

## **1. Scope of Conditions**

a) All our purchases of goods and services, orders, requirements or call-off orders with all of our suppliers shall be performed solely on the basis of these General Conditions of Purchase. These Conditions apply to businesses, and thus to all future business relations, even if they are not expressly agreed.

b) We hereby expressly reject any General Terms and Conditions of the supplier that conflict with our General Conditions of Purchase. Our Conditions of Purchase also apply exclusively even if we do not, in individual cases, raise objections to the inclusion of the General Terms and Conditions of one of our suppliers or if we accept a shipment of a supplier without reservation while being aware of contrary or supplementary General Terms and Conditions. Commercial letters of confirmation of a contractual partner do not obligate us, even if we do not explicitly contradict them.

c) We may amend our General Conditions of Purchase at any time, should market conditions necessitate these amendments, and if the supplier consents to the amendments. The supplier declares their consent by not expressing any opposition to such amendments within four weeks of notification. We shall notify the customer of any amendments and the consequences of failure to submit an objection.

## **2. Orders and Conclusion of a Contract**

a) Orders, conclusions of contracts and call-off orders, as well as amendments and additions thereto, must be made in text form. Oral agreements of any kind, including subsequent amendments and additions to our General Conditions of Purchase, must be confirmed by us in text form.

b) Should the supplier fail to accept an offer or order within two weeks, we shall be entitled to withdraw from our offer or order. Call-off orders and delivery times shall become legally binding, if the supplier does not object thereto within three working days from the receipt thereof.

c) Cost estimates are binding and shall not be

subject to remuneration, unless otherwise agreed.

d) The supplier shall not be entitled to assign its claims that arise from the contractual relationship to third parties.

e) If the supplier intends to discontinue or cease the manufacturing or sale of the respective goods, it shall inform us as early as possible, but at the latest six months in advance of the discontinuation or cessation of manufacturing or sale. In this event, the supplier shall give us the opportunity to call off an annual quantity of the respective parts for an unchanged price.

## **3. Prices and Shipping Costs**

a) The prices stated in our order, plus statutory value added tax, are decisive. Should a price be not expressly stated, the prices stated in the previous order shall apply or, in the case of call order, the agreed price or, in the event that no corresponding agreement has been expressly made, the price of the last shipment. All prices are fixed prices.

b) Price increases must be expressly accepted by us. Recalculations are excluded.

c) All prices are including all packaging, transportation, insurance and all other costs of delivery, unless otherwise agreed. This also applies to any ancillary costs such as travel expenses, provision of tools etc.

## **4. Billing**

Invoices must be sent to us in duplicate immediately following the delivery of goods. These invoices may not be attached to the shipment. The invoices must state as a minimum the order number, supplier number and our article number, as well as the day of delivery or provision.

## 5. Delivery and Packaging, Transfer of Risk

a) Unless otherwise agreed goods must be delivered "DAP" as stipulated in the Incoterms 2010 including shipping documents. Shipping documents are required to contain the following documents:

- delivery note in duplicate,
- packing note
- cleaning certificates and
- test certificates and / or certificates of conformity in accordance with the agreed specifications.

b) Agreed dates and deadlines are binding. The receipt of goods is decisive for compliance with the delivery date or delivery period. If in deviation from the usual practice the Incoterm "DAP" has not been agreed on, the supplier shall deliver the goods in due time by taking into account the duration of transport, in particular that of loading and shipping, which the supplier is supposed to coordinate with the freight forwarder. If the supplier fails to comply with the agreed dates or deadlines, statutory provisions shall apply. The supplier must inform us immediately as soon as it can be foreseen that the agreed delivery dates or delivery periods cannot be met. Any unreserved acceptance of a delayed shipment or performance shall not imply a waiver by us of any claims based on the supplier's default.

c) Partial deliveries and early deliveries are only permissible if we have expressly declared our consent thereto. However, the claim for payment becomes due at the earliest with complete delivery.

d) All shipping documents and, insofar the goods have been packed, the outer packaging is to be labelled with the order number, supplier number, our article number, gross and net weight, number of packaging units, type of packaging (disposable/recyclable), dispatch date or provision date and the destination (unloading point) and, if known, the recipient of the goods.

e) For imports, shipping documents must state whether goods are duty-paid or duty-unpaid. The supplier has to provide us with the following customs clearance documents for duty-unpaid goods:

