

# GENERAL PURCHASING TERMS AND CONDITIONS

## AuE Kassel GmbH

### I. General Provisions

#### 1. Scope

- 1.1. These Terms and Conditions of Purchase shall exclusively apply to orders of AuE Kassel GmbH (hereinafter referred to as "Principal"). The confirmation or performance of the order by the supplier shall be deemed an acceptance of these Terms and Conditions of Purchase. The Principal does not accept any deviating or additional terms and conditions of the supplier, except if confirmed in writing, even if the Principal does not explicitly object to them.
- 1.2. These Terms and Conditions shall only apply vis-à-vis entrepreneurs within the meaning of Sec. 14 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) as well as legal entities under public law and funds under public law.
- 1.3. These Terms and Conditions shall also apply to future transactions with the supplier within the framework of the ongoing business relationship even if they are not separately agreed upon again.

#### 2. Order and Order Confirmation

- 2.1. Orders of the Principal are only valid if they are made in writing. Oral orders require the written confirmation by the Principal (text form is sufficient), unless the Principal accepts deliveries based on oral orders without reservation. Side agreements are to be made in writing. If the offers of the Principal do not explicitly state a commitment period, the Principal shall be bound to an offer for one week from the date of the offer. The receipt of the declaration of acceptance by the Principal shall be decisive as regards a timely acceptance.
- 2.2. The supplier shall immediately confirm orders of the Principal in writing; the reference number shall be included in the confirmation.
- 2.3. The Principal retains title and copyright in any orders and assignments placed by the Principal as well as in any drawings, images, calculations, descriptions and other documents provided to the supplier. The supplier shall not make these available to third parties nor use or reproduce them itself or via third parties without the Principal's express consent. Upon request of the Principal, the supplier shall fully return these documents to the Principal if the supplier no longer requires them in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. In this case, the supplier shall destroy any copies it made of these documents, with the exception of the storage within the framework of the statutory record retention obligations as well as the storage of data for backup purposes within the framework of the usual data protection.

#### 3. Delivery Dates and Contractual Penalties

- 3.1. Delivery dates and periods are binding.
- 3.2. The Principal is entitled to change time and place of the delivery as well as the type of packaging at any time by way of a written notification, observing a notice period of at least seven calendar days before the agreed delivery date. The same shall apply to amendments of product specifications, provided that these can be implemented within the framework of the normal production process of the supplier without

considerable additional efforts; in such cases, however, the notice period pursuant to the above sentence shall be at least 14 calendar days. The Principal shall reimburse the supplier for any proven and reasonable additional costs incurred due to the amendment. If such amendments cause delays in delivery which cannot be prevented with reasonable effort in the normal manufacturing and business operation of the supplier, the originally agreed date of delivery shall be postponed accordingly. After a careful assessment, the supplier shall notify the Principal of any additional costs or delays in delivery to be expected in writing and in due time before the date of delivery, at least, however, within three business days after the receipt of the notification of the Principal pursuant to sent. 1.

- 3.3. If a contractual penalty is agreed in case of a delayed delivery, the Principal's right to withdraw from the contract and to assert additional claims, such as additional claims for damages, shall remain unaffected.
- 3.4. In case of delays in delivery, the Principal is in any case entitled, after a prior written warning letter to the supplier, to request a contractual penalty in the amount of 0.5% for each commenced week of delay, as a maximum, however, 5% of the respective order value. The contractual penalty is to be set off against the damage caused by default to be compensated by the supplier.
- 3.5. The Principal is entitled to request an agreed contractual penalty up until the final payment even if the delivery or performance was accepted without any prior special reserve.
- 3.6. If it is foreseeable that the supplier cannot comply with delivery dates, in part or in whole, the supplier shall immediately inform the Principal accordingly stating the reason therefor and the expected duration of the delay. In case of a culpable breach of this duty, the supplier shall be liable for the resulting damage.

#### 4. Shipping Regulations and Dispatch Notes

- 4.1. The reference number specified by the Principal is to be indicated in the shipping documents. Immediately after the dispatch, the Principal is to be provided with the dispatch note in duplicate. The dispatch note has to contain the quantity, weight (gross and net), type and packaging of the goods and the item.
- 4.2. If, for reasons for which the supplier is responsible, the requested and required shipping documents for a delivery are not provided in due time or do not contain essential and required information, the goods will remain in storage at the expense and risk of the supplier until the shipping documents and/or the complete shipping documents have been provided.

