

## **Wohlrab Aufdampftechnik GmbH – General Terms and Conditions of Purchase**

### **1. General**

- 1.1. The following General Terms and Conditions of Purchase shall govern the legal relations between us and the contractor. They are also valid for all future business relations even if they are not agreed explicitly each time. With the acceptance of our order, but no later than at the time of dispatch of the goods, our conditions shall be deemed accepted.
- 1.2. Other terms and conditions of the contractor, especially general terms and conditions of sale, delivery and payment, shall only be recognised if they agree with our general terms and conditions or form the basis of particular contracts or services. Acknowledgements by the contractor referring to his own terms and conditions, including terms and conditions of sale and delivery, are hereby rejected.
- 1.3. Amendments and additions as well as supplementary agreements between us and the contractor for the purposes of fulfilling our order must be confirmed by us in writing if they are to be valid. This also applies to the cancellation of the requirement for written form itself. Orders and call-offs can also be made by data transmission, fax or e-mail. Deliveries and services provided without a written order from ourselves shall not be recognised or paid for.

### **2. Offers and conclusion of contracts**

- 2.1. We shall not reimburse the contractor for visits or the preparation of offers, projects, drafts or trial deliveries unless explicitly agreed otherwise.
- 2.2. Insofar as our order constitutes an offer as defined in Section 145 of the German Civil Code, that offer shall be valid for one week calculated from its receipt by the contractor. The contractor is obliged to confirm our orders in writing as soon as he receives them. They shall always be considered accepted unless rejected within three days of receipt. If we do not receive written confirmation within a week, we shall be entitled to cancel our order without further notice.
- 2.3. Any drawings, calculations, descriptions or other documents supplied by us shall be binding on the contractor. The contractor should check these to ensure their completeness and accuracy, and immediately inform us in writing if this is not the case. The contractor shall remain solely responsible for any drawings, plans and calculations he produces even if we approve them.

### **3. Prices**

- 3.1. The price quoted in the order is binding. Unless otherwise agreed in writing, the price shall include free delivery, including packaging and goods in transit insurance. Returning the packaging shall be subject to special agreement. Prices do not include VAT, which shall be displayed separately.
- 3.2. The contractor shall request approval in good time before delivery of any prices that are not specified and mentioned in the order.

### **4. Duty to co-operate, secrecy, property rights, and declaration of security (AEO-C)**

- 4.1. The contractor must inform us at least six months in advance of any modifications he proposes to make to materials, components or production processes. Such modifications require our explicit written agreement.

- 4.2. The contractor is obliged to keep stocks of replacement parts for the duration of the normal lifespan of the delivered goods. In the case of a continued business relationship, the contractor is obliged to inform us immediately of any plan to discontinue production of such parts and to guarantee their delivery for at least another six months at reasonable prices.
- 4.3. We retain ownership and copyright of any illustrations, drawings, calculations, files, software, etc. Such material may not be made available to third parties without our explicit written agreement. It may only be used in connection with delivery and fulfilment of our orders and must be returned to us as soon as the order is completed. There shall be no right of retention. The contractor is obliged to protect any illustrations, drawings, calculations, files, software, etc. that we send him from unauthorised third-party use. Such material may only be disclosed to third parties if we have given our explicit written agreement. The contractor is obliged to use such material solely for the production of the goods we have ordered. This obligation remains valid after the completion of the orders and will expire if and as far as the production know-how incorporated in the illustrations, drawings, calculations, etc. supplied by us becomes common knowledge. The contractor is responsible for ensuring that his employees and suppliers comply with this obligation.
- 4.4. The contractor guarantees that no industrial property rights, copyright or other such third-party rights will be infringed in connection with his deliveries and services. Should a claim be asserted by third parties as a result of such an infringement, the contractor shall indemnify us from all such claims on our first written demand. The contractor's obligation to indemnify us shall apply to all costs that we may incur as a result of, or in connection with, any claim from a third party. The limitation period is 10 years, calculated as of the conclusion of the contract.
- 4.5. In September 2011 we were recognised by Hauptzollamt Nürnberg as an "authorised economic operator" (AEO-C – customs simplification). AEO is a concept that aims at balancing increased security requirements with facilitations for compliant traders. It constitutes a main element of the Customs Security Program of the European Union. The aim is to secure the international supply chain from the producer to the end consumer. Our customer therefore agrees to produce, store, process, treat and load in secured premises and at secured depots parts he has delivered or handed over to us for surface finishing and to protect such materials against non-authorised access during production, storage, processing, treatment and transport. Our customer gives an undertaking that the personnel entrusted with producing, storing, processing/treating, loading, transporting and taking delivery of the materials will be reliable. In addition, the customer gives an assurance that those acting on his behalf shall be aware that they also need to ensure the integrity of the aforementioned supply chain. The customer is obliged not to pass to any unauthorised third parties any data acquired as a result of the business relationship and to store such data securely to prevent its being accessed and misused by unauthorised persons.

