

## ***General Terms and Conditions of Purchase***

### **§ 1**

#### ***Scope of the Present General Terms and Conditions of Purchase (GTCP); Protective Clause***

- (1) The present General Terms and Conditions of Purchase (GTCP) shall apply to all of our business relationships with our suppliers (contractors). However, they shall only apply if the contractor is an entrepreneur within the meaning of Section 14 German Civil Code (Bürgerliches Gesetzbuch, BGB), a legal entity under public law or a special fund under public law.
- (2) Our GTCP shall apply exclusively, even if we have knowledge of the terms and conditions of the contractor and still accept services or indirectly or directly refer to letters, etc. containing terms and conditions of the contractor or of third parties without reservation. We will not accept contradicting, deviating or complementary terms and conditions of the contractor, unless we explicitly agree to their application in writing.
- (3) Our GTCP shall likewise apply, without any need for another reference to them, in the respective version to all future deliveries, services or orders of one and the same contractor. We will inform the contractor of all modifications made to our GTCP without undue delay.

### **§ 2**

#### ***Orders, Contract Conclusion and Contractual Content***

- (1) Deliveries will be carried out only based on orders made by us. Our orders shall be binding only if they are placed by us in writing or confirmed by us in writing following an order placement by word of mouth or by telephone indicating the order number. The same shall also apply to oral ancillary agreements or subsequent modifications made to the order.
- (2) We must receive the acceptance of the order without undue delay, at the latest, however, five (5) working days (Monday to Friday) after receipt of the order by the contractor; otherwise, we shall be entitled to revoke the order free of charge.
- (3) The requirement of written form shall also be deemed satisfied by a transmission by telefax or via e-mail.
- (4) Commitments, information, consultations, etc. by word of mouth or by telephone, except in cases of gross negligence on our part, cannot be used to derive any rights against us. Such oral statements shall be binding for us only if they are confirmed by us in writing or if it can be demonstrated that we have waived the written form requirement. Our order number shall be stated in the entire written correspondence, on all invoices and in the dispatch papers.
- (5) With the exception of our managing directors, procurators (persons disposing of a general commercial power of attorney) and our other employees explicitly designated towards the supplier as being our points of contact, for ex. the respective employees of the purchasing department – including any constellation of powers of representation for each and any one of them – our employees shall not be authorised to conclude contracts, to enter into individual written or oral agreements or to give other commitments.
- (6) We may request modifications to the order also after acceptance by the contractor, provided that said modifications are conscionable for the contractor. In such a case, prices and delivery dates shall be adjusted appropriately, where required.
- (7) The contractor shall not be entitled to entrust third parties with the task of performing the delivery either in whole or in substantial parts without our prior written approval.
- (8) The contractor shall warrant that both the delivery and spare parts can be delivered to us for a period of ten (10) years from the last delivery under reasonable conditions. In the event that the contractor intends to discontinue the delivery or the provision of spare parts in this context after expiry of the time limit, the

contractor shall be obliged to inform us thereof in writing without undue delay and to provide us with an opportunity to place one last order.

### **§ 3**

#### ***Delivery Terms; Scope of Delivery; Transfer of Risk; Acts of Cooperation, etc.***

- (1) The scope of delivery shall be determined by the order placed by us. Necessary protective devices, certificates of origin, as well as storage, installation and operating instructions and safety datasheets issued in the official EU languages shall be included in the delivery free of charge, where required. The same shall also apply to documents necessary for the maintenance and repair of the delivered components. At our request, the contractor shall issue free of charge a certificate of inspection for the goods delivered.
- (2) Unless anything to the contrary has been agreed upon in writing, the supply shall be carried out with delivery duty paid, including proper packaging, DDP (Incoterms 2010) to the specified place of destination. If no place of destination has been specified, the place of destination shall be the headquarters of our company. The transfer of risk shall be determined by the Incoterms agreed upon.
- (3) Any delivery is to be announced to us upon execution at the latest by means of a dispatch notice. Partial deliveries shall be permitted only with our prior approval. Any delivery shall be accompanied by proper delivery notes / documents. Said documents must contain the subject-matter, the ordered items, the quantity, the weight, the packaging, the mode of dispatch and the labelling as well as our contract and order number. Regulations on the transport of dangerous goods shall be complied with; in particular, dangerous goods shall be identified as such. The consequences of incorrect or incomplete delivery papers / documents or delivery papers / documents received late shall be to the detriment of the contractor.

