

## 1 Scope

These conditions shall apply to purchasing by the company Merten GmbH and are to be regarded as an integral part of the agreement for all orders placed by the company Merten GmbH.

## 2 Law and place of jurisdiction

Unless expressly agreed otherwise, all contractual relationships shall be governed by German law. The application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention 1980, CISG) is excluded pursuant to Art. 6 of this agreement. If the contractual partner is a registered trader or has no general place of jurisdiction in Germany, the place of jurisdiction for both parties shall be the court having jurisdiction for the domicile of the company Merten GmbH. The same shall also apply if the contractual partner moves his domicile or usual place of residence out of the area of application of this law following conclusion of the agreement, or his domicile or usual place of residence is not known at the time of instituting legal proceedings.

## 3 General terms and conditions of business of the contractual partner

General terms and conditions of business of the contractual partner shall not be deemed to have been agreed to, even if the company Merten GmbH does not expressly contradict them or if the contractual partner indicates that he intends to deliver only on his own terms. The contractual partner shall be deemed to have accepted these conditions of purchase upon confirmation or execution of the order at the latest.

## 4 Written form

As a matter of principle, the company Merten GmbH will confirm all agreements and declarations of consent in writing; this shall also apply to oral agreements with the managing directors of the company Merten GmbH and authorised representatives of the company Merten GmbH and/or the company Merten GmbH. Electronic form (Section 126a of the German Civil Code (BGB)) may not take the place of written form. The requirement of written form can only be waived in writing.

## 5 Execution of the agreement

The contractual partner shall not be entitled to pass on the order or significant parts thereof to third parties without the consent of the company Merten GmbH. In the event of contravention, the company Merten GmbH may impose the contractual penal-

ty agreed to below in case of delayed delivery for the duration of the contravention. We reserve the right to claim damages in addition or in lieu thereof, taking the contractual penalty into account. The statutory rights of rescission and damages on grounds of delayed performance and/or in place of performance shall not be affected by this.

## 6 Delivery and performance dates

The company Merten GmbH is reliant on punctual delivery to meet its own production deadlines. All delivery dates must therefore be strictly adhered to. In the event that the delivery date is exceeded, the contractual partner undertakes to pay the company Merten GmbH a contractual penalty of 0.2% of the purchase price or compensation owed by the company Merten GmbH for each day by which delivery is delayed. The contractual penalty is limited to a maximum period of 50 days or a maximum of 10% of the total order value and shall apply notwithstanding any other rights under legislation governing sale of goods. We reserve the right to claim damages on grounds of delayed delivery in addition or in lieu thereof, taking the contractual penalty into account. As soon as the contractual partner has reason to assume that he will not be able to deliver all or part of the order on time, he must immediately inform the company Merten GmbH of this, so that the company Merten GmbH is able to make alternative arrangements where necessary. The additional costs incurred as a result of delayed delivery shall be for the account of the contractual partner. The company Merten GmbH shall be entitled to demand that the contractual partner confirms his willingness and ability to deliver on time within 10 days in writing. If it does not receive this confirmation, the company Merten GmbH shall be entitled to withdraw from the agreement without penalty.

## 7 Shipping, costs of delivery and risk of loss during shipping

Unless agreed otherwise, shipping shall take place free of all charges at the risk of the supplier to the receiving centre specified by the purchaser. The shipping documents and dispatch note (in duplicate) must contain the order reference specified in the order (particularly the order number and item number). Shipments without ordering information will be stored at the risk and expense of the supplier pending clarification. Correspondence must be maintained with the purchasing department; two copies each of the advice of dispatch and deliv-

ery note and one copy of the invoice must be transferred with the delivery. Invoices which do not include the complete reference and order numbers shall not be deemed to have been issued until they are clarified by the supplier. In the event of incorrect delivery, the company Merten GmbH shall be entitled to retain a proportion of the payment until correct performance has taken place. Acknowledgement of performance as per agreement is not connected to any advance and interim payments agreed to.

## 8 Method of payment

Payment will be made on the 15th of the month following delivery with a cash discount of 3% or within 90 days of delivery net, under reserve of delivery or performance as per agreement and an invoice issued in proper form.

