

# General Terms and Conditions of Purchase

# MOTOMETER

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## 1. Scope

1.1 Our General Terms and Conditions of Purchase shall apply only with respect to entrepreneurs within the meaning of Section 14 of the BGB [German Civil Code].

1.2 Our General Terms and Conditions of Purchase shall apply to all business transactions (deliveries and services) with the supplier even if no express reference is made to these terms. We do not acknowledge any terms to the contrary or any deviating terms used by the supplier, unless such have been expressly approved by us. In particular, acceptance of deliveries or services or payment thereof shall not imply consent.

1.3 Our General Terms and Conditions of Purchase shall also apply to all future deliveries and services provided to us by the supplier.

## 2. Conclusion of Contract

2.1 Unless otherwise expressly agreed, cost estimates shall be binding and free of charge.

2.2 Offers and quotations from the supplier shall be free of charge. If they deviate from our request this must be expressly pointed out by the supplier.

2.3 If the supplier does not accept our orders within two weeks of receipt, we shall be entitled to withdraw. Call-off orders shall become binding unless the supplier objects to them within five working days following receipt thereof.

2.4 If the acknowledgment of order deviates from our order we shall only be bound if we have agreed to the deviation in writing. Acceptance of deliveries or services or payment thereof shall not imply consent.

2.5 If, upon conclusion of the contract, errors on our part occur through no fault of our own, e.g. on account of transmission errors, misunderstandings etc., any claims for compensation of damages asserted against us shall be excluded as per Section 122 BGB.

## 3. Deliveries and Passing of Risk

3.1 Since 01 July 2011, MOTOMETER GmbH has been listed as a "SLVS prohibition customer" [German

"Verbotskunde" – buyer waiving insurance of the goods during transport]. Any insurance costs charged to us will not be accepted by us and will not be paid.

3.2 Any dates and time periods that have been agreed shall be binding and must be strictly adhered to. The receipt of the goods at our site or at the receiving point agreed or specified by us shall be decisive for this.

3.3 Place of performance for all and any deliveries and services of the supplier shall be the receiving point specified by us.

3.4 Each consignment must be accompanied by a delivery note stating the date (issuance and shipment), the contents of the delivery (item number and quantity) as well as our order identifier (date and number). In the absence of a delivery note or if the delivery note is incomplete, we shall not be responsible for the resulting delays in processing and payment. A corresponding shipping notice with the same content must be sent to us under separate cover.

3.5 The risk of accidental loss and accidental deterioration of the delivery item shall pass to us upon delivery at the place of performance. If acceptance has been agreed, such acceptance shall be authoritative for the passing of risk. Also in other respects, the statutory provisions of the law on contracts for work and services [German "Werkvertragsrecht"] shall apply mutatis mutandis if acceptance has been agreed. Default in acceptance [German "Annahmeverzug"] on our part shall be equivalent to delivery [German "Übergabe"] or acceptance [German "Abnahme"].

3.6 As soon as it becomes apparent to the supplier that deliveries or services might be delayed, the supplier must inform us thereof without delay. The binding effect of the agreed delivery date shall not be affected thereby.

3.7 If delivery is effected prior to the stipulated delivery date, we shall have the right to reject such delivery. Partial deliveries can likewise be rejected by us.

3.8 In case of default of the supplier we shall be entitled to claim a contractual penalty of 0.5% for each commencing week of the delay, however not exceeding 5% of the order value. Such contractual penalty shall also apply if we have not reserved the right to assert a contractual penalty when accepting the performance. Any claims for further damage shall not be excluded by the contractual penalty.

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## 4. Prices and Payment

4.1. The agreed prices shall be fixed prices and shall be inclusive of freight, packaging and other ancillary costs (e.g. proper packaging, transport costs including possible transport and liability insurance) free of charge to the receiving point designated by us.

Unless otherwise agreed in individual cases, the price shall include all and any services and ancillary services of the supplier (e.g. assembly, installation).

Price increases shall only be permissible also for long-term supply contracts if an express agreement has been concluded to this effect.

