

## **PURCHASING CONDITIONS**

### **General Terms and Conditions of Purchase for Deliveries and Services to Winkler+Dünnebier GmbH**

EFFECTIVE: March 1, 2015

#### **1. Scope**

1.1. Deliveries by the Supplier to companies of the Winkler+Dünnebier GmbH as Buyer are based exclusively on these Purchasing Conditions and any other written agreements. The Supplier's general terms and conditions shall not become part of the agreement even if the Buyer does not expressly object to them. This also applies if the Supplier expressly states that it only wishes to deliver according to its general terms and conditions or the Buyer does not expressly object to the Supplier's general terms and conditions in the individual case or the deliveries are accepted without reservation.

1.2. Deliveries within the meaning of these Purchasing Conditions apply to both deliveries of goods as well as the performance of work and services.

1.3. These Purchasing Conditions also apply until revocation by the Buyer to all future deliveries by the Supplier even if they have not expressly been agreed again. Agreed modifications only apply to the delivery for which they were confirmed in writing.

#### **2. Orders**

2.1. Deliveries are only to be made on the basis of the order of the Buyer. Orders of the Buyer are only binding if they are placed by the Buyer in writing or electronically or if they have been confirmed by the Buyer in writing or electronically after the order has been placed orally or by telephone, quoting the order number. The same applies to oral ancillary arrangements or subsequent changes of the order.

Acceptance of the order by the Supplier has to be made on the form provided for this purpose on the order, unless otherwise agreed.

2.2. Acceptance of the order must be sent to the Buyer without delay, at the latest, however, five working days (the weekdays Monday to Friday are regarded as working days) after receipt of the order by the Supplier; otherwise the Buyer is entitled to cancel the order free of charge.

2.3. No rights can be derived against the Buyer from oral or telephone commitments, information, advice, etc. except in the case of gross negligence on the part of the Buyer. Such oral statements are only binding upon the Buyer if they have been confirmed in writing by the Buyer or if the Buyer demonstrably waived the written form.

2.4. The order number of the Buyer must be stated in all of the correspondence, on invoices and in shipping documents.

2.5. The Buyer can also demand changes to the order after acceptance by the Supplier if this is reasonable for the Supplier. Prices and delivery dates must be adapted appropriately in such a case if necessary.

2.6. The Supplier is not entitled to contract third parties with performance of the delivery as a whole or in significant parts without prior written approval of the Buyer.

2.7. The Supplier guarantees that both the delivery as well as spare parts can be supplied to the Buyer for 15 years from delivery on reasonable terms. If the Supplier intends to cease delivery or spare parts for it after expiry of the fixed period, the Supplier is obliged to inform the Buyer of this immediately in writing, giving it the opportunity to place a final order.

### **3. Delivery Scope**

3.1. The delivery scope is subject to the order placed by the Buyer.

3.2. Necessary protective equipment, certificates of origin and storage-, assembly and operating instructions and data sheets issued in the official EU languages must be included in delivery if necessary. The same applies to documents required for maintenance and repair of the delivery.

3.3. The Supplier undertakes to use eco-friendly products and processes within the framework of what is economically and technically feasible. The Supplier will issue a certificate of inspection free of charge for the goods delivered at the Buyer's request.

#### **4. Delivery, Passage of Risk, Documents, Packaging**

4.1. Delivery has to be made duty paid, including proper packaging, DDP (Incoterms 2010) stated destination unless otherwise agreed in writing. If a destination has not been stated, the destination is the registered office of the Buyer.

4.2. The passage of risk depends on the Incoterms agreed.

4.3. Each delivery must be notified to the Buyer at the latest upon shipment with a shipping note. Partial deliveries are only permissible with prior approval of the Buyer.

4.4. Proper delivery papers / documents must be included with each delivery. These must detail the object, order items, quantity, weight, packaging, dispatch method and marking and job and order number of the Buyer. Regulations regarding the shipment of hazardous goods must be observed; in particular, hazardous goods must be labeled as such. The Supplier bears the consequences of delivery papers / documents that are incorrect, incomplete or arrive late.

