

## GENERAL TERMS AND CONDITIONS OF PURCHASE

These General Terms and Conditions of Purchase apply to all business relationships between PURPLAN GmbH and its business partners and suppliers ("Supplier") regarding any delivery of movable items, e.g. goods or products and/or services to be performed by the Supplier ("Delivery") regardless of whether the Supplier performs the Delivery itself or purchases it from a supplier.

### ACCEPTANCE OF THE GENERAL TERMS AND CONDITIONS

1.1 These Terms and Conditions of Purchase apply exclusively. They also apply to all future Deliveries, even if not separately agreed again.

1.2 The Supplier's terms and conditions of business shall not apply. We hereby object to their inclusion. Our Terms and Conditions of Purchase shall apply exclusively even if we accept without reservations despite being aware of additional terms and conditions of the Supplier which conflict with or differ from our Terms and Conditions of Purchase. Any additional or deviating terms and conditions of business of the Supplier shall apply only if they have been accepted by us in writing.

1.3 Our Terms and Conditions of Purchase only apply if the Supplier is an entrepreneur (Sec. 14 of the German Civil Code), a legal entity under public law or a special fund under public law.

### OFFER AND ORDER

2.1 Our orders and all statements and agreements in connection with our orders are binding only if made in writing. Our order is not deemed to be binding before it has been issued or confirmed by us in writing.

2.2 Deliveries for which there is no written order will not be accepted.

### DELIVERY PERIODS AND DEFAULT IN DELIVERY

3.1 The delivery periods agreed have to be observed. We are entitled to

suspend performance of a Delivery for a reasonable period of time if there is an objective reason. In this event the delivery period will be extended by the period of suspension. As soon as the Supplier realises that it is unable to perform a Delivery or any part thereof in time, the Supplier shall inform us accordingly without undue delay, stating the reasons and the expected duration of the delay in writing.

3.2 If the Supplier defaults in delivery, we are entitled to demand default damages of 0.2% of the net order value for each working day by which the delivery date is exceeded but a maximum of 10% of the net order value. The Supplier is entitled to furnish proof that the default in delivery caused no damage or caused significantly lower damage. Further statutory claims are not affected thereby.

### QUALITY MANAGEMENT

4.1 The Supplier will perform and maintain appropriate quality assurance and furnish proof thereof if so requested by us. We are entitled to check the Supplier's quality assurance system ourselves or by a third party instructed by us during the Supplier's business hours. We will exercise this right only as appropriate. If so requested by us, the Supplier will submit testing certificates to prove compliance with quality features agreed.

4.2 The Supplier will provide material certificates for raw materials used and certificates of origin or a supplier statement regarding the origin of the item supplied.

4.3 The Supplier shall inform us in due time by notice in writing of any changes to manufacturing procedures, materials or supplier parts for products or services, relocation of production sites, and of any change of procedures or facilities to test parts or other quality assurance measures. We are entitled to verify as appropriate whether such changes could have a negative effect on the product. At our request, the Supplier shall provide the documents required for this and allow audits to the extent required.

4.4 The Supplier shall inform us in writing of any involvement of sub-contractors, freelancers, sub-suppliers or other third parties (together "Agents") who are not employees of the Supplier in connection with the services to be provided to us. In its relations to the Agents, the Supplier shall ensure by contract that any and all services are carried out completely and in a proper manner and that proper performance can be fully verified by corresponding documentation and regular audits and that the obligations under the contractual relationship between the Supplier and us also apply in the Supplier's relationship with the Agent.

4.5 Agents are deemed to be vicarious agents (*Erfüllungsgehilfen*) of the Supplier. Any failure, delay, disruption, poor performance or other mistake in the Agent's deliveries or services shall not release the Supplier from its obligation to perform under the contract concluded with us, irrespective of the reason for such failures.

### SHIPMENT PROVISIONS

5.1 In each delivery, one copy has to be enclosed of each the delivery note and the packing slip. The order numbers, designations and numbers of the materials, gross and net weights, numbers and types of packaging (disposable or reusable) and the recipient of the goods have to be stated in all shipping documents and on the outer packaging. The Supplier shall pack, mark and ship dangerous products in accordance with the relevant national and international regulations.

5.2 Save where otherwise agreed in writing, transport shall be arranged by the Supplier. If, in an exceptional case, we bear the costs of transport based on a written agreement, the Supplier shall choose the most economical and most appropriate method of transport.

5.3 The risk will pass to us only when the goods are handed over to us at the agreed destination even if shipment was agreed.

5.4 The Supplier will collect or instruct third parties to collect any outer

packaging, transport packaging and sales packaging if so requested by us at its own expense from the location where the result of performance is intended to occur (= place of effect).

#### **RIGHTS IN THE EVENT OF DEFECTS**

6.1 As regards our rights in the event of defects of the Delivery in material or title or other breach of duty by the Supplier, the statutory provisions shall apply except where otherwise provided below.

6.2 The Supplier shall be liable for the Delivery being free of defects and having the agreed features. The Supplier in particular is responsible for the Delivery corresponding to the state of the art and the generally accepted technical and occupational health safety regulations of authorities and professional associations as applicable from time to time and complying with the relevant legal requirements. If performance involves machinery, devices or facilities, such machinery, devices or facilities have to comply with the requirements under the special safety rules applicable to machinery, devices and facilities at the time of performance of the contract and carry the CE mark.

6.3 The Supplier is in particular liable for the Delivery being of the agreed quality at the time of passing of the risk. The product specifications which – in particular by designation or reference in the order – are part of the relevant contract or have been incorporated into the contract in the same way as these General Terms and Conditions of Purchase are in any event deemed to constitute quality agreements. It is irrelevant in this context whether the product specification was provided by us or by the Supplier.

