

## Standard Terms and Conditions

of Schwarzer Precision GmbH + Co. KG (hereinafter referred to as "the Supplier") for business with companies, businessmen and public bodies of all descriptions (hereinafter referred to as "the Purchaser").

### Section 1: General Conditions

1.) The sale and delivery of goods and the performance of services by the Supplier shall be governed by written declarations signed both by the Supplier and by the Purchaser and by these Standard Terms and Conditions. Any standard terms, including without limitation standard terms of purchase orders, of the Purchaser shall not become part of the contract between the Supplier and the Purchaser (hereinafter referred to as "the Contract") even if the Supplier does not raise explicit objections to the application of such standard terms in any specific case.

2.) The Supplier shall retain full title and copyright to any and all cost estimates, drawings and other documents (hereinafter referred to as "Documents") submitted to the Purchaser. The Purchaser shall not divulge any Documents to any third party without the prior permission of the Supplier. In the event that the Contract is not awarded to the Supplier, the Purchaser shall return all such Documents to the Supplier without delay upon request by the Supplier. These provisions shall also apply mutatis mutandis to documents of the Purchaser submitted to the Supplier, except that the Supplier shall be entitled to make documents of the Purchaser available to third parties to whom the Supplier has subcontracted the supply of goods in accordance with the Contract.

3.) The Supplier shall be entitled to make partial deliveries under the Contract in the event that the Purchaser can reasonably be expected to accept such deliveries.

### Section 2: Contracts

1.) The Purchaser shall be bound by its order for two weeks from the receipt thereof by the Supplier, unless otherwise stated in the order.

2.) The Contract shall be deemed to have been concluded when the Purchaser receives the written confirmation by the Supplier of the Purchaser's order, provided however that the Contract shall be deemed to have been concluded implicitly if the Supplier does not issue to the Purchaser a written refusal to conclude the Contract within the period stated in paragraph 1 of this Section 2.

### Section 3: Prices, Terms of Payment, Set-off

1.) All prices shall apply to ex works delivery not including carriage, packaging or value added tax, which will be charged in addition to the prices.

2.) Except where prices are explicitly agreed between the Supplier and the Purchaser, the Contract shall be subject to the list prices of the Supplier on the date when the order is issued by the Purchaser.

3.) Payments under the Contract shall be made by the Purchaser by the agreed date without any deduction to the account designated by the Supplier. Payment by check or bill of exchange, if agreed with the Supplier, will only be accepted by the Supplier on account of performance.

4.) The Purchaser shall only be entitled to set off claims against the Supplier which have been accepted by the Supplier or in respect of which an enforceable judgement has been given.

### Section 4: Retention of Title

1.) The Supplier shall retain title to the goods supplied under the Contract (hereinafter referred to as "the Goods") until any and all claims of the Supplier against the Purchaser under the business relations between them have been settled. In the event that the total value of Goods to which the Supplier retains title exceeds by more than 15 % the total value of the claims of the Supplier on the Purchaser for which security is provided, the Supplier shall release title to an appropriate part of the Goods upon request by the Purchaser.

2.) The Purchaser shall not sell, pledge, transfer title to, rent or otherwise dispose of the Goods to third parties while title to the Goods is retained by the Supplier without the written permission of the Supplier. The Purchaser shall be entitled to sell Goods to third

parties in the normal course of his business without such permission in the case of Goods which have been sold to the Purchaser for resale. In the case of Goods resold by the Purchaser in the normal course of business or with the permission of the Supplier, the Supplier shall be entitled to a share in the amount owed to the Purchaser by the third party purchasing such Goods corresponding to the amount owed to the Supplier by the Purchaser. The Purchaser hereby assigns a claim to such amount to the Supplier.

3.) The Purchaser shall be entitled to collect amounts owed to the Purchaser in connection with the resale of Goods until such right is revoked by the Supplier. This shall not apply if the Purchaser is in arrears with payments under the Contract. Until full payment has been made for the Goods by the Purchaser, the Purchaser shall not be entitled to pledge its prospective title to the Goods or to transfer such prospective title by way of security.

4.) If the Goods are connected to other objects in such manner as to become an integral part of such objects and the new object so created is to be regarded as the main object, the Purchaser shall be deemed to have already transferred to the Supplier a pro rata share in the title to such new object and shall store said new object on behalf of the Supplier. This shall also apply to any goods which are processed or caused to be processed by the Purchaser.

5.) In the event that the Purchaser resells any goods which the Purchaser has not paid for in full, the Purchaser shall, as towards the third-party buyer of said Goods, reserve the right of the Supplier to retain title to such goods and transfer any monies received in respect of such Goods to the Supplier forthwith or pay such monies into a special account and secure them until all amounts outstanding to the Supplier under the Contract have been paid.

6.) If any Goods to which the Supplier retains title are seized, confiscated or subject to intervention by third parties, the Purchaser shall promptly notify the Supplier and issue to such third party and the Supplier written confirmation that title to such Goods is held by the Supplier.

