

## **General Purchasing Conditions and Data Privacy Statement**

(As at 24th May 2018)

### **1. Applicable terms and conditions**

The legal relations between the Seller and the Buyer shall be based solely on these terms and conditions and any other agreements, amendments and additions must be in writing. Other General Terms and Conditions shall not apply, even if they have not been expressly contradicted in the individual case. The following terms and conditions with regard to deliveries shall also apply correspondingly to services.

### **2. Conclusion of contracts**

2.1 Supply contracts (quotation and acceptance) and call offs, as well as amendments and additions to these, must be in writing. Call offs may also take place through remote data transfer. All of the Seller's quotations shall be made free of charge.

2.2 If the Seller does not accept the order within 5 days of receiving it, the Buyer shall be entitled to cancel it. Call offs shall be binding if the Seller does not object to them within 3 days of receiving them.

2.3 The Buyer may demand alterations to the delivery item in terms of its construction and design, within the bounds of what is reasonable for the Seller. The consequences of such alterations, especially those relating to additional costs or cost reductions as well as to delivery dates, must be settled appropriately and by mutual agreement.

### **3. Price**

The price shown in the purchase order shall be binding and shall include delivery DDP to the Buyer's premises in accordance with Incoterms 2010, including the customary packaging, transport insurance, import duties and the statutory VAT.

### **4. Payment**

4.1 The payment shall be made, at the discretion of the Buyer, with a 3% discount within 30 days of the complete delivery and the receipt of an auditable invoice in duplicate, or in full within 90 days. In the event that early deliveries are accepted, the due date for the payment shall be based on the agreed delivery date.

4.2 In the event of an incorrect or incomplete delivery, the Buyer shall be entitled to retain the payment until the delivery has been properly and completely executed.

4.3 The Seller shall not be entitled, without the prior written consent of the Buyer, to transfer the rights and/or obligations that it has vis-à-vis the Buyer or, in particular, to assign its receivables from the latter or have them collected by third parties.

### **5. Delivery dates and delivery periods**

The delivery must take place on the date or no later than the last day of the period that is specified in the contract or the purchase order. Delivery periods shall start with the date of the purchase

order. Adherence to the delivery date or the delivery period shall be determined by the receipt of the complete ordered delivery by the Buyer. If the delivery is not agreed as DDP to the Buyer's premises in accordance with Incoterms 2010, the Seller must supply the goods with due consideration for the standard time for loading and dispatch. The deliveries must be processed in accordance with the Buyer's instructions.

## **6. Delayed delivery**

6.1 The Seller is obliged to inform the Buyer in writing immediately if the delivery is delayed.

6.2 In the event of a delayed delivery, the Buyer shall be entitled to demand from the Seller, irrespective of fault, compensation for delay of 1% of the contract value for each week of the delay that has started, but no more than 10 % of the full contractual value in total, as a contractual penalty. The Buyer's right to assert further damages and other claims shall remain unaffected.

6.3 In the event of a delayed delivery, the Buyer shall be entitled to withdraw from the contract without setting a grace period. If the Seller is responsible for the delayed delivery, the Buyer shall be entitled also to withdraw from all contracts relating to goods that have not yet been delivered or delivered goods that cannot be used properly without the goods affected by the delayed delivery.

## **7. Confidentiality**

The Seller is obliged to treat as business secrets all commercial technical details that become known to it as a result of its business relationship with the Buyer and that are not public knowledge. Drawings, models, templates patterns and similar items may not be handed over or otherwise made available to unauthorised third parties. The reproduction of such items shall only be permissible within the framework of the operational requirements and the regulations on intellectual property rights. The Seller may only use its business relationship with the Buyer in its advertising with the prior written consent of the latter.

## **8. Transfer of risk**

In the absence of a written agreement to the contrary, the time of the transfer of risk in both international and domestic transactions shall be determined in accordance with Incoterms 2010. If no agreement has been made with respect hereto, the Incoterms 2010 clause with regard to DDP to the Buyer's premises shall apply.

