

# TERMS AND CONDITIONS OF PURCHASE

valid from 15<sup>th</sup> March 2018

## 1. Scope of application

- 1.1 Our Terms and Conditions of Purchase shall apply exclusively; we do not recognise any conditions of the Supplier that are conflicting with or deviating from these conditions, except in cases where we have expressly agreed in writing that they shall apply. Our Terms and Conditions of Purchase shall apply even if we accept without reservation the delivery of goods from the Supplier in knowledge of conditions of the Supplier that are in conflict with or deviate from our Terms and Conditions of Purchase.
- 1.2 Our Terms and Conditions of Purchase shall apply only in our relationships with other businesses.
- 1.3 Our Terms and Conditions of Purchase shall apply also to all future transactions with the Supplier even though no further reference to our Terms and Conditions is made.

## 2. Quotations, Conclusion and Amendment of Contract

- 2.1 Quotations and cost estimates shall be binding and not subject to compensation, unless deviating terms were expressly agreed on. Provided that this is not agreed upon in individual cases, we shall not accept any costs and shall not pay any compensation for visits planning and preparatory efforts which the Supplier renders in connection with the submission of offers.
- 2.2 Verbal agreements of any kind – including subsequent amendments – are only binding if they are confirmed as such in writing by us.
- 2.3 Our purchase orders or frame order are generated and transferred electronically and are therefore also valid without signature. The Supplier must confirm our orders within 2 working days.

## 3. Deliveries

- 3.1 The date of delivery given in the purchase order shall be binding. The Supplier must inform us in writing without undue delay if any circumstances arise or are discernible to him that make it impossible for the agreed delivery date to be met.
- 3.2 If not agreed, partial deliveries and partial performance are excluded.
- 3.3 The Supplier shall notify us of the delivery of any quantities in excess of 10 pallets at least one day before the delivery date. Consignment documents such as delivery or packing notes must be enclosed with the consignment and their content must be in accord with that of the shipping documents. The delivery note must contain the order number and details of the consignment. The goods to be delivered must be properly packed and be marked in accordance with the applicable regulations.
- 3.4 Upon our request the Supplier is obliged to present to us certificates of origin.
- 3.5 Except as otherwise agreed, all deliveries are to be made DDP ("Incoterms 2010") Falkensee warehouse (c/o eCom Logistik GmbH & Co. KG, Strasse der Einheit 142-148, D-14612 Falkensee) or Voehrum works (Pelikanstrasse 11, D-31228 Peine) during our usual business hours.
- 3.6 Unless otherwise agreed, our valid terms and specifications of delivery and packaging are applicable.
- 3.7 In the event of late delivery, we shall be entitled to advance all claims provided for by law. In particular we shall be entitled, once an appropriate period has elapsed without avail, to demand compensation in lieu of performance and rescission of the contract.
- 3.8 In the event of late delivery, the Supplier shall be obliged to pay the following penalties: 0.2 % of the net order value per working day overdue. This shall not apply, if the Supplier is not responsible for the late delivery (e.g. force majeure). The burden of proof therefore is incumbent to the Supplier. In each individual case of late delivery the maximum penalty shall be limited to 5 % of the net order value.
- 3.9 We are entitled to claim the penalty in addition to performance. We are obliged to inform the Supplier within 10 business days from the receipt of the late delivery in the case that we reserve the right to claim penalty, with further claims and rights reserved. In particular, we are entitled to receive compensation from the Supplier for damages in excess of the forfeited penalty.

## 4. Prices and terms of payment

- 4.1 The price given in the purchase order or frame order shall be binding; in the case of domestic suppliers, it is exclusive of statutory value-added tax. Unless otherwise agreed, the price shall be DDP ("Incoterms 2010") Falkensee warehouse or Voehrum works, including packaging, freight and insurance.
- 4.2 Subject to a deviating agreement the agreed prices are valid for a listing period of one calendar year.

- 4.3 The Supplier shall present an invoice for every order within 5 days following the delivery of the goods ordered. We are only able to process invoices if, in accordance with the conditions attached to our order, they include the order number shown in the order and are addressed to the correct recipient; the Supplier shall be liable for any consequences arising out of the failure to observe this obligation, except in the case that he is able to demonstrate that they are not his responsibility.