4.2 Invoices shall be sent to us without delay after dispatch of the goods, separately for each order and specifying the order number. VAT shall be stated separately in the invoice. Any invoices that are not issued in due form shall be deemed as not issued.

4.3 Unless otherwise agreed, payment shall be effected within 10 calendar days with 3% discount, or within 30 days net, without any discount. The terms shall start with the receipt of the invoice or, if the delivery item is received after the invoice, with acceptance of the goods free from complaints, however, under no circumstances prior to the agreed delivery date.

If payment is effected by way of bank transfer, payment shall be deemed made punctually if our transfer order is received by our bank before the end of the payment period; we shall not be responsible for delays caused by the banks involved in the payment process.

4.4 Claims the supplier may have against us may only be assigned with our prior consent.

4.5 We shall be entitled to set-off and retention rights as well as to the plea of non-performance within the scope laid down by law. We shall in particular be entitled to withhold payments due for as long as we are still entitled to assert claims against the supplier arising from incomplete or defective performance.

4.6 The supplier may only offset claims for payment or exercise retention rights with counterclaims that are recognized by non-appealable judgment or are undisputed.

## 5. Incoming Goods Inspection at the Supplier

The supplier undertakes to conduct and document an incoming goods inspection of the products procured and provided. The methods applied in such incoming goods inspection shall be product-specific and shall be determined by the safety relevance of the products purchased. It must be ensured that only products free from defects will be used in the further production process.

## 6. Reduced Incoming Goods Inspection and Obligation to notify Defects

The supplier shall only supply delivery items which have been continuously inspected and have been approved. The provisions laid down by law shall apply to the commercial obligations to inspect the delivery items and give notice of defects (Sections 377, 381 HGB [German Commercial Code]) with the following proviso: Upon receipt and within a reasonable period of time we will only check the identity and check for any external damage of the delivery items in transport. Subsequently, we will only inspect the delivery items within the framework of the ordinary course of business during their use in production. If acceptance has been agreed there will be no obligation to inspect the delivery items. Our obligation to notify defects that are detected at a later date shall remain unaffected. The term shall be deemed to be complied with if the complaint is sent either by us - or by our customer in the event of drop shipments - in text form ["text form" as defined under § 126b of the German Civil Code] on the last day of the term. In this respect, the supplier shall waive the defense of delayed notification of defects.

The supplier will ensure that his liability insurance acknowledges the above amendment to the statutory regulations without compromise to the existing coverage of his liability insurance.

## 7. Material Defects and Defects of Title

7.1 Unless otherwise stipulated in the following, the provisions laid down by law shall apply to our rights relating to material defects and defects of title of the goods (including incorrect delivery and short delivery as well as incorrect assembly, inadequate assembly or operating instructions or instructions for use) as well as to other breaches of duty by the supplier.

# General Terms and Conditions of Purchase

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7.2 We shall be entitled to the statutory rights in the event of material defects and defects of title without restriction. We shall be entitled to select the type of supplementary performance.

7.3 Supplementary performance shall also include disassembly of defective goods and reassembly, if the goods, in accordance with their type or nature and their intended use, were incorporated into another object or attached to another object; our legal entitlement to reimbursement of the respective expenses shall remain unaffected. The expenditure required for inspection and supplementary performance shall be borne by the supplier even if it turns out that there was in effect no defect. Our liability for damages in the event of an unjustified request for rectification of defects shall remain unaffected; in this respect, however, we shall only be liable if we have acknowledged, or not acknowledged based on gross negligence, that there was actually no defect.

7.4 Without prejudice to our rights laid down by law and the stipulations under clause 7.3 above the following shall apply: If the supplier fails to meet his obligations for supplementary performance – at our discretion either by remedy of the defect (repair) or by delivery of a defect-free item (replacement) – within a reasonable time period set by us we shall have the right to remedy the defect ourselves and claim from the supplier compensation for the expenses thus incurred and/or can request a corresponding advance payment. If the supplementary performance by the supplier has failed or cannot be expected of us (e.g. due to special urgency, threat to operational safety or imminent occurrence of damage of a disproportionate nature) a deadline does not need to be set; we will inform the supplier without delay, beforehand if possible, of such circumstances.

