

General Terms and Conditions of Purchase

Stand 29.08.2017

I. Scope of Application

- (1) These General Terms and Conditions of Purchase apply exclusively to all MINDA orders. Additions or adverse terms and conditions of the supplier only apply if confirmed in written form by MINDA. The same applies for amendments to these given terms and conditions. The unreserved acceptance of a delivery, the payment thereof or otherwise maintaining silence about the Supplier's differing terms and conditions even if known to MINDA does not imply MINDA's acceptance of these terms. The explicit rejection of differing terms and conditions is not necessary.
- (2) All agreements between MINDA and a supplier concerning the execution of a contract must be confirmed in written form to become effective.
- (3) In the case of ongoing business transactions these general terms and conditions of purchase likewise apply to future transactions unless differing terms are not explicitly agreed upon.

II. Conclusion of the Contract

- (1) MINDA is committed to a binding order for 14 days.
- (2) The complete or partial allocation of deliveries and services to a third party is only possible with MINDA's prior written consent.
- (3) Orders, requests for delivery of goods ordered, supplements and amendments thereto may also be effected by data transmission or by machine-readable data carriers.
- (4) Visits or preparation work for quotations, projects etc. by the supplier are free of charge for MINDA. Cost estimations are binding and free of charge unless explicitly agreed otherwise.
- (5) MINDA may request for a modification of the delivery and performance even after signing the contract provided this is reasonable for the supplier. With this amendment to the contract both parties have to give appropriate consideration to the consequences, particularly with regard to increased or reduced costs and delivery dates.

III. Prices, Terms and Conditions of Payment

- (1) The agreed prices are fixed prices. Price adjustment clauses of the Supplier will not be accepted. The same applies to long-term contracts for deliveries. Price increases must be individually agreed upon and in writing.
- (2) Unless otherwise agreed all prices include packing, payment of duties, and carriage to the place designated in the Contract.
- (3) Inasmuch as the German Federal Act on Curbing Illegal Activity in the Building Trade of 30th August, 2001 applies MINDA will deduct 15 % of the gross amount invoiced by the Supplier and will forward this to the respective tax office. This will not be the case if the Supplier submits a valid exemption certificate to MINDA which must be in accordance with §48 b of the EstG (German Federal Income Tax Act) at the time of payment. For this purpose the Supplier shall inform MINDA immediately after signing the contract of the tax number, the appropriate tax office and address thereof, as well as the bank details of the tax office.
- (4) Unless otherwise agreed the term of payment is 90 days. If the invoice is settled within 14 days then a 3 % discount may be deducted. The term of payment commences from the time when the invoice as well the deliveries are accepted by MINDA respectively the services rendered.
- (5) Insofar as material testing is agreed the respective certificates are an essential part of the delivery and must be sent to MINDA together with the delivery.
- (6) Payments are deemed neither an acknowledgement of proper contractual performance or that the product or the rendered service is impeccable nor an acknowledgement of due and proper invoicing.
- (7) MINDA is not in default with payment until MINDA has received a written reminder from the Supplier.

IV. Rights of Set-off, Retention and prohibition of Assignment

- (1) For MINDA the respective laws and legal regulations concerning the assertion of rights of set-off and retention are binding. The Supplier is only entitled to set-off and retention rights if counterclaims are established by law, if they are undisputed, or have been acknowledged by MINDA.
- (2) The Supplier's claims against MINDA can only be assigned with MINDA's prior consent in writing.

V. Delivery and Transfer of Risk

- (1) The delivery shall be made to the delivery address at the Supplier's expense and risk. The supplier is required to use suitable packaging for the goods to be delivered at his own expense. Environmentally friendly packing materials are to be preferred. Any loss, damage or other detriment arising from a failure to comply with this provision shall be borne by the Supplier. Unless agreed otherwise the Supplier shall take back transport packaging free of charge.
- (2) Goods being delivered to the delivery address shall be accompanied by a delivery note indicating order number, order date, quantity and MINDA material number. For MINDA those values determined at the incoming goods inspection concerning quantity, weight and dimensions are relevant.
- (3) The agreed delivery date is binding. Changes or deviations thereof require MINDA's prior written consent.
- (4) The provisions of law apply should agree delivery dates not be observed. Notwithstanding the provision in V.(3) the Supplier is obliged to give the ordering departments at MINDA immediate written notice of anticipated delays in delivery.
- (5) The unrestricted acceptance of a late delivery or service by MINDA does not imply the waiving of any rights or remedies
- (6) The Supplier can only invoke the absence of essential documents MINDA has to supply if he has sent a written reminder about the documents and not received them within reasonable time.

VI. Invoicing

- (1) The invoice must contain exact details particularly regarding the quantity, order number, date of order and the MINDA material number if this number is known to the Supplier. The invoice must be sent to the address specified in the order and should not be attached to the consignments.

