

General Conditions of Purchase of Dichtomatik

1. Scope

- 1.1 1.1 All assignments and orders placed by us and all contracts concluded by us – hereinafter referred to as the “Order” – regarding the purchase of goods and work or services – hereinafter referred to as the “Deliveries” or the “Delivery Items” – shall exclusively be governed by these Conditions of Purchase. We hereby expressly object to conditions of our suppliers that differ from or supplement these Conditions of Purchase, and those conditions are not binding on us. Our Conditions of Purchase shall even apply exclusively if we do not object to the application of the conditions of our supplier in individual cases or accept its Deliveries without reservation, even though we are aware of conflicting or supplementary terms and conditions of the supplier.
- 1.2 1.2 These Conditions of Purchase shall also apply to all future transactions with the supplier, even if they are not expressly agreed on again.
- 1.3 The invalidity or unenforceability of individual provisions of these Purchase Conditions does not affect the validity of the remaining provisions. The invalid or unenforceable provisions shall be replaced with the legally permissible provision that comes closest to the economic purpose pursued with the invalid or unenforceable provision.

2. Contract formation

- 2.1 Any agreements concluded between the supplier and us and any Orders are only binding on us if they are put into writing. Any change, addition or ancillary agreement made before, during or after the formation of the contract also require our written confirmation. The written form requirement can only be waived in writing. The transmission of information by fax, e-mail or remote data transmission is deemed equivalent to the written form.
- 2.2 If the supplier does not accept our Order in writing within two (2) weeks of receiving it, we are entitled to cancel it. Call-offs become binding if the supplier does not object to them within three (3) working days of receiving them. Changes or additions to or other deviations from our Orders are only effective if they are specified expressly and separately and if we expressly agree to them.

3. Prices and terms of payment

- 3.1 The prices specified in the Order are fixed prices. Unless expressly otherwise agreed in writing, all prices include delivery FCA (agreed place of delivery) for land or air cargo shipments or delivery FOB (agreed port of lading) for sea cargo shipments. If the statutory value-added tax is not listed separately, it shall be deemed included in the price.
- 3.2 If the supplier has agreed to carry out the set-up, assembly or commissioning, and unless otherwise agreed in writing, the supplier shall bear all required incidental expenses, such as travel expenses and the provision of tools.
- 3.3 We can only process invoices if they are sent to us by separate mail. Each Order requires a separate invoice, collective invoices are only permitted with our prior written consent. The invoice shall clearly highlight the Order number specified in our Order, the Order date, the supplier number and our item number.
- 3.4 Invoices shall be issued in euros and shall include the correct IBAN, the correct BIC and the value-added tax identification number. Payments are only made in euros.
- 3.5 Payments are made by bank transfer or cheque or bill of exchange, at our discretion, after accepting the Delivery and receiving an auditable invoice and the submission of all documents that are part of the scope of Delivery. If this was agreed in advance in writing, we may also settle invoices using the credit note procedure in compliance with the applicable tax laws. The terms of payment individually agreed with each supplier apply.

Unless otherwise agreed, we will pay invoices within 10 days with a discount of 3% or within 30 days without any deductions.

- 3.6 The supplier must not assign all or part of its claims against us or dispose of them in any other way without our prior written consent.
- 3.7 We are entitled to exercise rights of offset and rights of retention to the extent provided for by law.