## **9. Warranty**

9.1 Warranty for defects of quality

The Seller guarantees that, for a period of 24 months from the transfer of risk, the goods delivered by it shall be free from faults and defects, shall have the guaranteed characteristics and shall satisfy the requirements or specifications of the Buyer. The Buyer must inform the Seller of defects in the delivery in writing as soon as they are discovered under the circumstances of the ordinary course of business, but within 14 days. The Buyer may report

concealed defects up to 36 months from the acceptance of the complete delivery. In this respect, the Seller shall waive the right to object to a late notification of defects. The Buyer is, at its own discretion, entitled to demand at short notice that the Seller rectify the defects, at its own expense



and risk, by improvement (repairs, addition of the missing part) and/or replacement, or to claim a price reduction, or to return the goods to the Seller at the latter's expense and declare the rescission of the contract, or to rectify defects itself or have them rectified by third parties at the expense and risk of the Seller. The Seller guarantees that the execution of the individual supply contracts shall not bring about any infringement, especially with respect to the adherence to laws, ordinances or other regulations of any official body.

#### 9.2 Warranty for defects of title.

The Seller guarantees that all items subject to the supply contracts are fully owned by him and that there are no conflicting third party rights.

### **10. Force majeure**

Force majeure, especially industrial action, unrest, measures by the authorities and other unforeseeable, inevitable and serious incidents shall release the Parties from their obligations for the duration of the disruption and to the extent of its effect. This shall also apply if these incidents occur at a time at which the Party affected is in default. The Parties are obliged, within reasonable bounds, to provide the required information immediately and to adapt their obligations to the altered circumstances, in good faith. The Buyer is entitled, for the duration of the disruption, to procure the goods covered by the supply contract from other sources and accordingly to reduce the delivery quantities agreed in the supply contract, without having any obligation vis-à-vis the Seller.

### **11. Liability**

11.1 In the event that claims are made against the Buyer on account of a fault in a product delivered by the Seller, in particular due to producers' and/or product liability, the Seller is obliged to release the Buyer from all claims of third parties and to compensate the Buyer for all payments that the latter has had to make to third parties as a result of these. The Seller is obliged to support the Buyer as far as possible in any legal dispute with third parties. If the Seller claims that there is no fault in the product delivered by him in terms of the producers' or product liability regulations, it must provide evidence of this to the Buyer.

11.2 The Seller shall be liable to the Buyer with respect to all claims, costs, damages and expenses, including prosecution costs, which arise from or on the basis of a recall of goods delivered by the Seller or of products in which the goods delivered by the Seller are integrated, provided that the recall is or was necessary on account of the goods delivered by the Seller. If the Seller claims that a recall is or was not necessary on account of the goods delivered by it, it must provide the Buyer with proof of this.

### **12. Quality and documentation**

12.1 For its deliveries, the Seller must comply with the established rules and the state-of-the-art, the safety regulations and the agreed technical data. Changes to the delivery item require the written consent of the Buyer in advance. The Seller must constantly check the quality of the delivery items. The Parties shall inform one another of the possibilities for an improvement in quality.

12.2 In order to guarantee the quality of the delivery items, the Seller is obliged to systematically plan, specify, execute and monitor measures, taking cost-effectiveness into



consideration, that guarantee a high level of quality. The quality management system that the Seller is obliged to maintain must satisfy the requirements of ISO 9001:2000, as well as other written agreements. An initial sample test, separated by materials, dimensions, functions and reliability, must be conducted to prove that the planned and applied manufacturing and testing processes are suitable for achieving consistent quality, even under series conditions. Any additional quality assurance requirements for the Seller must be observed. A functional quality assurance system requires clear and complete written instructions. These must constantly be updated. This shall apply, in particular, for the areas of planning, development, procurement, manufacturing, testing, storage and transportation. Any position in the Seller's company may be entrusted with the quality assurance agendas. The Seller must impose the same obligation on sub-suppliers or ensure their compliance with the relevant quality specifications with its own resources.

12.3 If authorities demand access to the Buyer's production process and the testing documents, in order to check certain requirements, the Seller agrees, at the request of the Buyer, to grant them the same rights on its premises and to give them any reasonable support with this.

