

## § 1 Scope of Terms

- (1) These General Purchasing Conditions (hereinafter referred to as "GPC") apply to all orders (goods and services) of Mayser GmbH & Co. KG, unless agreed upon otherwise.
- (2) Our GPC shall apply exclusively; we shall not accept any conflicting or different GPC of the Supplier, unless agreed upon in writing. Our GPC shall also apply when we accept deliveries of the Supplier without reservation while being aware of conflicting or different terms of the Supplier.
- (3) All agreements concluded between us and the Supplier for the purpose of executing this contract are to be included in writing in this agreement.
- (4) The following GPC shall only apply to entrepreneurs according to Section 14 German Civil Code, legal entities under public law or an asset under public law (hereinafter referred to as "Supplier").
- (5) Within a permanent business relationship between the Supplier and us, the following GPC shall also apply to all our future orders without requiring any further reference or agreement.

## § 2 Conclusion of Contract – Offer Documents

- (1) The drafting of offers and cost estimates by the Supplier is free of charge and non-binding for us.
- (2) Offers to us shall include all relevant details necessary for technical and cost assessment.
- (3) Delivery agreements (order and acceptance) and call-offs as well as their amendments and additions must be in written form; verbal orders and orders placed by phone require our written confirmation in order to be valid; this shall also apply in the case of a subsequent amendment of orders already placed.
- (4) A confirmation of the Supplier that differs from our order shall be considered as a new offer which requires our renewed written consent.
- (5) If the order or the call-off is not confirmed in written form within 5 working days after receipt by the Supplier, we shall be entitled to cancel the order without the Supplier being able to derive any claims from this.
- (6) We shall be entitled to require modifications of the subject of an agreement with regard to design and execution to a reasonable extent. In this regard, effects, particularly concerning additional and reduced costs as well as delivery dates, shall be appropriately settled by mutual agreement.
- (7) We reserve property rights and copyright on images, drawings, calculations and other documents; they shall not be made accessible to third parties without our express written consent. They shall exclusively be used for production on the basis of our order; after completion of the order they shall be returned to us unsolicited. They are not to be disclosed to third parties. Section 11, subsection (1) shall also apply in this regard.

## § 3 Prices and Terms of Payment

- (1) The price stated in the order shall be binding. It shall include all services and ancillary services, unless separately charged, which are necessary for provision of the service, e.g. for auxiliary materials. Unless otherwise agreed upon in writing, the price includes delivery franco domicile, including packaging. The return of packaging requires a separate agreement.
- (2) Unless provided for otherwise, the statutory value added tax is included in the price.
- (3) We can only process invoices if they contain the order number shown on our order form in accordance with the specifications of our order; the Supplier shall be responsible for any and all consequences arising from non-compliance with this obligation, unless he can prove otherwise.
- (4) We shall pay the purchase price, unless otherwise agreed in writing, within 14 days, calculated from delivery or assembly and installation on receipt of a proper invoice, with 3% discount or within 30 days after receipt of invoice net.
- (5) The invoice shall be sent in duplicate to our printed postal address. It is not to be included in a delivery.
- (6) We shall be entitled to exercise our rights of offsetting and retention to the statutory extent.
- (7) We reserve the right to choose the method of payment. In the case of payment by check or draft, it is essential for correct payment that the check or transfer order be received by the recipient within the payment period.
- (8) Invoices differing from the delivery or the performance of the Supplier shall be deemed received by us from the moment of their correction.
- (9) Payments effected shall not imply acknowledgement of the delivery or performance in accordance with the agreement.

