

## General Terms and Conditions of Purchase of VTS GmbH Kunststoffe 07 / 2020

### 1. Scope of Application

- 1.1 All deliveries, services and offers of our suppliers shall be made exclusively on the basis of these General Terms and Conditions of Purchase. These General Terms and Conditions of Purchase form an integral part of all agreements entered into with our suppliers as regards the goods or services offered by them. They shall also apply to all future deliveries, services or offers provided to us as far as transactions of the same or similar kind are concerned and unless otherwise agreed upon.
- 1.2 General terms and conditions of our suppliers or a third party shall not apply even if we do not explicitly object to them in the individual case. This shall apply even if we refer to a letter that contains general terms and conditions of the supplier or a third party or incorporates them by reference or if we unconditionally accept goods or services provided to us. General terms and conditions of a supplier or a third party shall only apply if we have explicitly agreed to their applicability.
- 1.3 Any side agreements and amendments to the respective agreements and/or to these General Terms and Conditions of Purchase shall only be effective if made in writing by personal signature unless otherwise agreed. The written form requirement can only be waived in writing. The written form requirement shall also be deemed to be met with telefax or email if a copy of the signed original is transmitted.

### 2. Purchase Orders

- 2.1 A contract between us and the supplier shall be concluded once the supplier unconditionally accepts our purchase order.
- 2.2 Our purchase orders shall only become binding upon acceptance by the supplier. The supplier shall inform us about any obvious errors (i.e. typing or calculation errors) or the incompleteness of our purchase order prior to acceptance in order to enable us to correct and complete our purchase order; otherwise, the contract shall be deemed not to have been concluded.
- 2.3 The supplier shall be obliged to accept our purchase orders promptly in writing or within 4 working days from receipt at the latest, or to unconditionally execute the purchase order by dispatch of the goods (acceptance). Otherwise the purchase order shall be deemed rejected. Any delayed acceptance shall be deemed a new offer and requires our acceptance. A call-off order becomes binding if the supplier fails to object to a call-off order within a period of 4 working days from receipt of the call-off order. The receipt of the supplier's declaration by us shall determine its timeliness.
- 2.4 To the extent reasonable for the supplier, we shall be entitled to request modifications as to the time and place of delivery, the type of packaging and the construction and design of the goods to be delivered. In this context, the effects of such modifications, in particular, with respect to additional costs or cost reductions and the delivery time (delivery period or delivery date) shall be dealt with reasonably by mutual agreement of the parties. If such modifications cause any delay in delivery which, despite all reasonable efforts, is not avoidable in the normal course of supplier's business and production process, the originally agreed delivery time shall be extended accordingly.
- 2.5 We shall be entitled to rescind or terminate the contract at any time by a written statement specifying our reasons for the termination if the goods purchased can no longer be used in our business operations due to circumstances which have occurred after the conclusion of the contract. In such a case, the supplier shall be paid for the partial deliveries made and services performed.

### 3. Prices, Terms of Payment, Invoice Details

- 3.1 Unless otherwise agreed, the prices as set forth in the purchase order shall be binding for the term of the purchase order and shall include delivery and transport to the shipping address stated in the purchase order, packaging as customary in the trade, transportation insurance and acceptance tests.
- 3.2 If, according to the agreement of the parties, the price does not include packaging and if the compensation for packaging – other than packaging which was loaned to us – is not expressly determined, packaging shall be charged at proven cost price. At our request, the supplier shall be obliged to take back packaging at its own expenses.
- 3.3 Unless otherwise agreed upon in writing, the invoice amount shall be paid within 14 days with 3 % discount or net within 30 days from the complete delivery of the goods and receipt of a proper invoice. In case of acceptance of premature deliveries, the payment due date shall be calculated according to the time of delivery agreed between the parties.
- 3.4 Payment shall be made by remittance or cheque.
- 3.5 If the delivered goods are defective or if any other delivery terms are not complied with, we shall be entitled to withhold payment proportionally until proper performance.
- 3.6 In case of late payment we owe default interest in the amount of 5 percentage points above the base rate pursuant to Sec. 247 BGB (German Civil Code).
- 3.7 Every order confirmation, delivery document and invoice shall contain our order number, our item number, the delivery quantity and the delivery address. If one or more of these particulars are missing and if this delays the processing within our normal course of business, the payment periods pursuant to clause 3.3 of these General Terms and Conditions of Purchase shall be extended in accordance with the period of delay.
- 3.8 The supplier shall not be entitled to assign its claims against us to third parties or to have such claims collected by third parties without our prior written consent. This consent may not be unreasonably withheld. If the supplier, in breach of sentence 1, assigns its claims against us to a third party without our prior written consent, the assignment shall nevertheless be effective. We shall, however, have the option to make the payment with discharging effect either to the supplier or to the third party.

