

# GENERAL TERMS AND CONDITIONS OF PURCHASING of PRIMES GmbH Metrology for Production with Laser Radiation

(As at: February 20, 2020)

## I. General, Area of Application

- (1) These General Terms and Conditions of Purchasing are applicable to all of the contracts and orders for the purchase of goods and for works or services (hereinafter: deliveries). The General Terms and Conditions of Purchasing shall apply only if the supplier is an entrepreneur (Article 14 of the German Civil Code), a legal entity under public law or special fund under public law.
- (2) The General Terms and Conditions of Purchasing Delivery shall apply in their respective version as a general agreement for future contracts with the same supplier without having to refer to them again in every individual case; in this case we will inform the supplier of amendments to our General Terms and Conditions of Purchasing without undue delay.
- (3) Our Terms and Conditions of Purchasing shall apply exclusively; supplier conditions that conflict with or deviate from our Terms and Conditions of Purchasing shall not be recognized unless their validity is explicitly agreed in writing. Any conflicting conditions of the supplier are hereby explicitly rejected. Our General Terms and Conditions of Purchasing are also applicable when we unconditionally accept a delivery from a supplier in knowledge of supplier conditions that conflict with or deviate from our Terms and Conditions of Purchasing.
- (4) Individual agreement with the supplier made in specific cases (including collateral agreements, supplements and amendments) shall always have precedence over these Terms and Conditions of Purchasing. A written agreement or our written confirmation shall be decisive for the content of such agreements.
- (5) Legally relevant declaration and notifications, which are to be submitted to us by the supplier after conclusion of the agreement (e.g. setting of deadlines, notifications of defects, declarations on rescission) must be made in writing to take effect.
- (6) References to the validity of statutory provisions are for the purpose of clarification only. Even without such a clarification, the statutory provisions therefore apply provided that they are not directly modified or explicitly excluded in these Terms and Conditions of Purchasing.
- (7) No remuneration shall be paid for the preparation of schedules and such like.

## II. Conclusion of Agreement

- (1) Our order shall be deemed to be binding at the earliest when it is submitted in writing or confirmed. The supplier must explicitly point out any obvious errors (e.g. spelling and arithmetical mistakes) and incompleteness in the order, including the order documents, as well as deviations from the order for the purposes of correction or completion before acceptance; otherwise the agreement will not be deemed to have been accepted.
- (2) The supplier must confirm our order in writing within a period of **3 working days**. A late acceptance by the supplier shall be deemed a new quote and shall require our acceptance in turn.

## III. Provision of Services, Procurement Risk

- (1) The supplier guarantees that the goods supplied are of the quality agreed, in particular correspond to our material specifications. We do not accept any equivalents or similar materials or materials from different manufacturers, unless we explicitly agree to this in advance.
- (2) Unless otherwise agreed in individual cases, the supplier shall bear the procurement risk for his performance.
- (3) We may demand changes to the agreement even after conclusion of the agreement, provided that this is reasonable for the supplier. If the agreement is changed, the effects for both parties, in particular with respect to additional or reduced costs and delivery dates, must be considered appropriately. An increased price as a result of changes to the order must be notified to us without undue delay and shall require written approval prior to performance.

## IV. Delivery Time, Delivery Delay

- (1) Unless otherwise agreed, the delivery date specified by us in the order is binding. If the supplier can probably not meet the agreed delivery date, he shall be required to inform us of this in writing without undue delay.
- (2) In addition to the further-reaching statutory entitlements - in the event of delay by the supplier, we have the right to demand flat-rate damages due to delay per calendar day in the amount of 0.25 % of the net price of the goods, however in total no more than 5 % of the net price. We reserve the right to prove higher damages. In return, the supplier has the right to prove that no or only a considerably lesser damage has been incurred.
- (3) If the supplier invokes force majeure if the delivery deadline is not met, we may cancel the agreement in whole or partially or demand implementation at a later date without the supplier gaining the right to base any claims against us if the agreement is canceled.

