

General Terms and Conditions of Purchasing and Ordering of Walcher & Rees GmbH (05/2012)

1. General – Scope of Application

- 1.1 Our General Terms and Conditions of Purchasing and Ordering shown below, apply to any and all contracts we conclude with companies, legal entities under public law and public-law special funds (hereinafter known collectively as “supplier”) for delivery of goods or provision of services performed by the contract partner. Our General Terms and Conditions of Purchasing and Ordering apply solely and exclusively. Supplier’s terms and conditions of business as a whole do not apply unless we have expressly agreed to their application in writing. The above provision also applies to any and all supplier’s terms and conditions of business which are not contradictory to our General Terms and Conditions of Purchasing and Ordering. Our General Terms and Conditions of Purchasing and Ordering shall apply solely and exclusively even if we have accepted the delivery of products or services without reservation although we are aware of supplier’s deviating clauses.
- 1.2 Our Terms and Conditions of Purchasing and Ordering shall also apply to any and all future business transactions with the supplier.
- 1.3 These General Terms and Conditions of Purchasing and Ordering are without prejudice to any rights to which we are entitled pursuant to statutory provisions and which exceed the scope of these General Terms and Conditions.

2. Offers, Purchase Orders, Modifications, Procurement Risks

- 2.1 Any and all offers shall be submitted to us in binding form and free of charge. The supplier shall maintain confidentiality with respect to the offers.
- 2.2 The offer is binding on the supplier for a period of 12 weeks as of our receipt of the offer.
- 2.3 A contract with us shall be deemed concluded solely if and when we have placed the order in writing (digital form or fax is sufficient). Our silence with respect to an offer from the supplier shall not be deemed tacit agreement or acceptance of the offer.
- 2.4 We may request modifications in the products or the services even after the conclusion of the contract, provided that such modifications are reasonable for the supplier. In the event of any such modifications, both parties shall give reasonable consideration to the impact of the modifications, in particular with respect, but not limited, to any additional or reduced costs and the dates of delivery and/or performance.
- 2.5 The supplier assumes the procurement risks with respect to deliveries by its own suppliers.

3. Delivery and/or Performance Period, Delivery and/or Performance

- 3.1 The agreed periods and dates of delivery/performance are binding. The goods must have arrived at the place of performance within the agreed period or as of the agreed date. We are not required to accept delivery before the expiration of the period or the date. In the event of foreseeable delays, the supplier shall notify us immediately in writing, stating the reasons for the delay and setting a new delivery/performance date. We are entitled to cancellation of the contract if and when we are not in agreement with the new date which is offered and the supplier refuses delivery/performance within a reasonable subsequent period we have suggested. If and when we declare our agreement with the new date offered by the supplier, or if and when the supplier accepts a subsequent period we have set, this shall not be construed as an extension of the contractually agreed delivery/performance date or delivery/performance period. Any such acceptance is without prejudice to damage compensation claims due to default of delivery.
- 3.2 If and when the supplier is in default of delivery of goods/services, in whole or in part, we are entitled to the statutory claims (damage compensation/rescission) in their full scope. We are in particular, but not solely, entitled to request damage compensation in lieu of performance upon expiration of a reasonable subsequent period. Moreover, we are entitled to request payment of a contractual penalty in the amount of 0.25% of the order value per business day, but not more than 5% in the aggregate of the order value, as of the commencement of the supplier’s default.
- 3.3 If and when the supplier is in default over the course of successive supply agreements and similar agreements for partial delivery/performance, we are also entitled to cancel the contract or request damage compensation in lieu of performance with respect to any and all outstanding partial deliveries/performances upon the fruitless expiration of a subsequent period we have set for the partial delivery.
- 3.4 Force majeure such as strikes, uprising, insurgency, etc. release us from our obligation to accept or purchase the ordered delivery/performance for the duration of the disruption and in the scope of its impact. In such cases, we will provide the required information to the supplier within the full scope of what is reasonable. Delivery shall be made immediately upon our notification of the supplier that the incident has ceased. If and when the delivery/performance is no longer of any value for us in commercial terms as a consequence of the delay caused by the force of majeure, we are entitled to cancel the contract.
- 3.5 The delivery/performance of partial quantities, surplus or shortfall deliveries is not permissible

unless we have expressly agreed in writing to such deliveries.

