

# General Terms and Conditions of Purchase of IBAF Industrial Solutions GmbH (Issue date: 20 October 2016)

## § 1 Scope

- 1 The following terms and conditions of purchase shall apply exclusively to all orders for supplies and services.
- 2 Contrary or differing terms and conditions issued by the supplier will not be recognised unless the purchaser expressly approves their validity in writing. The terms and conditions of purchase specified herein shall also apply where the purchaser, in awareness of contrary or differing terms and conditions issued by the supplier, accepts the supplier's goods or services without express reservation.
- 3 All agreements between the purchaser and the supplier with respect to execution of this order shall be recorded in writing in the order documentation. Oral agreements require written confirmation. No payment will be made in respect of preparatory work, quotations or planning work.
- 4 These terms and conditions of purchase shall also apply to all future transactions with the supplier.

## § 2 Quotation – Quotation documentation

- 1 The supplier is obliged to accept the order within a period of two weeks.
- 2 The purchaser reserves title and copyright on all furnished diagrams, drawings, calculations and other documentation; such documents must not be made accessible to third parties without the express consent in text form of the purchaser. They shall be used exclusively for execution of and compliance with the order specifications; following completion of the order, they shall be returned immediately to the purchaser. They are to be kept confidential in respect of third parties.

## § 3 Prices – Terms and conditions of payment

- 1 The price indicated in the order is binding. Unless otherwise agreed in writing, the price includes supply DDP in accordance with Incoterms 2010, either at a stated delivery address or, in cases of doubt, at Heinrichstrasse 67, 44805 Bochum, Germany.
- 2 Invoices can only be processed by the purchaser where, in compliance with the requirements indicated in the order, they show the order numbers, codes and cost centres indicated therein; any consequences arising from noncompliance with this obligation shall be the responsibility of the supplier.
- 3 Unless otherwise agreed in writing, the purchaser shall pay the invoice price within 14 days, calculated from the date of invoice receipt, with a 2% cash discount, or net within 45 days of invoice receipt.
- 4 Any claims made by the supplier to the purchaser shall only be assigned to third parties with the written consent of the purchaser. The supplier may only offset counterclaims to the extent that these are recognised by the purchaser and have been determined as due or legally binding.

## § 4 Delivery period

- 1 The delivery period stated in the order is binding.
- 2 The supplier is obliged to immediately inform the purchaser in text form in the event of circumstances arising or becoming known to the supplier indicating noncompliance with the contracted delivery period.
- 3 In the event of a delay or default in delivery, the purchaser shall be entitled to make such claims as are legally available. In particular, if the supplier fails to meet an appropriately extended deadline, the purchaser shall be entitled to demand compensation for non-performance.

## § 5 Transfer of risk – Documents – Quality controls

- 1 Unless otherwise agreed in writing, the supplier shall transfer the goods to the purchaser's domicile at supplier's cost and risk.
- 2 All shipments shall be despatched in the agreed manner to the purchaser or to the stated delivery address. Goods re-

ceipt shall be between the times 08.00 to 16.00 Monday to Thursday, and 08.00 to 15.00 on Friday.

- 3 The supplier is obliged to additionally provide the order number and cost centre on all despatch papers and delivery notes; should the supplier omit to do so, there may be unavoidable delays in processing for which the purchaser shall not be held responsible.
- 4 During the term of the contract, the purchaser shall be entitled to seek information on the status of order execution and, subject to prior announcement, carry out or have others perform quality controls at the supplier's facility.

## § 6 Claims for defects – Investigation of defects

- 1 The purchaser shall examine the goods within an appropriate period for any quality or quantity noncompliances; any complaint shall be regarded as having been submitted in good time provided that it is with the supplier within a period of 14 calendar days.
- 2 The purchaser shall be entitled to make all legally permissible claims for defects and noncompliances without restriction; this notwithstanding, it shall further be entitled to demand from the supplier, at the purchaser's discretion, rectification of the defect or supply of a defect-free item. The supplier shall then be obliged to bear all costs incurred for the purpose of defect rectification or the supply of a defect-free item. The purchaser further expressly reserves the right to compensation and in particular to damages for non-performance.
- 3 The limitation period for defect claims is two years calculated from the transfer of risk. The limitation period is halted on receipt of the notification in text form of the defect or noncompliance until the supplier has successfully rectified the defect or has rejected demands for (further) rework or improvement. The limitation period begins anew on completion of the defect rectification work.