## V. Delivery, Transfer of Risk, Default of Acceptance

- (1) Delivery within Germany is "DDP (INCOTERMS 2020)" to the place specified in the order. If a destination is not specified or has not otherwise been agreed, the delivery must be to our headquarters at Max-Planck-Straße 2 in 64319 Pfungstadt. At the same time, the destination is the place of performance, both for the supplier's service and for our payment.
- (2) Upon handover of the goods at the place of performance, the risk of accidental loss and accidental deterioration is transferred to us. In the case of agreed acceptance, this is decisive for the transfer of risk; the regulations of the law of contracts for work apply accordingly to acceptance. It is equivalent to handover if we are late with acceptance.
- (3) Late acceptance shall be determined by the statutory provisions. An explicit offer from the supplier is necessary even if a specific or specifiable date on the calendar is possible for an action or involvement. If we are late with acceptance, the supplier can demand reimbursement for his additional expenses, within the framework of the statutory provisions (Article 304 German Civil Code). In the event of a specific item (unique product) to be manufactured by the supplier, the supplier has further-reaching rights only in the event of violation of participation duties for which we are responsible.

## VI. Prices, Payment Terms

- (1) The price or pricing clause stated in the order is binding. All prices are subject to statutory turnover tax, even if not separately stated.
- (2) The price includes all services and supplementary work by the supplier (e.g. assembly, installation) as well as ancillary costs (e.g. correct packaging, transport costs, customs duties and import duties).
- (3) At our request, the supplier must accept return of the packaging materials free of charge and carriage paid. Alternatively, we are entitled to dispose of the packaging material at the supplier's expense.
- (4) Unless otherwise agreed, the remuneration shall be due to be paid within 30 calendar days of complete delivery and performance (including an agreed acceptance) and receipt of a proper invoice. The invoice must be submitted separately in duplicate, with details of the order number, quantities and price, and may not be enclosed with the consignment. Payment by bank transfer shall be deemed to have been made on time if our transfer order reaches our bank before expiration of the payment deadline; we shall not be responsible for delays in the payment process by the banks involved.
- (5) Entitlement to interest on the delay according to Article 353 para. 1 German Civil Code is excluded.
- (6) There shall be deemed to be a delay on our part only after a written warning from the supplier. The interest on the delay is 5 percentage points per annum above the base rate (Article 247 German Civil Code).
- (7) We are entitled to retain due payments if we still have claims with respect to the ordered goods or earlier deliveries and services vis-a-vis the supplier.
- (8) Unreserved payment does not mean that we recognize the supplier's performance as contractual.

## VII. Confidentiality

- (1) We reserve all ownership rights of and copyright to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documents. The documents must be used only for implementing the agreement and must be returned to us at our request, at the latests after completion. The retention of duplicates and copies is not permitted. The supplier undertakes to keep the documents secret from third parties, even after termination of the agreement. The obligation for confidentiality no longer exists when the knowledge contained in the documents has become generally known.
- (2) The regulation in para. 1 applies accordingly to the objects provided to the supplier by us for manufacture (e.g. fabrics and materials, tools, models, samples). The supplier is required to store such objects separately, provided that they are not processed, and to insure them appropriately against destruction and loss.
- (3) If the supplier processes, mixes or compounds (further processes) the objects provided, this is done for us. If we further process the goods supplied, the same shall apply to us; we are then deemed to be the manufacturer and acquire ownership of the product upon further processing of in accordance with the statutory provisions.

## VIII. Retention of Title

- (1) Ownership of the goods is transferred to us unreservedly and without consideration of payment of the purchase price.
- (2) In the event of a transfer of ownership of the goods delivered due to the supplier receiving payment of the purchase price, reservation of title shall expire upon payment of the goods concerned at the latests.
- (3) Even before payment of the purchase price, we are authorized to sell on the goods in standard transactions with advance assignment of the demand resulting from this (alternatively, application of the simple retention of title extended to selling on). All other forms of retention of title are excluded, such as in particular the expanded and forwarded retention of title and retention of title extended for further processing.

## IX. Offsetting, Retention

The supplier shall only be entitled to offsetting or retention if his counterclaims are determined with legal effect or recognized by us. Furthermore, he is authorized to exercise a right of retention only to the extent that his counterclaim is based on the same contractual relationship.

