

## GENERAL CONDITIONS OF PURCHASE OF OCTO ACTUATORS GMBH

### § 1

#### General information

- (1) Our terms and conditions of purchase apply exclusively and only to companies. Any terms and conditions of the supplier that are contrary to or deviate from our terms and conditions shall not be recognized; this shall also apply in the event of unconditional acceptance of the delivery. We do not recognize conflicting terms and conditions even if we do not expressly object to them or, if we refer to letters from the contractual partner in which reference is made to his terms and conditions. They shall also apply to all future transactions with the supplier, even if they are not expressly included again.
- (2) In addition, the statutory provisions (in particular BGB and HGB) shall apply. The regulations and guidelines mentioned by us apply in their current version. Our factory standards and guidelines, which form the basis of the contract and which are also based on the latest version, can be requested by the supplier at any time if they are not available.
- (3) If special terms and conditions deviating from these Terms and Conditions are agreed for a specific order, these General Terms and Conditions of Purchase shall apply subordinately and in addition.

### § 2

#### Orders / order confirmations

- (1) Our orders must be made in writing, in text form or by electronic data interchange (e.g. EDI). Text form means transmission by fax, computer fax or e-mail, whereby the issuing company and the issuing person must be clearly identifiable. Orders shall be effective without a personal signature if appropriately noted on the order form.
- (2) The supplier is obliged to accept our order within a period of no more than 5 days with an order confirmation, unless other binding periods are agreed upon in individual cases. Otherwise we are no longer bound to the order.
- (3) Delivery call-offs can also be made by remote data transmission.
- (4) All conditions, specifications, standards and other documents listed in the order shall be part of the order.

### § 3

#### Prices and terms of payment

- (1) The price stated in the order is binding.
- (2) Unless otherwise agreed, it does not include the statutory value added tax. Delivery "free domicile" including loading and packaging is also included.
- (3) We are entitled to set-off and retention rights to the extent permitted by law.
- (4) We pay within 14 days after the invoice date with a 2% discount; if the invoice is settled later, we pay net. The payment and discount periods shall run from receipt of invoice, but not before delivery of the goods or provision and acceptance of the service or before complete handover of contractually agreed documentation or other documents. If the supplier's terms of payment are more favourable, these shall apply without the supplier's general terms and conditions being recognised in other respects.

- (5) The supplier shall submit an invoice for each delivery or service separately from the shipment. The wording of the invoice must correspond to the order designations and contain our order number. The exact designation of our department placing the order and the date of the order must be stated. Invoices which do not contain these details will be returned by us and do not constitute a due date. The period for payment of the invoice shall commence on the working day following receipt of a proper and verifiable invoice or acceptance of the goods or services - whichever date is later.
- (6) Interest on maturity cannot be claimed. In any case, we are entitled to prove that the damage caused by delay is less than that claimed by the seller.

#### § 4

##### **Delivery time and delay in delivery**

- (1) The delivery time stated in the order is binding and must be confirmed in writing in the order confirmation.
- (2) The supplier is obliged to inform us immediately in writing or in text form if circumstances occur or become apparent to him which indicate that the required delivery time cannot be met.
- (3) In the event of a delay in delivery, we shall be entitled to demand a lump-sum compensation for damages caused by delay in the amount of 1.5% of the delivery value per completed week; however, we may claim a maximum of 5% as a lump sum.
- (4) The supplier shall have the right to prove to us that no damage or considerably less damage was caused.
- (5) Further legal or contractual claims (in particular damages for breach of duty) are reserved.
- (6) Each delivery must include a delivery bill and a packing slip (in case of shipping by ship, the name and address of the shipping company and the ship must be indicated).
- (7) The order references and details of the unloading point specified by us must be quoted in full in all documents (in particular on invoices and delivery bills, in dispatch notes, on packing slips and consignment notes and on the outer packaging).
- (8) Hazardous substances and dangerous goods must be packed, marked and shipped in accordance with national and international regulations. The information in the accompanying documents must comply with the respective national regulations.
- (9) The supplier is responsible for compliance with these obligations also by his subcontractors. He is liable for all damages and necessary expenses resulting from the violation of his obligations.
- (10) Shipments which cannot be accepted due to the violation of these obligations shall be stored at the expense and risk of the supplier. We may determine the content and condition of such consignments.
- (11) Unconditional acceptance of the delayed delivery or service does not constitute a waiver of the claims for compensation to which we are entitled due to the delayed delivery or service or a possible forfeited contractual penalty; this applies until full payment of the remuneration owed by us for the delivery or service concerned.

#### § 5

##### **Quality, documentation**

- (1) The Supplier warrants that its deliveries comply with the recognized rules of technology (including the applicable DIN standards), safety regulations, statutory provisions and the agreed or warranted technical data (specifications).