VII. Transfer of retention of title

- (1) If the goods delivered are subject to retention of title, the ownership thereof is transferred to MINDA upon payment at the latest. Further retentions of title are excluded.

VIII. Force Majeure

- (1) Force majeure and labor disputes release the contracting parties from their performance obligations for the duration of the disruption and to the extent of the impact. The contracting parties are as far as reasonably possible obliged to immediately inform each other of such circumstances and to adapt their obligations bona fide to the change in circumstances. MINDA is released completely or to a certain extent from the obligation to take the ordered goods and is insofar entitled to cancel the contract if the goods are in consideration of commercial and financial aspects no longer usable owing to the delay caused by force majeure or labor disputes.

IX. Quality

- (1) The Supplier guarantees that the contractual deliveries and services rendered comply with the specifications and the agreed technical data, are made of the agreed materials resp. the materials mentioned in the documentation, are without any material and manufacturing defects, entirely fulfill the agreed functions, and do not have faults that nullify or reduce the value or suitability for the customary or contractually stipulated use. If no materials have been agreed the contractual deliveries and services rendered must comply with the applicable respective legal and administrative regulations for the prevention of accidents and quality specifications and must be state-of-the-art.
- (2) Before effecting delivery the Supplier must carefully check and prove to MINDA that the aforementioned requirements are complied with by means of suitable state-of-the-art quality testing.
- (3) The Supplier must carefully check the documents sent to the Supplier for the implementation of the contract. Should it become evident to the Supplier that the scope of the procurement contract cannot be complied with fully or partially or the intention of the order cannot be achieved completely or in part, then the Supplier must inform MINDA immediately and in detail of these concerns before commencing with the performance of the contract.
- (4) The Supplier shall enter into a commensurate quality assurance agreement if deemed necessary by MINDA.

X. Claims in the event of defects of quality and defects in title

- (1) Legal rules and regulations apply for material defects and defects of title if not otherwise stated hereinafter.
- (2) A notice of defect for any obvious deviations of quality or quantity must be written within two weeks after delivery, in case of non-obvious defects within the same period after they have been detected.
- (3) In case of defects of the contractual deliveries and services rendered MINDA is entitled to unabridged legal claims regardless if the defects are obvious immediately or become noticed at a later date. As remedial measure MINDA is entitled to require the rectification of the defects or the replacement of the faulty deliveries as is deemed fit. The Supplier shall bear the costs resulting there from in particular transportation and travelling and costs of labor and material. The supplier may refuse the aforementioned rectification only if it is connected with disproportionate costs. Should the rectification not be successful then MINDA is entitled to opt for reducing the purchase price, rescinding the Contract or if the Supplier is held responsible for the defect – claiming compensation instead of rectification.
- (4) If a general control above and beyond the customary scale of the incoming goods is necessary due to the bad condition of the delivery then the Supplier shall bear the costs incurred.
- (5) Should only some parts of a complete delivery be defective then MINDA is entitled to cancel the entire delivery after MINDA has set the Supplier an additional period for performance or cure and the Supplier's efforts in this respect remain unsuccessful.
- (6) The period of limitation for material damages to deliveries and service performance is two years effective from date of transfer of risk unless the goods have been used according to their intended purpose for a building and have caused the bad condition thereof. In this case the period of limitation is five years. With regard to defects of title the Supplier shall indemnify and hold MINDA harmless from and against any costs associated with any third-party claims. For defects in title the standard limitation period of the §§ 195, 199 BGB applies.
- (7) If due to urgency it is not possible to inform the Supplier of defects respectively imminent damage or it is not possible to fix a period of time for fulfillment of warranty obligations or in those cases when a reasonable period of time set by MINDA for the fulfillment of warranty obligations ends to no avail MINDA may at the expense of the Supplier rectify the defect or have the damages rectified by others.

XI. Liability and Insurance

- (1) The Supplier is liable according to the provisions of the applicable law.
- (2) If the cause for product damages is established to have been in the Supplier's sphere of control or organization and a third-party claim for compensation is made against MINDA then the Supplier shall release MINDA from the claim at first request.
- (3) In this context the Supplier is obliged to reimburse any expenses which arise out of or from a recall campaign conducted by MINDA. MINDA shall inform the Supplier in advance of the content and scope of the recall measures and give the Supplier the opportunity to comment, provided there is no case of urgency and the prior information is possible and reasonable.
- (4) Furthermore, the Supplier shall effect an insurance appropriately and commensurately against all risks arising from product liability, including the risk of recall and shall provide evidence of insurance cover upon request.

XII. Withdrawal

As long as the Supplier has not completely fulfilled his obligations MINDA is entitled to withdraw from the contract in event of the following:

- (1) if the Supplier substantially breaches contractual obligations and does not remedy this breach within a fair and reasonable period of time.
- (2) if insolvency proceedings have been initiated against the assets of the Supplier or if such proceedings have been rejected because no assets are available.
- (3) if the Supplier faces any other substantial deterioration of the financial situation which jeopardize the performance of the contract.

