

GENERAL PURCHASING TERMS & CONDITIONS/GPTC of TOI TOI & DIXI GROUP GMBH



ID TOI TOI & DIXI-RL000007 Version 001

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1. General provisions

- 1.1. The following General Terms and Conditions of Purchase (GTCP) shall apply to the provision of all deliveries and services to companies of the TOI TOI & DIXI Group. Companies of the TOI TOI & DIXI Group can be all companies that are -directly or indirectly- affiliated with the TOI TOI & DIXI Group, independent of their shareholding relationship. If a company is newly added to the TOI TOI & DIXI Group, it shall be immediately deemed to be an TOI TOI & DIXI Group company upon joining the TOI TOI & DIXI Group.
- 1.2. Our General Terms and Conditions of Purchase shall apply exclusively; any general terms and conditions of Supplier conflicting with or deviating from our Terms and Conditions of Purchase will only be accepted if we have expressly approved them in writing. Acceptance or payment of goods and services from Supplier (hereinafter referred to as the Product) shall not constitute approval, even if the acceptance or payment is made in knowledge of Supplier's conflicting or deviating terms and conditions. Likewise, any previously agreed terms and conditions of Supplier conflicting with or deviating from these Terms and Conditions of Purchase are no longer accepted.

2. Orders and conclusion of contract

- 2.1. Orders shall only be binding upon us if they have been placed or confirmed by our purchasing department.
- 2.2. Orders, contracts and call-offs as well as any modifications and amendments thereto must be made in writing.
- 2.3. Oral agreements of any kind – including subsequent modifications and amendments to our Terms and Conditions of Purchase – must be confirmed by us in writing to be effective.
- 2.4. The written form requirement is also deemed to be complied with by fax, remote data transmission or email.
- 2.5. Cost estimates shall be binding and free of charge, unless expressly otherwise agreed.
- 2.6. Every order must be confirmed by Supplier in writing within one week of receipt, stating the price and the binding delivery period. After expiry of this period without effect, we shall be no longer bound by the order.
- 2.7. Call-offs within an order and delivery schedule shall become binding if Supplier does not object to them within two working days of receipt.
- 2.8. In the event of long-term supply contracts, Supplier is obliged to prepare and send us a written report showing the quantities delivered to us and the prices on a monthly basis.

3. Prices and passing of risk

- 3.1. In the absence of a specific agreement, all prices are quoted in EUR and delivered at place (DAP according to Incoterms® 2010) including packaging. The prices are exclusive of value-added tax. Supplier bears the risk of accidental loss and accidental deterioration of the goods until acceptance by us or by our authorised representative at the place to which the goods are to be delivered in accordance with the order.
- 3.2. Unilateral price adjustments in ongoing business relationships are not permitted.

4. Terms of payment

- 4.1. In the absence of a specific agreement, invoices will be settled within 60 days of the due date of payment as well as receipt and acceptance of both the invoice and the goods or services. Payment is subject to invoice verification. It is deemed agreed that 3% discount is granted for payments made within 14 days.
- 4.2. Order confirmations, dispatch notes, invoices and other documents must show our order and item numbers in full. Invoices that do not show our order and item numbers may be returned to Supplier without payment.
- 4.3. Supplier may only exercise rights of setoff and retention in respect of claims that are undisputed, legally established or have been expressly acknowledged by us in writing.

5. Delivery, delivery period and default in delivery

- 5.1. Agreed delivery dates and periods shall be binding. The date of receipt of the goods by us shall be authoritative for compliance with the delivery date or period. Unless delivery “free works” (DAP or DDP according to Incoterms 2010) is agreed, Supplier shall make the goods available in good time, taking into account the time required for loading and shipment to be arranged with the forwarder.
- 5.2. If Supplier has agreed to take care of setup or installation, all necessary expenses, such as travel expenses, provision of tools and per diem allowances, shall be borne by Supplier.
- 5.3. If agreed delivery dates are not complied with, the statutory provisions shall apply without limitations. If Supplier anticipates any difficulties with respect to manufacturing, supply of input materials, compliance with the delivery date or similar circumstances that could prevent Supplier from effecting the

delivery on time or in the agreed quality, Supplier must notify our purchasing department without delay.

