

1. Applicability

Legal relations between us and the supplier are determined exclusively by these conditions and any other written agreements. Amendments and supplements are required to be made in writing. Other general terms and conditions shall also not apply even if they are not expressly contradicted in individual cases. These Purchasing Terms and Conditions form the basis of all future individual contracts between us and the supplier – to the simultaneous exclusion of any other general terms and conditions to the contrary. Furthermore, these Purchasing Terms and Conditions shall only apply for contracts with companies.

2. Conclusion of the contract, amendments, *force majeure*, subcontractors

- 2.1 Delivery contracts (order and acceptance) and deliveries on call, as well as any amendments and supplements, are required to be made in writing. Deliveries on call can also be made using data transmission. All offers by the supplier shall be made free of charge. If the supplier does not accept an order within 5 days of receipt, we are entitled to cancel. Deliveries on call shall be binding at the latest within 3 days of receipt unless the seller gives notice to the contrary.
- 2.2 Within the bounds of reasonableness for the supplier, we can demand changes in the construction and design of delivery items. In such cases the outcome, in particular with regard to increases or reductions in costs as well as delivery dates, shall be appropriately settled in mutual agreement.
- 2.3 Strikes, lockouts and cases of *force majeure* shall absolve us from any purchase commitment entered into.
- 2.4 Any transfer of orders requires our authorization. In the event of contraventions we are entitled to withdraw from the contract without recompense and to demand compensation.

3. Dates and prescribed periods of delivery, delays in delivery

- 3.1 Delivery shall ensue on the set date or at the latest on the last day of the prescribed period of delivery as determined in the contract or the order. Prescribed periods of delivery begin on the date of the order. Our receipt of the entire delivery of goods as ordered including documentation is decisive for compliance with the delivery date or the prescribed period of delivery. If delivery ex works/EXW (Incoterms) is agreed, the supplier shall duly prepare the goods allowing for the usual time for loading and transport. Deliveries shall be handled according to our instructions.
- 3.2 The supplier undertakes to inform us in writing immediately if a delay in delivery is impending. In the event of a delay in delivery we are entitled to demand as a penalty from the seller, independent of blame, compensation for delay amounting to 1% of the total contract value per commenced day in delay, however in total not more than 25% of the total contract value. The assertion of a claim for damages exceeding this limit and other claims shall remain unaffected. If the supplier – for whatever reason – does not fulfil his obligations on the agreed delivery date or within the agreed period of delivery, we are particularly entitled, after the inconclusive expiration of a set period of grace, to completely or partially withdraw from the contract. If type samples or partial deliveries are repeatedly placed at our disposal by the supplier in an unserviceable state or late, or if the supplier is responsible for any other delay in delivery, we are entitled to completely or partially withdraw from the contract immediately and without recompense and also from all other contracts for goods delivered or not yet delivered which cannot reasonably be used without the goods affected by the delay in delivery.

4. Delivery

- 4.1 The supplier shall deliver, unless otherwise agreed in writing, whether by trans-border or correspondingly domestic transport, DDP our factory (Incoterms 2000). These costs are included in the price. We are, however, entitled both in trans-border and correspondingly domestic transport to alternatively also demand delivery EXW factory of the supplier

(Incoterms 2000) or according to any other clause of Incoterms 2000 determined by us, and to deduct the difference in cost of this delivery compared to a delivery DDP our factory (Incoterms 2000).

- 4.2 If delivery of the parts ordered ensues according to catalogues, lists, data sheets etc. of the manufacturer or the supplier, five copies of these shall be placed at our disposal before the first delivery and again in the event of any new editions.
- 4.3 Any forwarding advice or dispatch note shall be sent to our factory. Each delivery shall be accompanied by a delivery note on which the dispatch number, order number, item number and article number of THIEN eDrives GmbH are recorded.

5. Invoice

The invoice may not be included with the goods. The same entire series of numbers as on the delivery note shall be recorded on the invoice.

6. Prices, payment, assignment

- 6.1 The agreed prices are fixed prices and include, unless otherwise agreed in writing, delivery DDP our factory (Incoterms 2000), hence in particular standard commercial packaging, transport insurance, import duties and other taxes and legal turnover tax.
- 6.2 Invoices shall be paid as follows:
On 25th of the month following the verifiable receipt of invoice and unobjected receipt of goods with 3% discount or 90 days from the verifiable receipt of invoice and unobjected receipt of goods net. In the event of faulty deliveries we are entitled to withhold payment until correct and complete conformance. In the case of acceptance of premature deliveries the due date is determined by the agreed delivery date.
- 6.3 The supplier is not authorized, without our previous written consent, to transfer his rights and/or obligations towards us, in particular to assign his claims against us or to have them called in by third parties.
- 6.4 For the timeliness of payment for all methods of money transfer, our date of dispatch by the financial institute, the remittance order, the transfer etc. is decisive. Payment shall ensue subject to examination of correctness and the final acceptance of the goods in terms of Article 9.