## **5. Packaging, delivery, delivery lead times, dispatch, passing of risk, and acceptance**

- 5.1. The content, type, scope and features of the goods and services provided shall be defined exclusively by our order.
- 5.2. The goods and services provided by the contractor shall comply with the legal requirements in force at the time of delivery, accident prevention regulations, any relevant regulations, directives and standards of the authorities and trade associations, and the latest technological standards.
- 5.3. The delivery deadline stipulated in the order is binding. Unless otherwise agreed in writing, when the goods are received shall determine whether the delivery deadline has been met. The contractor may only supply goods and services before this if we have given our written agreement.
- 5.4. Supplies of goods and services either in excess of or less than the contractual amount require our prior written agreement.

- 5.5. The contractor is obliged to inform us immediately if a situation arises, or looks likely to arise, where the delivery deadline cannot be met. However, informing us in this way shall not release the contractor from his liability for any losses resulting from delivery delays in accordance with Sections 5.6. and 5.7. below.
- 5.6. We shall be entitled to assert our statutory rights in the event of such delays. In particular, we shall be entitled to demand compensation in lieu of performance after the fruitless expiration of a reasonable period and to withdraw from the contract.
- 5.7. In the event of delivery delays, we reserve the right to impose a contractual penalty of 0.2% of the net total order value for each day of delay. However, we may only demand at most 5% of the net total order value. We reserve the right to make additional statutory claims. As part of this process any forfeited contractual penalty will be added to the alleged damages. Reservation of the assertion of the contractual penalty does not have to be made before risk is transferred. We can do this at any time until the final payment is made.
- 5.8. In the case of goods not involving assembly or installation, transfer of risk shall occur when the goods arrive at the specified delivery point. In the case of goods involving assembly or installation, transfer of risk shall take place when the delivered goods or services have been accepted by us. Shipping shall in all cases be at the supplier's risk even if the parties have agreed to share the costs.

## **6. Payment**

- 6.1. Auditable invoices should be sent to the agreed billing address, taking care that they have been prepared in accordance with the latest accounting standards and tax regulations. We can only process invoices if, as requested in our order, these show the order number stated therein. For any and all consequences arising from non-compliance with this requirement the contractor is responsible, unless he can demonstrate that he is not responsible for this. Incorrect invoices shall only be deemed accepted once they have been corrected.
- 6.2. Unless otherwise agreed, invoices shall be paid (net) within 30 days of delivery/receipt of goods and receipt of a correctly completed invoice. Provided a cash discount has been agreed, this shall also be permitted if we offset or withhold an appropriate amount of payment because of defects. In the latter case, the date on which payment is due is calculated from the day on which the defects are remedied in full. The contractor may only exercise his right of retention if his counterclaim is based on the same contractual relationship or is legally binding, undisputed, or acknowledged by us.
- 6.3. Payment shall not be deemed to indicate correctness of the invoice or compliance of the goods/services with the contract. We shall be entitled to claim statutory set-off and retention rights.

