

# **Supplementary Terms for Tool Orders**

Supplementary to our „General Purchase Conditions“ and the „QC1“, in its current version, our tool orders are subject to the following terms.

## **1. Design, quality and workmanship**

1.1 Design, quality and workmanship of the tools are supposed to ensure that the part intended to be produced in serial form can be manufactured in an economically efficient manner.

It has to be ensured that the tools can be manufactured in serial form and as spare parts.

In case of failure to produce, by means of the tool, the output guaranteed in writing according to the offer or any other written document – e.g. on account of tool breakage or heavy wear and tear – a replacement tool has to be manufactured at the supplier's expense.

1.2 If requested by Spheros, the weight of each tool is to be specified, and two drawings of each tool are to be provided. The tool is to be designed on demand of Spheros in accordance with

- drawing
- data sheet (if available)
- load sheet (if available).

At the request of Spheros, the supplier submits the design documents for approval. The approval by Spheros of the tool documents, drawings, calculations and other technical material transmitted to us does not limit the supplier's responsibility for the tool in any way.

1.3 The supplier has to grant Spheros an insight into the schedule for the production of the tools. In periods of no longer than four weeks, Spheros is to be given notice of progress in the form of a written report. (Model report according to Attachment 1)

1.4 After completion of the tools, first samples are to be presented to Spheros with fully completed first sample test reports. The first samples have to comply with all the requirements made in the drawings, load sheet and specifications.

If ordered first samples are received incompletely and/or without a fully completed first sample test report, a complaint will be brought to the supplier's notice, which will be detrimental to the quality rating.

In case that no first sample test report is supplied, such test report will be drawn up by Spheros at the supplier's expense.

If the first samples are not accepted on account of the results of the first sampling, the supplier has to present new first samples in the aforesaid form at his expense.

## **2. Order alterations**

2.1 In case of technical alterations or supplements requested by Spheros after order placement, which result in changes in price or extensions of time, an estimate of cost and consequences as to delivery schedule are to be submitted to the Spheros Purchasing Department before starting work. Verbal agreements after order placement require confirmation in writing. Liability for additional costs or extensions of time, which have not been acknowledged in writing by Spheros, is assumed by the supplier.

2.2 Should Spheros decide, before completion of tools, that further work on the tools is to be ceased, for any reasons whatsoever, Spheros will assume the costs that provably have been incurred by then. Spheros reserves the right to prove the costs on the spot.

## **3. Advance payment guarantee, payment, passing of title**

3.1 If advance payments are agreed upon as an exception, the supplier grants Spheros in advance and free of charge an absolute guarantee unlimited in time (payment upon first demand), without clause as to deposit, by a credit institution admitted within the European Union and acceptable to Spheros. Spheros will return the surety bond immediately after successful acceptance without reservation.

3.2 Upon production of the tool (supplier identical with tool builder) or obtaining property of the tool (supplier obtains tool from a third party), the supplier transfers title to Spheros. The supplier is obliged to ensure the present transfer of title to Spheros in relationship with his contracting partners as early as possible.

The same is equally true for partial payments regarding partially manufactured tools.

3.3 The title to the tool is transferred irrespective of whether and to what extent Spheros has already paid tool (production) costs to the supplier.

3.4 Delivery of the tools in the supplier's possession is replaced by the supplier's obligation to preserve the tools on behalf of Spheros with the diligence of a prudent businessman and free of charge.

3.5 The supplier assures that there are no third parties holding rights to the tools. As far as the supplier has agreed upon a reservation of title against the assignment of future claims (extended reservation of title, as it is called) with previous suppliers, he assures that he is entitled to both unrestricted disposal of the tools and collection of the debt which might have been assigned. By way of precaution, Spheros agrees to any possible assignments of future claims resulting from extended reservations of title agreed upon with previous suppliers.

3.6 Tools whose expenses are apportioned to a defined number of standard parts will pass into the full ownership of Spheros after purchase of said number of parts.

3.7 Payment of the tools (payment of the balance or the full amount) will be effected only after successful first sampling by Spheros. The period for payment will start on the day of successful first sampling.

#### **4. Contractual penalty**

If the supplier exceeds a deadline or fails to supply the requested amount as ordered, he will pay for each exceeded week that has started 0.5% of the order volume, however, not more than 5% of the order volume. In addition, Spheros reserves the right to claim in addition damages incurred as a result of the delay and going beyond the contractual penalty. This stipulation refers to deadlines as to tool completion and first sample supplies. In case of delays in first sample supplies, the conventional penalty will refer to the order volume of the tool.

