

# General Terms and Conditions of Purchase

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## I. Scope of Application

- (1) These General Terms and Conditions of Purchase apply to all our orders, declarations relating to legal transactions and purchase contracts. They apply exclusively. Adverse or differing terms and conditions are hereby explicitly controverted. These General Terms and Conditions of Purchase also apply if we accept deliveries unreservedly, pay for them or otherwise are silent about the Supplier's differing terms and conditions even if we are aware of those differing terms and conditions.
- (2) All agreements entered into by the Supplier and us for the purpose of implementing the Contract must be confirmed by us in writing in order to be valid.
- (3) In the event of an ongoing business relation, these General Terms and Conditions of Purchase likewise apply to all future transactions with the Supplier, unless differing terms and conditions are explicitly agreed upon. Furthermore, these General Terms and Conditions of Purchase also apply to all agreements arising as a consequence of a concluded purchase contract, such as servicing or repair contracts.

## II. Conclusion of the Contract

- (1) We shall be committed to a binding order for 14 days. Confirmations received thereafter are deemed new offers.
- (2) Deliveries and performances may be contracted wholly or in part to third parties only with our prior written consent.
- (3) Orders, requests for delivery of goods ordered, supplements and amendments thereto may also be effected by data transmission or by mechanically readable data carriers.
- (4) Offers, projects, etc. to be drawn up by the Supplier are prepared free of charge for us. Estimates are binding and are not remunerated unless explicitly agreed otherwise.
- (5) We may request modifications to deliveries and performances even after the signing of the Contract, provided this is reasonable for the Supplier. With this amendment to the Contract, both Parties have to give appropriate consideration to the consequences, particularly with regard to increased or reduced cost and delivery dates.

## III. Prices, Terms and Conditions of Payment

- (1) The agreed prices are fixed prices. Any price increases are not accepted. The same applies to long-term contracts for deliveries. Price increases must be individually agreed upon in advance and in writing.
- (2) Unless otherwise agreed, all prices shall be inclusive of packing, payment of duties and carriage to the place designated in the Contract.
- (3) Inasmuch as the German Federal Act on Curbing Illegal Activity in the Building Trade of 30 August 2001 applies, we shall deduct 15% of the gross amount invoiced from the Supplier's invoices and pass on this sum to the relevant tax office, unless the Supplier has provided us with a valid exemption certificate in accordance with § 48 b of the EStG [German Federal Income Tax Act] at the time of payment. To this end, immediately after signing the Contract the Supplier shall inform us about its tax number and its tax office along with the address and bank details of the tax office.
- (4) A 30-day term of payment is agreed, unless otherwise expressly stipulated. In case the invoice is settled within 14 days, we might deduct a discount of 3%. The term of payment commences from the time both the invoice and the deliveries are accepted by us or services are rendered.
- (5) Insofar as material testing is agreed, the respective certificates shall form an integral component of the delivery and must be sent to us together with the delivery.
- (6) Payments are deemed neither acknowledgement of proper performance according to the Contract, in particular the absence of defects in deliveries and performances rendered, nor acknowledgement of due and proper invoicing.
- (7) We are not in default with payment until we have received a written reminder from the Supplier.

## IV. Rights of Set-off, Retention and Assignment

- (1) The respective provisions of law regarding the assertion of rights of set-off and retention apply. The Supplier is entitled to set-offs and retentions only if its counterclaims are established in law, uncontested or acknowledged by us.
- (2) The Supplier's claims against us may be assigned only with our prior consent in writing.

## V. Delivery and Transfer of Risk

- (1) The delivery shall be made to the delivery address at the Supplier's expense and risk. The Supplier is required to pack and to appropriately

insure the goods to be delivered at its own expense. Environmentally friendly packing materials are to be given preference. Any loss, damage or other detriment arising from a failure to comply with this provision shall be borne by the Supplier. Unless agreed otherwise, the Supplier shall take transport packing back free of charge in accordance with § 4 of the German Federal Packing Ordinance.