## X. Warranty, Guarantee

- (1) In the case of material and legal faults with the goods and other violations of duties by the supplier, the statutory regulations shall apply unless agreed otherwise below.
- (2) The supplier shall accept a guarantee of 36 months from the transfer of risk for its deliveries and services, stating that its deliveries and services during the term of the guarantee
  - a) are free of faults of all kinds,
  - b) are fully suitable for the intended or agreed purpose and
  - c) have the contractually agreed or promised properties.
- (3) If the supplier has intended or offered a longer or further-reaching guarantee, this guarantee intended or offered by the supplier shall apply.
- (4) Deviating from Article 442 para. 1 sentence 2 German Civil Code, we are entitled to claims for defects without limit if we remained unaware of the fault when the agreement was concluded due to gross negligence.
- (5) We accept goods or pieces that are the subject of complaint only for the account and risk of the supplier and store them in his name at his risk. Payments in no way mean dispensing with our right to complain.
- (6) The supplier shall be responsible for the costs incurred for the purposes of inspecting and repair (including any dismantling and installation costs) even if there was no fault. However, in the case of unjustified requests to remedy faults, we are liable for compensation only if we have recognized, or did not recognize due to gross negligence, that there was no fault.
- (7) If the supplier does not meet his obligation for remedy - either by means of repair (remedying the fault) or by a replacement delivery (delivery of a fault-free item) by our choice - within an appropriate deadline set by us, we are entitled to remedy the fault ourselves and demand compensation from the expenses thus incurred or an appropriate advance payment from the supplier. There is no need to set a deadline when remedy by the supplier has failed or is unreasonable for us (e.g. due to particular urgency, risk to operational safety or imminent disproportionate damage); we will inform the supplier of such circumstances, in advance if possible.

## XI. Product Requirements

- (1) The supplier undertakes to comply with all of the applicable laws and relevant public-law and technical regulations - in particular those aimed at protecting the environment - such as DIN standards, VDE, VDMA, UVV, TÜV regulations, REACH and ROHS conformity and employers' liability insurance accident prevention regulations; the latest state of the art, technology, experience and the rules of craftsmanship must be taken into account.
- (2) The supplier undertakes to respect the requirements of our Code of Conduct, provide its services according to it and to impose the obligations arising from it on its sub-suppliers.
- (3) Furthermore, the supplier guarantees that the products supplied are free from substances harmful to the wetting properties of lacquers. Upon request, the supplier will confirm this to us free of charge.
- (4) Upon request, the supplier shall provide us with one free long-term supplier declaration per delivery year for the products supplied by him, with all of the data relevant to the product, such as the customs tariff number and the country of origin.
- (5) We inspect the goods supplied on the basis of the accompanying documents only for identity and quantity and for externally visible transport damage. We shall report any faults in the delivery that we find as soon as we have identified them according to the circumstances of our normal business processes, but within 14 working days.

## XII. Supplier Regress

- (1) In addition to the claims for defects, we are entitled to the statutory regress claims (supplier re-gress according to Articles 478, 479 German Civil Code) without restrictions within a supply chain. In particular, we are entitled to demand the type of remedy (repair or replacement) from the supplier, which we owe our customer in individual cases; our right to choose according to article 439 para. 1 German Civil Code remains unaffected by this.
- (2) Before we recognize or comply with a guarantee claim asserted by our customer (including reimbursement of expenses according to Articles 478 para. 3, 439 para. 2 German Civil Code), we inform the supplier of this and ask him for a written statement outlining the state of affairs. If the supplier does not issue a statement within an appropriate deadline and if no mutually acceptable solution is arrived at, the guarantee claim that we actually granted our customer shall be deemed due; the supplier is obliged to prove otherwise.
- (3) The claims from supplier regress shall also apply if the goods were further processed by us prior to sale to a consumer or one of our customers (e.g. by installing it in another product).

## XIII. Manufacturer Liability

- (1) The supplier shall exempt us from third-party claims if he is responsible for a product fault, the cause of which originated in his area of responsibility and he is liable for himself in external relations.
- (2) Within the context of his indemnity obligation, the supplier shall reimburse expenses according to Articles 683, 670 German Civil Code arising from or associated with using third parties including recall campaigns carried out by us. Where possible and reasonable, we will inform the supplier of the content and extent of recall campaigns and give him an opportunity to take a position. Further-reaching statutory rights shall remain unaffected by this.
- (3) The supplier must conclude and maintain a product liability insurance policy with flat-rate cover of at least EUR 10 million per personal/material claim.