4.5. Delivery is made properly packaged. Unnecessary and non-eco-friendly packaging must be avoided. The Buyer is entitled at its discretion to return the packaging to the Supplier at the latter's expense, use or dispose of it. The Supplier shall reimburse the Buyer two-thirds of the invoice value for separately invoiced packaging upon return provided it is in good condition.

#### **5. Delivery Date, Contractual Penalty, Substitute, Performance**

5.1. Delivery dates and deadlines are binding. Receipt of the defect-free and complete delivery, rendering of the defect-free and complete services or, if agreed, the acceptance of the delivery or service by the Buyer at the stated destination is decisive for their observance.

Deliveries have to be made at customary business times. These must be requested from the Buyer.

5.2. Early delivery may only be made with written approval of the Buyer and does not affect the agreed payment date.

5.3. The Supplier must notify the Buyer in writing immediately of any foreseeable exceedance in the delivery dates and deadlines, stating reasons and the probable duration of the delay.

5.4. In the event of exceeding the delivery dates and deadlines, the Buyer is entitled to payment of a contractual penalty. The contractual penalty is 0.5% of the order value per working day of delay, at most, however, 7% of the order value. The Buyer can reserve the right to assert the contractual penalty until the final payment is made.

5.5. After fruitless expiry of an appropriate period of grace (grace period) set by the Buyer, the Buyer is in addition entitled to have the delivery rendered by a third party at the expense of the Supplier. In this case the Supplier is obliged to surrender the documents required immediately to the Buyer. If intellectual property rights hinder the delivery by third parties, the Supplier is obliged to procure corresponding exemption from these rights immediately.

5.6. Otherwise, the rights of the Buyer are determined according to the statutory provisions in the event of exceeding the delivery dates and deadlines.

The acceptance of a delay in delivery by the Buyer does not constitute any waiver of claims for compensation.

## **6. Delivery Interruption and Rescission**

6.1. If circumstances for which the Buyer is not responsible lead to a closure or impairment of the operations of the Buyer or of a Buyer's customer for whom the delivery is intended, the Buyer duty to take delivery lapses for the duration of the closure or impairment of operations. In this respect, claims to damages on the part of the Supplier against the Buyer are excluded.

6.2. The Buyer is entitled to rescind the agreement either in whole or in part if the delivery can no longer be utilized from an economic viewpoint due to circumstances for which the Buyer is not responsible.

6.3. The Buyer is entitled to rescind the agreement either in whole or in part if there is cause. Cause exists in the case of natural disasters, import and export restrictions, strikes, lockouts or other operational disruptions, both at the Buyer as well as at the Supplier; in addition, in the event of cessation of payments by the Supplier and / or submission of an application for the opening of insolvency proceedings concerning the assets of the Supplier.

6.4. In addition, the Buyer is entitled to exercise the statutory rights of rescission.

6.5. If the Buyer rescinds the agreement either in whole or in part, the payment claims of the Supplier shall lapse. Down payments made must be reimbursed to the Buyer immediately and without deduction. There is no right of retention of the Supplier.

6.6. If the Buyer rescinds the agreement in the event of stoppage of payments and / or submission of an application for the opening of insolvency proceedings concerning the assets of the Supplier, the Buyer is entitled to make use of the equipment required for the continuation of the work or deliveries made previously by the Supplier in return for appropriate payment.

## **7. Place of Performance**

Unless otherwise agreed in writing, the place of performance for all delivery obligations is the destination stated by the Buyer. If no such destination has been stated, the place of performance is the registered office of the Buyer.

## **8. Prices**

8.1. The agreed prices are fixed prices and exclude additional charges of all kinds. Prices are DDP (Incoterms 2010) “delivered duty paid” to the destination stated in the order without the statutory general sales tax, including packaging unless otherwise agreed in writing. The price components must be shown separately by the Supplier.