- 5.4. The acceptance of the delayed delivery or performance without reservation shall not constitute a waiver of our claims to compensation due to the delayed delivery or performance; this shall apply until full payment of the amounts owed by us for the delivery or performance in question.
- 5.5. As a rule, part deliveries are not permitted, unless expressly approved by us.
- 5.6. Unless evidence to the contrary is presented, the quantities, weights and measurements ascertained by us during the incoming inspection shall be authoritative.

6. Force majeure

- 6.1. Definition: “Force majeure” means the occurrence of an external event or circumstance that is not linked to business operations and cannot be prevented even when exercising the utmost care that can be reasonably expected.
- 6.2. Force majeure events, operational disruptions beyond our control, administrative measures and other unavoidable circumstances shall release us from the obligation of timely acceptance for the duration of such events. During such events and for a period of two weeks thereafter, we are entitled – notwithstanding our other rights – to withdraw from the contract in whole or in part, unless these events are of insignificant duration and do not cause a significant reduction in our demand due to procurement from other sources that became necessary as a result.
- 6.3. The provisions set forth in Sec. 6.2 shall also apply in the event of industrial action.

7. Notification of defects

- 7.1. Upon receipt, we will examine the goods for obvious defects, in particular transport damage as well as deviations in identity and quantity, unless otherwise agreed with Supplier in a quality assurance agreement.
- 7.2. We will give notice of any defects immediately after discovery.
- 7.3. To this extent, Supplier waives the objection of delayed notification of defects.

8. Claims for defects

- 8.1. Unless otherwise stipulated below, the statutory regulations governing material and legal defects shall apply.
- 8.2. We are entitled to select the type of cure. The place of performance for the cure is the intended location of the Product, which is the place where the Product is located at the time notice of defects is given. Supplier may refuse to effect the type of cure we have selected if it can only be effected at disproportionate expense.
- 8.3. Should Supplier not commence remedying the defect after having been requested to do so, we are entitled, in urgent cases after setting a reasonably short period for remediation, in particular to avert acute danger and to prevent greater damage, to remedy the defect ourselves or to have it remedied by a third party at Supplier's expense.
- 8.4. If reference samples or appropriate random samples from a delivery deviate from the contractual or statutory provisions as a whole or to a significant extent, we are entitled to withdraw from the contract as a whole. Any further claims to price reduction or compensation shall remain unaffected.
- 8.5. Supplier shall indemnify us from any claims by third parties based on the violation of third-party rights by the Product, unless Supplier demonstrates that it is not responsible for the violation. This shall also include the expenses necessary for defence against such claims. In addition, Supplier shall, at our request, immediately provide us with all information and documents on its services that are required for defence against such third-party claims.
- 8.6. The limitation period for indemnity claims is three years. The limitation period for indemnity claims commences at the end of the year in which the claim arose and we obtained knowledge of the circumstances giving rise to the claim and the identity of the debtor or would have obtained knowledge thereof without gross negligence. Any longer statutory limitation periods shall take precedence. This shall also apply to the aforementioned additional claim to information and documents.
- 8.7. Except in cases of fraud, claims for material defects shall expire after 3 years, unless the Product has been used in a building in accordance with its customary use and caused the defectiveness thereof. The limitation period commences upon delivery of the Product (passing of risk). Any longer statutory limitation periods shall take precedence.
- 8.8. The provisions set forth in Sec. 8.6 (limitation period for indemnity claims) shall apply mutatis mutandis to claims for legal defects. Any longer statutory limitation periods shall take precedence.
- 8.9. If Supplier meets its obligation to effect cure by delivering substitute goods, the limitation period for the goods delivered in substitution shall

recommence after their delivery, unless, when effecting cure, Supplier expressly and appropriately reserved the right to only effect the substitute delivery as a gesture of goodwill, to avoid disputes or in the interest of continuing the supply relationship.

- 8.10. Within the scope of effecting cure, the costs of transport, infrastructure, labour, installation, removal and material shall be borne by Supplier. If, as a result of a defective delivery, we incur any costs and expenses in connection with the repair or replacement of the Product which we were entitled to make, in particular costs and expenses for sorting, for an incoming inspection exceeding the regular scope, for examination and analysis of the defect as well as costs for involving external or internal personnel, these costs shall be borne by Supplier, unless it is not responsible for the defect. Any contributory negligence on our part shall be taken into account when calculating the reimbursable costs pursuant to Sec. 254 BGB [German Civil Code].
- 8.11. Supplier shall be liable for the fault of its subcontractors to the same extent as for its own fault.

