

# General Purchasing Terms Reichle & De-Massari AG

## 1. Exclusive Application

- 1.1 These General Purchasing Terms shall apply to any and all our purchases, insofar as nothing else is explicitly agreed in writing.
- 1.2 **Any purchasing terms of supplier shall apply to our purchases only if they have been explicitly agreed by us in writing.**

## 2. Request for Tender - Offers

Offers submitted on request are free of cost for us. Supplier shall be bound by an offer until such offer is explicitly revoked.

## 3. Form of Order

- 3.1 Our orders (including any amendments, sketches, drawings, comments, technical specifications etc.) shall be binding only if they are in writing and after we have them duly signed.
- 3.2 With our order, respective purchase contract shall be deemed to be validly binding.

## 4. Subcontracting, Liability for Subcontractors

- 4.1 With regard to goods normally manufactured in Supplier's own works, he may subcontract ordered units or components to third parties only after having obtained in due time our respective **written** approval.
- 4.2 Supplier shall be liable for subcontractors in the same way he is liable for himself, even if we have approved such subcontractors. Supplier may not invoke such approval or the use of subcontractors to exculpate himself.

## 5. Prices

- 5.1 Provided we have not otherwise agreed, our prices are deemed to be DELIVERED DUTY PAID NAMED PLACE OF DESTINATION (DDP, Incoterms 2000). Destination is Reichle & De-Massari AG, CH-8622 Wetzikon.
- 5.2 In case of orders without indication of fixed prices the actual expenditures shall be invoiced.

## 6. Order of Materials

Material which we supply for the fulfilment of an order shall remain our property even after treatment and processing respectively. Such material shall be marked and stored separately until treatment or processing. On request, waste material shall be returned to us.

## 7. Quantities to be Supplied, Due Dates, Default

- 7.1 Unless we are immediately advised to the contrary, we shall consider the date stated in the order to be binding on the part of the supplier.
- 7.2 Advance deliveries and partial deliveries shall require our explicit written approval. If we keep advance deliveries or partial deliveries, the due dates for payment shall be calculated as of the proper delivery date.
- 7.3 The date of delivery shall be deemed kept,

- a) for delivery from works, if notice of readiness for shipment of the agreed supply has been given and received before its expiration of the date of delivery;
- b) for all other cases, when the agreed supply has arrived at its destination before its expiration.

- 7.4 If Supplier has reason to believe that it will not be possible to ship the delivery, in part or whole, on time, he shall notify us immediately, indicating the reasons and expected duration of such delay.
- 7.5 Short deliveries shall constitute default in delivery.
- 7.6 In the case of exceeding the agreed date of delivery we reserve the right without further notice to insist on fulfilment of the order or to reject delivery. In both cases we are entitled to full compensation for direct or indirect damages (such as the cost for substitution, claims for damages by our costumers) even if supplier is not at fault.
- 7.7 Supplier can only plead not having received necessary documents, complementing objects or individual parts which were to be supplied by us, if he requested these in due time or if - where dates were agreed - he immediately sent a reminder. Supplier shall examine such documents, objects and parts and shall notify any defects thereof in accordance with the applicable statutory law.

## 8. Packaging, Documents

- 8.1 In specific cases we may provide packaging material.
- 8.2 Any packaging has to be done by supplier in such a way that the goods are suitably protected against damages and corrosion during transport and subsequent storage. Supplier shall be liable for any damages due to inappropriate packaging.
- 8.3 Supplier shall be liable for all cost and inconveniences arising from disregarding our instructions with respect to transport, passing through customs etc.
- 8.4 Where particular care has to be taken when unpacking, supplier has to make us aware of this in due time.
- 8.5 We reserve the right to return packaging material against credit for the amount invoiced. The freight for return shipment shall be at our expense.
- 8.6 Each shipment shall be provided with a detailed delivery note (dispatch note) including our references. When using our packaging, shipping cards shall be attached thereto.
- 8.7 All correspondence is to show our order No. as well as the date of the order and number of pieces, and shipping documents also need to include gross and net weight.

