

## **GENERAL TERMS AND CONDITIONS OF PURCHASE of**

Ulbrichts Witwe GmbH (FN 177246 g)  
Kaufing 40, A-4690 Schwanenstadt, AUSTRIA

**Version date: 01 July 2015**

### **1. Scope of Application**

- 1.1. All our invitations to tender, orders, purchases and other contractual transactions, deliverables and considerations placed, made, effected or provided by us as Buyer, shall exclusively be subject to these General Terms and Conditions of Purchase. We shall not be bound by any differing terms and conditions of the Supplier contained in any offer, order confirmation or other business documents of the Supplier, unless such differing terms and conditions have explicitly been accepted in writing by ourselves. Acceptance of or payment for a delivery or service shall not constitute acceptance of the Supplier's terms and conditions. These present General Terms and Conditions of Purchase shall constitute a framework agreement applicable to any and all other contractual transactions effected between ourselves and the Supplier. The version in effect at the time the Agreement is concluded shall be apply.
- 1.2. In the event of any discrepancies in the underlying contractual assumptions, the following hierarchical order shall apply for their resolution:
  - Any special arrangements, provided that they have been confirmed by us in writing,
  - our General Terms and Conditions of Purchase,
  - rules of civil law and commercial law.

### **2. Offer, Order, Contract**

- 2.1. Offer: In its offer, the Supplier undertakes exactly to meet the specifications of our invitation to tender with respect to the quantity and quality of the goods to be supplied and explicitly to state any deviations in writing and in advance. If the Supplier fails to provide such written notice, it shall not be entitled to claim a higher consideration in the event of deviations. All quotes by the Supplier shall be binding and made free of charge.
- 2.2. Order, Contract: Our orders shall be valid only if duly signed by authorised company representatives. Any agreements made orally, by telephone or by email shall only be binding on us if followed by a confirmation duly signed as described above.
- 2.3. Should the Supplier's order confirmation contain any deviations from our order, such deviations shall be considered to be invalid.

### **3. Prices**

- 3.1. The agreed prices shall include all costs relating to packaging, customs duties, insurance and other costs of shipping and/or carriage including all costs incurred in respect to transport authorization(s). All prices are final and quoted in Euro (€) and cannot be increased for any reason whatsoever. In the absence of any specific agreement, delivery shall be free to the point of destination (free place of destination).

Shipment and carriage of the goods shall be at Supplier's risk and expense.

- 3.2. Payments will be made thirty days from receipt of the invoice. For payments made fourteen days from receipt of invoice, we shall be entitled to deduct a 2% cash discount.

#### **4. Delivery Periods and Deadlines**

- 4.1. Delivery shall be made at the time and in the quantities specified in the contract/purchase order. Delivery lead times shall begin to run from the date of our purchase order. Compliance with the delivery lead time or deadline shall be determined by the date of receipt of the goods at the point of destination or user location specified by us, or by the timeliness of successful acceptance of the goods. Acceptance of delayed goods shall always be subject to reservation of any and all of our rights and remedies.
- 4.2. The Supplier shall be under the obligation immediately to inform us in writing in the event of delays in deliveries. In the event of a late delivery, we shall regardless of any fault on the part of the Supplier, be entitled to claim compensation in form of a contractual penalty equivalent to 0.5% of the value of goods to be delivered for each day of delay, however not exceeding a maximum of 10% of the contract value. Furthermore, in the event of a delay on the part of the Supplier, we are entitled to withdraw from the Agreement without setting or allowing a period of grace. In the event of such withdrawal from the Agreement, the Supplier shall not be entitled to any claim whatsoever against us. The above shall apply without prejudice to any and all other claims we may have in respect to compensation for any and all damages and adverse consequences resulting from the late delivery over and above the contractual penalty.
- 4.3. The Supplier may only invoke the non-receipt of required documents that we were obliged to provide, if they were not promptly received by the Supplier further to the remittance of a written reminder. In that case, deliveries shall not be deemed to be late for as long as we are in default of our obligation. In this context, the burden of proof lies with the Supplier.

#### **5. Ulbrichts Witwe's Documentation**

- 5.1. No information, drawings or other technical documentation provided by us to the Supplier in connection with the production of the items to be delivered, nor any drawings or other technical documentation prepared by the Supplier on the basis of our specifications and other technical information shall be used, reproduced or made accessible or disclosed to third parties for purposes other than such production. Such documents shall remain our sole property and shall upon request immediately be released to us together with all copies thereof. In the event that, for whatever reason, delivery does not take place, the Supplier shall immediately and spontaneously return all documentation to us. The purchase orders, as well as the works related therewith, shall be deemed to be trade secrets and shall, accordingly, be treated as confidential information. The Supplier shall be liable for all damages resulting to us from the violation of any of the above obligations.
- 5.2. The Supplier shall be allowed to mention or refer to its business connection with us in

promotional material or publications of any kind only with our explicit, written consent.

