

## **Order Terms**

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

The present Order Terms shall apply to any orders placed – now or in future – by the Orderer (purchaser) for products and services to be provided by Suppliers (sellers) that are entrepreneurs, even if the Terms are not explicitly agreed again for future orders. No conflicting agreements and terms and conditions issued by the Supplier shall be binding unless expressly agreed in writing. Terms and conditions or counter-confirmations to the contrary issued by the Supplier are not accepted.

### **2. Order Acknowledgment, Conclusion of Contract**

No order placed by the Orderer shall be binding unless in writing. The Orderer may cancel the order in the event that the Supplier fails to acknowledge such order in writing within two weeks (or any other period specified in the order). Provided that subject to the present Order Terms, the Orderer must submit all notifications in writing, such notifications may be submitted by fax or any other kind of remote data transmission.

No deviation in the order acknowledgment from the order, no verbal agreement before, at or after conclusion of the contract or deviations from the present Order Terms shall be binding unless approved and confirmed by the Orderer in writing.

The Orderer shall not pay for offers, planning, designs, etc. unless explicitly agreed in writing.

### **3. Designs, Samples, Provision of Materials**

Any designs, samples, tools, materials, etc. provided by the Orderer shall remain the Orderer's property and must not be passed on to any third party without the Orderer's written consent. They may be used for the agreed purposes only and must be protected against unauthorized use and inspection. Further such designs, samples, tools, materials, etc. as well as all information made available by the Orderer must be treated as strictly confidential.

The ownership of any designs, samples, tools, etc., including all rights of use, produced by the Supplier as agreed shall pass to the Orderer upon payment of the agreed remuneration.

#### **4. Time of Performance, Contractual Penalties for Impairment of Performance**

The agreed delivery dates are binding and must be strictly observed. Whether products or services are delivered in due time, depends on their arrival at the receiving point specified in the order. In case of work contracts, deliveries with installation services as well as services, the time of their acceptance is decisive. Notwithstanding any of the Orderer's rights, the Orderer must be immediately notified of any foreseeable delays in delivery, performance or the removal of defects. In the event that the delivery/performance date cannot be kept for reasons which the Supplier is responsible for, the Orderer may demand a lump-sum contractual penalty

in the amount of 0.3% for each started working day after the exceeded deadline, but in no event more than 5 % of the order value. Any further concrete rights of the Orderer (damages and cancellation) shall remain unaffected. In the case that the right to charge a contractual penalty is omitted upon acceptance of products, services or removal of defects, the contractual penalty may nevertheless be enforced up to the final settlement.

In the event that due to force majeure, the delivery/performance date cannot be kept or the acceptance of products/services is prevented, the Orderer must grant an extension. Should such extension expire without success, the Orderer may, at its own option, cancel the contract in whole, or portions thereof, or extend the time, but the Supplier shall not be entitled to claim damages etc. in such cases.

#### **5. Place of Performance, Dispatch, Passing of Risk, Invoices**

In case of work contracts, deliveries with installation services and services, the risk shall pass to the Orderer upon acceptance. In case of all other deliveries, the risk will pass to the Orderer upon arrival at the receiving point specified in the order. Unless otherwise agreed, the delivery shall be deemed agreed as a DDP delivery to the receiving point, including packaging.

In the case that a price ex works or warehouse of the Supplier (EXW) is agreed, the Supplier must ship the products at the lowest cost unless the Orderer requests a certain mode of shipment. Any additional costs of express shipments required to keep the delivery date shall be borne by the Supplier.

When products are loaded in case of a DDP delivery to a receiving point and/or made available for collection in case of a delivery EXW Supplier, the Supplier must at the same time send to the Orderer a shipping advice (dispatch note) for each order (or, in case such order is requested to be delivered in partial shipments, for each request) by fax or e-mail (to the Orderer's employee in charge as specified in the

order as addressee). Such shipping advice must also include the order number, request number, quantity actually delivered and time of delivery.

A delivery note must be enclosed with the shipment which, apart from the information defined for the shipping advice as stated above, must also contain the use by date or the product's remaining life with regard to the delivery date.

