



## **Standard Terms and Conditions of Purchase regarding acquisition of production material**

\* This Standard Terms and Conditions shall apply for the following companies: Mankiewicz Gebr. & Co. (GmbH & Co. KG), FINALIN GmbH, Grau Auslandsverwaltungsgesellschaft mbH and Mankiewicz Resins GmbH & Co. KG, each with their registered office in 21107 Hamburg, Georg-Wilhelm-Strasse 189, as well as for Norix Lackfabrik GmbH & Co. KG with registered office in 27838 Scheeßel Westerveseder Landstraße 1 and Rüdts Industrielacke GmbH & Co. KG, 72581 Dettingen an der Erms, Neuhäuser Str. 19 -21.

### **I. Applicable Conditions**

The legal relationship between the Supplier and the Purchaser complies with these conditions and any other agreements. Solely these conditions are applicable; the Purchaser does not acknowledge any dissenting conditions or conditions to the contrary unless the validity of these is expressly consented to in writing. These conditions are also applicable when the Purchaser accepts the delivery unconditionally although the Purchaser is fully aware of any dissenting conditions or conditions to the contrary of the Supplier. These conditions are also applicable for all future business transactions between the contract partners.

### **II. Purchase Order / Conclusion of an Agreement**

1. Delivery agreements (purchase order and acceptance) and delivery schedules are to be made in writing; the same is applicable for amendments and supplements to the delivery agreements and delivery schedules. Verbal commitments by the Supplier's proxy or other auxiliary persons are to be made in writing by the Supplier.
2. The Purchaser is bound to his quotation for one week. Individual delivery schedules are binding at the latest if the Supplier does not object within five working days after receipt; the Purchaser shall specifically point out the importance of the Supplier's conduct to the Supplier upon each delivery schedule.
3. Within the scope of reasonableness the Purchaser can demand modifications of the delivery item from the Supplier with regard to construction and design. In doing so, any repercussions, in particular with regard to additional or reduced costs as well as delivery dates, are to be regulated in an appropriately amicable manner.
4. The INCOTERMS are applicable in the version which is valid at the time the contract is concluded.
5. The Purchaser is entitled to withdraw from the contract if the Supplier has filed an application to open insolvency proceedings on his assets, has submitted a statutory declaration in accordance with § 807 ZPO or insolvency proceedings have been commenced on his assets or have been disclaimed due to lack of mass.
6. The Purchaser's Quality Assurance Agreement for Suppliers is an integral part of these conditions. In addition, Sections XIII and XIV of these Terms and Conditions of Purchase are in force.



### III. Prices and Conditions of Payment

1. The price indicated in the order is binding.
2. If no specific agreements have been stipulated payment of the invoice is to be settled either within 14 days less 3% cash discount or within 30 days without deduction from the due date of the claim for payment and receipt of both the invoice and the goods resp. rendering of the service. The later date is decisive for the due date. Payment is made under restriction of invoice verification.  
  
If deliveries are accepted prematurely the due date is based on the delivery date which has been agreed upon.
3. Unless otherwise agreed the price includes delivery DDP (Incoterms) to the delivery address agreed upon.
4. Payment is to be made via bank transfer or cheque. Payment does not signify an acceptance of conditions and prices and has no influence on the Purchaser's rights in the case of deficiencies.
5. In the case of a faulty delivery the Purchaser is entitled to defer the proportionate share of payment until due fulfilment.
6. The Supplier is not authorised to assign any claims he may have against the Purchaser without the Purchaser's prior written approval or to have these claims collected by third parties. § 354a HGB (German Commercial Code) remains unaffected.
7. Forwarding advice, Bills of Lading, invoices and any correspondence must contain the Purchaser's Order No.
8. Invoices can only be processed if these include the designated Order No. and are issued to the correct invoice recipient – in accordance with the specifications in the order. The Supplier is responsible for any consequences which may arise due to non-compliance with this obligation, unless he can prove conclusively that he does not represent these.
9. The Purchaser is entitled to the right of offsetting and the right for retention on a legal scale.
10. A reservation of proprietary rights between the contract partners is not applicable.

