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**General Terms of Purchase**  
**of**  
**manufacturing logistics & services GmbH & Co KG (ml&s)**

**Status July 2019**

**I. Prevailing Terms**

- (1) These General Terms of Purchase (GTP) apply to all business transactions with our suppliers or other contractors (hereinafter jointly referred to as "Supplier"). The GTP also apply in their then actual version to any subsequent contracts with Supplier even if they are not mentioned again; in such case we shall inform Supplier about any change of our GTP without delay.
- (2) These GTP apply in particular to any contracts concerning the sale and/or delivery of goods (hereinafter: „Goods“), regardless whether the seller has produced the Goods himself or bought them from his suppliers.
- (3) These GTP apply exclusively. Deviant, adverse or supplementary general terms of Supplier only apply, if and as far as we have expressly agreed to such terms in writing. This requirement of consent applies in any case, in particular if we accept Supplier`s delivery without reservation although being fully aware of Supplier`s general terms.
- (4) Any individual agreements as reached with the Supplier in particular cases (including side-agreements, amendments and changes) precede these GTP. Such individual agreements must be in writing.
- (5) Any material declarations and announcements, made to us by Supplier after closing of an agreement (e.g. deadlines, reminders, cancellation) must be in writing.
- (6) References to statutory provisions are for clarification purposes only. Therefore, statutory provisions apply even without such clarification, except they have been modified or excluded by these GTP.

**II. Orders and Closing of contract**

- (1) An order is only regarded as placed when we have made it in writing. Orders made verbally or via telephone are only binding for us if we have confirmed them by sending a subsequent written order. In the event of obvious errors (e.g. spelling- and arithmetic mistakes) or omissions of the order, including order forms we are only bound by the order if Supplier has indicated in writing the error / incompleteness prior to acceptance, so that we can correct the order and (if necessary) renew it. Otherwise the contract deems not to be closed.
- (2) We are bound to our order for 14 days. Supplier should accept our orders in writing or by delivery of the Goods within 5 working days, but at the latest within the foresaid period of 14 days. Late acceptance deems to be a new order and has to be accepted by us.
- (3) Supplier shall fulfil requests for alteration made by us after placing the order if and to the extent to which this is possible and reasonable from a technical and time point of view.

**III. Delivery Time and Delay**

- (1) Delivery times are binding according to our order. They are valid from the date of order. In the event that delays are expectable, the Supplier shall inform us without delay.
- (2) We are not obliged to accept delivery prior to the agreed delivery date. Any excess costs arising from a premature delivery shall be borne by Supplier. In the event of premature delivery, the payment period does not begin prior to the agreed delivery date.

- (3) If Supplier does not provide his performance properly or not within the agreed delivery time, or if he is in default, then our rights - in particular the rights for termination and compensation – are determined in accordance with statutory regulations. The regulations in para. 4 and para. 5 remain unaffected.
- (4) If Supplier is in default of performance, we have the right to impose a contractual penalty of 0.5 % of the net order value per calendar - week begun, however in aggregate not more than 5 % of the net order value of the delayed delivery. We have the right to demand the contractual penalty in addition to performance and as a minimum amount owed by Supplier in accordance with the statutory provisions concerning damages; the right to claim further damages remains unaffected. If we accept the delayed service, we can claim the penalty until the final payment. We are entitled to offset the contractual penalty against claims of the Supplier from the same delivery.
- (5) If Supplier is in default with its delivery or parts of its delivery longer than 7 days, we may, after the expiry of a further appropriate subsequent period - usually consisting of a maximum of 14 days - fully or partly withdraw from the contract and, in the event of fault on the part of the Supplier, assert a claim for damages. We are thereby free to charge for the specific damages or a flat rate damages fee of 10% of the net order value of the unfulfilled performance. A contractual penalty according to para. 4 shall be charged up against the claim for damages. The Supplier is free to provide evidence that no or only lower damages have occurred to us.