## **6. Shipping**

- 6.1. Each consignment of goods shall be accompanied by a delivery note. The Supplier shall be liable for all damages, costs, demurrage and other charges that may result from the non-compliance with this provision. Consignments received without the appropriate shipping documents shall not be accepted and shall be returned at the Supplier's risk and expense. The consignment shall be properly packaged in a manner appropriate for the means of transport used.
- 6.2. Partial deliveries shall only be permitted if agreed in writing; otherwise we reserve the right to refuse acceptance thereof. Partial deliveries shall in any case not be deemed to constitute separate business transactions and each partial delivery shall be designated as such, stating the total quantity and the quantity pertaining to the partial delivery.

## **7. Invoicing and Payments**

- 7.1. Invoices shall comply with applicable law, in particular with applicable value-added tax law, and any special arrangements agreed upon. Invoices must not be enclosed with the consignment but shall be sent to us immediately after the goods have been dispatched. In all cases, invoices shall mention the complete order reference number and the order date/contract date. The Supplier shall be liable for any additional or consequential costs due to incorrect or incomplete invoicing.
- 7.2. Payment deadlines start to run from the date when the invoice is received at our offices. In the event that the goods should be received after the invoice, then the payment deadline starts to run on the date on which the goods were received. Payment shall not be construed as an acknowledgement of a contractually compliant delivery or as a waiver of any possible claims whatsoever. Except for purely monetary claims, the Supplier shall not be entitled to assign any of its claims against us to third parties.
- 7.3. In the event that the Supplier's performance is not in accordance with the Agreement, we shall be entitled to withhold payment until fully compliant performance is accomplished.

## **8. Warranty, Notice of Defects, Damage Compensation**

- 8.1. The Supplier warrants that all delivered products and/or other services are provided in accordance with the full or release order, are complete and free and clear of any defects, are expediently and properly assembled, and, in particular, comply with the characteristics that are usually expected and may have been represented, have been mentioned in public statements and are in conformity with samples and specimens and in accordance with all relevant statutory and regulatory provisions that are applicable at the place of destination and/or in the distribution markets reported by us. The Supplier shall demonstrably draw our attention to all risks that may usually be expected in connection with the use of the product. Similarly, the Supplier shall provide the same warranty for all products and components supplied, but not manufactured by it and for any services provided.

- 8.2. The Supplier's warranty for goods shall end only after the expiry of our own warranty to our clients in respect to goods into which the Supplier's products or services are incorporated, but in any event not earlier than 24 months and not later than 36 months after our acceptance of the delivery of the products and/or services. The statutes of limitation pertaining to claims for damages shall not be affected by this provision. The warranty issued by the Supplier shall also apply to hidden defects and the related warranty period shall only start to run from the date on which we became fully aware of the defect.
- 8.3. We shall not be required to examine the goods and to give notice of any defects discovered (which shall also apply to quantity defects), and the application of Sections 377 and 378 of the Austrian Business Code (Unternehmensgesetzbuch - UGB) are hereby explicitly excluded.
- 8.4. We shall be entitled, at our sole discretion, to require our contractual partner promptly and at short notice to rectify defects at its own risk and expense, either by way of improvement (repair, additional delivery of the missing item/service) and/or exchange, and/or to claim a reduction in price; or to return the goods to the contractual partner at its own cost and to rescind the Agreement; or to take measures on our own account to remedy the defects or defects in workmanship or service or service not provided by the contractual partner or have such defects remedied or performance of services carried out by third parties at the contractual partner's risk and expense.
- 8.5. In the event of the assertion of a warranty claim, the burden of proof as to the defect not having been present at the time of transfer lies with the Supplier.
- 8.6. In the event of defects of any kind whatsoever, we shall be entitled to withhold the entire outstanding purchase price and/or consideration for the work/service until the defect has been fully remedied.
- 8.7. Our liability for any damages suffered by the Supplier due to business transactions with us shall generally be limited to the value of the purchase order placed by us and restricted to damages resulting from gross misconduct on our part or on part of our agents. This limitation of liability shall not apply to claims relating to personal injury, where we shall be liable also in the event of slight or ordinary negligence. Any compensation by us for consequential damages, pure economic losses, loss of profits, and damages resulting from third party claims shall be excluded. The burden to prove gross negligence shall lie with the Supplier.

## **9. Product Liability**

- 9.1. The Supplier shall enclose in its delivery, a copy of instructions for use and precautions and warnings in German and/or in English. As far as possible and reasonable, such instructions shall be affixed directly onto the delivered items. In the event that, after acceptance of the delivery by us, defects in respect to the delivered goods should emerge or be detected within the meaning of Section 5 of the Product Liability Act (Produkthaftungsgesetz), and/or that the properties of a product no longer comply with the state of the art within the meaning of Section 8 of the Product Liability Act, the Supplier shall be obliged to take such goods back and to refund the entire purchase price.

- 9.2. If a product liability claim is asserted against us based on a product delivered by the Supplier, the Supplier shall be obliged immediately to provide us with all requested means of evidence, in particular quality and inspection and investigation reports, certificates, expert opinions and the like, at its own cost. Furthermore, the Supplier shall fully indemnify us and hold us harmless against all claims asserted by third parties.
- 9.3. The supplier undertakes to obtain appropriate insurance coverage for all product liability risks. We reserve the right to request evidence of appropriate insurance coverage from the Supplier. Should the Supplier not comply with such a request within 14 days, we shall be entitled to withdraw from the Agreement and may demand compensation for damages, including compensation for loss of profits.

