

# Marabu GmbH & Co.KG Terms of Purchase



## I. Validity of our Terms of Purchase

1. The present Terms of Purchase apply to all business relationships with our business partners and suppliers (hereinafter referred to as "Contractors"). The Terms of Purchase apply only if the Contractor is an entrepreneur (section 14 German Civil Code (BGB)), a public law legal entity or a public law special fund.
2. Our Terms of Purchase apply in particular to contracts for the sale and/or supply of movables ("goods"), regardless of whether the Contractor has produced the goods itself or has purchased them from its own suppliers (sections 433, 651 BGB). Unless otherwise agreed the version of the Terms of Purchase valid at the time of our purchase order or the text version last notified to the Contractor shall also constitute a framework agreement for similar future contracts without the need for us to draw attention to the same each time.
3. These Terms of Purchase apply exclusively. Differing, contrary or additional general terms and conditions of the Contractor shall only be incorporated into the contract if we have explicitly approved their applicability in writing. This requirement for approval applies in all cases, including, for example, if we unreservedly accept deliveries from the Contractor in full knowledge of the Contractor's general terms and conditions.
4. Individual agreements reached with the Seller in specific cases (including subsidiary terms, amendments and additions) will in all cases take precedence over these Terms of Purchase. Subject to evidence to the contrary, the exact terms of such agreements will be as specified in a written contract and/or our written confirmation.
5. Any declarations or notices of legal significance which the Contractor is required to submit to us after the conclusion of the contract (such as setting of deadlines, official reminders, declarations of rescission) shall only be effective if made in writing.
6. Indications that legal provisions apply are made for clarification purposes only. Statutory provisions therefore apply even without such clarification, unless they are specifically modified or expressly excluded in these Terms of Purchase.

## II. Purchase order/order

1. We receive confirmation of order of all purchase orders immediately, at the latest within 5 working days. Late acceptance shall be deemed to constitute a new offer and is subject to acceptance by us.
2. The prices referred to in our purchase order/our order are fixed prices and cover all the Contractor's ancillary costs and services. The Contractor shall be bound by its price quotations. If the Contractor makes a reduction in its prices prior to delivery, the subsequently lower price shall then apply at the time delivery is made.
3. Any departures from our purchase orders/our order and the documents submitted or changes in the property, quality or performance of the supplies or services compared to previous deliveries or agreed performance shall be subject to our prior written approval.
4. We shall be entitled to modify technical details up to 4 weeks in advance of the delivery date. If specimen items are made available to us, series production or delivery shall only commence after we have given our explicit approval in writing.
5. Except in the case of minor incidental work, the Contractor shall only be entitled to transfer to a third party (e.g. subcontractor) part or all of the performance owed by him with our prior written approval. The Contractor shall continue to be responsible for third parties contracted by it after we have provided our approval.
6. We shall be entitled to withdraw the purchase order/order up to 4 weeks ahead of the delivery date if the Contractor's financial or operating circumstances should change in a way which would be unreasonable for us, unless the Contractor is able to provide evidence to the contrary to our satisfaction.



### **III. Order documents, confidentiality**

1. Purchase orders/orders and all related details shall be treated as business secrets. Contractual cooperation with us shall not be used for advertising purposes or publicised.
2. Sketches, drawings, tools, other items, information and all intellectual and material property which we have made available to the Contractor or which has been produced by the Contractor according to our specifications, shall remain or become our property and shall be stored by the Contractor on our behalf at no charge with the diligence of a prudent businessman. Such items and information shall be treated with confidentiality and may not be used for any other than the agreed purpose without our consent. Such items and documents shall be surrendered to us immediately at our request and upon completion of the order.
3. This obligation to maintain secrecy/confidentiality shall continue to apply after termination of the business relationship with us. Additional rules on confidentiality shall be agreed separately as required.