9. Liability and product recall

- 9.1. In the event that a product manufactured by us causes damage to a third party or a product manufactured by us violates any property rights and a third party asserts claims for compensation against us, Supplier shall indemnify us from all claims by third parties on first demand, including the necessary expenses for defence against such claims, if the damage has been caused by a product delivered by Supplier.
- 9.2. In the cases listed in Sec. 9.1 above, all costs and expenses, including the costs of any legal action, shall be borne by Supplier, unless the costs are unnecessary and unreasonable as a whole.
- 9.3. Apart from that, the statutory provisions shall apply.
- 9.4. Prior to any product recall that fully or partially results from a defect in the Product delivered by Supplier, we will notify Supplier, give Supplier the opportunity to cooperate with us and discuss with Supplier the efficient execution of the product recall, unless notification or involvement of Supplier is not possible due to particular urgency. If the product recall results from a defect in the Product delivered by Supplier, the costs of the product recall shall be borne by Supplier, unless it is not responsible for the defect. Any contributory negligence on our part shall be taken into account when calculating the costs to be borne by Supplier pursuant to Sec. 254 BGB.

10. Retention of title

- 10.1. If we provide Supplier with any material, such material shall remain our property and must be stored separately until processing. Such material may only be used for our orders. If such material is damaged or destroyed, Supplier is liable to pay compensation.
- 10.2. Any processing of the material provided by us shall take place on our behalf. We shall become the owner of the goods created by processing.
- 10.3. In the event that the material provided by us is combined or intermixed with Supplier's material, Supplier shall hereby assign to us its share of co-ownership of the goods created by combination or intermixing. We hereby accept the assignment. Supplier shall store these goods for us with the due care of a prudent businessman.

11. Documents and confidentiality

- 11.1. All business-related and technical information made available by us (including features that can be derived from items, documents or software provided and any other knowledge or experience) must be kept confidential from third parties as long and insofar as such information is not demonstrated to be in the public domain, and may only be disclosed to those persons in Supplier's business who must necessarily use it for the purpose of effecting delivery to us and who are also committed to confidentiality; the information shall remain our exclusive property. Without our prior written consent, such information must not be reproduced or used for commercial purposes, except for the purpose of effecting deliveries to us. At our request, all information originating from us (including any copies or records produced) and all loaned items must be returned to us or destroyed completely without delay.
- 11.2. We reserve all rights to such information (including copyrights and the right to file for industrial property rights, such as patents, utility models, etc.). Where such information has been provided to us by third parties, this reservation shall also apply for the benefit of these third parties.
- 11.3. Products that are manufactured on the basis of documents drafted by us, such as drawings, models and the like, or on the basis of our confidential information or using our tools or tools modelled on our tools may neither be used by Supplier itself nor offered or supplied to third parties.
- 11.4. Any subcontractors shall be placed under the same obligations.

12. Place of performance

Unless otherwise agreed, the place of performance shall be the place to which the goods are to be delivered or at which the services are to be rendered in accordance with the order.

13. Final provisions

- 13.1. Should any provision of these Terms and Conditions and the agreements made therein be found invalid, the validity of the remaining provisions shall not be affected. The Parties undertake to replace the invalid provision by a regulation that most closely reflects the economic outcome of the invalid provision.
- 13.2. The contractual relationship shall be governed exclusively by German law, without giving effect to any conflict-of-laws rules and the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 13.3. The place of jurisdiction for any disputes directly or indirectly arising from the contractual relationship under these Terms and Conditions of Purchase shall be Ratingen. The Regional Court of Düsseldorf shall have jurisdiction over proceedings before the regional courts. Furthermore, we are entitled to take legal action against Supplier at our option either at the court of Supplier's registered office or branch office or at the court of the place of performance.
- 13.4. Any modifications and amendments to the contract, including these GTC, must be made in writing. This shall also apply to any modifications and amendments to this provision. The written form requirement is also deemed to be complied with by fax, remote data transmission or email.