General Terms and Conditions of Purchase

1. General information

1.1
The contractual relationship between the Supplier and Memmert GmbH + Co. KG (hereinafter referred to as the 'Customer') is exclusively based on the following Terms and Conditions of Purchase.
Any of the Supplier's Terms and Conditions that are contradictory to or deviate from these Terms and Conditions of Purchase shall not become part of the contract unless the Customer expressly agrees to the validity of the same in writing.

1.2
These Terms and Conditions of Purchase shall also apply if the Customer unreservedly accepts this delivery in the knowledge of the Supplier's Terms and Conditions that are contradictory to or deviate from these Terms and Conditions of Purchase. References or indications that the Supplier makes to the validity of their General Terms and Conditions are hereby expressly rejected.

1.3
These Terms and Conditions of Purchase shall also apply to all future transactions between the Supplier and the Customer.

2. Conclusion of the contract

2.1
The Supplier's quotations are binding with respect to all information (particularly with regard to illustrations, drawings, weight and dimensional data) and are free of charge for the Customer, unless remuneration is expressly agreed in writing.

2.2
Modifications and amendments shall be made in writing to be valid.
This shall also apply to any waiving of this written form clause.

2.3
If the Supplier does not accept a purchase order within a period of two weeks following receipt of the same, the Customer's request for conclusion of the contract shall cease to be valid.

2.4
The Supplier's contractual declaration (quotation / acceptance) shall be accompanied by technical data sheets and safety data sheets on request. They shall contain special storage conditions and potential expiry dates for the purchased items.

2.5
Modifications of the goods compared to previous similar purchase orders or release samples (with regard to material changes or in terms of the goods' structural design) shall be reported to Memmert GmbH & Co. KG before production commences. Such modifications require the prior written consent of Memmert GmbH & Co. KG. The goods shall also correspond to the respective state of the art.

3. Delivery dates

3.1
The agreed delivery dates are binding (business on fixed terms). Receipt of the goods at the Customer's specified place of receipt or use is decisive for compliance with the delivery date.

3.2
The Supplier is obligated to inform the Customer in writing immediately if circumstances indicating that the delivery date cannot be met occur or become apparent, stating reasons and the expected duration.
This notification has no effect on the agreed delivery date.

3.3
Partial deliveries shall only be accepted following express agreement. They shall be identified as such and the remaining quantities shall be listed.
Even if the Customer has agreed to a partial delivery, the agreed deadlines for the entire delivery shall remain in force so that the delivery is only completed once the contract has been fulfilled in full.
The statutory right of withdrawal from the contract for the outstanding partial delivery remains expressly in force.

4. Default on delivery

4.1
In the event of default (failure to comply with the fixed delivery date), the Customer shall be entitled to statutory claims.
Acceptance of the delayed delivery does not constitute a waiver of any assertion of claims for compensation.

4.2
For each completed week, the Customer shall demand lump-sum compensation for default amounting to 1%, but no more than 10%, of the delivery value. The Supplier shall be permitted to prove that no damage or significantly less damage has been caused by the delay.

4.3
Further statutory claims are expressly reserved.

5. Delivery

5.1
Delivery shall be free of charge, including packaging and all other transport and ancillary costs, to the named place of receipt or use. The Supplier shall take back the packaging material free of charge at the Customer's request.

5.2
Each shipment shall be accompanied by the corresponding delivery note. The delivery note and the invoice shall contain all the information required in the purchase order as follows:
- The Customer's recipient / contact person
- The Customer's order number
- The order's item number
- The Customer's part numbers
- Number of packages
- Quantities / package
- Information about possible partial / subsequent deliveries

5.3
Completeness of the delivery requires receipt of the goods and the associated material tests, test reports, quality documents and all other agreed documents.

5.4
Contrary to § 447 of the German Civil Code (BGB), the risk shall not pass to the Customer until the sold item is handed over, even if the Supplier ships the purchased item to a head office of the Customer at the Customer's request.
The costs of an insurance policy taken out by the Supplier to cover any damage to the purchased item occurring during transport shall not be borne by the Customer.

6. Prices, invoicing, payment

6.1
The price stated in the purchase order is binding.

6.2
Invoices shall be submitted as original documents and as duplicates or copies and shall contain the following information as a bare minimum:
- Order number
- Name of the Customer's ordering employee
- Supplier number
- Part number
- Quantity
- Designation / product name
- Price
- Performance period

6.3
Payments shall be made within 14 calendar days with a 3% discount or within 30 calendar days without a discount.
The payment period shall commence when a proper invoice is issued (6.2) and the delivery is complete (5.3) and, if applicable, installation / assembly has taken place, but under no circumstances before the agreed delivery date.
The discount shall also be deducted in the event of offsetting by the Customer and in the event of (partial) retention of the purchase price due to material defects (the payment period commences once all of the material defects have been eliminated).