- 4.4 Settlement of an invoice does not represent waiver of any claims for defect in respect of the goods supplied, and shall be without prejudice to any such later claim.

- 4.5 Unless otherwise agreed, we settle invoices with 3 % discount within 90 days, or with 2 % within 100 days, or 120 days net, calculated from the date of delivery and receipt of the invoice.

## 5. Force Majeure

Force majeure, labour disputes, disruptions of operations that are not our fault, civil disturbance, official measures and other events beyond our control shall entitle us - without prejudice to any other rights we have – to postpone fulfilment of the obligation to accept delivery for the duration of the disruption or cancel the Agreement in whole or in part, provided they are not of insignificant duration and result in a substantial reduction of our demand.

## 6. Claims for defect

- 6.1 The Supplier warrants that the goods supplied fulfil the specifications agreed in the order, are manufactured from the agreed material, are free of material, manufacturing and/or design defects in accordance with the latest state of technology and of any defects that render the goods unsuitable or less suitable for their normal or contractually agreed use or render the goods supplied worthless or reduce their value, and that the goods comply with all the statutory provisions applicable in the Member States of the EU and/or EFTA and/or the United Kingdom.
- 6.2 We undertake to examine the goods for any deviations in quality or quantity within an appropriate period of time. We shall be obliged to notify the Supplier of any apparent defect within 7 working days – in the case of machinery or machine parts within 14 working days – after receipt of the goods, and of any other defects immediately after their discovery. In cases where the above mentioned periods are met, objections due to a late notice of defects are excluded.
- 6.3 We shall be entitled to pursue our statutory claims for defect without diminution; we shall be entitled in each case to require the Supplier, at our discretion, to remedy the defect or to supply replacement goods. In such a case, the Supplier shall be obliged to bear all the costs of remedying the defect or supplying replacement goods. We expressly reserve the right to claim compensation, and in particular to claim compensation in lieu of performance.
- 6.4 We shall be entitled to remedy the defect ourselves at the Supplier's expense where delay could be dangerous or in cases of particular urgency.
- 6.5 All claims shall be subject to a limitation of 24 months from the passage of risk.
- 6.6 The notification of any defect shall interrupt all periods of limitation until the defect has been remedied.

## 7. Declaration of Conformity

The essential basis of our co-operation with the Supplier is our respective current Declaration of conformity. The Supplier is responsible that the Contract Products correspond to the EU laws and standards listed in the respective Declaration of Conformity as far as they are applicable to the Contract Products.

## 8. Product liability

- 8.1 Where the Supplier bears responsibility for any loss or damage arising in relation to a product, he shall be obliged to indemnify us at first request against any claims for compensation raised by third parties, to the extent that the cause lies within his area of control and organisation and he himself is liable in the external relationship.
- 8.2 As a part of his liability for loss or damage within the scope of Clause 8.1 above, the Supplier shall also be obliged to reimburse any expenses arising out of or incurred in connection with any recall action carried out by us. We shall inform the Supplier – as far as is possible and reasonable – of the nature and extent of any recall measures to be implemented and give him the opportunity to state his position. This shall be without prejudice to any other statutory claims.

8.3 The Supplier undertakes to maintain product liability insurance providing cover of Euro 5 million per event as a combined limit of bodily injury or damage to property; this shall be without prejudice to any claims for further compensation which we may be entitled to pursue.

## **9. Intellectual property rights**

9.1 The Supplier warrants that no trademarks, patents, copyrights or other intellectual property rights of third parties are infringed in connection with the goods delivered by him.

9.2 Should any claims be made upon us by third parties in relation to the infringement of intellectual property rights, the Supplier undertakes to indemnify us against such claims upon first written demand.

9.3 The Supplier's duty of indemnity shall cover all costs necessarily incurred by us as a result of or in connection with claims by any third party.

9.4 The Supplier is not entitled to use information about an intended or existing contractual cooperation with us for reference or marketing purposes without our written consent.

