

General Terms and Conditions of Purchasing of Maschinenfabrik Wagner GmbH & Co. KG

1. Scope of application

To the extent not agreed to the contrary, the present General Terms and Conditions of Purchase shall apply to the business relationship between Maschinenfabrik Wagner GmbH & Co. KG ("PLARAD") and the provider ("Supplier"). Deviating or supplementary terms and conditions used by Supplier shall not become contents of the contract, even if PLARAD does not expressly contradict them or if Supplier declares that it exclusively wishes to supply at its terms and conditions. This shall also apply if PLARAD accepts the delivery/service by Supplier without an express contradiction of Supplier's terms and conditions of business. As a precaution, contradictory terms and conditions of Supplier are here and now challenged.

2. Conclusion of contract

2.1 Insofar as the order by PLARAD deviates from Supplier's quotation, the order shall be deemed accepted by Supplier insofar as Supplier does not contradict the order within six working days from the date of receipt.

2.2 Only orders placed in writing shall be legally binding. The same shall apply to side-agreements and amendments. Written form shall be equated to transmission by remote data transmission.

2.3 Production, submission and presentation of quotations shall be without obligation and free of charge for PLARAD. Estimates shall only be remunerated following written agreement in this regard.

2.4 Amendments of the subject matter of the contract can also be demanded by PLARAD following conclusion of the contract. In this context, the effects with a view to additional and lower costs and also delivery dates shall be taken into due account.

3. Delivery directives

3.1 All correspondence (e.g. notifications of dispatch, delivery notes, invoices) shall be marked with the corresponding PLARAD order number.

3.2 Supplier engages to provide PLARAD with all the necessary product information, in particular safety data sheets, identification directives etc., in good time before each delivery.

3.3 To the extent that certificates concerning quality examinations have been agreed, they shall form an integral part of the delivery. They shall be transmitted to the agreed destination no later than the date of the delivery.

3.4 Upon acceptance, commodities shall pass into PLARAD's ownership without limitation as a matter of principle. A right of retention in favour of Supplier shall only exist if it has been agreed by a written individual agreement.

4. Delivery dates and arrears in delivery

4.1 The agreed delivery dates shall be binding. Advance deliveries and part deliveries shall only be admissible following prior agreement.

4.2 If Supplier sees circumstances which could jeopardise compliance with an agreed date, it shall be obliged to notify PLARAD without delay, stating the reasons and the prospective duration of the delay.

4.3 With acceptance of the delayed delivery or the delayed rendering of the contractually agreed services, PLARAD shall not declare any waiver of all and any rights as a result of exceeding the period of performance.

4.4 Supplier can only make reference to a lack of necessary documents to be provided by PLARAD if it has not received them within a suitable period despite a written reminder.

5. Passage of risk

To the extent not determined to the contrary in the individual case, risk shall pass upon acceptance of the deliveries and services at the delivery address determined by PLARAD. To the extent not expressly agreed to the contrary, Supplier shall supply free Haus Birrenbachshöhe, packaging and customs paid. The costs of freight, packaging and customs shall be paid by Supplier.

6. Invoice and payment

6.1 Invoices shall be submitted separately in duplicate following delivery in accordance with the valid statutory form with all the pertinent documents and data (order number, if applicable including the order item number).

6.2 Invoices not corresponding to the form stated under 6.1 shall only be deemed received from the time of correction.

6.3 Payments shall be made as agreed in the individual case between PLARAD and Supplier. To the extent that no such agreement has been made, payment shall either be with 3% discount within 30 calendar days following delivery/service and receipt of the invoice or purely net following 60 calendar days. Payment shall not rest in fictitious approval of the commodities.

6.4 Notwithstanding further claims, the quantities or weights established at the delivery address by PLARAD or third parties commissioned by the latter shall be decisive in calculation according to quantities or weight.

7. Warranty and damages

7.1 PLARAD shall only make a check of incoming goods with a view to externally visible damage and externally recognisable deviations with a view to quantity, weight and identity. Such defects shall be notified without delay following delivery – or to the extent provided for by law or contractually agreed – following inspection. Further, PLARAD shall notify defects without delay as soon as they have been established.

