

## **General Terms and Conditions of Purchase (GTCPs)**

### **1. Definition / agreement of these conditions**

1. The "supplier" within the meaning of these terms is any business that provides us – or intends to provide us – with consignments and/or services. Where "consignments" are mentioned below, "services" are also meant, and vice versa.
2. These GTCPs apply exclusively. General terms and conditions of business of the supplier which differ from, conflict with or are additional to these GTCPs shall only become part of the contract if we have agreed to their validity in writing. This requirement applies in all cases, for example, even if we unconditionally accept the consignments of a seller in knowledge of its general terms and conditions of business.
3. The GTCPs are deemed to be a framework agreement for future contracts for consignments and/or services with the same supplier, without us having to refer to them again in each individual case.

### **2. Offers**

1. Offers are not binding for us, and are to be submitted free of charge.
2. Where the supplier has been provided with – or has itself made according to our specifications – drawings, models, samples and other documents, these may be used only for processing the offer and to execute the ordered consignment. They must be immediately handed over to us, without us having to request this, following the completion of our request or after the execution of the ordered consignment. They may not be made available to third parties.

### **3. Purchase orders / conclusion of contract / unilateral declarations**

1. Purchase orders and other declarations are only binding if issued or confirmed in writing.
2. Order confirmations are to be communicated to us such that they are fully compliant with the order in terms of content, and at the latest within 10 days after the date on which the order was received. If confirmation is not received within this period, we are entitled to cancel the order.
3. If the supplier confirms our purchase order subject to differing conditions, then separate acceptance by us is required.
4. Legally binding declarations and notifications which are to be delivered to us by the seller after the end of the contract (e.g. for the setting of deadlines, for reminders, or for declarations of withdrawal), are not effective unless they are in writing.

### **4. Prices**

1. The prices are fixed prices, unless we have expressly confirmed a price-adjustment clause or a conditional price. The prices includes remuneration for all consignments and services performed by the supplier for this order; packaging is paid only if separate remuneration was expressly agreed for this.
2. The agreed prices are, unless otherwise agreed, stated carriage free to the delivery address specified by us.
3. Price increases must be approved by us in writing.

### **5. Delivery item**

1. Our purchase order is definitive in terms of content, nature and scope of the consignment.
2. The drawings, descriptions, etc. belonging to the purchase order are binding on the supplier; however, it must check for any discrepancies and immediately advise us of errors it discovers or suspects in writing. The Supplier remains solely responsible for drawings, plans and calculations it creates, even if they are approved by us.
3. Insofar as the purchase order defines no requirements that go beyond this, the delivery items are of merchantable quality and, to the extent that CE, DIN, VDI, DVGW, DIN-EN, GMP, HACCP, QS or equivalent standards apply, are to be delivered in accordance with these. In any case, the delivery items are to be produced and equipped such that they meet the legal provisions applicable on the day of delivery at the place of performance, in particular with regard to technical equipment, hazardous materials, accident prevention, pollution control and accident prevention in the workplace, and that they comply with trusted ergonomic findings. Portable electrical equipment and electrical installation material must be manufactured according to VDE regulations. Those products which can be certified must be tested in accordance with VDE regulations and carry the VDE certification at all times.

4. In determining the weight, the incoming weight ascertained by our employees on our factory scales applies. If we cannot perform the weighing, the official value given by the transporting rail company on the waybill, or that determined by a public weighbridge in the event of delivery by lorry shall apply. If it is not possible to weigh the delivery item, the supplier must provide evidence of the design weight.

