

General Purchasing Terms and Conditions Treofan Germany GmbH & Co. KG

§ 1 Scope of Application

(1) These purchasing terms and conditions shall apply to all purchase, work and other service contracts between us as purchaser/customer (hereinafter called "customer" or "we") and the supplier/contractor (hereinafter called "supplier").

(2) Our orders and other offers and acceptances are made exclusively on the basis of these terms and conditions. The supplier acknowledges the application of these terms and conditions through conclusion of the contract, at the latest through delivery/execution of the order. Our purchasing terms and conditions shall apply exclusively even if we are aware of the fact that the supplier's terms and conditions conflict with or deviate from our terms and conditions and even if we accept his delivery/service without special reservation. We do not acknowledge deviating general terms and conditions of the supplier even if we do not explicitly object against them in the individual case unless we would have accepted their application explicitly and in textual form.

(3) These purchasing terms and conditions shall apply in the case of ongoing business relationships also to all future transactions with the supplier even if we do not refer to them again.

(4) Deviations of these general terms and conditions as well as contract modifications, supplements and collateral agreements require textual form. Oral collateral agreements have not been made.

§ 2 Offers, Order, Conclusion of Contract and Order Confirmation

(1) The elaboration of drafts, offers, estimates of costs, the submission of samples or the like has to be made for us free of costs and non-binding. This shall also apply if the contract does not come into existence.

(2) In the case of doubt our requests to the supplier constitute only invitations to submit a contract offer by the supplier. Orders from us are binding only if they are made in textual form (e.g. by fax or e-mail). If our order is the contract offer we are not bound to the order until the conclusion of the contract. Until the receipt of the acceptance declaration by the supplier we are entitled at any time to revoke our order.

(3) Contract offers, contract acceptances and order confirmations of the supplier are valid only if they are made in textual form (e.g. by fax or e-mail). In the case of doubt the supplier is bound to his offer for three months if no different binding period is explicitly determined in the offer.

(4) In the offer the supplier has to abide by the conditions of the request or tender. If the supplier's acceptance declaration or the supplier's letter of confirmation contains modifications or additional conditions to the request, tender or order the supplier must explicitly point to that. Such modifications require our confirmation in textual form for their validity.

§ 3 Prices

(1) Unless otherwise agreed all mentioned prices include delivery ex place of use and insurance, i.e. including customary packaging, including transport, transport insurance (if the conclusion of an insurance is agreed or customary) as well as including where appropriate other arising levies and fees (such as customs, stamp duties etc.) but excluding the statutory turnover tax. If an assumption of the freight and/or packaging costs by us is explicitly agreed those costs are to be advanced by the supplier and particularly identified in the invoices.

(2) Unless otherwise agreed all prices are fixed prices in EURO. Subsequent price modifications are excluded.

(3) In the case of orders that are to be accounted based on time and material expense the verifications of hours and materials have to be signed off by us or by an employee of our end customers entitled by us and have to be sent to us along with the invoice.

§ 4 Invoices, Payment

(1) The remuneration is due for payment with 3% cash discount on the gross amount invoiced within 21 days after complete and proper receipt of the goods/acceptance and receipt of a proper invoice or net within 30 days after complete and proper receipt of the goods/acceptance and receipt of a proper invoice. The periods shall commence upon receipt of a proper invoice or in the case the goods arrive later than the invoice upon complete receipt of the goods including all required supporting documents but under no circumstances before the agreed date for the incoming of the goods.

(2) Invoices have to be sent in writing by mail or in electronic form as pdf-document to the address invoice@treofan.com. In a given invoice only the deliveries/performances of a single order may be accounted. The fulfillment of the supplier's contractual duties is not deemed confirmed through payment.

(3) We reserve unlimited rights of set off and retention because of own claims against the supplier. Further, we are entitled to set off against the supplier's claims also with claims of our affiliated companies against the supplier. Moreover, we are also entitled to set off with own claims against claims that the supplier has against our affiliated companies.

§ 5 Modifications of Contract

(1) Subsequent modifications of the delivery content or scope desired by us are to be accepted by the supplier if those are reasonable and feasible for the supplier. If this causes additional costs or postponements of the dates the supplier has to inform us about these consequences in writing before the commencement of the corresponding works.

