

## Purchasing Terms

of INDEX-Werke GmbH & Co. KG Hahn & Tessky  
and TRAUB Drehmaschinen GmbH & Co. KG  
(edition 1/2014)

### I. Scope / defence clause

1. The terms and conditions set out below shall apply to all contracts concluded by and between INDEX-Werke GmbH & Co. KG and TRAUB Drehmaschinen GmbH & Co. KG, as well as the contractor. They shall also govern all future business relationships, even if they are not explicitly agreed again. The Vendor's divergent, contradictory or additional terms and conditions shall only become an integral part of the contract if we have explicitly agreed to them in writing. Accepting delivery without reservation shall not constitute consent.
2. References to the application of statutory regulations shall merely be intended for clarification. Even without such clarification, the statutory regulations shall therefore apply unless they have been directly amended or explicitly excluded in the present Purchasing Terms.

### II. Conclusion of contract

1. Purchase orders, supplements and changes to purchase orders placed verbally or by telephone shall only be valid if confirmed by us in writing.
2. Unless otherwise stated in our purchase orders, our orders shall remain valid for two weeks as from the order date. Our right to revoke a purchase order before receiving the Vendor's correspondingly worded written acceptance confirming the order shall remain unaffected. Timely acceptance shall be determined by the date on which we receive the declaration of acceptance.
3. Contractual amendments and supplements shall only be valid if confirmed by us in writing.
4. We may rescind all or part of a contract if we no longer require the goods, or no longer require them in the agreed quantities on account of labour disputes, stoppages or other unforeseeable circumstances.

### III. Goods / quality requirements

1. Content, nature and scope of the goods shall be governed by our written purchase order, as well as by the specifications and production documents (drawings, samples, etc.) provided by us. The Vendor's duty to review all purchasing and other contractual documents to ensure they are complete, correct and suitable for the intended purpose and to inform us of any inconsistencies / errors in writing shall remain unaffected; the Vendor's personal responsibility for the execution shall likewise remain unaffected.
2. Complete documentation (e.g. vendor's declaration of preferential origin, operating and maintenance manual, safety regulations) shall be presented to us with the goods. The Vendor shall immediately inform us of all changes relating to the origin of the goods.
3. Goods produced according to our specifications shall be inspected prior to acceptance. They shall be accepted as soon as function tests have shown that the goods are without defects or display only minor defects. Acceptance shall be documented in a record to be signed by both parties.
4. Insofar as the Vendor performs work on our company site, he shall comply with our regulations (e.g. company rules, safety regulations), which will be issued to him on request. Storage of materials shall only be permitted by prior arrangement with us; workplaces shall be kept in a safe condition precluding accidents at all times; they shall be left clean and tidy at the end of each working day.