- Customs transit documents (ZBT 1),

- Waybills,

- Customs or commercial invoice,

- Preference documents such as Form A, EU R.1, A.TR,

- Certificate of Origin and, if required,

- any further documents required for customs clearance.

f) With regard to the application for customs registration, the supplier shall additionally ensure that any required information be submitted in due time as well as complete and correct to those responsible for the submission of the application for registration, so that no delay in delivery will occur therefrom. For duty-paid goods, proof of duty payment (e.g. AT/C number (ATLAS), tax bill number) must be stated in the waybill.

g) The supplier shall also inform us comprehensively and in writing about any authorisation requirements with regard to the (re-) export in accordance with both the respective national export and customs provisions and those applicable in the country of origin of the goods and services, if to his knowledge the goods are destined for (re-) export.

h) Additionally, the supplier shall pack the goods with packaging materials authorised for both the entire shipment route and the destination and with due diligence in order to prevent the occurrence of any transport damage. In the event of the occurrence of any transport damage which can be attributed to inappropriate packaging, supplier shall be liable in accordance with the respective statutory provisions.

i) As to domestic deliveries, supplier shall at our request collect or provide for the collection of any secondary packaging, transport or transit packaging as well as retail packaging at the respective destination.

j) Dangerous goods must be packaged, labelled and shipped in accordance with the relevant national and international provisions. In particular, the supplier needs to fulfil its duties laid down in the EC Regulation 1907/2006 ("ReACH Regulation") and shall provide a Chemical Safety Report in the language of the recipient's country pursuant to the ReACH Regulation. The supplier shall bear the risk of loss, damage or other deterioration up to the arrival of the goods in the contractually agreed state

and at the agreed destination. Insofar as delivery with installation/service has been agreed, the transfer of risk shall occur only following the proper execution of installation/service and handover. Insofar acceptance of the goods has either been agreed on or is required on the grounds of statutory law, the risk shall be passed to us upon our acceptance. If formal acceptance has been agreed, the transfer of risk shall occur only upon confirmation of acceptance in the acceptance report. The mere payment of invoiced amounts, even if done without reservation, does not replace formal acceptance. Partial deliveries are not permitted unless we have given our express consent or it is reasonable for us.

k) With regard to quantities, weights and dimensions, the values determined by us during the inspection of incoming goods shall be decisive. The supplier may prove the contrary by submitting respective evidence.

l) The supplier shall bear the risk of loss of the goods until the acceptance thereof by us or any of our representatives at the place to which according to the order the goods are to be delivered or performance shall take place.

## **6. Payment**

a) Payments shall be made at our discretion by bank transfer, cheque or promissory note following the acceptance of goods and receipt of an auditable invoice, as well as transfer of all documents related to delivery.

b) Unless expressly agreed otherwise in writing, we pay either within 30 days less 3% early payment discount or within 60 days without such discount. We shall be entitled to settle invoiced amounts against receivables owed by us to our supplier.

## **7. Warranty, Liability**

a) The vendor warrants that products are of high quality and have been produced in accordance with the best industry standards. Products are safe, marketable and suitable for their intended purpose and comply with their specifications in all regards.

b) We check delivered goods based on accompanying documentation only for identity and quantity, as well as visible external transport damage. We shall notify the supplier

of any defects in the shipment within a reasonable period of time as soon as they have been detected in accordance with our regular business procedures. In this respect, the supplier waives the objection of delayed notification of defects (§ 377 HGB).

c) In case of defects in goods that have been or are to be delivered to us or any other non-performance to which such statutory provisions are applicable, statutory warranty rights shall apply. In the event of defective goods, we shall be entitled in particular to request, at our discretion, either that the defect is remedied or that goods free of defects are supplied. Pursuant to the requirements of § 439 subsec. 4 German Civil Code (Bürgerliches Gesetzbuch – BGB) the supplier may be entitled to refuse to cure the defect as chosen and determined by us.

d) In the event that the supplier is in default, we shall be entitled to demand liquidated damages to the amount of 1% for each commenced week of delay, but in the aggregate no more than 10% of the order value; while the supplier has the right to prove to us that no or significantly less damages have been incurred. We shall reserve the right to claim any damages in excess of the amount due and payable as liquidated damages. Any liquidated damages due and payable by supplier may be counterbalanced by way of set-off against any claims for damages based on the supplier's default that exceed the amount due and payable as liquidated damages.