7.) In the event that the Purchaser is in breach of any of its obligations under the Contract, including without limitation its obligation to make payments in good time, the Supplier shall grant the Purchaser a reasonable period to remedy such breach and, in the event that the Purchaser fails to remedy such breach within such reasonable period, to rescind the Contract and take back the Goods. This provision shall be without prejudice to the statutory provisions under which the Supplier may not be obligated to grant the Purchaser a reasonable period. In any such case, the Purchaser shall be obligated to deliver up the Goods to the Supplier.

### Section 5: Delivery Deadlines, Delay, Impossibility

1.) The compliance by the Supplier with deadlines for the delivery of Goods shall be subject to the proviso that any and all documents and approvals to be submitted by the Purchaser are received by the Supplier in good time and that the Purchaser complies with the agreed payment conditions and its other obligations under the Contract. In the event that the Purchaser fails to meet all such obligations in good time, the deadlines for the delivery of the Goods shall be extended by an appropriate period.

2.) In the event that the Supplier fails to comply with any delivery deadline by reason of circumstances of force majeure including war or warlike occurrences, strike or lockout, said delivery deadline shall be extended by an appropriate period.

3.) In the event that the Purchaser proves that it has suffered loss or damage by reason of a failure of the Supplier to comply with delivery deadlines for the Goods, the Purchaser shall be entitled to liquidated damages in the amount of 0.5 % of the price payable for the Goods concerned, subject to a maximum limit of 5 % of the price payable for the Goods which are delayed.

4.) Should the delivery of the Goods become impossible, the Purchaser shall be entitled to claim damages from the Supplier unless delivery becomes impossible for reasons for which the Supplier is not responsible. In any such case, the damages payable to the Purchaser shall not exceed 10 % of the price payable for the Goods the delivery of which has become impossible.

5.) Claims for damages by the Purchaser by reason of delay in delivery or the impossibility of delivery or damages in lieu of performance in excess of the limits stated in paragraphs 3 and 4 of this Section 5 are hereby excluded. This exclusion shall not apply in the event of loss or damage caused by wilful act or omission or gross negligence, death, personal injury or damage to health caused by the Supplier or to loss or damage caused by a wilful or negligent breach of any obligation by a statutory representative, servant, agent or employee of the Supplier.

6.) The Purchaser shall not be entitled to rescind the Contract in accordance with the applicable statutory provisions unless the Supplier is responsible for the delay in or impossibility of delivery of the Goods. Rescission shall be subject to the provisions stated in Section 7, paragraph 4, sentence 2, hereinbelow. These provisions do not entail a reversal of the burden of proof to the detriment of the Purchaser.

#### **Section 6: Transfer of Risks**

1.) The risks associated with the Goods shall be transferred to the Purchaser when the Goods are handed over to the Purchaser or, in the case of goods to be shipped, when the Goods are handed over to the haulier or forwarder or other person or organization responsible for shipment. In the event that shipment becomes impossible or is delayed for reasons beyond the control of the Supplier or the delivery of goods is delayed at the request of the Purchaser or for reasons for which the Purchaser is responsible, the risks associated with the Goods shall be transferred to the Purchaser when the Supplier notifies the Purchaser that the Goods are ready for shipment.

2.) All Goods shall be shipped at the risk and expense of the Purchaser even in cases where delivery carriage paid or shipment at the request of the Purchaser has been agreed. Unless otherwise agreed, the Supplier shall be entitled to select the mode of shipment to be used for any Goods.

#### **Section 7: Liability for Defects in Goods**

1.) The Supplier shall, at the option of the Supplier, either repair defects in or supply new Goods in replacement for Goods which were defective at the time of the transfer of the risks associated with the Goods concerned in accordance with Section 6 hereinabove (subsequent performance). The Purchaser shall grant the Supplier a reasonable period of time for such subsequent performance.

2.) The claims of the Purchaser in connection with defects in Goods shall be forfeited unless made within one year of the transfer of the risks associated with the Goods concerned in accordance with Section 6 hereinabove. This shall not apply in the event that longer periods are laid down by law in accordance with Section 479, Para. 1 BGB (Civil Code – right of recourse) or in the event of death, personal injury or damage to health or in the event of wilful or grossly negligent breach of its obligations by the Supplier or in the event that any defect in Goods is maliciously concealed by the Supplier. For this purpose, any breach of obligations by a statutory representative, servant, agent or employee of the Supplier shall be deemed to be a breach of its obligations by the Supplier.

3.) Claims made by the Purchaser in connection with defects in Goods shall be forfeited unless made in writing within two weeks of the transfer of the risks associated with the Goods concerned in accordance with Section 6 hereinabove in the case of evident defects or within one year of such transfer of risks in the case of non-evident defects.