5. If the goods partly or completely consist of software, the Vendor shall grant us the non-exclusive, irrevocable and transferable right to use the software without restriction in time or space. We shall be entitled, as a matter of principle, to reproduce the software where necessary for use in conformity with its contractually intended purpose. The Vendor shall supply printable documentation in German. We may demand that the Vendor conclude a customary maintenance agreement and deposit the source code (e.g. with TÜV Süd) at our expense.
6. At our request, the Vendor shall provide us with the names of his own suppliers. We may reject an upstream supplier for good cause; the Vendor shall be consulted if this leads to delays or changes in costs.
7. For a period of at least ten years as from delivery, the Vendor shall supply us with spare and replacement parts at customary market prices for the goods delivered to us. If the Vendor intends to suspend production of such spare and replacement parts, he shall inform us accordingly at least three months before suspending production, notwithstanding his duty pursuant to sentence 1.
8. The Vendor shall not be entitled to subcontract the work to third parties (e.g. subcontractors) without our prior written consent. The Vendor shall bear the procurement risk for his work insofar as it does not concern production of a single unit.
9. The goods shall be produced using the most appropriate materials and tools in faultless condition, in accordance with our reported technical specifications and the applicable ISO standards, European and German standards, statutory regulations (especially those of the law on product safety), guidelines issued by professional associations, etc. as well as the state of the art. This shall constitute a quality standard for the goods, even if not explicitly agreed.
10. The Vendor shall ensure that the products delivered by his suppliers are free from certain minerals (e.g. tantalum, tin, gold or tungsten) mined in the conflict region of the Democratic Republic of the Congo (DRC) or its neighbouring states.
11. Accepting packaged goods shall not constitute acceptance of the goods as performance. We shall in all cases reserve the right to inspect the goods after delivery.
12. Within reasonable limits, we shall be entitled to demand changes in the design and execution of the goods, with corresponding adjustment of the prices and delivery periods.
13. The Vendor shall be obliged to constantly test and improve the quality of the goods. At the Vendor's request, we shall discuss the nature and scope of the tests, test equipment and methods with the Vendor, and shall agree on these in writing with due regard for the latter's know-how, experience and the state of the art. Samples shall be presented to us for acceptance before commencing delivery in series. The obligation to test the quality shall apply equally to parts which have been provided in accordance with No. VIII.3, as long as they are in the Vendor's possession. If the Vendor is only a middleman for the goods, he shall be obliged to examine the goods for defects before they are handed over to us.
14. The Vendor shall inform us before changing his production sequences, production location, the materials used and upstream suppliers; this shall not apply if such changes demonstrably remain without effect on the quality or nature of the delivered items for our intended use.

- The goods shall not violate any third-party rights (especially trademark, patent and other industrial property rights) in Germany or abroad.

#### IV. Delivery period

- The delivery period stated in our purchase order shall be binding. Time-limits begin to run with our written purchase order.
- Part-deliveries by the Vendor shall only be permitted with our prior written consent.
- The Vendor shall be obliged to inform us in writing and without delay if agreed delivery periods foreseeably cannot be met. We shall be entitled to exercise our statutory rights in the event of default by the Vendor. Default of delivery shall additionally entitle us to demand 1% of the net price of the complete order for each full week by which the delivery period is exceeded, but not more than 5% of the net price of the complete order altogether, as a contractual penalty. This shall also apply accordingly if the Vendor defaults on part-deliveries. Claims for damages shall remain unaffected. Payment of a contractual penalty shall be netted against the damages claimed. If we accept the delayed performance, we must claim the contractual penalty, at the latest, together with the final payment.

#### V. Shipment / acceptance

- Goods shall be shipped at the Vendor's risk; within Germany, they shall be sent free domicile to the address stated in the purchase order. The same shall also apply if goods are returned. The Vendor shall be liable for complying with the specified shipping regulations.
- Where possible, the Vendor shall use eco-friendly packaging materials. At our request, he shall take the packaging materials back at the agreed receiving address, free of charge for us.
- The risk shall pass to us when the goods are handed over on our premises or at the agreed receiving address. In the case of machinery and technical equipment, as well as in the event of an agreed function test/acceptance inspection, the risk shall only pass to us when we have confirmed the faultless function test/acceptance inspection in writing.
- The Vendor shall enclose a delivery note with each consignment, stating our purchase order number, article number, quantity, delivery address and the name of the goods, insofar as these particulars have been stated in our purchase order. If not, we shall be entitled to refuse acceptance of the goods without any rights accruing to the Vendor as a result. The resultant costs shall be borne by the Vendor.
- The occurrence, on our part, of default in accepting delivery of the goods shall be governed by statutory regulations. However, the Vendor must explicitly offer us his services even when a specific or determinable calendar date has been agreed for our action or participation (e.g. provision of material). If we default on accepting delivery of the goods, the Vendor shall be entitled in accordance with statutory regulations to demand reimbursement of his additional costs (§ 304 German Civil Code (BGB)). If the contract concerns a single item to be manufactured by the Vendor (custom-built), further rights shall only accrue to the Vendor if we have undertaken to participate in manufacture and are responsible for failing to do so.