### **IV. Delivery periods and default**

1. The deadlines for delivery or performance stated on our purchase orders/orders are binding and must be complied with. The Contractor must notify us in writing if it becomes apparent that there will be delays in performance. Such notification shall not, however, release the Contractor from any claims for compensation which may be due to us. Unless otherwise agreed in particular cases (e.g. restriction to stock), the Contractor shall bear the procurement risk for his supplies and services.
2. In the event of non-performance and defaults in performance, we shall be entitled to charge as compensation 0.25% of the net price per calendar day not exceeding a total of 5% of the net price of the goods which have not been delivered or not delivered on time. We shall be entitled to demonstrate that more extensive damage has been incurred. The Contractor shall have the right to demonstrate that no damage was incurred or that the damage incurred was significantly lower than the amount of the flat rate claim.
3. If the Contractor does not render its services or fails to do so within the agreed delivery period, or if the Contractor defaults on performance, our rights - including but not limited to rescission and damages - shall be based on statutory regulations. This shall not affect the provisions of paragraph 2 above. In the event that the Contractor is responsible for defaulting on the delivery owed which then results in default on our own deliveries or complete cancellation of one of our deliveries to parties with which we have entered a contract, we shall also be entitled to claim as damages any contractual penalties imposed on us which we are obliged to pay to our customers or third parties.
4. The risk of accidental loss or accidental deterioration shall only pass to us if the receiving location has in fact obtained power over the delivered goods.
5. All deliveries are always made "carriage paid" including packaging to the receiving location stated in the purchase order. If the receiving station is not stated and nothing else has been agreed, delivery shall be made to our place of business in 71732 Tamm. The applicable receiving location shall also be the place of performance for the delivery and for any subsequent performance (obligation which must be performed at the ordering party's address). Part deliveries may only be made with our prior written approval.

### **V. Quality**

1. The Contractor shall provide and maintain effective quality assurance and demonstrate this to the customer upon request. The Contractor shall operate a quality system which complies with ISO 9001 ff. or a similar standard at the request of the customer. The customer shall be entitled to audit the quality system or arrange for the system to be audited by a third party (in either case in the form of supplier audits). In order to secure consistent quality, the customer retains the right to agree special quality agreements with the Contractor.



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## **VI. Duty to provide notification of changes in quality**

1. The supplier shall guarantee consistent quality by stipulating and applying binding quality regulations. The requirement for consistent quality shall also apply to future purchase orders. Changes in specifications (including departures from our order text) may only be made with our explicit consent. If necessary, specimen items shall be sent to us.

## **VII. Export controls and customs duty**

1. The supplier shall inform us in its business documents about any approval which may be required for the purpose of (re-)exporting its goods in compliance with German, European, US export and customs regulations and about the export and customs regulations which apply in the country from which its goods originate.
2. If asked to do so by us, the supplier shall notify us in writing of all the foreign trade data relating to its goods and their components and notify us in writing immediately (prior to delivery of any goods affected by such data) of any changes in such data.
3. Goods must comply with the origin requirements under the Generalised Scheme of Preferences (GSP) where deliveries are made under this trading scheme.

## **VIII. Payment**

1. Payment shall be due in euros within 14 days of receipt of the invoice at 3% prompt payment discount or net within 60 days. If delivery is made after receipt of the invoice, the rules stated above shall apply subject to the actual date of delivery.
2. All payments are made subject to the condition of correct delivery and invoicing. No additional agreement is required in order to make payment by bill of exchange. We shall also be entitled to make deductions for prompt payment if payment is made by bill of exchange.
3. The Contractor may only assign claims arising from our business relationship to third parties with our written agreement.
4. Claims held by the Contractor may not be asserted and/or rights of retention brought unless the applicable counterclaims are not disputed or have been recognised by non-appealable declaratory judgement.