## XIV. Limitation

- (1) Unless the following provisions state otherwise, the mutual claims of the parties shall be limited in accordance with the statutory provisions.
- (2) Deviating from Article 438 para. 1 No. 3 German Civil Code, the general limitation for material and legal defects is 3 years. The statutory limitation for third party claims for return according to Article 438 para. 1 No. 1 German Civil Code shall remain unaffected; claims from legal defects also never limit provided that the third party can still assert the right against us - especially in the absence of limitation.
- (3) In derogation of Article 438 para. 1 No. 2 German Civil Code, the general limitation for material and legal defects for structures and objects that have been used for a structure in their usual way and have caused their defects is six years.
- (4) The limitation starts with the transfer of risk.
- (5) The limitations under sales law and Nos 2 and 3 above apply to our claims for compensation outside the agreement associated with a defect in the goods only as minimum deadlines; otherwise, the regular statutory limitation applies (Articles 195, 199 German Civil Code). The same applies if there is no sold right, the supplier has accepted a guarantee or a fault has been maliciously concealed.

## XV. Assignment, Pledge

Rights from the agreement with us may only be assigned or pledged with our written agreement.

## XVI. Accident Prevention Equipment

All machines, devices, vehicles, etc. must be fitted with equipment to protect against accidents and industrial diseases, which are required according to the most up-to-date accident prevention guide-lines from the employers' liability insurers or according to the latest relevant statutory provisions.

## XVII. Industrial Property Rights

The supplier shall ensure that copyright, trademark, patent or other industrial property rights of third parties are not infringed by delivery and use of the goods ordered. He shall fully exempt us from any use by holders of property rights at first request and is required to grant us every support in warding off the claims of third parties and bear the costs for this. This also applies to deliveries from third parties to the supplier that he passes on to us.

## XVIII. Inventory Support for Provided Components

If we provide the supplier with components to provide his service, the supplier shall conduct an inventory of these provided components on 1 January of each year on the inventory form provided by us and then send it to us without undue delay.

## XIX. Ownership Protection

- (1) We reserve ownership of the property or copyright of the orders or contracts placed by us and the drawings, pictures, descriptions and other documents made available to the supplier. The supplier may not make them accessible to third parties or use or reproduce them himself, or allow them to be used or reproduced by third parties without our explicit permission. He must return these documents to us at our request if he no longer needs them for standard business or if negotiations do not lead to the conclusion of an agreement. Copies of these made by the supplier must be destroyed in this case, only storage within the context of statutory storage requirements and the storage of data for securing purposes within the context of standard data storage are excluded from this.
- (2) Tools and models that we make available to the supplier or that are made for the purposes of the agreement and for which the supplier is charged separately remain our property or become our property. The supplier will mark it as our property, store it carefully, secure it appropriately against damage of any kind and use only for the purposes of the agreement. One half each of the costs of maintaining and repairing them shall be borne by the parties - in the absence of an agreement to the contrary.

However, where costs are the result of objects manufactured by the supplier or incorrect use by the supplier, his employees or other vicarious agents, they should be borne in full by the supplier. The supplier shall notify us without undue delay of all minor damage to these tools and models. He is required to issue them to us in a proper condition when he no longer needs them to fulfill the agreements concluded with us.

## **XX. Account Work**

- (1) Account work shall be paid only if it has been agreed in writing. Account work shall be invoiced monthly.
- (2) Account work done for us will only be recognized if the account hours have been initialed by the relevant head of department.

## **XXI. Place of Jurisdiction, Applicable Law**

- (1) Conclusion of the contract and the contractual relationships between us and the supplier are subject only to the law of the Federal Republic of Germany. Use of UN sales law is excluded.
- (2) The place of jurisdiction for any disputes arising from the contractual relationship is our business headquarters in Pfungstadt. However, we are also entitled to file a suit.