7. Liability for material defects and defects of title

7.1
Deviations from the agreed specifications are always considered to be material defects.

7.2
A whole batch of the delivered goods shall be deemed defective if the number of defective individual parts exceeds 2% of the respective batch ('serial defects').

7.3
In addition to the statutory rights, the Customer is also entitled to remedy the defects themselves or to have them remedied by third parties at the Supplier's expense if the Supplier does not comply with a subsequent improvement request within the set period.

7.4
The limitation period is three years, unless a longer limitation period is provided for by law.

7.5
For repaired or subsequently delivered parts or products, the three-year limitation period shall recommence on completion of the repair or on delivery of the new item.
This provision shall not apply if only a minor defect in a delivered part can be remedied by replacement delivery or subsequent improvement without significant time and cost expenditure. This provision shall also not apply if the replacement delivery or subsequent improvement is undisputedly made as a gesture of goodwill or for the amicable settlement of disputes.

7.6
If defective items from faulty deliveries are not taken back despite the Customer requesting the same, the Customer has the right to dispose of them at the Supplier's expense or, alternatively, to return them 'carriage forward' at the Supplier's expense.
The Supplier shall bear the risk of loss or deterioration of the item if and when it is returned.

8. Quality

8.1
The Supplier guarantees that all deliveries comply with the state of the art, the relevant legal provisions inclusive the material compliance (under 17.4; 17.5; 17.6 and the company standard Memmert GmbH & Co. KG: Link) and the regulations and guidelines set down by authorities, employers' liability insurance associations and professional associations.

If deviations from these regulations are necessary on a case-by-case basis, the Supplier shall obtain the Customer's consent to this effect. The Supplier's liability for defects is not limited by this consent.

8.2
If the Supplier has reservations about the type of execution requested by the Customer, they shall immediately inform the Customer in writing.

8.3
The Supplier shall carry out quality assurance of a suitable type and scope and in accordance with the state of the art and shall provide the Customer with evidence to this effect to the Customer on request.
The Supplier shall enter into a quality assurance agreement with the Customer at the Customer's request.

9. Product liability

9.1
In the event of product defects occurring, the Supplier is obligated to indemnify the Customer from all contractual and non-contractual claims unless the Supplier proves that the cause of the product defect was not their fault.

9.2
The Supplier is obligated to insure the product risk sufficiently beyond the scope of normal business liability insurance. Proof of appropriate insurance policies shall be provided on request.

10. The Customer's limitation of liability

The Customer's liability for any damage to the items provided to them by the Supplier under the contract is limited to cases where the damage is due to a grossly negligent or intentional breach of duty.

11. Delivery of spare parts in the event of wear

11.1
With regard to the delivered purchased item, the Supplier shall supply spare parts for the period of expected technical use under reasonable conditions, but at least for a period of ten years from delivery.

11.2
Irrespective of 11.1, if there are plans to cease production of the purchased item, the Supplier shall inform the Customer 12 months prior to such cessation and shall give the Customer the opportunity to place a final purchase order to the extent of the purchase quantity of the last 12 months and shall, at the Customer's request, provide the Customer with all the equipment and documents necessary for the production of the spare parts and shall allow the Customer to use such equipment and documents free of charge.

12. Transfer of orders to third parties

12.1
The Supplier is not entitled to transfer the order or essential parts of the same to third parties without the Customer's written consent.

12.2
Should the Supplier breach the obligation undertaken in 12.1, the Customer shall be entitled to withdraw from the contract in whole or in part and to claim damages.

13. Provision of material by the Customer

13.1
Items provided to the Supplier by the Customer (such as provided documents, samples, drawings, specifications, illustrations, models, data, tools, calculations, sheet metal parts, electrical components, screws, etc.) remain the Customer's property.
The Supplier shall ensure that the Customer's ownership is clearly identifiable by means of labelling.
The Customer expressly reserves any existing copyrights.
The items shall be used exclusively for production based on the Customer's purchase orders and may not be disposed of, sold or made accessible to third parties without the Customer's written consent.
The items shall be insured at replacement value, particularly against risks such as fire, lightning, explosion, water and electrical effects, breakage and theft.

13.2
The Supplier shall waive any right of retention to which they may be entitled in respect of the items referred to in 13.1, insofar as this does not originate from the same contractual relationship.

13.3
Any processing, modification or installation that the Supplier carries out on items provided by the Customer shall be carried out exclusively for the Customer.

13.4
If processing, conversion or installation leads to the Customer's items being inseparably connected to or mixed with items belonging to the Supplier or a third party, the Customer shall acquire co-ownership of the new item in the ratio of the value of the item provided to the other items contained in the new item at the time of loss of ownership.

13.5
If combination, mixing or processing is carried out in such a way that the Customer's item ought to be regarded as the main item, it is deemed to be agreed that the Supplier shall transfer sole ownership of the new item to the Customer.

13.6
The Supplier shall hold the sole ownership or co-ownership in safekeeping for the Customer.

13.7
The Supplier's extended or expanded reservations of title are not recognised so that a reservation of title declared by the Supplier only has the effect of a simple reservation of title vis-à-vis the Customer.

