

## 1. Scope of application

- 1.1 These General Terms and Conditions of Purchase shall be applicable to any and all legal transactions (deliveries and services) with the Supplier, even if we do not expressly refer to these General Terms and Conditions of Purchase again. We do not accept any general terms and conditions of the Supplier.
- 1.2 Our General Terms and Conditions of Purchase shall exclusively apply to entrepreneurs in terms of sec. 14 *BGB* [*Bürgerliches Gesetzbuch* – German Civil Code].
- 1.3 Our General Terms and Conditions of Purchase shall also apply to any and all future deliveries and services of the Supplier, even if we do not individually refer to them once again.

## 2. Contract conclusion

- 2.1 The Supplier shall prepare and submit to us both commercial offers and cost estimates on a non-paid and non-binding basis.
- 2.2 Should the Supplier fail to confirm our purchase orders in writing within a maximum period of two weeks, we shall be entitled to revoke such purchase order.
- 2.3 In the case where order confirmations deviate from the relevant purchase order, in particular with regard to the prices or delivery periods, the Supplier shall be obliged to separately point out to this. Only if we confirm them in writing shall these deviations become an integral part of the contract.

## 3. Prices

The contractual prices shall be fixed prices, including freight, packaging and other ancillary costs for the delivery to the named place of destination. We accept

price increases, regardless of the reasons – also in the case of permanent supply contracts –, only if we concluded an express agreement with the Supplier in this regard.

#### **4. Deadlines and delivery delays**

- 4.1 Contractual deadlines and periods shall be considered binding and must be met in each case. Timeliness shall depend on the time when the goods are delivered to our premises and/or to the place of destination contractually agreed upon or named by us.
- 4.2 The legal provisions shall apply in the case where the Supplier fails to meet contractual deadlines. Once the Supplier notices that delays in deliveries might occur, they shall be obliged to immediately inform us about this in writing, also by indicating the reasons and the presumed duration of such delay; however, such notification shall have no effect on the binding nature of contractual delivery deadlines.
- 4.3 Should the Supplier deliver the goods prior to the date agreed upon, we shall be entitled to reject acceptance. In addition, we shall have the right to reject any partial deliveries, unless we expressly agreed to them or they must be considered acceptable for us.
- 4.4 Acceptance of delayed deliveries or services subject to no conditions whatsoever does not mean that we waive our claims resulting from delayed delivery or services provision.

#### **5. Transfer of risk**

The Supplier shall bear the material risk until we ourselves or any of our authorised representatives accepted the goods at the place to which they had to be delivered according to the contract.

#### **6. Nature and scope of the services**

- 6.1 Information included in our purchase orders and in our call-offs concerning the type, quality, dimensions, weight, quantities, extent etc. of the deliveries/services shall be deemed to be binding and the Supplier must in each case comply with them.

- 6.2 Subject to the submission of other documents, quantities, dimensions and weights shall depend on the values we determined in the course of incoming goods inspection.
- 6.3 Only if we previously agreed to this in writing shall any deviations from our purchase orders and call-offs be admissible. We may request construction and execution of the deliveries/services to be changed, unless this is unacceptable for the Supplier. In the case of changes to construction and execution, we shall be obliged to compensate for additional costs for which evidence is provided; lower costs for which we provided evidence must be reimbursed to us.

## **7. Incoming goods inspection and defect notification**

- 7.1 The Supplier shall exclusively supply goods which they completely inspected and which they determined to be good. For this reason, there is no need to perform detailed incoming goods inspections at our premises. If and to the extent this is required in the ordinary course of the business, we shall inspect any incoming goods and notify the Supplier of any defects immediately after their detection. To this extent, the Supplier shall waive the objection of a delayed notification of defect in terms of sec. 377 HGB [*Handelsgesetzbuch* – German Commercial Code].
- 7.2 In no case will we accept any wrong deliveries or deliveries of goods other than those we had ordered; in this regard, there is no need for special defect notification.

## **8. Defects of quality and title**

- 8.1 The Supplier shall be responsible for ensuring that the goods they deliver and the services they render comply with any and all legal and official requirements which apply to their distribution or to their use. Both deliveries and services must comply with the state of the art, other statutory provisions, technical test specifications and accident prevention regulations which are valid at the time of delivery or services provision or which will be presumably valid in the future. Unless we agreed upon any deviating provisions with the Supplier, the goods delivered must comply with applicable DIN and/or EN standards when it comes to quality and measurement accuracy.
- 8.2 We shall be fully entitled to the rights in relation to defects of quality and title. We shall have the right to select the type of subsequent performance (that is, defect rectification or replacement delivery). The Supplier shall be obliged to bear any costs and expenses which are required for defect rectification or replacement deliveries. Should the Supplier follow the request for defect rectifica-

tion or replacement delivery not within a reasonable period or only to an insufficient extent or should urgent reasons require immediate defect rectification, we shall be entitled to rectify ourselves or have others rectify these defects or to make covering purchases at the Supplier's expense.