### 4. Inspection and Notification of Defects

- 4.1 Deviations in quality or quantity shall be deemed to have been notified timely if we notify the supplier of them within a period of 5 working days from receipt of delivery or, in case of latent defects, within a period of 5 working days from discovery.
- 4.2 Upon receipt of our written notification of defects by the supplier the limitation period shall be suspended until the supplier rejects our claims or declares the defect to be remedied or otherwise refuses to continue negotiations about our claims. In case of repair or replacement of defective goods the limitation period for such repaired or replaced goods shall begin anew, unless we had grounds to believe, based on the supplier's behavior, that the supplier did not consider himself obliged to take the remedial action but only carried out the repair or replacement as a gesture of goodwill or for similar reason.
- 4.3 If the supplier represents a product's characteristic by means of an acceptance test certificate (APZ), we shall only be obliged to check the goods for obvious defects. If a defect is discovered at a later time, we shall give notice of the defect within the period specified in clause 4.1 of these General Terms and Conditions of Purchase.

### 5. Confidentiality

- 5.1 Trade and business secrets which we make available and/or disclose to the supplier orally, in writing or in any other form during the course of our business relationship, as well as the knowledge or conclusions obtained therefrom (altogether referred to as "Confidential Information"), shall be treated confidentially and may not be used for purposes other than those contractually agreed upon. This shall apply irrespective of whether or not this Confidential Information has been designated as "confidential" or "classified" or in a similar manner as requiring secrecy.

- 5.2 The above confidentiality obligation shall not apply to any information which (a) was already known to the supplier at the time of its first disclosure by us and which is not subject to any confidentiality obligation; or (b) the supplier has received legally and without any confidentiality obligation from a third party; or (c) was already publicly known at the time of its first disclosure to the supplier by us or, subsequently came into the public domain without the supplier's fault; or (d) the supplier demonstrably has developed within the framework of its own independent developments without using any Confidential Information; or (e) must be disclosed by applicable laws, provided that the supplier promptly informs us about such disclosure and takes all reasonable efforts to ensure that as little Confidential Information as possible is disclosed.
- 5.3 The burden of proof for the exceptions mentioned in clause 5.2 of these General Terms and Conditions of Purchase shall rest with the supplier.
- 5.4 Any Confidential Information provided by us and any copy thereof made by the supplier either has to be returned to us or, upon our request, destroyed or, as applicable, erased from the supplier's IT systems after the termination of the cooperation.
- 5.5 Subcontractors shall be obligated accordingly.
- 5.6 The supplier may only advertise the business relationship with us with our prior written consent.

### 6. Delivery, Delivery Dates, Default in Acceptance

- 6.1 The supplier shall not be entitled to delegate the services owed by him to third parties (e.g. subcontractors) without our prior written consent. Unless otherwise agreed in the individual case, the supplier shall bear the procurement risk for his services.
- 6.2 If the destination is not specified in the order and unless otherwise agreed, delivery shall be made to our warehouse in Rottweil, Germany. The respective destination is also the place of performance for the delivery and any subsequent performance.
- 6.3 The supplier shall not be entitled to make partial deliveries of goods or other partial services without our prior written consent.
- 6.4 The delivery time stated in our order is binding.
- 6.5 Decisive for the supplier's compliance with the delivery date shall be the receipt of the goods at the agreed delivery address. If, in exceptional cases, delivery to the shipping address is not included in the purchase price, the supplier shall make the goods available for timely collection, taking into account the usual time required for loading and dispatch.
- 6.6 For the occurrence of default in acceptance on our part, the statutory provisions shall apply. However, the supplier must expressly offer the service even if a specific or definable calendar date has been agreed for an action or assistance on our part.