4. Delivery dates and delivery terms

- 4.1 The dates specified in the Order or otherwise agreed are binding and shall be strictly observed. The supplier shall notify us in writing immediately if it anticipates that there will be a delay or that it will not be able to comply with the agreed upon deadlines or delivery periods, specifying the reason and the anticipated duration.
- 4.2 Partial deliveries and early deliveries are only permitted if we have expressly agreed to them. However, the claim for payment only arises on the originally agreed delivery date (at the earliest).
- 4.3 The quantities ordered are binding. Unless expressly otherwise agreed or unless otherwise provided for in an individual agreement, we will accept surplus deliveries of up to 2%. However, we are entitled to reject surplus deliveries of more than 2% to the detriment and at the expense of the supplier. We will not accept short deliveries, even if the goods are received.
- 4.4 Unless otherwise agreed, Deliveries shall, in addition to the delivery note, include a specific test report based on DIN EN 10204 or an equivalent internationally recognised test report, listing the specifications agreed upon with the supplier. The first Delivery shall include an initial sample test report.
- 4.5 Goods can only be delivered at the agreed times. The instructions of our security personnel must be complied with.
- 4.6 If the Delivery is delayed, we are entitled to claim a contractual penalty in the amount of 1% of the Order value per week of delay or part thereof, but limited to a total of 10% of the Order value; the supplier is entitled to prove to us that no damage or significantly less damage has been incurred. We reserve the right to claim any damage beyond this amount. We are obligated to state that we reserve the right to claim a contractual penalty at the latest when we pay the invoice following the delayed Delivery.
- 4.7 Force majeure events that make it impossible or considerably more difficult for our supplier to deliver the Delivery Items or for us to accept or use the Delivery Item in our operation or for our customers, postpone our obligation of acceptance in accordance with our actual requirements. If we or our supplier are affected by force majeure, we can also choose to rescind part of or the entire contract.

5. Place of performance, passing of the risk, acquisition of title

- 5.1 The place of performance shall be the place specified in the Order to which the goods are to be delivered or at which the work or service is to be performed. The place of performance for our payments is our registered office.
- 5.2 The Delivery Item shall be delivered at the expense and risk of the supplier, properly packaged for shipment and free of charge, to the place of delivery at the address specified by us and/or performed there. Even if we have agreed to pay the shipping costs, the risk of the accidental loss or the accidental deterioration of the Delivery Item shall only pass to us on the later of the following dates: a) when we, or the forwarding agent contracted by us, receive the Delivery Item at the agreed place of performance or b) after the final acceptance of the Delivery Item.
- 5.3 Upon the passing of the risk at the place of performance or when the goods are delivered to a forwarding agent specifically contracted by us we acquire the title to the goods without reservation of any rights for the supplier.



5.4. If the Delivery is of work, the risk shall only pass after it has been accepted at the place of performance.

6. Liability for defects and other liability

6.1 We verify only the identity and quantity of all goods delivered based on the shipping documents and only check them for transport damage that is visible from the outside. We will notify the supplier of defects of the Delivery Item within an adequate period of time of at least five (5) working days from the time when they are identified in the ordinary course of our business.

6.2 Unless otherwise provided for in this section, the supplier is liable in accordance with the statutory provisions, especially for defects of the Delivery Item, without any limit or exclusion of liability in terms of the merit or the amount, and shall indemnify us against claims of third parties in this respect.

6.3 The right to choose the type of remedial action lies with us in principle.

6.4 If the supplier does not start remedying the defects immediately after it has received our request to remedy the defects, we are entitled to remedy the defects identified by us ourselves or have them remedied by third parties at the expense of the supplier in urgent cases, especially to avert imminent dangers or avoid extensive damage, without having to provide an additional period of time for remedial action to the supplier in advance.

6.5 Unless otherwise agreed or unless the statutory provisions provide for longer expiry periods, claims based on defects of quality become time-barred 24 months after the end product has been sold to the consumer, but at the latest 30 months after it has been delivered to us. If the Delivery is of work, claims become time-barred 30 months after the written final acceptance. If the Delivery Item has been used for a building in accordance with its standard use and if it has caused the defectiveness of that building, the claim only becomes time-barred after five (5) years.

6.6 With respect to defects of title, the supplier shall also indemnify us against any existing claims of third parties. Claims based on defects of title and claims for indemnification become time-barred after ten (10) years.

6.7 If defective Deliveries require an incoming goods inspection beyond the usual extent, the supplier shall bear the related costs.

7. Product liability

7.1 The supplier shall indemnify us against all claims of third parties arising from or in connection with personal injury or property damage if and to the extent that the cause lies in its area of control or organisation. In this context the supplier must also reimburse us for all expenses incurred by us based on or related to a recall or other measure taken.

