

# General Terms and Conditions of Purchase

## Company: MDS GmbH & Co. KG

### **I. Purchase Order and Confirmation of Order**

- (1) MDS GmbH & Co.KG (=purchaser) is allowed to cancel the purchase order, if the contractor has not confirmed the order in writing within two weeks of receiving the order.
- (2) If there is a discrepancy between the confirmation of order and the purchase order, the purchaser is only bound if he confirmed the differences in writing.
- (3) In particular, the purchaser is only bound to the General Terms and Conditions as long as they are in accord with the purchaser's Terms and Conditions or if he accepted them in writing. Accepting deliveries or services, as well as making payments does not signify his consent.
- (4) Amendments and supplements to the purchase order only take effect, if they are confirmed in writing by the purchaser.

### **II. Delivery Period**

- (1) For deliveries to be on time, they must arrive at the receiving office indicated by the purchaser, and for deliveries that require installations or fittings to be considered on time, the purchaser must accept their deliveries.
- (2) For recognizable delays of a delivery or services, the purchaser has to be informed immediately and to be asked for his decision.

### **III. Transfer of Risk and Shipping**

- (1) For deliveries requiring installations or fittings and for providing services the transfer of risk is completed at the moment the site acceptance test is made and for deliveries, without installations or fittings, the transfer of risk is made at the moment the deliveries arrive at the receiving office that was indicated by the purchaser.
- (2) The delivery charges have to be paid by the contractor, if nothing else has been arranged. For pricing terms that are "ex works" or from the sales depot of the contractor, the shipments have to be arranged at the lowest cost possible, as long as the purchaser did not specify a particular mode of transportation. Additional charges caused by not complying with the forwarding instructions will be at the contractor's expense. For setting prices that are free for the receiver, the purchaser can also decide the type of shipping to be used. Additional shipping charges for meeting a delivering date, like the kind of transportation to be used, have to be paid by the contractor.
- (3) Each delivery must have attached a dispatch notes with a declaration of the contents, as well as the all relevant ordering codes. The dispatch notes for the delivery have to clearly indicate the above mentioned details.

### **IV. Invoices**

On the invoices the ordering codes and the numbers of each single position, have to be indicated. If these details are missing, the invoices cannot be paid. Copies of an invoice have to be marked as duplicates.

### **V. Payments**

- (1) Payments are to be made according to the following terms, except when other agreements have been made:
  - a) Within 14 days at a 2 % cash discount
  - b) Or within 30 days, the net amount due
  - c) Or after delivery, 80 % of the total amount due
  - d) after the on-site acceptance test, 20 % of the total amount due
- (2) The payment period starts, as soon as the delivery or service is fully completed and the duly issued invoice is submitted. Issuing a cash discount is also allowed, if the purchaser is being compensated for defects or partially retains an appropriate portion of the payment because of defective goods. The payment period starts, once the defects have been completely rectified.
- (3) Payments do not signify an acceptance of deliveries or services as stipulated in the contract.

### **VI. Quality and Quality Management**

For the delivery the supplier is bound to the generally accepted rules for procedures and the (technical) specifications that were agreed to, in particular the quality specifications (QM-manual, procedural instructions 016 "QA-requirements for suppliers" which have to be requested from the purchaser's Quality Assurance (QA) department), and he is bound to the protective laws and the other various safety regulations.

For quality assurance purposes the interim and final inspections are carried out at the suppliers as instructed. The results are to be documented in an inspection record. The supplier makes it possible for us to check the suitability and effectiveness of his quality assurance system. When requested, the supplier concedes to an inspection of his quality records and to his production facilities during the course of a system audit. The supplier is to be informed of an upcoming audit in due time. All information, in particular the results of the assessments, is only processed within our company and is treated confidentially. The supplier assures us that the quality controls that are used correspond to the packaging materials used and to current technical standards.