## § 4 Terms of Delivery

- (1) Terms of deliveries agreed upon shall be binding. Compliance with the delivery date shall be determined by the arrival of the goods in our works.
- (2) Early deliveries shall only be accepted after prior written agreement.
- (3) The Supplier shall be obliged to give us notice in writing promptly if circumstances occur or are identified which indicate that the delivery time agreed upon cannot be met.
- (4) In the event of delay of delivery, we shall be entitled to exercise the statutory rights. In particular, we shall be entitled to claim damages in lieu of performance and rescission after fruitless expiration of an adequate period. In the event that we claim for damages, the Supplier shall be entitled to prove that he is not responsible for the breach of duty.
- (5) The Supplier shall not be entitled to provide surplus or short deliveries.
- (6) If partial deliveries are agreed, the Supplier shall indicate the amounts still to be delivered.
- (7) If the delivery date agreed upon cannot be complied with due to a circumstance for which the Supplier is responsible, irrespective of additional legal claims, we shall be entitled, at our own discretion, after the expiry of a reasonable additional period, to rescind the contract, to procure substitution from a third party and/or to demand compensation on grounds of non-fulfilment. We are entitled to claim compensation of all additional costs occurred due to delayed deliveries or performances for which the Supplier is responsible. The acceptance of delayed delivery or performance does not imply the waiving of claims for compensation.
- (8) If the Supplier fails to comply with the agreed delivery date, we shall also be entitled to demand for each commenced calendar week of the delivery delay 0.5%, but not more than 10% of the order value. The forfeit of contractual penalty shall not exclude the right to claim further damages under deduction of the contractual penalty. If we accept the goods or service in spite of the delay, we shall be entitled to demand the contractual penalty, without having reserved this right when accepting the goods or service. The Supplier is to furnish proof that the damage was less or that no damage has been incurred.
- (9) We reserve the right to amend the amount of ordered deliveries or to order the temporary suspension of scheduled deliveries.
- (10) In the event of an early delivery, we are entitled to refuse the service or to return the goods to the Supplier at his expense and risk. If we do not return the goods, we are entitled to store the goods at our works at the cost and risk of the Supplier. Payment is based on the agreed delivery date.

## § 5 Packaging, Transport, Passing of Risk and Documentation

- (1) The transport of goods shall be carried out at the expense and risk of the Supplier (DDP Incoterms 2010). If delivery franco domicile is agreed in exceptional cases, we shall only bear the lowest possible freight costs, unless we have stipulated a certain type of shipment.
- (2) The deliveries shall be carried out with the freight company stipulated by us, unless delivery franco domicile is agreed in exceptional cases.
- (3) If hazardous substances are supplied, the Supplier shall be obliged to comply with all applicable standards, laws and regulations, in particular the applicable provisions regarding environmental protection, hazardous substances, dangerous goods and accident prevention.
- (4) Any costs incurred due to non-compliance with the specified delivery provisions and conditions are to be borne by the Supplier.
- (5) Irrespective of the allocation of costs, the risk shall not pass to us before delivery and acceptance of the goods or service at the agreed place of delivery.
- (6) The Supplier is obliged to specify our exact order number, Mayser item number, batch number, item number, date of order and shipping route on all shipping documents, order confirmations, invoices etc. In addition, the Supplier shall enclose a delivery note in duplicate with this information in a sealed envelope with each shipment. If the Supplier fails to comply with this obligation, we shall not be held responsible for any delays occurring due to the Suppliers' omission.
- (7) A VDA (Association of the German Automotive Industry) label 4902 (current version) shall be attached to every delivery to us which is designated for an end-customer in the automotive sector. In the case of cardboard packaging, the VDA label shall be attached to the front and side of the box and inside the box. On all other packagings, the VDA label shall be clearly visible on the packaging unit when stacked.

## § 6 Warranty, Incoming Control and Notification of a defect

- (1) The statutory provisions regarding material defects and defects of title shall apply unless otherwise set forth below.

- (2) We shall immediately notify the Supplier of defects as soon as these have been determined through proper business procedures. In this respect, the Supplier shall waive the claim of late notification of defects.
- (3) The Supplier shall operate a quality management system ("QM system") that ensures flawless deliveries. Requirements for the QM system (for example certification according to ISO 9001 or TS 16949) shall be agreed separately, if necessary. The Supplier shall grant us access to the production facilities, having made a prior appointment, to assess the implementation of the QM system and the reliability of product development.
- (4) The limitation period is 36 months, calculated from the passing of risk, unless the statutory mandatory provisions of Sections 478, 479 German Civil Code apply.
- (5) The Supplier warrants that the products delivered or services provided are free from defects and in particular that they comply with the contractually agreed quality and quantities, that they meet our required specifications, that they meet the recognized technical standards at the time of delivery (e. g. DIN standards) as well as technically necessary standards of quality and safety.
- (6) If a defect is discovered, the Supplier shall bear the costs of the inspection and determination of the defect, without prejudice to other, further claims.
- (7) In the event of substitute deliveries, the period of materials defect liability recommences with regard to the replaced part.
- (8) In the event of delivery of defective goods, the Supplier is obliged to either remedy a defect or to effect replacement delivery at our discretion.
- (9) If the Supplier does not meet the request for remedy of defects or replacement delivery immediately within 7 working days, or is unable to do so, we are entitled to cancel the contract and/or claim compensation in lieu of performance as well as to return the goods to the Supplier at his own risk and to purchase the required goods from a third party. The costs incurred in such cases are to be borne by the Supplier.
- (10) In urgent cases, if the immediate elimination of a defect is justified due to a particular requirement on our part or if there is reason to suspect that the elimination of a defect by the Supplier would cause delays which would make it more difficult for us to meet our obligations towards our contractual partners, or that a removal of the defect by the Supplier would result in higher costs than an elimination of the defect by us, we have the right to eliminate the defect of the defective delivery or service ourselves or have it eliminated by a third party to the extent necessary without informing the Supplier in advance, at the expense of the Supplier (self-help). In such cases, we shall also have the right to procure flawless goods or services from a third party (procurement of replacement). The Supplier shall bear the necessary costs for the self-help or procurement of replacement.
- (11) We shall have the right to return non-compliant goods delivered at the expense and risk of the Supplier.
- (12) If a defect of the goods delivered by the Supplier is only discovered on further processing or further delivery, the Supplier is obliged to bear all costs associated with the exchange or rectification of the defective goods, in particular costs for testing, transport, travel, labor and materials.
- (13) In the event of insolvency or bankruptcy, we are entitled to withhold an appropriate security, but at least 10% of the agreed price, until expiry of the limitation of warranty claims.
- (14) The Supplier assigns its warranty claims against its preliminary suppliers to us. We are entitled to disclose this assignment in the event of bankruptcy of the Supplier. Furthermore, we are entitled to cancel orders which have not yet been delivered at this time.
- (15) The Supplier indemnifies us from all claims of third parties which the latter may assert against us arising from the services provided or failure to provide service of the Supplier. The Supplier shall bear all costs associated with a defect, including potential costs of a recall.

