

# Purchasing General Terms and Conditions of MOTORTECH GmbH

## 1. Applicability/Defense Clause

These PGTC shall apply only if the contractual partner is an entrepreneur (§14 of the Bürgerliches Gesetzbuch (the German Civil Code, hereinafter the "BGB")), a legal entity under public law, or a special fund (Sondervermögen) organized under public law. The following conditions apply to all purchase, work supply, work and service contracts, as well as similar contracts, entered into by the MOTORTECH GmbH (hereinafter "MOTORTECH," "we," or "us") with the contractual partner, to the extent not opposed by mandatory statutory provisions and insofar as not otherwise provided in the contracts themselves or in our order letters. Any and all divergent general terms and conditions of business, of delivery and of payment of our contractual partners shall be without effect with respect to us. Nor shall such conditions be incorporated into this contract even if (i) they have been sent to us in an order confirmation or in a commercial letter of confirmation and (ii) our contractual partner, without prior objection by us, performs the delivery or performance, or (iii) we accept the deliveries of the contractual partner without reservation in the knowledge of its general terms and conditions of business. To the extent that our contractual partner does not want these PGTC to be applicable, it shall expressly object thereto, in writing, within a period of ten (10) days, calculated from the placement of our order. In the absence of an express agreement to the contrary, the orders issued by us shall in any case incorporate our PGTC if the contractual partner commences the order without timely objection to said PGTC.

## 2. Delivery Dates/Delivery Default

2.1 The dates agreed upon for delivery are binding. If the delivery date is not provided in the order, and not otherwise agreed upon, then the date of delivery shall be two (2) weeks from the date on which the contract was formed. Should the contractual partner be in default of delivery and should the contractual partner be responsible for such default, then we shall be entitled to demand, for each fully lapsed calendar day, liquidated damages as compensation for default of delivery in the amount of 0.25% of the net delivery value, in total up to a maximum of 5% of the net delivery value. Both contractual parties are entitled to prove that the actual damage, whether direct or indirect, from such default/delay was greater or less than the amount above. In such case, compensation shall be provided for proven damage. Damage subject to compensation also includes, but is not limited to, contractual penalties or damages owed by MOTORTECH as a consequence of the contractual partner's default of delivery. As a general rule, MOTORTECH, on its part, is under obligation to pay such liquidated damages to our customers. If default occurs and we have set a reasonable grace period of three (3) days, then we are entitled after this period expires without result to demand compensatory damages for non-performance and/or to unilaterally withdraw from the contract. If the contractual partner realizes that it cannot comply with an agreed upon delivery date, then the contractual partner shall provide us with written notice thereof without undue delay specifying (i) the reasons therefor and (ii) the expected duration of said delay. This shall not, however, be construed as having altered the fact that a default has occurred.

2.2 The contractual partner is only entitled to call upon the fact that necessary documents to be delivered by us have not been furnished only where (i) it has, in writing, demanded the documents and (ii) it has not received said documents within a reasonable time period.

2.3 Force majeure and labor disputes shall release the contractual partner from performance for the duration of said duration and to the extent that such affects any duties thereof. The contractual partner shall be obligated to furnish any necessary information within reasonable parameters and without undue delay, and shall in the exercise of good faith adjust its obligations to the altered circumstances. If the delivery and/or performance — considered from a business perspective — is no longer economically viable for us due to the delay caused by the force majeure event or by the labor dispute, then we shall consequently be released, in whole or in part, from the obligation to accept the ordered delivery and/or performance and shall to such degree, be entitled to unilaterally withdraw from the contract.

2.4 In the event of a premature delivery not agreed upon, we reserve the right to render payment solely on the maturity date originally agreed upon.

2.5 We shall accept partial deliveries only in accordance with an express written agreement. In the case of agreed upon partial shipments, the remaining undelivered quantities are to be specified.

## 3. Transportation/Transfer of Risk

3.1 Delivery and shipment shall be made free of all expenses, at the cost and risk of the contractual partner, to the receiving destination determined by us; if said destination is not prescribed, then performance shall be tendered at our business headquarters ("Betriebsstz").

3.2 Transportation shall be effected in accordance with the Incoterms agreed upon for the respective case.

3.3 Even in the aforementioned cases, risk of loss shall pass to us only upon physical receipt or acceptance of the goods.