The loading resources available upon delivery of goods and offered for exchange or collection must comply with the agreed, or alternatively, normal trade, quality specifications as to kind and quality. Otherwise the Orderer may refuse to accept an exchange. In the event that products are delivered in silo vehicles, the Orderer reserves the right to produce a weight protocol using an officially calibrated or, alternatively, public trucking weigh-station. In the case that the original packaging of the delivered products or the sealing of silo vehicles is damaged giving reason to doubt the undamaged condition and unspoilt quality of the products, the Orderer may reject such products.

All invoices (including a duplicate to be identified as a copy) must be submitted with reference to the order number and the individual item numbers. No invoice shall become due for payment unless these complete details are provided.

## **6. Payments**

Unless otherwise agreed, invoices must be paid within 14 days less a 3% cash discount or net 60 days. The term of payment will commence upon complete delivery of the products or services and submission of a correct invoice. The Orderer will be in default if it fails to pay after receipt of the Contractor's payment reminder issued when the invoice is due and no objections are made.

Payments shall not be considered as an acceptance of the products' or services' delivery according to the contract and are made subject to the invoice control.

## **7. Inspection of Incoming Products, Liability for Defects**

Art. 201 OR in such a way that the Orderer must notify apparent defects or transport damage within 10 working days after delivery, hidden defects must be notified within 10 working days of discovery, unless the products require a shorter period due to their perishableness. In the case that products are forwarded or re-routed, the beginning of the inspection shall be deemed postponed up to the goods' arrival at the new destination. The Supplier must bear all costs of justified return shipments, substitute deliveries or removal of defects.

The Supplier warrants that the products to be delivered comply with the Law on Food Products and Articles of Daily Use as well as all statutory provisions in force at the

destination to protect life, health and safety, provided that such provisions are applicable.

Art. 210 OR notwithstanding, the period of limitation for the Orderer's remedies for breach of warranty shall be three years. In all other circumstances the statutory limitation periods and provisions shall apply.

Should products or services have a defect under a breach of warranty given by the Supplier, the Supplier shall always assume liability for damages without fault. In the event that a product is defective but no warranty has been given, the Supplier may only be released from the Orderer's claims for damages or the reimbursement of expenses made in vain, if the Supplier can furnish proof that the non-performance of its obligations has been caused by an obstacle beyond its control and that the Supplier could not reasonably be expected to take such obstacle into account when concluding the contract or avoid or remove such obstacle or its consequences. In the case that the Contractor used a third party, the Contractor can only be released if it is released according to these requirements and such third party would also be released according to these requirements if these requirements applied to it.

In the event that the delivered products or services are defective, the exercise of the Orderer's rights resulting from such defect does not require the fixing of a period even if the Contractor delivers the products or services upon occurrence of the default or the Orderer takes a special interest in immediately exercising its rights to avoid its own default with respect to its buyers or other urgent issues. If, when remedying a defect, the Contractor delivers new products or services, in whole or in part, or removes the defect, the periods of limitation for the remedies for breach of warranty shall commence anew.

The Contractor warrants that the delivered products or services are free of industrial property rights of third parties and that particularly such property rights do not conflict with the use provided for in the contract at the place of performance or destination agreed by contract. The period of limitation for liability arising from warranty of title is 10 years from date of delivery.

When executing the order, the Supplier agrees to only use such persons who have the necessary official licenses and permissions. In case of any violations, the Supplier agrees to indemnify the Orderer from any claims.

## **8. Confidentiality**

The Supplier must treat the order and any related work and services, including all materials and designs made available, as confidential. The existence of the business relations may be disclosed only with the Orderer's prior written consent.

## **9. Special Right of Termination**

In the event that the Contractor ceases payments, if a provisional administrator in insolvency proceedings is appointed or insolvency proceedings have been instituted against the assets of the Contractor, the Orderer may cancel the whole contract or portions thereof. In case of cancellation, the Orderer may use, against payment of an adequate remuneration, existing facilities and products and services delivered by the Contractor up to that point of time to continue works.

## **10. Choice of Law, Place of Jurisdiction, Language**

The present Order Terms shall be governed by the law of Switzerland. In case of disputes, the courts at the seat of the Orderer shall have jurisdiction. Unless otherwise agreed, all order acknowledgments, shipping advices (dispatch note), delivery notes, invoices and other documents must be submitted by the Supplier in German.

## **11. Severability Clause**

If any provision of the present Order Terms, or parts thereof, is or are found to be invalid, such invalidity will not affect the enforceability of the remaining provisions of the Order Terms.