#### **IV. Delivery/Transfer of Risk and Title**

- (1) Delivery shall be made at the expense of the Supplier, free of charge, to the point of acceptance stated by us in the order. If the point of acceptance is not stated and if not agreed otherwise, the Goods have to be delivered to our business location in Greifswald (DAP Greifswald, Incoterms 2010). The respective destination is also place of performance (Bringschuld). If we have to bear the freight costs in exceptional cases, Supplier shall select the transport type prescribed by us, otherwise the transport and delivery type most economical for us.
- (2) One copy of delivery notes and packing slips shall be attached to all deliveries. Each delivery note must contain:
  - Order number (also as barcode)
  - Quantity and units (also as barcode)
  - gross -, net - and (if necessary) calculation weight (also as barcode)
  - Item description and our item number
  - date code (also as barcode (ddmmyy))
  - delivery note number (also as barcode))If documents are missing or incomplete, we are not liable for any delays in processing and payment resulting therefrom. Separated from the delivery the Supplier shall send us on the day of shipment an appropriate shipping notice with the same content.
- (3) Supplier shall use the packaging specified by us and pack the goods so that they will not be damaged during transport.
- (4) Supplier shall inform us of any official approvals and reporting obligations required for the import and use of the goods, in particular of any anti-dumping measures. For deliveries from preferential countries, the seller must enclose proof of preference with each delivery. The long-term supplier's declaration must be submitted once a year. Furthermore, the seller is obliged to comply with the relevant export control regulations and to inform us of the export control marking of the goods, in particular in accordance with EU and US law, without being requested to do so, in writing at the latest with the delivery.
- (5) The risk of accidental loss is transferred to us not before acceptance by us at our point of receipt. If acceptance is agreed, this is decisive for the transfer of risk. Further to this the statutory provisions of the work contract law shall apply mutatis mutandis. Delivery or acceptance shall also be deemed to have occurred, if we are in default of acceptance.
- (6) The ownership of the delivered Goods passes to us upon payment. Any prolonged or extended retention of title is excluded.

## V. Prices

- (1) If not expressly regulated otherwise, the agreed prices are fixed prices. Prices are including statutory VAT, if VAT is not reported separately. If Supplier reduces his prices in general, he is obliged to pass on this reduction to us. Unless expressly agreed otherwise in writing, quotations, cost estimates and other price calculations of Supplier will not be refunded by us.
- (2) Supplier shall not grant us less favourable prices and conditions than other customers, if and to the extent to which the latter offer the same or equivalent- value conditions to Supplier in given cases.
- (3) Unless otherwise agreed in individual cases, the price includes all services and ancillary services of the Supplier (e.g. assembly, installation) and all ancillary costs (e.g. for proper packaging, transport costs including any transport and liability insurance). Supplier shall take back any packaging material at our request, whereby we must be credited for returned packages at least 2/3 of the value calculated for the package by us.

## VI. Invoice/Payment

- (1) Invoices shall be issued separately for each order stating our correct order number. Invoices shall be sent exclusively via e-mail and as pdf-document to our central e-mail address for invoices [ERP.Rechnungen@mlands.com](mailto:ERP.Rechnungen@mlands.com).
- (2) Payments shall be effected within 60 calendar days from full receipt of the Goods or services (including acceptance, if agreed) and receipt of a correct invoice at the e-mail address mentioned in section (1) above. We are granted a cash discount of minus 3 % of the net – amount if we pay within 14 days from receipt of invoice. In case of bank – transfer payment deems to be made on time if our transfer order is received at our bank before the deadline for payment; we are not responsible for delays caused by the banks involved in the payment transaction.
- (3) We do not owe any interest due. The annual interest rate is 5 percentage points above the base rate. For the entry of our delay, the statutory provisions apply. Notwithstanding this a written warning by the Supplier is required in any case.
- (4) We have any rights to offset and retain as well as the defence of breach of contract according to statutory extent. We are especially entitled to withhold payments due as long as we are still entitled to claim from incomplete or poor performance against Supplier.
- (5) Supplier has a right of retention or set-off only because of legally established or undisputed counterclaims.

## VII. Warranty

- (1) For our rights in material defects and defects of the goods (including wrong and short delivery as well as improper assembly, improper installation- or operation-manual) and other breaches of duty by the seller, the statutory provisions apply, except as specified otherwise hereinafter.
- (2) In particular Supplier shall ensure that the Goods have the agreed quality at the time of transfer of risk. In any case such descriptions of the Goods deem to be agreed quality standard, which had become object of the contract or have been involved in the same way as these GTP in the contract - in particular by name or reference in our order. Insofar it makes no difference whether the product description comes from the Supplier or from the manufacturer. If Supplier has to deliver and perform according to our plans, drawings or other special requirements, the conformity of the goods or services with the requirements deems to be expressly guaranteed. If the delivery or performance differs from the requirements, we have the rights according to this section VII..
- (3) Furthermore Supplier warrants that the Goods shall be delivered free from any third party's rights and that by delivery no rights of third parties are violated. Supplier shall indemnify us against any claims by third parties on first request, insofar as he is responsible for the defect of title.