### **§ 4**

#### ***Delivery Deadlines, Suspension of Delivery and Withdrawal***

- (1) Delivery dates and deadlines shall be binding. The decisive factors for compliance with said dates and deadlines shall be the date on which the delivery is received completely and free of defects and the service is rendered free of defects and completely or, where agreed, on which the delivery or service is accepted by us at the specified place of destination.
- (2) Deliveries shall be carried out during normal business hours. Information on said business hours can be obtained from us. Any early delivery must be performed only with our written approval and shall not affect the payment date agreed upon.
- (3) The contractor shall communicate to us in writing without undue delay foreseeable delays with regard to the delivery dates and deadlines, indicating the reasons and the estimated duration of the delay.
- (4) In the event of any exceedance of the delivery dates and deadlines, we shall be entitled to claim the payment of a contractual penalty. The contractual penalty shall amount to 1% of the contract value per working day of delay, but not more than 10% of the contract value. We may reserve the right to assert the contractual penalty until the final payment has been made.
- (5) Following the fruitless expiration of the reasonable grace period set by us, we shall further be entitled to have the delivery be carried out by a third party at the contractor's expense. In this case, the contractor shall be obliged to hand over to us any necessary documents without undue delay. To the extent that property rights constitute obstacles to the delivery by third parties, the contractor shall be obliged to obtain a corresponding exemption from these rights without undue delay.
- (6) Apart from that, our rights in the case of any exceedance of the delivery dates and deadlines shall be determined by the statutory provisions. The acceptance of any delayed delivery by us shall not be deemed a waiver of claims for compensation.

- (7) If any circumstances, which are not attributable to us, result in any cessation of or impairment to our business or to any business of our customers to which the delivery is to be made, our acceptance obligation shall be suspended for the duration of the cessation of or impairment to said business. In this respect, claims for compensation for damage on the part of the contractor against us shall be excluded.
- (8) The contractor can only assert the absence of necessary documents that we must supply where the contractor has demanded the documents in writing and has not received them within a reasonable period of time.
- (9) We shall be entitled to withdraw from the agreement either in whole or in part to the extent that there is good cause to do so. Good cause shall be deemed to exist in the case of natural disasters, import and export restrictions, strike, lockout or other operational disruptions both on our premises and on the contractor's premises.
- (10) We shall further be entitled to exercise the statutory rights of withdrawal.
- (11) In the event that we withdraw from the agreement either in whole or in part, the contractor's claims for payment shall cease to exist. Advance payments already made shall be reimbursed to us without undue delay and without any deduction. Any right of retention on the part of the contractor shall not exist.