#### **5. Loan for use**

Unless Spheros decrees otherwise, the tools transferred to the title of Spheros are left to the supplier as a loan until revoked.

5.2 The tools lent to the supplier are to be labelled by the supplier immediately in a suitable, clearly visible manner and durably as property owned by Spheros. The tools have to be marked with the tool numbers specified by Spheros in the tool order. In addition, the identification number of the part to be manufactured is to be attached to the tool such that it cannot be lost. The tools must not be used for third parties or left or pledged to third parties. Any encroachment on Spheros's rights by third parties has to be indicated immediately.

5.3 The supplier assumes unlimited liability towards Spheros – regardless of fault – for any damage or deterioration whatsoever as well as complete or partial loss of the tools left to him. The supplier has to insure the tools to a sufficient extent against the risk of fire, theft and water damage at his own expense for the period of time for which the tools are lent to him. If requested, documents proving the insurance are to be submitted to Spheros.

5.4 The supplier is obliged to maintain the tools' perfect condition at his own expense. Necessary repairs and maintenance work are to be carried out immediately in an appropriate and workmanlike manner.

5.5 If tools are left to the supplier subject to the proviso that they are to be used for the manufacture of parts for Spheros, new sampling is to be carried out after substantial modifications or repairs of the tools (QC1)

5.6 Spheros undertakes, during the term of the contract, to order the items to be supplied and to be manufactured by means of the tools from the supplier exclusively, provided that the supplier is competitive as to technology, quality, delivery dates, logistics and price. The prices of the parts to be supplied and manufactured by means of the tools will be negotiated and fixed separately.

5.7 If the tools are called for by Spheros, they are to be delivered to Spheros in perfect overhauled condition. It has to be ensured that the remaining output can be manufactured in perfect quality. If this is not the case, Spheros is authorized to carry out or have carried out the necessary repairs and subsequent improvements at the supplier's expense.

5.8 Spheros is entitled to inspect and examine the tools and installations lent to the supplier at any time after prior agreement.

## **6. Obligation to come to an agreement in case of compromise or bankruptcy**

The supplier undertakes:

- in case of a compromise
- commencement of bankruptcy proceedings against him
- in case that the tools are subject to seizure or other measures by third parties

to give notice to Spheros without delay.

In case of seizures, the supplier will give written notice of the rights held by Spheros to the execution creditors and provide Spheros with all necessary information and documents which might be required in case that Spheros wishes to intervene.

The tools are to be surrendered immediately on demand. The supplier has no rights to hold the tools back.

For tools, for which part of the tool costs were paid, the residual value of the tool can be charged to Spheros. The residual value amounts to the original acquisition value of the tool minus tool costs that have already been paid, minus the tool costs that have already been redeemed via the items supplied by that time.

## **7. Winding up of contract**

The complete correspondence in connection with the contract as well as alterations and amendments is to be kept with the Spheros Purchasing Department exclusively. Proposals made by the supplier can only become legally effective if approved by and agreed upon with the Spheros Purchasing Department. The approval by Spheros has to be made in writing.

## **8. Right of termination**

Both parties have a right of termination without specification of reasons; this right of termination can be made use of at the end of quarter with a notice period of six months. Spheros is authorized to terminate the contract immediately without prior notice if there are well-founded indications to the fact that the supplier is not in a

position to comply with delivery terms and prices agreed-upon or fixed quality standards of the items to be supplied.

## 9. Tool lists

The supplier has to keep a tool list. This list includes all tools/sets of tools with tool numbers, if available, by means of which parts are manufactured for Spheros. The individual tool items indicate the identification number of the component that is manufactured by means of the tool/set of tools. Said tool list is to be made available to the respective commodity purchaser without being asked for at the end of each year.

## 10. Final provisions

Agreements not included in this contract are not valid.

Supplements and subsequent amendments to this contract need to be made in written form. Evidence of the contents of the contract and the avoidance of the written form has to comply with this form.

This contract is fully valid also for tools produced by order of Spheros prior to the date of signing this contract or supplied by order of Spheros in any other way.

Gilching, **Date**

**Place, Date**

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Spheros GmbH

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**Supplier**