

## **General Purchase and Order Conditions of IWG Isolier Wendt GmbH**

### **§ 1 General, Scope**

(1) The present General Purchase Conditions would apply if our General Sales and Delivery Conditions do not apply for all business relations with our business partners and suppliers (hereinafter: "Sellers") for which we are acting as buyers and/or ordering purchasers. The General Purchase Conditions apply only if the seller is a businessman (§ 14 BGB (German Civil Code)), a legal person of public law or a legal entity under public law.

(2) The General Purchase Conditions particularly apply for contracts about the sale and/or delivery of mobile objects such as the order of works production (hereinafter also: goods) irrespective of if the seller produces the goods himself or purchases them from suppliers (§§ 433, 651 BGB (German Civil Code)). The General Purchase Conditions apply in their corresponding version as framework agreement, also for future contracts about the sale and/or the delivery of mobile objects with the same seller without need to point this out again in each individual case; in this case, we will immediately inform the seller about any changes of our General Purchase Conditions.

(3) These General Purchase Conditions apply exclusively. Deviating, contrary or complementary General Terms and Conditions of the seller become a part of the contract only if and insofar as we have expressly agreed on their validity in writing. This consent requirement applies in any case, for instance also if we accept deliveries from the supplier despite of knowing his General Terms and Conditions.

(4) Individual agreements made with the supplier in a particular case (including side agreements, supplements and changes) shall at any case take priority over these General Purchase Conditions. A written contract or our written confirmation is decisive for the content of such agreements.

(5) Legally relevant declarations and notifications, which are to be submitted towards us by the seller after conclusion of the contract (e.g. setting of deadlines, a warning notice, a declaration of cancellation), are required to be in writing in order to be effective.

(6) References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly changed or are explicitly excluded in these General Purchase Conditions.

### **§ 2 Contract**

(1) Our order shall be binding earliest with the written submission or confirmation. The seller must inform us about any obvious mistakes (e.g. typing and calculation errors) and the incompleteness of the order, including the order documents for the purpose of correction or completing before acceptance of the order; otherwise the contract will be regarded as not concluded.

(2) The seller must confirm our order in writing within a term of 14 days or in particular execute it without reservations (acceptance) by sending the goods. A late acceptance will be regarded as new quotation and shall be subject to acceptance by us.

### **§ 3 Lead Time and Delay in Delivery**

(1) The deadline for the delivery stated in the purchase order will be binding. If the delivery time has not been indicated in the order and also not otherwise agreed, it shall be two weeks after the conclusion of the contract. The seller is obliged to immediately inform us in writing if he expectedly cannot comply with the agreed delivery times – for whatever reason.

(2) In the event that the seller shall not provide his services or not provide his services within the agreed delivery time or is in default, our right shall be determined according to the legal regulations, this applying in particular to the withdrawal and compensation for damages. The regulations in paragraph 3 remain unaffected.

(3) If the seller is in default, we can demand a contractual penalty amounting to 1% of the net price per completed calendar week, however, in total not more than 5% of the net price of the delayed delivered goods. We are entitled to demand the contractual penalty besides the fulfilment and as the minimum amount of an amount of damages owed by the supplier according to the statutory regulations; the right to claim further damages shall remain unaffected. If we accept a delayed performance, we will exercise the contractual penalty latest with the final payment.

### **§ 4 Performance, Delivery, Transfer of Risks, Default of Acceptance**

(1) The seller shall not be entitled to arrange for third parties (e.g. subcontractors) to provide the performance owed without our prior written consent. The seller shall bear the procurement risk for its services unless otherwise agreed in the individual case (e.g. selling of goods which are in stock).

(2) Delivery shall be made "carriage paid" within Germany to the location stated in the order. If the place of destination has not been stated and nothing else has been agreed, the performance must be rendered at our place of business in Berlin. The corresponding place of destination is also the place of performance (obligation to provide).

(3) The delivery shall be accompanied by a delivery note indicating the date (issuing and dispatch), contents of the delivery (item number and quantity) as well as our order identification (date and number). If the delivery note is missing or incomplete, we shall not be responsible for delays in processing and payment resulting from this. We should issue a corresponding advice of shipment with the same content separately from the delivery note.

(4) Only with our expressive permission in writing, the seller would be entitled to perform partial deliveries.

(5) The risk of accidental loss and the accidental deterioration of goods shall pass to us with the receipt at the place of performance. If an acceptance procedure has been agreed on, this would be authoritative for the passing of risks. As for the rest, the legal regulations of the law applicable to works and services shall also apply accordingly. It is deemed equivalent to the handover or acceptance if we are in default with the acceptance.

(6) On commencement of the delay in acceptance, the statutory provisions apply. The seller must expressly offer us performance, even if a defined or definable calendar period has been agreed for an act or contribution on our part (e.g. provision of material). In the event that we are in delay of acceptance, the supplier can demand compensation for its extra expenses in accordance with the statutory

provisions (§ 304 BGB (German Civil Code)). If the contract concerns non-fungible goods that are to be produced by the supplier, then 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.