## **§ 5**

### ***Prices, Terms of Payment, Rights of Set-Off and Retention***

- (1) Unless anything to the contrary has been agreed upon in writing, the agreed prices shall be deemed to be fixed prices, excluding the statutory value-added tax, including packaging, and shall exclude additional charges of any kind (Incoterms 2010 – DDP). The price components shall be indicated separately by the contractor.
- (2) We will not grant any remuneration for visits, samples, specimens or the preparation of offers, projects, etc.
- (3) The payment will be effected by the means of payment selected at our option.
- (4) The payment period shall start with the receipt of a proper invoice and after the delivery has been carried out in its entirety or, where agreed upon, following the acceptance of the delivery or service by us. Any early delivery or partial delivery shall not affect the payment period.
- (5) Any proper invoice shall comply with the statutory requirements as well as with the specifications made in the order. The latter shall at least show the order number and other features required for assignment. Invoices that are not properly drawn up shall be deemed to have been received by us only from the date on which they have been corrected. Unless anything to the contrary has been agreed upon, invoices shall be issued in EUR.
- (6) Unless anything to the contrary has been agreed upon in writing, the payments shall be effected fourteen (14) days after receipt of the invoice with a cash discount of 2%, or thirty (30) days net. The cash discount shall also be permitted if we set off or retain payments due to defects; the cash discount period shall start once the defects have been completely remedied.
- (7) We shall not be deemed to be in default of payment without reminder. In the case of any default of payment, the contractor shall be entitled to charge interest on the claim in the amount of 2% above the base interest rate of the ECB.
- (8) We shall be entitled to rights of set-off and retention within the statutory limits. To the extent that payments have to be made before any delivery is performed (advance payments), the contractor shall provide corresponding bank guarantees of a German credit institution to our benefit before we effect any payment.
- (9) Payments shall not imply any acknowledgement of the delivery as being in accordance with the agreement. Payments shall be made subject to subsequent claims.

## **§ 6**

### ***Assignment, Seizure and Reservation of Title***

- (1) The contractor shall not be entitled to assign their claims for payment from us or have them be collected by third parties without our approval. In the event that the contractor assigns their claims to third parties or if the contractor has them collected by third parties anyway, we may, at our option, make payment to either the contractor or the third party with discharging effect.
- (2) In the case of seizures, impoundments or other disposal by third parties with regard to the deliveries owed to be effected by the contractor, the contractor shall notify us without undue delay.
- (3) Any reservation of title on the part of the contractor shall be binding only if it has been agreed upon in writing outside the General Terms and Conditions of the contractor. The exercise of the reservation of title by the contractor shall be possible only with the prior withdrawal from the agreement.

## **§ 7**

### ***Warranty for Defects***

- (1) The contractor shall warrant that all deliveries are free of defects, are consistent with the order and its specifications, are suitable for the intended use and purpose and are in compliance with the latest generally accepted rules of technology as well as with the relevant national and international legal provisions including the regulations and directives of public authorities, trade associations and professional associations. In the event that the contractor has any concerns in respect of the type of execution requested by us, the contractor shall notify us thereof in writing without undue delay.
- (2) We will inspect the delivery within a reasonable period of time for any externally visible deviations in quality and quantity. Defects detected in this context shall be communicated to the contractor without undue delay. Deviations in quality and quantity that are not visible from the outside shall be notified to the contractor once they have been detected within the framework of the normal course of business. The notification shall be deemed to have been made in due time if it is effected within a period of ten (10) working days following the detection of the defect.
- (3) In the case of bulk deliveries, we shall only be obliged to carry out checking by sampling. If it turns out during such checking that significant parts are not in compliance with the contractual or statutory requirements, we shall be released from the obligation to perform any further reinspection and shall be entitled to reject the entire delivery. The rejection of the delivery shall not be deemed to constitute any declaration of withdrawal from the agreement.
- (4) In the case of defects occurring within the warranty period, we shall be entitled to assert the statutory warranty claims at our option and, apart from that, to claim an expense allowance as well as compensation for damages from the contractor.
- (5) The warranty claims shall become time-barred after expiry of a period of twentyfour (24) months, starting with the notification of defect.
- (6) The contractor shall bear all expenses incurring in connection with the detection of defects and their repair, in particular investigation costs, disassembly and assembly costs, transport, delivery, labour and material costs as well as travel expenses. The same shall also apply to the extent that the expenses are increased by the fact that the delivery item has been transported to any place other than the place of destination.  
In the event that the contractor does not comply with our request to remedy the defect within a period set by us, we shall be entitled to have the necessary measures be taken by ourselves or by third parties at the expense of the contractor. To the extent that the setting of a time limit is dispensable, we shall be entitled to this right also without the setting of said time limit. Without prior approval, measures to be taken to remedy minor defects or to avert disproportionately severe damage or to prevent risks with respect to operational safety on our premises or on the premises of third parties may be performed at the expense of the contractor either by us or by third parties engaged by us. We will notify the contractor without undue delay of the reason, nature and scope of said measures. The contractor's warranty obligation shall not be affected thereby.

