

## General Terms and Conditions of Purchase

of the companies

Berghof GmbH

Berghof Automation GmbH

Berghof Products + Instruments GmbH

Berghof Fluoroplastic Technology GmbH

Berghof Membrane Technology GmbH

Berghof Analytik und Umweltengineering GmbH

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## **A. General Provisions**

### **§ 1 Scope of Application**

1. Our General Terms and Conditions of Purchase (hereinafter referred to as "GCP") shall apply to the whole spectrum of our purchasing activities, including but not limited to the purchase of goods, work or services.
2. Our General Conditions of Purchase apply exclusively. They also apply to all future transactions and in all cases in which contact is taken up with a supplier for business purposes, such as, for example, the entry into contractual negotiations or in the preliminary stage before conclusion of a contract, even if these Conditions are not expressly agreed again or if no express reference is made to them again.
3. Conditions of the supplier which diverge from, or which contradict, our General Terms and Conditions of Purchase are not recognized by us. Objection is expressly made to the application of general conditions of the supplier. Our General Terms and Conditions of Purchase shall also apply if we unconditionally accept deliveries despite being aware of diverging or contradicting conditions of the supplier.
4. These General Conditions of Purchase shall replace any contrary agreements or earlier versions of our terms and conditions of purchase.
5. Our General Terms and Conditions only apply to businesses, legal entities of public law or public special funds subject to § 310 (1) BGB (German Civil Code).

### **§ 2 Orders, Order Documents, Conclusion of a Contract**

1. We issue our orders, changes to orders and calls for supplies in writing, by e-mail or by fax. Unless otherwise expressed, the content of verbal agreements shall only be binding if confirmed by us in writing.
2. Every order, change to an order, as well as every call for supply, must be confirmed by the supplier in writing immediately. If this confirmation is not dispatched within seven working days following receipt of our order or change to an order or if our order is not accepted within a period of seven working days, then we shall no longer be bound to the order and we shall be entitled to withdraw from the contract. Calls for supplies become binding, if the supplier does not object to them within seven working days after receipt.
3. The offer or estimates of costs transmitted to us by the supplier are binding. They are to be provided by the supplier free of charge.

### **§ 3 Item to be Supplied**

1. The supplier is obliged to supply, or, as appropriate, to carry out, the item/service ordered by us in accordance with the contractual agreement. Deviations are only permissible with our written consent. The supplier guarantees that the supply/service will be performed with the use of suitable materials, that it will conform to the recognized technical rules and that it will comply with the applicable statutory regulations and official safety-regulations and with the environmental-protection provisions which are currently in force or which have already been enacted subject to a transitional period, but which will definitely come into force.
2. The supplier has to pack the goods with the due care and diligence of a prudent business person. Several articles of a consignment may be delivered together but must be separately packaged and identifiable.
3. If we order parts which are to be manufactured by the supplier in accordance with a drawing or sketch specifically provided by us or in accordance with a model, then, upon our request, the supplier shall, together with supply of the item ordered, submit a test-protocol free of cost to us showing the characteristics of the product, such as measurements etc.
- 3.1. If the supplier makes changes to the manner in which the material processed is composed or in the constructive manufacture of its products or services, as compared with similar supplies or services which were previously supplied to us, then the supplier is obliged to inform us about this without delay in advance. As a general rule any changes are subject to our approval.