## **10. Quality Assurance**

- 10.1. Unless otherwise agreed upon in writing, the Supplier shall comply with all relevant quality standards in their current valid version. The Supplier shall systematically plan, determine, implement and monitor the appropriate measures to ensure the highest levels of quality. Upon request the Supplier shall, at any time and even without prior notice, grant us or our agent access to its production facility or other premises in order to acquire information on the Supplier's quality management system and to be satisfied that the aforementioned measures are effective. Such obligations/rights shall also apply to any of the Supplier's subcontractors and subsuppliers, and the Supplier shall ensure that they are bound by such obligations.
- 10.2. The Supplier shall, upon our request and in a timely manner before the first delivery of the goods ordered, provide the results of the analyses performed by a sworn technical expert to the effect that the goods comply with the agreed upon technical quality, in particular with regard to the properties set out in the purchase order and the fitness for the agreed upon use. In the event that we should require such expert opinion, the Supplier shall be under the obligation to have such analyses regularly performed by sworn experts throughout the term of the relevant order. The pertinent expert opinions shall be spontaneously provided to us without undue delay. All costs incurred in connection with the performance of such analyses shall be borne by the Supplier.

## **11. Retention of Title, Transfer of Risk**

- 11.1. The risk and title to the products and services to be supplied by the Supplier shall transfer to us upon acceptance of their complete delivery at the place of performance (place of destination). No transfer of risk shall occur in the event of partial deliveries or partial performance, even if such partial deliveries or partial performance were contractually agreed, or when commissioning or implementing/using partial deliveries of products or services.
- 11.2. We hereby explicitly object to any and all retentions of title by the Supplier. The receipt of products and services offered subject to retention of title shall not be construed as representing our consent to retention of title.

## **12. Third Party Intellectual Property Rights**

- 12.1. The Supplier warrants that no third party intellectual property rights (patents,

trademarks, design or utility model rights, copyrights, equipment, product names, know-how, territory protection or any similar rights, even when only an application for the grant of such rights has only just been filed) will be infringed by our contractual use of the delivered products and services. We are not obliged to verify whether any intangible property rights for the products exist and/or are being infringed; rather, we are entitled to assume that the Supplier is entitled to all rights that are necessary for the proper fulfilment of contracts with third parties. The Supplier shall indemnify us and hold us harmless against any and all claims asserted by third parties in this respect.

- 12.2. Without prejudice to any further rights on our part, we shall in such a case and until it is established whether such asserted claims are legitimate, be entitled to refuse acceptance of the goods, to return already accepted goods to the Supplier at his expense and to withhold payment of the total purchase price.

### **13. Rescission of the Agreement**

In the event of delays in delivery or owing to other important grounds, in particular (but without limitation) if a petition to open insolvency proceedings with regard to the Supplier had been dismissed due to lack of assets, if the Supplier ceases to make payments, and in cases of force majeure, we shall, without prejudice to any further claims of any kind on our part, be entitled immediately to withdraw from the Agreement or parts thereof without granting any period of grace. Such withdrawal on our part shall not entitle the Supplier to any claim of any kind against us. The Supplier shall be obliged to inform us immediately of the existence of any such circumstances. The rescission shall have legal effect upon our unilateral declaration of withdrawal from the Agreement.

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

- 14.1. The registered office of our company in Schwanenstadt, Austria, shall be the place of performance for both parties with regard to all rights and obligations resulting from any contractual transactions effected with us. In the event that an individual purchase order states a different place of destination, the ordered goods shall be delivered to such destination.
- 14.2. For the Supplier the sole venue and jurisdiction for all disputes arising from or in connection with the present contractual relationship shall be that of the court competent with regard to the subject matter in respect to Schwanenstadt, Austria. We shall however, at our discretion, be entitled to institute proceedings against the Supplier in any other court that may be competent under national or international law.
- 14.3. The present agreement shall exclusively be governed by Austrian substantive law. The conflict of law rules of private international law and of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are hereby explicitly excluded.

### **15. Final Provisions**

- 15.1. If a provision of our present General Terms and Conditions of Purchase should be or

become ineffective, then the effectiveness of the remaining provisions of our present General Terms and Conditions of Purchase shall remain unaffected thereby. In such case the parties to the Agreement shall be required to agree on a new provision that corresponds as closely as possible to the purpose of the invalid provision.

- 15.2. The headings of the provisions included in these General Terms and Conditions of Purchase are used for reference only and must not be used for interpretation.
- 15.3. No development in the business relationship between the Supplier and ourselves, and no delay or omission in regard to the exercise of any right or remedy granted to us on the basis of these General Terms and Conditions of Purchase, shall constitute a waiver of such rights. All rights and/or remedies granted to us in the present General Terms and Conditions of Purchase shall be deemed to be cumulative and of equal rank and to exist in addition to other statutory rights or remedies.