

## I. Scope of application

- a) Business transactions with TIBA AUSTRIA GmbH (hereinafter the "Purchaser" or "TIBA") shall be subject exclusively to the following standard terms of purchase. TIBA's contracting partner shall be referred to in the following as the "Supplier".
- b) These terms of purchase shall be binding on all current and future business transactions (in particular the purchase of goods and services) with the Supplier, even if no express reference is made hereto.
- c) The Purchaser shall not accept the Supplier's standard terms of business and supply. This shall also apply if the Purchaser has not expressly objected or if the other standard terms of business and supply of the Supplier expressly include the validity thereof as an express condition. Accordingly, the Supplier's standard terms of business and supply shall not be binding, even if proven to have been served on the Purchaser, if the goods have been accepted without objection, if confirmation of delivery is made on the delivery documents and if payment has been effected by the Purchaser.
- d) All quotations provided to the Purchaser shall, irrespective of the preparatory work necessary, be free of charge to the Purchaser and shall establish no obligations whatsoever.
- e) The Purchaser reserves the right to withdraw from its order if it does not receive a confirmation of order from the Supplier within 10 days following the placing of the order.

## II. Prices and terms of payment

- a) The fixed prices specified in the order or in a quantity agreement shall apply, and, in the absence of separate written agreement, shall include collateral costs such as the costs for packaging, transport or shipment, and unloading but shall not include any levies and taxes applicable.
- b) The Purchaser shall only be obliged to pay after complete receipt of the goods/services and after communication (by post or electronically) of an invoice corresponding to Sec. 11 of the Austrian VAT Act as amended from time to time and broken down into details (in particular the following shall be stated: order number and date of order, item number according to order, purchaser's name, quantity and specifications, prices and discounts, delivery note number and date).
- c) If payment is made within 30 days from receipt of invoice, the Purchaser shall be entitled to deduct a discount of 3%. No payments in advance shall be made. In the absence of an express agreements to the contrary, the payment period shall be 60 days from receipt of invoice.
- d) Delivery dates agreed and confirmed in writing shall be deemed to be the relevant effective date for invoicing. Invoicing on the basis of premature deliveries shall require the Purchaser's express written consent.
- e) Payment shall not constitute an automatic acknowledgement that the deliveries/services are in order and thus shall not constitute a waiver by the Purchaser of the assertion of claims on the basis of shortcomings in performance based on warranty claims or damages if necessary.
- f) The Supplier shall only be entitled to assign its claims or obligations with the Purchaser's prior written consent.

## III. Delivery and punctuality

- a) Unless expressly agreed in writing to the contrary, goods shall be accepted and services provided exclusively in the following periods:  
Monday to Thursday between 7.00 a.m. and 3.00 p.m.  
Friday between 7.00 a.m. and 11.00 a.m.

### TIBA AUSTRIA GmbH

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- b) The delivery date agreed in writing shall be deemed to be a fixed date and binding. Compliance with the agreed delivery date shall constitute an essential contractual obligation on the part of the Supplier. If no delivery date is stated in the order placed by the Purchaser, the delivery shall be effected without delay.
- c) The standard term of delivery agreed for suppliers shall as a matter of principle be DDP pursuant to Incoterms 2010. Delivery shall be to the place of destination specified by the Purchaser in the order, at the Supplier's expense and risk; if such place has not been specified, the Supplier shall enquire where the delivery is to be made. In the case of shipment, the Supplier shall comply with the shipment specifications notified to it in the order. Shipment and transport shall be at the Supplier's expense and risk.
- d) If delivery by the Supplier is delayed, the Purchaser can demand a contractual penalty of 0.3% of the value of the order per calendar day of the delay. However, the contractual penalty shall amount to a maximum of a total of 5% of the value of the order. The Purchaser reserves the right to claim any losses exceeding the contractual penalty. In the individual case, the Purchaser can, at its own discretion, waive the assertion of the contractual penalty in whole or in part, but the Supplier shall not be entitled to demand such.
- e) In the event of a failure to supply on time, the Purchaser, in the event of exigent circumstances, urgent necessity or in order to avoid further losses, be entitled, without setting a grace period, to have the deliveries and/or services not provided by the Supplier provided by a third party at the Supplier's expense.
- f) The assignment of orders or essential part of orders shall require the Purchaser's express prior written consent. This shall not apply to the procurement of preliminary materials for production or of standard and special components necessary for manufacture. This approval shall not release the Supplier from its liability pursuant to Sec. 6 of these standard terms of purchase.
- g) Partial/ overdelivery or underdelivery shall only be permitted with the Purchaser's express written consent.
- h) Place of performance for all deliveries/services shall be the destination expressly set out in the order; if such place has not been specified, the Supplier shall before shipping ask the Purchaser where the delivery is to be made.

#### **IV. Transport, packaging and labelling**

- a) The Supplier shall be obliged to ensure at its own expense appropriate and secure packaging suitable for the means of transport and in accordance with the usual standards of the industry. The subject matter of the contract must be made available for shipment in a packaging defined according to the manner of transport and the character of the equipment, and corresponding to the environmental and safety provisions applicable in Austria.
- b) The Supplier shall be liable for all damage due to inappropriate or incorrect packaging and for transport damage resulting from faulty and/or unsuitable securing of the transport or an unsuitable means of transport.
- c) All packaging supplied to the Purchaser must be licensed with an approved collecting system – such as ARA – by the Supplier and its sub-suppliers. The Purchaser shall be entitled to return packaging material to the Supplier by free of charge.