(2) In this case the modification of contract takes effect only if we agree to the increase of remuneration/the postponement of the dates in writing or if we insist on the modification of contract in textual form despite corresponding information of the supplier.

§ 6 Duty of Delivery, Dates

(1) The supplier bears the procurement risk for his performances. The times and dates of delivery stated in the order/order confirmation are binding.

(2) Authoritative for the compliance with the delivery time or period is the proper receipt of the goods or the flawless performance as well as the handover of the documentation at the place of receipt named by us.

(3) If it becomes recognizable that there will be a delay in delivery or performance the supplier has to inform us promptly indicating the reasons and the anticipated duration of the delay. However, such information does not exclude the occurrence of default.

(4) In the case of a delay in delivery or performance of the supplier we are entitled to demand liquidated damages in the amount of 0.5% of the performance's value of which the supplier is in delay with per commenced week but at most 5% of this value. In the case of delay with a partial delivery or performance the value of the total performance is decisive for the calculation of the liquidated damage if the total delivery is useless for us due to the delay with the partial delivery. The supplier has the right to prove that as a result of the delay no or a significantly lower damage occurred. We reserve the right to request further statutory claims, particularly the right to prove a higher damage caused by delay as well as the right to demand, after fruitless expiration of an adequate extension of time, compensation in lieu of performance. The liquidated damages will be given credit in the case of a higher damage.

§ 7 Delivery, Transfer of Ownership and Risk, Set off/Retention by the Supplier, Assignment

(1) All deliveries must be made to the place of delivery stated in the order or if a specific place of delivery was not agreed to our plant in Neunkirchen, Saarland, Germany. We are entitled at our discretion to receive the delivery at the supplier's site.

(2) Unless otherwise agreed the delivery is made according to DDP (pursuant to Incoterms in the current version at the respective time). The supplier has to arrange for adequate insurance at its own expense.

(3) Two delivery notes have to be enclosed to the delivery. In the case of deliveries from foreign customs countries the supplier has to get in contact with us in a timely manner regarding customs and import clearances. At the latest 7 business days

before arrival of the goods all original documents have to be submitted to us. The supplier is responsible for all damages and additional costs arising from a delayed customs and import clearance.

(4) Increased, decreased or partial performances are permitted only with our express written consent.

(5) In the case of sales contracts, no matter whether the supplier transports by himself or whether third parties get engaged with the transport or whether we exceptionally bear the costs of the transport, the risk is always transferred – unless otherwise provided in the following sentence – after discharge at the place of delivery. In the case of machines and technical facilities the transfer of risk and the delivery only occur when we confirm in textual form the successful process of a functional testing (§ 11 (4)).

(6) If our employees support the transport person/the supplier with the loading or unloading without the (un-)loading being part of our contractual duties our employees act as vicarious agents of the transport person/the supplier. Liability on our part for loading damages shall be excluded.

(7) Upon hand over of the goods the title to and ownership in the goods shall be transferred to us. The supplier is not entitled to a retention of title unless otherwise agreed explicitly and in textual form. If the payment is made before the hand over the title to and ownership in the goods is already transferred to us at the time the payment is made. A relation of administration and deposit free of costs is agreed between the supplier and us.

(8) The supplier is entitled to set off and/or retention of deliveries or services only if his counterclaim is undisputed or awarded by final and unappealable judgment.

(9) An assignment of rights arising from contracts concluded with us is permissible only with our prior written consent.

§ 8 Call-Off Contracts

In the case we have concluded a contract with the supplier about deliveries on call we are, unless otherwise explicitly provided, entitled to make the call as needed and in optional (partial) quantities. There is no commitment to calls of certain or consistent quantities or on certain or periodic dates. Unless otherwise agreed the call period corresponds to the contract period. The supplier is not entitled to demand an earlier call. There is no obligation to a full call, unless a set purchase quantity or a minimum purchase quantity is explicitly agreed. Anticipated order quantities are non-binding expected needs only. Unless otherwise agreed the supplier is bound to have goods purchased by call available immediately and to carry out the delivery within three business days or at a date determined by us.