XIII. Providing materials, tools and parts

- (1) MINDA reserves the retention of title of the materials, parts and tools provided by MINDA. They may be used only in accordance with their contractually intended use.
- (2) The processing of material and the assembly of parts will be done on behalf of MINDA. MINDA becomes co-owner of products manufactured using MINDA material and parts in proportion of the value of the material and parts provided by MINDA to the value of the total product. The Supplier shall take the necessary steps to safeguard MINDA property rights.
- (3) If the product and parts provided by MINDA should be inseparably intermixed with other goods not pertaining to MINDA then MINDA acquires co-ownership of the newly manufactured product in proportion of the value of what MINDA provided to the total value of the intermixed goods at the time they were intermixed. Should they be intermixed in such a way that the Supplier's goods are to be regarded as the main goods then it is agreed that the Supplier assigns to MINDA pro rata coownership; the Supplier shall preserve the sole ownership or co-ownership for MINDA free of charge by taking the appropriate measures.
- (4) If the Supplier should manufacture tools or processing equipment at the expense of MINDA, the production is on behalf of MINDA, with the consequence that upon production MINDA acquires ownership of the respective goods.
- (5) The Supplier is obliged to use the tools provided by or manufactured for MINDA solely for the production of the goods and performance of services ordered by MINDA. Furthermore, the Supplier is obliged to insure the tools belonging to MINDA at its own expense for the original value against loss or damage through fire, water, theft and other types of damage (e.g. caused by employees). The Supplier is responsible for carrying out any necessary servicing and inspection work on time at its own expense. Any failures or breakdowns must be reported to MINDA immediately.
- (6) Tools supplied by MINDA to the Supplier shall be returned to MINDA upon first demand, but no later than upon the termination of the business relationship.

XIV. Rights of Use and administrative laws: Property Rights

- (1) The Supplier grants MINDA the rights of use and administrative laws of all deliveries and services without extra charge and as far as legally permissible.
- (2) The Supplier guarantees that no third-party rights are infringed by the manufacture, distribution or use of the deliveries and services.
- (3) This obligation to meet claims does not apply if the deliveries and services are solely in accordance with MINDA plans, documents or models and the Supplier did not nor had to know that the manufacture, delivery resp. the rendering of services constituted an infringement of rights in the aforementioned sense.
- (4) In case the Supplier has to accept responsibility for the infringement of property rights according to XIV. (2) and a third party raises claims then the Supplier will indemnify MINDA from and against any and all third party claims on first written demand. The Supplier's obligation to exempt MINDA refers to all expenses which arise for MINDA in connection with the claims of a third party.
- (5) The Supplier must specify upon demand all the applications for property rights the Supplier uses in connection with the contractually agreed deliveries and services. Should an infringement of property rights or applications for property rights be noticed by the Supplier then the Supplier must inform MINDA thereof immediately and unsolicited.

XV. Nondisclosure and Data Protection

- (1) The Supplier is obliged to maintain strict secrecy with regard to the received illustrations, drawings, calculations and other documents and information. They may only be presented to a third party with the explicit prior consent of MINDA in written form. The nondisclosure agreement also applies after the termination of this contract. However, it ceases to apply as soon as and insofar as the production know-how contained in the illustrations, drawings, calculations and other documents has become common knowledge.
- (2) The aforementioned documents and information placed at the Supplier's disposal remain MINDA property and must be returned to MINDA without further notice and free of charge as soon as they are no longer required for the fulfilment of the Contract.
- (3) Products manufactured in accordance with documents drawn up by MINDA or with confidential MINDA know-how or by using MINDA tools or reproduced tools may be used by the Supplier for testing purposes only. The products may not be offered or forwarded to a third party. The same applies analogously for the Supplier's standard products modified according to MINDA specifications.
- (4) MINDA is entitled to store and process for their own purposes and in compliance with the German Federal Data Protection Act all data regarding the Supplier received in connection with the fulfilment of the Contract.

XVI. Provision of spare parts

- (1) With respect to those parts which are necessary for the proper use of the deliveries and services without extra costs, the Supplier is required and guarantees to keep a supply of these parts at its own expense over a period of 10 years from the time of the last delivery, respectively as far as this is reasonable to ensure availability thereof.
- (2) In accordance with XVI. (1) the Supplier will inform MINDA upon reasonable notice before the end of the period for which the Supplier guarantees the supply of spare parts and shall offer to manufacture a sufficient amount of such spare parts to enable MINDA to maintain a sufficient stock.

XVII. Place of performance

The place of performance is the contractually agreed delivery address.

XVIII. Place of jurisdiction and applicable law

Place of jurisdiction is Minden. German law as applied between domestic contractual partners shall exclusively govern the Contract and all legal relations.