#### 5. Passing of Risk / Prices

- 5.1. Due to the lack of an explicitly deviating agreement, CPT (carriage paid to indicated destination) (INCOTERMS 2000) shall apply as regards delivery terms. The prices specified by the supplier and the agreed prices are also subject to CPT and include all ancillary costs, such as customs duties.
- 5.2. The risk of accidental loss or accidental deterioration shall be borne by the supplier until the passing of risk (delivery or acceptance, provided an acceptance is prescribed by law or was agreed upon). This shall also apply if the shipment has already reached the agreed place of delivery.

## 6. Acceptance and Inspection of the Goods

- 6.1. Events of force majeure and other events for which the Principal is not responsible and which were unforeseeable, such as strikes, lockouts or natural disasters, entitle the Principal to delay the acceptance accordingly.
- 6.2. In case of excess deliveries which exceed the quantities customary in the trade, the Principal reserves the right to return the goods delivered in excess at the supplier's expense.
- 6.3. Any inspection obligations of the Principal are limited to the immediate inspection of the delivery as to whether it corresponds to the quantity and type ordered as well as to any transport damage and defects visible on the outside. If the Principal is obliged to make an immediate complaint, this complaint shall in any case be deemed in due time if made within ten business days after the passing of risk or receipt (whichever occurs later) in case of visible defects and within ten business days after their detection in case of hidden defects. If a longer period is required for the inspection of the shipment, the longer period shall be applicable.
- 6.4. By accepting or acknowledging samples or specimen provided, the Principal does not waive any warranty claims.

## 7. Payment and Invoices

- 7.1. The price stipulated in the order shall be binding.
- 7.2. In the absence of a written agreement stating otherwise, the price includes the delivery and transport to the delivery address stipulated in the contract, including packaging.
- 7.3. Unless otherwise agreed, payment shall be effected, at the Principal's discretion, either within ten days with a discount for prompt payment of 3%, within 14 days with a discount for prompt payment of 2% or within 30 days as from the receipt of the invoice and complete performance. The occurrence of default of payment of the Principal at an earlier point shall be excluded. In case of a specified period, the Principal shall only be in default of payment upon a prior written warning of the supplier.
- 7.4. The order details of the Principal are to be indicated in the invoices of the supplier which are then to be posted in duplicate. A copy of the delivery note is to be enclosed. The Principal is entitled to effect payment by bill of exchange or cheque. In this case, discount charges and taxes shall be borne by the Principal.
- 7.5. The date of receipt of the invoice shall be the date of receipt at the invoice address specifically indicated in the order. Payment periods commence upon receipt of the invoice by the Principal, on no account, however, before the agreed delivery date.
- 7.6. Any down or interim payments do not constitute an acknowledgement of the performance being in compliance with the contract or of the fulfilment of performance by the supplier.

## 8. Warranty

- 8.1. The supplier undertakes to comply with the recognised technical standards and in particular with any regulations, norms and directives issued by the government, supervisory authorities, employers' liability insurance associations and the German Association for Electrical, Electronic and Information Technology (*Verband der Elektrotechnik Elektronik Informationstechnik e.V., VDE*) with regard to performance, accident prevention and environmental protection in Germany or, if a different country of

destination was specified vis-à-vis the supplier, in that respective country of destination. This shall also apply to export regulations. The norms and directives mentioned by the Principal shall apply in their most recent version at the time of the delivery.

- 8.2. The Principal is entitled to the full statutory warranty rights (claims for defects). The Principal in particular opposes any and all restrictions of the statutory warranty rights, including any related claims for damages. This shall in particular apply to the Principal's rights in case of a recourse due to consumer claims asserted pursuant to Sec. 478 BGB.
- 8.3. Unless otherwise agreed, the limitation period for claims for defects shall be 36 months after the delivery or, if acceptance is prescribed by law or was expressly agreed upon, after acceptance. If statutory deadlines are longer, such statutory deadlines shall apply. Clause 8.5 shall apply to the limitation period of claims for defects of title.
- 8.4. In order to prevent imminent disproportionate damage, the Principal is also entitled to remove defects itself at the supplier's expense or to procure replacements. However, the Principal shall notify the supplier immediately, if possible prior to the performance of such measures. This shall also apply to purchase contracts.
- 8.5. The Principal's claims for defects of title shall become statute-barred two years after the Principal gained or should have gained knowledge of them, at the latest, however, five years after the passing of risk.
- 8.6. Upon receipt of the written notice of defects of the Principal by the supplier, the limitation period of warranty claims becomes suspended until the supplier rejects the claims or declares that the defect has been removed or otherwise refuses the continuation of negotiations regarding the claims. In case of replacement deliveries and removals of defects, the warranty period commences anew for replaced and improved parts, unless the Principal had to assume due to the behaviour of the supplier that the supplier had not considered itself obliged to carry out the measure but rather effected the replacement delivery or removal of defects as a gesture of goodwill or for similar reasons.