## § 7 Contractual penalty

- 1 It is agreed that a contractual penalty amounting to 0.3% will be paid for each day by which the supplier culpably exceeds the delivery deadline. The contractual penalty shall be limited to 15% of the total order value. This shall not affect the right to claim greater damages as compensation for default. The contractual penalty does not have to be reserved on acceptance but can be applied up to final payment.
- 2 If the purchaser commissions construction services for which VOB (Contracting Procedures for the Award of Public Works), Parts A and/or B, is/are agreed, for each working day by which the deadline is culpably exceeded, it is agreed that a contractual penalty amounting to 0.2% of the order value shall be payable. The contractual penalty is limited to 5% of the contract sum. In all other matters, § 7 (1) obtains.

## § 8 Acceptance – Commissioning

- 1 The purchaser and supplier will carry out a trial commissioning of the product at the business premises of the purchaser. A written record of this will be kept, and this will be signed by both parties. Commissioning shall be regarded as completed once the scope and function of the product have been fulfilled without defects or nonconformities.

## § 9 Spare parts

- 1 The supplier undertakes to stock spare parts for the ordered product for a further period of 5 years. The ongoing availability and supply of spare parts must be assured by the supplier.

## § 10 Liability

- 1 In the event that the supplier is responsible for a product failure, the supplier shall keep the purchaser harmless from associated claims for damages by third parties on first demand where the cause lies within the supplier's control and

organisational responsibility and the supplier is itself liable to third parties.

- 2 Within this context, the supplier also undertakes to reimburse any costs arising from or in connection with a recall action instigated by the purchaser. The purchaser will – where possible and reasonable – inform the supplier of the content and scope of the recall measures to be carried out and provide the supplier with an opportunity to make representations.
- 3 The supplier shall conclude a business liability insurance policy and also a product liability insurance policy with cover amounting to €5m for personal injury and €5m for damage to property. The supplier will provide the purchaser with a copy of the insurance policies on request. The right to claim further damages remains unaffected.

#### **§ 11 Proprietary rights**

- 1 The supplier shall, by instigating appropriate searches in keeping with its duty of due care and attention as typical and applicable within the industry, ensure that the supplies and services to be provided, and the results thereof, shall not infringe on the rights of third parties.
- 2 In the event that the rights of third parties are violated by the supplier, the supplier shall inform the purchaser immediately and collaborate with the purchaser to find a viable alternative solution. Should the proprietary rights of third parties prove to be impossible to circumnavigate, the purchaser will decide whether the property right should be utilised within the framework of a licence. In this case, agreement on the sharing of licence fees and other costs incurred will be negotiated between the supplier and the purchaser.
- 3 In the event that the supplier does not inform the purchaser of prohibitive rights of third parties of which the supplier is aware, or should have been aware in keeping with its duty of due care and attention as typical and applicable within the industry, the supplier shall keep the purchaser harmless of any claims made by third parties based on the conflicting rights.

#### **§ 12 Retention of ownership – Items furnished by purchaser – Tooling**

- 1 In the event that the purchaser provides the supplier with materials for the purpose of executing the contract, the purchaser retains ownership of such materials (reserved goods). Processing and conversion by the supplier are performed on behalf and for the account of the purchaser. In the event that reserved goods provided by the purchaser are processed together with items that do not belong to the purchaser, the purchaser shall acquire co-ownership of the new combination in accordance with the proportionate value of the reserved goods (invoice amount) provided by the purchaser in relation to the value of the other processed items at the time of combination.
- 2 In the event that the purchaser provides the supplier with workpieces, moulds, dies or tools, or where such are manufactured on behalf of the purchaser for the purpose of executing the contract, the supplier will be required to return such workpieces, moulds, dies and tools to the purchaser once the contract has been completed. The purchaser retains title on transferred tools, workpieces, moulds and dies. The supplier shall use the transferred tools, moulds, dies or workpieces exclusively for the manufacture of the goods ordered by the purchaser. The supplier shall, at the supplier's own cost, insure the tools, moulds, dies and workpieces belonging to the purchaser against fire, water damage, theft and burglary for a sum adequate to cover the replacement value. The supplier shall likewise perform any requisite maintenance and inspection work in good time and at its own cost. The supplier shall inform the purchaser of any malfunctions encountered. Should the supplier culpably fail to meet this duty of notification, the purchaser's entitlement to claim for damages shall persist unaffected.

#### **§ 13 Confidentiality**

- 1 The supplier shall maintain strict secrecy with respect to all diagrams, drawings, calculations and other documentation and information received. Such items may only be disclosed to third parties with the express consent of the purchaser.

This duty of confidentiality also applies to the management of this contract; it lapses once the know-how and expertise contained in the transferred diagrams, drawings, calculations and other documents become generally known. This duty of confidentiality is mutual.

#### **§ 14 Legal venue – Place of performance**

- 1 The legal venue is Bochum or, at the discretion of the purchaser, the general legal venue of the supplier.
- 2 German law shall apply even where the contract has been concluded abroad. Application of the uniform Hague Convention on the International Sale of Goods is precluded. Unless otherwise agreed, the place of performance is Bochum, Germany.