7. Marking of goods requiring an export licence

The supplier undertakes to mark goods requiring an export licence and to specify the customs tariff number as well as the number from the German export list. Furthermore, the supplier undertakes in his confirmation of order or invoice to point out items requiring an export licence or subject to US re-export regulations and also to indicate, in addition to the relevant export list number, the customs code number.

8. Working materials

- 8.1 Tools, equipment, technical documents, drawings, models etc. originating from us shall remain our exclusive property and shall be returned to us, together with any copies made, upon demand, or unbidden upon completion of the order or upon termination of the business relationship; all intellectual property rights shall also remain with us. They may not, without our authorization, be used for or surrendered to third parties or otherwise made accessible to them. Any right of retention on the part of the supplier to such items, whatever the reason, is ruled out. All copying or reproduction of the above mentioned items is only permissible to the extent that it is absolutely necessary for execution of the order.
- 8.2 In the event that the supplier has materials produced especially for our order – or if he produces them himself – and these materials are paid for or written off by us as agreed – completely or partially – they shall become our property after payment or amortisation. Instead of transfer of possession, the supplier shall, on the basis of a contract, hold the materials in custody free of charge for us in accordance with the progress of our payment

or amortisation, and he shall declare beforehand that the materials are presumed to have been handed over to us and to be our property (anticipated constructive possession). The supplier shall, if necessary, take all action to bring about the accordant transfer of ownership to us and, at the same time, adhere to the transfer of ownership provisions designated internationally for application under private law. The same applies for the establishment of a co-ownership relationship in the case of partial payment or amortisation. Our property shall be clearly marked both on the working materials themselves as well as in the business records. In the event that business relations end before the date of complete payment or amortisation, we are entitled to demand surrender of the working materials and full transfer of ownership to us, concurrently against payment of the difference between services already effected and those agreed. In the event that we do not avail ourselves of this right in cases of the absence of warranted features or deficiency, we are authorized to demand a refund of payments or amortisation amounts made on working materials. Furthermore, the provision in Article 8.1 shall apply accordingly for the cases stipulated in this paragraph.

- 8.3 The supplier undertakes, at his own expense, to insure working materials belonging to us at replacement value against fire and water damage and theft. He undertakes to duly carry out any necessary maintenance and inspection work at his own expense.

9. Guarantee, liability, recall

- 9.1 There shall be no duty or obligation of inspection and notification of complaints before the delivery or service is complete.
- 9.2 The supplier acknowledges that we duly carry out the initial inspection upon receipt of delivery, namely that we make random spot checks to a reasonable degree on the identity of the items supplied including weight, dimensions and appearance immediately after delivery, at the latest within 10 working days.
- 9.3 We have no obligation to carry out technical functional tests and other inspections.
- 9.4 We shall give notice of any defects in the delivered goods that become apparent during the above mentioned inspections immediately, at the latest within 14 days, and of latent defects within a period of 14 days after detection of such latent defects.
- 9.5 The supplier guarantees that the delivery items meet the highest technical specifications and do not have any defects affecting their value or efficiency, and that they comply with the conditions specified in the letter of order. Moreover, the supplier guarantees that the delivery items conform to current official and statutory provisions, in particular to the relevant health and safety at work and accident prevention regulations, even if it is a matter of a custom-made item. In the event that a defect becomes apparent within 6 months of the transfer of risk, it shall be assumed that the defect already existed at the time of the transfer of risk, unless this assumption is inconsistent with the character of the matter or the defect.
- 9.6 For deliveries or services that do not meet requirements according to Article 9.5, we are entitled to the right to supplementary performance in the form of rectification or subsequent delivery – if necessary using other constructions or material compositions – or to the right to withdraw. Further rights due to defective deliveries or services in accordance with statutory and contractual provisions, in particular to compensation for damages, shall remain unaffected.
- 9.7 The supplier shall undertake supplementary performance if need be in shift work, overtime or on public holidays in the event that this is required by us for urgent operational reasons and the supplier can be reasonably expected to do so. The supplier shall bear the costs of supplementary performance including costs arising from the inspection and identification of defects and disassembly.
- 9.8 In the event that the supplier falls behind schedule with his supplementary performance obligation, or if immediate supplementary performance is necessary for the protection of our interests, we can – in the latter case after informing the supplier accordingly – undertake the supplementary performance ourselves or arrange for it to be undertaken by

a third party at the supplier's expense. In addition, we can at any rate rectify minor defects ourselves or arrange for them to be rectified, i.e. without the requirements mentioned in the above sentence; the supplier shall receive a report from us after completion of the supplementary performance work.