- (2) Goods being delivered to the delivery address shall be accompanied by a delivery note indicating the order number, the date of the order, the quantity and our material number. The values ascertained during our checking of incoming goods for numbers of items, weights and measures shall be definitive.
- (3) The agreed delivery date is binding for the Supplier. Deviations there from require our prior written consent.
- (4) Should agreed delivery dates not be observed, the provisions of law apply. Notwithstanding the provision in V. (3), the Supplier is obliged to give our department placing the order immediate written notice of anticipated delays in delivery.
- (5) Our unrestricted acceptance of a late delivery or service does not imply that we waive any of our rights or remedies.
- (6) The Supplier may cite the absence of essential documents we are to supply only if the Supplier has sent a written reminder about the documents and has not received them within a reasonable period of time.
- (7) If goods are delivered earlier than agreed, we reserve the right to send them back at the Supplier's expense. If goods delivered early are not sent back, they shall be stored at our premises at the expense and risk of the Supplier until the agreed delivery date. If goods are delivered early, we reserve the right not to pay for them until the agreed date of payment. We accept part deliveries only if expressly agreed in advance.
- (8) If standardised, exchangeable, reusable (pool) pallets (e.g. Euro flat pallets, Euro box pallets) are used for the supply, the clauses of the "Bonn Pallet Exchange" shall apply unless otherwise agreed in individual cases.

## VI. Customs and Export Control

- (1) The Supplier shall notify MIAS in its business documents of any obligations to obtain permits or any other limitations with respect to the export or re-export of deliverables under German, European or US export or customs regulations and/or the export or customs regulations applicable in the country of origin of the deliverable. For this purpose, the Supplier shall as a minimum provide the following information in its quotations, order confirmations, shipping notes and invoices with respect to each item:
  - the export list number in accordance with Schedule AL to the German Export Regulation or similar list numbers of similar export lists,
  - for US goods the ECCN (Export Control Classification Number) or EAR99 in accordance with the US Export Administration Regulations (EAR),
  - the commercial law origin of goods,
  - the statistical product number (HS-Code) of goods.
- (2) Within the scope of contracts concluded, all statutory provisions and specifications must be complied with by the supplier. The supplier engages itself to transmit to MIAS unsolicited an original long-term supplier declaration for products with preferential origin in accordance with the respective relevant statutory provisions (presently: Regulation (EU) No 2015/2447).
- (3) The supplier assures that he is either an Authorised Economic Operator AEO-F or AEO-S, or that he meets the following requirements for safety in the supply chain:
  - goods which are manufactured, stored, transported, supplied to, or are received by same on behalf of MIAS, are manufactured, stored, machined or processed, and loaded at safe manufacturing facilities and shipping facilities,
  - are protected against unauthorised access during manufacturing, storage, machining or processing, loading and transportation,
  - the personnel employed for the production, storage, machining or processing, loading, transportation and receiving of such goods is reliable (in terms of Art. 24(1) Regulation (EU) No 2015/2447),
  - business partners acting on behalf of the supplier are informed that they also need to implement measures to assure the above mentioned supply chain.

The supplier will provide MIAS forthwith with the AEO-F or AEO-S certificate by sending a copy of the official certification, at the latest with the first delivery. If the supplier is not an Authorised Economic Operator, he will forthwith provide a safety declaration with the obligation of conforming to the requirements given under No. 1, at the latest with the first delivery. In as far as the supplier no longer conforms to the assured requirements

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given in the safety declaration, he is obliged to inform MIAS immediately in writing.

## VII. Invoicing

The invoice must contain exact details particularly regarding the quantity, order number, date of order and our material number, if this last number is known to the Supplier. The invoice shall be addressed to the invoice address specified in the order and not attached to the consignments.

## VIII. Transfer of Ownership

If the goods delivered are subject to reservation of title, the ownership thereof is transferred to us upon payment at the latest. Further reservations of proprietary rights are excluded.

## IX. Force majeure

Force majeure releases the affected Party from its performance obligations for the duration of the disruption and to the extent of their impact. The Parties are obliged to immediately give notice to the other of such circumstances and to adapt their obligations to the change in circumstances. We are released from the obligation to take delivery of the whole or parts of the goods ordered and are insofar entitled to cancel the Contract if we are no longer able to use the delivery, taking commercial / financial aspects into account, owing to the delay caused by force majeure.

## X. Quality

(1) The Supplier guarantees that the contractual deliveries and services strictly and entirely comply with the specifications and the agreed technical data, are made of the agreed materials / the materials specified in the documentation, are free of any defects, e.g. in design, material and manufacturing, fulfil entirely the agreed functions and do not have faults that nullify or reduce the value or suitability for the customary or contractually stipulated use. If no materials have been agreed, the contractual deliveries must be made of the best-suitable materials and services rendered must comply with highest standards. The Supplier further guarantees that the deliveries and services comply with all applicable statutory and official provisions, the regulations for the prevention of accidents, the recognised quality regulations, and are state-of-the-art.