- 3.2. The supplier must carry out our orders in its own business premises. The assignment of orders to third parties requires our written consent. If the subject-matter of our contract with the supplier involves the provision of consultancy services or other work which, due to the content thereof, requires to be performed personally by a specific individual as a fundamental element of the contract, then the supplier shall be obliged to arrange for the consultancy services or other work to be carried out by the relevant individual personally.
- 3.3. If we instruct the supplier to perform work of a non-physical kind, such as, for example, construction, consultancy or programming work, then, on delivery thereof or, as appropriate, on performance of the relevant contractual obligation, we acquire the exclusive right to use the work done, such right being unlimited in time and space. Inventions made in connection with performance of the work are to be notified to us and the exclusive rights thereto are to be assigned to us. The personality rights of the inventor remain unaffected.
- 3.4. If we instruct the supplier to perform consultancy work, to provide services or to produce an item of work at the premises of our customers, then the supplier is obliged to comply with our basic directions, especially with regard to quality management and documentation requirements.
- 3.5. If we instruct the supplier to perform work protected by copyright, then that contractor grants to us an exclusive, worldwide, assignable right to use the relevant work, unlimited both in time and in content. The right of use encompasses the right to reproduce, distribute and exhibit the work in physical form, the right to transfer it onto picture media and sound media, the right to reproduce the work in non-physical form in public and the right to make the work publicly accessible in that form. The right of use granted herein covers, especially, but not limited to, the right
- 3.5.1. of reproduction and dissemination of the work in print media (for example in advertising, business cards, company brochures, business letters, newspapers, magazines, brochures, books, posters and signs)
- 3.5.2. of storage, duplication and dissemination of the work on sound or data media (for example magnetic, optical, magneto-optical and electronic carrier media such as CD-ROM, CD-i and other CD derivatives, DVD, floppy disks, hard disks, memory, microfilm, video cassettes), irrespective of the transmission, carrier and storage techniques;
- 3.5.3. to make the work accessible to public through wired or wireless communication by means of digital or analog electronic distribution, irrespective of the technology used, via telecommunications and data networks of all kinds (for example, but not limited to, internet services, internet, intranet, cable systems, satellite systems, mobile services such as mobile phones, WAP services, teletext or navigation systems), including the right to allow users to download;
- 3.5.4. to publicly perform, in particular publicly reproduce the work.
- 3.5.5. to make photographs as well as the recording of the work on video or other film carriers and the duplication and dissemination, as well as the public making available and the public reproduction of photographs and recordings made according to points 3.5.1 to 3.5.4.
- 3.5.6. to use the work in a manner not yet known,
- 3.5.7. to transfer all rights of use individually or as a whole to third parties or to grant third party rights to the work. The supplier already agrees to the transfer of the rights of use to third parties.

#### **§ 4 Prices and Terms of Payment**

1. The price stated in our orders shall be binding. If no prices are stated in the order, then the list prices of the supplier shall apply accordingly with customary trade deductions. In the event the supplier reduces the prices for the goods ordered before they are dispatched, then the reduced prices shall apply.
2. The supplier shall be obliged to take back any packaging material upon our request.
3. The supplier must state the order number in its invoices indicated in our order; we can only process invoices if these indicate the order number; The supplier is exclusively liable for all losses and costs arising from non-compliance with this obligation.

4. Payment terms commence upon the fixed delivery-date or, as appropriate, from the fixed date of supply (of services or work); they begin to run at the earliest from the day of receipt of the goods or the day of complete performance, from acceptance thereof – insofar as this is agreed or is stipulated by law – and from the time of receipt of a proper invoice. If the issue of additional certificates or material-testing certificates is agreed, the payment periods do not commence before receipt of such documents in correct form. These documents constitute an integral component part of the supply; they are to be presented at the latest five days after receipt of the goods or, as appropriate, receipt of the invoice.
5. Unless otherwise agreed, the supplier will grant a 3 % discount for prompt settlement in respect of payments made within 14 days after receipt of an invoice on the goods/services; otherwise, payment will be made within 30 days net.
6. We are entitled to setoff-rights and retention rights to the extent stipulated by law. The assignment of claims against us requires our prior written consent. Settlement of an invoice shall not be deemed a waiver of the right to complain of defects.

## **§ 5 Time of Delivery, Default of Delivery**

1. The delivery date stated by us shall be binding. The supplier shall not be entitled to earlier delivery. Delivery periods start at the time of receipt of the order by the supplier. The receipt of the goods or the performance of the goods shall be decisive for compliance with the delivery date or the period of performance. The supplier shall also be deemed in default of delivery as soon as the relevant delivery-date which has been bindingly agreed, is passed, even without issue of a notice of default.
2. The supplier is obliged to notify us in writing without delay, if circumstances arise or become apparent which give reason to believe that the agreed delivery-time or time of supply cannot be met. This notification does not release the supplier from the supplier's liability for delay.
3. In the event of a delayed delivery negligently caused by the supplier, we shall be entitled to demand a lump-sum for the occurred damage of 1,5 % for each full week of the net price of the ordered goods, however such compensation is limited to a max. of 5% of the total value of the ordered goods and shall not affect our further statutory rights.  
We reserve the right to prove that a higher loss has occurred to us. The seller reserves the right to prove that we have suffered none or only a significantly lower loss. In case we accept a delayed delivery, we will claim for the contractual penalty by the time of full purchase price payment the latest.