e) The supplier shall bear liability for any other defective performance or any other breach of contract in accordance with statutory provisions. The statute of limitations for any warranty claims for defects shall also be governed by statutory provisions.

f) The supplier shall indemnify us from any liability towards third parties or liability claims from third parties arising out of or in connection with the manufacturing, the delivery or the storage of the goods at first call. The above does not apply if the underlying occurrence can be attributed to grossly negligent or wilful misconduct by us. The supplier shall notify us immediately of any legal action brought or claims asserted against it and provide us with all relevant documents. If we are obliged, due to a failure on the part of the supplier, to conduct a product recall which affects third parties, the supplier shall bear all related costs.

g) The supplier undertakes to conclude a comprehensive liability insurance policy, including product liability, with a renowned insurance company with a reasonable minimum coverage per claim. The supplier shall provide us with evidence of the scope of insurance coverage on an annual basis without being notified to do so.

h) In the event of a product recall instigated by the authorities or in the event we intend to deliberately recall either the delivered goods or the final product, the parties shall immediately inform each other and coordinate the respective adequate procedure. If the parties fail to agree on a joint procedure, we shall be permitted to determine alone which measures shall be deemed adequate and be carried out accordingly (e.g. also preventative customer care measures). The costs incurred by such measures shall be borne by the supplier. If a serial defect can be remedied by the exchange of parts or in case an inspection of our products without the exchange of parts should become necessary, supplier shall also indemnify us from any costs incurred by the respective product warranty claims.

## **8. Origin of Goods, Composition of Goods**

a) Our supplier must state the origin of the goods (country of origin) in commercial papers (in particular in the delivery note and invoice) and, at our request, furnish a Certificate of Origin or a (long-term) supplier's declaration free of charge.

b) As to the origin of the goods, the goods must meet the requirements set forth in either the applicable bilateral or multilateral preferential trade agreements or unilateral requirements of origin of the Generalised System of Preferences (GSP), insofar as shipments are within the scope of this movement of goods.

c) Our supplier must ensure that all components of the goods are in accordance with the relevant requirements of EU Regulation 1907/2006, also known as the "ReACH Regulation" and that they are preregistered or registered for the uses that we have communicated to the supplier, unless exempted from the registration requirement and, insofar relevant, are also authorised. If the goods are an article pursuant to Art. 7 of the ReACH Regulation, the above requirements have to be met with regard to the substance intended to be released.

d) Our supplier shall inform us immediately, if a component of a product contains a concentration in excess of 0.1 percent weight by weight (W/W) of a substance that meets the criteria of Art. 57 and 59 of the ReACH Regulation (Substances of very high concern). This also applies accordingly to packaging products.

e) The supplier undertakes to retain documentation regarding the manufacture, storage and delivery of products for a period of at least ten years from the date of delivery and to make these documents available to us on request.

f) The supplier is not supposed to offer us any products which contain so-called conflict minerals. These are minerals which contain tantalum, gold, tungsten or tin and by the sale of which armed groups in the Democratic Republic of Congo or in bordering countries are financed either directly or indirectly. The supplier shall be obliged to undertake measures which ensure the avoidance of materials or components containing such conflict minerals.

## **9. Minimum Standards to be met by Supplier**

a) With regard to the workers deployed the supplier shall ensure that itself, its subcontractors, recruitment agencies and suppliers or their respective subcontractors, recruitment agencies or suppliers comply with the statutory requirements set forth in the German Minimum Wage Act (Gesetz zur Regelung eines allgemeinen Mindestlohns - MiLoG) and in the German Posted Workers Act as well as ensure that the aforementioned meet their obligations to pay contributions to social security institutions, worker cooperatives and other institutions, in particular to the joint facilities of the parties to a collective agreement as referred to in § 8 of the Posted Workers Act (Arbeitnehmerentsendegesetz – AEntG). The supplier shall take the above into account as to the selection of its subcontractors or recruitment agencies and shall oblige these to legally bind their respective subcontractors and recruitment agencies accordingly which also shall be clearly documented by the supplier. Any illegal employment of any kind is prohibited.

