

## **General Purchasing Terms**

### **W+K Industrie Technik GmbH & Co. KG**

### **December 2012**

#### **1. General, scope**

- 1.1. These Purchasing Terms shall apply to relations with business people, legal entities under public law and public special funds. By accepting these Purchasing Terms without protest or by discharging the contract without protest, the contractor declares its consent to the exclusive validity of these Purchasing Terms for all deliveries and performances. We shall not accept the contractor's contradictory or divergent terms, unless we have explicitly agreed to their validity in writing. Our Purchasing Terms shall also apply if we unconditionally accept delivery without reservation in full knowledge of the contractor's contradictory or divergent terms.
- 1.2. All agreements reached with the contractor for the purpose of discharging this contract shall be set out in writing. Verbal agreements shall only be valid when explicitly confirmed by us in writing.
- 1.3. Our Purchasing Terms shall also apply to all future transactions with the contractor.

#### **2. Offer, tender documents, responsibility**

- 2.1. The contractor shall confirm our order within ten (10) days. The contractor shall not be entitled to hire third parties to carry out the order or parts thereof. Third-party execution of the order or parts thereof shall only be permitted in exceptional cases and only following prior consultation and with the written consent of our purchasing department, director or management. Supplements or restrictions to, or divergences from, the purchase order and/or the associated documents shall likewise require the written consent of our purchasing department, director or management.
- 2.2. The contractor shall treat the order and conclusion of the contract, as well as the contractual terms, confidentially. Our purchase order may only be mentioned for reference or promotional purposes with our prior written consent.
- 2.3. We shall retain ownership and copyright to illustrations, drawings, calculations, tools, models and other documents; they shall not be made available to third parties without our explicit written consent. They shall only be made accessible to those members of the contractor's staff who need to be familiar with them in order to discharge the contract. They shall be used exclusively for manufacturing parts pursuant to our purchase order and shall be returned on request upon completion of the order. Even when the order has been completed, they shall not be disclosed to third parties. The contractor shall be liable for all damage and losses incurred through any culpable violation of this requirement.
- 2.4. Our approval of drawings, calculations and other documents shall not affect the contractor's exclusive responsibility for the delivered item. This shall also apply with regard to our proposals, recommendations and other participation.

#### **3. Prices, terms of payment, setting off, assignment**

- 3.1. The price indicated in the purchase order shall be binding. It shall apply excluding value-added tax at the applicable rate. Unless agreed otherwise in writing, the price shall include delivery "free domicile", including freight and the customary packaging. If prices have been agreed "ex works" or "ex warehouse", we shall only bear the lowest possible freight costs. We reserve the right to select the freight company. All costs incurred until the goods are handed over to the carrier, including loading and carriage, shall be borne by the contractor.
- 3.2. We can only process invoices if the data are complete and correct as specified in our purchase order, and in particular if they quote the complete purchase order number specified there. If not, the invoice concerned shall be deemed to be not received. The contractor shall be answerable for all consequences due to non-compliance with these duties, unless the contractor is not responsible for such non-compliance.
- 3.3. Unless agreed otherwise in writing, we shall remit payment with 3% discount within 14 days of correct delivery and receipt of the invoice or without deduction within 60 days.
- 3.4. All payments shall be made subject to verification of the invoice and our rights in the event of defective delivery or performance. If notice of defects has already been given when invoices become due, we shall be entitled to withhold payments to a reasonable extent.
- 3.5. We shall be entitled to set off and withhold payments to the extent permitted by law.
- 3.6. Claims asserted against us may only be assigned with our prior written consent, which shall not be refused unfairly. This shall not apply to assignments within the framework of an extended reservation of ownership. Section 354a German Commercial Code (HGB) shall remain unaffected.
- 3.7. Disputes concerning the amount of remuneration shall not entitle the contractor to suspend its performances in full or in part, not even temporarily.