## **§ 6 Transfer of Risk, Delivery**

1. Unless otherwise agreed, dispatch of goods within Germany shall, take place freight paid and insured: CIP (Incoterms 2010) or, as appropriate, in the case of goods dispatched from abroad, delivered, insured and customs paid: DDP (Incoterms 2010) to our delivery-address as stated.
2. Packaging-slips are to be enclosed with all deliveries; dispatch-documents are to be sent in on the day of dispatch. The VAT-ID No. of the supplier must be apparent. Delivery-notes and invoices are to be issued in duplicate and must contain the delivery note numbers and invoice numbers, as appropriate. Supplies without adequate accompanying documents will be held back in the handling- and payment process until clarification; until the matter is put right by the supplier, the supplies will be stored in our premises, exclusively at the cost and risk of the supplier. Time-periods for grant of a discount commence on correction of the accompanying documents. The supplier is exclusively liable for all losses and costs which arise due to faulty compliance with, or non-observance of, these conditions. This shall not apply if the supplier proves that he is not to blame for the breach of its obligation.

## **§ 7 Quality**

1. The supplier guarantees that the quality of the goods correspond to the specifications given in our purchase orders (including any drawings).
2. If the supplier plans, compared to similar supplies or services previously supplied to us, to change the used material or the constructive execution of his products or services in comparison to similar products or services supplied before to us by the supplier, he is obliged to inform us in advance. Such changes are subject to our prior approval.
3. The supplier shall maintain a quality assurance system, which shall in particular contain the general applicable quality standards, regular quality inspections as well as an inspection of outgoing goods. The supplier must draw up records on this and provide them to us upon our request.

## § 8 Liability for Defects

1. We accept goods delivered subject to our right to examine them for freedom from defects. We satisfy our duty of examination and our duty to complain of any obvious defects in the supply/service if we send off an objection regarding defects within 10 working days from receipt of the supply. To the extent that the proper conduct of business affairs does not make it possible to undertake an examination of the supply/service within that period, we will notify obvious defects to the supplier without delay after examination takes place and after the relevant defect is discovered. To this extent, the supplier waives its right to allege that the objection regarding defects has been submitted late.
2. If there are substantive defects in the supply/service of the supplier, then, unless otherwise agreed, we are entitled to assert the statutory liability for substantive defects within 24 months from delivery of our product to our customer, such product having been manufactured using the article delivered by, or act of performance from, the supplier, but for a maximum period of 36 months from delivery to us, or acceptance by us, of the items supplied. If, in respect of certain items or rights acquired by us or in respect of products manufactured by us using items supplied by supplier, longer limitation periods are provided for by statute, then these limitation periods shall be deemed to be agreed, also in relation to the supplier.
3. To the extent that the examination of the goods delivered is carried out on a spot-check basis as agreed, then, if a defect is found, we are entitled to claim for subsequent performance with regard to the whole supply.
4. The running of the limitation periods shall be interrupted for the duration of the supplier's attempts at subsequent performance. Interruption of the limitation periods commences at the time when our notice regarding defects is given. Interruption of the limitation period first ends at the time when the item to be supplied is usable without defects and then still runs for at least another three months.
5. If, within six months after the date of the passing of risk, a defect becomes apparent, it is presumed that the good was already defective when risk passed, unless this presumption is incompatible with the nature of the good or the defect.
6. If the supply/service of the supplier received by us is affected by legal defects, then the supplier shall keep us indemnified against possible claims from third parties. This shall not apply if the supplier is not to blame.