### **VII. Scope of the Receiving Inspection:**

For carrying out a receiving inspection according to § 377 of the HGB (German Commercial Code) MDS is only required to follow these regulations

with regard to the kind of goods being delivered, the quantity of the order, shipping order, packing list and for obvious transport and packing damages. The receiving inspection takes place within 10 days. However, MDS is entitled to take numerous samples whenever they want.

### **VIII. Delivery**

Should the delivery quantity exceed the ordered quantity by more than 10 %, MDS is allowed to send back the additional delivery of more than 10 % to the supplier at the supplier's expense.

### **IX. Liability for Defects**

- (1) The contractor has to offer warranties for the deliveries and services for 24 months. The period of warranty starts with the transfer of risk (n°3 paragraph 1). For deliveries to sites where the purchaser carries out external orders (outside of his facilities), the period of warranty starts with the site acceptance test made by the purchaser's principal. The period of warranty ends at the latest 2 years after the transfer of risk is made.
- (2) If defects are determined before or at the moment of the transfer of risk or during the period of warranty, the contractor can choose how to fix the defects at his own expense or he can choose to provide or send a new delivery of goods that are free from defects. That is also true for deliveries which are limited to a sampling inspection. The purchaser can choose how to rectify the problem at his own discretion.
- (3) If the contractor does not remedy the defects or provide or send a new delivery of goods and services that are free from defects within a certain period of time, which is set by the purchaser, the purchaser is then allowed to cancel the contract without compensation or:
  - Or: To demand a price reduction
  - Or: To rectify the defects at the contractor's expense
  - Or: To do or arrange a new delivery for compensation
  - Or: To claim damages because the contract terms and conditions were not fulfilled.
- (4) Rectifying defects can be carried out at the expense of the contractor without setting a deadline, if the delivery takes place after the delay and the purchaser is interested in quickly fixing the defects because he wants to avoid a delay of his own or some another urgency.
- (5) The aforementioned claims lapse after a year of receiving notification about the defect.
- (6) Further legal claims, especially for the reimbursement of useless expenses and conversion costs that are incurred are unaffected.
- (7) Complaints about defects can be made within a month from the delivery of contracted goods or services or from the moment they are detected if the defects can only be recognized once they are handled, processed or put to use.
- (8) The previously mentioned provisions are valid for services used to remedy defects as well.
- (9) The contractor bears the costs and risks of sending back defective delivery items.

### **X. Transfers of the purchase order**

Transferring the purchase order to a third party is illegal without the written consent of the purchaser and it entitles the contractor to cancel either the contract entirely or some of its parts, and to claim damages.

### **XI. Obligation to inform the purchaser**

The supplier is obliged to inform MDS immediately, if during the business relationship:

- The manufacturing process is changed
- The production site is relocated
- The sources for the supply of the primary product are changed
- The composition of raw materials is changed.

### **XII. Tools, Moulds and Models**

The tools, moulds, models, mockups, profiles, drawings, standard specification sheets, manuscripts and gages, ceded for use by the purchaser, as well as the manufactured goods made using them, are not allowed to be passed on to a third party or to be used for any further contractual purposes without the explicit consent of the purchaser in a written agreement. They have to be protected from unauthorized inspection or use. Pending other laws, the purchaser can demand the surrender of property and restitution, if the contractor neglects his duties.

### **XIII. Assignment of Claim**

The assignment of claim is only permitted if the purchaser makes agrees to it in a written agreement.

### **XIV. Supplementary Provisions**

If the clauses in the purchase order do not contain any special provisions, legal statues are valid.

### **XV. Place of Jurisdiction, Applicable Laws, Severability Clause**

- (1) The place of jurisdiction is the place where the order has been made.
- (2) The applicable law is German law.
- (3) Should individual clauses of this agreement be deemed invalid, the validity of the remaining clauses shall remain unaffected. The remaining clauses should rather be looked at with respect to their business purposes, which follow the contested or invalidated clauses.