## **10. Reservation of title of the Supplier**

We do not recognise any extended or prolonged reservation of title. Simple reservation of title shall be recognised by us only to the extent that it permits us to sell onwards, process or commingle the goods supplied in the ordinary course of our business.

## **11. Models, drawings, moulds, provided parts etc.**

11.1 Any models, drawings, data sheets, printer's copy, offset transparencies, tools, gauges, dies, moulds etc. provided by us shall remain our property. The Supplier shall keep them carefully, maintain them free of charge and clearly marked in a separate stock, replace them if necessary and return them to us in usable condition after use. Neither they nor the goods manufactured with or according to them may without our written permission be either made available to third parties or used on behalf of such third parties or for the Supplier's own purposes. This obligation shall remain in force after the fulfilment of this Agreement; it shall be extinguished when and to the extent that the manufacturing expertise contained in the documents furnished comes into the public domain. In the event of non-compliance the Supplier shall be liable to pay compensation.

11.2 Should the Supplier experience production difficulties, and in particular if the Supplier fails to meet his contractual obligations or ceases production, we shall be entitled to require him to furnish us, against appropriate consideration, with any moulds paid for in whole or in part by him. Moulds that are no longer required may be destroyed only with our written approval.

11.3 If we provide the Supplier with any parts, we reserve our title thereto. Any processing or change in the form of the goods effected by the Supplier shall be deemed to have been undertaken on our behalf. If such goods subject to our reservation of title are processed together with other items that are not our property, we shall thereby attain to co-ownership of any new item in the ratio of the value of our goods to that of other items processed at the time of such processing.

11.4 If the goods provided by us are inseparably mixed with other items that are not our property, we shall thereby acquire co-ownership of any new item in the ratio of the value of the goods subject to reservation of title to that of other commingled items at the time of commingling. If such mixing is effected in such a way that the Supplier's goods are to be regarded as the major item, it shall be deemed to have been agreed that the Supplier transfers to us a proportionate share of co-ownership; the Supplier shall have custody of the goods, whether in sole ownership or co-ownership, on our behalf.

11.5 The Supplier must carefully examine, mark and store goods provided by us. We must be informed immediately about any deviation (e.g. in quantity or quality). The Supplier is liable for any loss or damage resulting from negligence or intent of the Supplier.

11.6 To the extent that the collateral rights accruing to us under Clauses 11.3 and/or 11.4 above exceed by more than 10 % the purchase price of all our goods that are subject to reservation of title and have not yet been paid for, we undertake, at the request of the Supplier, to release collateral rights of our own choice.

## **12. Confidentiality**

12.1 The Supplier is required to keep all illustrations, drawings calculations as well as miscellaneous documents and information (e.g. confidential information concerning operational and commercial matters) in strict confidence. Only with our explicit written consent may the above be disclosed to third parties, especially sub-contractors.

12.2 The obligation of secrecy is also binding after execution of this agreement; it expires only when the Supplier can prove that the confidential information at the time it was provided, was already known to him or was public knowledge or, it became generally known at a later date without his fault.

12.3 In particular, the presentation of Contract Products at trade fairs as well as the illustration of the Contract Products and/or the mention of us as client for reference purposes is allowed only in individual cases after our prior written consent.

## **13. Miscellaneous**

13.1 Neither party may assign its contractual rights and obligations without the prior agreement of the other party.

13.2 The Supplier shall have rights of set-off or retention only in respect of claims that are undisputed or have been finally established by due process of law.

## **14. Place of performance and jurisdiction; applicable law**

14.1 The exclusive place of jurisdiction for any disputes arising out of or in connection with this contractual relationship shall be our place of business. Notwithstanding this provision on place of jurisdiction, we shall also be entitled to initiate legal action against the Supplier before any other court that has jurisdiction under applicable law.

14.2 Except where otherwise stated in the order, place of performance shall be our place of business.

14.3 German law shall apply, to the exclusion of any other conflicting law and of UN Law of Purchase.

14.4 Should individual provisions of these Terms and Conditions of Purchase or of the contract entered into between the Supplier and us be or become fully or partially invalid, this shall not affect the validity of the other provisions.

**Pelikan Vertriebsgesellschaft mbH & Co. KG**