

# **Tubex Wasungen GmbH, Wasungen**

## **Purchasing Conditions**

*Applicable in business transactions with entrepreneurs, legal entities under public law and public-law special funds. Not applicable in legal transactions with consumers in the sense of § 13 German Civil Code.*

### **1. General**

These purchasing conditions apply to all of our (Tubex Wasungen GmbH, Aluminiumstraße 1, D-98634 Wasungen) orders and to any statements of intent that we make in connection with purchasing or procurement of goods, service or work, such as purchasing of raw material, input material, accessories, purchased parts or charging of works and services. These purchasing conditions apply exclusively; we only accept contrary terms and conditions of the supplier or terms and conditions deviating from others where we have expressly consented to them in writing. Acceptance of goods or services of the supplier (hereinafter: object of the contract) or payment for them shall not constitute consent to the application of any terms and conditions provided by the supplier.

### **2. Conclusion of the Contract and Changes to the Contract**

2.1 Orders, conclusions and delivery calls, as well as any changes to and amendments of them shall require written form.

2.2 Oral agreements of any kind - including any subsequent changes to and supplementations of our purchasing conditions - shall require written confirmation by us to be valid.

2.3 Written form shall also be met by remote data transfer (e.g. by email) or telefax.

2.4 Cost estimates shall be binding and not subject to compensation unless something different has expressly been agreed.

2.5 If the supplier does not accept the order within two weeks of receipt, we shall have the right to revocation.

2.6 Delivery calls in the scope of order and call planning become binding if the supplier does not refuse within two working days from receipt.

### **3. Delivery**

3.1 Deviations from our conclusions and orders shall only be permitted upon our previous written consent.

3.2 Agreed dates and deadlines shall be binding. Receipt of the goods by us shall be essential for compliance with the delivery date or the delivery period. If delivery "free works" (DAP or DDP according to Incoterms 2010) is not agreed, the supplier shall provide the goods in time under consideration of the time to be coordinated with forwarder for loading and shipment.

3.3 If the supplier has assumed setup and installation and nothing deviating has been agreed on, the supplier shall assume any required secondary costs, such as travelling costs, provision of tools and deployment fees in addition to this, subject to any deviating provisions.

3.4 If any agreed deadlines are not complied with, the statutory provisions shall apply. If the supplier foresees any problems regarding production, input material supply, compliance with the delivery deadline or similar circumstances that may keep him from timely delivery or delivery in the agreed quality, the supplier shall inform our ordering department without delay.

3.5 The acceptance of the delayed delivery or service without reservations shall not include any waiver of the reimbursement claims due to us because of the delayed delivery or service; this shall apply until complete payment of the compensation owed by us for the respective delivery or service.

3.6 Partial deliveries are generally not permitted, unless we have expressly consented to them or they are reasonable for us.

3.7 The values determined by us during incoming goods inspection for piece numbers, weights and dimensions shall be essential.

3.8 We shall have the right to use the software that belongs to the product delivery, including its documentation, at the scope permitted by law (§§ 69a et seqq. UrhG).

3.9 In such software, including its documentation, we shall also have the right to use it with the comparable performance features and at the scope required for contractual use of the product. We shall also have the right to make a backup copy without express agreement.

#### **4. Force Majeure**

4.1 Force majeure, impairment of operations without fault, unrest, authority measures and immediate unavoidable events shall release us from the obligation of timely acceptance for the duration of their presence. During such events, as well as within two weeks after their end, we shall - notwithstanding our other rights - have the right to declare whole or partial rescission of the contract where such events are not of inessential duration and our demand considerably reduces due to the required other procurement.

4.2 The rules of item 4.1 shall also apply in case of labour dispute.

#### **5. Notification of Dispatch and Invoice**

The information in our orders and delivery calls shall apply. The invoice shall be sent to the respective printed-on address in single execution under indication of the invoice number and other assignment features; it must not be enclosed with the deliveries.

#### **6. Pricing and Passing of Risk**

If no special agreement has been made, the prices are delivered designated site (DAP according to Incoterms 2010) including packaging. This shall not include VAT. The supplier shall assume the material danger until acceptance of the goods by us or our officer at the location where the goods are to be delivered according to the order.

#### **7. Payment Conditions**

Where no special agreements have been made, the invoice shall be settled either within 20 (twenty) days under deduction of 3% (three percent) discount or within 60 (sixty) days without deduction from the due date of the compensation claim and receipt of the invoice and the goods or rendering of the service. Payment shall take place under reservation of auditing of the invoice.

## **8. Claims for Defect and Recourse**

8.1 The supplier assumes the obligation to only deliver such goods that has been subjected to a final inspection for its material, drawing and standard compliant design.

8.2 Acceptance takes place under reservation of an examination for freeness of defects, especially also for accuracy and completeness, where and as soon as this is suitable according to the proper course of business. Defects are reported by us after being discovered without delay. In this respect, the supplier waives the objection of delayed complaint about defects.

8.3 The statutory provisions on defects of material and title shall be applied unless something different is provided for below.

8.4 We shall generally have the right to choose the type of subsequent performance. The supplier may refuse the type of subsequent performance chosen by us if it is only possible with disproportional costs.

8.5 If the supplier does not start to remove the defect without delay after our request for removal of the defect, we shall have the right to do this ourselves or have it done by a third party at the supplier's expense in urgent cases, and especially to defend against acute dangers or to avoid larger damage.

8.6 In case of legal defects, the supplier shall also indemnify us against any possible third-party claims unless he is not at fault for the legal defect.

8.7 Claims for defects shall expire within 3 (three) years - except in cases of malicious intent - unless the object has been used for a building according to its common use and has caused it to be defective. The expiration period shall commence at delivery of the object of the contract (passing of risk).

