

## § 1 Fundamental Constituents of Contract

(1) Exclusively our Terms and Conditions of Purchase shall be valid. Terms and conditions of the supplier standing contrary to or deviating from our Terms and Conditions shall not be respected; this shall also apply in case of unconditional acceptance of the delivery.

We will also not accept any differing terms and conditions either, if we have not expressly rejected them, or if we refer to correspondence with the contractual partner, in which reference is made to the contractual partner's terms and conditions. Our Terms and Conditions of Purchase shall also apply for all future business transactions with the supplier, even if they have not been explicitly included again.

(2) The statutory regulations (particularly German Civil Code and German Commercial Code) shall be supplementarily applicable. Regulations and guidelines cited by us shall be respectively valid in their current version. Our Company Standards and - Guidelines, which are fundamental constituents of contract, and for which the newest version shall also be the authoritative edition, may be requested by the supplier at any time if he should require them.

## § 2 Offer Quotation, Contract Documents and Secrecy

(1) Our order shall be without engagement, provided that there have been no commitment periods agreed in the individual case.

(2) Construction drawings, plans, documents, models, electronic data carriers, drawings and similar enterprise documents shall remain in our property and shall always be treated strictly confidential. They may not be made accessible to third parties without our consent. The supplier shall be committed to strictest secrecy with regard to all other information, which comes to his knowledge in the course of his activity for us.

He shall be obliged to also impose these duties upon his staff and upon his business successors. The documents, together with copies and reproductions, shall be returned to us upon request, as well as after completion of the order.

Reference advertising using our name and the like shall be permitted only after previous consent.

All records, documents and files which are of importance for performance, shall be submitted by the supplier at the latest upon delivery/provision of the performance without having been asked to do so.

In case of infringement of these duties, the supplier shall be liable towards us in full extent as provided by the statutory regulations.

## § 3 Prices and Terms of Payment

(1) The price submitted in the order shall be binding.

(2) It contains – in lack of a divergent agreement – the statutory value added tax. The delivery "franco domicile", including shipment and packing, is just as well included.

(3) We shall be entitled to offsetting and retentions in the extent as stipulated by law.

(4) We shall settle invoices under deduction of 3% cash discount within 30 days, otherwise without discount; the payment- and cash discount periods shall commence as of receipt of invoice, however, not before delivery of the goods or provision and acceptance of the services, or respectively before the complete delivery of contractually agreed documentations or of other documents. If the supplier provides for more favourable terms of payment, then these shall apply, without thereby accepting or acknowledging the remaining other general terms and conditions of the supplier.

(5) Payments may be effected by means of cheque or bank transfer. The payment is punctual, if the cheque was dispatched by mail on the due-date, respectively if the transfer order was delivered to the bank or the post office for commissioning on the due-date.

## § 4 Time of Delivery and Delay in Delivery

(1) The time of delivery specified in the order shall be binding. The supplier shall immediately notify us as soon as he must assume, that he will not be able to meet the delivery deadlines, or will not be able to meet the delivery deadlines on time; the notification shall contain the reason and expected duration of the delay in delivery; if the supplier violates this obligation, then he cannot refer to the hindrance or impediment.

(2) In case of delay in delivery we shall be entitled to claim flat rate damages due to delay in the amount of 0.1% of the delivery value (net without value added tax) per working day of the delay, we may, however not claim more than 5% as a flat rate in total.

The supplier shall thereby have the right to prove to us, that no damage or a considerably lower damage has occurred. Further statutory or contractual claims (particularly compensation because of breach of duty) shall remain reserved.

## § 5 Inspection of Defects

(1) Obligations on our part to examine and give notification of defects in connection with non-obvious defects according to § 377 German Commercial Code shall be excluded. We shall be committed to perform minimum inspections on the basis of the delivery note, and to check for damages in transit; the supplier shall be committed to perform final inspections of the merchandise, and he shall conclude a Quality Assurance Agreement with us.

(2) If no Quality Assurance Agreement has been concluded, or if there are obvious defects on hand, then our notification of defects shall be regarded as punctual in any case, if it has been delivered to the supplier within 7 working days (without Saturdays), calculated as of receipt of the goods, or in case of concealed defects, calculated as of discovery. If the term of immediateness as stipulated in § 377 German Commercial Code should perhaps be longer than 7 working days in the individual case, then the longer term shall apply.

