

# General Terms and Conditions of Procurement

## I. Scope

1. These General Terms and Conditions of Procurement apply only in respect of entrepreneurs exercising their commercial or self-employed activity and in respect of legal entities under public law. They apply to all business dealings between Model GmbH, Model Kramp GmbH, Model Logistik GmbH, and Model Sachsen Papier GmbH (referred to hereinafter as "Model") and the supplier, contractor or service provider (referred to hereinafter as the "Contractor"), even if subsequent agreements do not make reference hereto.

2. Terms and Conditions of the Contractor that contradict, supplement or deviate from these General Terms and Conditions of Procurement do not become part of the contract unless Model would have agreed, in writing, to their application. These General Terms and Conditions of Procurement also apply if Model unconditionally accepts a service or delivery by the Contractor in full knowledge of their contradictory, supplementary or deviating terms and conditions.

3. Agreements concluded between Model and the Contractor in execution of the contract that contradict, supplement or deviate from these General Terms and Conditions of Procurement, must be set forth in writing. This also applies to the waiver of this written form requirement.

4. Rights going beyond those set forth in these General Terms and Conditions of Procurement to which Model is entitled pursuant to the statutory provisions or under other agreements remain unaffected.

## II. Conclusion of Contract and Contractual Amendments, Performance of the Contract

1. Offers, drafts, plans, cost estimates, samples and models are free of charge for Model. At Model's request, the Contractor must without delay and at its own expense take back such documents, samples and models.

2. An assignment or order (referred to hereinafter as "Order") becomes binding only when it is awarded, in writing, by Model or, in the case of an oral agreement, has been duly confirmed, in writing, by the Contractor. An order placed by automated means without a signature and name shall be deemed to be in writing. Any Order that contains obvious errors, misspellings or miscalculations shall not be binding for Model.

3. The Contractor must without delay but no later than one week from receipt of the Order issue a written order confirmation that explicitly states the price and delivery or performance period. Any deviation between the confirmation and the Order shall be deemed agreed only if it has been confirmed by Model, in writing. This applies in the same way to subsequent contractual amendments.

4. Order confirmation, notice of dispatch, consignment notes, delivery notes, invoices and other correspondence from the Contractor must state the order information, in particular the order number, order date and contractor number.

5. Model's silence in response to offers, requests or other declarations by the Contractor shall be construed as consent only if this was previously agreed, in writing.

6. If it transpires in the course of performing the contract that deviations from the agreed specifications or service are necessary or expedient, the Contractor must notify Model without delay and in writing and submit proposed amendments. Model shall advise the Contractor whether and which amendments the Contractor should make to the original Order. Model is entitled to amend the Order at any time. In such cases, the Contractor must be provided a reasonable period within which to implement the necessary changes. If these changes lead to an increase in the cost of fulfilling the order for the Contractor, the contracting parties shall negotiate a corresponding price adjustment. If it has not been possible to agree on a price adjustment within eight weeks of the written request for negotiation, Model is entitled to terminate the contract without the need to observe a notice period.

7. Model retains all ownership, copyright and other intellectual property rights in all documentation. Such documents are permitted to be used exclusively for the performance of this agreement and are not permitted to be made available to third parties without Model's prior written consent. At Model's request, the Contractor shall return all documents to Model, provided

they are no longer required in the ordinary course of business. This applies in the same way to all drafts, samples, prototypes and models of Model.

8. Model shall be entitled to withdraw from the agreement, in whole or in part, if the Contractor's financial circumstances deteriorate to a significant degree or if a legitimate application for the initiation of insolvency or similar proceedings in respect of the Contractor's assets is rejected due to lack of assets.

## III. Packaging, Shipping and Transport, Delivery and Acquisition of Ownership

1. The Contractor must comply with Model's specifications concerning the shipping of the product, in particular the applicable transport, packaging and delivery regulations in each case. Products must be delivered in packaging appropriate to the type of product. Specifically, products are to be packaged in a way that prevents transport damage. Packaging materials are to be used only to the extent necessary. The Contractor must, in particular, label the packaging with the scope of the delivery, the article and material numbers, the delivery quantity, manufacturing date as well as the order information, in particular the order number, order date and contractor number.

2. A delivery note stating the scope of the delivery, the article and material numbers, delivery quantity, manufacturing date and the order information, specifically the order number, order date and contractor number, must be included with all deliveries.

3. When delivering the product, the Contractor must also observe the provisions of the ordinance on hazardous substances (Gefahrstoffverordnung, GefStoffV), specifically, it must package and label the products concerned accordingly and explicitly indicate any hazardous substances on the delivery note.