#### **V. Warranty**

- a) The Supplier warrants the contractual fault-free delivery of goods and provision of services, the qualities of which shall correspond to the state of the art.
- b) The Purchaser shall not be obliged to examine the shipments for defects before the goods are used by the Purchaser in accordance with its course of business; an obligation to object and/or examine is expressly excluded. In the event of substantial defects that prevent the due use of the goods, the Purchaser shall be entitled to retain the purchase price or parts thereof until remedy of the defect.

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- c) The Supplier shall provide a warranty for defects within the framework of the statutory provisions in Austria. The warranty period shall be 24 months from delivery of the goods/services at the agreed place of destination. The warranty shall also extend to goods and components supplied by the Supplier but which it has not manufactured itself.
- d) Warranty claims shall be satisfied, at the Purchaser's discretion, at the place of performance or, in the event of direct delivery to a customer, at the location of the plant in which the goods are installed. All costs incurred for this shall be borne by the Supplier.
- e) If after receipt of a complaint the Supplier fails to comply with its obligations with respect to the remedying of the defect within a technically appropriate period of time (of a maximum of 10 working days), the Purchaser, irrespective of its other rights, shall be entitled to remedy the defects identified itself or have such remedied by a third party at the Supplier's expense, without this affecting the Supplier's obligations. The remedying of the defects shall not release the Supplier from its responsibility.
- f) In the case of defects where there can be no delay in remedying (in particular in the case of exigent circumstances), the Purchaser shall be entitled either to remedy the defect itself or to have such effected by an authorised third party, subject to timely information to the Supplier, at the latter's expense. The remedying of the defect shall not release the Supplier from its responsibility.
- g) In addition, the Supplier shall be obliged to hold available spare parts for a period of at least 10 years from date of delivery and to supply such to the Purchaser at the list price, or if there is no such, at a reasonable price, and within an appropriate delivery period.

#### **VI. Liability, product liability and product safety**

- a) The Supplier shall be liable for all disadvantages and damage incurred by the Purchaser through the Supplier or its vicarious agents (including in particular consequential losses and lost profit) and for damages to property or persons within the framework of the Austrian legal system.
- b) The Supplier's product liability and product safety shall likewise be subject to the applicable provisions of the Austrian legal system.
- c) If a legal defect should arise, the Supplier shall take all necessary measures to avert third-party claims against the Purchaser. If a third party asserts claims against the Purchaser based on industrial property rights, copyright, trademark or design protection, the Purchaser shall inform the Supplier immediately and in full. The Supplier shall indemnify and hold the Purchaser harmless in full with respect to such claims, and shall guarantee the Purchaser unrestricted use of the goods supplied.

#### **VII. Breach of contract and withdrawal from the contract**

- a) The Purchaser shall be entitled to withdraw from the contract, even without setting a grace period, in the event of good cause, in particular
  - if the Supplier infringes official regulations or provisions of these standard terms of purchase,
  - if insolvency proceedings are commenced with respect to the Supplier's assets or if such are dismissed for lack of assets to cover the costs, or
  - if more than two enforcement proceedings are pending against the Supplier.
- b) In the event of one of the causes specified in Sec. VII a), the Purchaser shall be entitled to withdraw with respect to the entirety of the contract not yet performed or only with respect to individual parts thereof.

**VIII. Delay and withdrawal from the contract**

- a) In the event of delay (irrespective of whether of a final or interim deadline or in the event of the Supplier's delay in effecting the remedying of defects), the Purchaser shall, provided that the ground for the delay does not lie within the Purchaser's sphere, be entitled, after setting an appropriate grace period, either to withdraw from the contract and to claim damages on the grounds of non-performance or to adhere to the contract and claim compensation for the loss resulting from the delay (in particular in the case of lost profits and production downtime).

**IX. Confidentiality**

- a) The Supplier hereby irrevocably undertakes to maintain confidentiality with respect to all trade and business secrets made accessible or made available to it by the Purchaser or otherwise becoming known to it in connection with or on the basis of a business relationship or the contact with the Purchaser, and shall not make such available to third parties in any manner without the Purchaser's consent. In addition, the Supplier undertakes to use information only on a need-to-know basis and only within the framework of the contract concluded.
- b) The confidentiality obligation shall remain in effect for a period of five years after termination of the business relationship with the Purchaser or, irrespective of a business relationship, for five years after the Purchaser has obtained a quotation.
- c) Advertising and publications about the Purchaser's orders and the inclusion of the Purchaser in the Supplier's reference list shall require the Purchaser's prior consent.

**X. Legal system, legal venue, other provisions**

- a) The contracting parties shall aim to achieve appropriate extrajudicial solutions by mutual consent in all questions of the construction of the contract and the collaboration. Should a dispute arise, this shall not entitle the Supplier to terminate the deliveries/services.
- b) If extrajudicial agreement cannot be achieved or if such is not complied with by one of the two parties, the court competent for such cases in Graz is agreed to be the legal venue for both parties in the event of a dispute. This contractual relationship shall be subject to substantive Austrian law to the exclusion of the conflict of law rules of Austrian international private law and the UN Convention on the Sale of Goods.
- c) If individual provisions of these standard terms of purchase shall be invalid, this shall not affect the validity of the remaining provisions; the invalid provision shall be replaced by a valid provision that comes closest to the commercial purpose of the invalid provision.
- d) All agreements and collateral agreements and supplements shall be invalid unless in writing and expressly confirmed in writing by the Purchaser. Oral promises, collateral agreements or declarations by employees of the Purchaser that depart from the written agreement or supplement such shall thus not be binding.