

# GENERAL TERMS AND CONDITIONS OF PURCHASE FOR PRODUCTION MATERIAL

The General Terms and Conditions of Purchase for Production Material apply to the following companies: Mankiewicz Gebr. & Co. (GmbH & Co. KG), FINALIN GmbH & Co. KG und Grau Auslandsverwaltungsgesellschaft mbH with their offices located at 21107 Hamburg, Georg-Wilhelm-Straße 189 as well as Norix Lackfabrik GmbH & Co. KG with its office located at 27383 Scheeßel, Westerveseder Landstr. 1 and Rüdt Industrielacke GmbH & Co. KG with its office located at 72581 Dettingen an der Erms, Neuhäuser Straße 19 – 21 (hereinafter referred to as “Purchaser”).

## I. General Provisions

Legal relations between Supplier and Purchaser shall solely be governed by these Terms and Conditions and other agreements, if any. These Terms and Conditions shall apply exclusively as the Purchaser does not accept any conflicting or deviating conditions, unless such conditions have expressly been agreed in writing. These Terms and Conditions shall also apply if the Purchaser accepts the delivery without explicitly rejecting conflicting or deviating terms and conditions of the Supplier. These terms and conditions shall also apply to all future transactions between the parties.

## II. Orders; Contract

1. Supply contracts (order and acceptance) and delivery call-offs shall be in writing; the same applies to amendments and supplements to supply contracts and delivery call-offs. Verbal promises made by representatives or other agents of the Supplier must be confirmed in writing by the Supplier.
2. Orders and individual delivery call-offs shall be confirmed or rejected by the Supplier immediately, stating a binding delivery date. If the Supplier receives neither an order confirmation nor a rejection within five working days, the order or the delivery call-off shall be deemed accepted.
3. The Purchaser may demand changes to the supplies and services in terms of quality, quantity, weight or other specifications as long as it is reasonably acceptable for the Supplier. The effects, in particular with regard to additional and reduced costs as well as delivery dates, shall be reasonably agreed upon by the parties.
4. The INCOTERMS in the version valid at the time of the respective order shall apply.
5. The Purchaser shall be entitled to withdraw from the contract if the Supplier has filed an application to open insolvency proceedings against his assets, has made an affidavit in accordance with § 807 German Code of Civil Procedure (ZPO) or similar legal provisions in his country, and/or insolvency proceedings against his assets have been opened or rejected for lack of assets.

## III. Prices and Payment

1. Unless agreed upon otherwise, invoices shall be paid within 14 days less 3% cash discount or 30 days without deduction after

receipt of both the invoice and the goods or performance of the service, whichever date is the latest. Payment shall be made subject to invoice verification.

In case of acceptance of early deliveries, the due date shall be based on the actual delivery date.

2. Unless otherwise agreed, prices include delivery DDP (Incoterms) to the agreed delivery address.
3. Payment shall be made by bank transfer or cheque. Payment does not imply acceptance of conditions and/or prices and does not affect the rights of the Purchaser in the event of defects.
4. In the event of defective supplies or services, the Purchaser shall be entitled to withhold payment proportionately until proper fulfilment.
5. Without the prior written approval of the Purchaser, the Supplier may not assign any claims against the Purchaser or have them collected by third parties. Sec. 354a German Commercial Code (HGB) remains unaffected.
6. Order confirmations, certificates of analysis, invoices and any correspondence shall state the order number of the Purchaser.
7. Invoices can only be processed, if they comply with applicable tax regulation and they state the order number and the right recipient of the invoice. The Supplier shall be responsible for any consequences of his non-compliance, until proven to the contrary. Invoices shall always be sent in electronic form to the e-mail address known to the Supplier.
8. The Purchaser shall be entitled to all legal set-off and retention rights. The Supplier may not offset Purchaser's claims or assert a right of retention unless his claim is undisputed, recognized by the Purchaser or legally established or based on the same contractual relationship.
9. The Supplier may not retain title in the supplies.

## IV. Shipping

1. Supplies must be accompanied by a delivery note in duplicate and a packing slip; if the supplies in question are customs goods (duty unpaid goods), the Supplier shall inform the Purchaser thereof without further request by the Supplier and must hand over all relevant documents for customs clearance. If the Supplier fails to provide the above information in the shipping documents, the Purchaser shall be

entitled to reject the delivery. If the Purchaser accepts the delivery of the Supplies nevertheless, the Purchaser shall not be responsible for any delays in production.