8.8 If the supplier does not meet his obligation to subsequent performance by replacement delivery, the expiration period shall start over again for the goods delivered as replacement after their delivery, unless the supplier had expressly and accurately reserved that he was only doing this out of goodwill, to avoid dispute or in the interest of a continued delivery relationship, at subsequent performance.

8.9 If the defective delivery of the object of the contract causes any costs for us, especially transport, travelling, work, removal or material costs or costs for any incoming goods inspection exceeding the common scope, the supplier shall assume such costs.

## **9. Product Liability**

9.1 If any product liability claims are raised against us, the supplier shall be obliged to indemnify us against any such claims where and as far as the damage has been caused by a fault of the contractual object delivered by the supplier. In cases of liability independent of fault, however, this shall only apply where the supplier is at fault. Where the damage cause is subject to the area of responsibility of the supplier, he must document that he is not at fault.

9.2 In the cases of item 9.1, the supplier shall assume all costs and expenses, including the costs for pursuing rights.

9.3 Apart from this, the statutory provisions shall apply.

9.4 Before a recall campaign that is wholly or partially a consequence of a defect of the contractual object delivered by the supplier, we shall inform the supplier, enable him to contribute and engage in exchange about efficient performance with him, unless information or involvement of the supplier is not possible due to special urgency. Where a recall campaign is the consequence of a defect of the contractual object delivered by the supplier, the supplier shall assume the costs for the recall campaign.

## **10. Rescission and Termination Rights**

10.1 In addition to the statutory rescission rights, we shall have the right to rescission or termination of the contract with immediate effect if the supplier ceases supplying his customers, if the supplier's asset situation deteriorates essentially or threatens to do so, and if the performance of his delivery obligation towards us is endangered by this, if the supplier is unable to pay his debts when due or if the supplier is over-indebted, or if the supplier ceases payments to his creditors.

10.2 We shall also have the right to rescission of termination if the supplier requests insolvency proceedings for his assets or any comparable procedure for debt clearance.

10.3 If the supplier has effected a partial performance, we shall only have the right to rescission of the entire contract if we are not interested in the partial performance.

10.4 If we declare rescission or termination of the contract according to the above contractual rescission and termination rights, the supplier shall reimburse us for any damage arising from this, unless he is not at fault for the creation of the rescission or termination rights.

10.5 Statutory rights and claims shall not be limited by the rules according to item 10.

## **11. Performance of Work**

Persons who perform work on the factory premises to perform the contract shall observe the provisions of the respective rules of operations. The liability for accidents that happen to these persons on the factory premises shall be excluded unless caused by wilful or grossly negligent violation of obligations by our statutory representatives or servants.

## **12. Provision**

Any materials, parts, containers and special packaging provided by us shall remain our property. They must only be used as intended. Materials shall be processed and parts shall be assembled for us. It is agreed that we are joint owner of the products produced using our substances and parts at the ratio of the value of the provision to the value of the total product, and that the resulting products shall be kept for us by the supplier.

## **13. Documents and Secrecy**

13.1 Any business or technical information made accessible by us (including features that can be taken from any provided objects, documents or software, and any other knowledge or experience), shall be kept secret from third parties while and as far as they are not verifiably publicly known, and must only be provided to such persons in the supplier's own company who must be deployed for their use for delivery to us and who are also committed to secrecy; they shall remain our exclusive property. Without our advance written consent, such information must not be reproduced or used commercially - except for deliveries to us. Upon our request, any information from us (if applicable including any copies or records made) as well as borrowed objects must be returned to us without delay and completely or destroyed.

We reserve all rights in such information (including copyright and the right to register commercial property rights such a patents, utility samples, semi-conductor protection, etc.). Where these have been provided to us by third parties, the reservation of rights shall also apply to the benefit of such third parties.

13.2 Products that have been made according to documents, models and similar designed by us, or according to our confidential information or with our tool must not be used by the supplier for his own purposes or offered or delivered to third parties. This shall apply accordingly for our print orders.

## **14. Compliance**

14.1 The supplier commits to complying with the respective statutory rules for handling of employees, environmental protection and work safety, and to work on reducing detrimental effects on man and the environment in his work. For this, the supplier shall set up a management system according to ISO 14001 and develop it further in the scope of his options. Furthermore, the supplier shall observe the principles of the Global Compact Initiative of the UN. These essentially affect protection of the international human rights, right to collective bargaining negotiations, abolition of forced labour and child labour, abolition of discrimination in founding and continuation of employment, responsibility for the environment and prevention of corruption. Further information on the UN's Global Compact Initiative is available at [www.unglobalcompact.org](http://www.unglobalcompact.org).

14.2 If a supplier violates the law repeatedly and/or in spite of the corresponding note and does not document that the violation has been remedied as far as possible and that appropriate provisions have been taken for avoiding violations of the law in future, we reserve the right to rescission of present contracts or to termination of such contracts without notice.

## **15. Place of Performance**

The place of performance shall be that place to which the supplier has to deliver the goods according to the order or where he has to render his work.

## **16. General Provisions**

17.1 If any provision of these conditions and the further agreements made is or becomes invalid, this shall not affect the validity of the remaining provisions. The contracting partners are obliged to replace the invalid provision by a provision that comes as close as possible to it in its economic success.

17.2 The contractual relationships shall be solely subject to German law under exclusion of the conflict of laws provisions and UN purchasing law (CISG).

17.3 The place of jurisdiction in case of any legal disputes directly or indirectly resulting from contractual relationships based on these purchasing conditions shall be D-98617 Meiningen. The district court (Amtsgericht) Meiningen shall be relevant for any procedures before district courts. We shall also have the right to raise a claim against the supplier at the court of his seat or branch or the court of the place of performance, at our discretion.

*As of 04 / 2012*