

## **General Terms and Conditions of Purchase of AB VALVES GmbH**

### **1. General – Scope of Application**

- 1.1. Our General Terms and Conditions of Purchase shall apply exclusively; contrary or deviating Terms of the supplier are not accepted unless expressly approved by ourselves in writing. Our Terms and Conditions of Purchase shall also apply if we accept delivery of the supplier unreservedly despite being aware of a conflict between his conditions and ours.
- 1.2. Individual agreements made in a particular case (including collateral agreements, amendments and modifications) shall take priority over these General Terms and Conditions of Purchase. The contents of such arrangements shall be subject to a written contract or to our confirmation in writing.
- 1.3. Our General Terms and Conditions of Purchase only apply in relation to entrepreneurs in the sense of § 310 para. 1 German Civil Code, to legal persons under public law and to special funds under public law.
- 1.4. Our General Terms and Conditions of Purchase also apply to future transactions even if no express reference is made to them, provided they have been supplied to the supplier with an earlier order.

### **2. Offer – Offer Documents**

- 2.1. The supplier shall be obligated to accept our order within a period of 2 weeks.
- 2.2. We reserve ownership and copyrights to diagrams, drawings, calculations and other documents; they must not be made available to third parties without our express written consent. They are to be used exclusively for production based on our order and shall be returned to us after completion of the order without prior request. They shall be kept secret vis-à-vis third parties, insofar clause 10.5 shall apply in addition.

### **3. Prices – Payment Terms**

- 3.1. The price set out in the order shall be binding. In the absence of any written agreement to the contrary, the price shall include “carriage paid” delivery and packaging. The return of packing material requires a separate agreement.
- 3.2. The price includes statutory VAT.
- 3.3. The invoice has to include the number and date of the order, of the conclusion of the contract and of the delivery request, additional data (accounting), tax number, VAT identification number in case of cross-border deliveries within the EC, unloading point, number and date of delivery note and quantity of the goods charged. The supplier shall be responsible for all consequences arising from his failure to meet this obligation, unless he can prove that he is not responsible for this failure.
- 3.4. We are allowed to pay by cheque or bank transfer. In these cases payment has been made in due time if the cheque has been posted on the due date or the transfer has been received by our bank on the due date.
- 3.5. Failing a special agreement to the contrary, we shall pay the purchase price after having received the complete delivery and the invoice issued as described under 3.3. Failing a written agreement to the contrary, we shall pay the purchase price within 14 days of delivery and receipt of the invoice at a 2% discount or within 30 days of receipt of the invoice without discount.
- 3.6. Payment is made under reserve of the invoice being checked by us. We shall be entitled to the right of set-off and lien to the extent permitted by law.

### **4. Delivery Period**

- 4.1. The delivery period stated in the order shall be binding.
- 4.2. The supplier shall be obligated to immediately notify us in writing if circumstances arise or become apparent to him that would prevent him from observing the agreed delivery period.
- 4.3. The delivery period is observed if the delivery item has reached the contractually agreed destination and/or the contractually owed service is completely performed on the day of delivery and/or upon expiration of the delivery period.
- 4.4. In the event of a delay in delivery we shall be entitled to statutory claims. We shall in particular be entitled to claim damages in lieu of performance and withdraw from the contract after an appropriate period has lapsed without result. Should we claim damages, the supplier shall be entitled to prove that he is not responsible for the breach of duty.

### **5. Delivery - Passing of Risk - Documents**

- 5.1. Unless otherwise agreed in writing, delivery shall be made carriage paid to the place of destination specified in the order. If the place of destination is not specified and nothing else is agreed, delivery has to be made to our registered

office. The respective place of destination shall also be the place of performance (debt to be discharged at creditor's domicile).