2. Unless otherwise agreed, the Supplier shall arrange for shipment and select the cheapest and most suitable means of transport. The Supplier shall package, label and ship dangerous goods in accordance with the relevant national and international regulations. In the event of non-compliance with these regulations, the Supplier shall reimburse the Purchaser for all costs and damages.

## V. Time for Supplies

1. Agreed times for supplies shall be binding and determine the delivery date or period. In this respect it is decisive whether delivery of the supplies is completed within the normal business hours of the Purchaser.

Unless otherwise agreed, delivery „DDP“ shall be deemed agreed, including packaging.

2. Supplies which do not comply with the specifications of the order may be rejected by the Purchaser and returned to the Supplier at the Supplier's expense and risk. This shall also apply to excess or short deliveries or partial deliveries to which the Supplier is not entitled, unless the Purchaser can reasonably be expected to accept them on a case-to-case-basis.

3. The Supplier may affect an early delivery only with the consent of the Purchaser. In the event of an early delivery without consent, the Purchaser reserves the right to return the goods to the Supplier at the Supplier's expense and risk. Only the actual delivery date determines whether delivery has been affected on time.

4. If the Supplier anticipates difficulties with regard to production, material supply, compliance with the delivery date or similar circumstances which could prevent him from delivering on time or in the agreed quality, the Supplier must notify the Purchaser of the aforesaid difficulties immediately in writing and coordinate and agree on any deviations with the Supplier.

5. The unconditional acceptance of delayed supplies or services shall not constitute a waiver of the Purchaser's claims for damages due to the delayed supplies or services; this shall apply until full payment of the remuneration due for the delivery and service concerned.

## VI. Delay

1. The Supplier is fully responsible for the procurement of the production material required for the supplies (full assumption of the procurement risk).

2. In the event delivery is delayed, the Purchaser shall be entitled to all statutory claims. In particular, the Purchaser shall be entitled to claim damages in lieu of performance or rescind from the contract upon expiry of reasonable time set to the Supplier to effect the supplies. In addition, the Purchaser shall in all cases be entitled to claim damages for loss of profit and losses from business disruption as well as damages resulting from the delay or non-performance of the Supplier.

3. In the event of a delayed delivery, the Purchaser shall be entitled to claim liquidated damages for delay in the amount of 0.2% of the net order value per working day exceeding the delivery date, but in no case more than 10% of the net order value. This shall not affect any further statutory claims the Purchaser may have. The Supplier shall have the right to prove to the Purchaser that the delay has caused substantially less damage or no damage at all.

4. Supplies are also delayed if delivered without or with incomplete documentation.

5. Partial deliveries are not allowed, unless with Purchaser's prior written approval.

## VII. Force majeure

Force majeure, natural disasters, labour disputes, unrest, government regulations (including embargo and licensing obligations) and other unforeseeable, unavoidable and serious events, the cause of which is beyond the control of the parties, shall release the parties from their performance obligations for the duration of the interruption and to the extent of its effect. The parties are obliged to inform the other party without delay. Upon request, the party concerned shall submit suitable documents as evidence of the force majeure event and its duration.

## VIII. Quality of the Goods

1. The Supplier shall provide the goods free of material defects and defects of title. The Supplier warrants that the goods are manufactured using the most suitable materials, comply with the agreed specifications and properties, the applicable standards and the latest state of the art and are in compliance with the generally recognized technical and occupational health and safety regulations of authorities and professional associations and other relevant legal provisions.

2. If the purchased goods are machines, equipment or production plants, they must comply with the special safety regulations for machines, equipment and production plants applicable at the time of performance of the contract and bear a CE marking.

## IX. Inspection; Notification of Defects

The Purchaser shall notify the Supplier immediately in writing of any defects in the supplies as soon as they are discovered in the ordinary course of business. In this respect, the Supplier waives any objection of late notification. The Supplier undertakes to adapt its outgoing goods inspection accordingly.

## X. Warranty

1. The Purchaser shall have all statutory claims based on defect without restrictions.

2. In the event of delivery of defective goods and unless otherwise agreed, the Purchaser may demand the following provided the conditions listed below and the relevant statutory requirements are met:

- a) Prior to the start of production, the Purchaser shall give the Supplier the opportunity to remedy the defect or make a replacement delivery, unless this is unreasonable for the Purchaser. If the Supplier is unable to do so or does not comply immediately, the Purchaser may rescind the contract without setting a further deadline and return the goods at the Supplier's expense and risk. Under the same conditions, the Purchaser shall be entitled to remedy the defect itself or have it remedied by a third party at the Supplier's expense and risk. If the replacement goods are defective again and after giving a written notice, the Purchaser shall be entitled to rescind the contract even for the unfulfilled scope of the supplies.
- b) If the defect is discovered after start of production, the Purchaser may additionally:
  - demand subsequent performance and reimbursement of the transport costs required for the purpose of subsequent perfor-

mance as well as dismantling and installation costs (labour costs; material costs), even if these costs are incurred by its customer (Sec. 439 paragraphs 1, 3 and 4 of the German Civil Code (BGB), or

- reduce the purchase price.