### **13. Property rights**

The Seller shall be liable for claims that arise from the infringement of property rights and applications for property rights during the contractual use of the delivery items. It shall release the Buyer and its customers from all claims arising from the use of such property rights and shall indemnify them and hold them harmless in this respect. The Parties are obliged to inform one another immediately of any risks of infringement and alleged cases of infringement that become known to them, and to give each other the opportunity to jointly oppose such claims.

### **14. Use of the Buyer's means of production and confidential information**

Models, matrices, templates, patterns, tools and other means of production, as well as all confidential information with which the Seller provides the Buyer or which are paid for in full by the latter may only be used for deliveries to third parties with the prior written consent of the Buyer, and must be returned to the Buyer, along with all copies, immediately on the latter's request.

### **15. General provisions**

15.1 The Seller shall be entitled to withdraw from the contract, in full or in part, if insolvency proceedings are initiated on the assets of the Seller, or if an application for the initiation of such proceedings is rejected due to the lack of sufficient assets to cover the costs, or if the conditions for the initiation of such proceedings or for the rejection of such an application are available, or if the Seller ceases its payments, as well as in cases of force majeure. Such a withdrawal shall not entitle the Seller to make any claims whatsoever against the Buyer. The Seller is obliged to inform the Buyer of such circumstances immediately.

15.2 If a provision of these terms and conditions and the additional agreements made is or becomes invalid, the validity of the remainder of the contract shall not be affected by this. The Parties are obliged to replace the invalid provision with a provision that resembles it as closely as possible in terms of the economic result.

15.3 The place of fulfilment for all the services of the Parties arising from the present contract shall be the registered office of the Buyer.

15.4 The exclusive place of jurisdiction for all disputes that arise from the present contract or are related to it shall be, for the Seller, the court responsible for the registered office of the Buyer. The Buyer shall be entitled, at its own discretion, also to bring an action against the Seller at any other court that may be competent according to national or international law.

15.5 This agreement shall be exclusively subject to Austrian law. The rules on the conflict of laws under international private law and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

15.6 Offsetting against the claims of the Buyer shall not be permitted. The Seller shall not have a right of retention.

15.7 The Buyer's order number must be cited in any correspondence relating to the supply contract. A separate delivery note, stating the order number and article numbers, must be enclosed with each delivery for each order number.

## **16. DATA PRIVACY STATEMENT**

**16.1 For the purpose of concluding and executing the contract, Weingaertner Maschinenbau GmbH processes the following personal data of those persons who have been disclosed by the contractual partner for the purpose of implementation of the contract: Company name, address, phone number, e-mail, fax, company register data, VAT number, bank details, salutation, name of the contact person, department / function of the contact person, telephone/ e-mail of the contact person, etc. as well as any information that can be assigned to these companies about the contractual service and the billing of this service.**

**16.2 The data provided by the contractual partner is required for the fulfilment of the contract. Without these data Weingaertner Maschinenbau GmbH cannot conclude the contract with the contractual partner.**

**16.3 The legal basis for data processing is the fulfilment of the present contract in accordance with Art. 6 para. 1 lit. b GDPR.**

**16.4 This personal data is stored for the duration of the ongoing contractual relationship and only as long as there are legal obligations or legitimate interests (e.g. to fulfil legal obligations to retain data or to assert legal claims).**

**16.5 This personal data is only transferred to third parties if this is necessary for contract execution, if is based on a legal foundation, if there is a legitimate interest in the business execution of involved third parties or if it is necessary for asserting or defending legal claims. The data of the contractual partner could be passed on to the following recipients if this is mandatory: Banks, legal representatives (in the enforcement of rights or defence of claims or in the context of administrative proceedings), accountants, courts, administrative authorities, debt collection companies, outside financing providers (e.g. leasing), cooperating contract and business partners (shipping service providers, transport companies), insurance companies, providers (IT service providers), etc.**

**16.6 In accordance with the legal provisions, you have the right to disclosure for the data concerning you, to correction, deletion, restriction of processing, data transferability and objection to the processing of your personal data as well as the right to lodge a complaint with**



the supervisory authority. In Austria, this is the Data Protection Authority (“Datenschutzbehörde”).

**16.7** The contact details of the Controller can be found in the data protection statement at the Weingartner website.