- (4) Notwithstanding § 442 para. 1 S 2 BGB (German Civil Code) we keep any claims without restriction even if the defect remained unknown at conclusion of the contract due to gross negligence.
- (5) For commercial obligations of inspection and complaint, the statutory provisions (§§377, 381 HGB – German Commercial Code)) shall apply to the following conditions: Our investigation liability is limited to defects that are visible during our incoming goods inspection, including external control, check of shipping documents and quality control at random (e.g. transport damage, wrong and short delivery). If acceptance is agreed, there is no obligation of inspection. Otherwise, it depends on the extent to which an investigation is feasible under the circumstances of each case and in the ordinary course of business. Our obligation to notify Supplier about defects, which have been discovered later, remains unaffected. In all cases, our complaint (Mängelanzeige) is considered promptly and timely if received from Supplier within 10 working days.
- (6) If we incur costs as a result of the defective delivery of the Goods, in particular testing-, transport-, labour-, installation-, removal-, material costs or costs for an extraordinary scope of incoming goods inspection, Supplier has to bear these costs.
- (7) If Supplier fails to remedy the defect - at our discretion by elimination of the defect (repair) or by supplying a non-defective item (replacement) - within a range of reasonable time set by us, we can remedy the defect ourselves and require from Supplier any necessary expenses or an appropriate advance. If supplementary performance of Supplier has failed or is unreasonable for us (e.g. due to special urgency, risk to the safety or imminent occurrence of disproportionate damage) no deadline is required; we will inform Supplier of such circumstances immediately, if possible in advance.
- (8) In addition, in case of a material defect or defect of title we are entitled according to legal regulations to reduce the purchase price or to cancel the contract. In addition, we can claim for damages or compensation according to statutory provisions.
- (9) The warranty period for claims based on defects are governed by § 438 BGB, whereby the general warranty period in accordance with § 438 Para. 1 No. 3 BGB, deviating from the statutory provision, is 3 years from the passing of risk. If acceptance has been agreed, warranty period begins at the day of acceptance. The 3-year period also applies to claims arising from defects in title, whereas the statutory period of limitation for restitution claims of third parties (§ 438 para. 1 No. 1 BGB) is not affected; irrespective of this, claims based on defects in title do not become time-barred as long as the third party can still make claims against us - in particular if the third party's claims are not time-barred yet.
- (10) Our written notification of defects inhibits expiration of the warranty period. The warranty period continues only after two months, after the successful rectification of defect or after the seller has rejected the warranty-claims in writing. In case of replacement, the warranty period restarts from the date of delivery of replacement goods.
- (11) Our rights from Recourse of the Entrepreneur according §§ 478, 479 BGB in case of a sale of consumer goods are not affected.

#### **VIII. Producer`s liability**

- (1) If Supplier is liable for product damage, Supplier shall indemnify us from any third party claims as far as the cause for such damage is within his control and organization and as far as he is liable in the relationship with third parties.
- (2) As part of its obligation to indemnify Supplier shall reimburse any expenses according to §§ 683, 670 BGB, arising out of or in connection with any claims by third parties, including recall campaigns carried out by us. We will inform Supplier of the content and scope of any recall measures - as far as possible and reasonable - and give him an opportunity to comment. Further statutory rights remain unaffected.
- (3) Supplier has to maintain a product liability insurance with a lump sum insured of EUR 2 million per personal injury / property damage and has to maintain this insurance for the duration of the cooperation with us.

## **IX. Performance by a third party/ assignment of receivables**

- (1) Supplier is not entitled to have his contractual obligations performed by third parties (e.g. subcontractors) without our prior written consent. Supplier bears the procurement risk for his services, unless otherwise agreed in a particular case (e.g. sale of goods in stock).
- (2) If Supplier wants to cede any contractual receivables to third parties, this requires our written consent. § 354 HGB remains unaffected.