#### VI. Prices / invoicing / payment

- The price stated in the purchase order shall be binding and shall be fixed, free domicile, plus value-added tax at the statutory rate, including all accessory services and incidental costs (e.g. assembly, installation, packaging, transport and marine insurance).
- The Vendor shall negotiate an adjustment of the prices with us if the market situation changes significantly for us or if the market prices of our products drop significantly. If such negotiations fail, we may terminate ongoing contracts (especially skeleton agreements) with a period of notice that duly takes into account the interests of both parties. In such a case, the Vendor can only charge us the costs actually incurred for material which cannot

be used otherwise. We shall be entitled to exercise the same right of termination if the Vendor's prices are above the market level or at least 3% higher than the prices of a comparable competitor, and he is unable to offer more competitive prices within one month of being requested to do so.

- Invoices shall be presented to us with the goods, as a single original in keeping with statutory requirements and stating the package number, number of packages and number making up the consignment. Our article number and the purchase order number shall be stated for each item invoiced, insofar as such particulars are shown in our purchase order. If the invoice refers to goods from different purchase orders, the invoice must state which order has been delivered with the respective consignments.
- Following receipt of the contractual work and services, as well as receipt of the correctly issued invoice, we shall remit payment with deduction of a 3% discount within 14 days, or with deduction of a 2% discount within 30 days, or net within 60 days. In all cases, we shall only be deemed to have defaulted following written reminder.
- The Vendor shall not be entitled to assign all or some of his rights and claims against us to third parties without our prior written consent (however, § 354a German Commercial Code (HGB) shall remain unaffected).

#### VII. Examination / defects in the goods

- Unless otherwise specified below, our rights in respect of material and title defects (including incorrect and short delivery, defective installation, defective documentation) and other violations of duty by the Vendor shall be governed by statutory regulations.
- On receiving the delivered items, we shall randomly inspect them in the order course of business, thus discharging our commercial duty to examine the goods. If additional examinations become necessary on account of defects found during the random inspections, the associated costs shall be reimbursed by the Vendor.
- If we or our customers risk incurring a considerable loss due to delayed repair of a defect, we shall be entitled to repair the defect ourselves or have it repaired by a third party at the Vendor's expense, without first having requested the Vendor to do so. We shall inform the Vendor accordingly as soon as possible.
- The costs of subsequent performance (§ 439 (2) German Civil Code (BGB)) shall also include the cost of removal and re-installation, troubleshooting costs and sorting costs.
- Even if a defect is not found, the Vendor shall bear his costs for verifying a defect report and carrying out repairs; we shall in all other respects only be liable for damages in conjunction with an unjustified demand for repair of defects if we are aware that a defect does not exist or have failed to become aware of this fact through gross negligence.
- Our claims for material defects shall become statute-barred after 2 years, in the case of title defects after 4 years, in both cases as from the date of delivery and/or acceptance. Longer limitation periods for other claims not based on a defect in the actual goods shall remain unaffected. The statutory limitation period for rights of repossession in rem (§ 438 (1) No. 1 German Civil Code (BGB)) shall likewise remain unaffected.
- Defective parts of the goods shall remain at our disposal until replaced, and shall become the Vendor's property when replaced.

#### VIII. Security interests / provided parts / ownership

- The Vendor undertakes to release the security which we have provided, insofar as its value exceeds that of the secured claim by more than 10%.