7.5 Furthermore, in case of material defects or defects of title we shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the provisions laid down by law. Besides, as per the provisions laid down by law we shall be entitled to claim reimbursement of expenses as well as damages.

7.6 If costs are incurred by us on account of defects pertaining to the item delivered, including but not limited to transport, travelling, labor or material costs

or costs of an incoming inspection exceeding the ordinary extent, the supplier shall bear these costs.

7.7 If a material defect becomes apparent within six months of the passing of risk, it is presumed that the defect already existed at the time of the passing of risk, unless this presumption is incompatible with the nature of the item or the defect.

## 8. Recourse against the Supplier

8.1 In addition to claims for defects we shall be entitled to assert in full, without any restrictions, claims in recourse within the supply chain as laid down by law (recourse against the supplier as per Sections 445a, 445b, 478 BGB). We shall in particular have the right to require the supplier to provide the exact type of supplementary performance (repair or replacement) owed by us to our customer in each individual case. Our statutory right to select the respective cure (Section 439 [1] BGB) shall not be restricted by this.

8.2 Before we acknowledge or comply with a claim for defects asserted by one of our customers (including reimbursement of expenses as per Sections 445a [1], 439 [2] and [3] BGB) we will as a rule – but without assuming any legal commitment – give the supplier the opportunity to provide his comments. If the supplier fails to submit a substantiated statement within a reasonable period of time, does not provide an adequate plausible explanation or denies the existence of a defect, and if an amicable solution is not reached, the claim for defect in effect granted by us shall be deemed as owed to our customer. In such case, it shall be incumbent upon the supplier to provide evidence to the contrary.

8.3 Our claims from recourse against the supplier shall also apply if the defective goods have been processed either by us or by another entrepreneur, e.g. by way of incorporation into another product.

## 9. Product Liability and Quality Assurance

9.1 If the supplier is liable for a product defect he shall hold us harmless from and against any third-party claims if and to the extent that the cause thereof is within his field of control and organization and he is liable himself vis-à-vis third parties.

9.2. Within the scope of his indemnity obligation, the supplier must bear all costs and expenses as per Sections 683,

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670 BGB arising out of or in connection with claims asserted by any third party, including costs on account of recall actions conducted by us as well as any legal costs. To the extent possible and reasonable, we will inform the supplier on the content and scope of recall measures and will give him the opportunity to comment on the same. Any further statutory claims shall remain unaffected.

9.3 The supplier undertakes to take out, maintain and upon request substantiate to us sufficient product liability insurance of a minimum coverage of EUR 5 million for each claim.

9.4 The supplier shall establish a quality assurance system suitable as regards type and scope and in compliance with the state of the art and shall document all relevant data. Such quality assurance documentation shall be maintained and stored for a minimum of 10 years following the end of series production. Longer retention periods (up to 20 years) are recommended bearing in mind the limitation periods for product liability claims that apply in other countries (e.g. the US).

9.5 Subject to being given reasonable prior notice the supplier shall grant us and our authorized agents (if applicable, accompanied by agents of our customers) access to his premises as well as to the relevant documents and records at any time during ordinary business hours for the purpose of carrying out audits (system, process and product audits); during such visits the supplier will provide an appropriately qualified employee to answer questions and provide information.

## 10. Intellectual Property Rights and Indemnity

10.1. The supplier shall ensure that the items delivered by him do not infringe any domestic or foreign intellectual property rights and guarantees that we are completely free and authorized under copyright law to use them and trade with them both domestically and abroad.

10.2. In the event of us being held liable by third parties for an infringement of domestic or foreign intellectual property rights relating to the items delivered the supplier shall indemnify and hold us harmless from

and against all and any claims and damage incurred thereby.

## 11. Confidentiality and Retention of Title

11.1 We shall retain ownership rights and copyrights with respect to order documents, illustrations and images, plans, drawings, calculations, instructions and product descriptions and other documents. Such documents shall be used for the contractual performance exclusively and must be returned to us upon completion of the contract. They may only be used in the execution of our orders and may only be made available to those employees whose involvement is required for the execution of the order. They must be kept secret vis-à-vis any third party, also following termination of the contract. The obligation to confidentiality shall only become extinct if and to the extent that the know-how contained in the documents provided has become part of the public domain.