**9. Delivery, Acceptance Inspection, Notice of Defects, Rights in the Event of Defects**

- 9.1 Supplier releases us from our statutory obligation to inspect the goods upon receipt.
- 9.2 Any notice of a defect submitted within the warranty period shall be deemed to have been validly effected.
- 9.3 Supplier shall warrant that the goods supplied have no defects detrimental to their value or suitability for their intended use, that they comply with the agreed properties and technical specification as well as the pertinent laws, regulations and other rules. Even if not explicitly stated in the order or the technical specification, the goods in their composition and function shall be in accordance with state of the art technology and comply with the regulations of environmental protection likely to be applicable at the time of delivery, even though such regulations may not be legal standard yet. Furthermore, supplier shall warrant in respect of proper packaging and compliance with any regulations regarding the transport of the goods.
- 9.4 In case of warranty, supplier agrees to either remove or have removed the defect on site at his expense, or to supply a fault-free replacement at our discretion. Except for absolutely minor defects we are in any case entitled to terminate respective purchase agreement instead. In each case of warranty, supplier shall be bound to compensate us for any direct or indirect, including any consequential, damages we might have incurred due to a deficient supply.
- 9.5 If supplier fails to remove the defect, or in case of urgency, we shall be entitled to remove the defect or have it removed at the expense and risk of supplier.
- 9.6 With regard to the products or services supplied by supplier, he shall support us at his own expense in the defence of third-party claims. In case we become liable to such third parties in connection with goods or services supplied by supplier, in particular for defects in respect of development, design and manufacture (regardless of the legal title), supplier shall upon first demand hold us harmless (cf. 9 par. 9), even if supplier is not at fault.
- 9.7 All rights in connection with defects, including the right to compensation of damages, are due to us even if supplier is not at fault. In case of defects we shall be entitled to retain a reasonable part of the purchasing price to secure our claims. We shall furthermore be entitled to offset our claims with any counterclaim.
- 9.8 If defects are noticed in the process of handling or utilization, respective defective materials shall be replaced free of cost by supplier, regardless of the time which may have expired since delivery.
- 9.9 For any deliveries not covered by 9. par. 8 the warranty period (both the statutes of limitation regarding claims in the event of defects as well as the time period during which a defect can be

notified) shall be five years from the date of delivery. The warranty period shall also apply to every kind of direct or indirect, including any consequential, damages. If a third party raises a claim against us after expiry of this period, we shall be entitled to have recourse to supplier within a year after our effecting payment and performance respectively to such third party.

- 9.10 For supplies of spare parts or repair the warranty shall be issued to the same extent as for the respective item originally supplied, with the warranty period for repaired or replaced parts beginning with the new delivery.
- 9.11 These provisions are subject to any further claims we are entitled to by law.

**10. Specially Designed Goods**

In respect of specifically designed goods, working drawings should be submitted to us by supplier for approval prior to commencement of production. The information on the drawings shall be binding, sample parts shall only serve the purpose of illustration. Our approval does not release supplier from his product liability, in particular with regard to development, design and manufacture.

**11. Specific Dangers**

In an appropriate place supplier shall refer to specific dangers which are related to the objects supplied or which may jeopardize the objects supplied.

Moreover supplier shall inform us in writing of any operating conditions which are to be observed.

Even if supplier fulfils his obligation to give a warning and inform us in this connection in accordance with 11 paras. 1 and 2, supplier's warranty and his related liability shall not be affected thereby.

**12. Infringement on property rights**

Supplier shall be responsible to ensure that no patent or other property rights of third parties are being infringed by the supply and use of the items ordered. He is compelled in each case to allow us the undisturbed use of the item supplied. Exception is made for our own design.

**13. Drawings, test certificates and operating instructions**

Drawings, tools, models etc. made available by us to supplier shall remain our property and shall be returned to us on request. They have to be adequately stored and insured against any damages.

**14. Secrecy and Rights concerning Intellectual Property**

- 14.1 Any data, drawings, materials, tools etc. which we make available to supplier, may only be used for the manufacturing of our orders and according to or instructions, they may neither be used for any other purpose, be copied nor may third parties be given any access hereto. All thereto related intellectual property rights are due to us. On request, all documents (including final working drawings for specifically designed goods, maintenance and operating instructions and spare parts lists), including any copies or duplicates, shall immediately be returned to us. If no delivery is made, supplier shall without request return said documentation.
- 14.2 Supplier shall treat the order and the work or deliveries related thereto as confidential.
- 14.3 Supplier shall ensure that all obligations contained in this clause are also met by any of its subcontractors.

#### 15. **Terms of Payment**

- 15.1 Subject to any other agreement, we shall pay within 30 days after receipt of the invoice and agreed documents, if any, with a discount of 2 %, or within 60 days the net amount.
- 15.2 We may to offset counterclaims on our part as well as on behalf of other companies. Supplier may cede claims against us to third parties only with our consent. Such consent shall not be denied without good reason.
- 15.3 In case of prepayment, supplier shall indicate an acceptable bank or insurance guarantee in the form of a joint guaranty.

#### 16. **Place of Performance, Applicable Law and Venue**

- 16.1 Place of performance for the delivery shall be the destination. Place of performance for payment shall be the registered office of our company.
- 16.2 The legal relationship between supplier and us shall be subject to Swiss law. The conflict of laws provision and the UN sales law shall be excluded.
- 16.3 **Wetzikon/Switzerland** shall be the venue. However, we shall also be entitled to submit any of our claims against supplier at his domicile or to any other competent court.

#### 17. **Original Language**

In the event of deviations between the German version of these purchasing terms and any version in another language, the German authentic text prevails.

Wetzikon, December 15, 2003