## 9 Prohibition of assignment of claims and transfer of ownership

Claims of the contractual partner resulting from this agreement may only be assigned to third parties with the written permission of the company Merten GmbH.

## 10 Transfer of ownership

The goods will become the property of the company Merten GmbH upon delivery. Retention of title by the contractual partner—in any form—shall not be effected.

## 11 Liability for defects

The contractual partner guarantees that all deliveries and services are in accordance with the latest technology, the relevant German and European provisions and the regulations and guidelines issued by German and European authorities, professional organisations and trade associations, and that they meet specifications. If deviations from these provisions are necessary in individual cases, the contractual partner shall obtain Merten's written permission. The obligation to assume liability is not restricted by this permission. If the contractual partner has reservations about the design requested by the company Merten GmbH, he must immediately inform the company Merten GmbH of this in writing. The contractual partner undertakes to use environmentally friendly products and methods for his deliveries/services and also for subcontracted supplies or ancillary services provided by third parties, within the bounds of financial and technical possibilities. He shall be liable for the environmental compatibility of the products and packaging materials supplied and for all

consequential damage caused by the breach of his statutory duties to dispose. At the request of the company Merten GmbH, the contractual partner will issue a certificate of inspection for the goods supplied. Changes to the composition or the constructional design in comparison with previous deliveries and services of the same type must be announced to the company Merten GmbH before the start of production. They must be expressly approved by the company Merten GmbH. The company Merten GmbH will only issue this approval in writing. At the same time, the contractual partner must take all necessary measures with regard to his production, inspection, packaging, etc. as he sees fit and on his own authority so that he is able to guarantee that the requirements of the company Merten GmbH are met at all times. The contractual partner's warranty obligations also extend to delivering and fitting any missing guards on machines and devices and the like and ensuring that the supplied equipment corresponds with statutory provisions in all respects. In the event of defects as to quality, the company Merten GmbH shall be free to assert the statutory warranty claims at its own option (in the event of withdrawal or partial withdrawal). In urgent situations where elimination of defects by the contractual partner is unreasonable, the company Merten GmbH shall be entitled to minimise the damage by replacing or repairing faulty parts and eliminating damage caused without further announcement at the expense of the contractual partner. The same shall apply in the event of delay on the part of the contractual partner. Costs incurred by a third party instructed by the company Merten GmbH or the imputed primary costs incurred by the company Merten GmbH shall be eligible for compensation. If claims are brought against the company Merten GmbH on grounds of breach of official safety regulations or domestic or foreign product liability regulations or laws as a result of its products being defective, and this can be traced back to the contractual partner's goods, then the company Merten GmbH shall be entitled to demand compensation for this damage from the contractual partner, insofar as it has been caused by the products supplied by the contractual partner. This damage shall also include the costs of a precautionary product recall. The contractual partner must implement quality assurance appropriate to the type and scope, in accordance with the state of the art, and supply proof of this to the

company Merten GmbH upon request. He will conclude a corresponding quality assurance agreement with the company Merten GmbH upon request. Furthermore, the contractual partner will adequately insure himself against all risks arising from product liability, including the risk of a product recall, and will present the insurance policy to the company Merten GmbH for inspection upon request.

The contractual partner guarantees that the deliveries and services are unencumbered by third-party rights which could restrict their usability by Merten GmbH. For the rest, the aforementioned provisions with regard to liability for defects shall apply in the event of non-compliance with this warranty.

#### **12 Limitation**

Claims under art. 11 shall become time barred 36 months after the transfer of risk.

#### **13 Acceptance and complaints**

Acceptance by the company Merten GmbH shall take place upon delivery in accordance with random sampling tables DIN/ISO 2859/1 with a permissible quality level value of 0.65 for major defects and 1.0 for minor defects, unless expressly agreed otherwise. Furthermore, the company Merten GmbH shall not be obliged to inspect deliveries and services for uniformity upon receipt. The company Merten GmbH may give notice of defects due to obviously defective deliveries within two weeks of delivery of the goods. The company Merten GmbH may give notice of defects which only become apparent when the delivered goods are processed or put into use within two weeks of their discovery. The timely dispatch of notification of the defect shall be sufficient in order to preserve the rights of the purchaser. If the seller has fraudulently failed to mention the fault, he may not rely on these provisions.

