the right to ship the packaging back to the place of origin freight prepaid and to charge the supplier 2/3 of the billed value or to dispose of the packaging at the supplier's expense.

**§ 6****Passage of Risk - Documents**

- (1) Passage of risk occurs when the delivery has been properly turned over to us at the agreed place of delivery or has been accepted by us. The same condition applies when we provide our own transportation personal.
- (2) The supplier is obliged to list exactly our purchase order number, material code number(s) and purchase order item(s) on all shipping documents and delivery notes; if he omits to do so, delays in processing the delivery, for which we cannot be held responsible, will be unavoidable.
- (3) The supplier has not fulfilled his delivery obligations until we receive the proper delivery and shipping documents. Until we receive these documents we have the right to store the delivery at the supplier's expense and risk.

**§ 7****Investigation of Defects - Warranty**

- (1) The supplier must carry out an outgoing goods inspection. The goods will be examined by us for obvious defects, identity, shortage, as well as transportation damage upon arrival. There is no obligation to inspect the goods further. We will report any existing defects or other deviations within a reasonable period of time. We will give notice of hidden damages within a reasonable period of time after they are discovered. With respect to this point, the supplier waives his rights to a defense based on the late notification of defects.
- (2) Irrespective of any warranties he may have assumed, the supplier warrants that the delivered goods are without defect at the time they are delivered to us, have the warranted characteristics, and correspond to the state of the art, applicable legal, safety and accident prevention regulations, as well as the customary technical specifications (e.g., DIN, VDE, VDI, EX-guidelines). Should there be different versions of the technical specifications, the version valid for Germany applies.
- (3) The warranty period is 36 (thirty six) months from the date of delivery or – should an acceptance test have been agreed upon – from the date of acceptance. For buildings and materials used therein, the warranty period is 5 (five) years.
- (4) Should the goods be defective, we have the choice of demanding either rectification of the defects or subsequent delivery of the defective goods. After a reasonable additional delivery period has expired without remedy, or, when due to exceptional urgency it is no longer possible to set an additional delivery period, after notification of the supplier we also have the right to, at the supplier's expense, undertake correction of defects ourselves, have a third party undertake the correction of defects, or obtain replacement goods elsewhere.
- (5) The supplier must bear all expenses (including the cost for removal and installation) for the rectification of the defective goods or for the delivery of replacement goods to the place at which the article is in use. On request, we will inform the supplier of this location.
- (6) Should the supplier rectify delivered goods or replace them partially or wholly, the warranty period according to § 7 (3) begins again in respect of these defective parts, unless the remedy is an explicit act of goodwill by the supplier or involves only insignificant effort.

**§ 8****Product Liability - Indemnity against Liability - Liability Insurance – Liability for sub-suppliers**

- (1) Should we be subject to product liability claims, the supplier must indemnify us, to the extent that a defect in the goods delivered by the supplier caused the damage, from such claims. In cases of fault-dependent liability, this clause applies only if the supplier is at fault.
- (2) The supplier indemnifies us upon our first written request.
- (3) In any case, the supplier assumes the expenses corresponding to his extent of cause or fault, including the expenses of any court actions or recalls. This clause also applies in cases of a discernable or imminent epidemic failure.
- (4) The supplier is obliged to maintain suitable product liability insurance and upon request to provide proof that this insurance exists.
- (5) Claims for damages of any sort are excluded when we, our lawful representatives, or our vicarious agents have caused the damages by ordinary negligence. This exclusion of liability does not apply should there be bodily damage or should a material contractual obligation have been violated in a way that endangers the fulfillment of the contract. In such cases, our liability is limited to customary and foreseeable damages.
- (6) The supplier is liable for the negligent or intentional acts of its vicarious agents, sub-suppliers and sub-contractors as if such acts were its own.

**§ 9****Third Party Rights - Assignment of Rights**

- (1) The supplier warrants that, in connection with this delivery, the rights of third parties are not infringed upon in the European Union, the United States of America, Japan, Korea, and Singapore.
- (2) If a third party claim is made against us in this respect, the supplier shall in so far be obliged to indemnify us against these claims.
- (3) The supplier is not liable to the extent to which he manufactures goods exclusively according to our drawings or models and he did not know or needed not to know that the manufacture of these goods violated third party rights.
- (4) Indemnification will take place upon the first written request.
- (5) The indemnity obligation of the supplier applies to all reasonable expenses which we incur as a result of, or in connection with, third party claims.

**§ 10****Assignment**

Without our written consent rights granted to the supplier and obligations granted by the supplier may neither wholly nor partially be assigned to third parties. This condition also applies to assignment of claims, but not in respect of monetary claims. However, we can perform to the supplier with the effect of a full discharge.

