

# PSG Procurement Services GmbH

## General Conditions of Purchase

### 1 Area of application

- (1) The following General Conditions of Purchase of PSG Procurement Services GmbH („PSG“, „we“, „our“) are valid for all contracts concluded now and in the future between PSG as the buyer and the supplier regarding the delivery of goods, even if they are not explicitly being stipulated again or if PSG implicitly accepts the delivery knowing about the supplier's differing delivery terms.
- (2) The supplier agrees with these General Conditions of Purchase by implicitly acknowledging or delivering the goods.
- (3) All agreements between PSG and the supplier are recorded in the respective purchase contracts and the General Conditions of Purchase on hand. There may be individual agreements for particular goods or services (e.g. construction services etc.).
- (4) Our General Conditions of Purchase only apply to businessmen (section 14, German Civil Code), legal persons under public law and separate funds under public law.

### 2 Orders and the conclusion of contracts

- (1) PSG will transmit legally binding orders to suppliers only in written form, via fax, e-mail or electronic data transmission.
- (2) The supplier informs PSG about completed deliveries via a single invoice (via paper, \*.pdf file or in an electronic way as SAP-IDOC). The supplier forwards a separate acknowledgement to PSG in case of changes in delivery time and/or prices. The supplier sends this acknowledgement via \*.pdf file to [versandinfo@psg-procurement.com](mailto:versandinfo@psg-procurement.com).
- (3) If there is no information according to section 2 paragraph 2 within the stipulated individual contract deadline - or within 10 calendar days from receipt – PSG is not bound to the order anymore. Controlling the meeting of deadlines including the obligation to inform is the responsibility of the supplier.
- (4) Contract supplements and amendments including changes of the present General Conditions of Purchase by our employees need our representatives' written approval in order to be effective (CEOs, authorized officers or officers with a sufficient power of representation). For the issuing of unilateral declarations, especially the exercise of the right to alter a legal relationship (e.g. dismissal, resignation, reduction), a written notice is sufficient. A written notice can be a fax or e-mail.

### 3 Delivery

- (1) The delivery date stated by PSG in the purchasing order and accepted by the supplier or the delivery time specified are binding.
- (2) Unless otherwise agreed upon in writing the delivery time is 3 working days after receipt of the order at the supplier's site according to section 2, paragraph 1.
- (3) The supplier is obligated to promptly inform us in writing should circumstances occur or should he anticipate circumstances indicating the impossibility to meet the delivery date.
- (4) Should the supplier not provide his services, not provide them within the delivery time agreed upon or should he fall behind, without a reminder on our part being required, our rights -particularly our rights to rescission and damages - shall unconditionally be governed by the statutory provisions. The regulations of paragraph 5 remain unaffected.
- (5) If the supplier falls behind with delivery PSG is entitled to the statutory provisions.

Furthermore, PSG can claim a contractual penalty of 1% of the order value per week but not more than 5% of the order value. This contractual penalty shall be set off by PSG against a possible asserted damage caused by delay. The supplier is free to prove that a damage has not occurred or simply occurred in a little amount.

(6) If the supplier exceeds the delivery date by more than 5 days in spite of the agreed binding delivery time, PSG is allowed to withdraw from the contract irrespective of any further claims and to procure the stipulated goods elsewhere and/or demand damages due to non-fulfillment. As long as nothing else has been stipulated, delivery takes place correctly packed and free of shipping costs to a differing delivery address specified by PSG.

(7) Should we be restricted by force majeure to take delivery at the place of execution, this will not be a default of acceptance. Claims by the supplier for compensation or damages are excluded. Force majeure at the conclusion of the contract means unforeseeable, extraordinary and inevitable circumstances, especially natural disasters, riots, strikes and legitimate lockouts. The event of force majeure must be immediately notified to the other contracting party. If the impediment takes more than three months, every contracting party can withdraw from the contract regarding the part of the contract not yet fulfilled.

#### **4 Special conditions for catalogue products**

(1) The supplier makes available his article data free of cost including all product pictures and documents/certificates (as data file or deeplink in the electronic catalogue) via a data storage medium, file or FTP download in a file format provided by PSG.