#### **14 Provision of materials**

The materials provided shall remain the property of the company Merten GmbH, even where they are subject to a charge, and, as such, must be stored, labelled and managed separately. They may only be used for orders placed by the customer. In the event of infringement, a contractual penalty shall be owed in accordance with article 5. In the event of culpable damage or culpable partial or complete destruction of the items provided, damages must be paid free of charge.

#### **15 Drawings, tools, models**

and samples or similar, as well as goods manufactured on

the basis of these, may not be passed on or made accessible to third parties or used for advertising purposes without the written permission of the company Merten GmbH. They must be protected from unauthorised access or use. The contractual partner undertakes to maintain secrecy with regard to manufacturing techniques, materials and expertise made accessible to him within the scope of the business relationship with the company Merten GmbH, or his own knowledge which he acquires within the scope of this business relationship. Tools, moulds and similar which are to be manufactured wholly or partially at the expense of the company Merten GmbH shall become the property of the company Merten GmbH upon manufacture. The contractual partner may only charge the company Merten GmbH for such items following the presentation of patterns as per agreement and approval by the company Merten GmbH. The company Merten GmbH shall be entitled to request the surrender of moulds and tools which it has paid for or has paid a deposit for. The supplied items such as moulds and tools will be kept safe by the contractual partner and maintained, so that they can be used at any time.

#### **16 Rights of use**

The contractual partner shall grant the company Merten GmbH the non-exclusive, transferable right of use to the supplier's industrial property rights which have been incorporated into the contractual product, unrestricted in terms of time or place. The contractual partner shall also grant the company Merten GmbH this right of use to software forming part of the contractual product, including associated documentation, as well as the right of use pursuant to Section 69a ff. of the German Copyright Act (UrhG). Backup copies may be produced.

#### **17 Provisions for the delivery of hardware and software**

Where hardware and/or software is to be delivered, the contractual partner shall inform the company Merten GmbH about all possible connection and installation conditions before the company Merten GmbH places its order. Devices which are typically installed by the supplier must be in an operational condition at the installation site. The operability must be proven in due form and confirmed by the company Merten GmbH.

The contractual partner shall perform the installation with his employees. The costs of this are included in the fixed price. The contractual partner is obliged to provide the company Merten

GmbH with the required software. The contractual partner shall grant the company Merten GmbH an unlimited and transferable right of use for the software supplied, unrestricted in terms of time, place and subject matter. Additional remuneration for parallel, multiple use is expressly excluded. The contractual partner shall take suitable measures to ensure that the supplied software is free from viruses or similar faults.

#### **18 Property rights**

The contractual partner guarantees that no property rights, particularly copyrights, patent rights and licencing rights of third parties will be breached through the acceptance, processing and resale of the items supplied by him.

#### **19 Nondisclosure**

All information that the supplier receives from us in connection with execution of the agreement must be treated as confidential without restriction. This shall not apply to information which was already known to the supplier or which he has acquired knowledge of elsewhere. The supplier shall be obliged to observe the statutory data protection provisions. In particular, the supplier's employees must be committed to the protection of data privacy in accordance with Section 5 of the Federal Data Protection Act (BDSG). The supplier must also impose these obligations on approved subcontractors.

We reserve the proprietary rights and copyrights to all documents handed over to the supplier in connection with the order, such as calculations, drawings, etc. The supplier undertakes not to disclose these documents to third parties unless we issue our express written consent for this to the supplier. Authorised subcontractors shall not be regarded as third parties for the purposes of these provisions if they have been committed to confidentiality. These documents must be returned to us without delay if the supplier does not accept our order within the period set out in article 6. If our order is accepted, the documents must be returned to us at the latest upon processing of the order, without being requested to do so.

#### **20 Final provisions**

The supplier shall not be entitled to a right of retention.

No subsidiary agreements have been concluded. In the event that parts of these conditions are ineffective, the remaining provisions shall remain an effective part of the agreement. In this case, the ineffective conditions shall be replaced by condi-

tions which most closely reflect the intended financial purpose of the ineffective conditions.

#### **Merten GmbH**

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