3.4 The contractual partner shall bear the risks associated with procurement within the scope of its performance, unless, upon a case-by-case basis (e.g., sale of goods in stock), contrary provisions are agreed upon.

3.5 The seller shall expressly offer its performance to us, even if a definite or determinable calendar period has been agreed upon for an act or any form of collaboration or assistance on our part.

## 4. Maturity

4.1 Apart from any payment and maturity dates specifically agreed upon, the maturity of all monetary claims that our contractual partner has against us shall require: (i) an invoice in an auditable form complying with our specifications and (ii) the rendering of complete and defect-free performance by our contractual partner.

4.2 Unless otherwise agreed upon, the deadlines for early payment discounts and for payment shall begin to run only upon receipt of (i) the defect-free delivery and performance and (ii) a due and proper invoice.

4.3 We shall not owe any maturity interest (interest on arrears). Default interest for us shall amount to five (5) percentage points over the base interest rate and shall be calculated on an annual basis. The statutory provisions shall apply concerning the requirements of the occurrence of default by us, whereby — in possible derogation thereof — a written warning by the contractual partner is necessary in any event.

## 5. Assignments/Set-offs

5.1 The assignment of payment claims against us held by our contractual partner shall be permissible only with our written consent.

5.2 Set-offs against us by the contractual partner are not permissible to the extent that the claim is disputed by us or not the subject of a final, binding judicial determination.

5.3 In case of assignments, we are entitled to settle accounts directly with the debtors of the contractual partner. The contractual partner shall have the obligation to issue any information necessary for the direct settlement of accounts, to notify its debtors thereof, and to ensure the direct settlement of accounts with such debtors.

5.4 MOTORTECH shall be entitled to unilaterally dissolve any agreement upon occurrence of one of the grounds cited herein: (i) if the supplier's product is no longer technologically or economically competitive; (ii) in the event of the supplier's breach of the stipulated contractual or delivery conditions; (iii) in the event that the end product of MOTORTECH no longer includes the supplier's specific product, independently of the reasons therefor, (iv) in the event that the supplier is no longer trustworthy. No claims by the supplier whatsoever for loss or damage or for compensatory damages can be asserted based upon termination of the contractual relationship.

5.5 Beginning with the third master sample inspection of a part originally offered to and not modified by MOTORTECH, we reserve the right to invoice a lump sum of €100 for the repetition of the master sample inspection.

## 6. Transfer of Ownership

6.1 The transfer of ownership to us is unconditional and regardless of the payment of the purchase price. Should we, however, in any individual case, accept an offer made by the seller subject to the condition of the payment of the purchase price, then the title retention of the seller shall extinguish by no later than the payment of the purchase price for the goods delivered. Prior to payment of the purchase price, we also remain in any case entitled to effect a re-sale within the normal course of business under advance assignment of the payment claim arising from such payment. However, in every instance, all other forms of title retention are excluded, including, but not limited to, the extended title retention ("weiterer Eigentumsvorbehalt"), retention of title with the entitlement to transfer title subject to the transfer of title retention requirements ("weitergeleiteter Eigentumsvorbehalt") as well as title retention with the entitlement to transfer title subject to the assignment of payment claims arising in connection therewith where this also includes cases of further processing ("der auf die Weiterverarbeitung verlängerte Eigentumsvorbehalt").

6.2 Tools, molds, or additional parts belonging to us shall also remain our property when made available to the contractual partner. These items are to be separately designated as our property by the contractual partner.

## 7. Inspection and Complaint Duties

Insofar as a mutual commercial purchase within the meaning of § 343 HGB is concerned, we shall, within a reasonable period, be obligated to inspect the goods upon delivery for deviations from the norm in quality and quantity, unless a different agreement has been entered into with the contractual partner. Notices of obvious defects shall be deemed timely when dispatched by us within five (5) business days of delivery of the goods and subsequently received by the contractual partner. Notices of latent defects shall be deemed timely when dispatched by us within five (5) business days from discovery of the latent defect by the contractual partner.