#### **4. Delivery period, delayed delivery, Acts of God, penalties**

- 4.1. The delivery period stated in the purchase order shall be binding. Premature delivery, as well as excess, short or part-delivery shall only be permitted if and to the extent that we have consented to it in writing.
- 4.2. The contractor shall be obliged to inform us without delay if circumstances arise or become known to the contractor as a result of which the stated delivery period or agreed specifications cannot be met. Delays in delivery shall not be accepted if we are not informed accordingly within not more than five (5) days.
- 4.3. If delivery is delayed, we may claim all statutory rights. On expiry of a reasonable period of grace which we set, we may claim damages in lieu of performance and / or to rescind the contract.
- 4.4. If delivery is delayed, we shall be entitled to demand flat-rate damages for delayed performance in the amount of 0.2% of the purchase order price for each working day of the delay, but not more than 5% of the order price altogether. The flat-rate damages may be claimed until the examination of the invoice (in a departure from any statutory arrangements).
- 4.5. Unconditional acceptance of the delayed delivery or performance without reservation shall not constitute any waiver of our entitlement to damages.
- 4.6. Unless proved otherwise, the quantities, weights and dimensions established during our incoming inspection shall apply.
- 4.7. We shall be entitled to use the software included in the scope of delivery of the product, including its documentation, within the framework permitted by law (Sections 69a et seq. Copyright Act (UrhG)). We shall also be entitled to use such software, including documentation, with the agreed performance features and to the extent necessary for the contractually intended use of the product. Even if not explicitly agreed, we shall be entitled to produce a backup.
- 4.8. In the event that labour disputes, operational disruptions for which we are not responsible, civil commotion, official measures or other unavoidable and unforeseeable events (Acts of God) persist for a not inconsiderable length of time and lead to a major reduction in our needs, we shall be entitled – our other rights notwithstanding – to rescind all or part of the contract accordingly. We shall be entitled, subject to compensation for expenses, to cancel in the event that the order underlying the purchase is terminated.

## **5. Transfer of risk, delivery and dispatch documents**

- 5.1. The risk shall be borne by the contractor until the consignment is delivered to us or to our designated consignee (transfer of risk).
- 5.2. The contractor shall be obliged to indicate our complete purchase order number, along with the delivery address stated in the order, on all dispatch documents and delivery notes. If this is not done, we shall not be responsible for any resultant delays and/or losses. The contractor shall be obliged to ensure that we are held harmless accordingly.

## **6. Warranty, recourse**

- 6.1. The contractor warrants that its performances comply with the contractually agreed characteristics, the generally accepted technical rules and standards, all relevant standards, as well as the relevant safety regulations, and that they have the guaranteed properties and are in all other respects free from material defects and defects in title.
- 6.2. The contractor shall waive the plea of belated notice of defects.
- 6.3. Acceptance shall in all cases be made subject to all rights, especially those based on defective or delayed delivery. If acceptance is prevented or significantly impeded for reasons beyond our control, we shall be entitled to postpone acceptance for the duration of such circumstances.
- 6.4. Our statutory rights in respect of material defects and defects in title shall apply without restriction. Regardless thereof, we shall be entitled to demand that the contractor remedy defects or supply a replacement, at our discretion, insofar as the contractor cannot refuse our chosen form of repeat performance in accordance with Section 439 (3) German Civil Code (BGB).
- 6.5. If the contractor does not begin to remedy the defect immediately following our request, we shall be entitled in urgent cases to undertake the repairs ourselves or to have them carried out by third parties after hearing the contractor and at the latter's expense.
- 6.6. The period of limitation for claims based on material defects shall be 36 months as from the transfer of risk. If longer statutory periods of limitation are prescribed by Sections 438, 479 and 634a German Civil Code (BGB), we shall be entitled to claim these without restriction.
- 6.7. In the event of defects in title, the contractor shall additionally exempt us from all third-party claims.
- 6.8. The period of limitation agreed here shall recommence for any goods which are repaired or replaced during the limitation period within the framework of the contractor's duty to remedy defects.
- 6.9. The contractor shall reimburse any costs for transport, travel, labour and material, as well as the cost of inspections exceeding the normal scope of incoming inspections which we incur as a result of the contractor's defective performance or delivery. The same shall also apply with regard to all expenses which we have to bear in relations with our customers on account of their entitlement to repeat performance.