§ 9 Order Execution, Quality Assurance and Documentation, Supporting Documents

(1) The supplier has to precisely comply with the determined performance characteristics of the goods/service to be produced/delivered. The supplier is responsible for the flawless quality of the delivered goods/of the services rendered by him. Particularly, he accepts liability for the delivery to be of the latest scientific and technical status and free of defects of quality and/or title.

(2) The supplier is obligated to carry out appropriate quality inspections of his deliveries and services and to maintain a documented quality management (ISO or equal) which corresponds to the latest technical status. On request this has to be proved. The results of the quality inspections have to be documented in textual form. We are entitled to make quality audits for the assessment of the quality assurance system's effectiveness or to instruct someone to make it. We are entitled at any time to demand access to quality inspection records as well as information about the works' status and to examine the commissioned orders on whether they are being made in accordance with the contract, particularly also through controls at the supplier's premises for which we have to be given access during the business or working hours, through inspection of the execution documents which has to be granted to us as well as through requesting delivery of random samples, also of intermediate products, in a reasonable scope. The supplier is not entitled to any claims, neither to reimbursement of expenses as a result of the aforementioned measures. We bear our own costs for routine controls made without a specific indication of the existence of a breach of duty by the supplier. Costs for controls that are made because of specific indications of breaches of duty or because of deficiencies during previous controls shall be borne in total by the supplier.

(3) In the case of production and/or processing orders the supplier bears the responsibility for the faultless production and for the choice of the production/processing procedure. He is responsible for the selection of the material and/or the procedure.

(4) In the case we provide parts or material or we give specifications with regard to material and/or production/processing procedures the supplier has to inform us promptly - if possible even before the commencement of the works – in textual form if he has concerns against the intended way of execution (also because of the protection against dangers of accidents), against the suitability or quality of the substances or building components provided by us or against the performance of other contractors. In these cases the supplier may execute the order only if we insist on the specifications explicitly and in textual form despite the supplier's information in textual form. In the case of a breach of the above-mentioned duties the supplier cannot invoke the aforementioned circumstances. Further, the supplier has to indemnify us for all damages arising from the breach of the aforementioned duties.

(5) The supplier may only use subcontractors to fulfill his duties after prior consent in textual form. We have to be informed about intended subcontractors in a timely manner before the conclusion of the contract. Also if we give our approval to the use of subcontractors the supplier remains solely responsible to us.

The supplier is responsible for the subcontractor's compliance with all legal requirements, such as e.g. with respect to contributions to social security, minimum wages and tax, and he is liable for possible breaches.

(6) Along with the delivered goods comprehensive supporting documents in German and English language (duplicate) have to be delivered free of costs, if required in digital form or in a form which is easy to duplicate, particularly drawings and documents of the supplier, particularly those that describe comprehensively the function of the delivered object, as well as documents that enable a proper implementation of installation, operation, monitoring, repairing, procuring of spares and maintenance of the performance object (e.g. installation and operating instructions, lists of spares) and all information and documents needed for obtaining the required authorizations. The delivery shall be deemed carried out only upon delivery of all supporting documents. We are entitled to use these drawings and documents for the production of spares as well as for modifications of the performance object – also through instructed third parties.

(7) In the case of hazardous goods the relevant safety information sheets are to be provided unsolicitedly.

(8) The supplier is obliged to carefully check goods he gets delivered from third parties for faultlessness, appropriately to the specific goods. He will not use suppliers which are not known (to him) as fully liable.

(9) The supplier warrants the availability of spares and replacement products for his deliveries and services for a period of 10 years after delivery.

(10) If in the case of contracts for work and services the work or service becomes unfeasible due to a reason we are not responsible for or if we terminate due to such a reason the supplier does not have the right of remuneration. However, we are entitled to claim already produced work results. In the case we exercise this right the supplier has the right to a part of the contractually agreed remuneration that corresponds to the proportion of the rendered performance.