## § 7 Product Liability, Indemnification and Compulsory Liability Insurance

- (1) If we are liable towards third parties in accordance with the provisions of the Product Liability Act, or other provisions, due to a product defect, the Supplier is obliged to indemnify us upon first demand from all claims for damages, including damages due to necessary recall, refitting, disassembly and assembly, if and insofar as the damages result from a defect of the goods delivered by the Supplier. If the reason for such damage lies in a defect of the goods delivered by the Supplier, the Supplier shall bear the burden of proof in this respect. In such cases, the Supplier shall also bear all expenses and costs including the costs of any prosecution.
- (2) In order to comply with his obligations of the supply agreement concluded with us, the Supplier shall take out sufficient business liability insurance and product liability insurance including the risks of recall, with minimum coverage of € 5 million per personal/property damage claim, and to maintain the insurance continuously and at least for the duration of 10 years after delivery at the

Supplier's expense. Upon request, the Supplier shall provide written evidence of conclusion and continued existence of such insurance. Any further claims for damages on our part remain unaffected.

- (3) With regard to prosecution, the Supplier and we shall mutually inform and support each other.

## § 8 Industrial Property Rights and Liability for Defects of Title

- (1) The Supplier shall warrant that the goods delivered by him do not infringe domestic or foreign intellectual property rights or rights of third parties.
- (2) In the event of an infringement of third party rights, we are entitled to all legal claims against the Supplier as a result of defective goods and defective title, even where the Supplier has procured the relevant goods from a third party.
- (3) The Supplier shall indemnify us against claims of third parties due to the infringement of such rights. This provision shall not apply if the Supplier has produced according to samples and drawings provided by us.

## § 9 Provided Material and Manufacturing Equipment

- (1) Technical and commercial documents of any kind, including prototypes, models, samples, drawings and manufacturing equipment, which we provide to the Supplier, remain our property and shall be returned to us unrequested as soon as they are no longer required for executing the order, as well as at any time on request. They shall always be treated confidentially and shall only be used to provide the ordered goods and services. In particular, they shall not be used for other purposes, nor copied or made accessible to third parties.
- (2) The Supplier shall bind any sub-contractors accordingly and shall inform us of this immediately and on his own initiative by submitting the appropriate documentary evidence.
- (3) The same shall apply to documents and manufacturing equipment which the Supplier has produced according to our instructions or with our assistance.
- (4) Material and manufacturing equipment provided shall not be forwarded to third parties, sold, pledged, made accessible or used in any other way without our consent.
- (5) Processing or transformation of material provided by the Supplier shall be carried out for us. If our goods subject to retention 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 our goods (purchase price plus VAT) to that of the other processed objects at the time of processing.
- (6) If the item supplied by us is inseparably mixed with other items not belonging to us, then we shall acquire co-ownership of the new item created in the ratio of the value of the item subject to the retention of title (purchase price plus VAT) to the other objects mixed-in at the time of intermixture. If the goods are mixed in such a manner that the item of the Supplier is to be regarded as the main object, it is agreed that the Supplier transfers the right to joint ownership to us pro rata; the Supplier shall hold the sole ownership or the joint ownership on our behalf.
- (7) As far as our entitlement of these rights to security according to subsection (5) and/or (6) exceed the unpaid purchase price of all our goods subject to the retention of title by more than 10%, we shall be obliged to release security at our discretion when requested by the Supplier.

