

## **Terms of purchase**

**Ullrich GmbH (Ullrich) – Dr.-Schott-Str. 35 – D-94227 Zwiesel**

**Date: 01.10.2010**

### **1. Scope of application**

All supplies and services of Suppliers to Ullrich shall be governed by these terms only. They shall not apply to construction or labour agreements. Conflicting terms of Supplier shall not apply even if Ullrich fails to object to them in a specific case, namely if Ullrich accepts supplies ordered without such objection, or if Ullrich refers to correspondence which contains, provides for or makes reference to conflicting terms of Supplier.

These terms shall apply to all future agreements with Supplier, even if Ullrich does not refer to these terms again.

### **2. Written form**

Supplier shall give all and any notices or declarations to Ullrich under or in relation to an agreement in writing. Otherwise, such notices or declarations shall be invalid.

Agreements, amendments or addenda to agreements, as well as individual agreements, shall be read and construed as fixed in writing or as confirmed in writing by Ullrich.

### **3. Offers and orders**

If the Supplier does not confirm the order without any changes, without undue delay, at the latest, however, two weeks after receipt, Ullrich shall be entitled to cancel such order without any cost. The right of Ullrich to provide for a different time for Supplier to confirm such an order shall remain unaffected. Supplier shall confirm such orders without undue delay, however, no later than five working days following receipt of the order.

### **4. Delivery dates and delays**

a) Dates agreed or confirmed for supplies or services shall be binding. If delays are to be expected or have occurred, Supplier shall inform Ullrich immediately.

b) If Supplier fails to deliver supplies or services at the date agreed between the parties, Supplier shall be in delay. If, under the agreement between the parties, a date can be identified until which the supplies or services have to be delivered or performed at the latest, Supplier shall likewise be in delay after such date has passed. In the cases under sentences 1 and 2, Ullrich shall be entitled to its rights in case of delay of debtor as provided under statutory law.

c) Supplier shall pay to Ullrich liquidated damages of 0,5 per cent of the value of supplies or services for each new week of delay, up to a maximum of 5 per cent of the value of supplies or services. Supplier may prove that actual damages of Ullrich are lower. Nothing in this paragraph shall restrict the right of Ullrich to claim higher damages.

d) If Supplier fails to deliver its supplies or performs its services even after an appropriate

deadline set by Ullrich has expired, Ullrich shall, after such expiry, be entitled to entrust the supplies or deliveries to a third party and to charge necessary expenses and additional cost to Supplier. Ullrich shall be entitled, at the same time, to claim damages in lieu of performance.

## **5. Prices**

a) Prices stated in an order shall be binding. They are based on Incoterms 2000 DDP Ullrich (delivered duty paid Ullrich). The price shall comprise installation or implementation of devices, cost for packaging, duties, transportation and, if applicable, insurance. Supplier shall take back packaging material at its own cost upon request of Ullrich.

b) Unless stipulated otherwise, Ullrich shall pay the price following delivery of products or approval of services and receipt of the correct invoice (lit. c) within 14 days with a discount of 3 per cent, or within 30 days net.

c) Supplier shall state the order number and the date of the order in all confirmations, delivery documents or invoices. If one of these statements is missing, Ullrich shall be entitled to return the invoice. In any case, periods for payment under lit. b shall be extended by such time by which review and processing of an invoices is delayed because of missing statements.

d) Ullrich shall not owe interest on receivables due. Ullrich shall not be in delay of payment unless dunned in writing by Supplier. Interest for delay in payment shall be five per cent points above the base rate.

e) Ullrich shall be entitled to retention and set-off as provided under the law. Furthermore, Ullrich may withhold payments even if due as long as obligations of Supplier arising out of incomplete or defective supplies are open.

## **6. Deliveries**

a) Supplier may subcontract supplies or services with the prior written consent of Ullrich only. Supplier shall remain responsible for complying with all obligations to Ullrich in any case.

b) Deliveries in part shall be subject to the prior written consent of Ullrich.

c) A technical description and a manual for use shall be supplied without charge for instruments and technical devices. Software shall be deemed supplied no sooner than complete documentation relating to systems and users has been handed over. If software has been developed for Ullrich, programmes shall be supplied in a source code format, too.