4. Model is to be notified of the dispatch of the products without delay.

5. The Contractor must take out transport insurance appropriate in terms of type and coverage amount and at Model's request provide immediate written evidence thereof.

6. Deliveries are only permitted to be made on workdays during standard business hours from Monday to Thursday from 7:00 a.m. to 3:30 p.m. and Fridays from 7:00 a.m. to 11:00 a.m. The Contractor shall indemnify Model against all claims asserted by third parties based on deliveries made outside these times, unless the Contractor is not responsible for the delivery being made outside of standard business hours.

## IV. Delivery and Performance Period

1. The deadlines and dates stated in the Order or otherwise agreed for deliveries and services are binding. The deadlines commence upon receipt of the Order or from the date of the other agreement. For deliveries, the receipt of the delivery at the delivery address stipulated by Model is decisive for compliance with the delivery date or performance period. If the production of work or the provision of another service was agreed, the work or the service must have been duly produced or performed, specifically, produced or performed in full, by the agreed date. Model is not required to accept partial deliveries or partial performance.

2. If it becomes apparent to the Contractor that it will not be possible to comply with the delivery or performance period, it must notify Model without delay and in writing, stating the reasons and the expected duration of the delay.

3. In the case of default on the part of the Contractor, Model is entitled to demand a contractual penalty of 0.2 % of the net order value for each calendar day of delay, but no more than 5 % of the net order value, unless the Contractor is not responsible for the delay. If Model accepts the delivery or performance, it must withhold the contractual penalty no later than upon final payment. Instances of force majeure are excluded. This shall not affect any further claims of Model going above and beyond this. Model's claim to delivery or performance is excluded only if, at Model's request, the Contractor provides compensation in place of delivery or performance. The acceptance of the delayed delivery or performance shall not be deemed to constitute a waiver of the claim for compensation of damages or the contractual penalty.

4. Delivery or performance prior to the agreed delivery or performance date is permissible only with Model's prior written consent. Model is entitled at the Contractor's expense to store any products that were delivered prematurely without written consent or to return them at the Contractor's expense, unless the degree of prematurity of the delivery or performance is minor, or the Contractor is not responsible for the premature delivery.

## V. Cross-Border Deliveries

1. In the case of cross-border deliveries, the Contractor must at its own expense and in good time submit all declarations and take all measures necessary in respect of the competent authorities for export from the country from which the products are imported into the Federal Republic of Germany and for import into the Federal Republic of Germany; it must, in particular, procure all documentation necessary for customs processing.

2. The Contractor shall ensure that the products or parts of products to be supplied by it are not subject to national or international export restrictions, in particular restrictions under the Foreign Trade Act (Außenwirtschaftsgesetz). If a product is subject to such export restriction, the Contractor shall at its own expense procure the necessary export licences for worldwide export.

## VI. Prices and Payment

1. The price stated in the Order or otherwise agreed is binding. The price satisfies all services of the Contractor. In the absence of any written agreement to the contrary, the price applies "free to the place of use" and includes, in particular, the cost of packaging, shipping (including shipping devices), transport and insurance to the delivery address stipulated by Model, as well as customs fees and other public charges. If the cost of shipping and transportation are not included in the price in individual cases and it has been agreed, in writing, that Model is to assume the cost of shipping and transportation, this shall apply only for the price of the most cost-efficient method of shipping and transportation, even if faster shipping is required in order to comply with the agreed delivery or performance dates.

2. The price includes VAT at the applicable statutory rate unless it is explicitly stated to be a net price.

3. If VAT free delivery or service is an option, the Contractor must furnish the necessary evidence, provided such evidence is within their sphere of responsibility. For deliveries or services within the European Union, the Contractor must voluntarily and in writing provide a VAT identification number, furnish evidence of entrepreneur status and cooperate in the furnishing of proof of export in the form of accounts and supporting documentation.

4. Model shall receive a simple copy of the Contractor's invoice. The invoice is not permitted to be enclosed with the delivery and must be sent separately. Invoices that do not include an order number, order date or Contractor number shall be deemed not to have been received since they cannot be processed.