- 9.9 The term of limitation for the assertion of guarantee claims for the goods delivered by the supplier shall be 36 months beginning with the acceptance of the goods by us. The term of limitation shall be extended by the period of time of the supplier's supplementary performance measures from receipt of our notice of defects until the supplier declares the completion of the measures in writing or declines any further supplementary performance in writing. In the case of supplementary performance undertaken by ourselves according to Article 9.8, the term of limitation is extended by the period of time up to completion of supplementary performance.
- 9.10 The precepts of § 933 b ABGB (Austrian General Civil Code) with recourse to the supplier chain remain unaffected.
- 9.11 In the case of defects of title, in particular industrial property rights of third parties, the supplier shall also indemnify us from any existing third parties claims. With regard to the defects of title, a term of limitation of 10 years shall apply.
- 9.12 In respect of any claims for damages and/or reimbursement of expenses on our part, statutory provisions shall apply.
- 9.13 In the event that we are claimed against by clients or third parties for compensation, on whatever legal grounds and whether on the basis of domestic or foreign law, the supplier shall indemnify us from such claims – including the costs of legal defence in connection with this, as far as he has caused the damage and – in the case of the application of absolute liability law – has to answer for the liability-causal constituent facts. Inasmuch as the cause of damage lies in the supplier's sphere of responsibility, he shall carry the burden of proof. In such cases the supplier shall also bear all costs and expenses of any product recall. Moreover, statutory provisions shall apply. The supplier shall, on demand, take out product liability insurance and show proof of this to the buyer.

10. Certification, duty of notification

- 10.1 The quality management system according to ISO/TS 16949 or ISO 9001 is implemented. For this reason certified suppliers shall be favoured.
- 10.2 In the event that the supplier intends to change a part to be delivered to us in terms of material or fabrication, he must advise us of this in line with the following time limits before intended production begins:
Standard products: at least 12 months
Customer-specific products: at least 18 months

11. Samples

In the event that after placing our order we are provided with samples by the supplier, these must be acknowledged by us in writing before the supplier can begin with series production – for tools with a first sample report.

12. Spare parts deliveries

Spare parts for deliveries of any kind shall – as far as functional parts are concerned – be held ready for 10 years from the last delivery and dispatched immediately on demand. For all other spare parts a prescribed period of storage of 5 years shall be regarded as agreed.

13. Provision of mechanics

The supplier of equipment, machines and appliances undertakes – even beyond the guarantee period – to provide mechanics at our request to rectify malfunctions or to carry out repair work on site.

14. Trade and company secrets

All information and documentation of a technical and/or commercial nature (e.g. sketches, drawings, building documents, samples, models, parts lists, technical specifications, scope of order, special requirements) conveyed to the supplier on the occasion of meetings, enquiries, placing of orders etc. or otherwise made known to him in the course of cooperation constitutes a trade and company secret in terms of §§ 11 ff. UWG (Act against unfair Competition). Such information and/or documentation may not, without our previous written consent, be duplicated, made accessible or known to third parties or used in any other way improperly, as far as it is not generally known or lawfully known to the supplier in any other way. Subcontractors shall also be obligated accordingly. Such information and/or documentation is our intellectual property. We reserve the right to obtain industrial property rights. The supplier undertakes to keep secret all results or partial results compiled by him in the fulfilment of our order and to use these exclusively for the fulfilment of this order. The documentation (in particular samples, drawings, models) which we make available to the supplier, shall be returned to us unbidden and free of charge as soon as it is no longer required for the execution of enquiries or orders. The supplier may only advertise using his business connections with us with our previous written consent.

15. Provision of material and parts

In the event that the supplier is provided by us – or on our behalf by a third party – with material and/or parts for the execution of our order, he shall store these separately with the diligence of a prudent businessman. Our property shall be clearly marked both on the items themselves as well as in the business records. The items may only be used for the execution of the order placed by us. In the event that the supplier acquires co-ownership through processing or mixing (§§ 414 ff. ABGB, Austrian General Civil Code) or ownership is passed to the supplier, the supplier herewith transfers his co-ownership share or his ownership to us. Instead of transfer of possession, the supplier shall, on the basis of a contract, hold the items in custody for us.

16. Severability clause

In the event that individual provisions of these Purchasing Terms and Conditions, and of contracts concluded within the scope thereof, completely or partially are or become invalid or unenforceable, the validity and enforceability of the remaining provisions of these Purchasing Terms and Conditions, and of contracts concluded within the scope thereof, shall remain unaffected. The contracting parties undertake to replace the invalid or unenforceable provision with a valid and enforceable provision that approximates as closely as possible the economic purpose pursued by the contracting parties with the invalid or unenforceable provision. This also applies even if the invalidity or unenforceability of a provision is based on a measure of performance or time standardized in these Purchasing Terms and Conditions or in contracts concluded in the scope thereof; in such cases, a legally admissible measure of performance or time that comes as close as possible to that intended shall be agreed. The same applies if any provision in these Purchasing Terms and Conditions or in contracts concluded in the scope thereof should be found to be incomplete and require elaboration.

17. Place of performance

Place of performance for all performances detailed in contracts concluded in the scope of these Purchasing Terms and Conditions is Lustenau.

18. Place of jurisdiction, applicable law

18.1 Both parties declare themselves in agreement with the exclusive competence of the place of jurisdiction at our official company location. We also have the right to institute legal action at the court competent for the supplier or at any other court that can be competent according to national or international law.

18.2 These Purchasing Terms and Conditions are governed exclusively by the law of the Republic of Austria. The conflict of laws of International Private Law and the UN Convention on Contracts for the International Sale of Goods (CISG) are excluded.

19. Full mailing address

THIEN eDrives GmbH
Millennium Park 11, 6890 Lustenau, Austria