### 7. Default in Delivery, Transfer of Risk

- 7.1 The supplier shall promptly inform us in writing as soon as circumstances arise or become apparent according to which the delivery date cannot be met. In doing so, the supplier shall identify the reason for and the probable duration of the delay.
- 7.2 If, on the basis of the contract, the expiry date of the delivery deadline can be determined, the supplier is in default, upon the expiry of such date without us issuing a reminder.
- 7.3 In case of delay in delivery, we shall be entitled to all claims provided by law, including (after the expiry of a cure period to no avail) the right to rescind the contract and to claim damages in lieu of performance (*Schadenersatz statt der Leistung*).
- 7.4 In case of delay in delivery, we shall be entitled, following a prior written warning, to charge a penalty for the delay in an amount of 0.1% per calendar day of the delay but, in no event, more than a total of 5% of the total value of the order amount. The contractual penalty shall be deducted from the total amount of default damages which has to be compensated by the supplier. The contractual penalty may be claimed until issuance of the final invoice, even if we do not expressly reserve the right to do so upon acceptance.
- 7.5 The risk of accidental loss of or damage to the goods, even if shipping is included, shall pass to us not earlier than handover of the goods to us at the agreed shipping address.

### 8. Quality and Documentation

- Unless the parties have entered into a separate quality assurance agreement, the following shall apply:
- 8.1 The supplier shall set up and maintain a documented quality assurance system which is suitable in terms of type and scope and which is in accordance with state-of-the-art technology. The supplier shall keep records, in particular with regard to the quality inspections, and shall make these available to us upon request. The period for keeping these records shall be 10 years. We or representatives acting on our behalf shall be entitled to carry out quality audits to assess the effectiveness of the supplier's quality assurance system.
  - 8.2 The supplier shall be obliged to select its suppliers and subcontractors in accordance with the requirements specified in clause 8.1 of these General Terms and Conditions of Purchase and shall oblige them accordingly.
  - 8.3 Insofar as we have provided the supplier with material descriptions, formulas or other technical descriptions with respect to a purchase order or within our ongoing business relationship, these shall also become part of the contract even if they are not expressly referred to in the purchase order or the order confirmation.
  - 8.4 The supplier shall advise us on potential applications for and risks of the goods delivered by him and shall, inform us at its own initiative in writing about any concerns he may have in respect of our intended use of the goods, provided that he is or should be aware of our intended use.
  - 8.5 The supplier shall promptly inform us in writing about any modifications of the raw materials, manufacturing methods and the like used by him as far as they may lead to a change in the properties of his goods. This shall apply as well if the modification concerns properties that are not expressly agreed in the contract or defined by technical standards.

### 9. Product Liability and Warranty

- 9.1 In the event of defects, we shall be entitled to raise all statutory claims without restrictions. In particular, we shall be entitled to demand subsequent performance from the supplier and to require the supplier, at our discretion, to either remedy the defect (repair) or deliver a non-defective replacement item (replacement). Subsequent performance shall also include the removal of the defective goods and their reinstallation, provided that the goods have been installed in or attached to another item in accordance with their nature and intended use. Our statutory claims for reimbursement of corresponding expenses shall remain unaffected.
- 9.2 The supplier shall be responsible for ensuring that its goods meet the agreed specification and are suitable for the intended use. At least those specifications of goods shall be deemed to constitute an agreed specification which form part of the respective contract – especially if they are listed in or incorporated by reference into our purchase order – or which are incorporated into the respective contract in the same way as these General Terms and Conditions of Purchase.
- 9.3 We do not waive our warranty claims by accepting or approving samples or specimens.
- 9.4 The supplier shall bear any and all costs incurred as the result of a defect, including but not limited to contractual costs, all costs incurred for inspection and determination of the defect, assembly, disassembly, dispatch and packaging.