## 8. Warranty

8.1 We shall have the unabridged right to assert the warranty claims provided for statutorily. We shall be entitled to demand, at our discretion, that the contractual partner repair the defect or provide a replacement. In this event, the supplier is to bear the expenses necessary for the repair of the defect or for the replacement delivery. The contractual partner shall be liable for damages pursuant to statutory provisions without restriction.

In derogation of §442 para. 1 sent. 2 BGB, we shall also be entitled to unrestricted claims for defects if, at the time the contract was entered into, the defect was unknown to us as a consequence of gross negligence.

8.2 The warranty period shall be twenty-four (24) months from (i) the transfer to us of the deliverable or (ii) its acceptance. For replacement parts exchanged within the scope of defect repair due to defects which were not merely slight in nature, the warranty shall begin again upon transfer.

8.3 Our contractual partner shall guarantee and shall assure that all performances/deliveries conform to the latest state of the art, to pertinent legal provisions, and to regulations and directives issuing from government agencies, from employers' liability insurance associations (Berufsgenossenschaften), and from professional associations (Fachverbände). In particular, the contractual partner shall assure that the manufacture and procurement of the product or service delivered is in compliance with (i) all environmental laws and official requirements, (ii) other environmentally relevant provisions, and (iii) relevant European Union directives. If deviations from these regulations are necessary in any individual case, then it shall be necessary to obtain our consent. In the event that our contractual partner has any concerns regarding the manufacture or use of any deliverable desired by us, the contractual partner shall notify us thereof in writing without undue delay.

8.4 The contractual partner shall be obligated to produce all required certificates of conformity ("Konformitätsbescheinigungen") for the given product to be delivered.

8.5 The supplier is prohibited from unilaterally changing tools, processes, procedures, and products without our consent.

8.6 Our claims for recourse against the supplier shall be valid and enforceable even if the goods, prior to their sale to a consumer by us or one of our customers, have been further processed or modified, e.g., by being built into another product. Before we acknowledge or satisfy any defect claim being asserted by our customer (including claims for reimbursement of expenses pursuant to §§ 478 para. 3, 439 para. 2 BGB), we shall notify the contractual partner thereof under provision of a brief outline of the facts of the matter and request a written statement. If (i) said written statement is not issued within a reasonable period and (ii) an amicable solution cannot be effected, then the defect claim which we actually satisfy shall be deemed as being owed to our customer; in such event, the contractual partner shall have the burden of proving the contrary.

8.7 Provided that the applicability of any warranty limitation period in any individual case does not trigger a longer limitation period, the standard statute(s) of limitation (§§ 195, 199 BGB) shall apply to the extent that we are also entitled to non-contractual claims for damages due to defects.

8.8 In the event of unjustified defect complaints made by us, the contractual partner shall bear the required expenses for reviewing the defect complaint and for any subsequent performance. We shall, however, be liable to the contractual partner for damages in the event that we wilfully or through gross negligence did not realize that no defect was present.

## 9. Product Liability

9.1 If claims are made against us alleging violation of (i) official rules and regulations governing health and safety or (ii) domestic or foreign product liability regulations or laws due to defective conditions in our delivery or performance, which conditions have arisen from the manufacturing, delivery, storage, or use of the performance or of the delivered goods, then the contractual partner shall be obligated to indemnify us upon first demand from any and all liability vis-à-vis third parties and/or from the claims of third parties. Said indemnification obligation shall not apply insofar as the claim is based upon any grossly negligent or willful breach of duty by us. Any further claims for compensatory damages — including those stemming from expenses indirectly caused — shall not be affected.

9.2 Our contractual partner shall encode or label the deliverables in such a manner as to render them permanently recognizable to MOTORTECH as being the products of the contractual partner. Our contractual partner is to conduct suitable quality management, commensurate with the nature and scope of the products and in conformity with the state of the art, and to evidence said quality management to us upon request.

9.3 In addition, our contractual partner shall (i) take out insurance with reasonable coverage against all product-liability risks, including the risk of recall, and (ii) furnish the insurance policy to us for our review upon demand to do so.

9.4 Environmental protection, hazardous materials, and hazardous goods: With respect to storage of hazardous materials and to the transportation of hazardous goods, the supplier shall be obligated to fulfill the requirements of all laws, directives, and regulations, as such may be amended from time to time.