b) The supplier shall be obliged to indemnify us from any claims made by any of its employees or any of its respective subcontractors or recruitment agencies or by one of the facilities of the parties to a collective agreement as listed in

§ 8 of the Posted Workers Act (Arbeitnehmerentsendegesetz – AEntG) for the payment of remuneration and/or contributions, including any legal costs.

c) Should the supplier be in breach of one of the obligations stipulated in this paragraph, we shall be entitled to terminate or rescind the contract extraordinarily and without notice. The supplier shall additionally be liable towards us for any damages incurred by a breach of the obligations set forth in this section. This shall not apply if the contractual party bears no responsibility for such a breach.

d) The supplier shall have no direct or indirect commercial or other connections to terrorists, terrorist groups or other criminal or anti-constitutional organisations. In particular, the supplier shall take appropriate organisational measures to ensure the compliance with existing embargoes, European regulations on the fight against crime and terrorism applicable in the context of the supply relationship and the corresponding American or other applicable provisions in the conduct of its business, in particular through the implementation of adequate software systems. The supplier shall indemnify us from all claims and costs resulting from any respective infringement constituted by any actions or omissions of the supplier, its affiliates or employees, representatives or any third parties used by the supplier to perform its obligations - including reasonable legal fees and consultation fees or fees or fines pursuant to administrative law.

e) The supplier shall allow us to inspect their premises at any time and without prior notification. To this end, the supplier shall provide us with information and grant us access to relevant documents and materials, as well as grant us access to production processes, storage and transportation. The same shall apply to any ad hoc audit or business process analysis carried out with regard to any of supplier's sub-suppliers as well as to such audits carried out by designated persons or organisations on the grounds of respective statutory or normative requirements. We or any third party obliged to confidentiality shall be permitted to carry out inspections on the supplier's premises during regular business hours. At our request supplier shall also grant our customers that are obliged to confidentiality to carry out the aforementioned inspections in our company. We shall ensure that supplier's on site operations will be interfered with as little as possible by such activities.

## **10. Production Materials**

a) Any design or other item or piece of equipment related to the preparation and / or implementation of the manufacturing and / or assembly of products, such as in particular technical drawings, standard factory procedures, models, matrices, forms, dies, tools, etc. which have been either provided to supplier by us or have been created by the supplier according to our specifications, shall not be used for, and in particular not sold to or otherwise conveyed or passed on to third parties without our consent. The same applies to products manufactured using these items or pieces of equipment. These, too, may be used for other purposes only when we have granted our consent to such use.

b) Such items or pieces of equipment, as listed above under clause 10. a), must be returned to us without special notification to do so following the execution of our orders.

## **11. Spare Parts**

(1) The supplier shall provide spare parts for products delivered to us for a period of at least 10 years following delivery.

(2) The supplier must inform us in good time should it intend to cease to provide or manufacture the respective spare parts.

## **12. Confidentiality, Data Protection**

a) We and the supplier mutually agree to treat any information deriving from the business relationship as confidential, regardless of whether the information is noticeably confidential or not. This does not apply to information which before disclosure has either been known by the other party or is in the public domain with respect to the relevant business surroundings. The obligation to confidentiality remains in effect for further five years as per the date of the cessation of the business relationship. We shall be permitted to forward confidential information to our affiliates, consultants, customers and other third parties, insofar as the respective third party necessarily needs to know the confidential information in order to serve the purpose of the contractual relationship concluded between us and the customer, and provided that the third party is equally obliged to confidentiality.

b) Each party shall at all times comply with its respective obligations under the applicable data protection laws and regulations. For purposes of this section 12, the term "personal data" means any information relating to an identified or identifiable individual.

c) The parties acknowledge and agree that, where in the course of performing our obligations under the agreement we process personal data on behalf of our customer, we shall not be entitled to use or otherwise process such personal data for any other purpose. Accordingly, we shall in connection with that processing:

