General Terms of Purchase

I. General matters, scope
(1) These General Terms of Purchase and Terms of Business shall apply to all quotations and contracts on the basis of which we purchase supplies and services from our business partners and suppliers (hereinafter “Sellers”). The Terms of Purchase and Terms of Business shall only apply if the Seller is a trader (§ 14 BGB [German Civil Code], a public sector legal entity or a public law special fund.
(2) The General Terms of Purchase and Terms of Business, as amended, shall also apply to future quotations and contracts in relation to supplies and services involving the same Seller, without us needing to make a specific reference to them in each case.
(3) These General Terms of Purchase and Terms of Business shall apply on an exclusivity basis. If the Seller additionally provides supplementary General Terms of Business of the Seller shall only become a constituent of the contract inasmuch as we have explicitly approved their validity in writing.

II. Quotation, contract conclusion
(1) The Seller must quote precisely in accordance with our inquiry and must explicitly highlight any variations.
(2) Orders and order amendments, in particular order amendments, shall apply at the earliest when they are placed in writing or confirmed by us as binding.
(3) We shall be entitled to request changes to the contractual services at any time. The Seller may oppose our change request if it cannot reasonably be expected to implement.
(4) If the framework agreement contains contract sums or order quantities, at our request, provided it is able to do so, the Seller shall notify us as soon as 80% of the contract sums or order quantities set out in the framework agreement shall not give rise to an acceptance obligation on our part, unless specified otherwise in the framework agreement.
(5) If individual provisions of our General Terms of Purchase and Terms of Business should be or become invalid, this shall not affect the validity of the remaining provisions.

III. Framework agreements
(1) If we have concluded a framework agreement with the Seller in relation to the supply of goods or the provision of services, we shall not be obliged to cover our requirements of the goods or services to which the contract relates continuously or exclusively from the Seller, unless specified otherwise in the framework agreement. Contract sums or order quantities set out in the framework agreement shall not constitute minimum contract sums or minimum order quantities, and shall not give rise to an acceptance obligation on our part, unless specified otherwise in the framework agreement.
(2) If the framework agreement concludes contract sums or order quantities, the Seller shall notify us as soon as 80% of the contract sum or order quantity has been reached. The Seller shall increase the contract sums or order quantities, at our request, provided it is able to do so and can reasonably be expected to do so.
(3) We reserve the right to change and cancel individual orders under framework agreements. The Seller shall not invoce us any costs in this respect. The framework agreement cannot be cancelled or terminated in whole or in part through a decrease or cancellation that it cannot reasonably be expected to implement.

IV. Prices and payment terms
(1) The price stated in the order shall be binding. All prices shall be inclusive of value added tax at the statutory rate, if the value added tax is not shown separately.
(2) Unless agreed otherwise in individual instances, the price shall include all work and incidental services by the Seller (e.g. assembly, installation) and all incidental costs (e.g. appropriate packaging, transport costs including any transport and liability insurance) etc. At our request, the Seller shall take back and dispose of packaging materials.
(3) If the Seller should reduce its prices or improve its conditions during the period between ordering and delivery, the prices and conditions valid on the date of delivery shall apply.
(4) In case of individually agreed payment terms the agreed price shall fall due for payment within the individual term from full supply and service (including any accepted partial deliveries and receipt of an appropriate invoice. In any other cases the statutory provisions shall apply.

V. Delivery period and default in delivery
(1) The time allowed as specified in the contract shall be binding. The Seller shall be obliged to inform us immediately in writing if it is unable to be able to adhere to the agreed delivery times for any reason whatsoever. Each delay shall be documented, the Seller must state the reasons and the anticipated length of the delay.
(2) If the Seller fails to provide its service or defaults in delivery, our rights, in particular in regards withdrawal and compensation, shall be as laid down by law. This shall not affect the provisions of (3).
(3) If the Seller defaults in delivery, we may claim, along with any additional statutory claims, flat rate compensation for our default loss of 0.5% of the net value of the goods delivered late for each calendar week, albeit no more than 5% of the net price of the goods delivered late. We shall be entitled to provide evidence of higher loss. The Seller shall be entitled to provide evidence that we have not incurred any loss or that an alternative delivery avoids the effect of suspending the period of limitation with respect to warranty claims. If the Seller has supplied several delivery items, the suspension of warranty claims shall extend to any defect-free delivery items that cannot be used as a result of the defective delivery. In the event of
replacement supply or defect remedy, the warranty period for replaced or repaired parts shall recommence, unless we had to assume, from the Seller’s behaviour, that it did not consider itself obliged to take such action, but only undertook the replacement supply or defect remedy as a goodwill gesture or for similar reasons.