## § 9 General Liability

1. The supplier shall be liable to us for damages on an unlimited basis for all types of blameworthy breach of obligations caused by him or by his vicarious agents according to the statutory provisions, regardless of whether direct or indirect loss, financial loss or other items of loss are being claimed.
2. The limitation period for claims for damages due to defects is 24 months from delivery of our product to our customer, such product having been manufactured using the article delivered by, or act of performance from, the supplier, but for a maximum period of 36 months from delivery to us, or acceptance by us, of the items supplied. If longer limitation periods are prescribed by statute, then the relevant longer period applies. If, in respect of products manufactured by us using items supplied, longer limitation periods are provided for by statute, then these longer limitation periods shall be deemed to be agreed, also in relation to the supplier. In addition, the supplier is liable under the Product Liability Act.
3. If claims are made against us for infringement of national-, foreign- or official safety-regulations or product-liability rules or with regard to defects in our products which have been caused by supplies made by, or acts of performance of, the supplier, then we can demand compensation from the supplier for the losses caused by the supplier's products and we can demand that the supplier indemnifies us against relevant claims by third parties. However, in cases where liability is dependent on blame, this only applies if the supplier was to blame. If the cause of the loss lies in the area of responsibility of the supplier, then, to that extent, the supplier bears the burden of proof.
4. The costs which are to be reimbursed to us do also include the costs of any recall-campaign which may be necessary, as well as the necessary costs of legal action. The supplier will be informed of the content and extent of the recall-campaign which is to take place. The supplier is obliged to conclude a manufacturer's public liability insurance for its liability as manufacturer of the items to be supplied.

## § 10 Withdrawal in Case of Force Majeure

If, as a result of events of force majeure, labor disputes, inculpable business disturbances, civil unrest, official measures or other unavoidable events which occur after conclusion of the contract, there is a significant drop in demand for the goods ordered without blame on our part, then, to the extent that the events in question are not of insignificant duration, we can withdraw from the contract in full or in part or demand performance at a later time, without the supplier being entitled to make any claims in respect thereof against us.

## § 11 Intellectual Property Rights

1. The supplier guarantees that, in connection with the supply/service by the supplier, no third party rights will be infringed.
2. If a third party raises claims against us for alleged infringement of protective rights, then, upon our request, the supplier is obliged to indemnify us against such claims. This shall not apply if the supplier is not to blame.
3. We are entitled to all intellectual property rights generated under this contract. In case a law stipulates that - as an exception - the supplier becomes the owner of any of these intellectual property rights, the supplier will grant us the use free of charge, non-exclusively and temporarily unlimited.
4. If the supplier already owns commercial protective rights to the supplies or services ordered or with regard to processes for their manufacture, then these are to be notified to us on request, the relevant registration number to be stated. We are granted a non-exclusive right of use thereof such right being of unlimited duration and free of charge.

## § 12 Ownership of Objects, Reservation of Title

1. All items handed over by us to the supplier, such as tools, presentations, samples or models, remain our property. The supplier shall be obliged to keep such items strictly confidentially and shall return them immediately upon our request. The supplier therefore undertakes that, without our prior consent, the supplier will not pass on such items to third parties nor use the same for own purposes (with the exception of the provision of services for us).
2. On manufacture of the item to be produced or, as appropriate, on dispatch of the supply contracted for, the supplier transfers title to us in respect of all models, tools, drawings and sketches specifically designated for the order which were manufactured by the supplier at our cost. We accept the transfer of title. If these items remain at the supplier, then delivery thereof to us shall be substituted by our lending to the supplier of these the manufacturing equipment and tools for the purpose of the performance of the order. Modification of these items do require our written consent. The supplier shall be liable for any damage and / or loss in accordance with the statutory provisions during the possession of the goods lent by us to the supplier.
3. If we make a contribution to the cost of production of manufacturing equipment, tools or models, then the supplier will transfer co-ownership of the manufacturing equipment, tools or models to us in proportion to the relationship of our contribution to the total costs of manufacture. We accept the transfer of this co-ownership. The supplier is only entitled to use the manufacturing equipment, tools or models which are encumbered with our right of co-ownership for the benefit of other customers after our written consent has been given.
4. Title to goods supplied to us shall be transferred unconditionally and regardless of whether the purchase price has already been paid. If, however, we accept in individual cases, a transfer of title to goods being subject to the condition of a paid purchase price, then the title to goods shall be transferred with purchase price payment for the delivered goods at the latest. In the normal course of business, we shall however be entitled to resale the goods prior to full payment of the purchase price if advance assignment of such claims to the supplier takes place (simple reservation of title and, regarding the resale of goods, prolonged reservation of title). Any other forms of a reservation of title, in particular the extended reservation, shall be excluded.