8.2. Payment for visits, samples, patterns or the preparation of offers, projects, etc. is not granted by the Buyer.

## **9. Terms of Payment**

9.1. Payment is effected using the payment instruments at the Buyer's discretion.

9.2. The payment period begins upon receipt of a proper invoice in duplicate after completely rendered delivery or if agreed after acceptance of the delivery or service by the Buyer. Early delivery or partial delivery does not affect the payment period.

9.3. A proper invoice must meet the statutory requirements and guidelines of the order. The latter include at least statement of the order number and other relevant details. Incorrect invoices are only regarded as received by the Buyer from the time of correction. Invoices must be issued in EUR unless otherwise agreed. Online invoices are only permissible with prior written approval of the Buyer.

9.4. Unless otherwise agreed in writing, payments are due 30 days after invoice receipt including a 3% discount or 60 days net. The cash discount is also permissible if the Buyer offsets or withholds payments on account of defects; the discount period begins after complete elimination of defects.

9.5. The Buyer shall not be deemed to be in default without warning.

9.6. The Buyer is entitled to rights of offsetting and retention to the statutory extent.

9.7. If payments must be made by the Buyer before delivery (down payments), the Supplier must provide corresponding bank guarantees issued by a German bank in favor of the Buyer before the Buyer effects payment.

9.8. Payments do not indicate acceptance of the delivery as being in accordance with the contract. Payments are made subject to subsequent claims.

## **10. Assignment, Pledging, Retention of Title**

10.1. The Supplier is not entitled without the approval of the Buyer to assign its claims vis-à-vis the Buyer or to have them collected by third parties. If the Supplier nevertheless assigns its claims to third parties or has them collected by third parties, the Buyer can at its discretion pay both to the Supplier as well as to the third parties with discharging effect.

With regard to the extended retention of title of pre-suppliers of the Supplier, the agreement of the Buyer to advance assignment is hereby considered to be given.

10.2. In the case of pledging, seizures or other dispositions by third parties with regard to deliveries owed by the Supplier, the Supplier must notify the Buyer immediately.

10.3. Retention of title on the part of the Supplier is only binding if agreed in writing separated from of the general terms and conditions of the Supplier in an individual agreement.

Exercise of the retention of title by the Supplier is only possible in the case of prior rescission of the agreement.

## **11. Guarantee**

11.1. The Supplier guarantees that all deliveries are free of defects, comply with the order and its specifications, are suitable for the intended use and application and correspond with the latest state-of-the-art technology and the relevant national and international legal provisions including the regulations and guidelines of authorities, professional associations and trade associations. If the Supplier has reservations regarding the type of execution requested by the Buyer, it must notify the Buyer of this immediately in writing.

11.2. The guarantee period is 24 months unless otherwise agreed in writing.

The guarantee period begins with the start-up or final acceptance of the delivery. If start-up or final acceptance is not agreed, the guarantee period begins upon delivery to the Buyer.

In the case of deliveries which the Buyer resells, the guarantee period begins with the start-up or final acceptance by the Buyer's customer. If a start-up or final acceptance by the Buyer's customer is not agreed, the guarantee period begins with the delivery to the Buyer's customer.

The guarantee period ends at the latest 36 months after delivery to the stated destination.

11.3. The Buyer shall check the delivery within an appropriate period for apparent quality and quantity deviation. The Supplier shall be notified immediately of any defects ascertained.

The Supplier shall be notified of unapparent quality and quantity deviations as soon as these have been identified in the normal course of business. The notification is regarded as timely if made within a period of ten working days after identification of the defect.

11.4. The Buyer is only obliged to take samples in the case of mass deliveries. If this reveals that significant parts of the samples do not meet the contractual or legal requirements, the Buyer shall be released from additional inspection and is entitled to reject the entire delivery. The rejection of the delivery does not constitute any declaration of rescission of the agreement.