- 9.5 If the supplier does not comply with its obligation for subsequent performance pursuant to clause 9.1 of these General Terms and Conditions of Purchase within a reasonable cure period specified by us, we shall be entitled to remedy the defects ourselves at the supplier's costs or, in case this is not possible, to purchase them from another supplier at the supplier's costs. We are not required to set a reasonable cure period if subsequent performance has failed or would be unreasonable for us (e.g. due to a particular urgency, a health and safety hazard or in case of an impending occurrence of disproportionate damages). We shall promptly (if possible in advance) notify the supplier of such circumstances.
- 9.6 By way of derogation from Sec. 438 para. 1 No. 3 BGB, the general limitation period for warranty claims shall be 3 years starting with the transfer of risk. If acceptance has been agreed, the limitation period shall start upon acceptance.
- 9.7 The supplier shall be responsible for all personal injury claims or claims for damage to property asserted by any third party which have been caused by defective goods delivered by the supplier and the supplier shall be obliged to indemnify us against such claims. If we are obliged to carry out a product recall due to a defect of the goods delivered by the supplier, the supplier shall bear any and all costs related to the product recall.
- 9.8 The supplier shall be obliged to sufficiently insure itself against the aforementioned risks by taking out a product and third party liability insurance policy and to provide us with evidence of such insurance coverage upon request.
- 10. Intellectual Property Rights**
- 10.1 The supplier shall be responsible for and ensure that the goods do not infringe any third party rights (in particular copyrights, patents or trademarks) in any Member State of the European Union or in any other country to which the products are delivered by us or by our customers with the knowledge of the supplier.
- 10.2 If any third party asserts a claim against us due to the infringement of any rights as set forth in clause 10.1 of these General Terms and Conditions of Purchase, the supplier shall indemnify us against these claims and shall reimburse us upon first written demand for necessary expenses incurred in connection with such claims. This indemnity shall not apply if the supplier proves that it neither is responsible for the infringement nor could have been aware of the infringement at the time of delivery notwithstanding the application of the standard of care of a reasonable businessperson.
- 10.3 Our further rights due to defects in title (*Rechtsmangel*) of the goods delivered to us shall remain unaffected.
- 11. Retention of Title**
- 11.1 If the supplier delivers products subject to retention of title we acknowledge the retention of title. Extended and expanded retention of title (*verlängerter und erweiterter Eigentumsvorbehalt*) shall be excluded. We shall be entitled to handle, process or resell the delivered goods in the ordinary course of business.
- 11.2 We reserve our title to the Confidential Information provided by us to the supplier (such as plans, drawings, tools, models or additives, reinforcing and filling materials, etc.).
- 12. Miscellaneous**
- 12.1 The agreements and/or these General Terms and Conditions of Purchase and the entire relationship between us and the supplier shall exclusively be governed by the laws of the Federal Republic of Germany but excluding all references to other jurisdictions and international agreements. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 12.2 If one or more provisions of these General Terms and Conditions of Purchase turn out to be invalid or become invalid in whole or in part, the validity of the remaining provisions shall remain unaffected. The wholly or partially invalid provision shall be replaced by such valid provision which comes closest to the economic purpose of the invalid provision. The same shall apply in the event of an omission.
- 12.3 Exclusive venue for any and all disputes arising from or in connection with the contracts entered into between us and the supplier and/or these General Terms and Conditions of Purchase shall be Rottweil, Germany. We shall be entitled, however, to take legal actions against the supplier before any other competent court.
- Notice:**  
The supplier acknowledges that we store data deriving from the contractual relationship for the purpose of data processing in accordance with the legal requirements (Art. 6 Sec. 1 lit. b) GDPR) and we reserve the right to transmit the data to third parties (e.g. insurances) to the extent which is necessary to fulfil the contract.