## 9. Liability for Compensation / Product Liability

- 9.1. The Principal is entitled to the full statutory compensation claims.
- 9.2. The supplier shall indemnify the Principal upon first demand against any and all compensation claims asserted against the Principal due to defects of a product delivered by the supplier, provided that the defect was caused in the sphere of control and organisation of the supplier and that the supplier itself is liable vis-à-vis third parties.
- 9.3. The supplier shall furthermore reimburse the Principal for any reasonable expenses pursuant to Secs. 683, 670 and Secs. 830, 840, 426 BGB incurred by the Principal due to an error caused by the supplier or in connection with a recall or information measure carried out by the Principal (e.g. warning notices published in the media), unless the Principal had to assume at the time when the measure was carried out and under the circumstances which were known to the Principal that such a measure was not necessary. Insofar as this is possible and reasonable, the Principal shall inform the supplier of the scope and content of the measures to be carried out and give the supplier the opportunity to provide a statement. Any other statutory claims of the Principal shall remain unaffected.
- 9.4. The supplier undertakes to maintain a product liability insurance with a reasonable coverage. Upon request of the Principal, the supplier is obliged to provide proof of

the respective insurance and payment of the corresponding premiums. If the supplier is liable vis-à-vis the Principal due to a product defect, the supplier is obliged upon first demand to assign to the Principal its insurance claims in the amount of the damage incurred by the Principal. Payments to the Principal resulting from these assigned insurance claims shall be set off against the Principal's claims against the supplier.

## **10. Industrial Property Rights**

10.1. The supplier undertakes to ensure that the object of delivery or the service is free from any rights of third parties in Germany or, if it has knowledge of a different country of destination at the time of the conclusion of the contract, in the country of destination. In case of an infringement of industrial property rights of third parties for which the supplier is responsible, the supplier is obliged to reimburse the Principal for any and all resulting damage. If the supplier cannot remove the industrial property rights of third parties within a reasonable period of time, the Principal is entitled to obtain from the owners of such property rights for a usual and reasonable consideration and at the supplier's expense in particular the permit for delivering, taking into operation, using and reselling the object of delivery or the service in the scope required for the purpose of the contract.

## **11. Confidentiality, Drawings**

11.1. The supplier is obliged to keep strictly confidential the order of the Principal and any related commercial and technical details. Any information provided by the Principal, any drawings prepared by the Principal or the supplier on the basis of this information etc. may only be used or exploited for other purposes upon the written consent of the Principal. Unless otherwise agreed, the obligations specified in this clause 11.1 shall apply permanently.

11.2. The supplier's sole responsibility for a proper performance shall not be affected by an acceptance or approval of drawings, plans and samples provided by the supplier.

## **12. Assignment, Prohibition of Set-off, Retention of Title**

12.1. Any rights under this order may only be assigned to third parties upon mutual agreement between the parties. The Principal's approval shall be deemed granted if the supplier has granted its supplier an extended retention of title within the course of ordinary business transactions.

12.2. Any tools, devices and models which the supplier is provided with or which were manufactured for contractual purposes and separately invoiced to the Principal by the supplier shall remain or become the property of the Principal. The supplier shall mark them as the property of the Principal, store them properly, protect them against damage of any type and only use them for contractual purposes. In the absence of a deviating agreement, the contractual parties shall each bear half of the costs of the maintenance and repair of such tools, devices and models. However, if such costs result from defects of objects manufactured by the supplier or from an improper use of the supplier, its employees or other vicarious agents, the costs shall exclusively be borne by the supplier. The supplier shall immediately inform the Principal of any damage to these objects which is not minor. Upon request, the supplier is obliged to return the items to the Principal in proper condition if they are no longer required for the performance of the contracts concluded with the

Principal.