11.2 The above provision shall apply mutatis mutandis to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, models, samples and other objects provided by us to the supplier for production. As long as they are not processed, such items must be stored separately at the supplier's expense and must be adequately insured against destruction and loss.

11.3 Any processing, mixing or combining (further processing) of items provided by us by the supplier shall be carried out on behalf of us. The same shall apply to further processing of the delivered goods by us, so that we shall be deemed as the manufacturer and acquire title to the product at the latest with the further processing in accordance with the legal provisions.

11.4 Transfer of title to the goods to us must be made unconditionally and irrespective of the payment of the price. However, if, in an individual case, we accept an offer of the supplier for transfer of title dependent on the condition precedent that the purchase price is paid, the supplier's retention of title shall become extinct with the payment of the purchase price for the delivered goods at the latest. In the ordinary course of business, we shall remain authorized to resell the goods even before payment of the purchase price, with advance assignment of the resulting claim (alternative application of "basic ROT" [German "einfacher Eigentumsvorbehalt"] and "extended ROT" [German "verlängerter Eigentumsvorbehalt"] in case

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of resale). In any event, all other forms of ROT clauses shall thus be excluded, in particular "prolonged ROT" [German "erweiterter Eigentumsvorbehalt"], "transferred ROT" [German "weitergeleiteter Eigentumsvorbehalt"] and retention of title extended to further processing.

## 12. Limitation of Liability

We shall be liable for intent and gross negligence. We shall only be liable for slight negligence in case of a breach of essential contractual obligations which go to the root of the contract or the breach of which endangers the fulfilment of the contractual purpose. Also in these cases damages shall be limited to the foreseeable damage. In other respects, in case of slight negligence damage claims asserted by the supplier shall be excluded, irrespective of the legal grounds thereof. The aforesaid limitation of liability shall not apply in case of injury to life, limb or health.

## 13. Statute of Limitation

13.1 Unless otherwise stipulated in the following, the mutual claims of the contracting parties shall become statute-barred in accordance with the provisions laid down by law.

13.2 In derogation of Section 438 [1], number 3, BGB, the general limitation period for claims for defects shall be 3 years from the passing of risk. If acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall apply to claims for defects of title *mutatis mutandis*, whereby the statutory limitation period for the claim of a third party for return in rem (Section 438 [1], number 1, BGB) shall remain unaffected; furthermore, claims for defects of title shall not become statute-barred for as long as the third party is still in the position to assert the claim against us – in particular because it is not yet statute-barred.

13.3 The limitation periods under the law governing the sale of goods, inclusive of the aforesaid extension, shall apply to all contractual claims for defects, to the extent permitted by law. If and to the extent that we are also entitled to non-contractual claims for damages based on a defect the standard limitation period laid down by law shall apply (Sections 195, 199 BGB), unless, in an individual case, application of the limita-

tion periods stipulated under the law governing the sale of goods results in a longer limitation period.

## 14. Place of Performance, Jurisdiction, Applicable Law

14.1 Place of performance for all and any liabilities arising out of the contract, in particular for delivery and payment, for both parties shall be the principal place of business of our company or the place of performance stipulated by us.

14.2 If the supplier is a registered trader with seat in the European Union, Switzerland, Norway or Iceland at the time proceedings are initiated, place of jurisdiction for all and any legal disputes arising out of the contractual relationship, its creation and effectiveness shall for both parties be the court competent at our company's principal place of business. In derogation hereof, we may, at our discretion, also bring an action at the seat of the supplier.

14.3 To the extent that clause 14.2 above is not applicable, all and any legal disputes arising out of the contractual relationship, its creation and effectiveness shall be settled by final and binding decision in accordance with the Rules of Arbitration of the German Arbitration Institute (Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)), excluding the jurisdiction of the courts. Place of arbitration shall be Karlsruhe, Germany. The language of the arbitration proceedings shall be German.

14.4 The contractual relationship shall be governed by German law excluding the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).

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