11.5. In the event of defects occurring within the guarantee period, the Buyer is entitled to assert the legal guarantee claims at its discretion and in addition to demand reimbursement of expenses and damages from the Supplier.

The guarantee claims are statute limited after the expiry of 12 months beginning with the notification of defects.

11.6. The Supplier bears all expenses arising in connection with the identification and rectification of the defect, especially examination costs, costs for dismantling and installation, shipment, transport, work, material and travel costs. This also applies if the expenses increase as a result of the delivery item being taken to a location other than the stated destination.

11.7. If the Supplier does not meet the demand of the Buyer to rectify the defect within a grace period set by the Buyer, the Buyer is entitled to carry out the measures required itself or have them carried out by third parties at the expense of the Supplier. If setting a grace period is not essential, the Buyer also has this right without setting a grace period.

11.8. Measures to correct minor defects or to avoid disproportionately great damage or to avoid threats to operational safety at the Buyer or third parties may be carried out at the expense of the Supplier by the Buyer or by third parties contracted by the Buyer without prior consultation. The Buyer informs the Supplier immediately of the reason, nature and scope of these measures. This does not affect the guarantee obligation of the Supplier.

11.9. The guarantee period is extended by the duration of the interruption of use for deliveries or parts thereof which cannot be used by the Buyer for the duration of the defect and / or the defect rectification. For repaired or replacement deliveries or parts thereof, the guarantee period restarts at the time of the successful rectification of the defect.

## **12. Third-Party Rights**

12.1. The Supplier guarantees that the delivery is free of third-party rights. The Supplier undertakes to indemnify the Buyer and its customers from all damage and costs arising for the Buyer and its customers from non-observance of this guarantee.

The Supplier and Buyer will inform each other immediately of risks of a legal infringement or alleged legal infringements that emerges and take mutual action to oppose such claims.

12.2. If the third-party rights are infringed by contractual use of the delivery, the Buyer is entitled to acquire the necessary license rights from the holder of the rights at the expense of the Supplier. The Supplier is obliged to support the Buyer in out-of-court disputes with the holder of the rights and lawsuits filed by the latter.

Moreover, the rights of the Buyer are determined in the case of defects in title according to the legal provisions. The period of limitation for defects-in-title claims is ten years.

### **13. Software**

13.1. The Buyer is entitled to use the software belonging to the delivery including documentation to the extent required for the contractual use of the delivery.

13.2. The Supplier shall check the software before its delivery and installation with up-to-date, standard virus protection programs for viruses, Trojans or other computer malware.

### **14. Legal Requirements, Quality Assurance, Product Liability**

14.1. The Supplier is reminded that the Buyer sells its products worldwide.

The Supplier undertakes to observe the legal provisions applicable to the delivery at the destination, especially regarding accident prevention, industrial and machine safety and environmental protection.

14.2. The Supplier must carry out quality assurance corresponding to the technological state of the art, suitable in type and scope, and on request demonstrate this to the Buyer.

The Supplier will conclude a corresponding quality assurance agreement with the Buyer on request.

14.3. The Supplier must ensure through tests at its factory that the deliveries comply with the technical specifications of the Buyer and otherwise correspond with the provisions mentioned in section 14.1. The Supplier is obliged to keep records of the tests carried out and archive all inspection, measurement and test results for ten years. The Buyer is entitled at any time to inspect the documents and make copies.

14.4. The Supplier will label the delivery items to ensure that they can be permanently recognized as its products unless otherwise agreed in writing.

14.5. If claims are asserted against the Buyer on account of the infringement of legal provisions, especially safety regulations, or on account of domestic or foreign product liability, the Supplier is obliged to indemnify the Buyer and its customers from all claims if this is due to the delivery of the Supplier. This indemnification also includes the costs of a precautionary recall. If possible and reasonable, the Buyer shall inform the Supplier of the content and scope of the recall measures to be carried out and provide the Supplier with the opportunity to comment thereon.