12.3. Any deductions or set-offs vis-à-vis the Principal are only admissible if the claims of the supplier are undisputed or have been established with final legal effect. The same shall apply to rights of retention and rights to refuse performance.

12.4. The supplier shall only have rights of retention of title if these concern payment obligations of the Principal for the respective products with regard to which the supplier has reserved title. In particular expanded or extended retentions of title shall in particular be inadmissible.

## **13. Vicarious Agents**

13.1. The supplier shall be liable for its own deliveries and services as well as for the deliveries and services of its suppliers; in this context, the suppliers of the supplier shall be regarded as vicarious agents of the supplier.

## **14. Place of Performance, Applicable Law and Jurisdiction**

14.1. Place of performance for deliveries and services shall be the place of destination, for payments the seat of the Principal.

14.2. German law shall apply to any and all claims under and in connection with this contract. The UN Convention on the International Sale of Goods shall not apply.

14.3. Exclusive place of jurisdiction – provided that the supplier is a merchant – for any and all disputes arising directly or indirectly from this contractual relationship shall be Kassel, Germany. The Principal may also initiate an action against the supplier at its registered seat.

14.4. Should individual provisions of this Agreement be or become invalid, this shall not affect the validity of the remaining provisions.

(Last updated: July 2016)

## **II. Special Provisions for the Performance of Work**

### **1. Scope**

If the contractor performs assembly, repair or any other work (hereinafter referred to as "Work Performance") for the Principal or if the contractor produces a work (hereinafter referred to as "Work") for the Principal, the following provisions shall apply in addition to section I:

### **2. Performance of the Contract**

The contractor will render the services independently with its own employees and provide a contact person who will be available to coordinate with the Principal any questions regarding the planning and performance of the services.

For the avoidance of doubt, the Principal is not entitled to issue instructions to the employees of the contractor, except in case of imminent danger.

### **3. Remuneration, Due Date**

3.1. Unless otherwise agreed, the Principal shall pay the remuneration within ten working days from acceptance and receipt of an auditable invoice pursuant to clause I. 4.5 with an early payment discount of 3% or within thirty days net.

3.2. In case of an acceptance of early Deliveries or Services, the deadline shall commence at the earliest on the agreed date of Delivery or of Service.

3.3. The Principal is not obliged to effect part payments, unless the production of the overall Work requires

considerable advance payments of the contractor.

- 3.4. In order to secure any and all warranty claims of the Principal, the contractor shall provide a security in the amount of 5% of the respective net invoice amount ("Security Deposit"). The Principal will directly retain the Security Deposit from the payment of the remuneration. The return of the Security Deposit shall be effected upon expiry of the warranty period and written request by the contractor. The Security Deposit can be replaced by an unconditional, unlimited and absolute guarantee for warranty claims of a credit institution acknowledged in Germany.
- 3.5. If defects of the Work and/or the Work Performance are already detected at the acceptance, the Principal is entitled to retain reasonable amounts from the remuneration.

#### **4. Acceptance**

- 4.1. After the proper completion of the Work and/or the Work Performance commissioned, the contractor shall declare the readiness for acceptance and hand over to the Principal any and all documents relating to the subject-matter of the contract.
- 4.2. The Principal shall carry out the acceptance within two weeks after receipt of the declaration of readiness for acceptance. The Principal is not obliged to carry out the acceptance prior to the expiry of the contractually agreed delivery or performance date.
- 4.3. If the inspection of the Work Performance of the contractor requires a taking into operation of the systems etc. which are the subject-matter of the order for test purposes (e.g. individual tests, integration tests), the acceptance shall only take place after the successful completion of such tests.
- 4.4. The acceptance declaration shall be made in writing. The acceptance certificate is to be prepared by the contractor and to be countersigned by the Principal.
- 4.5. The use of the Work by the Principal or a third party does not constitute a formal acceptance.

#### **5. Warranty, Limitation**

- 5.1. The Principal is entitled to the statutory warranty rights.
- 5.2. Prior to the commencement of the manufacturing process, the Principal is to be notified of any amendments of the type or composition of the processed materials or of the constructive design compared with previous similar Deliveries and Services. They require the written consent of the Principal. After their receipt, the Principal is not obliged to check whether the Deliveries and Services are of the same kind.
- 5.3. Any warranty claims due to quality defects shall become statute-barred after three years from acceptance.

