



Terms and Conditions (Rev. 01/01/2011)

1. **Acceptance.** This order is subject to acceptance by S:FLEX GmbH ("Seller"). Acceptance is subject to Buyer's agreement to all of the terms and conditions on the face and reverse side hereof, which will constitute the sole terms and conditions of this order. The Parties agree that these terms and conditions shall supersede any additional or different terms and conditions contained in any order for the purchase of goods, even if such additional or different terms are contained in orders subsequent to these terms and conditions. Buyer's agreement will be conclusively established: (i) when Buyer has received and retained this Acknowledgment for ten days without objection, or (ii) by Buyer's acceptance of all or any part of the goods. Seller objects to any terms or conditions which differ from, or are additional to, those stated on the face and reverse side hereof. After acceptance by Seller, this order may only be modified by a writing signed by Seller.
2. **Change of Price.** Unless specified otherwise in a writing signed by Seller, the prices and charges stated on the face hereof will be adjusted to, and the goods and other items covered by this order will be invoiced at the prices and charges fixed by Seller at the time of shipment under this order, provided that such prices and charges will not exceed the prices and charges appearing on Seller's applicable price schedule, if any, in effect at the time of each shipment. The prices and charges stated on the face hereof do not include state or federal excise, sales or use taxes (if any).
3. **Payment.** Unless set forth to the contrary on the face hereof, terms are payment with the Buyer's order/ with order pickup. Whenever reasonable grounds for insecurity arise with respect to due payment by Buyer, Seller may demand different terms of payment, and may demand assurance of Buyer's due payment. Any such demand may be oral or written and Seller may, upon the mailing of such demand, stop production and suspend shipments hereunder. If, within the period stated in such demand, Buyer fails or refuses to agree to such different terms of payment or fails or refuses to give adequate assurance of due payment, Seller may, at its option, treat such failure or refusal as a repudiation of the portion of this order which has not been fully performed, or may resume production and may make shipment under reservation of possession or of a security interest and may demand payment against tender of documents of title.
4. **Delays.** Unless a shipping date is specified as firm on the face hereof or in a writing signed by Seller, Seller will use reasonable efforts to fill this order in accordance with the estimated shipping date, but will not be responsible for any delays in filling this order nor liable for any losses or damages resulting from such delays, and this order will not be subject to cancellation for such delays.
5. **Force Majeure.** Seller will not be liable for delays in filling this order or failure in the performance of any of its obligations caused by accidents, labor disputes, shortages of labor, materials, fuel or power, fires, floods or other acts of God, acts or omissions of Buyer, priorities required, requested, or granted for the benefit of the Federal or any state government, restrictions imposed by Federal or state legislation or regulations thereunder, or any cause, whether similar or dissimilar to those enumerated herein, which is beyond the control of Seller.
6. **Warranty.** Seller warrants to Buyer that the goods will, at the time of shipment, conform to the description on the face hereof, that it will convey good title thereto; and that such goods will be delivered free from any lawful security interest or other lien or encumbrance unknown to Buyer. Seller further makes the product warranty set forth on the document entitled "10 Year Limited Product Warranty," attached hereto and incorporated herein by reference. SELLER MAKES NO FURTHER OR ADDITIONAL WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY THAT THE GOODS WILL BE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE. SELLER MAKES NO WARRANTY EXPRESSED OR IMPLIED EXCEPT SUCH AS IS EXPRESSLY SET FORTH HEREIN.
7. **Inspection, Acceptance or Rejection.** Inspection, acceptance or rightful rejection of goods must be made within 90 days after Buyer's receipt of goods hereunder. Buyer must notify Seller within such 90 days if it believes that any goods delivered hereunder are nonconforming, and hold such goods pending Seller's inspection.
8. **Shipments; Shipping Weights.** Unless set forth to the contrary on the face hereof, Seller may make partial shipments hereunder and may invoice for each such partial shipment separately. Each partial shipment will be deemed to be a separate sale, however, delay in delivery of any partial shipment will not relieve Buyer of its obligation to accept delivery of remaining shipments hereunder.
9. **Limitation of Liability.**
 - (a) Seller's liability and Buyer's exclusive remedy for any tender of non-conforming goods or breach of warranty, is expressly limited to Seller's choice of (i) the repair of nonconforming goods, (ii) the replacement of nonconforming goods with conforming goods at the FOB point shown on the face hereof, and (iii) the replacement of that portion of the purchase price represented by nonconforming goods. Such repair, replacement or repayment will be made only upon return of the nonconforming goods, which may be returned at Seller's cost only after Seller's inspection and Buyer's receipt from Seller of definite shipping instructions.
 - (b) Seller will not be liable for any incidental, consequential, indirect special, contingent, or punitive damages for (i) any breach of warranty, whether based on theories of breach of warranty, breach of contract, tort, strict liability or otherwise; (ii) the tender of defective or nonconforming goods; or (iii) breach of any other provision of this agreement. In any event, Seller's liability to Buyer will not exceed the purchase price of the goods on which such liability is based.
10. **Patents.**
 - (a) Seller agrees to indemnify Buyer against all court assessed damages (excluding consequential damages) and costs resulting from infringement of any European Patent covering (i) standard commercial compositions offered for sale generally by Seller at the time of acceptance by it of this order, or (ii) standard commercial forms, shapes or constructions offered for sale generally by Seller at the time of acceptance by it of this order, to the extent that such compositions, forms, shapes or constructions are supplied hereunder.
 - (b) Buyer agrees for the goods delivered under this order to indemnify Seller against all court assessed damages (excluding consequential damages) and costs resulting from infringement of any United States Letters Patent to the extent that the infringement arises from designs, specifications or instructions furnished or explicitly or implicitly required by Buyer and different from the matters embraced by (i) and (ii) of the preceding sentence.