- 3.6 If and when we request that the supplier postpones a delivery, it must insure the properly packaged and labelled goods at its expense and store them so that they do not suffer any loss of quality; however, this obligation will remain in effect for a maximum of three months.

4. Packaging, Shipping

- 4.1 Unless otherwise agreed, the products will be shipped at the expense and risk of the supplier to the address designated in our order.
- 4.2 The supplier warrants compliance with any and all relevant shipping and declaration requirements as well as any export and import formalities. The supplier is liable for any and all loss or damage resulting from the failure to comply with said requirements and formalities.
- 4.3 The supplier will provide at its expense appropriate and clean packaging as commonly used in the trade and warrants that the products are protected by the packaging from typical transport damage, corrosion and ingress of contamination or moisture. The supplier is liable for any and all loss or damage resulting from the failure to comply with these requirements.
- 4.4 An itemised notification of shipping showing our order number, our order date, the production works, the shipping address, the content, the type of packaging, the packaging unit number and the weight shall be sent to us upon dispatch of each and every consignment.
- 4.5 Each and every consignment shall be accompanied with a delivery note showing our order number, our order date and the content.
- 4.6 Unless otherwise agreed, the risk of shipment does not transfer to us until the delivery has been made.
- 4.7 The supplier is obligated at our request to collect packaging material and transport aids at its expense.

5. Insurances

- 5.1 We will bear the expenses for insurance solely if and when a prior written agreement to this effect has been concluded with us.
- 5.2 The supplier is obligated to maintain at its expense a liability insurance policy, including a cover for loss or damage arising from product liability which includes the risk of a recall action, with adequate cover for personal injury, material damage and pecuniary loss (minimum of €2 million per person or per insured event of material damage or pecuniary loss) throughout the entire term of the supply or order relationship, i.e. until the expiration of the limitation period for any and all claims which might arise from the contractual relationship, and, upon request, to sub-

mit verification of the policy. If and when the supplier does not maintain appropriate insurance cover, or if and when it refuses to submit verification to us even after we have set a reasonable subsequent period for said submission, we will be entitled to cancel the contract and may request compensation from the supplier for the loss or damage we have suffered.

- 5.3 Our claims are not limited to the sum insured.

6. Prices, Terms and Conditions of Payment, Assignment, Offset; Subcontracting of Order, Changes of Company, Change of Production; Contract Processing

- 6.1 Unless a deviating currency has been agreed in writing, prices are shown in euros.
- 6.2 The price shown in our order is binding. It includes delivery "free house" and packaging.
- 6.3 Invoices shall be sent directly to us by post under separate cover upon dispatch of the products; they shall be itemised according to order number and order date for each and every order and indicate whether the order has been completed or, if not, what quantities or numbers of units must still be delivered. Value-added tax shall be shown as a separate item. The invoice must clearly show in particular the type and scope of the delivery or performance.
- 6.4 We may pay invoices within 30 days subject to a 3% cash discount or within 90 days net. The period commences upon our receipt of the invoice, but no earlier than the day on which the consignment arrives at the address we have designated.
- 6.5 In the event of defective delivery or performance or the sending of an invoice which is not in compliance with requirements, we are entitled to reserve payment until proper fulfilment/ sending of a correct invoice without losing our cash discount entitlement.
- 6.6 Assignments are subject to our written consent. This provision is without prejudice to Section 354a HGB (German Commercial Code). The supplier is entitled to rights of offset and retention solely with respect to claims which are undisputed, which we have acknowledged or which have been finally adjudicated.
- 6.7 The supplier is not authorised to engage third parties to carry out the order or parts of the order without our prior written consent. Even if we give our consent, the supplier remains responsible for its contractual obligations and is liable for the third party in the same scope as for its own actions.
- 6.8 The supplier shall notify us in writing immediately of any and every change in its shareholders and any and every change in its company.
- 6.9 If and when the supplier intends to discontinue its production as a whole or to modify or discontinue production of the goods which are the subject of