§ 10 Conversion of Products/Procedures

Suppliers we have constant business relations with are obligated to inform us in writing at an early stage if they intend to make conversions of products/procedures as well as alterations to the methods of analyses with respect to products we buy.

§ 11 Receiving Inspection/Acceptance/Functional Testing

(1) Notices of defects required pursuant to section 377 German Commercial Code (HGB) are in any case in time if notice of an apparent defect is given within four weeks after receipt of the goods. If due to the kind of the goods a longer time limit for the inspection and notice is indicated the longer time limit applies. Notices of hidden defects have to be given within two weeks after their detection. For observing the time limit the sending off of the notice shall suffice.

(2) The unreserved acceptance or issuance of receipts of delivery/delivery notes by us must not be considered as a waiver of possible claims or rights because of delayed performance or performance not according to contract and is made subject to a subsequent quantity and quality control pursuant to the preceding paragraph.

(3) Payments are not to be considered as acknowledgements of the delivery or performance to be proper.

(4) In the case of contracts for work and services an acceptance is given only if it is declared by us formally in textual form. Functional testings are made by us within a short time after receiving the notice about the operability. In respect of sys-

tems and devices with manifold and complicated programs we reserve a time for the functional testing of minimum 90 days unless otherwise agreed. Our claims because of breaches of duty, particularly because of defects, are not limited by confirming the successful process of the functional testing.

§ 12 Rights Accruing from Defects

(1) The supplier is liable for defects of title and quality according to the statutory provisions. He ensures the careful and appropriate fulfillment of the contract, particularly the compliance with the set specifications and other provisions regarding the execution corresponding to the latest scientific and technical status as well as the delivery's quality and expediency with regard to material, construction and execution and the documents belonging to the delivery (drawings, plans and the like). In the case of defective performances we reserve all statutory rights without limitations. In the case of a supplementary performance we have the right to choose the type of supplementary performance. This also applies if the defect remained unknown by us at the time of the conclusion of the contract because of gross negligence. The supplier bears all expenses occurring in connection with the determination and removal of the defect, particularly costs of examination and inspection, costs of disassembling and assembling, costs of packaging, transport, travel, working, material, downtime and modifying costs. This also applies if the costs occur at our side. The supplier bears the risk and costs for a possibly needed return delivery. The supplier is responsible for delivered spares and subsequent improvement works as he is for the object of the delivery.

(2) Also in the case of sales contracts and contracts for work and materials after the expiry of a reasonable time limit without result or in urgent cases without setting a time limit we are entitled to remove the defects at the supplier's expense by ourselves or through a third party (so-called substitute performance). Further statutory rights remain unaffected.

(3) The limitation period for warranty is 24 months unless the law provides a longer time limit.

(4) If an own customer or a third party asserts a claim regarding product liability, warranty or compensation against us because of services that the supplier has rendered the supplier has to provide us promptly with all information and documents that are relevant or required for legal defense. The supplier is obliged to indemnify us against all claims unless he proves that he is not responsible for the defect or damage.

§ 13 Rights of Third Parties, Property Rights, Advertising Material

(1) The supplier guarantees that the delivered good is free from rights of third parties, particularly free from retentions of title, rights of protection of industrial property, liens and other encumbrances. This applies to foreign property rights only insofar as the supplier knew that the goods would be delivered to the territory of these property rights.

(2) The supplier shall indemnify us against any obligations that accrue from the good or a part of it being encumbered with rights of third parties. If a third party in this respect asserts a claim against us the supplier is obligated to indemnify us against these claims; we will not - without the supplier's consent - enter into any agreements with the third party, particularly not agree on a settlement. The supplier has to indemnify us for any damages resulting from that.

(3) In the case that within the scope of the order or its preparation know-how results which is eligible for patent or utility model and to which we have contributed the supplier and we will jointly be the applicants for the registration of protective rights. The use of know-how eligible for property rights has to be based on our mutual interests.

(4) The supplier may point to commercial relations with us in advertising material only with our explicit consent in textual form.

§ 14 Claims for Damages and Rescission of the Customer

(1) For claims for damages and rights of rescission on our part the statutory provisions shall be - subject to diverging provisions in these terms and conditions - applicable.