## **7. Regulatory Issues**

a) Supplier shall comply with all legal or regulatory requirements applicable to its supplies or services. Relevant certificates, instructions for disposal or documents shall be provided with the deliveries free of charge.

b) Supplier shall be solely responsible for complying with provisions for avoiding accidents when fulfilling its obligations. Devices or equipment required under such provisions, as well as manuals or instructions from the manufacturer, shall be provided with the supplies free of charge.

#### **8. Transfer of risk, approval**

a) Risk of loss or deterioration shall pass to Ullrich according to the Incoterms 2000 DDP Ullrich upon delivery in the Ullrich premises. In case of deliveries including installation, such risk shall pass as soon as the device has been installed successfully. The approval of the installation shall be fixed in a formal minute.

b) If Ullrich starts to use a work product, this shall not replace the formal approval procedure.

#### **9. Obligation to inspect products and to give notice of defects, effort for inspection**

a) Ullrich shall inspect products supplied in view of defects which can be detected upon examination of the exterior and review of delivery documents. In addition, Ullrich shall conduct spot checks according to generally accepted statistical methods. Notice of deviations from the agreement concerning quality or quantity of products shall be deemed timely if sent to Supplier within 14 days following receipt of the products.

b) Without prejudice to any further rights, Ullrich shall be entitled to inspect a delivery completely to the cost of Supplier if defects exceed maximum tolerances fixed by the parties.

#### **10. Warranty for defective products**

a) Supplier shall warrant that products, upon transfer of risk, have the qualities as agreed between the parties and comply with the specifications. Ullrich shall have all claims provided under the law in case of defective products. A second delivery shall be unacceptable (§ 440 German Civil Code) if defects are caused by errors in development or technical design of products. In such case, Ullrich shall be entitled to its rights under Section 10 lit. d immediately.

b) As long as a product is not in the custody of Ullrich, Supplier shall bear the risk of loss or deterioration.

c) In urgent cases, in particular if safety of operations of Ullrich is endangered or if extraordinarily high damage may arise, furthermore to remedy minor defects, Ullrich shall be entitled to remedy the defect or possible damage caused by the defect itself or have the defect or such damage remedied by a third party, each at the cost of Supplier. This shall likewise apply if Ullrich has set an appropriate deadline for second delivery and Supplier has failed to remedy the defect or deliver non-defective products until such deadline. This shall also apply if Ullrich is forced to remedy or have remedied defects immediately in order to avoid delay of delivery to its own customers.

d) If Ullrich chooses not to remedy defects itself as provided under lit. c, it may, after having set an appropriate deadline for second delivery, rescind the agreement or to reduce the compensation due under the agreement (reduction of price). In addition to these two alternative remedies, Ullrich shall have the right to claim damages.

e) Products supplied may not be encumbered by rights of third parties. If software is to be supplied, Supplier shall be liable for holding all rights, namely intellectual property rights, that are required for selling the software.

f) Unless provided otherwise, the period for warranty rights shall extend to 36 months running from transfer of risk under Section 8 lit. a. The period for warranty shall not run for such time beginning by Ullrich sending a notice of defects and ending by Ullrich receiving non-defective products or services. For parts of deliveries remedied or supplied as replacement for defective products, or services repeated for warranty purposes, the period defined in the first sentence shall run again beginning by receipt of non-defective products or services, unless Supplier has made a replacement delivery or remedied defects only as a matter of courtesy or for other reasons than those of warranty under this Section.

g) Nothing in these Terms shall limit or restrict rights and claims of Ullrich as a Purchaser or a Customer for works under statutory law.

### **11. Obligation to hold harmless in case of defects**

Supplier shall defend and hold harmless Ullrich against any and all claims raised by third parties – regardless of the cause of action – because of material or legal defects caused by default of Supplier. Supplier will reimburse Ullrich necessary cost of legal action required to defend against such claims.

### **12. Technical documentation, tools and production devices**

a) Ullrich reserves any and all property rights or copyrights for technical documentation, tools and specifications. Such documents or objects may be used for fulfilling the agreement only and shall be returned to Ullrich, including all copies, even without a request, as soon as no supplies are owed under the agreement any more. Supplier waives any rights of retention it may have against Ullrich in this respect. Supplier shall not take copies nor replicate such objects unless this is indispensable to fulfill the agreement with Ullrich.

b) If Supplier produces or develops objects as defined in Section 12 lit. a wholly or in part at the cost of Ullrich, Section 12 lit. a shall apply mutatis mutandis. In such case, Ullrich shall acquire joint property of such objects. Supplier shall keep in custody the objects for Ullrich free of charge. Ullrich may, however, acquire the rights at the objects against payment of expenses of Supplier that have not been amortised yet and require Supplier to return the objects at any time.