9.5 The obligation of the contractor to observe regulations governing the avoidance of packaging waste (BGBL 1234 ff.) shall be considered binding.

## 10. Payments

10.1 The price which we indicate in the order shall be binding and shall apply DDP (Incoterms © 2010) to the recipient designated by MOTORTECH, where nothing is designated to MOTORTECH's business headquarters ("Betriebsstz"), insofar as nothing to the contrary has been agreed upon in writing. Packaging costs shall be included in the price. The price shall be understood as including the respective applicable value-added tax as provided by law.

10.2 Insofar as no divergent written agreement has been entered into, we shall, subsequent to receipt of the goods and invoice, render payment: (i) within ten (10) days with a 2.5% early payment discount, (ii) within twenty (20) days with a 1% early payment discount, or (iii) net within thirty (30) days.

10.3 We shall be entitled to rights of setoffs and retention to the fullest extent provided by law. We shall be entitled to assign, without having to obtain consent of the contractual partner, any and all claims arising from any contract.

10.4 A payment made by us shall not constitute any confirmation of a transaction which is voidable or void as a matter of law. Nor shall said payment constitute any acknowledgement of such billing calculations.

## 11. Documents

11.1 Prior to the commencement of manufacturing, workshop, or assembly activity, all drawings and technical documents are to be discussed with us in detail. Upon approval, said documents shall comprise the basis of manufacturing and assembly. After such work has been performed, the contractual partner shall have to send us in the desired number of copies and in the format requested, by no later than the acceptance date, the drawings and calculations which factually correspond to the performance, along with any other technical documents pertaining to the deliverable. The contractual partner shall be obligated to transfer, at no charge, title in these documents to us. The intellectual property rights therein shall not be affected thereby.

11.2 The warranty and guarantee obligations of the contractual partner pertaining to the deliverable shall not be affected by our consent to drawings, calculations, and other technical documents. The same principle shall also apply to suggestions and recommendations by us, unless otherwise expressly agreed upon. All documents pertaining to the execution of work shall be able to be utilized only for the stipulated purpose, and said documents are to be made accessible to third parties only to such extent. Upon the order being fulfilled, said documents are to be returned at no cost and unsolicited. We reserve all rights in the drawings made to our specifications.

11.3 In all papers (delivery notes, invoices), both our order number and our article number are to be listed, in order to guarantee attribution. In the event of noncompliance, we reserve the option of refusing to accept the goods. Expenses resulting therefrom shall be invoiced to the supplier.

## 12. Non-disclosure covenant

12.1 Except to the extent that an express agreement to the contrary is entered into in writing, the contractual partner shall be obligated to regard and to treat as a business secret any orders and the details in connection therewith, such as documents, drawings, manufacturing documents, etc. Said obligation shall continue to be in effect and in force subsequent to termination of the business relationship.

12.2 If the contractual partner culpably breaches the non-disclosure covenant mentioned in Clause 1, then MOTORTECH shall have the right under § 249 BGB to demand compensatory damages for each culpable violation.

## 13. Final provisions

13.1 The place of performance and the exclusive venue for all mutual claims and duties shall be MOTORTECH, Celle, or the seat of its respective branch office.

13.2 German law shall apply. The law of the United Nations governing the sales of goods shall be precluded.

13.3 All amendments to or restatements of this contract, in order to be legally effective, shall require the written-form ("Schriftform"). Furthermore, the written-form agreement itself can be rescinded only in writing.

13.4 Legally significant clarifications and notices with which the contractual partner is obligated to furnish us after the contract has been entered into (e.g., the setting of deadlines, warning notices, or a declaration of withdrawal) shall require the written-form in order to be effective.

13.5 In the event that any individual provision or a part of these General Terms and Conditions of Purchasing and Ordering is or becomes ineffective or unenforceable, or is effectively modified, such shall not impair or affect the validity of the remaining parts/the remaining provisions of our General Terms and Conditions of Purchasing and Ordering. Any ineffective/unenforceable provision shall be replaced by such a provision which approximates as closely as possible the financial purpose of the ineffective/unenforceable one.

13.6 The contract shall be entered into exclusively upon the basis of our PGTC. Other legal instruments shall not apply, even to the extent that individual provisions are not contained in our PGTC.