- the contract, it shall notify us without delay in writing, provided that no more than 6 months have passed since our most recent order of the goods. The supplier shall ensure that the delivery of the goods which are the subject of the contract can continue for no less than 12 months after notification.
- 6.10 If and when we have engaged the supplier as a contract processor, it shall conduct an incoming goods inspection of any goods delivered to it for contract processing and notify us of any defects in the goods before commencing the contract processing and discuss the subsequent procedures with us. If and when it fails to comply with this requirement, it shall be obligated to compensate us for the loss or damage. The above provision is without prejudice to our right to assert more extensive statutory claims.
- 7. Warranty, Limitation Periods**
- 7.1 The supplier warrants that the goods or services are free of any material and/or legal defects, and that they are in compliance with state-of-the-art technology, pertinent national and European legal statutes (in particular, but not limited to, food and commodity laws), the requirements and directives of government agencies, employers liability insurance associations and professional associations, the specifications we have provided, the agreed characteristics, the instructions in the order/contract award and the conformity declaration.
- 7.2 The supplier must point out to us without delay if and when, in individual cases, deviations from specifications, agreed characteristics or instructions in the order are required or expedient, or if and when there are concerns about the nature of the execution we have requested. We will then notify the supplier as soon as possible whether and, if so, which of the modifications are to be realised. Our agreement does not limit the supplier's liability. If and when the modification results in a change in the costs incurred by the execution of the contract, we and the supplier are both entitled to request a corresponding adjustment of the compensation to which the supplier is entitled.
- 7.3 Furthermore, the supplier warrants that the goods or services are suitable for the agreed use or the use foreseeable due to the nature of the goods or services and that they do not contain any prohibited or unappraised substances. In the case of goods which are used to package food or toys, the supplier warrants that the goods are suitable for contact with food or toys and that contact with the goods does not have any negative effects on the food or toys.
- 7.4 The supplier warrants that the goods are properly labelled.
- 7.5 The supplier warrants that the order/contract will be executed in such a manner that compliance with the act regarding technical equipment, the machine protection act, the accident prevention requirements of the relevant employers liability insurance association, the requirements for fire protection, the most recently revised DIN and VDE standards and the requirements for CE labelling is assured.
- 7.6 If it is discernible to the supplier that we or our customers intend to use the provided goods/services in countries outside of the European Union, the supplier hereby assumes the warranties pursuant to clauses 7.1 to 7.5 for those countries which are discernible to it as customers on the basis of the contract.
- 7.7 We are entitled to the full length of the statutory warranty periods. In particular, we are entitled at our option to request remedy of defects or delivery of a defect-free object/performance of a defect-free service. If and when the supplier does not fulfil its subsequent performance obligation within a reasonable period we have set, we may carry out the required measures ourselves or engage third parties to carry them out at the supplier's expense and risk. In urgent cases, we are entitled to carry out the measures ourselves even before expiration of the period if and when the supplier does not provide written, binding confirmation within 24 hours of our request that it is prepared and able to conduct the subsequent performance without delay. If and when we carry out the measures ourselves, we may bill our own services at prices usually charged on the market by third parties. The above provisions are without prejudice to our statutory rights in all other respects.
- 7.8 The supplier shall bear any and all expenditures related to the determination of defects and their remedy, regardless of fault, including any and all expenditures we incur, in particular, but not limited to, inspection expenses, installation, removal and reinstallation costs for defective parts, labour and material expenses, transport and any and all other costs resulting from the replacement of defective parts.
- 7.9 To the extent that we are entitled to cancellation of the contract, said cancellation can, in the event of non-fulfilment or poor performance of a limited part of the performance, be restricted to this part while the remaining parts of the contract remain in force.
- 7.10 The cancellation of the contract or reduction of the price is without prejudice to our right to assert damage compensation claims.
- 7.11 Warranty claims pursuant to material and legal defects are subject to a limitation period of 36 months provided that legal statutes do not provide for a longer limitation period and that the

- limitation period has not been suspended. The limitation period begins upon the arrival of the goods at our place of business or upon acceptance of the service. If and when acceptance is delayed through no fault of the supplier, the warranty period shall be 36 months as of the readiness of the goods/services for acceptance.
- 7.12 If the goods are procured for the purpose of resale or for use in the manufacture of products, the period shall begin at that point in time at which the warranty period for the goods equipped with the delivered product commences, but no later than 6 months after delivery of the goods to us.
- 7.13 If and when the supplier provides replacements within the scope of subsequent performance, the limitation period for the goods delivered as a replacement commences anew upon their delivery to us. If a part has undergone subsequent improvement, the limitation period recommences with the conclusion/acceptance of the subsequent improvement as a whole.

8. Obligation to Submit Complaint

Complaints received by the supplier within a period of two weeks (calculated from the receipt of the goods for visible defects, from the time of discovery for hidden defects) shall at all times be deemed immediate within the sense of Section 377 HGB. The period shall also be deemed observed if complaint is submitted orally or by telephone.