(2) Before effecting the delivery, the Supplier must check and prove to us that the aforementioned requirements are complied with by means of suitable state-of-the-art quality testing.

(3) The Supplier is required to check carefully the documents sent to the Supplier for the implementation of the Contract. If the Supplier becomes aware of any indications that the whole or part of the Contract cannot be complied with in terms of scope, or that the intention of the order cannot be achieved wholly or in part, the Supplier is required to communicate these reservations immediately to us in detail before commencing the performance of the Contract.

(4) The Supplier shall enter into a commensurate quality assurance agreement with us should we deem this necessary.

## XI. Claims in the Event of Defects of Quality and Defects in Title

(1) The provisions of law apply to all defects in quality and defects in title, subject to the stipulations hereinafter.

(2) Any obvious defects or deviations in quality or quantity must be notified within 2 weeks of delivery, in the case of non-obvious defects within the same period of time after they have been detected.

(3) In case of defects, we are entitled to require the rectification of the defects through repair or the replacement of the faulty deliveries, as we deem fit. The Supplier shall bear the expenses resulting therefrom, in particular transportation and travel expenses, and the costs of labour and materials. In this respect, the Supplier shall also bear the dismantling and reinstallation costs.

The Supplier may refuse the aforementioned rectification only if it is connected with disproportionate costs. Should the rectification not be successful, we are entitled to opt for either reducing the purchase price, rescinding the Contract or – if the Supplier is held responsible for the defect – claiming compensation instead of rectification of the defect.

(4) If a general control above and beyond the customary scale of the incoming goods control should be necessary, the Supplier shall bear the costs incurred.

(5) If parts of a delivery are defective, we are entitled to cancel the entire delivery after we have set the Supplier a period of grace to rectify the defect or render a due and proper delivery or service and the Supplier's efforts to that end remain not successful.

(6) The period of limitation for defects in the deliveries and services is 2 years from the transfer of risk, unless the goods have been used in conformity with their intended purpose for a building. In this case, the period of limitation is 5 years. Regarding defects in title, the Supplier shall indemnify us for costs associated with and hold us harmless from any third-party claims. For defects in title the standard limitation period of the §§ 195, 199 BGB applies.

(7) In case it is not possible to inform the Supplier of the defect respectively the pending damage or an appointment of a time limit for the fulfilment of the warranty obligation is not possible, both for reasons of urgency, or in other cases when a reasonable period of time set by us for the fulfilment of the warranty obligation ends to no avail, we may ourselves rectify the defect or have it rectified by others at the Supplier's expense.

## XII. Liability and Insurance

(1) The Supplier is liable according to the provisions of the applicable law. (2) If the cause of damage to property or bodily injury resulting from a defective product is established to have been in the Supplier's sphere of control or organisation and a third-party claim for compensation is made against us, the Supplier shall release us from the claim at first request.

(3) In this context, the Supplier is obliged to reimburse any expenses arising out of or in connection with a recall campaign conducted by us. We shall inform the Supplier in advance of the content and scope of the recall measures to be implemented and give the Supplier the opportunity to comment, provided there is no case of urgency and the prior information is possible and reasonable.

(4) Furthermore, the Supplier shall insure itself appropriately and commensurately against all risks arising from product liability, including the risk of recall, and shall furnish proof that the insurance has been taken out when requested by us.

## XIII. Withdrawal

As long as the Supplier has not completely fulfilled its obligations we are entitled to withdraw from the Contract according to §§ 346 ff of the BGB [German Federal Civil Code] in the following cases:

(1) if the Supplier substantially breaches its contractual obligations and does not cure such breach within a fair and reasonable period of time set by us;

(2) if an application for insolvency proceedings is being initiated against the Supplier's assets or if such proceedings have been rejected because no assets are available;

(3) if there is another substantial deterioration in the financial situation of the Supplier which jeopardizes the performance of the Contract.

## XIV. Providing Materials, Parts and Tools

(1) We reserve the title in ownership of the materials, parts and tools we provide. They may be used only in accordance with their contractually intended use.