(2) The supplier commits to provide the current electronic catalogue to PSG for installation, four weeks before the planned price or catalogue amendment. The new assortment and the new prices may only be activated after the approval of PSG. If this rule is not observed, the prices remain valid for additional four weeks at the expense of the supplier. Changes in production, which have an impact on quality, are to be notified on time as well.

#### **5 Prices – terms of payment**

(1) The price mentioned in the PSG order is binding. If nothing else has been stipulated in individual cases, the price includes all the services and incidental services of the supplier (e.g. assembly and installation) as well as all the additional costs (e.g. proper packaging, transport costs comprising a possible transport and liability insurance, etc.). The supplier must take back packaging material on demand. Every delivery must include a packing slip or delivery note with the exact table of contents (article number, quantity delivered) as well as our order number and the order number of the customer.

(2) All prices are quoted including VAT if the tax is not stated separately.

(3) Invoices shall be containing our order number and be submitted via paper, \*.pdf file or in an electronic way as SAP-iDOC.

(4) If nothing else has been stipulated in written form, PSG pays the purchase price within 30 days upon proper receipt of the invoice with 3 % discount or within 60 days net. For our punctual payment it is sufficient that our remittance order arrives at our bank before the expiration of the payment term.

(5) We have the right to offset and retention to the extent legally provided. We do not owe any maturity interest. If we are in default with a payment due, the default interest is 9 percentage points per year above the base interest rate. In the event of a default by us, legal provisions shall apply, but in any case, a supplier's reminder is necessary.

## 6 Delivery – transfer of risks – documents

- (1) Unless otherwise agreed, the supplier is not entitled to have third parties (e.g. subcontractors) render his services without our approval. The supplier shall not send partial deliveries without our prior written consent.
- (2) Unless otherwise agreed, delivery takes place free domicile to the destination specified in the order or DDP (according to Incoterms 2020). If there is no destination specified in the order and nothing else has been agreed, the delivery shall be made to our business location in Lohmar. The respective place of destination also is the place of fulfilment (obligation to perform)
- (3) If nothing else has been agreed, the risk of an accidental perishing and an accidental deterioration shall pass over to us upon handover at the place of fulfilment. If an acceptance is stipulated, it is decisive for the passing of the risk.
- (4) For the default of acceptance legal provisions apply. The supplier shall also explicitly offer his services to us if for an act or a contribution of ours (e.g. the provision of material) a certain or determinable calendar time has been agreed on. If we are in default of acceptance after legal provisions, the supplier may claim compensation of his additional expenses (section 304, German Civil Code). If the contract concerns an undue object, which is to be produced by the supplier (specific item), the supplier shall only be entitled to further reaching rights, if we are obliged to provide assistance and are responsible for the failure to provide the assistance.

## 7 Examination of defects – liability for defects

- (1) For our rights with physical and legal defects of the goods (including wrong and short delivery as well as improper installation, insufficient installation, operating instructions or manual) and with other violations of duty by the supplier, legal provisions apply unless otherwise specified below.
- (2) According to legal provisions, the supplier is liable especially for the goods to be free of defects during the passing of risk. If nothing else has been stipulated, all product descriptions which are - especially through a notation or reference in our order - subject matter of the relevant contract or included in the contract in the same way as these General Conditions of Purchase. In this context, there is no difference, if the product description originates from us, the supplier or the producer.
- (3) If demanded by us the supplier is bound to provide a sample, a specimen and/or data sheets for the goods to be delivered. The features of the sample or specimen as well as the details in the data sheets are to be considered as agreed quality of the goods to be supplied. The same applies for the details in test reports. By handing over or accepting submitted samples, specimen or data sheets we do not waive warranty rights.
- (4) For the commercial duties regarding the examination of the goods and obligation to give notice of defects legal provisions (sections 377 and 381, German Commercial Code) apply subject to the following restrictions: The obligation to give notice of defects complies with the circumstances of the individual case. Our notice of defect is immediate and punctual, if it arrives at the supplier within 5 working days, counted from reception of goods or with hidden defects counted from the detection.
- (5) The costs spent by the supplier for the purposes of testing and rectification (including possible assembly and disassembly costs) shall be borne by him. In the event of an unjustified request to remedy a defect from our side, we are only liable for damage if we did recognize or did not recognize in a gross negligent way, that there was no defect.
- (6) If the supplier does not meet his obligation of a subsequent performance within an adequate period of time set by us, we are allowed to eliminate the defect and claim replacement from the supplier for the necessary expenses and/or to claim an appropriate advance payment from the supplier. Should the supplier refuse the subsequent performance or in case that the subsequent performance has failed or is

unacceptable for us (e.g. due to special urgency, risk to the operational safety or imminent occurrence of disproportional damages), no deadline is needed; the supplier is to be informed immediately or, if possible, beforehand.