9. Retention of Title

The supplier's retention of title to the goods is excluded. The supplier warrants that the delivered goods are free of any third-party title rights. The supplier will indemnify and hold us harmless from and against any third-party claims upon our first request and will also bear any and all costs we incur in this respect. The above provision applies to legal and court costs as well.

10. Intellectual Property Rights

- 10.1 The supplier warrants that the goods or services are free of third-party intellectual property rights and are not third-party intellectual property; it also warrants in particular that the delivery and use of the delivered goods or services do not infringe on any patents, licences, utility models, registered designs, trademarks, copyrights or other third-party intellectual property rights.
- 10.2 The supplier will indemnify and hold us harmless from and against any and all third-party claims arising from the infringement of the third-party rights mentioned in clause 10.1 upon first request and will also bear any and all costs we incur in this respect. The above provision applies to legal and court costs as well.

- 10.3 We are entitled, at the supplier's expense, to obtain any and all permits from entitled third parties which are required for the use of the goods and services.
- 10.4 The above provision is without prejudice to any further statutory claims, e.g. pursuant to liability for legal defects.
- 10.5 The supplier is not entitled to utilise our trade name, logos, trademarks or other protected intellectual property for its own benefit or the benefit of third parties.
- 10.6 Goods or services which are not part of the supplier's standard product range and which it has produced pursuant to our instructions or our drawings and/or technical specifications may not be offered, sold, delivered or disclosed to third parties without our prior written consent.
- 10.7 The supplier may not offer to third parties, sell, deliver or otherwise introduce to the market goods from its standard product range if and when our trade name, our logo, our trademark or other protected intellectual property of ours is recognisable on the goods.

11. Work Materials

- 11.1 We reserve title and intellectual property rights to any and all work materials provided to the supplier or created in accordance with our instructions for the preparation of the offer or execution of the order/contract award, including, but not limited to, drafts, templates, sketches, films, lithographs, plates, punch presses, dies, negatives, print rollers, moulding equipment, digital data, printing cylinders, tools, samples, models, printing materials, calculations, etc. The supplier is obligated to return to us upon first request any and all work materials received from us. It may not retain copies or reproductions in any other form.
- 11.2 The supplier may not utilise work materials within the sense of clause 11.1 for any purposes other than the execution of the order/contract award. They may not be disclosed or made accessible to third parties. In the event of the breach of the above obligation, the supplier is obligated to pay damage compensation to us.
- 11.3 In the event of the loss of work materials within the sense of clause 11.1, the supplier is obligated to procure replacements at its expense and to pay damage compensation.

12. Product Liability

- 12.1 If and when claims are asserted against us based on the violation of official safety requirements or due to the defectiveness of our products on the basis of domestic or foreign product liability regulations or laws which is traceable to the goods delivered to us by the supplier, the supplier shall compensate us for any loss or damage caused by the goods delivered by the supplier. If and when

the damage or loss is caused by goods delivered by a number of supplier, said suppliers shall be liable to us jointly and severally. If and when loss or damage occurs which is typical for a defect in goods delivered by the supplier, it will be assumed that the loss or damage resulted from this defect. The supplier is entitled to provide proof that the defect was not the cause of the loss or damage.

- 12.2 Within the scope of its liability for occurrences of damage or loss within the sense of clause 12.1, the supplier is also obligated, pursuant to Sections 683, 670 BGB (German Civil Code) or to Sections 830, 840, 426 BGB, to reimburse us for any and all expenses which are incurred by or in relation to any recall action we have carried out. We shall, provided that it is possible and reasonable, notify the supplier in advance of the content and scope of the recall actions which must be carried out and give it the opportunity to submit a statement of opinion. The above provisions are without prejudice to other statutory claims.

13. Quality Assurance

The supplier warrants that it maintains, operates and documents a quality assurance system appropriate with respect to type and scope and in accordance with state-of-the-art science and technology. The supplier is obligated to prepare records of the tests, measurements and inspections which are carried out, to archive any and all test, measurement and inspection results for a period of 10 years and to assure their traceability. We are entitled to conduct an unannounced, on-site audit during normal business hours for the review of the entire quality assurance system related to the goods delivered to us. The supplier also grants to us, upon our request, the right to inspect any and all of the documentation of the quality assurance system related to the goods delivered to us and to provide copies of the documentation to us in the required scope.