13.8
Following completion of the purchase order, the items mentioned under 13.1 shall be returned to the Customer on request insofar as they were not processed. The Supplier shall refrain from using the items any further.

14. Property rights

14.1
The Supplier warrants that all deliveries are free from any third-party industrial property rights or copyrights and that the delivery and the contractual use of the delivery items by the Customer or their customers does not infringe any industrial property rights or copyrights belonging to third parties.

14.2
The Supplier shall be liable in accordance with the statutory provisions for infringements of third-party industrial property rights or copyrights.

15. Non-disclosure

15.1
The Parties undertake to treat as business secrets all commercial and technical details that are not public knowledge and that become known to them through the business relationship. In particular, all received illustrations, drawings, calculations, samples, specifications and similar items must be kept secret. Reproduction and disclosure of secret information is only permitted in the context of operational requirements. It may only be disclosed to third parties with prior written consent.

15.2
The Supplier undertakes to obligate subcontractors and affiliated companies to maintain secrecy to the same extent.

15.3
The non-disclosure obligation shall continue to apply beyond termination of the supply relationship.
If no specific termination date has been agreed, this obligation shall cease to apply if and to the extent that the production knowledge contained in the illustrations, drawings, calculations and other documents provided has become common knowledge.

15.4
The Parties may only advertise their business relationship with written consent.

16. Origin of goods, export regulations

16.1
The Supplier is obligated to provide all evidence (e.g. certificates of origin) necessary for the Customer to obtain customs or other benefits and for customs clearance and all procedures, actions, etc., associated with the same.

16.2
The Supplier shall inform the Customer in writing which components, assemblies, devices, pieces of equipment, etc., are subject to export and re-export restrictions under the Federal Republic of Germany's foreign trade regulations or, if applicable, the US Export Regulation.

17. Compliance with standards and guidelines

17.1
Provisions under labour law
We expect our suppliers to strictly comply with applicable laws and regulations for occupational health and safety. The Supplier is obligated to comply with internationally applicable minimum standards under labour law with respect to employee rights, working hours and occupational health and safety, as well as all applicable statutory and official regulations. This also applies to the violation of human rights, discrimination against employees, forced labour or child labour.

17.2
Environmental protection
Environmental protection is a top priority within Memmert GmbH + Co. KG. The Supplier undertakes to comply with the respective legal regulations on environmental protection and to practice environmental thinking in accordance with ecological guidelines, as well as to work continuously on reducing the negative effects that their activities have on humans and the environment.

17.3
Compliance rules
Memmert GmbH + Co. KG is explicitly opposed to any form of corruption or bribery.
The Supplier shall not participate actively or passively, or directly or indirectly, in any form of bribery or corruption.

17.4
Conflict minerals
The Supplier undertakes to comply with the provisions on conflict minerals set down in Section 1502 of the Wall Street Reform and Consumer Protection Act ('Dodd-Frank Act') and Regulation (EU) 2017/821 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. If conflict minerals are required in the context of manufacturing or for the function of the products supplied by the Supplier, their origin must be disclosed. The Supplier shall provide the necessary documentation on the use and origin of conflict minerals completely and immediately on request.

17.5
RoHS
Since 2006, the use of certain hazardous substances in electrical and electronic equipment has been regulated in the EU by EU directives. EU Directive 2011/65/EU is applicable at present. In March 2015, it was extended by the EU Directive (EU) 2015/863 (RoHS 10). It includes additional substances, the use of which shall be restricted from 2019 on. The Supplier undertakes to comply with Directive 2011/65/EU with the extension 2015/863.

17.6
REACH
The Supplier shall ensure that the products they supply comply with the provisions set down in the REACH Regulation (EC) No. 1907/2006 with extension (EU) 2018/2005 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ('REACH Regulation').

17.7
Hazardous substances
If hazardous substances under the German Ordinance on Hazardous Substances or products where the release of such substances cannot be ruled out during use of the same are supplied, the Supplier shall inform Memmert GmbH + Co. KG without being prompted to do so and make safety data sheets for these products available.

18. Final provisions

18.1
If one of the Parties suspends payment or applies for insolvency proceedings over their assets or out-of-court settlement proceedings, the other Party shall be entitled to withdraw from the contract for the unfulfilled part.

18.2
Unless expressly agreed otherwise, the contractual language is German. Insofar as the Parties also use other languages, the German wording shall take precedence.

18.3
The place of performance for the Supplier's delivery obligations is the place of receipt or use specified by the Customer.

18.4
The applicable substantive law is German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 and the German conflict of laws provisions.

18.5
The exclusive place of jurisdiction is Schwabach, Germany.

18.6
Should individual parts of these Terms and Conditions be legally invalid, this shall not affect the validity of the remaining provisions.

18.7
Any waiving, modification and amendment of these Terms and Conditions shall be made in writing.
This shall also apply to any waiving of this written form clause.

Last updated: 07/2021