### **8 Liability – product liability – indemnity – third party insurance cover**

- (1) The liability of the supplier for violations of duty is governed by statutory provisions, if nothing else has subsequently been stipulated.
- (2) The supplier is responsible for every claim made by third parties concerning personal and material damages that are due to a defective product, and he is bound to release us upon initial request from third parties' claims for damages in the way he himself is liable in the external relationship.
- (3) According to paragraph 2, in the context of his indemnity obligation, the supplier is liable for refunding possible expenses to us resulting from and in the context of the claiming of third parties or a recall program initiated by us (sections 683, 670 and 830, 840, 426 of the German Civil Code). We will inform the supplier about the content and extent of recall programs – as far as possible and reasonable – and will give him the opportunity to comment. Other legal claims shall remain unaffected.
- (4) The supplier is obliged to conclude and maintain a product liability insurance with a sum insured of at least € 10 million flat per bodily injury / property damage which does not need to cover the recall risk or punitive or similar unforeseeable damages. The supplier will send us a copy of the liability policy at any time on demand.

### **9 Industrial property rights**

- (1) The supplier ensures that in the context of his delivery and the goods' use by us, according to regulations, no industrial property rights of third parties are harmed in countries in the European Union or other countries in which the goods are delivered by agreement among the contractual parties. This refers in particular to patents, brands, utility models, industrial designs and copyrights.
- (2) If we shall be claimed against by third parties because of a violation of property rights according to section 9, paragraph 1 of the General Terms and Conditions of Trade, the supplier is obliged to release us from these claims upon first written request. This does not apply if the supplier is not responsible for the respective violation of property rights. We are not entitled to make any agreements with a third party concerning a violation of property rights according to section 9, paragraph 1, especially not to enter into a settlement, without a broad participation of the supplier.
- (3) The supplier's obligation to indemnify us regards all the expenses arising from or in connection with the claiming of a third party.
- (4) The supplier provides PSG with the standard software for the purposes of resale and all the necessary measures.

### **10 Rights of property and copyrights**

- (1) We shall retain the right of property and copyright to images, drawings, calculations and other documents. This also applies to written documents which are designated "confidential". Such documents shall be taken only for the execution of our orders. After the processing of our order they shall be returned without request. The supplier shall be obliged to keep strictly confidential all received images, drawings, calculations and other documents. He must not reproduce them or use them for a different purpose than the fulfillment of the contract. They shall only be disclosed to third parties with our explicit consent. Violations shall impose an obligation for compensation for damages. The duty of confidentiality shall also apply after the completion of the order; it becomes invalid if and insofar as the production knowledge contained in the provided images, drawings, calculations and other documents has become common knowledge.

(2) The above-mentioned provision applies accordingly for substances and materials provided by us (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items that we provide to the producer for manufacturing. These items shall only be used for the manufacturing of the goods ordered by us. As long and as far as they are not processed, they shall be separately stored on the supplier's expenses and insured in a reasonable scope against destruction and loss. As of now the supplier cedes all claims for compensation from this insurance regarding the items provided by us; we hereby accept the cession. The supplier is obligated to perform necessary maintenance and inspection works as well as all maintenance and repair work on time at his own expenses. The supplier shall immediately report to us about any malfunctions and damages.

### **11 Retention of title – provision**

(1) In the event that our provided item is inseparably mixed with other goods that do not belong to us, we retain co-ownership in the new product in relation to the value of the object subject to reservation of ownership (purchase price plus value-added tax) to the other mixed goods at the time of the mixture. Should the goods be inseparably mixed with other goods so that the new goods are to be regarded as principal thing, we proportionally retain co-ownership in the new product. The buyer shall safely store the new sole property or co-property for us.