2. We shall retain ownership and copyright to the illustrations, diagrams, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall exclusively be used for the contractual work and services, and shall be returned to us on completion of the contract. The documents shall be treated confidentially and shall not be disclosed to third parties, even when the contract has ended. This confidentiality obligation shall only cease if and insofar as the know-how contained in the documents has become public knowledge.
3. Tools, fixtures, models and other materials which we have made available or otherwise provided to the Vendor, or which were delivered directly to the Vendor on our behalf (generally referred to as "provided parts") shall remain our property. They shall not be sold, assigned by way of security, pledged, forwarded to or used for third parties, nor made available to them without our consent. Provided parts shall be insured against all standard risks by the Vendor at his expense; as our property, they shall be stored separately from identical or similar items owned by third parties or the Vendor. The Vendor shall exclusively use the provided parts to produce our purchase order and shall immediately return them to us on demand. The Vendor's vicarious agents shall be obligated accordingly.
4. The Vendor shall inform us without delay of any impending seizure of provided parts or other impairment of our rights, as well as of any physical loss or damage to provided parts. He shall be obliged to segregate the provided parts.
5. Provided parts shall be processed, mixed or combined by the Vendor on our behalf. If third parties retain ownership of the products resulting when provided parts are processed, mixed or combined with third-party articles, we shall acquire co-ownership of the new article commensurate with the value of our provided parts in relation to the other articles.
6. If provided parts are improved by the Vendor when realizing a purchase order, we shall acquire a free, non-exclusive right to exploit the improvement as well as any associated industrial property rights ourselves.
7. Models, samples or other documents which we have provided, as well as others produced by the Vendor to our specifications, may only be duplicated by the Vendor to the extent necessary for processing the quotation/execution of the delivery. Insofar as the Vendor places such documents at the disposal of an upstream supplier, the Vendor shall duly obligate the upstream supplier accordingly in writing before making the documents available and shall prove this to us on request.
8. Items manufactured to our specifications shall not be offered / delivered to third parties without our consent; this duty shall remain in force even when the business relationship has ended. If our production documents lead to improvements for the Vendor, we shall acquire a free, non-exclusive right to exploit the improvement as well as any associated industrial property rights.
9. We herewith reject all forms of extended or prolonged reservation of title, with the result that if a reservation of title has been agreed, it shall only apply to the goods delivered to us and only until we have paid for them.

#### **IX. Secrecy**

1. The Vendor shall be obliged to treat as business secrets all commercial and technical details which are not common knowledge but have been revealed to him through the business relationship with us, and to maintain such confidentiality until they become generally known. The Vendor's vicarious agents (including employees) shall be obligated correspondingly in writing; the undertakings shall be presented to us on request.
2. The Vendor may only refer to the business relationship with us for promotional purposes with our prior written consent.
3. Articles produced by order and according to our specifications may only be published by the Vendor for his own advertising with our prior written consent.

#### **X. Product liability**

1. If the Vendor is responsible for a product defect, he shall exempt us from third-party claims insofar as the cause of the fault lies in his sphere of control and organization, and liability rests with the Vendor in his relations with third parties.
2. In this context, the Vendor shall also be obliged to reimburse costs in accordance with §§ 683 and 670 German Civil Code (BGB) which we have incurred through or in conjunction with action which we or our customer have taken to avert a hazard (e.g. by recalling products), insofar as we or our customer were obliged to do so or the action was reasonable. Where possible and reasonable, we shall inform the Vendor of the nature and scope of the action beforehand and give him the opportunity to state his position.
3. If we are sued, without fault, by third parties in Germany or abroad on account of a product defect for which the Vendor is responsible, the latter shall be liable to us accordingly. The same rules governing the burden of proof shall apply to our relationship with the Vendor as to our relationship with the third party.
4. The Vendor undertakes to maintain product liability insurance with a – flat-rate – limit of indemnity of EUR 2.5 million per personal injury/property loss. The insurance certificates shall be presented to us on request. Our claims for compensation shall remain unaffected.

#### **XI. Concluding provisions**

1. The requirement for written form shall also be met by communications sent by email and fax.
2. Place of performance shall be at our domicile. Exclusive venue shall be at the court having jurisdiction for our domicile; however, we shall also be entitled to sue the Vendor at the latter's domicile.
3. German law shall apply, including the UN Convention on the International Sale of Goods (CISG).
4. Data pertaining to the Vendor, especially his name, address and account details, which are needed for handling the contractual relationship will be stored and processed.
5. If one or more of these terms and conditions prove to be or become invalid, this shall not affect the validity of the remainder.