### IV. Forwarding Instructions

1. The delivery note – in duplicate - is to be enclosed in the consignment together with the packing slip; should this concern dutiable goods (duty unpaid goods) the Supplier must inform the Purchaser accordingly without being asked and submit all relevant documents for customs clearance. Order No., gross and net weight, quantity and type of packing (disposable or reusable) as well as place of unloading and consignee are to be noted on all shipping documents and on the outer packing. Individual containers are to be marked with the material description, material number, batch number, production date, shelf life and net weight. Should the Supplier neglect to provide these particulars the Purchaser is not responsible for any delays in processing.
2. The Supplier is to take care of consignment and to select the most favourable and suitable method of transport unless otherwise agreed. The Supplier must pack, mark and dispatch hazardous products in accordance with the relevant national and international regulations.



## **V. Delivery Dates and Delivery Deadlines**

1. The dates and deadlines agreed upon are binding. The date when the goods are received by the Purchaser is decisive for compliance with the delivery date or delivery deadline. Unless otherwise agreed, delivery "DDP" is valid, including packaging.
2. A premature delivery may only take place if the Purchaser agrees to this. In the case of a premature delivery which has not been agreed upon the Purchaser reserves the right to return the consignment to the Supplier at the Supplier's risk and expense. Should no such agreement exist and the consignment is not returned to the Supplier in the case of a premature delivery the merchandise shall be stocked by the Purchaser at the Supplier's risk and expense until the delivery date agreed upon. The delivery schedule agreed upon is applicable for compliance with the payment deadline.
3. Should the Supplier anticipate any problems regarding production, material supply, compliance with the delivery date or any similar circumstances which may deter him from delivering on time or delivering the quality agreed upon the Supplier is to notify the Purchaser in writing immediately.
4. The unconditional acceptance of the late delivery or delayed service does not comprehend any waiver of claims which are due to the Purchaser due to the late delivery or service; this is applicable until complete payment of the fee due for the relevant delivery and service has been made.

## **VI. Delayed Delivery**

1. The Supplier vouches without any restrictions whatsoever for the procurement of all supplies and services - independent of negligence - which are required for the delivery (complete takeover of the procurement risk).
2. The Purchaser is entitled to legal claims in the case of delayed delivery. In particular, the Purchaser is eligible to claim damages - instead of accepting the service or requesting cancellation - following the unsuccessful expiration of an adequate time limit. Furthermore, the Purchaser is by all means also entitled to lodge claims against the Supplier as delay damages / damages resulting from non-fulfilment for the loss of profit and losses arising from service interruption
3. In the case of delayed delivery the Purchaser is entitled to demand a lump-sum of 0.2% of the net order value per working day of the missed deadline for damages caused by delay, however no more than 10% of the net order value. All further statutory rights remain unaffected. The Supplier is entitled to provide evidence to the Purchaser that no damages or substantially lower damages have arisen due to the delay.
4. Partial orders are not acceptable unless the Purchaser has agreed to this previously in writing.

## **VII. Force Majeure**

Force Majeure, labour disputes, disturbances, official sanctions (including embargo and compulsory approvals) and other unforeseeable, unavoidable and serious occurrences release the contract partners from their obligation to perform duties for the duration of the disruption and to the extent of the execution. The contract partners are obligated to provide the necessary information without delay and to adapt their duties to the modified circumstances in good faith and within just and reasonable bounds.



### **VIII. Conditional Warranty of the Supplier**

In terms of a Specification Agreement the Supplier assures the following conditions with regard to the delivery items:

1. All deliveries and services as agreed upon in the specification shall be executed resp. rendered in the appropriate professional manner using the most suitable materials and corresponding with the latest and best available technology and with the generally accepted technical and occupational health safety regulations of the authorities and trade associations and are consistent with the relevant legislation.
2. If the objects delivered are machines, devices or installations these must correspond with the special requirements of the safety regulations for such machines, devices or installations which are applicable at the time of fulfilment of the contract and must have a CE certification.