5. Payment shall be made (1.) for deliveries following acceptance of the products or, for services, upon due performance of the service and acceptance thereof (provided this has been agreed) and (2.) receipt of the invoice within 14 days with a 3 % discount, within 21 days with a 2% discount or net within 30 days. Payment shall be made only to the Contractor and subject to a review of the invoice. Model has the right at its discretion to make payment by cheque or bank transfer. In the case of defective delivery or defective performance, Model has the right to withhold payment until such time as the proper fulfilment without forfeiting any rebates, discounts or other price deductions. The deadline for payment commences in this context upon complete rectification of the defects. In the case of the premature delivery of the products or premature performance of the service, the deadline for payment commences no sooner than on expiry of the deadline for delivery or performance or on the agreed delivery or performance date. If the Contractor is required to provide material tests, inspection reports, quality documentation or other documents, the acceptance of the products triggers the payment deadline only if Model has also been provided with the documentation owed.

## **VII. Transfer of Risk and Transfer of Ownership, Acceptance of Deliveries and Incoming Goods Inspection**

1. In the case of deliveries, the Contractor shall bear the risk of the accidental destruction and the accidental deterioration of the products until such time as they are handed over to Model. If, in addition to the delivery, the Contractor is also required to assemble or install the products, the risk of the accidental destruction and the accidental deterioration of the products shall pass to Model only upon the complete assembly or installation of the products. This also applies if Model has assumed certain services, such as the costs of transportation.

2. If the Parties have agreed, in writing, that deliveries need to be accepted, in derogation from the foregoing subsection 1, the risk of the accidental destruction and accidental deterioration of the products passes to Model only upon acceptance. The provisions set forth in Section VIII. of these General Terms and Conditions of Procurement apply mutatis mutandis and in addition in the event of agreed acceptance unless otherwise provided in this Section VII. of the General Terms and Conditions of Procurement.

3. Ownership of the products passes directly and free from any encumbrances to Model in the case of deliveries upon handover and, if acceptance has been agreed, no later than upon their acceptance. The Contractor guarantees that it is authorised to resell and transfer ownership in the products.

4. Model must notify the Contractor of any obvious (identified or identifiable) defects without delay upon delivery of the products and concealed defects immediately upon identification. If the installation or assembly of the products or acceptance has been agreed, the products are delivered only upon complete installation or assembly. Notice is deemed immediate if it is submitted within two weeks of delivery in the case of obvious defects, and in the case of concealed defects, within two weeks of identification. In the case of deliveries comprising a large number of the same product, Model must inspect an appropriate quantity of the products delivered for defects. If the inspection renders the products unsellable, the quantity to be inspected shall be reduced as appropriate. If individual random samples in a delivery are defective, Model may at its discretion demand removal of the defective items by the Contractor or assert claims based on defects for the entire delivery in accordance with the statutory provisions. If defects in the products necessitate an inspection of the products going beyond the customary goods received inspection, the Contractor must bear the costs of such inspection. In the case of the delay and loss of the notification of defects, timely dispatch shall be deemed sufficient. General Terms and Conditions of Procurement

## **VIII. Acceptance, Transfer of Risk and Transfer of Ownership in Work**

1. Work performance shall be accepted by Model within a reasonable period from completion unless the condition of the work excludes the acceptance. In this case, each party has the right to request formal acceptance. Unless otherwise agreed, formal acceptance must take place in the presence of both parties. The acceptance is to be documented in an acceptance protocol. This also applies to unsuccessful acceptance attempts. The Contractor must reimburse to Model any costs incurred by Model as a result of unsuccessful acceptance attempts unless it is not responsible for the unsuccessful acceptance attempts. Any claims of Model going above and beyond this remain unaffected.

2. The acceptance of partial performance is excluded unless Model previously agreed, in writing, to the acceptance of partial performance.

3. If a defect becomes apparent during the acceptance, Model is entitled to refuse acceptance. This also applies to insignificant defects.

4. In the case of work performance, the risk of the accidental destruction and the accidental deterioration passes to Model upon acceptance.

5. For the transfer of ownership in the case of work performance, Section VII.3. of these General Terms and Conditions of Procurement applies in the same way, subject to the proviso that ownership passes to Model no later than upon acceptance.

## **IX. Warranty, Claims based on Defects and Guarantees**

1. The Contractor warrants that at the time of the passage of risk, the products supplied and the work performance are free from material defects and defects in title, in particular that the products have the agreed specifications and correspond to the approved samples. The Contractor furthermore warrants that the products and work performance comply with the applicable legal provisions and regulations and directives of official bodies, professional associations and trade associations, and that they meet the applicable DIN-standards.

2. If defects render the delivered products unfit for sale or if they need to be properly disposed of by Model, Model has the right to carry out the disposal at the Contractor's expense, unless the Contractor is not responsible for the defects.