## § 6 Liability/Warranty for Defects in Quality and Title

(1) We shall, in full extent, be entitled to all statutory rights regarding defects in quality and title.

The supplier shall be particularly responsible, that the delivery item corresponds with the contractual and legal specifications, and that it is not afflicted with other defects. The delivery item must correspond with the current state-of-the-art in science and technology, as well as with the respectively valid standards regarding the environment, the maintenance of industrial health and safety, and the standards and rules for the prevention of accidents.

In case of defects we shall be particularly authorized to require the elimination of the defect, or the delivery of an item free of defects, as we may select in our own discretion (Subsequent Performance); the supplier shall bear the costs required therefor in full extent.

We shall furthermore be entitled to the statutory claims for compensation to an uncurtailed and unlimited extent.

The supplier shall not be automatically freed and released from his liability for faulty goods by the acceptance of the goods or of a sample or specimen.

(2) A limitation period of three years shall be valid as of delivery, if no longer periods have been provided for by law. In as far as the delivery item is delivered anew in the context of Subsequent

Performance, then the limitation period shall commence anew, if such may be regarded as an acknowledgment of the obligation to Subsequent Performance. In case of re-working, the same shall apply for the part of the delivery item subjected to such reworking.

(3) In urgent cases, we shall be authorized to carry out the elimination of defects by ourselves at the expense of the supplier (in cases of imminent danger or if particular urgency is on hand). An urgent case is on hand, if it is not possible anymore to inform the supplier and to grant him a period of time for Subsequent Performance (even though such period may be short).

## § 7 Reservation of Title

(1) If we provide parts to the supplier, then we reserve ourselves the property rights for such.

(2) The reservation of title shall also extend to include the products created by or resulting from the processing or the re-organization of our product, at full value thereof, whereas these procedural operations are carried out for us, so that we are regarded as the manufacturers. If, in case of processing or re-organization under usage of goods of third parties, the right of ownership should remain with such third parties, then we shall acquire co-ownership in a proportional ratio corresponding with the impartial values of these goods.

In case of intermixing or the compounding of our items with other objects, we shall just as well acquire ownership in a proportional ratio as described above.

If the procedural operation is carried out in such manner, so that the item of the supplier is to be regarded as the main item, then it shall hereby be agreed, that the supplier shall convey and transfer co-ownership to us in proportional share.

The manufacturer shall store our property in accordance with standard commercial care.

## § 8 Recourse

(1) If we are approached on grounds of manufacturer's warranty, product liability, or due to other prerequisites of liability then the supplier shall exempt and hold us harmless from the liability resulting from the defect, in as far as he has to represent the defect. The exemption shall thereby be provided upon first request.

(2) The supplier shall, in this context, also be obliged to reimburse any contingent costs and charges in accordance with

§ § 683, 670 German Civil Code, or respectively § § 830, 840, 426 German Civil Code, which may arise from or in connection with a product recall action. We shall, in the extent reasonable and at our disposal, immediately inform the supplier regarding the volume and extent of the action. Further-reaching statutory claims shall remain reserved.

(3) If we are approached otherwise because of a defect of the item delivered by the supplier, then we shall be entitled to the right of recourse against the supplier in full extent, as provided by § 478 German Civil Code; there shall be only one exception herefrom, namely if we have in advance been granted equal compensation for the right of recourse.

## **§ 9 Intellectual Property Rights**

(1) The supplier shall warrant and be responsible, that no rights of third parties are culpably violated in connection with his delivery.

(2) If we are approached by third parties because of this, then the supplier shall be obliged to exempt and hold us harmless from these claims. The exemption shall be provided upon first request. We shall, without the consent of the supplier, not be authorized to conclude any agreements (particularly compromises) with the third party.

(3) This obligation to indemnification also refers to and covers all costs and charges which we necessarily incur from or in connection with being approached by a third party.

(4) Further-reaching statutory entitlements shall remain unaffected.

(5) If no longer period has been provided for, then the limitation period shall be three years for these claims, and it shall commence with delivery of the delivery item.