## **§ 5 Prices and Terms of Payment**

(1) The price indicated in the order is binding. All prices are quoted including the legally applicable sales tax if it is not shown separately. A price adjustment due to increase in cost, price changes from upstream suppliers or others does not take place.

(2) Unless otherwise agreed, in a particular case, the price shall include all services and ancillary services of the seller (e.g. also assembly and installation), as well as all additional charges (e.g. proper packaging, transportation cost including possible transportation and liability insurance). The seller must take back the packaging material free of charge upon our demand.

(3) The agreed price would be due for payment within 45 calendar days of complete delivery and performance (including the acceptance inspection if one is agreed) and receipt of a due and proper invoice. If we make payments within 14 calendar days, the supplier shall grant us a discount of 3% on the net invoice amount. In case of bank transfers, the payment will be made in a timely manner if our transfer order will be received by our bank before the expiry of the payment term; we are not responsible for any delays caused by banks involved in the payment process.

(4) In case of works production, we are entitled to retain a security deposit amounting to 10% of the invoice sum on interim bills until the receipt of a final invoice. For final invoices, we are entitled to retain a security amounting to 5% of the invoice sum until the expiry of the warranty period.

(5) We do not owe any interest on maturity. The default interest amounts to annually 5 percent above the applicable base rate. If we are in default, the statutory regulations are applicable, whereas in deviation of this in any case a written reminder of the seller would be required, if applicable.

(6) The rights of offset and retention as well as the plea of non-performance or incomplete performance of the contract are available to us according to the statutory provisions. We are in particular entitled to retain due payments, as long as we are still entitled to claims arising from incomplete or faulty deliveries towards the seller.

(7) The seller shall have a right of set-off or right of retention only because of counterclaims that have become final and non-appealable or are undisputed.

(8) Any assignment of claims of the supplier towards us to third parties requires our previous expressive agreement.

## **§ 6 Non-Disclosure and Reservation of Property**

(1) We reserve all property rights and copyrights to illustrations, plans, drawings, calculations, executive instructions, product descriptions and other documents. Documents of this kind shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. The documents must not be disclosed to third parties during the contract or after termination thereof. The obligation to maintain confidentiality shall not lapse until and to the extent that the information contained in the documents handed over has become publicly known.

(2) The above provision shall apply mutatis mutandis to substances and materials (e.g. software, finished products and semi-finished products) as well as to tools, templates, patterns and other items which we make available to the seller for production purposes. Such items must - so long as they are not processed - be stored separately and insured to the usual extent against destruction and loss at the suppliers cost.

(3) A processing, mixing or combination with other goods (further processing) of items made available by the seller will be performed for us. The same applies for the further processing of the delivered goods by us so that we are regarded as the producer and latest with the further processing, we would acquire property of the product in accordance with the legal stipulations.

(4) The assignment of the goods to us shall take place unconditionally and regardless of the payment and the appropriate price. However, if we accept in the particular case an offer of the seller for transfer of title conditioned by the payment of the purchasing price, the retention of title of the seller expires latest with the payment of the purchased price for the delivered goods. In the orderly course of business, we also remain entitled before the payment of the purchased price to resell the goods by advance assignment of the receivables resulting hereof (alternatively application of the simple and to reselling extended retention of title). Therefore, any forms of the retention of title- in particular the extended, the transferred and the retention of title extended to further processing will be excluded.

## **§ 7 Defective Delivery**

(1) For the rights in case of defects as to quality and defects to title of the goods (including wrong delivery and short delivery, as well as incorrect assembly and inadequate assembly and operating instructions) and in case of other breaches of duty by the supplier, the statutory provisions apply unless agreed otherwise in the following.

(2) According to the statutory provisions, the supplier is particularly liable for the goods having the agreed quality at the time when the risk passes to us. In any case, these product descriptions, which are the subject matter of the respective contract, of the quotation or incorporated in the same way as these Purchase Conditions - in particular due to the identification or reference in our order, shall apply as agreement about the quality. For this, it makes no difference whether the product description originates from us, the seller or from the manufacturer.

(3) Notwithstanding § 442 para. 1 S 2 BGB (German Civil Code) we shall even be entitled to unrestricted warranty claims if the defect shall remain unknown to us from conclusion of the contract and as a result of gross negligence.

(4) For the commercial duty to inspect and to give notice of defects, the statutory provisions (§§ 377, 381 HGB (German Commercial Code)) apply with the following provision: Our duty to inspect as part of the incoming lot control will be limited to defects, which are evidently revealed by an external examination including examination of the delivery papers, and by our quality control by way of random sample tests (e.g. transport damage, incorrect or short deliveries). No examination will be required if an acceptance procedure has been agreed on. For the rest, it will depend on to what extent an inspection has been taken into account, the circumstances of the individual case is feasible according to the proper course of business. The obligation to give notice of defects discovered at a later point in time will remain unaffected. In all cases, our objection (notification of defects) shall be deemed timely and without delay, if it is delivered to the seller within 14 days of discovery of the defect.