#### **6. Specification of the Subject-matter of the Contract by the Principal**

If the Work is manufactured pursuant to specifications, drawings or models of the Principal, the following provisions shall apply:

- 6.1. The Work as well as any special facilities used for its production, matrices or the like shall only be delivered to third parties upon the prior written consent of the Principal.
- 6.2. The provision of clause 5.1 shall also apply if the contractor procured the special facilities, matrices and the like at its own expense or if the Principal refused the acceptance of the ordered Goods due to a delayed or defective delivery or if the Principal refrains from further orders despite a proper delivery.

#### **7. Provision of Material**

- 7.1. If the Principal provides the contractor with any items (hereinafter referred to as "Material"), the Principal retains the title to such Material.
- 7.2. Any processing or alteration of the Material by the contractor shall be carried out on behalf of the Principal.
- 7.3. If the Material is processed with other objects that do not belong to the Principal, the Principal shall acquire joint ownership of the new object, with such value being the value of the Material (the purchase price plus VAT) in proportion to the other processed objects at the time of the processing.
- 7.4. If the Material is inseparably mixed with other objects that do not belong to the Principal, the Principal shall acquire joint ownership of the new object, with such value being the value of the Material (the purchase price plus VAT) in proportion to the other mixed objects at the time of the mixing. If the mixing is carried out in such a way that the contractor's part is deemed the main part of the object, the parties agree that the contractor shall grant to the Principal joint ownership on a proportional basis. The contractor shall keep the sole ownership or joint ownership on behalf of the Principal.

#### **8. Tools**

- 8.1. The Principal reserves the title to any and all tools provided by the Principal within the framework of the business relationship; the contractor shall mark such tools as the property of the Principal; the contractor is obliged to exclusively use such tools for the manufacturing of the Goods ordered by the Principal.
- 8.2. The contractor is obliged to insure the tools of the Principal at their original value against damage caused by fire, water or theft at its own expense. The contractor hereby assigns any and all compensation claims under this insurance to the Principal; the Principal accepts this assignment.
- 8.3. The contractor is obliged to carry out any necessary maintenance and inspection work as well as any preventive and corrective maintenance work for the tools of the Principal at its own expense and in due time. The contractor shall immediately inform the Principal of any incidents; if it culpably fails to do so, compensation claims of the Principal shall remain unaffected.

#### **9. Termination**

- 9.1. The Principal is entitled to terminate the contract at any time prior to the completion. In such case, the contractor is obliged to discontinue its work immediately. The contractor is entitled to request the agreed remuneration; however, the contractor shall deduct any expenses which it saved due to the termination of the order or those amounts which it acquires or maliciously fails to acquire by using its labour force for other purposes.

### **III. Special Provisions for Services**

#### **1. Scope**

If the Principal commissions the contractor to render services, the following provisions shall apply in addition to the provisions under clauses I. 1, 6-9 and 11-13:

#### **2. Performance of the Contract**

2.1. The contractor shall render its services as an independent entrepreneur; the Principal shall not have any rights to issue instructions vis-à-vis the contractor and the contractor is not bound as regards time and location for the performance of its services. If the contractor is a natural person, it is stipulated for the avoidance of doubt that no employment relationship is established between the Principal and the contractor.

### **3. Remuneration**

- 3.1. If the parties agreed upon an accounting on the basis of hours worked, the contractor shall issue an invoice to the Principal at the end of each month specifying the activities and their duration and separately stating VAT. The remuneration becomes due within ten working days after receipt of a proper invoice.
- 3.2. If the parties agreed upon a fixed remuneration, it shall become due ten working days after the completion of the performance of the services and receipt of a proper invoice by the Principal.
- 3.3. The contractor shall be responsible for the payment of any taxes or social security contributions.
- 3.4. Any and all expenses which arise within the framework of the performance of the services shall be deemed settled with the remuneration specified in the above clause 2.1/2.2. By derogation from the above provision, the contractor may only request a compensation for the expenses if this was agreed in writing with the Principal prior to the performance of the services. Travel times shall not be remunerated.
- 3.5. For the avoidance of doubt, the contractor is not entitled to remuneration if it is prevented from performing the services due to illness or for other reasons.

### **4. Termination**

- 4.1. If, subject to a deviating agreement between the parties, the commissioning of the contractor to carry out the services results in a continuing obligation not limited in time, the Principal can terminate the service relationship with notice (*ordentlich*) observing a notice period of one month to the end of a month.
- 4.2. The right of termination for good cause (*außerordentlich*) remains unaffected.

(Version: February 2017)