3. In the case of defects in the products or the work performance, Model is entitled irrespective of the statutory claims based on defects, at its discretion to demand the immediate rectification of the defects as subsequent performance (in the case of deliveries and work performance) or the supply of defect-free products (in the case of deliveries) or the new production of the work (in the case of work performance) by the Contractor. The Contractor must bear the costs incurred in the course of the subsequent performance. In the case of deliveries, this also applies if, following delivery, in accordance with their intended use the products were transported to a location other than the delivery address stipulated by Model.

4. Taking receipt of the products, as well as the processing, payment and reordering of products or work performance of products that have not yet been recognised as defective and rejected or work performance that has not yet been identified as defective shall not be deemed to constitute approval of the delivery or the work, nor does this constitute any waiver by Model of its claims based on defects. The limitation period for Model's claims based on defects is 36 months. The limitation period for deliveries commences upon delivery of the products, whereby the products are delivered only

5. upon complete assembly or installation or acceptance, if assembly or installation or acceptance have been agreed. In the case of work performance, the limitation period commences upon acceptance. If (1.) the defective products in line with their customary use were used in construction and caused the construction to be defective (in the case of deliveries) or (2.) the defect in question is a construction defect (in the case of deliveries and work performance) or (3.) the defect in question is a defect in work, the success of which consists in the provision of planning and supervision services for a structure (in the case of work performance) the limitation period is five years. The limitation period for defects with respect to deliveries expire no earlier than six months from lodging of the complaint for defects notified by Model within the limitation periods.

6. If the supply chain ends with a consumer goods purchase the statutory provisions remain unaffected.

7. Any further guarantees of the Contractor remain unaffected.

## **X. Product Liability**

1. The Contractor is required in the case of deliveries to indemnify Model against all third-party claims based on national and international product liability laws unless it is not responsible for the product defect pursuant to product liability law principles. Further claims of Model remain unaffected.

2. In the course of this indemnification requirement, the Contractor must in particular reimburse to Model the expenses incurred by Model in the course of or in connection with a warning, exchange or product recall campaign. Model shall, to the extent possible and reasonable, notify the Contractor of the content and scope of the measures to be implemented and provide an opportunity to respond. The Contractor must support Model to the best of its abilities in the measures to be performed and implement all measures reasonable for them and ordered by Model.

3. The Contractor is required in the case of deliveries to take out and maintain in force extended product liability and product recall insurance with worldwide coverage and a coverage amount appropriate for the products of at least € 3 million per instance of personal injury for each individual, at least € 5 million per instance of damage to property and at least € 5 million for financial loss. The Contractor hereby assigns to Model the claims under extended product liability and recall insurance, together with all ancillary rights. Model hereby accepts the assignment. If, under the insurance contract, assignment is not permissible, the Contractor hereby instructs the insurer to make any payments only to Model. Further claims of Model remain unaffected. The Contractor must on request furnish Model with evidence of the conclusion and continued existence of the extended product liability and product recall insurance. The Contractor shall refrain from any action or omission that could jeopardise the insurance cover.

4. If the Contractor fails to duly fulfil its duty pursuant to subsection 3, Model shall be entitled, but not under any obligation, to take out extended product liability and product recall insurance at the Contractor's expense.

## **XI. Third-Party Intellectual Property Rights**

1. The Contractor warrants that the supply and use of the products does not infringe any national or foreign patents, utility models, licences or other intellectual property rights and copyrights of third parties. This does not apply if the products were delivered by Model.

2. If, based on the delivery and use of the products, Model or its customers faces legal action by a third party claiming the infringement of such rights, the Contractor is required to indemnify Model against such claims. The indemnification duty applies to all expenses incurred by Model in connection with the claim. Model is entitled in particular at the Contractor's expense to procure approval to the use of the products from the third party. The indemnification obligation does not apply if the Contractor is not responsible for the infringement of the intellectual property rights of third-party rights.

## **XII. Force Majeure**

1. If Model is precluded as a result of force majeure events from fulfilling its contractual duties, in particular from accepting the products or services, Model shall for the duration of the impediment and for an appropriate start-up period thereafter be released from its performance obligations without being required to compensate the Contractor. The same applies if the performance of Model's obligation is rendered unreasonably more difficult or temporarily impossible as a result of unforeseeable circumstances beyond Model's control, in particular as a result of industrial action, official measures, energy shortages or material disruptions to operations. Model can in the case of deliveries refuse to accept the products if such circumstances impede the sale of the products as a result of decreased demand. This also applies if such circumstances occur at a time at which Model is in default of acceptance.