- c) Irrespective of when the defect is discovered, the Supplier shall be obliged to provide the Purchaser with a preliminary statement on the cause of the defect within 48 hours of receipt of the notice of defect. In order to ensure that future deliveries are free from defects, short-term corrective measures shall be implemented as soon as possible, at the latest within 7 calendar days. Permanent corrective action shall be taken no later than 21 calendar days after receipt of the notice of defect and shall be documented in writing in an 8D report.
- d) The right to claim damages, in particular the right to claim damages in lieu of performance, is expressly reserved. In any case, the Supplier shall be liable for the supplies and services procured with sub-suppliers or sub-contractors in the same way as for its own supplies or services, even in case of no fault at its part.

3. These warranty claims shall expire 3 years after delivery to the Purchaser. If the Supplier has fraudulently concealed the defect, the claims shall expire 10 years after delivery.

4. In case of defective goods, Purchaser's claims arising from the German Product Liability Act (ProdHaftG), tort and agency of necessity ("Geschäftsführung ohne Auftrag") shall remain unaffected by this section.

## **XI. Product Liability, Indemnity, Liability Insurance Coverage**

1. To the extent the Supplier is responsible for product damages, he shall be obliged to indemnify the Purchaser upon first request against claims for damages by third parties to the extent that the cause lies within his sphere of control and organization and/or he himself is liable externally.
2. Within the scope of its liability in accordance with para. 1, the Supplier is also obliged to reimburse any expenses pursuant to Sec. 683, 670 BGB and Sec. 830, 840, 426 BGB arising from or in connection with a recall campaign carried out by the Purchaser. The Purchaser shall inform the Supplier - as far as possible and reasonable - of the content and scope of the recall measures to be carried out and give him the opportunity to make a statement. Other statutory rights shall remain unaffected.
3. The Supplier undertakes to maintain product liability insurance (including recall cost coverage) with a lump sum coverage of EUR 5 million per case of personal injury, financial loss and/or property damage; if the Purchaser is entitled to additional higher damages, these shall remain unaffected.

## **XII. Intellectual Property Rights**

1. The Supplier shall be liable for claims arising from the infringement of intellectual property rights and/or applications for intellectual property rights (intellectual property rights) if the supplies are used in accordance with the contract.
2. The Supplier shall indemnify the Purchaser and its customers against all claims arising from the infringement of such intellectual property rights upon first written request. The Supplier's obligation to indemnify shall extend to all expenses necessarily incurred by the

Purchaser or its customers as a result of or in connection with claims asserted by a third party. These claims shall be time-barred 10 years after the conclusion of the contract of the respective supplies.

3. The parties undertake to inform each other immediately of any infringement risks and alleged cases of infringement that become known to them and to give each other the opportunity to defend against such claims.
4. At the Purchaser's request, the Supplier shall notify the Purchaser of the use of its own published and unpublished as well as licensed intellectual property rights and applications in the supplies.

## **XIII. Quality and Documentation**

1. The Supplier must comply with the accepted rules of technology, the safety regulations and the agreed technical data.

Nonetheless the Supplier shall constantly check the quality of its goods. The parties shall inform each other about the possibilities of quality improvement.

2. A certificate of analysis must be enclosed with the delivery in accordance with the agreed applicable specification. The Supplier shall record in separate documents when, in what manner and by whom the delivery items have been tested with regard to the characteristics, which require documentation and to what results the required quality tests have produced. The test documents shall be kept for twenty years and presented to the Purchaser when required. The Supplier shall commit sub-suppliers to the same degree to the extent permitted by law.

3. Insofar as state authorities and/or customers of the Purchaser have the right to inspect the production process and test documents of the Purchaser in order to examine certain requirements, the Supplier shall grant them the same rights in its own production plant, in coordination with the Purchaser, and shall provide all reasonable support in this respect.

4. The Supplier shall provide certificates of the materials used and proof of the origin of the purchased goods by 31 January of each year in the form of a long-term supplier's declaration. The long-term supplier's declaration for one of the companies in the Mankiewicz group also applies to the other companies of the Mankiewicz group (see above). The inclusion of subcontractors and/or the change of subcontractors require the prior approval of the Purchaser. If the goods are sourced non-OECD countries, the Supplier shall inform the Purchaser in writing in its quotation.