14.6. The Supplier shall take out adequate insurance against all risks arising from product liability, including the recall risk and presents the insurance policy to the Buyer on request.

14.7. The Supplier must notify the Buyer without being asked and immediately of changes in the composition of the processed material or structural design of its deliveries. The changes require the written approval of the Buyer. The Supplier and Buyer shall inform each other immediately of risks of injury or alleged cases of injury that become known and take mutual action to oppose corresponding claims.

## **15. Customs Law and Foreign Trade Legislation**

15.1. The Supplier undertakes to comply with the applicable national and international customs and foreign trade legislation (together “foreign trade law”). The Supplier must inform the Buyer in writing at the latest two weeks after delivery and in the case of changes immediately of all information and data which the Buyer requires to comply with foreign trade law in the case of export, import and re-export, in particular:

- all applicable export list numbers including the export control classification number pursuant to the US Commerce Control List (ECCN);
- the statistical goods number pursuant to the current goods allocation of the foreign trade statistics and the HS (Harmonized System) Code and
- Country of origin (non-preferential origin) and if requested by the Buyer, supplier declarations on the preferential origin (in the case of European suppliers) or certificates of preference (in the case of non-European suppliers).

All information and data designated previously are agreed as the constitution of the supply.

15.2. If the Supplier infringes its obligations according to section 15.1, the Buyer is entitled to rescind the agreement and to assert all damage arising as a result. The Supplier indemnifies the Buyer in this respect.

## **16. Models, Tools, Documents, Advertising, Confidentiality**

16.1. Models, tools and installations made or procured at the expense of the Buyer by the Supplier become the property of the Buyer after payment. They must be treated carefully by the Supplier, labeled as the property of the Buyer and – if possible – stored separately from the other products of the Supplier and insured against loss and other damage at the expense of the Supplier. The manufacture and delivery of products and parts thereof produced using these models or tools or with these installations is permitted solely for the Buyer. At the Buyer's request, the Supplier must surrender the models, tools and installations free of the third-party rights to the Buyer without exception.

16.2. All drawings, plans, sketches and other technical documents and materials provided to the Supplier for the implementation of orders remain the property of the Buyer even in the case of processing. They must be returned immediately to the Buyer at any time on request and after implementation of the order without special request.

16.3. Documents and materials of the Buyer may only be used exclusively for the purposes of the Buyer and exclusively to the extent approved by the Buyer and may neither be duplicated nor made accessible to third parties without the prior written approval of the Buyer.

16.4. Orders of the Buyer and all associated commercial and technical details must be treated by the Buyer as business secrets.

16.5. The Supplier may only refer to the business relationship with the Buyer with written approval of the Buyer. The Supplier is not entitled to use trade names, logos or trademarks of the Buyer.

16.6. The Supplier is forbidden to present the delivery item especially manufactured or processed for the Buyer at fairs or make same accessible to third parties.

## **17. Partial Invalidity**

Should a provision of an agreement be invalid either in whole or in part, this shall not affect the validity of the remaining provisions. The Supplier and the Buyer shall endeavor to agree on a valid provision that comes as close as possible to the invalid provision in business terms. If no agreement is reached, the court shall decide.

## **18. Place of Jurisdiction and Applicable Law**

18.1. The place of jurisdiction is the registered office of the Buyer. However, the Buyer is also entitled to assert its claims at the place of general jurisdiction of the Supplier.

18.2. The law of the Federal Republic of Germany applies to the mutual legal relationship. The application of the conflict of laws of international private law (IPR) and of the UN Convention on the International Sale of Goods (CISG) is excluded.

## **Note on compliance**

We advise that our employees are instructed to strictly comply with all applicable statutory regulations and the Values and Principles of Winkler+Dünnebier GmbH. In particular, our employees are not allowed to demand or to accept any inappropriate favors and donations, or to accept any promise hereof.