(2) Materials shall be processed and parts assembled on our behalf. We become co-owners of products manufactured using our materials and parts in proportion of the value of the material and parts we have provided to the value of the total product. The Supplier shall take the necessary steps to safeguard our property right.

(3) If the materials or parts provided by us should be inseparably intermixed with other goods not pertaining to us, we shall acquire co-ownership of the newly manufactured product in proportion of the value of what we provided to the total value of the intermixed goods at the time they were intermixed. Should they be intermixed in such a way that the Supplier's goods are to be regarded as the main goods, it is agreed that the Supplier assigns to us pro rata co-ownership; the Supplier shall preserve the sole ownership or co-ownership for us free of charge by taking appropriate measures.

(4) If the Supplier should manufacture tools or processing equipment at our expense, the production is on our behalf, with the consequence that upon production we acquire ownership of the respective goods.

(5) The Supplier is obliged to use the tools supplied by us or produced for us solely for the manufacture of the deliveries and the performance of the services we order. The Supplier is further obliged to insure the tools belonging to us at its own expense for the original value against loss or damage through fire, water, theft and other types of loss or damage (e.g. caused by employees). The Supplier shall have any necessary servicing and inspection work carried out on time at its own expense. The Supplier is required to notify us immediately of any abnormal occurrences.

(6) Tools we have supplied to the Supplier shall be returned to us upon

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first demand, but no later than upon the termination of the business relationship.

## **XV. Rights of Use and Commercialisation; Property Rights**

(1) Inasmuch as admissible in law, the Supplier grants us at no extra charge the rights of use and commercialisation of all deliveries and services.

(2) The Supplier guarantees that no third-party rights are infringed by the manufacture, distribution or use of its deliveries and services.

(3) This guarantee does not apply if the deliveries are effected and the services are rendered solely in accordance with our plans, documents or models, and the Supplier neither knew nor had to know that the manufacture of the delivery or the rendering of the services constituted an infringement of rights as defined above.

(4) If the Supplier has to accept responsibility for the infringement of property rights according to XV. (2) and a third party raises a claim against us, the Supplier shall indemnify us for and hold us harmless from these claims upon first demand. The Supplier's duty to indemnify us encompasses all expenses we incur arising out of or in connection with a third-party claim.

(5) The Supplier shall specify upon demand all the applications for property rights the Supplier uses in connection with the deliveries and services. If the Supplier should ascertain the infringement of property rights or applications for property rights, the Supplier is required to notify us thereof immediately without having to be solicited.

## **XVI. Secrecy; Data Protection**

(1) The Supplier is obliged to maintain strict secrecy regarding any illustration, drawing, calculation and other document or information received, and to disclose them to third parties only with our express prior consent in writing. The obligation to maintain secrecy also applies after the termination of the Contract. It ceases, however, to apply as soon as and insofar as the production know-how contained in the illustrations, drawings, calculations and other documents becomes part of the public domain.

(2) The aforementioned documents and information furnished to the Supplier remain our property and must automatically be returned to us free of charge as soon as they are no longer required for the fulfilment of the Contract.

(3) Products manufactured in accordance with documents drawn up by us or with our know how or using our tools or reproduced tools may be used by the Supplier for test purposes only, but not be offered or delivered to third parties. The same applies analogously to the Supplier's standard products modified according to our specifications.

(4) We are entitled to store and process for our own purposes all data regarding the Supplier received in connection with the fulfilment of the Contract in compliance with the provisions of the German Federal Data Protection Act.

## **XVII. Provision of Spare Parts**

(1) In respect of those parts which are necessary for the proper use of the deliveries and services without extra expenditure, the Supplier is required and guarantees to keep a supply or to ensure availability at its own expense over a period of at least 10 years from the time of the last delivery.

(2) Upon reasonable notice before the end of the period for which the Supplier guarantees the supply of spare parts in accordance with XVI.

(1), the Supplier shall offer to manufacture a sufficient amount of such spare parts to enable us to maintain a sufficient stock.

## **XVIII. Place of Performance**

The place of performance is the contractually agreed delivery address.

## **XIX. Place of Jurisdiction and Applicable Law**

Place of jurisdiction is our registered office. We are allowed to sue the Supplier at his registered office or the place of performance. German law as applied between domestic contractual partners shall exclusively govern the Contract and all legal relations between the Supplier and us.