6.4 As regards the obligation of merchants to examine the goods and notify defects, the statutory provisions (Sections 377, 381 of the German Commercial Code (*Handelsgesetzbuch - HGB*)) apply, provided that:

We will examine the goods for defects to the extent feasible in the ordinary course of business.

When a defect has been identified, we will notify the Supplier accordingly without undue delay. In the event of latent defects, the notification is deemed to be without undue delay if made within 14 days of discovery. Without prejudice to the foregoing, there may be special circumstances in an individual case which require a longer period. If acceptance has been agreed, an obligation to examine does not exist.

6.5 The Supplier shall respect our business interests when performing cure. If cure has not taken place within a reasonable period of time, if cure has failed or if the fixing of a time limit was dispensable for other reasons, we can assert the further rights provided by the law in the event of defects. We explicitly reserve the right to exercise our rights under other statutory provisions and under any guarantees assumed.

6.6 If the Supplier fails to meet its obligation to cure within the fixed reasonable period of time without being entitled to refuse cure, we are entitled to remedy the defect ourselves or to have it remedied by a third party at the Supplier's expense and risk. We can demand an advance from the Supplier for the expenses required to remedy the defect. In the event of imminent danger of particular urgency we are entitled to remedy the defect ourselves or to have it remedied by a third party without fixing a time limit at the Supplier's expense. Imminent danger of particular urgency exists only if due to particular urgency it is not possible anymore to notify the Supplier of the defect and the imminent damage and to fix a time period, even a short one, to take remedial action itself.

6.7 The Supplier will again be liable for subsequently improved or replaced parts being free of defects in accordance with the statutory provisions, unless the Supplier's conduct suggested that the Supplier considered itself to be not obliged to take such action but carried out the replacement delivery or remedy of defects only as a gesture of goodwill or for similar reasons.

6.8 The expenses made by the Supplier for examination and subsequent

improvement (including any expenses for removal and installation) shall be borne by the Supplier even if it turns out that in fact there was no defect. Our liability for damages in the event of an unfounded request for remedy of defects is not affected; however, we will be liable in this respect only if we have recognized or failed to recognize due to gross negligence that a defect did not exist.

6.9 The limitation period for warranty rights is 36 months from the passing of the risk. For tanks and ducts, the period is extended to 48 months. The running of the limitation period for warranty claims is suspended from the Supplier's receipt of our written notice of defects until the time when the Supplier rejects our claims, declares the defect to have been remedied or otherwise refuses to continue negotiations regarding our claims.

6.10 If we are held liable for defects by any of our customers, our claim will become barred by the statute of limitations at the earliest two months after the point in time in which we have performed the customer's claim. This only applies if the claim is due to the defectiveness of the product delivered by the Supplier. The suspension of the running of the limitation period ends at the latest 48 months after the point in time when the Supplier delivered the item to us.

#### **PRODUCT LIABILITY**

7.1 The Supplier will indemnify us against any third party claims resulting from non-contractual product liability due to a fault of the product delivered by the Supplier. The Supplier will reimburse us any expenses and costs incurred by us as a result of reasonable preventive measures against claims under non-contractual product liability. We will inform the Supplier of the implementation of such measures without undue delay. Any expenses resulting from or relating to a recall carried out by us shall be borne by the Supplier. The obligation to indemnify and compensate is proportionally reduced if the party ordering has contributed to the arising of the claim.

7.2 The Supplier agrees to maintain sufficient product liability insurance and to provide proof thereof at our request.

#### **CONFIDENTIALITY**

8.1 The Supplier shall treat as business secrets all commercial and technical details of which it obtains knowledge as a result of the business relationship, in particular inquiry, order and delivery. The obligation to maintain confidentiality does not cover information which is in the public domain or was already known to the Supplier at the time of conclusion of the contract.

8.2 All information and documents which we make available to the Supplier or which the Supplier prepares in accordance with our specifications and all other information received may not be used for purposes other than those which we have explicitly approved and may not be reproduced or made available to any third party. The documents remain our property and shall be returned to us without undue delay whenever so requested.

#### **IP RIGHTS**

9.1 The Supplier is responsible for ensuring in accordance with subsection 2 that no third party rights are infringed within the European Union in connection with its Delivery.

9.2 If we are held liable by a third party, the Supplier is obliged to indemnify us against such claims upon our first written request. The obligation to indemnify also encompasses all expenses necessarily incurred by us in connection with our being held liable by a third party. The claim does not exist where the Supplier furnishes proof that it is not at fault. Any further claims provided by law are not affected thereby.

#### **PRICES AND TERMS OF PAYMENT**

10.1 The price stated in the order is binding. An obligation to return packaging requires a special agreement. In the absence of any deviating written agreement, the price includes transport to the address stated in the contract and packaging.

10.2 Unless otherwise agreed, payment will be made within 10 days of delivery and receipt of the invoice with a discount of 3% or within 45 days net. For timeliness of the payment owed by us, it suffices if our bank receives the transfer order in time.

10.3 In the event of default in payment we will owe default interest of five percentage points above the base interest rate in accordance with Sec. 247 of the German Civil Code.

#### **FINAL PROVISIONS**

11.1 The contractual relationship is governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

11.2 The place of jurisdiction shall be at our choice either Osnabrück or the Supplier's general place of jurisdiction. This only applies if the Supplier is a merchant (*Kaufmann*) and there is no exclusive jurisdiction.

11.3 If any provision of these Terms and Conditions is legally ineffective, the effectiveness of the other provisions hereof shall not be affected thereby. If there is no optional law available to fill the gap, the parties undertake to agree on a new provision in lieu of the ineffective or missing provision which appropriately fills the gap created or identified, taking into account the mutual interests expressed in the overall contract.

*PURPLAN GmbH Wallenhorst  
last updated: October 2016*