(2) In the case we have the right to assert damages in lieu of performance we are entitled to claim liquidated damages amounting to 15% of the agreed remuneration. However, the supplier is entitled to prove a lower damage. We reserve the right to claim a higher damage.

(3) In the case of a breach of duty the supplier is liable unlimitedly for all thereby caused damages including downtimes, lost profit, loss of production and other consequential damages.

§ 15 Product Liability, Insurance

(1) In the case our own customer or third parties assert claims against us based on personal injury and damage to property that are attributable to the supplier's performance the supplier has to provide us promptly, on first demand, with all information and documents that are relevant or required for legal defense. The supplier has to indemnify us against all claims of third parties if the origin falls within his areas of control and organization.

(2) In this case the supplier also has to reimburse all expenses including costs for possible recall actions. Further statutory claims remain unaffected.

(3) The supplier is obligated to maintain a manufacturer's and product liability insurance covering an amount of € 5 millions per personal injury/damage to property that also covers damages in the case of further delivery by us. On our demand the supplier has to prove a corresponding insurance. The existence of such an insurance does not restrict our direct claims against the supplier.

§ 16 Documents, Obligations of Secrecy, Data Protection

(1) We reserve all rights, particularly the title and the copyright, to all documents, figures, drawings, parts lists, models, plans, descriptions, calculations or other information that the supplier received from us or was informed about by us before or after the conclusion of the contract.

(2) The supplier is obliged to keep all documents provided to him as well as all knowledge about operating methods and financial data he obtained in connection with the contract or the contract negotiations and all other business and trade secrets and information that are not generally known, e.g. technical and commercial information, strictly secret, in fact also after the termination of the contract. The supplier has to preserve embodied information appropriately and particularly has to take care that third parties cannot inspect it. Documents and information may be used only for the contractually intended purpose. Without our written consent they must not be copied, duplicated, handed over to third parties or made known in a different way. On demand these are to be sent back to us promptly. Subcontractors have to get obligated correspondingly.

(3) In every case of a culpable contravention against the obligation of secrecy according to paragraph 2 the supplier is obliged to pay a contractual penalty determined by us the reasonableness of which has to be examined by the competent Regional Court (Landgericht) in a case of dispute. The defense of continuation connection is excluded. In the case of continued infringement every commenced week of the contravention shall be deemed a separate infringement. Further compensation remains unaffected. A paid contractual penalty is to be given credit for possible claims for damages.

(4) Upon request the supplier will provide us with plans, implementation drawings, technical calculations etc. that are linked to the delivered object insofar as we need these documents for the regular use, repair measures or the like. On demand he also has to supply to us drawings of spares for the essential spares along with sufficient specifications about the condition of these spares. Forms, tools, print templates etc. which we get charged for are transferred into our ownership upon payment; they shall get preserved for us by the supplier free of costs and shall be handed over to us on demand.

(5) The supplier is responsible for his employees to comply with the data secret pursuant to section 5 Federal Data Protection Act (BDSG).

§ 17 Duties of Care and Retention of Title regarding Provided Materials

(1) The supplier is obliged to precisely comply with all provisions and specifications with regard to the handling of the provided materials and when in doubt has to ask us.

(2) In the case provided materials and/or workpieces get damaged, destroyed or they get lost at the supplier's premises the supplier shall be fully liable therefor and has to indemnify us for all resultant damages.

(3) We retain title to all provided materials until complete delivery. Processing or remodeling by the supplier is made for us as manufacturer. If our goods that are subject to the retention are connected with objects that do not belong to us or processed we acquire co-ownership of the new thing at a ratio of the value of the good that is subject to retention (purchase price plus turnover tax) to the other processed goods at the time of the processing. If the supplier according to statutory provisions acquires sole ownership he shall transfer to us already now the co-ownership amounting to the quota resulting from the ratio of the invoice value of the goods that are subject to the retention to the invoice value of the other main thing.

(4) The supplier is responsible for the appropriate preservation, securing, insurance and use of our property. He is obligated to mark our property and to store and administer it separately. Our property is to be preserved carefully, particularly to be protected from external influences and accesses of third parties. The supplier is obliged to insure the goods owned by us at the replacement value against damages due to fire, water and theft at his expense. The supplier hereby assigns to us already now all possible claims for compensation against the insurer or third parties. We accept the assignment.