- 5.2. The risk of accidental loss or accidental depreciation of the goods shall pass to us on delivery at the place of performance. If a requirement of acceptance is agreed, this is decisive for the transfer of risk. In all other respects, the statutory regulations of contract work law shall apply accordingly with regard to acceptance. The risk also passes to us if we are in default of acceptance.
- 5.3. The supplier shall be obligated to exactly indicate our order number on all shipping documents and delivery notes; should he fail to do so, we shall not be responsible for delays in processing.

## **6. Inspection of defects – Liability for Defects**

- 6.1. We shall be obligated to inspect the goods within an appropriate period with respect to any deviations in quality and quantity; any notice of defect shall be considered given in time if received by the supplier within 5 working days as of receipt of the goods or, in the event of hidden defects, as of discovery.
- 6.2. We shall be entitled to all claims due to defects permitted by law; we shall in any case be entitled to demand of the supplier remedy of defects or delivery of replacement goods at our discretion. We expressly reserve the right to claim damages, in particular damages in lieu of performance.
- 6.3. If the supplier is in default, we shall be entitled to remedy the defect ourselves at the supplier's expense.
- 6.4. The period of limitation shall be 36 months as of the passing of risk. **7.**

## **7. Recourse of the entrepreneur**

- 7.1. Apart from the claims for defects, we are entitled without any qualifications to all claims for compensation throughout a supply chain provided by law we are entitled to request exactly that type of supplementary performance (improvement or replacement), we owe our customer in the individual case. Our statutory right to choose (§ 439 para. 1 German Civil Code) shall remain unaffected.
- 7.2. Before accepting or fulfilling a defect claimed by our customer (incl. compensation pursuant to §§ 478 para. 3, 439 para. 2 German Civil Code), we will notify the seller and ask him for a written statement including a brief description of the facts. If such statement is not made within due time and no amicable solution can be negotiated, the claim for defects actually granted by us shall be deemed to be owed to our customer; the supplier has to produce counter-evidence.
- 7.3. Our claims from compensation shall also apply if the goods have been processed by us or one of our customers, e.g. by fitting into another product, before having been sold to a consumer.

## **8. Production**

- 8.1. Irrespective of the supplier's warranty obligation, we are entitled to inspect the production in the premises of our supplier at any time, to object to non appropriate quality and to reject defective parts. We are entitled to carry out checks in order to convince ourselves of the diligence and due progress of work.
- 8.2. Any necessary supplements or amendments of drawings, calculations or other documents shall become our property.
- 8.3. The supplier shall inform us on time about the date of completion so that acceptance can be performed in our presence. We are entitled to carry out test operation at our own discretion and to reject acceptance in case production conditions are not adhered to. If the rejection of parts of the delivery is founded, we are entitled to use the delivered goods free of charge until appropriate replacement is provided.

## **9. Product Liability – Release – Liability Insurance**

- 9.1. Insofar as the supplier is responsible for damage caused by a product, he shall be obligated to indemnify us upon first request against any claim for damages by third parties, if the claim lies within his sphere of control and organization and he is himself liable in relation to third parties.
- 9.2. Under the liability pursuant to clause 9.1. the supplier shall also be obligated to reimburse any expenses resulting from or in connection with any recall action carried out by us in accordance with Sections 683, 670 German Civil Code or in accordance with Sections 830, 840, 426 German Civil Code. As far as possible and reasonable we shall notify the supplier of the content and extent of the recall action to be taken and shall give the supplier an opportunity to comment. Other statutory rights shall remain unaffected.
- 9.3. The supplier undertakes to maintain product liability insurance with coverage of 10 million per case of personal injury/damage to property as a blanket policy. If we are entitled to more extensive claims for damages, said claims shall remain unaffected.