- (c) The parties agree to provide information and reasonable assistance to each other upon request to the extent such information and assistance are required by such party to defend against any infringement claim arising under this clause. Neither party will be entitled to indemnification under this clause as to any claim of infringement concerning which it does not give the other party prompt notice in writing upon learning thereof and full opportunity, at the expense of such other party, to defend and dispose of such claim of infringement.
- (d) The sale of goods covered by this order will not grant to Buyer any right or license of any kind under any patent owned or controlled by Seller, or under which Seller is licensed, but the foregoing will not be understood to limit in any way the right of the Buyer to use and sell such goods, in the event that such goods as sold hereunder are covered by any such patent.
11. **Indemnity.** Buyer will release, hold harmless, indemnify and defend Seller from any liability (including without limitation liability for negligence or strict liability) claims, losses, suits and costs caused by, arising out of or relating to the design of goods supplied hereunder or the design of the packages or containers in which they are shipped if such goods, packages or containers are made in compliance with Buyer's design or specification.
12. **Termination of Order.** Buyer may not terminate this order without the written consent of Seller. If Seller consents to such termination, reasonable termination charges, computed by Seller, will be assessed in connection with such termination.
13. **Delivery and Transportation**
- (a) If the shipping terms on the face hereof are FOB destination, Seller will deliver and bear the cost of transportation of the goods to such destination. The method and agency of transportation and the routing will be designated by Seller. Excess packing, shipping and transportation charges resulting from compliance with respect to the use of any agency or method of transportation or any routing other than that which would be designated by Seller will be for Buyer's account. In the case of Buyer pick-up, Buyer's truck is destination, and unless Seller otherwise agrees in a writing, Seller will not deliver or bear any cost or make any allowance with respect thereto, beyond loading on Buyer's truck (whether owned by, leased to, or otherwise under contract to Buyer).
- (b) If the shipping terms on the face hereof are FOB Seller's plant, the cost of transportation and risk of loss or damage will be borne by Buyer.
14. **Equipment.**
- (a) Any equipment (including jigs, dies and tools) which Seller constructs or acquires for use exclusively in the production of goods for Buyer will be and remain Seller's property and in Seller's possession and control, and any charges by Seller therefore will be for the exclusive use of such equipment only. All such equipment will be used exclusively for the manufacture of goods for Buyer. When for three (3) consecutive years no orders acceptable to Seller are received from Buyer for goods to be made with any such equipment, Seller may make such use or disposition thereof as Seller desires, without liability or obligation to Buyer.
- (b) Any materials or equipment owned or furnished by Buyer to Seller will be carefully handled and stored by Seller while in Seller's possession. When for three (3) consecutive years no orders acceptable to Seller are received from Buyer for goods to be made from any such equipment or materials, Seller may, by written notice to Buyer, request Buyer to make disposition thereof at Buyer's expense. If Buyer fails to comply with such notice, Seller may make such use or disposition of said materials or equipment as it desires, without liability or obligation to Buyer.
- (c) Any equipment specified on the face of this order as returnable, or for which a charge is made or for which a deposit is required, will be returned in accordance with Seller's standard instructions with respect thereto.
15. **Standard Quantity Tolerances.** Unless another tolerance is stated on the face hereof, the quantity tolerance applicable to each item of goods specified on the order will be the applicable standard quantity tolerance in effect at the time of shipment of such item or portion thereof. Shipping tolerance and shipping tolerance policy may be amended from time to time. Applicable tolerance will be listed on your Sales Order Acknowledgement.
16. **Miscellaneous.**
- (a) No provision hereof and no breach of any provision hereof will be deemed waived by reason of any previous waiver of such provision or of any breach thereof.
- (b) This Order may be performed, and all rights hereunder may be enforced against Buyer, by Seller or by any subsidiary or affiliate of Seller. This Agreement may also be assigned by Seller to any subsidiary, affiliate or related company of Seller, without Buyer's consent.
- (c) This order may not be assigned by Buyer without the prior written consent of Seller.
- (d) This order will be governed by, and interpreted in accordance with, the laws of the State of Germany, excluding its rules relating to conflict of laws.