- (7) For deliveries or parts thereof which cannot be used by us for the duration of the defect and/or its repair, the warranty period shall be extended by the duration of the respective interruption of use. For deliveries or parts thereof which have become subject to any later improvement or replacement, the warranty period shall start anew with the point in time where the defect is repaired.

## **§ 8** **Property Rights**

- (1) The contractor shall be responsible for ensuring that the goods are free of industrial property rights or copyrights of third parties. Each of the parties shall inform the respective other party in writing without undue delay if claims are asserted against them based on the violation of such rights.
- (2) The contractor shall be obligated to indemnify us as the contracting party and our customers against any damage and all costs incurred by us and/or our customers due to any non-compliance with this guarantee assurance.
- (3) In the event that the goods violate any industrial property right or any copyright of a third party, the contractor shall, at our discretion and at their expense, either alter or replace the goods in such a manner that they do no longer violate the rights of third parties, but that the goods continue fulfilling the functions contractually agreed upon, or grant us or our customer the right of use by concluding a licence agreement. If the contractor is not able to do so within a reasonable period of time, we shall be entitled to withdraw from the agreement or to reduce the purchase price appropriately.
- (4) In the case of infringements of rights by products of other manufacturers or suppliers which are delivered by the contractor, the contractor shall, at our discretion, assert their warranty claims vis-à-vis such manufacturers and suppliers for the account of our customers or assign them to the customer.
- (5) Apart from that, our rights in the case of defects of title shall be determined by the statutory provisions. The period of limitation for claims based on defects of title shall be ten (10) years.
- (6) The contractor shall transfer to us for the territory of the Federal Republic of Germany the exclusive and unlimited right in terms of time to publish, disseminate, reproduce, process and use for any other purposes all ideas, concepts, drafts and designs which have been produced by the contractor and commissioned by us. The aforementioned granted right shall cover all types of use, including, in particular, print advertising as well as multimedia utilisation. The transfer of rights provided for in this provision shall also expressly include the right for transfer to third parties. The acquisition of the aforementioned rights shall be deemed compensated with the remuneration in accordance with the respective commissioning. References of the contractor to business relationships existing with us for advertising purposes shall require our explicit approval.

## **§ 9** **Software**

- (1) We shall be entitled to use the software included in the scope of delivery including documentation to the extent required for the contractual use of the delivery. If required, we shall be provided with the respective source code of the software.
- (2) The contractor shall check the software prior to its delivery and installation by means of up-to-date virus protection programmes customary in the market for viruses, Trojan horses or other computer malware.

## **§ 10** **Quality Requirements, Product Liability, etc.**

- (1) It shall be pointed out to the contractor that we are selling our products on a worldwide basis. The contractor shall be obligated to comply with the legal provisions applicable to the delivery at the place of destination, in particular those with regard to accident prevention, safety at work, machine safety and environmental protection, provided

that the contractor has gained knowledge of said provisions.

- (2) The contractor shall carry out quality assurance which is appropriate in terms of nature and scope and in compliance with the latest state-of-the-art technology, at least, however, with the regulations of DIN ISO 9001/2008, and shall demonstrate this to us upon our request at any time. Upon our request, the contractor shall enter into a corresponding quality assurance agreement. The contractor shall ensure that the deliveries are consistent with our technical specifications and, apart from that, comply with the provisions laid down in Paragraph (1). The contractor shall be obliged to prepare corresponding records of the tests performed and to archive any and all test, measuring and control results for a period of ten (10) years. We shall be entitled to inspect and to make copies of the documents at any time. If requested by us to do so, the contractor shall mark the delivery items in such a manner that they can be permanently recognised as the contractor's products. In the event that any claim is made against the contractor based on any violation of statutory provisions, in particular safety regulations, or due to any domestic or foreign product liability, the contractor shall be obliged to indemnify us and our customers against all claims to the extent that this is a result of the delivery made by the contractor (see also Section 13). This indemnification shall also comprise the costs of any precautionary recall campaign. To the extent that this is possible and reasonable, we shall inform the contractor of the content and scope of the recall measures to be taken and shall provide the contractor with the opportunity to make a corresponding statement. The contractor shall take out insurance against all risks from product liability, including the recall risk, in an adequate amount and shall, at our request, provide us with the insurance policy for inspection.
- (3) The contractor shall notify us of any change in the composition of the processed materials or in the constructive execution of their deliveries without undue delay and without being requested to do so. The changes shall require our written approval. The contractor and we shall notify each other without undue delay of any injury risks or alleged cases of injury that become known to us and shall counteract corresponding claims by mutual agreement.
- (4) The contractor shall comply all relevant statutory provisions, in particular the MiLoG (AEntg, etc.) - das Mindestlohngesetz. The contractor shall be obligated to indemnify us as the contracting party and/or our customers against any damage and all costs incurred by us and/or our customers due to any non-compliance with the relevant statutory provisions.