7.2 If a delivery/service is defective, PLARAD shall, alongside the claims accruing to

it by law, be entitled to demand that Supplier carries out subsequent performance without delay and free of charge for PLARAD and reimburses PLARAD for all expenditure incurred by the latter in connection with the subsequent performance. In urgent cases or if Supplier rejects subsequent performance without delay, PLARAD shall be entitled to carry out subsequent performance itself without delay or to have it carried out by third parties at Supplier's expense and risk.

7.3 Apart from the cases of inhibition of barring by limitation provided for by law, barring of limitation of claims and rights from defects shall also be inhibited during the period between notification and remedying of defects. The period of barring shall recommence for new or reworked deliveries.

7.4 Apart from this, Supplier's liability shall exclusively be based on statutory provisions. In particular, no limitations of or exemptions from liability shall be accepted by PLARAD. Supplier shall hold PLARAD harmless against third-party claims to damage at first request to the extent that Supplier or its sub-supplier(s) has/have caused or is/are answerable for the defect triggering the liability.

7.5 Approval of drawings, calculations etc. of Supplier shall not affect the latter's obligation to defect-free delivery.

8. Protective rights

8.1 Supplier guarantees that all deliveries and services are free of third-party protective rights and that in particular patents, licences or other third-party protective rights are not infringed by the delivery and use of the objects of delivery.

8.2 Supplier shall hold PLARAD and its contracting parties harmless against all third-party claims from all and any infringements of protective rights at first written request and shall bear all costs originating in this connection.

8.3 PLARAD shall be entitled, albeit not obliged to obtain approval for the use of the objects of delivery and services in question from the beneficiary at Supplier's expense.

9. Confidentiality

9.1 Supplier engages to secrecy concerning all information, knowledge and documents, in particular data, measurement figures, diagrams, plans, drafts and other information ("Information") received from PLARAD or otherwise becoming known to it and not public domain, not to copy it, to take the measures necessary to ensure that third parties do not receive any access to it and only to use the information for the handling of the contractual relationship in question, this obligation also surviving the ending of the underlying contractual relationship. Supplier shall be obliged to obligate its employees and sub-suppliers in the same way. Supplier engages to return all Information to PLARAD without specific request following the ending of the contractual relationship. Further, PLARAD shall also be entitled to demand the return of information during the handling of the contract.

9.2 Supplier shall only be authorised to notify third parties of the business relationship with PLARAD following prior written approval by PLARAD.

10. Production devices

Models, testing devices, tools, moulds, samples etc. ("Production Devices") provided to Supplier by PLARAD or produced according to information from PLARAD shall remain or become, respectively, property of PLARAD. Supplier engages only to use Production Devices for the handling of the contractual relationship in question. Supplier further engages not to copy Production Devices or to make them accessible to third parties and to return them to PLARAD without specific request no later than the ending of the contractual relationship.

11. Proof of origin export restrictions

11.1 The supplier shall submit a written declaration free of charge using a proper form that contains all information required and is appropriately signed concerning the proofs we requested (e.g. supplier declaration, movement certificates, manufacturer declarations of conformity (CE)).

11.2 This also applies to all documents which are required for the use, erection, installation, processing, storage, operation, maintenance, inspection and repair of the goods/services.

11.3 If goods/services are subject to foreign regulations in accordance with German or other law, then the supplier is responsible themselves for observing all relevant provisions. The contractor shall procure any export licences required for themselves and PLARAD. If PLARAD does not receive an export licence required, then PLARAD is entitled to withdraw from the contract.

12. Further provisions

12.1 If individual parts of the present General Terms and Conditions of Purchase are or become legally ineffective, the validity of the remaining provisions shall not be affected.

12.2 Supplier shall not be entitled to forward or assign its contractual duties or rights or parts thereof to third parties without the prior written approval of PLARAD.

12.3 To the extent not expressly agreed to the contrary, place of performance for deliveries shall be the dispatch address or place of use stated by PLARAD or Much for all other duties of both parties.

12.4 If Supplier ceases payments, if a preliminary insolvency administrator is appointed, insolvency proceedings are opened against its assets or if protests against bills or cheques are made against Supplier, PLARAD shall be entitled to withdraw from the contract partly or totally without claims against PLARAD being derived therefrom.

12.5 The exclusive place of jurisdiction shall be Siegburg. However, PLARAD reserves the right to assert its claims at any other admissible place of jurisdiction.

12.6 The terms shall exclusively be governed by the law of the Federal Republic of Germany, ruling out the UN convention on sale (CISG) of 11.04.1980.