- (2) The supplier must carry out quality assurance of a suitable type and scope and in accordance with the recognised state of the art and provide us with evidence of this upon request. For all deliveries, he shall carry out a documented outgoing goods inspection with regard to the characteristics necessary for proper functioning.
- (3) If the supplier realizes that his deliveries do not or only partially meet the agreed requirements, he must notify us immediately in writing or in text form.
- (4) If the supplier intends to make changes to his deliveries or their manufacturing processes (e.g. deviations from specifications, material, dimensions, manufacturing method, place of manufacture, subcontracting to third parties, etc.), we must be informed of this in writing or in text form before the changes are made. Changes and change requests on the part of the supplier require our prior written consent in any case.

## § 6

### Defects investigation

- (1) An obligation on our part to give notice of defects in accordance with § 377 HGB for non-obvious defects is excluded. We undertake to carry out a minimum check on the basis of the delivery bill and for transport damage; the supplier undertakes to carry out a final inspection of the goods and concludes a quality assurance agreement with us.
- (2) In the event that no quality assurance agreement exists or in the event of obvious defects, our complaint shall be deemed to be in good time if it is received by the supplier within 7 working days, calculated from receipt of the goods or, in the case of hidden defects, from discovery. If, in individual cases, the "immediate notification period" from § 377 HGB should be longer than 7 working days, this longer period shall apply.

## § 7

### Liability for material defects and defects of title

- (1) We are fully entitled to all legal rights in case of material defects and defects of title.
- (2) In the event of defects, we shall be entitled in particular to demand, at our discretion, either removal of the defect or delivery of a defect-free item; the supplier shall bear the full costs required for this purpose. Furthermore, we shall be entitled to the statutory claims for damages in full and without limitation. The costs of subsequent performance to be reimbursed by the supplier in accordance with § 439 (2) BGB shall also include the costs of locating the defect and sorting costs.
- (3) A limitation period of three years from delivery shall apply, unless longer periods are provided by law. If, in the course of subsequent performance, the delivery item is delivered as a new item, the limitation period shall start anew if this is to be seen as an acknowledgement of the obligation of subsequent performance. The same shall apply in the event of rectification of defects to the repaired part of the delivery item.
- (4) In urgent cases (imminent danger or special urgency) we are entitled to remedy the defect ourselves at the supplier's expense. An urgent case exists if it is no longer possible to inform the supplier and set him a (albeit short) deadline for subsequent performance.

## § 8

### Retention of title

- (1) If we provide parts to the supplier, we reserve the right of ownership.

- (2) The retention of title also extends to the full value of the products resulting from the processing or transformation of our goods, whereby these processes are carried out for us so that we are considered the manufacturer. If the right of ownership of third parties remains in effect after processing or alteration with goods of third parties, we shall acquire co-ownership in proportion to the objective values of these goods. If our goods are mixed or combined with other objects, we also acquire co-ownership in the ratio just described. If the process is carried out in such a way that the supplier's item is to be regarded as the main item, it is agreed that the supplier shall transfer proportional co-ownership to us.
- (3) The manufacturer shall store our property with customary care.
- (4) If the estimated value of our security rights exceeds the value of the secured claims by more than 50%, the excess security rights shall be released. Their selection is at our discretion.
- (5) With regard to the supplier's rights of retention of title, the supplier's terms and conditions shall apply with the proviso that the ownership of the goods shall pass to us upon payment and, accordingly, the extended forms of the so-called current account and group retention of title shall not apply.
- (6) Based on the reservation of title, the supplier can only demand the return of the goods if he has withdrawn from the contract.

## § 9

### **Information and documents for foreign trade**

- (1) The supplier is obliged to provide the following foreign trade data upon delivery of the delivery items:
  - Classification of goods in the trade statistics (Statistical Goods Number)
  - Country of origin
  - Marking and classification of goods subject to export control
  - On request: the provision of a certificate of origin or proof of preference

## § 10

### **Recourse**

- (1) If a claim is made against us on the basis of producer liability, product liability or other liability circumstances due to a defect in the item delivered by the supplier, the supplier must indemnify us from the liability resulting from the defect, insofar as he is responsible for the defect. The indemnification must be made upon first request.
- (2) In this context, the supplier is also obliged to reimburse any expenses pursuant to §§ 683, 670 BGB or §§ 830, 840, 426 BGB which arise from or in connection with a recall action. Within the scope of reasonableness and possibility, we shall inform the supplier immediately of the content and scope of the action. We reserve the right to further legal claims.
- (3) If other claims are made against us due to a defect in the item delivered by the supplier, we shall be entitled to the full extent of the right of recourse against the supplier under § 478 BGB; an exception to this shall only exist if we have previously been granted an equivalent compensation for the right of recourse.
- (4) In order to secure these claims, the supplier shall maintain a corresponding liability insurance with a coverage of at least 10 million Euro per personal injury/property damage - lump sum.