7.2 The supplier undertakes to maintain extended product liability and recall costs insurance, each with a sum insured of at least EUR 2,500,000.00 (two million five hundred thousand euros) (lump sum) per personal injury claim/property damage claim; even though our claims are not limited to the sum insured.

8. Non-infringement of industrial property rights and compliance with regulations

8.1 The supplier affirms that its Deliveries and their use do not infringe upon industrial property rights or other rights of third parties or violate any kind of legal or official regulations. The supplier also affirms that the goods delivered by it do not contain any CFCs, PCBs or asbestos. The supplier undertakes to provide all relevant IMD system data or other data relevant to REACH, GHS or export laws free of charge at our request.

8.2 In this context the supplier shall indemnify us against all claims asserted against us by third parties due to or in connection with the Deliveries or their use. Section 6.6 sentence 2 applies.

8.3 The supplier's obligation to indemnify also extends to all expenses incurred by us arising from or in connection with claims asserted against us by a third party.

8.4 If the supplier delivers machines and equipment, it shall also provide a risk analysis based on DIN EN 1050 free of charge in accordance with EU Machine Directive 98/37/EC if the machines and equipment to be delivered fall under the scope of this directive.

8.5 The supplier acknowledges that we, as a manufacturer of goods/products, are a "downstream user" within the meaning of the European chemicals regulation No. 1907/2006 ("REACH") and warrants that it will comply with all REACH provisions, especially those required to process, sell or distribute goods within the EU, in particular: (a) to preregister or register chemical substances or preparations or get them approved to the extent required by law, (b) to implement internal organisational measures which document compliance with REACH, (c) to ensure that any use of chemical substances or preparations in goods (including packaging material) specified/reported to the supplier by us or our customers is covered by the respective (pre)registration or approval, (d) to notify us without undue delay as to whether a substance or preparation which has been pre-registered shall not or cannot be finally registered within the respective transition period and (e) not to sell or deliver goods of any kind containing prohibited substances of very high concern (SVHC) without prior written coordination with us ((a) to (e) are collectively referred to as "REACH conformity"). The supplier acknowledges that violations of REACH conformity fundamentally result in a defect of the substance, the preparation or other goods/products within the meaning of applicable law and shall indemnify us against all claims, any liability, all expenses and any damage caused by the supplier due to a violation of the aforementioned REACH conformity and support us in enforcing it at its own expense.

9. Reservation of title, tools

9.1 We reserve the title to all goods (e.g. parts, components, semi-finished products) provided by us.

9.2 The reservation of title also extends to products resulting from the processing, mixing or combining of our goods at their full value, and these processes are carried out on our behalf, which means we are deemed their manufacturer. If rights of title of third parties remain in effect when our goods are processed, mixed or combined with their goods, we acquire co-ownership of the product in proportion to the objective value of these goods.

9.3 Any tools provided to the supplier and tools manufactured by the supplier itself on our behalf or ordered from third parties on our behalf that we have contributed to the costs of remain our property or become our property as they are manufactured or acquired by the supplier and shall be clearly marked as our property and stored separately.

9.4 The supplier shall store the tools for us free of charge in a locked room, take out sufficient insurance for them and submit proof of the insurance coverage to us at our request. Unless otherwise agreed, the supplier shall only use the tools to manufacture parts that are meant for us. Such consent for manufacturing parts based on orders from other Dichtomatik Group companies is granted hereby.

9.5 The supplier shall maintain and service any tools provided by us at its expense. At the end of the contract the supplier shall return the tools to us immediately upon request; it is not entitled to any right of retention. When they are returned, the technical condition of the tools and their visual appearance must be acceptable based on the prior use. The costs of repairing the tools shall be borne by the supplier. It must not scrap the tools without our prior written consent.