### **IX. Examination / Notice of Defects**

The Purchaser is to inform the Supplier immediately in writing of any defects in the delivery as soon as these have been determined under the conditions of a proper course of business. The Supplier waives insofar the objection of the delayed notification of defects.

### **X. Liability for Defects**

1. The Purchaser is entitled to the unrestricted legal warranty claims.
2. In the case of defective deliveries the Purchaser may demand the following if the respective legal premises and the appropriate premises listed below are existent and nothing else has been specified:
  - a) Prior to the start of production the Purchaser is to give the Supplier the opportunity first to sort out as well as to remedy any defects or to provide replacement delivery unless this is unacceptable to the Purchaser. If the Supplier is unable to accomplish this or if he does not comply with this immediately the Purchaser may withdraw from the contract without any further deadline whatsoever and return the goods at the Supplier's risk. In the event of further defective delivery the Purchaser has the right to cancel the contract after written notice, also for the incomplete scope of delivery.
  - b) If the defect is not noticed until production has commenced the Purchaser may
    - demand supplementary performance and reimbursement of the transport costs necessary for such supplementary performance as well as assembly and disassembly costs (labour costs; material costs) in accordance with § 439 Paragraph 1, 3 and 4 BGB (German Civil Code) or
    - reduce the purchase price.
  - c) The right to claim damages, in particular for damages instead of performance, remains explicitly reserved. In any case the Supplier vouches for the supplies and performances which he procures – independent of negligence - as well as for his own deliveries or performances.
3. Any claims with regard to liability for defects becomes invalid 3 years after handover to the Purchaser.
4. In the case of defect deliveries the Purchaser's claims with regard to the Product Liability Act, unlawful acts and agency of necessity remain unaffected by this clause.



## **XI. Product Liability – Indemnity – Third Party Insurance Cover**

1. As far as the Supplier is responsible for a product defect he is obligated to exempt the Purchaser from damage claims of third parties upon first request insofar as the cause lies within his jurisdiction and organisation and he himself is liable in the legal relationship with third parties.
2. Within the scope of his liability for claims in terms of Paragraph 1 the Supplier is also obligated in accordance with §§ 683, 670 BGB (German Civil Code) as well as §§ 830, 840, 426 BGB (German Civil Code) to reimburse any expenses which may arise from or in connection with a product recall which the Purchaser may conduct. The Purchaser will notify the Supplier – if possible and reasonable – of the contents and extent of the product recall procedure to be enforced and give him the opportunity to comment on this. Other legal claims remain unaffected.
3. The Supplier undertakes to maintain a Product Liability Insurance (also covering recall costs) with a lump-sum coverage amount of EUR 5 million per bodily injury/property damage/material damage; should the Purchaser be entitled to advanced claims for damages these remain unaffected.

## **XII. Trademark Rights**

1. The Supplier is liable for claims which result from the infringement of trademarks and trademark applications (trademarks) – when using the delivery item as specified in the contract.
2. He indemnifies the Purchaser and his customers from all claims resulting from the use of such trademarks upon first written request. The Supplier's indemnity obligation alludes to all expenses for the Purchaser or his customers which may necessarily accrue from or be in connection with claims from a third party. The limitation period for such claims is 10 years, commencing with the conclusion of the respective contract.
3. The contact partners undertake to inform each other immediately of any risks of injury and alleged infringements which may become known and to give each other the opportunity to counteract corresponding claims amicably.
4. The Supplier shall notify the Purchaser upon his request of the use of published and unpublished own and licensed trademarks and trademark applications for the delivery item.

## **XIII. Quality and Documentation**

1. The Supplier is to observe the engineering rules, the safety regulations and the stipulated technical data for his deliveries. Any modifications of the delivery item, e.g. change in the source of supply for primary material, transfer to another production plant or substantial modifications in the production process require the prior written approval of the Purchaser.