## **7. Checking for defects, liability for defects, and product liability**

- 7.1. As far as possible in the normal course of business and only if no quality control agreements exist, we are obliged to inspect the goods for discrepancies in quality or quantity and to report any defects as soon as they are discovered. In this respect the supplier waives the right to object on the grounds of a late complaint regarding a defect.
- 7.2. We shall have an unrestricted right to make statutory claims for defects and, in any case, shall be entitled to require the contractor to either correct the defects or supply a new item. The right of compensation, especially the right of compensation instead of performance, is explicitly reserved.
- 7.3. The contractor shall bear all expenses arising in connection with his liability for defects. This applies particularly to claims for compensation by our customers for the cost of transport, travel, labour, and materials arising from a faulty delivery.

- 7.4. We are entitled to remedy the defects ourselves at the contractor's expense if there is a risk of delay or if the matter is particularly urgent.
- 7.5. Warranty claims shall become statute-barred 36 months after the day of passing of risk. For parts repaired or redelivered within the limitation period of our warranty claims, the limitation period shall begin anew upon completion of the subsequent performance. If a defect appears within six months of the date on which risk passed, it is presumed that the goods were already defective when risk passed.
- 7.6. If the contractor is responsible for product damage, he shall be obliged to release us from third-party damage compensation claims at our initial request to the extent that the cause lay within his domain of authority and he is personally liable to third parties.
- 7.7. Under his liability for damages as defined under Section 7.6., the contractor is also obliged to reimburse us for any expenses arising either from or in connection with any product recall. As far as possible, we shall inform the contractor of the content and scope of the recall measures and give him an opportunity to comment on them. Other statutory rights shall remain unaffected.
- 7.8. The contractor shall maintain product liability insurance with a flat rate sum insured of 5 million Euro per personal injury claim/property claim. If we are entitled to further claims for damages, these shall remain unaffected.

## **8. Reservation of title, tools, and moulds**

- 8.1. We retain title to all goods provided by us to the contractor. The contractor undertakes processing or transformation on our behalf. If the goods supplied under reservation of title are mixed during processing with other goods not belonging to us, then we shall acquire co-ownership of the new item created in the ratio of the value of the goods supplied under reservation of title (final invoice value including VAT) to the value of the other goods processed at the time of processing. The same applies should we lose title by way of mixing or commingling. To the extent our collateral rights exceed the purchase price of all our still unpaid goods subject to retention of title by more than 10%, we are, at the request of the contractor, obliged to release the collateral rights at our discretion.
- 8.2. We retain title to means of production (such as tools, moulds, models, samples, and templates) which we have made available to the contractor. Means of production produced by the contractor using our documentation or paid for, directly or indirectly, by us become our property. The contractor shall safeguard these means of production free of charge and with the due care and diligence of a prudent businessman on our behalf. The contractor is obliged to use these means of production solely for the production of the goods we have ordered. Using these means of production for deliveries to third parties, giving them to third parties, or copying them for the benefit of third parties is only permitted with our explicit written consent. The contractor is obliged to insure these means of production at replacement value against fire damage, water damage and theft. At the same time, the contractor hereby assigns to us all claims for compensation from this insurance. We hereby accept such assignment. The contractor shall be under a duty to carry out on our means of production any servicing or inspections that may prove necessary, as well as all maintenance and repairs, in good time and at his own expense. The contractor shall inform us immediately of any breakdown. If he culpably neglects to do so, claims for damages shall remain unaffected.

## **9. Place of performance, jurisdiction, governing law, and severability clause**

- 9.1. For all present and future claims arising from business relations with us, including claims based on bills of exchange and cheques, the sole place of jurisdiction for both parties is our registered office.

- 9.2. The laws of the Federal Republic of Germany are valid to the exclusion of foreign law and the Uniform Law on the International Sale of Goods. The German version of a contract shall prevail.
- 9.3. Should one provision in these terms be ineffective or unenforceable for whatever reason, this shall not affect the validity of the remaining provisions or the underlying contract. The parties are then obliged to replace the ineffective provision with a provision that most closely reflects the original intent.