## **7. Product liability, call-back, non-liability, insurance cover**

- 7.1. If product liability claims or other claims based on the defects mentioned in No. 6.1 are asserted against us, the contractor shall exempt us from these at our first request, insofar as and to the extent that the damage has been caused by a fault in the goods delivered by the contractor or in the latter's performance. In cases of liability based on fault, however, this shall only apply if the contractor is at fault. The burden of proof shall rest with the contractor insofar as the contractor is responsible for the cause of damage.
- 7.2. In the cases mentioned in No. 7.1, the contractor shall bear all costs incurred in this context, especially the costs of our legal defence and any call-back campaigns. We shall inform the contractor of the content and scope of such call-back campaigns. We reserve the right to exercise further statutory rights.
- 7.3. Numbers 7.1 and 7.2 shall apply accordingly insofar as product defects are attributable to deliveries or performances by the contractor's own suppliers or subcontractors.
- 7.4. The contractor shall obtain adequate insurance against product liability risks, including call-back costs, and the other risks mentioned in No. 7.1 and 7.2 and shall prove such insurance to us at any time on request.

## **8. Industrial property rights**

- 8.1. The contractor warrants that third-party rights are not violated in conjunction with its deliveries and performances. If corresponding claims are asserted against us by a third party, the contractor shall exempt us from such claims at our first written request. This exemption shall also apply to our customers/final customers.
- 8.2. If the manufacture, delivery, use of licences or sale of the goods or performance violates patents, trademarks, copyright or other intellectual property rights, the contractor shall provide us, at its own expense, with a licence free of charge and with unlimited validity for the items concerned. To prevent violation of these rights, the contractor may also modify the ordered goods or substitute other goods, provided that the delivered goods are equivalent to those which were ordered. This obligation shall apply even when we have specified part of the design, material or manufacturing process.

## **9. Parts which we have provided**

- 9.1. Materials, parts, models, containers, special packaging, tools, data, drawings, designs and software which we have provided shall remain our property and may only be used in conformity with their intended purpose. Materials shall be processed and parts assembled on our behalf. It is agreed that we shall be co-owner of the finished product in accordance with the value of the provided parts in relation to the value of the product manufactured using our provided parts; the contractor shall store this shared property free of charge on our behalf.
- 9.2. The contractor shall mark the items mentioned in No. 9.1 as our personal property and shall store and insure them separately. Until they are returned to us, the contractor shall bear the risk of their loss and/or destruction. They shall only be used to discharge the contractor's duties under the present contract and shall send them back to us without delay when requested by us in writing.

## **10. Suspension / termination**

The contractor undertakes to comply with a written request for a suspension of the purchase order. Additional costs may only be claimed by the contractor if the suspension remains in force for more than six (6) months. We shall be entitled to terminate the purchase order at any time. The contractor shall be entitled to demand remuneration of the performances undertaken up to the moment of termination, with proof of the incurred cost of sales, but not more than the contract price. The performances or items concerned shall be surrendered to us at once. The contractor shall not be entitled in any case to claim compensation for consequential losses or loss of income.

## **11. Jurisdiction, place of performance, applicable law**

- 11.1. Insofar as the contractor is a business person [*according to German law*], a legal entity under public law or a public special fund, jurisdiction for all disputes resulting from this contractual relationship shall be at our business domicile. However, we shall also be entitled to sue the contractor at its general place of jurisdiction.
- 11.2. Place of performance shall be the location to which the goods are to be delivered under the terms of the order.
- 11.3. The law of the Federal Republic of Germany shall apply exclusively; application of the UN Convention on Contracts for the International Sale of Goods is herewith excluded.

## **12. Saving clause**

If any of the provisions of the contract, including these rulings, prove or become partly or completely invalid, or if the contract is found to contain a loophole, this shall not affect the validity of the remaining provisions or parts of such provisions. The invalid or missing provisions shall be replaced by the corresponding statutory rulings.

**The General Purchasing Terms were originally written in the German language. If there should be any conflicts between the German and the English version (e.g. interpretations and/or errors of the translation) only the German version shall be legally binding.**