## **§ 10 Rescission and Joint Liability**

(1) The statutory right of withdrawal/rescission of the supplier shall be neither excluded nor restricted. Statutory or contractual rights and claims to which we are entitled shall as well neither be excluded nor restricted.

(2) We shall be unrestrictedly liable only in cases of premeditated intention and gross negligence (also for such conduct of our legal representatives and vicarious agents), as well as for injury of life, body and health. We shall just as well be unrestrictedly liable with regard to guarantees and assurances/warranties which we have given, if a defect

contained in or covered by such should actuate our liability. There also shall be no restriction either regarding liability resulting from factual circumstances constituting a hazard or danger (absolute/strict liability).

(3) Regarding any other culpable infringement of essential contractual duties and obligations (cardinal duties), our remaining liability shall be limited to the foreseeable damage normally covered by contract.

(4) All remaining other liability – regardless for which legal justification (particularly regarding claims resulting from infringement or breach of principal contractual- and auxiliary covenants, from tortious acts, as well from any other liability for offence or malpractice) – shall be excluded.

(5) The same (exclusions, limitations of and exceptions from) shall apply for claims from faults at conclusion of contract.

(6) This § 10 shall apply correspondingly for the case of reimbursement of expenses.

(7) An exclusion or a limitation of our liability shall also have effect for our legal representatives and vicarious agents.

(8) A reversal of the burden of proof is not intended. Cardinal duties are essential contractual duties, they are therefore such duties, which render the contract its character, and which the contracting party may rely on and trust in; they therefore constitute the essential rights and duties, which create the prerequisites for the performance and fulfilment of contract, and which are indispensable for the attainment of the contract purpose.

(9) The liability of the supplier is regulated in the § § 6, 8 and 9.

## **§ 11 Place of Performance, Place of Jurisdiction, Applicable Law, Insurances and Distribution of the Burden of Proof**

(1) Place of performance for our duties and obligations (particularly for our payments) shall be our established place of business.

(2) Place of jurisdiction shall be Augsburg, in as far as the supplier is also a merchant, a corporate body governed by public law or a public law fund. The same shall apply if the supplier does not have a general place of jurisdiction in Germany, or if he has relocated his established place of business abroad since the conclusion of contract. We shall be authorized to also sue him at other permissive places of jurisdiction.

(3) Valid and applicable with regard to all entitlements and rights from this contract shall be the non-harmonised law of the

Federal Republic of Germany (German Civil Code (BGB), German Commercial code (HGB)). The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG), and any conflict of laws provisions under the Introductory Act to the German Civil Code (EGBGB) shall be expressly excluded. The contractual language shall be English.

(4) For the coverage of damages caused by the supplier's performances/services, by his staff and/or by his subcontractors, the supplier shall effect and provide for sufficient third-party liability insurance (esp. factory, product and environmental liability insurance) at his own expense, the existence of which shall be proven to us by submission of evidence of such insurance upon inquiry.

The supplier shall furthermore effect and provide for sufficient transportation insurance at his own expense.

(5) None of the provisions agreed in any of these Terms and Conditions shall alter the statutory or judicial distribution of the burden of proof.

(4) All conceptions and regulations are to be understood as gender-neutral and also as non-discriminatory in all other respects, as contemplated in the German General Equal Treatment Act (AGG).

## **§ 12 Conflict Minerals**

The matulka company requires from its suppliers to observe the Line of conduct of EICC (Electronic Industry Citizenship Coalition) particularly regarding so called conflict minerals listed in Dodd-Frank-Act Section 1502.

## **§ 13 Miscellaneous Provisions**

(1) Amendments to the Contract can only become effective in agreement with us.

(2) If individual provisions of these Terms and Conditions should be completely or partly ineffective or void, then the remaining other provisions shall remain unaffected thereof. The contracting parties shall be obliged to consent to an arrangement, by which the economic meaning and purpose pursued with the ineffective or void provision is reached to the greatest possible extent.

(3) We deal with the data of the supplier exclusively for business operations purposes, and in accordance with the requirements and specifications of the respectively valid data protection regulations. Upon submission of a written enquiry, the supplier shall also be entitled to demand information with regard to his personal data, which we have<sup>1</sup> collected, processed and used.