## **X. Force Majeure**

War, civil war, export restrictions or trade restrictions due to changes in political conditions, strikes, lock-outs, operational constraints and any other events which make it impossible or unreasonable to perform the contract shall be considered as force majeure and release us for the duration of their existence from the requirement of timely acceptance. The contractors are required to inform each other about this and adapt their obligations to the changed circumstances in good faith.

## **XI. Secrecy**

- (1) To illustrations, plans, drawings, calculations, installation instructions, product specifications and other documents we reserve all ownership and copyright. Such documents shall be used exclusively for the contractual service and returned after the completion of the contract to us. Unless otherwise specified, they shall be regarded as *trade secrets* within the meaning of the German law on the protection of trade secrets (GeschGehG). To third parties the documents must be kept secret, even after the termination of the contract. The confidentiality obligation shall not expire until and unless the knowledge contained in the provided documents has become generally known.
- (2) Supplier shall take suitable measures with its employees, agents and other persons coming into contact with confidential information in the course of the cooperation, to assure that these individuals also observe the obligations to maintain secrecy arising from para. 1 above.

## **XII. Quality Management/Environmental Protection**

- (1) Supplier's goods and services shall correspond to the statutory provisions, in particular to the provisions concerning safety and environmental protection, including the regulations for protection against hazardous substances - Hazardous Substances Act, the REACH Regulation, the RoHS Directive, the WEEE and the safety recommendations of German professional bodies and associations, such as VDE, VDI, DIN. The relevant certificates and documents must be supplied to us free of charge.
- (2) Supplier shall observe our respective current requirements regarding quality management and environmental protection. We assume thereby that the Supplier possesses a functioning quality management system, at least fulfilling the requirements of ISO 9001 and ISO 14001. Upon our request Supplier shall provide us with the respective certificate.
- (3) We reserve the right to examine the observation of the contractually agreed quality requirements as part of a quality audit of the Supplier as required, and after prior notice during normal business hours.

## **XIII. Compliance, Miscellaneous**

- (1) Supplier will behave law-abiding during the entire duration of the relationship. Supplier shall ensure that also all employees, agents and other third parties engaged by him in the business relationship with him, will do the same. This is especially true with regard to relevant occupational health- and safety-, anti-discrimination- and anti-corruption laws. The Supplier shall inform us

immediately of the initiation of official investigation proceedings due to an infringement. In addition, we shall be entitled to demand information in writing about the infringement and the measures taken to remedy it and avoid it in the future in the event of indications of an infringement by the Supplier.

- (2) Supplier shall pay its employees at least the statutory minimum wage. In the event that we should be claimed for breach of an appropriate statutory obligation for payment, the seller shall indemnify us upon first demand from these claims.
- (3) Supplier warrants that the goods supplied by him do not contain any raw materials from crisis areas, in particular from those within the meaning of Section 1502 of the Dodd-Frank Act (so-called "Conflict Materials"). Upon request Supplier shall provide us with all the information and documentation, which are necessary for enabling supply chain traceability of the products, so it can be ruled out that Conflict Materials have been included in the goods.
- (4) Supplier undertakes to comply with the Code of Conduct (CoC) of ml&s, which is available on our website [www.mlands.com](http://www.mlands.com).
- (5) Supplier shall impose such obligations also to his sub-contractors.

#### **XIV. Data Protection**

We would like to point out that within the framework of the business relationship we store the personal data of supplier and his employees required for contract preparation and processing in our EDP system and process them in accordance with the requirements of the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG). The data will only be passed on to third parties if this is necessary within the scope of the business relationship, required by law or permitted by supplier. You can find further information regarding data protection in our privacy statement.

#### **XV. Applicable law and place of Jurisdiction**

- (1) To these GTP and to any contractual relationships between Supplier and us German law applies under exclusion of the regulations of international law, in particular under exclusion of the laws on the international purchase of goods (CISG).
- (2) If Supplier is a merchant according to German Commercial Code (HGB), a legal entity under public law or a public special fund, the exclusive - and international - place of jurisdiction for all disputes arising from the contractual relationship, is our place of business in Greifswald, subject to a deviating exclusive place of jurisdiction. However, we shall also be entitled to take legal action at the supplier`s registered office or at the place of performance of the delivery obligation.

Greifswald, July 2019