Regardless of this, the Supplier is to control the quality of the delivery items constantly. The contract partners shall inform each other of the possibilities of quality improvement.

2. A Certificate of Analysis is to be attached to the delivery in accordance with the valid Specification Agreement. The Supplier is to keep specific records of when and how the delivery items were checked with regard to the parameters which must be documented, who did this and the results of the quality tests required. The test documents are to be retained for a period of 20 years and presented to the Purchaser if required. Sub-suppliers are to be bound by the Supplier to the same extent within the scope of the legal possibilities.



3. If authorities and the Purchaser's customers request insight into the Purchaser's production process and test documents in order to verify certain requirements the Supplier agrees – in co-ordination with the Purchaser - to grant the same rights in his establishment and to provide all reasonable support.

4. The Supplier furnishes material certificates for the primary materials used as well as a "long-term declaration for goods having preferential origin status" for the delivery item every year by the 31<sup>st</sup> January. The "long-term declaration for goods having preferential origin status" for one of the companies within the Mankiewicz Group of Companies is also applicable for the other companies within the Mankiewicz Group of Companies (see above). The inclusion and/or changing of sub-suppliers require the prior authorization of the Purchaser. The Supplier is already to inform the Purchaser in writing during the offer phase should the goods originate from countries which do not belong to the OECD.

5. In the event that the Supplier intends to no longer manufacture a product and/or change the specification of products which have been delivered to the Purchaser within the last 24 month or in case of planned product shifts of the aforesaid products, the Supplier is obliged to inform the Purchaser thereof in writing in a timely manner of at least 12 months in advance. In case the Supplier culpably infringes such duty, Purchaser may charge Supplier with any and all costs and expenses resulting from any of the aforementioned events. Upon the prior written approval of the Purchaser, the Supplier may alternatively propose the delivery of products similar in technique, quality and pricing taking into account any and all necessary authorizations and/or approvals requested by third parties. Any and all costs and expenses resulting from any of the aforesaid changes, including but not limited to cost for necessary authorizations and/or approvals, shall be borne by the Supplier. The option to discontinue the manufacturing of products shall not apply in case that the Supplier has committed to delivery of products for a certain period of time.

#### **XIV. Quality Management / Testing**

1. The Supplier shall conduct and maintain an effective quality control and provide evidence of this to the Purchaser upon request. For this he will apply a Quality Management System in accordance with DIN EN ISO 9001:2000. The respective relevant version of the norm is applicable.

2. The Purchaser himself is entitled to check this Quality Management System or adherence to the tests agreed upon at any time or to have this checked by authorised third parties as well as the Purchaser's customers during the working hours applicable at the Supplier.

3. Sub-suppliers are to be committed accordingly.

4. A certified environmental management system in accordance with ISO 14001 is expected.

#### **XV. Export Control Regulations**

1. The Supplier undertakes to comply with the currently valid Counterterrorism Regulations as well as Export Control.

2. Furthermore, the Supplier undertakes to notify the Purchaser of products which are subject to approval in accordance with the relevant Export Control Regulations of the USA as well as the EC and national formalities upon delivery at the latest and to provide all necessary details.



#### **XVI. Non-disclosure**

1. The contract partners undertake to treat as a trade secret all non-public administrative and technical details which become known to them via the business relationship.
2. Samples, test results, formulae and similar objects are not to be passed on to or made accessible to unauthorised third parties. Duplication of such objects is only permissible within the scope of the company requirements.
3. Sub-suppliers are to be committed accordingly.
4. The contract partners may only advertise their business connection after prior written approval.

#### **XVII. General Provisions**

1. The current Safety Regulations of the Purchaser are applicable to the Supplier and his sub-suppliers for all operations at the Purchaser's establishment.
2. This contract shall be governed solely by German law as far as nothing else has been agreed upon. Application of the Convention on the International Sale of Goods (CISG) is debarred.
4. Place of jurisdiction is the registered office of the Purchaser.
6. These conditions only apply for traders, body corporate organised under public law and special assets under public law.

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