### **§ 11** *Statute of Limitations*

- (1) In accordance with Section 438 Para. 1 No. 3 German Civil Code, the period of limitation for – also non-contractual – claims based on material defects shall be two (2) years upon commissioning or final acceptance of the delivery by us. If no such commissioning or final acceptance is envisaged, the warranty period shall start with the delivery to us. In the case of deliveries resold by us, the warranty period shall start with the commissioning or final acceptance by our customers on our premises. In the event that no such commissioning or final acceptance by our customers on our premises is envisaged, the warranty period shall start with the delivery to our customers. The warranty period shall end thirty-six (36) months after the delivery to the specified place of destination at the latest.

### **§ 12** *Special Right of Withdrawal In Case of Cessation of Services, etc.*

- (1) We shall be entitled to withdraw from the agreement in the following cases: (a) The contractor ceases their services to the contractor's creditors. (b) The contractor applies for opening of the insolvency proceedings relating to the contractor's assets. (c) Application for opening of the insolvency proceedings is filed by us or by another creditor in a permissible manner. (d) Insolvency proceedings – or only preliminary insolvency proceedings – are opened. (e) Or the application is rejected for lack of assets.
- (2) In any of the aforementioned cases, we shall be entitled to make use of the installations required for the continuation of the work or of the deliveries already performed by the contractor against payment of an adequate remuneration.

**§ 13**

***Duty to Inform in the Event of Official or Own Measures***

If official measures are taken on the contractor's premises or against the contractor in connection with our contracts (e.g. order for redemption or a recall or other measures within the framework of market surveillance) or if the contractor intends to take own measures relating to the products made available on the market, the contractor shall inform us in writing without undue delay.

**§ 14**

***Place of Fulfilment***

Unless anything to the contrary has been agreed upon in writing, the place of fulfilment for all delivery obligations shall be the place of destination specified by us. If no such place of destination has been specified, the place of fulfilment shall be the headquarters of our company.

**§ 15**

***Choice of Law and Place of Jurisdiction***

- (1) The business relationships between us and the contractor shall be exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- (2) If the contractor is a merchant, a legal entity under public law or a special fund under public law or if the contractor does not have a general place of jurisdiction in the Federal Republic of Germany, then the exclusive – also international – place of jurisdiction for all legal disputes resulting from the business relationship between us and the contractor shall be our headquarters in Karlsruhe, Germany. We shall be entitled, however, to also sue the contractor at the contractor's headquarters or at the place of fulfilment (§ 14 of the present GTCP). Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected.

**§ 16**

***Severability Clause***

If provisions of the present GTCP are or become void or ineffective either in whole or in part, then this shall not affect the effectiveness of the remaining provisions. To the extent that provisions have not become an integral part of the contract or are ineffective, the content of the contract shall be determined by the statutory regulations (Section 306 Para. 2 German Civil Code). Only apart from that and to the extent that no complementary interpretation of the contract takes precedence or is possible, the parties shall replace the void or ineffective provision by such effective regulation that comes closest to such void or ineffective provision in economic terms.

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