- (aa) process personal data only on the written instructions of our supplier, unless required to do so by law;
- (bb) keep confidential the personal data and take appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure, use or access and against all other unlawful forms of processing, including controls over entry, access, intervention, disclosure, input and preservation of and to such data;
- (cc) enable the supplier to audit our compliance with the obligations of this section 12 and in particular the technical and organisational measures referred to in sub (b) above. We shall provide the supplier with all reasonably required assistance and evidence in connection therewith;
- (dd) notify the supplier without undue delay about, and no longer than 24 hours after becoming aware of, any breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data (a "Data Breach"). Upon a Data Breach, we shall take adequate remedial measures as soon as possible and shall promptly provide the customer with all relevant information and assistance as requested by the supplier regarding the Data Breach;
- (ee) ensure and upon request certify that any copies of those personal data in our possession or under our control are permanently destroyed upon termination or expiry of the agreement or when they are otherwise no longer required for the performance of our obligations under the agreement;

- (ff) ensure that personal data is only accessible to members of our personnel who have committed themselves to confidentiality and who need to have access to the data in order to carry out their roles in the performance of our obligations under an Agreement;
- (gg) allow the supplier to inform third parties of the processing of the personal data by us;
- (hh) give the supplier such co-operation, assistance and information and do all things and execute all documents as the customer may reasonably request to enable the supplier to comply with its obligations under any data protection laws and timely co-operate and comply with the directions or decisions of any competent data protection and privacy authority in relation to those data; and
- (ii) not transfer any personal data to any country outside the country in which the services or goods are delivered or make such personal data accessible from any such country, other than with the specific prior written approval of the supplier.

d) Supplier hereby provides its general authorisation for us to engage sub-contractors and affiliates (each a "sub-processor") to process personal data in connection with the performance of our obligations under the agreement, subject to the following. We shall:

- (aa) ensure that our subcontractors and affiliates abide by a level of data protection no less protective than the obligations as set out in this section 12;
- (bb) upon request inform the supplier of the identity of all sub-processors;
- (cc) keep the supplier updated on any changes to sub-processors; and
- (dd) give the supplier the opportunity to object to any sub-processors based on reasonable grounds.

In the event that the supplier objects to any sub-processor and the parties cannot reach a mutually acceptable solution, we shall refrain from allowing the sub-processor to process personal data, or allow the supplier to terminate the agreement without cost.

e) We shall defend and hold harmless supplier against any claim, demand, suit or proceeding made or brought against the supplier by a third party (including any supervisory authority and/or regulator) based on a breach by us or our affiliates (or by their personnel or other third

parties for which we are responsible) of its obligations under this section 12 or applicable data protection laws. Any limitations of our liability included in these terms do not apply to this indemnity.

f) The supplier is hereby informed that we process personal data acquired during the business relationship in accordance with the provisions of the German Federal Data Protection Act. For further information please verify our data privacy policy, which you can find under [www.amg-pesch.com/1052-Datenschutz.html](http://www.amg-pesch.com/1052-Datenschutz.html).

### **13. Property Rights**

a) The supplier is obliged to treat orders placed by us and all related details and information, both commercial and technical, as trade secrets. This obligation shall remain effective for a period of further five years as per the date of the termination of the contractual relationship, unless a longer period has been agreed by the parties. At our request, all documents and information must be returned to us or destroyed immediately following the completion of the order. Publicly accessible information or information that the supplier has developed independently are exempted from this provision.

b) The supplier shall be liable for any infringement of existing domestic or foreign intellectual property rights or any other such property rights which are not expressly protected by statutory law that may be caused by the use of the supplied goods. In addition the supplier shall be liable for any direct or indirect damages caused to us by any infringement of such rights. In such case, the supplier shall indemnify us from any reasonable legal or defence costs incurred.

### **14. Place of Fulfilment, Place of Jurisdiction, Applicable Law and Other**

a) For all rights and obligations arising out of or in connection with any agreement under these General Terms of Purchase Cologne, Germany shall be the place of delivery, performance and payment.

b) The sole place of jurisdiction for disputes arising either directly or indirectly from the contractual relationship (including proceedings on claims arising from promissory notes, cheques and any other proceedings in which solely documentary evidence may be submitted shall be

Bielefeld, Germany. We may, however, also choose a different place of jurisdiction.

c) The laws of the Federal Republic of Germany shall exclusively be applied to the entire business and legal relationship between our supplier and us. The application of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.

d) The ineffectiveness or unenforceability of any provision of these General Conditions of Purchase shall not affect the effectiveness of the remaining provisions. Any ineffective or unenforceable provisions shall be replaced by a legally permissible provision that most closely approaches the purpose of the ineffective or unenforceable provision.