## **10. Reservation of Title – Provision of Materials – Tools – Secrecy**

- 10.1. Insofar as we provide the supplier with parts, we shall reserve title therein. Any processing or transformation by the supplier shall be done solely in our name and on our behalf. If our reserved goods are processed or transformed together with other property not belonging to us, we shall acquire co-title in the new product in the proportion of the value of our reserved goods (cost price plus VAT) to the other goods at the time of processing or transformation.
- 10.2. If our reserved goods are inseparably combined with other goods not belonging to us, we shall acquire co-title in the new goods in the proportion of the value of our reserved goods (cost price plus VAT) to the other combined goods at the time of combining. If the combining is such that the supplier's product is considered the main chattel, it shall be agreed that the supplier assigns co-title to us on a pro rata basis; the supplier shall preserve the sole title or co-title for us.

- 10.3. We shall reserve title in any tools; the supplier shall be obligated to use said objects solely for manufacturing the goods ordered by us. The supplier shall be obligated to insure the above objects belonging to us at replacement value against fire damage, water damage and theft at his own expense. The supplier hereby assigns all of his claims for compensation under said insurance to us; we hereby accept the assignment. The supplier shall be obligated to carry out any service or inspection work on the above objects that may be necessary as well as all maintenance and repair work at his own expense and in a timely manner. The supplier shall notify us of any defects immediately. If the supplier culpably fails to do so, our right to claim damages shall remain unaffected.
- 10.4. Insofar as the security interests to which we are entitled pursuant to clause 10.1 and/or clause 10.2 exceed the cost price of all our reserved goods which have not yet been paid for by more than 10%, we shall be obligated to release the security interests upon the supplier's request at our option.
- 10.5. The supplier shall be obligated to keep all illustrations, drawings, calculations and other documents and information received strictly confidential. They may only be disclosed to third parties with our express consent. The obligation of secrecy shall also apply after expiry of this agreement; the obligation shall not expire until and insofar as the production know-how contained in the illustrations, drawings, calculations and other documents provided is in the public domain.

## **11. Industrial Property Rights**

- 11.1. The supplier warrants that no rights of third parties within the Federal Republic of Germany are infringed in connection with his delivery.
- 11.2. Should a third party assert any claims against us because of an infringement of his rights, the supplier shall be obligated to indemnify us against said claims upon first written request. We shall not be entitled to enter into any agreements whatsoever with the third party, in particular not to conclude a settlement - without the supplier's consent.
- 11.3. The supplier's indemnity obligation relates to all expenses necessarily incurred by us arising from or in connection with the recourse claimed by a third party.
- 11.4. The limitation period shall be 36 months as of the passing of risk.

## **12. Official authorization**

If the scope of delivery includes objects whose design and version are subject to official approval for which we have to submit together with the supplier documents, the supplier shall be engaged to do everything necessary to establish the necessary documents.

## **13. Data about the supplier**

We are entitled to store and process data about the supplier with regard to our business relationship or in connection therewith whether they come directly from the supplier or from third parties.

#### **14. Data protection**

It is our obligation to handle personal data about the supplier with great care. The provisions of relevant legal norms are strictly adhered to. We will in no way impair personal rights of the supplier.

#### **15. Place of Performance – Place of Jurisdiction – Applicable Law**

- 15.1. Except where the purchase order otherwise indicates, place of performance shall be our place of business.
- 15.2. If the supplier is a merchant in the sense of the German Commercial Code, legal entity under public law or a federal special fund under public law, the place of jurisdiction – even international - shall be our registered place of business for all disputes resulting from the contractual relation. However, we are also entitled to institute legal proceedings at the location of the supplier's headquarters or any other legal place of jurisdiction.
- 15.3. The laws of the Federal Republic of Germany shall apply to these General Terms and Conditions of Purchase and the entire legal relationships between us and the supplier, with the exclusion of all international and supranational (contractual) legal systems, in particular the UN Conventions on Contracts for the Sale of International Goods. Prerequisites and effects of the reservation of title shall be subject to the law of the respective location of the subject-matter, insofar as the choice of law is invalid or unenforceable in favor of German law.
- 15.4. The German version of these Terms and Conditions shall be binding.