#### **6. Delivery dates, contractual penalty**

1. The agreed delivery dates must be strictly adhered to. If, instead of a delivery date, a period is determined in which consignment is to be delivered, the consignment must be delivered by the last day of that period. If a period is set for several consignments to be delivered, delivery is to be effected in each case immediately upon request by us. The supplier undertakes to inform itself – sufficiently in advance of the delivery – as to the hours when the individual operating sites to which it is to deliver receive goods. Goods deliveries arriving outside the scheduled hours for receipt may be rejected, which does not suspend the delivery period/deadline.
2. Unless there has been a special agreement, the supplier is not entitled in individual cases to deliver consignments before an agreed date. For consignments delivered before the agreed date, we are entitled, at the expense and risk of the supplier, to return the goods or to temporarily store them in a freight warehouse.
3. If it is discernible that the delivery deadline may be exceeded, the supplier must notify us immediately of the reason and the expected duration. Such notification does not release the supplier from its obligations under the relevant agreement; we retain all statutory and contractual rights.
4. The supplier shall bear the risk of procurement for its services, unless it is a case of one-off production. If the supplier does not effect performance or does not do so within the agreed delivery period or if it is has fallen behind, then our rights – in particular our rights of withdrawal and to compensation – are determined according to legal regulations, unless it is proven that the breach of duty within the supplier's scope responsibility is due to force majeure or to labour disputes for which it is not responsible; the supplier may not plead that it has not received supplies itself due to other causes. If the delivery deadline is exceeded due to force majeure or labour disputes for which the supplier is not responsible, we may either demand the execution of the purchase order at a later date, without the supplier being able to assert any claims as a result, or – after the expiry of a reasonable extension set by us – withdraw from the contract wholly or in part. Further legal claims remain unaffected.
6. If the supplier is delayed in its performance, we may demand – without prejudice to other rights – a contractual penalty of 0.5% of the net price per complete calendar week of delay, but not totalling more than 5% of the net price of the delayed consignment. We are entitled to demand the contractual penalty in addition to performance, and to demand damages – the minimum amount being that payable by the seller under the statutory provisions; the assertion of claims for further damages remains unaffected. If we accept the delay in performance, we must assert the contractual penalty by the latest upon the final payment for the late consignment. If the delivery of the consignment is impossible due to the fault of the supplier, we may demand – without prejudice to other rights – a contractual penalty of 5% of the net price; we are entitled to demand a contractual penalty – the minimum amount being the damages payable by the seller under the statutory provisions; the assertion of claims for further damages remains unaffected.
7. The consignments and/or services to which the supplier is obliged must be executed without impairment even in the event of disagreement and consequent legal disputes between the supplier and us, and likewise the agreed deadlines met.

#### **7. Execution of work at the premises of the orderer**

Those who undertake work within our company in performing the supply contract are subject to our rules of procedure. The regulations for accessing our facilities must be observed. We are not liable for damage suffered by these persons on our land or at our facilities, unless it is a case of damage through intent or gross negligence, or damage caused by injury to life, limb or health.

#### **8. Packaging, shipping, receipt**

1. The supplier shall ensure the adequate packaging of the delivered items within the scope of customary standards.
2. Where separate remuneration for packaging has been explicitly agreed, we reserve the right to send back valuable packing material used, CPT the address of the supplier, subject to the chargeback of the full rental charges or 2/3 of the packaging value.

3. The goods shall be shipped to the prescribed reception centre. Consignments for which we have to bear all or part of the freight costs shall be transported by the shipping method which is cheapest for us and at the best freight rates.
4. Without prejudice to pricing, the risk is transferred to us upon the handover of the delivery item at the specified reception centre.
5. Shipping advice notes must be submitted separately in triplicate for each reception centre upon dispatch of each consignment. Each shipment must be accompanied by a packing slip which is neutral in form. Our purchase order numbers are to be indicated on the shipping documents.
6. If we receive the delivery item without proper dispatch papers or if our purchase order numbers are not displayed properly in the shipping documents, then all resulting additional costs shall be borne by the supplier. We are also entitled in such cases to refuse receipt of the delivery, at the cost of the supplier.
7. Furthermore, we may refuse receipt of the delivery item if an event of force majeure or other circumstances beyond our control, including labour disputes, make it impossible or unreasonable to do so. In such a case, the supplier shall store the delivery item at its own expense and risk.

### **9. Other material provisions**

1. The supplier is liable, in the case of negligence, for any loss or damage to other material provisions. We must be informed immediately in the event of an impairment of such items.
2. The other materials provided by us are worked on and handled on our behalf and remain our property at the working and processing stages. When processing with other items not belonging to us, we are entitled to joint ownership of the newly manufactured item in the ratio of the value of our provision to the value of all materials used in the manufacture process and the value of the expenditure made by the supplier for its processing. In this regard, the supplier shall retain the items for us gratis. The same applies if our property perishes by mixing or blending.