## § 11

### **Property rights and confidentiality**

- (1) The supplier guarantees that no rights of third parties are culpably violated in connection with his delivery.
- (2) If claims are made against us by third parties for this reason, the supplier is obliged to indemnify us from these claims. The indemnification shall be made upon first request.
- (3) This indemnification obligation also refers to all expenses that we necessarily incur from or in connection with the claim by a third party.
- (4) Unless a longer period is provided by law, the limitation period for these claims shall be three years and shall commence upon delivery of the delivery item.
- (5) Design drawings and similar company documents remain our property and must always be treated as strictly confidential. They may not be made available to third parties without our consent. They may only be used for the contractually intended purpose. In the event of a breach of these obligations, the supplier shall be liable to us in full in accordance with the statutory provisions.
- (6) Paragraph 5 applies accordingly to samples, parts provided and similar company goods.

## § 12

### **Proofs of origin, sales tax proofs and export restrictions**

- (1) The supplier shall provide any proof of origin requested by us with all necessary information, duly signed and free of charge. The same shall apply mutatis mutandis to proof of origin under VAT law for foreign and intra-Community deliveries.
- (2) The supplier shall inform us immediately if a delivery is wholly or partly subject to export restrictions under German or any other law.
- (3) Suppliers from member states of the European Union are obliged to provide us with long-term supplier's declarations in accordance with the respective valid European regulation within 30 days of acceptance of the order and then within the first two months of each calendar year without being asked. If this cannot be done for individual deliveries of goods, we shall receive proof of origin from the Seller at the latest when the invoice is issued.

## § 13

### **Withdrawal and joint liability**

- (1) The Supplier's statutory right of withdrawal shall neither be excluded nor limited. Likewise, legal or contractual rights and claims to which we are entitled shall neither be excluded nor limited.
- (2) We shall be liable without limitation only for intent and gross negligence (including that of our legal representatives and vicarious agents) and for injury to life, body and health. We shall also be liable without limitation when giving guarantees and assurances if a defect covered by such guarantees and assurances triggers our liability. There is also no limitation of liability for hazardous situations.
- (3) In the event of other culpable breach of material contractual obligations (cardinal obligations), our remaining liability shall be limited to the foreseeable damage typical for the contract.
- (4) Apart from that, our liability - regardless of the legal basis (in particular claims arising from the violation of contractual main and secondary obligations, tort and other tortious liability) is excluded.

- (5) The same (exclusions, limitations and exceptions thereof) shall apply to claims arising from culpa in contrahendo.
- (6) In the event of reimbursement of expenses, this § 12 shall apply accordingly.
- (7) An exclusion or limitation of our liability also applies to our legal representatives and vicarious agents.
- (8) A reversal of the burden of proof is not intended. Cardinal obligations are essential contractual obligations, i.e. those obligations which give the contract its character and on which the contractual partner may rely; these are thus the essential rights and obligations which create the conditions for the performance of the contract and are indispensable for the achievement of the purpose of the contract. Essential to the contract are the obligation to deliver on time as well as the freedom of the goods from defects which impair their functionality or usability more than only insignificantly and furthermore duties of advice, protection and care which aim at protecting the buyer or his personnel from considerable damages.
- (9) The liability of the supplier is regulated in §§ 6, 8 and 9 as well as by law.

## § 14

### **Place of performance, place of jurisdiction, applicable law and distribution of the burden of proof**

- (1) Place of performance for our obligations (in particular for our payments) is our place of business. Unless otherwise agreed, the place of performance for delivery and our payments is our registered office.
- (2) The place of jurisdiction for all legal actions is our place of business or the Regional Court of Mosbach if the supplier is a merchant, a special fund under public law or a legal entity under public law, has its registered office abroad or moves there after conclusion of the contract. Other permissible general or special places of jurisdiction are also open to us.
- (3) The non-unified law of the Federal Republic of Germany (BGB, HGB) shall apply to all claims and rights arising from this contract. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- (4) None of the clauses agreed upon in these terms and conditions changes the legal or judicial distribution of the burden of proof.

## § 15

### **Other provisions**

- (1) Changes to the contract can only become effective with our consent.
- (2) Should individual provisions of these terms and conditions be invalid or void in whole or in part, the remaining provisions shall remain unaffected. The contracting parties undertake to agree to a provision by which the meaning and purpose of the invalid or void provision is largely achieved in the economic sphere.
- (3) We treat all data of the supplier exclusively for the purpose of business transactions and according to the requirements of the respective valid data protection regulations. All terms used are to be understood in a gender-neutral way; no violation of the General Equal Treatment Act (AGG) is intended in other respects either.