14. REACH, Hazardous Substances

- 14.1 The supplier warrants that its delivery is in conformity with the provisions of the Regulation (EC) No. 1907/2006 (REACH Regulation) as most recently revised. Furthermore, the supplier will provide to us the safety data sheets required by the provisions of the REACH Regulation, including the appropriate intended purpose and/or the information required by the REACH Regulation.
- 14.2 Conformity with the provisions of the REACH Regulation does not release the supplier from its general obligation to provide to us without delay qualified information regarding any and all modi-

fications in the goods and their ingredients and to submit to us a data sheet.

- 14.3 The supplier will submit to us in conjunction with the offer, but in any case before the dispatch, a safety data sheet in accordance with Section 14 of the German Hazardous Substances Act, filled out completely, and a relevant accident bulletin (transport) for materials (substances/preparations) and objects (e.g. goods, parts, technical equipment, uncleaned storage containers) which, due to their nature, their properties or their condition, can present hazards to body, life or health of humans, to the environment and/or to property and which must therefore be accorded special treatment with respect to packaging, transport, storage, handling or waste disposal.

15. Safety

If and when the supplier's associates or authorised representatives conduct activities on our operating premises, the supplier will ensure that they comply with the pertinent safety and accident prevention regulations and fire prevention regulations and observe the plant regulations issued by the plant. The supplier will continually refer its associates or authorised representatives to these regulations. If the supplier does not take steps to remedy a breach of these regulations immediately, but no later than within three days after issue of a written warning, or if there are repeated serious violations of these regulations, we are entitled to extraordinary termination of the contract without notice, effective immediately. The supplier will reimburse us for any loss or damage and expenses we incur owing to the failure to comply with these regulations.

16. Worsening of Assets

- 16.1 If and when there is a major worsening of the assets of the supplier or of the companies affiliated with it (e.g. difficulties in making payments or suspension of payments, petition for creditor protection, petition for initiation of bankruptcy proceedings) after conclusion of the contract, or other circumstances become known which indicate that our claim to the return service could be endangered by the supplier's inability to perform, we are entitled to withhold our performance until the supplier has performed the return service or provided security. If and when the supplier does not either perform the return service in full or provide appropriate security within one week after our request to this effect, we are entitled to cancel the contract. Section 323 BGB will apply mutatis mutandis. The above provision is without prejudice to our right to demand damage compensation in accordance with legal statutes.
- 16.2 We are also entitled to cancel the contract as a whole in the event there are other objectively jus-

tified circumstances which cause the continuation of dependable business relationships to appear to be in serious jeopardy.

The German version shall be solely and exclusively authoritative in the event of doubt and/or contradictions.

17. Confidentiality

- 17.1 The supplier is obligated to maintain strict confidentiality with respect to any and all confidential information from the pre-contractual correspondence and from the cooperation and to utilise said information solely and exclusively for the fulfilment of the contractual relationship, provided that the information is not generally known or has not been legitimately obtained from third parties. Confidential information includes in particular, but is not limited to, queries and offers, technical data, procurement volume, prices, information about products and product developments, about research and development projects, any and all company data and any and all work materials within the sense of clause 11.1.
- 17.2 Associates to whom the supplier assigns the preparation of the offer and/or the execution of our order/contract award must be obligated to the same scope of confidentiality.
- 17.3 If and when the supplier recognises that a third party has illegally obtained possession of confidential information or that confidential documentation has been lost, it shall notify us immediately.
- 17.4 If and when the supplier is in breach of its obligations pursuant to clauses 17.1 to 17.3, it is liable for any and all costs and losses or damage which we suffer as a consequence of the breach.
- 17.5 The supplier may not refer to the business relationship with us in its publications without our prior written consent.
- 17.6 The obligations pursuant to clauses 17.1 to 17.5 shall survive the termination or expiration of the contractual relationship for an indefinite period.

18. Place of Performance, Venue, Proper Law

- 18.1 Place of performance for the delivery or performance is the agreed shipping site. Place of payment for our payment obligations is our registered office.
- 18.2 Venue for business transactions with companies, legal entities under public law and public-law special funds is our registered office or, at our option, the supplier's registered office.
- 18.3 Sole proper law governing the contracts is the law of Germany, excluding application of international private law and the UN Convention on the International Sale of Goods (CISG). The above provision also applies to deliveries/performance across national borders.
- 18.4 These General Terms and Conditions of Purchasing and Ordering also exist in a German version.