4.) In the event of the failure of subsequent performance by the Supplier, the Purchaser shall, without prejudice to any rights of the Purchaser to claim damages under Section 8 hereinbelow, be entitled to rescind the Contract or abate the price payable under the Contract. In the event of the rescission of the Contract, the Purchaser shall, in consideration of the repayment of the price of the Goods, return the Goods to the Supplier and pay to the Supplier compensation for the actual use of the Goods by the Purchaser and for such use which would have been possible but for the wilful act or omission or gross negligence of the Purchaser. In any such case, the Purchaser shall not be entitled to reimbursement by the Supplier of any expenses incurred. In the event of the loss or deterioration of the Goods while in the possession of the Purchaser and in the event that the Purchaser is unable to return the Goods to the Supplier for any other reason in the event of the rescission of the Contract, the Purchaser shall be

obligated to pay compensation for the value of the Goods to the Supplier if the Purchaser was aware of the reason for rescission. In the event that the Purchaser was unaware of the reason for rescission, the Purchaser shall pay to the Supplier compensation for the value of the Goods if the Purchaser was responsible for the loss or deterioration of the Goods or any other reason why it is not possible to return the Goods to the Supplier.

5.) The Purchaser shall not have any claims on the Supplier with respect to insignificant deviations of the Goods from agreed properties, insignificant impairment of the fitness of the goods for the intended purpose, normal wear and tear or damage caused after the transfer of the risks associated with the Goods in accordance with Section 6 hereinabove by incorrect or negligent handling, overloading, the use of unsuitable consumables, chemical, electrochemical or electrical effects, wind, weather or environmental conditions or for damage caused by the improper installation of compressors, vacuum pumps or liquid pumps, including without limitation any failure to provide sufficient cooling air for such compressors or pumps. The Purchaser shall not have any claim on the Supplier with respect to defects in the Goods caused by modifications or maintenance work not performed properly by the Purchaser or third parties or the consequences of such modifications or work.

6.) The Purchaser shall not be entitled to refuse to take delivery of the Goods because of slight defects in the Goods.

7.) The Purchaser shall not be entitled to retain any payments due to the Supplier except in the event that complaints by the Purchaser concerning defects in the Goods are justified without any doubt. In any such case, the Purchaser shall only be entitled to retain amounts which are reasonable in view of the defects concerned. In the event that any complaints made by the Purchaser concerning defects in the Goods prove to be unjustified, the Supplier shall be entitled to claim from the Purchaser reimbursement of the costs incurred by the Supplier in this connection.

8.) Claims for damages by the Purchaser shall also be governed by Section 9 hereinbelow. Any claims of the Purchaser against the Supplier and its servants, agents and employees not covered by or going beyond the limits of Section 7 hereinabove are hereby excluded. This shall not apply in the event of death, personal injury or damage to health or in the event that the Supplier is responsible for any breach of its obligations or to other loss or damage caused by a wilful or grossly negligent breach of its obligations by the Supplier. For this purpose, any breach of obligations by a statutory representative, servant, agent or employee of the Supplier shall be deemed to be a breach of its obligations by the Supplier.

#### **Section 8: Liability for Defects in Title**

1.) The provisions of Section 7 hereinabove shall apply *mutatis mutandis* to defects in the title to the goods.

2.) The obligations of the Supplier to pay damages shall be governed by Section 9 hereinbelow.

3.) Any claims of the Purchaser against the Supplier and its servants, agents and employees with respect to defect in the title to Goods not covered by or going beyond the limits of Section 7 hereinabove are hereby excluded. This shall not apply in the event of death, personal injury or damage to health or in the event that the Supplier is responsible for any breach of its obligations or to other loss or damage caused by a wilful or grossly negligent breach of its obligations by the Supplier. For this purpose, any breach of obligations by a statutory representative, servant, agent or employee of the Supplier shall be deemed to be a breach of its obligations by the Supplier.

#### **Section 9: Claims for Damages**

1.) Any claims for damages or compensation made by the Purchaser on whatsoever grounds, including without limitation the infringement of obligations under the contractual relationship, damage to any property other than the Goods themselves and tortious act, are hereby excluded.

This shall not apply in the event that the Supplier is liable under compulsory provisions of the applicable law, including liability under the *Produkthaftungsgesetz* (Product Liability Act), liability for the wilful act or omission or gross negligence of the Supplier or its statutory representatives, servants, agents and employees or the wilful or grossly negligent breach of material provisions of the Contract. In any such case, except in the case of wilful act or

omission or gross negligence or death, personal injury or damage to health, the liability of the Supplier shall be limited to such loss or damage as could typically have been foreseen in connection with the Contract. These provisions shall not constitute any change in the burden of proof.

2.) Claims for damages made by the Supplier under this Section 9 shall be forfeited unless made within the period specified for claims in connection with defects in Goods in Section 7, Paragraph 2 hereinabove. Claims for damages under the *Produkthaftungsgesetz* (Product Liability Act) shall be subject to the statutory provisions concerning periods of limitation.

#### **Section 10: Applicable Law, Venue for Disputes**

1.) The venue for any disputes arising between the Supplier and the Purchaser out of or in connection with the Contract shall be Essen.

2.) The entire legal relationship between the Supplier and the Purchaser shall be governed by and construed and interpreted in accordance with the law of Germany with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).

#### **Section 11: Miscellaneous Provisions**

If any of the provisions of the Contract, including these Standard Terms, is ineffective, the other provisions of the Contract, including these Standard Terms, shall remain in full force and effect. The Purchaser shall not assign its rights under the Contract to any third party without the express permission of the Supplier.

Date: February 2003