### **13. Product Liability**

a) Supplier shall be responsible for any and all claims raised by third parties to the extent

damages to persons or property have been caused by a defective product supplied by Supplier. Supplier shall defend and hold harmless Ullrich against any liability arising thereof. If Ullrich is obliged to call back its own products because of deficiencies of a product supplied by Supplier, Supplier shall bear all cost related to the call back. Ullrich shall inform, as far as possible and acceptable, Supplier about the scope of call back measures and grant it an opportunity to comment.

b) Supplier shall take out insurance against product liability risks with a coverage of at least € 5 million and maintains it throughout the business relation with Ullrich and up to 3 years later. Supplier shall provide Ullrich a copy of the insurance policy upon request.

c) Nothing in this section shall limit any rights under statutory law for products liability.

#### **14. Material provided by Ullrich**

a) Material provided by Ullrich to Supplier for manufacturing products shall remain the property of Ullrich. Supplier shall keep such material in custody applying the care of a prudent businessman and separate them from its own property or property of third parties and label it property of Ullrich. Supplier shall take out insurance to the amount of the value of the material against loss or damage. Section 13 lit. b shall apply accordingly. Such material may be used for fulfilling the respective Ullrich order only.

b) Any processing, remodelling, combination or amalgamation of material provided by Ullrich shall be for the account and to the benefit of Ullrich. New products so manufactured shall become property of Ullrich immediately. If the material provided by Ullrich is only a part of such new products, Ullrich shall acquire joint ownership of the new objects to the share corresponding to the value of the material provided by Ullrich in relation to the overall value of all material used.

#### **15. Relief from Supplier**

a) Ullrich may claim relief within the supply chain as provided by the law (Sections 478 and 479 of the German Civil Code) in addition to, and without prejudice to its warranty rights. Ullrich may claim from Supplier the same form of cure which it owes its own customers. The right to opt for a remedy under Section 439 par. 1 German Civil Code shall remain unaffected.

b) Ullrich shall use its best endeavours to inform Supplier and ask for the point of view of Supplier within an appropriate period of time before acknowledging or fulfilling its own warranty obligations. If Supplier does not reply within such period of time, the warranty provided by Ullrich shall be deemed lawfully owed to the Ullrich customer, subject to proof to the contrary by Supplier.

c) Ullrich shall be entitled to relief within the supply chain even if products have been processed, amalgamated or combined.

## **16. Confidentiality**

a) Supplier shall treat the terms of an agreement and all information received from Ullrich in relation to the agreement as confidential and shall use it only to the extent necessary to fulfill the agreement. This shall not apply if Supplier proves that it was aware of such information before it entered into contacts with Ullrich or has been provided such information later on by a third party without an obligation of confidentiality or that the information was in the public domain or has become public without the responsibility of Supplier.

Supplier shall mention its business relationship with Ullrich to third parties with the prior written consent of Ullrich only.

b) Supplier shall exhibit products produced exclusively for Ullrich, namely according to drawings or specifications provided by Ullrich, or manufacture such products for third parties, only with the prior written consent of Ullrich.

Supplier shall pay to Ullrich a contractual penalty of EUR 10,000.00 for any infringement to this Section 16. This shall not exclude the right to claim higher damages.

## **17. Retention of Title**

Title to products supplied shall pass to Ullrich without any conditions and independently from payment of the purchase price. In particular, extended or prolonged retention of title shall be excluded. In any case, title to the products shall pass to Ullrich upon payment of the prices for these very products.

## **18. Severability**

If any provision in the agreement or in these terms is or becomes invalid, the validity of the other provisions of the agreement or of these terms shall not be affected. If the agreement or these terms have gaps, these gaps shall be deemed filled by provisions which the parties, considering the intention of the agreement and the purpose of the terms, would have agreed upon if they had been aware of the gaps.

## **19. Place of performance, court of venue, applicable law**

a) Exclusive court of venue, shall be the District Court of Munich I. Ullrich may also file suit at the place of general jurisdiction of Supplier.

b) The agreement shall be subject to the law of the Federal Republic of Germany, except for its rules of conflicts of law. The UN Convention on International Sales of Goods shall not apply.

c) If in doubt, the German language version of these Terms shall prevail.