**10. Quality assurance**

- 10.1 The supplier undertakes to maintain an ISO 9001 quality management system that must ensure the impeccable quality of the Delivery Items delivered to us during the entire business relationship, to monitor it periodically through internal audits, and to initiate the required measures immediately if it identifies any deviations. We are entitled to review the quality assurance system of the supplier at any time with advance notice. At our request, the supplier shall allow us to view certification and audit reports and any testing procedures conducted, including all test records and documents regarding the Delivery Item.
- 10.2 Our "quality standards", as amended, which we send to our suppliers upon request, are part of all Orders and agreements between the supplier and us.

11. Confidentiality, documents

- 11.1 The supplier shall keep all information, formulations, drawings, models, tools, technical records, procedures, software and other technical and business know-how, as well as all work products generated in connection with it, that were made available by us or which the supplier learned about with respect to us (hereinafter referred to as "Confidential Information") confidential from third parties and this Confidential Information may only be used in the supplier's own business to execute/perform Deliveries for us and may only be made available to persons who need to know the Confidential Information in the context of the business relationship and who have been placed under an obligation of confidentiality in accordance with this provision. This also applies beyond the duration of the business relationship, unless the supplier can prove that the Confidential Information was already known to it when it received it or that it was publicly known or became publicly known later through no fault of the supplier.
- 11.2 All documents (e.g. drawings, illustrations, testing specifications), samples and models etc. that we make available to the supplier in the context of the business relationship remain our property and shall be returned to us or destroyed at the expense of the supplier, at our option, at any time upon our request, but at the latest upon the termination of the business relationship (including any copies, transcripts, excerpts and reproductions that exist). The supplier is not entitled to a right of retention in this respect.
- 11.3 The disclosure of Confidential Information and any submission of documents, samples or models do not create rights in industrial property rights, know-how or copyrights for the supplier and does not constitute a prepublication or a right of prior use within the meaning of the Patent and Utility Model Act.
- 11.4 The supplier shall provide a proof of origin and must be able to prove the information regarding the origin provided by it with an information certificate confirmed by a customs office (for suppliers with their registered office outside of the EU this would be a certificate of origin). The supplier shall provide all information and data we need to comply with the applicable foreign trade legislation when we export, ship and import or, in the event of redistribution, re-export the goods and services, particularly for each good and each service, to us in writing as early as possible, but at the latest when it accepts the contract.

For Deliveries within the EU: for each first-time delivery of raw materials in a calendar year: a long-term suppliers declaration for goods with a preferential originating status in accordance with the EU regulation applicable at the time of delivery if the goods are originating goods qualifying for preference. For Deliveries from outside of the EU: for each delivery: a movement certificate/declaration of origin on the invoice in accordance with the preferential regime applicable at the time of delivery if the goods are originating goods qualifying for preference;

The supplier cannot object to a supplier's declaration issued by noting this on shipping documents or on the invoice. It can only object in the form of a new (amended) supplier's declaration, with a note stating that this renders the previous supplier's declaration invalid.

12. Choice of law and place of jurisdiction

- 12.1 These General Conditions of Purchase are exclusively governed by the law of the Federal Republic of Germany to the exclusion of its private international law to the extent that it refers to the application of another legal system. The application of the UN Convention for the International Sale of Goods (C.I.S.G.) or other bilateral or multilateral agreements for the harmonisation of the international sale of goods is excluded.
- 12.2 The place of jurisdiction for all claims from business relationships with suppliers, especially arising from contracts or regarding their validity, shall be the place of performance (Section 5.1) or Weinheim/Bergstraße, at our discretion. However, we are entitled to bring suit against the supplier at any other general or special place of jurisdiction at our option.
- 12.3 If the registered office of the supplier is outside of the United Kingdom, we are also entitled, at our option, to have all claims, disputes or differences of opinion from business relationships with the supplier decided by the Swiss Chambers' Arbitration Institution in accordance with the rules of arbitration applicable at the time when the procedure is initiated, to the exclusion of litigation in the ordinary courts. The seat of the court of arbitration is in Zurich, Switzerland. The language of the arbitration proceedings is English. The decision of the court of arbitration is final and binding on the involved parties.

February 2016