(2) As far as the security rights that we hold exceed the purchasing price of all of our objects subject to reservation of ownership by more than 10 % we are bound to release security rights of our choice to the supplier.

(3) The assignment of the goods to us shall take place unconditionally and regardless of the payment of the purchase price. If in an individual case we accept a supplier's offer for transfer of ownership which is subject to payment of the purchase price, retention of title of the supplier is only valid when he refers to our duty to pay for the particular products for which the supplier reserves the ownership. In this case, in a duly course of business, even before paying the purchase price, we are authorized to resell the goods under advance assignment of the resulting claims. Retentions of title which are expanded, forwarded and extended for further processing are excluded.

### **12 Statute of limitations**

(1) The reciprocal claims of the contractual parties become time-barred after the legal provisions, as far as nothing else has subsequently been agreed on.

(2) Deviating from section 438, paragraph 1, No 3 and section 634a, paragraph 1, No 1 of the German Civil Code, the general statute of limitations for claims with regard to material or legal defects is three years from the passing of the risk. If an acceptance is agreed, the statute of limitations begins with the acceptance. Longer legal statutory limitation periods due to defects remain unaffected.

This especially applies to

(3) claims on account of defects which stand in real right of a third party and are resulting in a submission of the purchase item or which stand in another right that is recorded in the land register

(section 438, paragraph 1, No 1, German Civil Code) and

(4) claims on account of defects with a building or defects in products which have been used according to their common utilization for a building and have led to the defectiveness of the building; or with a plant which has its success with the provision of planning or monitoring services of a building (section 438, paragraph 1, No 2; section 634 a, paragraph 1, No 2, German Civil Code).

(5) With the supplier's receipt of our written notice of defect (section 7), the statute of limitation for warranty claims is suspended. In case of a replacement delivery or a removal of defects, the liability period for replaced and amended parts shall begin again, unless we had to assume from the supplier's behavior that



he did not feel bound to these measures but only executed the replacement delivery or a removal of defects as a gesture of goodwill or similar reasons.

(6) If because of the regulations on purchase of consumer goods (section 478 and 479, German Civil Code) we are entitled to recourse claims against the supplier, section 478 of the German Civil Code applies for the statute of limitations, but it does not apply before expiry of the deadline regarding section 11, paragraph 2.

(7) In the case of a fraudulent concealment of a defect by the supplier (section 438, paragraph 3; section 634a, paragraph 3, German Civil Code) and as far as we are entitled to competing contractual and/or non-contractual claims for damages due to a defect, the regular statutory limitation period is applies (sections 195 and 199, German Civil Code). However, the statute of limitations does not apply before the expiry of the deadline regarding section 11, paragraph 2. In any case, the legal statute of limitations terms according to the product liability law remains unaffected.

### 13 Confidentiality

(1) The existence of a contract and all its details shall be kept confidential. Furthermore, the supplier and PSG shall legally oblige their employees to secrecy.

In case of infringement damage claims are reserved.

### 14 Social responsibility

(1) The supplier commits himself and his subcontractors to keep to ethical regulations especially to the PSG “[Code of Conduct](#)”, the Principles of the UN Global Compact, the ILO Conventions, the Universal Declaration of Human Rights of the United Nations, the UN Conventions on the Rights of the Child as well as the OECD Guidelines for International Companies.

### 15 Data protection

(1) For more information concerning data protection please see our privacy policy:

<https://www.psg-procurement.com/en/data-policy>

### 16 Place of jurisdiction – applicable law – place of performance – miscellaneous

(1) Provided that the supplier is a merchant, legal person under public law or a public estate, the place of jurisdiction is our domicile in Cologne; however, we are entitled to sue the supplier also at his domicile.

(2) For the legal relations in the context of this contract German law is applicable under exclusion of the UN Sales Convention.

(3) The interpretation of commercial terms shall be based on the ICC Incoterms version of 2020 or in the respective prevailing version.

(4) Should a provision in these General Conditions of Purchase or a provision within the scope of other agreements be or become invalid, this does not influence the effectiveness of the remaining provisions or agreements.

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As of 11/2022