## **IX. Material and legal deficiencies**

1. The Contractor guarantees that its supplies and services comply with the agreed specifications, the current state-of-the-art and all regulations prescribed by law or trade associations at the time delivery is made. Chemical products must be identified as stipulated in the applicable regulations. The Contractor shall also ensure that any chemical substances supplied are included on national raw material lists, e.g. EINECS; DSCA etc. Notification must be made of any departures from these regulations.
2. We shall be entitled to give notification of any obvious defects found in randomly checked goods received within two weeks of their receipt. This time limit for the notification of hidden defects shall also apply to defects identified at a later point in time.
3. We shall be entitled to assert all statutory rights and claims in full in the event of defective supply/service, legal deficiencies or any other violation of duties arising from obligations.

4. In the event of a risk to operating safety and/or avoidance of unusually high damages to us or third parties we shall be entitled, without reaching prior agreement with the Contractor regarding costs, to rectify any defects, remedy any damages or make covering purchases.
5. The Contractor shall indemnify us against all third-party claims - including but not limited to claims based on product liability - arising from defects in performance or part performance provided by the Contractor (including but not limited to delivery of raw materials) or from any other breaches of duties arising from obligations entered into. This shall also apply if third-party rights are infringed by virtue of our use of the performance provided by the Contractor.

## **X. Sustainability**

1. The Contractor shall comply with the principles of sustainable development and respect both the laws in force and internationally recognised fundamental standards relating to occupational health and safety, protection of the environment, labour and human rights (as a minimum the 8 core ILO standards) and shall ensure that it complies with principles of responsible corporate management (hereinafter referred to as "ESG standards"). The Contractor must describe its understanding of the ESG standards in a code of conduct or within the framework of the environmental/occupational safety management system which it has introduced. The customer expects the Contractor to comply with the ESG standards. The customer also requires the Contractor to obtain compliance with such standards from its own subcontractors and suppliers. The customer shall be entitled to audit compliance with ESG standards or arrange for such compliance to be audited by a third party (in either case in the form of supplier audits).
2. When performing the contract the Contractor shall comply with the specific occupational health and safety and environmental protection stipulations stated in the purchase order.

## **XI. REACH**

1. The Contractor guarantees that all the substances contained in the goods are effectively pre-registered, registered (or are exempt from the duty to register) and, where applicable, are approved for the uses stated by the customer in compliance with the substantial requirements of the REACH regulation. If the goods are products within the meaning of Article 7 of the REACH Regulation, the previous sentence shall apply to all substances released by these products. The Contractor shall also inform the customer immediately if any components of a product contain a substance with a concentration of over 0.1 mass fraction which meets the criteria of Articles 57 and 59 of the REACH Regulation (SVHC - Substances of Very High Concern). This also applies to packaging products.

## **XII. Data privacy**

1. The Contractor agrees that we shall store the data required for the purposes of the business relationship and concerning contracts made by IT means and that we shall only use such data for our own purposes. Additional rules on data privacy shall be agreed separately as required.

## **XIII. Severability**

If one of the provisions of these Terms of Purchase is ineffective, this shall not affect the validity of the remaining provisions. If any provision proves to be ineffective or unenforceable, such provision shall be replaced by an agreement which corresponds as closely as possible to the business and legal purpose and intent of the ineffective provision.

#### **XIV. Place of performance, legal venue and choice of law**

1. The place of performance for all supplies and services is the receiving location prescribed by us or – if no such place has been prescribed – our place of business in 71732 Tamm.
2. If the seller is a registered trade as defined in the German Commercial Code (HGB), a public law legal entity or a public law special fund, our place of business is in 71732 Tamm. We shall, however be entitled to bring an action at the place of performance for the delivery obligation under these Terms of Purchase or under any individual agreement which has precedence or at the Contractor's general legal venue. Statutory regulations which have precedence, including but not limited to exclusive jurisdictions, remain unaffected.
3. These Terms of Purchase and the contractual relationship between ourselves and the Contractor are subject to the law of the Federal Republic of Germany to the exclusion of uniform international law, including but not limited to the United Nations Convention on Contracts for the International Sales of Goods.

Marabu GmbH & Co. KG  
71732 Tamm

1 September 2016, valid as of 15 September 2016