(5) The supplier has to inform us promptly about accesses to or interferences with our property by third parties, particularly attachments, seizures, damages, and to provide us with all information and documents required for an intervention. The supplier is liable for the costs that accrue for dissolution of the access, particularly by bringing an action in opposition to execution of a judgment, as long as they cannot be obtained from the collecting creditor.

§ 18 Enticement of Employees

(1) The supplier commits to not entice away employees from us during the contract period and up to six months after the termination of the contract.

(2) In the case of a breach against the prohibition to entice away employees the supplier is obligated to pay a contractual penalty/compensation of € 25,000.00 per enticed employee.

§ 19 Special Provisions in Respect of Performances at Our Premises and With Things Provided by Us

(1) In the case of performances at our premises or in connection with things provided by us the supplier has to follow the instructions of our supervisory and security personnel, particularly to respect the respective code of conduct/works guidelines/house rules/company standard/environmental guidelines/energy policy (devices, tools, machines, etc. are to be used in such a way that energy resources are protected) in the respectively valid version. These include, inter alia, the wearing of a safety vest at our premises as well as the providing the employees with safety equipment (work clothes, safety shoes, helmet etc.) and the required tools. The supplier shall provide the required safety equipment at its own expense. The supplier is obliged to enquire about the existence of any such regulations which we will make available to the supplier on request.

(2) Work may generally be commenced only in consultation with the persons mentioned in paragraph 1. The handling and use of the plant's operating facilities and devices is allowed only with approval.

(3) If the supplier renders services at our premises he is obligated to effect an appropriate third party liability insurance covering possible damages that he causes during rendering the services. On demand he has to prove the existence of such insurance.

(4) The workplace/construction site must be left every day at the end of work in a tidy, clean and safe condition.

(5) The unauthorized taking of products and energies as well as the unauthorized use of devices, tools and machines is forbidden. The taking and use have to be made in a resource-friendly way.

(6) In the case of contraventions against the above obligations we are entitled to prohibit the supplier from the further execution and to expel it from the premises. In addition the supplier shall be obliged to compensate for the damage resulting from the contravention. The damages that are compensated include, but are not limited to, the cleaning costs in the case of breaches of § 19 (4). The assertion of further claims is unaffected hereby.

§ 20 Clientele Protection

(1) During the contract period and up to 12 months after the termination of the contract the supplier commits to neither directly nor indirectly offer or render contractual services that are subject to our customer relation or business operations and that we could carry out by ourselves or through third parties to or for clients we currently have or had a contractual relationship with during the past 12 months.

(2) In every case of a culpable contravention against the clientele protection agreement the supplier is obliged to pay a contractual penalty determined by us, the reasonableness of which has to be examined by the competent Regional Court (Landgericht) in a case of dispute. The defense of continuation connection is excluded. In the case of continued infringement every commenced week of the contravention shall be deemed a separate infringement. Further compensation remains unaffected. A paid contractual penalty is to be given credit for possible claims for damages.

§ 21 Final Provisions

(1) The laws of the Federal Republic of Germany apply. The CISG/Vienna 1980 Convention is excluded.

(2) The place of performance for all duties arising from this contract is the respective dispatch address, secondarily our place of business.

(3) The place of jurisdiction for all disputes in connection with and arising from this contractual relation is Neunkirchen, Saarland, Germany. We are entitled to sue the supplier also at his general place of jurisdiction.

(4) Contract modifications, supplements and collateral agreements shall be made in textual form.

(5) If one or several conditions of these General Purchasing Terms and Conditions are or become invalid or if the contract contains a regulatory gap the validity of the remaining conditions is unaffected hereby. The invalid or incomplete condition shall be replaced by a condition the commercial outcome of which comes closest to the intent and purpose of the desired condition.

(6) These General Purchasing Terms and Conditions are a translation of the German language original which is available on our website www.treofan.com. In the case of doubt or deviation the German language original takes precedence.