(5) The costs spent by the supplier for the purpose of testing and rectification (including possible dismantling and installation cost) shall be borne by the supplier; even if it transpires that there was in fact no defect. The liability to pay damages in the case of unjustified demands concerning notices of defects shall remain unaffected; however, as far as this is concerned, we shall only be liable if we have recognized or were grossly negligent in failing to recognize that there was no defect.

(6) In the event, that the seller shall not honour his obligation for supplementary performance - at our choice by remedying the defect (subsequent improvement) or by delivery of an item free of defects (replacement delivery) - within a reasonable time limit as set by us, we shall be able to remedy the defect ourselves and demand from the seller compensation for the expenses necessary for this or an appropriate advance payment. A deadline shall not be necessary in the event that supplementary performance by the seller shall be abortive or unacceptable for us (e.g. on account of special urgency, operating safety hazard or imminent occurrence of disproportionate damages); we will inform the seller of this immediately if at all possible in advance.

(7) As for the rest, we shall be entitled to reduce the purchase price or withdraw from the contract according to the legal regulations in the case of defects of quality and defects of title. Furthermore, according to the legal regulations we will be entitled to damages and compensation claims.

#### **§ 8 Supplier Regress**

(1) We are also entitled without restriction to our statutory determined rights of recourse within a supply chain (supplier recourse according to §§ 478, 479 BGB (German Civil Code)) as well as the claims for defects. We shall particularly be entitled to demand precisely such kind of supplementary performance (repair or substitute delivery) from the supplier as we owe our customer in an individual case. Our statutory right to choose (§ 439 para. 1 BGB (German Civil Code)) will not be restricted by this.

(2) Before we acknowledge or fulfil a claim for defects asserted by our customer, (including reimbursement of expenses according to §§ 478 para. 3, 439 para. 2 BGB (German Civil Code)) we shall notify the supplier by giving a brief account of facts, requesting written comments. If the statement is not made within an appropriate period and if no amicable solution has been precipitated, the claim for defects effectively allowed by us will be regarded as owing to the respective customer; in this case the supplier would be responsible for supplying counter evidence.

(3) Our claims arising out of the recourse against suppliers shall also apply if the goods have been further processed by us or by a customer, e.g. by installation into another product, before being sold to a consumer.

#### **§ 9 Manufacturer Liability**

(1) Where the seller is liable for the product damage, it shall hold us harmless in respect of third-party claims insofar as the cause lies within its area of control and organization and that the seller would be liable in relation to third parties or to us.

(2) Under his obligation to indemnify, the supplier must reimburse any expenses pursued and to §§ 683, 670 BGB (German Civil Code) that arise out of or in connection with any recourse taken by third parties including for recall campaigns carried out by us. The purchaser shall, to the

extent possible and reasonable, notify the supplier of the content and extent of recall measures and give it an opportunity to comment. Statutory claims over and above these shall not be affected.

(3) The seller has to conclude and maintain product liability insurance with lump-sum coverage of at least five million EUROS per case of personal injury/property damage.

#### **§ 10 Limitation**

(1) Unless otherwise stipulated, the contract parties' mutual claims shall be time-barred in accordance with the statutory provisions.

(2) By derogation from § 438 para. 1 No. 3 and § 634a para. 1 No. 3 BGB (German Civil Code), the general limitation period for claims for defects is 3 years from the passing of risk. Insofar as an acceptance has been agreed, the statute-of limitations shall begin with the acceptance. The period of limitation of 3 years also applies accordingly for claims resulting from defective titles whereby the statutory limitation periods regarding third party claims for return based upon property right (§ 438 para. 1 No. 1 BGB (German Civil Code)) remain unaffected; furthermore, claims resulting from defective titles do not become time-barred at all, as long as the third party can still assert the right against us particularly in the absence of limitation.

(3) The limitation periods applicable under the law governing the sale of goods and contracts for work and services, including the above extension, shall apply - to the extent provided by statute - to all contractual claims for defects. If a defect also entitles us to assert non-contractual compensation claims, the standard statutory period of limitation (§§ 195, 199 BGB (German Civil Code)) shall apply unless other statutory periods of limitation of the sales law result in a longer period in the case in hand.

#### **§ 11 Choice of Law and Place of Jurisdiction**

(1) These General Purchase Conditions and all legal relationships between us and the seller shall be governed exclusively by the German law to the exclusion of international harmonized law and the UN Convention on the International Sale of Goods. Prerequisites and effects of the reservation of title shall be subject to the law of the respective location of the subject matter insofar as according to the choice of law, which was agreed, would be inadmissible or invalid for the benefit of German law.

(2) If the seller is a businessman within the meaning of the German Commercial Code, a legal entity under public law or a public law fund, the exclusive venue, including international matters, for all disputes arising from the contractual relationship shall be our registered office in Berlin. However, we shall also be entitled to bring actions in the place of fulfilment for the delivery commitment.