### **10. Production testing / final inspections**

1. We reserve the right, to inspect – during the production process and prior to delivery – the quality of the materials used, their dimensional and quantitative accuracy and other qualities of the manufactured parts, as well as their compliance with the purchase order requirements. This inspection may occur at the premises of the supplier and/or of its upstream suppliers.
2. If we have a reserved the right to undertake a final inspection of the completed delivery item at the supplier's premises and/or to have such an inspection undertaken by a third party we have designated, then we and/or the designated third party are to be notified of the date of the final inspection 14 days in advance, unless a different arrangement has been met. The material costs for production tests and final inspections shall be borne by the supplier.
3. If we have required the final inspection of the finished merchandise by a third party, the supplier must arrange for the final inspection by the third party for us gratis, and forward us the inspection results immediately or with the shipping documents at the latest.
4. The production testing and final inspection does not relieve the supplier of its performance and warranty obligations according to Section 13 below.

### **11. Invoicing and payment**

1. Invoices must not be enclosed with the shipment: instead they must be submitted separately immediately after consignment for each purchase order, stating the purchase order number and release order number. Payment arrangements are to be given in full on the invoice. Invoices not presented by the 3<sup>rd</sup> of the month following delivery will not be settled until the end of the month following receipt of invoice, without the payment of interest. Any agreed sales tax/VAT is to be shown separately on the invoices.
2. Payments shall be made subject to the accuracy of the invoices and the conformity of the services to which they refer. Payment is made, unless other arrangements exist, after receipt of the delivery item and of the invoice, within 21 days with a 3% discount, within 30 days net, whereby the payment method is at our discretion. Where a consignment has been delivered before the agreed date, this does not affect the payment deadline related to this delivery. If payment is made in promissory notes or bills of exchange, we shall benefit from the discount pursuant to the conditions valid on the date on which the bill was issued.

3. We are entitled to assert a lien against the supplier's claims or to fulfil them by offsetting.

#### **12. Assignment and settlement of accounts**

1. Without our written consent, the supplier may not assign its contractual rights to third parties either wholly or partially. For advance assignments under a reservation of title by the upstream supplier, consent is hereby granted, with the proviso that a set-off is also permitted against counterclaims acquired after notification of the assignment.
2. The supplier is not entitled to offset with claims other than those which are undisputed or legally established, and is not entitled to assert any right of retention based on not undisputed or not legally established claims.

#### **13. Warranty, notification of defects and warranty period**

1. The warranty is based on the statutory requirements, with the following provisos:
2. The supplier must also ensure that third-party rights – in particular intellectual property rights – are not infringed by the delivery or use of the delivered goods.
3. Where the supplier has to provide supplementary performance, we are released from any existing obligation to immediately repeat the inspection of the delivered goods and to immediately re-notify the supplier in the case of that the defectiveness continues.
4. If a claim is made against us by third parties due to the statutory warranty rights, then a period of three years applies with regard to our recourse against the supplier and to the validity of all of our claims associated with the warranty.

#### **14. Use in advertising**

The use of our requests for quotation, purchase orders and related correspondence is not permitted for advertising purposes.

#### **15. Compliance with our code of conduct**

The supplier declares that it is cognisant of and observes the "acting in the green zone" code of conduct, also available in its current version on the [www.agravis.de](http://www.agravis.de) website. The supplier shall take all reasonable measures in this respect and liaise with us regarding problems and ambiguities.

#### **16. Choice of law, supplementary statutory provisions**

With regard to these GTCPs and all legal relationships between us and the seller, the law of the Federal Republic of Germany shall apply, to the exclusion of United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **17. Place of performance and jurisdiction**

1. Place of performance for all consignments and services is the designated reception centre; with regard to payments, it is our registered office.
2. If the supplier is a merchant, a legal entity under public law or a special fund under public law, then the following applies: jurisdiction – including international – for disputes of all kinds, including regarding bills of exchange, is the German court which is competent in terms of *ratione loci* and *ratione materiae* at our registered office. We are also entitled to sue the supplier at its general legal venue. With regard to other suppliers, the statutory provisions continue to apply.

**Date: December 2015**