5. If the Supplier intends to discontinue production of a product which the Purchaser has purchased within the last 24 months; to make changes to the specification of the product; to change the procurement source for raw material; to change the production site; to relocate the product or to make major changes in the manufacturing process, the Supplier shall be obliged to inform the Purchaser in writing at least 12-18 months in advance. Should the Supplier fail to give this timely notification, the Purchaser reserves the right to pass on the resulting expenses and costs to the Supplier, unless the Supplier is not responsible for such failure. The Purchaser may accept the supply of goods comparable in technology, quality and price, taking into account a possible qualification for series production. The Supplier shall bear the costs of any product change and any associated requalification. The Supplier may not discontinue delivery of a product if the Supplier has made a delivery commitment for certain period of time.

## **XIV. Management Systems**

1. The Supplier shall carry out and maintain effective quality assurance and provide evidence to the Purchaser upon request. The Supplier shall establish a quality management system in accordance with DIN EN ISO 9001 as amended from time to time.
2. At any time, the Purchaser shall be entitled to inspect this quality management system and Supplier's compliance with the agreed quality tests either by himself or by commissioned third parties or by customers of the Purchaser during Supplier's normal working hours.
3. The Supplier shall bind its sub-suppliers accordingly.
4. The Purchaser expects the Supplier to establish an environmental management system in accordance with ISO 14001.
5. The Supplier shall establish and maintain an information management system in accordance with ISO 27001 or a comparable system.

## **XV. Export Control**

1. The Supplier undertakes to observe and comply with the applicable provisions on counter-terrorism as well as export control and international trade embargoes.
2. The Supplier also undertakes to inform the Purchaser of any licensing requirements for goods (including technology contained therein) under the relevant German, EU or US and national export control regulations of the country of origin no later than with the first delivery. In order to fulfill the information obligation, the Supplier shall inform the Purchaser of the list number of the relevant export control lists of items (e.g. Common Military List of the European Union, Part I of the Export List of the Foreign Trade and Payments Regulation, Annex I of Regulation (EC) No. 428/2009 (Dual-Use Regulation as amended from time to time), U.S. Commerce Control List [EAR], Export Control Classification Number [ECCN], U.S., Munitions List [USML], etc.) and, if applicable, the value of the corresponding U.S. share in the product.
3. The Supplier shall immediately inform the Purchaser of any changes in connection with export control relevant data classifications of the delivered goods. If there are no changes, the Supplier shall confirm the continued validity of the information communicated with respect to a product no later than five years after the first delivery.

## **XVI. Confidentiality**

1. The parties undertake to keep confidential all commercial and technical information not in the public domain and which become known to them within the business relationship.
2. Samples, test results, recipes and similar objects must not be passed to unauthorized third parties or otherwise made accessible. Reproduction of such objects is only permitted within the framework of operational requirements. For this paragraph 2 the term third party does not include affiliated companies of the Purchaser within the meaning of Sec. 15 et seq. of the German Stock Corporation Act (AktG).
3. Sub-suppliers shall be bound accordingly.
4. The parties shall not use their business relationship as advertisement without the prior written approval of the other party.

## **XVII. Legal Provisions, Environment and Social Standards**

The Supplier will fully comply with applicable laws and will observe the regulations of the United Nations Global Compact in the areas

of human rights, labor guidelines, the environment and measures against corruption. Furthermore, the Supplier expressly undertakes to set up a system for recording and minimizing greenhouse gas emissions, to use natural resources sustainably, to burden the environment as little as possible and to dispose of waste in an environmentally friendly manner. The Supplier shall provide corresponding evidence upon request.

## **XVIII. Miscellaneous**

1. In case of discrepancy the contract documents shall take the following priority:
  - a) Individual agreements
  - b) Logistics Guidelines for Raw Material & Container Suppliers
  - c) General Terms and Conditions of Purchase for Production Material
  - d) Code of Conduct for Suppliers Europe
  - e) Statutory provisions.
2. For all work carried out at the Purchaser's premises, the Supplier and its subcontractors shall observe the safety guidelines of the Purchaser as amended from time to time.
3. The contract shall be governed by German law s. to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG), unless otherwise agreed.
4. The place of performance shall be at the registered office of the Purchaser.
5. Place of jurisdiction shall be at the registered office of the Purchaser.
6. These conditions apply only to merchants, legal entities under public law and special assets under public law.
7. Should any provision of these Terms and Conditions of Purchase or any agreement be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a provision which comes closest to the invalid provision.

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