5. If, within the framework of a supply/service, we provide any models, samples, manufacturing-equipment, tools, measuring- and testing devices, drawings, standardized workshop-papers, printing plans or other ancillary materials, then these remain our property. They will be stored by the supplier with the care of a proper businessman, free of charge, properly and prudently; they will be labelled by the supplier as our property and will only be used by the supplier for the purpose of the performance of our supply/service. The models and tools which are made available to the supplier are to be insured by the supplier against catastrophes such as fire, water, theft and loss at the supplier's cost and at their repurchase value as new.

### **§ 13 Software**

1. Unless otherwise agreed individually, the supplier of software products and the accompanying documentation grants us a free of charge, non-exclusive, unrestricted, transferable, sub-licensable, temporarily unlimited worldwide right of use. This right of use includes, in particular, the reproduction, dissemination, public reproduction and public access to the work in all known ways of use, including the right to process and further develop and use the results to the above extent. We are also entitled to transfer the software to our customers.
2. For the purpose of data backup, we shall in particular be entitled to make reproductions of the software.

### **§ 14 Secrecy**

1. The supplier undertakes, during the period of the contract, to keep confidential all information which will become accessible to him in connection with the contract, which is described as confidential or which, for other reasons, is recognizable as constituting a business- or company secret, included, but not limited to, all technical- and commercial information; and the supplier undertakes, unless previously expressly approved or unless any such conduct is necessary in order to achieve the purpose of the contract, to neither record nor pass such confidential information on to third parties or to exploit them in any way. This duty of secrecy shall remain in force for a further five years after the fulfillment or termination of the contract.
2. The following information is excepted from these obligations of the supplier:
  - information which was already known to a party before the contractual negotiations commenced or which was notified to a party by third parties as not being confidential, provided that those third parties are, in turn, not in breach of any obligations of confidentiality;
  - information which has been developed by each of the parties independently of the other, respectively;
  - information which is, or will become, public knowledge without the blame or involvement of the parties; or information regarding which there is a statutory duty of disclosure or which must be disclosed due to an order from a public authority or court.
3. In the case last mentioned above, the disclosing party is obliged to inform the other party without delay before disclosure. Statutory duties of confidentiality which go beyond those referred to above remain unaffected.
4. For every case of faulty infringement by the supplier of this obligation to maintain secrecy, we are entitled to claim a liquidated damages amounting to EUR 10,000.-- (in words: Ten Thousand Euros); it is open to the supplier to show that we have not incurred any loss or that the loss incurred by us is smaller. If the evidence presented is satisfactory, then we are only entitled to claim compensation for the loss which has actually arisen.
5. We reserve to ourselves the right to claim an amount of loss which is verifiably higher, either instead of the liquidated lump-sum or in addition thereto.

## **§ 15 Spare Parts**

1. The supplier undertakes to supply spare parts in respect of the items supplied for the expected period of technical use of such items, but at least for a period of ten years after delivery. The supplier undertakes that such spare parts will be supplied at reasonable prices and on the conditions applicable to the underlying order.
2. If, after this period expires, the supplier discontinues supply of spare parts, then the supplier must inform us accordingly and give us the opportunity to make a final order. If agreement on the terms of the order, or regarding the price, is not reached or if the supplier discontinues supply of spare parts without notice, then, if we so demand, the supplier is obliged to hand out to us the documents required for production of the spare parts without delay. We are entitled to use the documents free of charge.

## **§ 16 Form of Declarations**

1. Legally relevant declarations and notifications which have to be provided to us must be made in writing.
2. This also applies to legal declarations and notifications which the supplier has to provide to third parties, In case they are relevant to the contractual relationship between us and the supplier.

## **§ 17 CE Declaration of Conformity / Manufacturer's Declaration / Certificates**

The items supplied must fulfill all legal provisions, directives and norms relating to the relevant goods and must be delivered with the prescribed certificates and confirmations. If a declaration of the manufacturer or a declaration of conformity (CE) is necessary for the goods, the supplier must prepare it and must make it available on demand, without delay and at the supplier's own cost.

## **§ 18 Final Provisions: Place of Performance, Jurisdiction, Applicable Law**

1. The place of performance and exclusive legal venue for all disputes between the parties arising out of the contractual relationship is the respective seat of the contracting company of our company group. By way of exception hereto, we are also entitled to initiate proceedings against the supplier at the supplier's general legal venue.
2. The contractual and other legal relations between ourselves and the supplier are governed by German law, to the exclusion United Nations Convention on the International Sale of Goods.
3. The language of the contract is German. If, beside that language, another language is used by the parties, then the German text shall take priority in accordance with the agreement.
4. If a provision of these General Conditions of Purchase should be or become ineffective or if, within the framework of other agreements, a provision hereof should be or become ineffective, then the effectiveness of all other provisions or agreements shall not be affected thereby.