## § 10 Tools, Devices

- (1) If a transfer for tool costs is agreed, then the ownership of and the exclusive power of disposition over these tools shall pass to us immediately after payment of the total or – if agreed – partial costs. The tools shall remain at the Supplier's works on a loan basis until completion of the order, unless otherwise agreed.
- (2) The same shall apply to tools for which the costs, as agreed, have been entirely or partly included in the price of the item ordered. Such tools shall be held fit for use and free of charge by the Supplier and shall be handed over after completion of the order upon request.
- (3) We shall retain the title to the tools that we have provided the Supplier with for the production of parts. The Supplier shall store all tools to which we have title of ownership at a place which is protected against theft, fire, water and other environmental impacts and risks.
- (4) Tools that are our property shall be used by the Supplier only for the processing of goods we ordered. On our expressed written request, the Supplier is obliged to insure the tools which are our property at their replacement value against fire, water damage and theft. We shall participate in the costs incurred hereby appropriately. At the same time the Supplier shall already now assign any and all claims for compensation arising out of this insurance; we hereby accept this assignment. The Supplier shall carry out any necessary service and inspection work as well as all maintenance and repair work in due time; we shall participate in the costs thus incurred appropriately. The Supplier shall give us notice of any incident immediately; in the event that he culpably fails to do so, any claims for damages remain unaffected hereby.

- (5) The Supplier shall ensure that the tools will not be copied and made accessible to third parties in any manner without our written consent. He shall also bear the risk for any accidental damages or losses.
- (6) Tools in the context of these provisions are to be interpreted in the broadest sense; this includes moulds and all types of appliances.

## § 11 Confidentiality and Data Protection

- (1) The Supplier shall be obliged to treat all information provided by us in relation to a purchase order confidentially, including product and process drawings, product specifications and all documents produced by the Supplier within the context of an order ("Confidential Information") and shall only use such information for the purpose of performance of the order. No confidential information shall be copied, used commercially or made accessible to third parties without our prior written permission. This confidentiality obligation shall be applicable to the contents of all contracts with Mayser, particularly within the context of the new or further development of products.
- (2) The Supplier shall only provide Confidential Information, also in its own enterprise, to persons who need to be deployed for the execution of the order and who also have been obliged to maintain secrecy by the Supplier. The Supplier shall impose the equivalent obligations on this group of people, where this is not already the case. Furthermore, the Supplier shall take all reasonable steps in order to prevent third parties from accessing work results or Confidential Information received from us. The Supplier shall be liable for any infringement of the secrecy obligations concerning an order by a third party to whom the Supplier made Confidential Information accessible.
- (3) The obligations of subsections (1) and (2) shall not apply to Confidential Information that is verifiably generally known, becomes generally known through no fault of the Supplier, has been rightfully obtained by a third party or was already known to the Supplier.
- (4) Advertisements which mention the business relation with us and other statements to the public or to authorities shall only be permitted with our prior written consent, unless these statements are necessary due to statutory mandatory regulations.
- (5) This obligation for confidentiality shall also apply after the end of the delivery agreement or business relationship for the duration of 5 years subject to the provisions of the following sentence 2. As far as the information subject to confidentiality concerns a trade or company secret, the obligation for confidentiality shall be permanent. This obligation for confidentiality shall also apply for documents mentioned in subsection (1) that were received within the context of contractual negotiations if an agreement is not concluded.
- (6) Documents received shall be returned to us in proper condition unrequested after the end of the supply agreement and the business relationship.
- (7) The Supplier shall ensure that all persons entrusted with the performance of contract in connection with the supply agreement and business connection shall comply with the legal data protection regulations.

## § 12 Transfer of Rights

The supply agreement concluded with us shall not be transferred either wholly or partly to a third party without our written consent. The assignment of claims towards us is only effective with our prior written consent. This shall not apply if the legal transaction on which the claim is based is a commercial transaction for both parties or if the Supplier is a legal entity under public law or an asset under public law.

## § 13 Place of Performance, Place of Jurisdiction and Applicable Law

- (1) The place of performance for deliveries and performances shall be our place of business.
- (2) If the Supplier is a merchant, Lindau (Germany) shall be the exclusive place of jurisdiction; however, we are also authorized to initiate court proceedings against the Supplier at the court of its place of residence.
- (3) All legal relations between the parties shall be governed by German law excluding the rules of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and international private law.

## § 14 Final Provision

Should any provision of these General Purchase Conditions be or become fully or partly invalid, the other provisions shall remain valid.

Version: September 2016