- 8.3 Unless otherwise agreed with the Supplier, claims from defects of quality or title shall become time-barred 36 months from the transfer of risk. This period shall be extended by the period required for defect rectification or replacement deliveries of the Supplier from the time of defect notification until the Supplier declares that defect rectification or replacement deliveries was/were completed or until they refuse any other subsequent performance or delivery measures. To the extent the law provides for longer periods, such longer periods shall be applicable.
- 8.4 In the case where we incur any additional costs due to defects with the goods delivered, in particular any transport, road, labour or material costs or any costs in relation to incoming goods inspection exceeding the customary extent of such inspections or selection measures, the Supplier shall be obliged to reimburse these costs to us.

## **9. Product liability**

- 9.1 Should any third parties assert claims against us based on the German Product Liability Act or based on any other provisions in relation to product defects, or should we incur any other damage in relation to the delivery of defective goods, the Supplier shall be obliged to accordingly indemnify us and to compensate us for any damage if and to the extent to which such damage can be attributed to a defect with the contractual goods which the Supplier had previously delivered to us. In cases of liability based on fault, this shall only apply if the Supplier is liable for this. If the reason for such damage falls into the Supplier's sphere of responsibility, they shall also bear the burden of proof in this regard. In these cases, the Supplier shall be obliged to bear any costs and other expenses, including the costs resulting from possible legal prosecution. The Supplier shall be obliged to take out sufficient product liability insurance.
- 9.2 Prior to any product recalls which totally or partially result from a defect with the contractual goods to be delivered by the Supplier, we shall accordingly inform the Supplier, grant them an opportunity of co-operation and discuss with them about efficient execution, unless notification or involvement of the Supplier is impossible due to special urgency. To the extent product recalls are the consequence of defects with the contractual goods to be delivered by the Supplier, the Supplier shall bear any and all product recall costs.

## **10. Property rights**

The Supplier shall be responsible for ensuring that no domestic or foreign third-party property rights will be violated in relation to their deliveries. The Supplier shall be obliged to indemnify us from any claims which third parties assert against us due to the violation of industrial property rights and to reimburse to us any expenses which are required in relation to the asserted claims. This claim shall exist independently of whether the Supplier is culpable.

## **11. Ownership of free issue equipment**

Free issue equipment which we provide shall remain our property; this may be exclusively used for the intended purpose. With regard to free issue equipment, the Supplier shall be obliged to perform incoming goods inspections and to inform us about the incoming goods inspection results. In the case where the Supplier processes our goods, we shall be considered the manufacturer without any other obligations and we acquire ownership in the newly created goods. Should other materials be used for processing purposes, we shall acquire co-ownership in the ratio of the invoice value of our goods to that of the other materials. In the case where the Supplier's goods must be considered the principal goods after the blending or mixing of our goods with those of the Supplier, co-ownership of the new goods shall be transferred to us in the ratio of the invoice value of our goods to the invoice value or, if this is not available, the market value of the principal goods. In these cases, the Supplier shall store the goods free of charge for us.

## **12. Non-disclosure**

12.1 The Supplier hereby undertakes to treat as a secret any confidential information which we directly or indirectly provide to them and to take any measures required for preventing third parties from having access to such confidential information. Purchase orders and any commercial and technical details related to this must be considered to be confidential information. The term "confidential information" shall include without limitation construction and manufacturing processes, technical and economic expertise, 3D data, materials, calculations, drawings, data, machine-readable information, files and documents.

12.2 This obligation to non-disclosure shall not apply to information

- ▶ which has already been known to the public at the time of receipt or to which the general public had access with no violation of these Terms;

- ▶ which, prior to receiving confidential information, had been in the legal possession of the Supplier with no obligation to non-disclosure; and
- ▶ which the Supplier legally received from third parties subject to no obligation to non-disclosure whatsoever.

12.3 This obligation to non-disclosure shall survive termination of the business relationship and shall extend to any and all employees, vicarious agents, consultants, suppliers and sub-contractors of the Supplier, regardless of the type and the legal structure of employment or assignment.

### **13. Place of performance; place of jurisdiction; governing law**

13.1 The place of performance for both Contractual Parties for any and all obligations under the contract, including but not limited to deliveries and payments, shall be the registered office of our company and/or any other place of performance we indicated.

13.2 The place of jurisdiction for entrepreneurs with regard to any and all legal disputes resulting from the contract relationship and concerning its establishment and validity shall be the courts competent for our registered office. If we so decide, we may file actions also at the Supplier's registered office.

13.3 This contractual relationship shall be subject to German law; the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.