2. Model is entitled to withdraw from the contract if such impediment lasts more than four months and Model no longer has any interest in the fulfilment of the contract as a result of the impediment. On request by the Contractor, Model shall on expiry of the deadline declare whether it intends to exercise its right of withdrawal or to accept the products within a reasonable period.

## **XIII. Liability of Model**

1. Model is liable without restriction for damage relating to the breach of a guarantee or damage to life, limb or health. The same applies to intentional acts and gross negligence or insofar as Model assumed a procurement risk. Model is liable for slight negligence only if material contractual duties that are inherent to the nature of the contract and of particular importance to the attainment of the contractual purpose have been breached. In the event of the breach of such duties, as well as in the case of default and frustration of contract, Model's liability is limited to typically foreseeable damages. Mandatory statutory liability for product defects remains unaffected.

2. If Model's liability is excluded or limited, this also applies to the personal liability of staff, workers, employees, representatives and agents of Model.

#### **XIV. Confidentiality**

1. The parties are required to maintain confidentiality with respect to all business secrets to which they become privy for the duration of five years from delivery or completion of the service and, unless necessary in the course of the business transaction, not to record nor disclose, use or exploit such information. The confidentiality obligation also applies to items that constitute business secrets. Business secrets include all information designated confidential or secret or which can be identified as business secrets based on other circumstances, in particular technical information (e.g., drawings, product and development descriptions, methods, procedures, formulae, techniques and inventions) and commercial information (e.g., prices and financial data as well as sources of supply).

2. The confidentiality obligation does not apply if the information was demonstrably already known to the recipients prior to commencement of the contractual relationship or was generally known or publicly accessible prior to the commencement of the contractual relationship or, through no fault on the part of the recipient, becomes generally known or publicly accessible. The recipient bears the burden of proof.

3. The parties shall ensure by means of appropriate contractual agreements with the employees and agents acting on their behalf, in particular their freelance employees and contractors and service providers acting on their behalf, that they also maintain confidentiality for the duration of five years from delivery or completion of the service.

#### **XV. Data Protection**

1. When performing the contract, the parties are required to observe the statutory provisions on data protection, specifically the EU General Data Protection Regulation (GDPR) and must also require their employees to comply with these rules.

2. The parties process the personal data received (name and contact information of the contact in each case) exclusively for the performance of the contract and shall implement appropriate safety measures to protect that information (Art. 32 GDPR) that complies with the current technological state-of-the-art. The parties are required to delete the personal data as soon as the processing thereof is no longer necessary. Any statutory storage obligations remain unaffected.

3. If in the course of the performance of the contract one party processes personal information on behalf of the other party, the parties shall conclude a contract processing agreement concerning such processing pursuant to Art. 28 GDPR.

#### **XVI. Final Provisions**

1. The Contractor is permitted to transfer rights and duties to a third party or to have an Order or service or material parts of an order or service performed by third parties only with Model's prior written consent.

2. Counterclaims of the Contractor entitle it to set-off only if they have been conclusively legally determined or are uncontested. The Contractor can assert a retention right only if its counterclaim is based on the same contractual relationship.

3. Suppliers of the Contractor shall be deemed to be its agents. Upon request they are to be notified to Model without delay and in writing.

4. The legal relationship between the Contractor and Model shall be governed by and construed in accordance with the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

5. If the Contractor is a merchant within the definition of the German Commercial Code (Handelsgesetzbuch, HGB), a legal entity under public law or a special public fund, the exclusive place of jurisdiction for all disputes arising under or in connection with the business relationship between the Contractor and Model is the registered seat of Model. Model is also entitled to file suit at the seat of the Contractor and at any other permissible place of jurisdiction. The application of arbitration clauses is hereby contested.

6. In the case of deliveries, the place of performance for the delivery and subsequent performance obligations of the Contractor is the delivery address stipulated by Model. In the case of services, the place of performance for the service and any subsequent performance obligations is the place of performance stipulated by Model. In all other instances, unless otherwise agreed in writing, the place of performance for all services of the Contractor and of Model is the registered seat of Model.

7. The language of the contract is English.

8. Should any provision of these General Terms and Conditions of Procurement be or become invalid or unenforceable, in whole or in part, or should there prove to be a gap in these General Terms and Conditions of Procurement, this shall not affect the validity of the remainder of the provision. In place of the invalid or unenforceable provision, the valid and enforceable provision is deemed agreed that comes as close as possible to attaining the purpose of the invalid or unenforceable provision. In the event of a gap, the provision is deemed agreed that corresponds to what would have been agreed in light of the purpose of these General Terms and Conditions of Procurement had the contracting parties considered the matter from the outset.

Bad Bentheim, 1 August 2021