(5) The Seller shall be answerable for the fact that use of the supply and service in accordance with the terms of the contract does not infringe the protective rights of third parties. If a claim is made against us by a third party owing to alleged infringements of protective rights, the Seller shall be obliged, in response to our first written request, to hold us harmless with respect to such claims by third parties, unless it is not responsible for the infringement of protective rights.

IX. Obligation to serve a notice of defect, quality assurance

(1) Each party may terminate a contract without notice on a serious ground. If the Seller is responsible for product damage, it must hold us harmless with respect to such claims by third parties, unless it is not responsible for the infringement of protective rights.

(2) The Seller must contract and maintain a product liability insurance with a lump sum cover amount of at least EUR 2,566,450.00 per person/instance of property damage.

X. Producer liability, insurance

(1) If the Seller is responsible for product damage, it must hold us harmless with respect to claims by third parties, inasmuch as the Seller or its own supplier has caused the product defect that triggers the liability. The Seller must reimburse us all the expenses that arise out of or in connection with a claim by a third party, including recall campaigns that we undertake. We shall inform the Seller and give it the opportunity to comment, where this is possible and can be reasonably expected of us, on the content and scope of the recall measures. This shall not affect further statutory claims.

(2) The Seller shall be obliged to adhere to all laws and rules relating to itself and to the employed by the Seller or other third parties. The Seller shall be obliged to adhere to all laws and rules relating to itself and to the business relationship with us (compliance).

XI. Transfer of rights and obligations, retention

Setoff

(1) The Seller shall only be entitled to transfer its rights and obligations, and to assign claims against us, subject to our written consent. We shall not unreasonably refuse to give such consent. This shall not affect § 354a HGB.

(2) We shall be entitled, to the statutory extent, to claims rights of setoff and retention and to plead non-fulfilment of the contract.

XII. Compliance, human rights, job and environmental protection

(1) The Seller shall be obliged not to take any action, or to refrain from actions, which could lead to criminal liability on grounds of fraud or breach of trust, criminal insolvency offences, criminal anti-competitive offences, the grant of benefits to, or the corruption of persons employed by the Seller or other third parties. The Seller shall be obliged to adhere to all laws and rules relating to itself and to the business relationship with us (compliance).

(2) The Seller undertakes to ensure that human rights and social standards according to (3) are upheld within its sphere, and to refrain from, and if possible prevent, actions that conflict with those goals. The Seller shall notify us immediately, and without any further request, of any breaches of the above rules, including by its own suppliers.

(3) The Seller shall strive, within its sphere, to ensure adherence to humane working conditions, by appropriate limits to working hours, adhering to minimum wages and health protection, and to refrain from committing any breaches in this respect (social standards). The Seller shall in particular take action against child and compulsory labour.

(4) The Seller shall undertake to adhere to the statutory provisions in relation to environmental protection and to take all action to protect the environment. The Seller undertakes to introduce an environmental management system, for example in accordance with DIN ISO 14000. Every delivery must take place in packaging that suits the product and has been agreed with us, in accordance with relevant environmental protection provisions. An environmentally-compatible packaging shape and returnable packaging (europallets) must be selected, with consideration to ecological aspects.

XIII. Contract termination

(1) Each party may terminate a contract without notice on a serious ground. If an application to institute insolvency proceedings in relation to the assets of the other party has been filed, such proceedings have been instituted or refused due to a lack of assets, this shall constitute a serious ground.

(2) In the event of a breach of compliance, in particular in the event of criminal acts involving the granting of benefits or corruption, we shall have a right to withdraw or terminate all legal acts existing with the Seller and to break off all negotiations, without notice. The same shall apply to breaches of human rights and against the aforementioned social standards and environmental obligations.

XIV. Place of performance, choice of law and place of jurisdiction

(1) Unless agreed otherwise, the place of performance shall be D-33442 Herzebrock (Federal Republic of Germany).

(2) These General Terms of Purchase and Terms of Business and all legal relations between us and the Seller shall be governed by the law of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

(3) If the customer is a trader for the purposes of the Handelsgesetzbuch (Commercial Code), a public sector legal entity or a public law special fund, the place of jurisdiction for all rights and obligations of the contracting parties arising out of transactions of all kinds shall be Herzebrock (Federal Republic of Germany). However, we shall also be entitled to sue the customer at its general place of jurisdiction.

State: 01. January 2015