**§ 11****Tools - Confidentiality****Reservation of Ownership - Provision of Material**

- (1) Tools which we made available to the supplier remain our property. Tools or other workshop facilities made on order for us and paid for by us become our property when the final payment is made. Our taking position of the tools and facilities is supplanted by the supplier holding the tools and facilities in safe custody free of charge and with the due care and diligence of a prudent business man. The supplier must keep the articles belonging to us separate from articles not belonging to us. Our property must be clearly identified as such on the articles themselves as well as in company records. After the conclusion of the business relationship, the tools and facilities must be handed over to us if so requested. The supplier is not entitled to use the tools and facilities for own purposes or to make them available to third parties. The supplier is obliged to use the tools and facilities belonging to us exclusively for the manufacture of the goods ordered by us. The supplier is obliged, at his own expense, to insure tools which belong to us at their replacement value against fire and water damage and against theft. He is obliged to carry out, at his own expense, any necessary maintenance and inspection work. He must notify us immediately of any malfunctions; if he negligently omits to do so, any claims for damages shall remain unaffected.
- (2) The supplier is obliged to observe strict confidentiality with regard to all illustrations, drawings, calculations and other documents and information received from us. They may only be disclosed to third parties with our express consent. This applies also for the goods which are manufactured according to documents designed by us or according to our confidential information or with our tools and facilities or tools and facilities which are reverse engineered. This obligation to maintain secrecy continues to apply after the fulfillment of this Contract; it expires only as and when the manufacturing know-how contained in the illustrations, drawings, calculations and other documents provided becomes common knowledge.
- (3) The supplier obligates himself to maintain confidentiality with respect to third parties regarding all details of our order, e. g., number of pieces, technical construction details, commercial conditions, etc. as well as information of a confidential nature which he obtains by us deliberately or by coincidence.
- (4) We reserve the right of ownership in respect of materials and components we provided the supplier with. The supplier processes or transforms such materials and components on our behalf. If the materials and components for which we reserve the right of ownership are processed with other items which do not belong to us, we shall own a proportion of the product manufactured equivalent to the ratio of the value of the goods supplied by us to the other processed items at the time of processing.

- (5) If the materials and components supplied by us are inextricably combined with other items which do not belong to us, we shall own a proportion of the product manufactured equivalent to the ratio of the value of the materials and components for which we reserve the right of ownership to the other items with which they are combined at the time of their combination. If the combination takes place in such a way that the supplier's product is regarded as the main product, it is agreed that the supplier will transfer proportionate ownership to us; the supplier holds the sole ownership or co-ownership in custody for us.

## **§ 12 CSR Activities**

- (1) Supplier warrants that Products shall be manufactured and delivered to us in full compliance with TDK Supplier Code of Conduct (to be revised and/or updated from time to time by TDK).
- (2) Supplier represents and warrants that it is in compliance with all applicable laws, rules and regulations, including but not limited to: (a) those relating to ethical and responsible standards of behavior, including those dealing with (i) human rights (including, without limitation, human trafficking, slavery, forced labor, and child labor), (ii) fraud, money laundering, tax evasion and similar conduct, and (iii) anti-bribery and corruption; (b) those dealing with conflict mineral sourcing; (c) those dealing with hazardous chemical sourcing; and (d) those relating to safety and environmental protection and sustainable development;
- (3) Supplier shall maintain an information security system. If Supplier determines that there has been or may be danger of illegal access by a third party or the loss or unauthorized disclosure of confidential information, which could affect our confidential information or data, Supplier shall promptly notify us.
- (4) Supplier shall cause its subcontractors and suppliers to comply with this article.

## **§ 13 Applicable Law - Court of Jurisdiction - Place of Performance**

- (1) The law of the Federal Republic of Germany shall apply to all disputes arising from and in connection with this Contract.
- (2) **The court of jurisdiction for both contracting parties is Freiburg im Breisgau.** We are also entitled, however, to take legal proceedings against the supplier at his domicile or place of business.
- (3) The place of performance is the place to which the goods are to be delivered to according to the terms of the order.

## **§ 14 Definitive Version**

In case of doubt, the German text of our Terms of Purchasing and Payment shall be regarded as the binding, original version.

TABLE

**TA000227 Terms of Purchasing and Payment – Ver.06 – 08.10.2020 – EK, Silke Gansky**

<b>TABLE:</b>	<b>TA000227 Terms of Purchasing and Payment</b>
Owner:	EK, Silke Gansky
Superior Process:	<a href="#">VA006201 Einkauf</a>
Application Area:	EK
Location:	Freiburg
IKS-relevant:	No
Version – Status:	06 - Productive
Classification:	confidential

## Document information

The following documents are to be considered for the execution of this process:

	Document number	Document name (with hyperlink)
	VA006201	<a href="#">Einkauf</a>

## Definition of Terms

See Glossar: <http://mips/Quality/bpm/NewMic/Lists/MicGlossar/AllItems.aspx>

## Approval

Function	Name
Head EK	Mr. Herr Peter Weber
Head MW	Mr. Andreas Ebner

## Distribution

Guiding principle: The supervisors of all affected employees are to be informed.  
For a longer or frequently changing list of people introduction of a distribution list is suggested.

Function	Responsible person(s) for information and training of affected employees
EK Procurement	Mrs. Silke Gansky

Function / Labor	Further persons or mailing lists, to be informed directly. (optional)

**Revision index**

Description of modifications carried out

Name of Author: Carmen Coviello

Date, Version : 08.10.2020, Ver. 06

Training / Info : for Info

Modification : New § 12 "CSR ACTIVITIES"

Amendment of § 1, § 4 (5), § 7 (1) and (5), § 8 (6)

Name of Author: Peter Weber

Date, Version : 01.12.2017, Ver. 05

Training / Info : for Info

Modification : New TDK-TDK-Micronas Template

Name of Author: Silke Gansky

Date, Version : 04.11.2015, Ver. 04

Training / Info : none

Modification : §3 Payment Terms

**Appendix (optional)**

none