## **B. Special Conditions For The Purchase and Delivery of Goods**

### **§ 1 Scope of Application**

The following special conditions for the purchase and delivery of goods shall apply in addition to the general conditions in section A. for all contracts with the supplier concerning the purchase and delivery of goods including but not limited to software.



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## § 2 Additional Provisions For Warranty

1. To the extent that we are entitled to a statutory claim of repair or re-performance, then, at our choice, the supplier shall either remove the defect or deliver a defect-free product. The provisions of § 439 III BGB remain unaffected. If additional costs are incurred due to the fact that, after the supply, the defective goods have been delivered by us to another location, then, if such transportation accords with the proper use of the goods, such additional costs shall be borne by the supplier. In the event of a defect, the supplier shall, as part of the repair or re-performance, also bear all necessary costs for the proper incorporation and extension of the contractual goods insofar as they are combined with other objects, whether mobile or immovable.
2. If repair or re-performance is unsuccessful or if the supplier refuses the type of repair or re-performance selected, then we have the following options: we can withdraw from the contract; we can claim a reduction in the remuneration claimed from us; and/or, if the supplier does not prove that the defects are not he supplier's fault, we can claim damages in lieu of performance. The same applies, if the repair or re-performance by the supplier is unacceptable for us. This is the case, in particular, if, despite having received a request to remove the defects, the supplier does not fulfill this duty without delay and acute dangers or greater losses threaten to occur. In these cases, after consultation with the supplier, and, if such consultation is refused by the supplier, according to our own, independent decision, we are also entitled to carry out the work which is required to remove the defects ourselves or to arrange for such work to be done by third parties at the cost of the supplier. This applies, in particular, if greater losses – in particular, claims by our customers for delay - can only be avoided by a removal of the defects by us or by third parties instructed by us. We will inform the supplier about this. Statutory claims which go beyond this – as, for example, claims for reimbursement of expenses – remain unaffected.
3. If we take back from our customers the goods sold to them because the relevant item is defective, such defect having been caused by a supply/service of the supplier, or if our customer reduces the remuneration agreed, then we are entitled to exercise the rights specified in § 437 BGB against the supplier, without the need to set a deadline to the supplier. Therefore, we can withdraw from the contract, we can reduce the remuneration agreed or, in the event that the supplier does not prove that the supplier was not to blame, we can demand damages in lieu of performance. If, in relation to our customer, as a result of the defectiveness of our product - such defectiveness having been caused by a supply/service of the supplier -, we had to reimburse expenses, then we can demand that we be compensated for such costs by the supplier. § 479 BGB shall apply in respect of the limitation of these claims to recourse.

## **C. Special Conditions For the Purchase Of Work**

### **§ 1 Scope of Application**

The following special conditions for the purchase of work shall apply in addition to the general conditions in section A. for all contracts with the supplier concerning the purchase of work, i.e. such contracts in which an achievement of a specific successful outcome is owed by the supplier.

### **§ 2 Remuneration, Acceptance, Maturity**

1. The supplier shall receive the remuneration agreed in the respective contract for its rendered work. A change of such remuneration after conclusion of the contract requires a mutual agreement.
2. The agreed remuneration shall be deemed to compensate for all services necessary in order to render the work properly, complete and in due time. In addition all other costs incurred by the supplier in order to fulfill its further contractual obligations shall be covered by the agreed remuneration.
3. In the event that the results of the work rendered are in accordance with the contract, we will declare acceptance subject to § 640 (1) German Civil Code (BGB). The supplier shall not be entitled to demand the acceptance for parts of the rendered work. The declaration of acceptance must be made in writing (acceptance report). The acceptance report must be drawn up by the supplier and countersigned by us.
4. The remuneration is payable within 30 days after acceptance and delivery of the contractual goods and receipt of a written invoice by the supplier.

### **§ 3 Supplementary Provisions for Warranty**

We shall be entitled to exercise our rights because of defects already prior to acceptance.