

# Marquard & Bahls AG General Terms and Conditions of Purchase and Ordering

For use in all contractual relationships between entrepreneurs, legal entities under public law and special funds under public law (hereinafter "Supplier" or "Contractor") and Marquard & Bahls AG (hereinafter "Client" or "Customer").

## 1. General scope

- 1.1. The legal relationship between Supplier and Customer shall be governed exclusively by the following General Terms and Conditions of Purchase and Ordering ("GTCP").
- 1.2. Unconditional acceptance of goods or services, including the necessary documentation (hereinafter uniformly referred to as "goods" or "delivery item") or the unconditional payment by the Customer, shall in no case constitute acceptance of the Supplier's General Terms and Conditions.
- 1.3. These GTCP shall also apply to all future transactions with the Supplier. Any deviating terms and conditions of the Supplier shall not become part of the contract, especially not upon acceptance of any offer or delivery by Customer or if Customer does not expressly object to their application. Unless otherwise agreed, the most current versions of the GTCP valid at the time of contract conclusion shall become contractual element.

## 2. Subject of the order

- 2.1. Delivery contracts (orders and acceptance) and delivery call-offs must be in writing. Orders and delivery call-offs can also be made in textual form (fax, e-mail).
- 2.2. Oral agreements after conclusion of the contract, in particular subsequent amendments and supplements to these GTCP and collateral agreement, require the written confirmation of the Customer.
- 2.3. Quotations are binding and are not to be remunerated unless something else was agreed in writing.
- 2.4. The Customer may request reasonable changes to the construction and design of the goods. The effects, in particular with regard to additional or reduced costs and the delivery dates, shall be regulated appropriately and by mutual agreement.
- 2.5. If the Supplier does not accept the order within two weeks of the order date ("order confirmation"), the Customer shall be entitled to revoke the order without the Supplier being entitled to any claims for losses and/or damages. Delivery call-offs shall become binding if the Supplier does not reject in writing within two weeks of receipt at the latest.
- 2.6. All communication and (accompanying) documents of the Supplier relating to the goods shall, upon commencement of the order confirmation, include the unique reference features provided by the Customer, in particular the purchase order ID. This also includes documents from accounting and credit management.

## 3. Prices, payment

- 3.1. Agreed prices are fixed, excluding statutory VAT which must be separately identified in each invoice. Additional claims are excluded. All prices shall be considered duty paid at the location of the Customer, including packaging.
- 3.2. Unless otherwise agreed, payment will be due within 15 calendar days less 3% discount or within 60 calendar days net without deduction as of the date the payment becomes due.
- 3.3. The payment period shall commence once the goods have been delivered/rendered in full and the properly issued invoice has been received by the Customer. Insofar as the Contractor has to provide material tests, test reports, quality documents or other documents, the goods are not considered complete until receipt of these documents by the client. Discount deduction shall also be permissible if the client offsets or withholds payments in an appropriate amount due to defects. In the latter case, the payment period shall commence after complete elimination of the defects. In the case of agreed instalment payments, the payment period shall begin on the date of receipt of an auditable instalment payment invoice. Invoices for down payments or part payments shall be indicated as such and must be numbered consecutively. Invoices without indication are deemed to be closing invoices.
- 3.4. Any payments made or certificates of goods acceptance shall not constitute acknowledgement of proper delivery. The payment is subject to invoice auditing.
- 3.5. In the case of acceptance of early deliveries, the due date shall be based on the agreed payment date, in case of doubt on the agreed delivery date at the earliest.
- 3.6. In the case of contracts which oblige the Supplier to provide goods on an ongoing or periodic basis over a longer period of time (e.g., maintenance contracts), invoicing and payment shall be made in arrears pro rata temporis in periods to be agreed (monthly or quarterly); in all other respects, these GTCP shall apply, including sections 3.1 to 3.5.

## 4. Delivery and acceptance, delivery periods, delay in delivery, contractual penalty

- 4.1. Agreed delivery dates are binding. Decisive for compliance with the delivery date is receipt of the goods at the place of use / place of performance specified or agreed by the Customer and successful incoming goods inspection and, if agreed, acceptance. In the case of contracts for work and services, the agreed deadlines for the production of the work in a condition ready for acceptance shall apply. The place of performance shall be the location of the Customer stated in the order, unless another location is expressly stated. If it has not been agreed that delivery shall

be free at the Customer's location and duty paid, the Supplier shall make the goods available in a timely manner, taking into account the usual time required for loading and shipping. In all other respects, the Supplier shall consult with the Customer's forwarding agent.

- 4.2. Partial deliveries and early deliveries are not permitted unless the Customer has expressly agreed to them in writing.
- 4.3. Unconditional acceptance of the delayed delivery of goods may not be construed as a waiver of the Customer's claims for damage due to the delayed delivery; this shall apply until full payment of the remuneration owed by the Customer for the delivery or service concerned.
- 4.4. If agreed delivery dates are not met, the statutory provisions under the applicable law shall apply. If the Supplier foresees difficulties which could prevent them from delivering on time or delivery of the agreed quality or delivery in quality capable of being accepted, the Supplier must inform the Customer immediately, stating the precise reasons. In addition, the Customer shall be entitled to demand a contractual penalty of 0.5% for each week or part thereof in which the delivery deadline is exceeded, up to a maximum of 10% of the total order value, unless a higher contractual penalty for this case has been agreed between the parties. Any contractual penalty shall be offset against claims for damages/losses due to exceeding the delivery deadline. Any further rights of the Customer due to delayed deliveries remain thereby unaffected.
- 4.5. If the Supplier has assumed responsibility for installation, assembly or disassembly, the Supplier shall bear all necessary ancillary costs unless otherwise agreed.
- 4.6. The Supplier bears the risk up until acceptance by the Customer or its representative at the place to which the goods are to be delivered in accordance with the contract.
- 4.7. The Supplier guarantees complete outgoing goods inspection for the delivery with zero-defect quality. Delivery shall be subject to an inspection to ensure that the goods are free from any defects, in particular in regard to correctness, completeness and fitness for use and purpose, as well as subject to acceptance, if such acceptance has been agreed. The Customer shall be entitled to inspect the goods to the extent and as soon as this is feasible in the ordinary course of business. Any defects discovered shall be reported by the Customer without undue delay. In this respect, the Supplier will waive the claim of late notification of defects.
- 4.8. For quantities, weights and dimensions, the values determined by the Customer during the incoming goods inspection shall be decisive, subject to proof to the contrary.
- 4.9. The Customer shall have the right to use software belonging to the scope of delivery, including its documentation, with the agreed performance features, in accordance with the contractual use of the product, and the right to resell the software together with the product, without any restriction on time or location and transferability worldwide. The Customer may also make a backup copy without express agreement. In other respects, the following shall apply: Insofar as the Contractor's industrial property rights exist with respect to the goods, including individual, optional uses of the performance object, or the Contractor acquires such industrial property rights after delivery, the Contractor shall grant to the Client, for use of the results delivered by the Contractor, a right of use of these industrial property rights that is valid worldwide, unlimited in terms of time and content, non-exclusive, irrevocable, royalty free, without content-related restrictions and not capable of being sublicensed, but such right of use shall be transferable to later purchasers of the results or products resulting therefrom.
- 4.10. If required, the Supplier shall set up a consignment warehouse free of charge at the request of the Customer.

## 5. Confidentiality & Data Protection

- 5.1. All information that is disclosed by the Client in connection with purposes of the contract through the execution of a purchase order or in discussions held before the conclusion of such a contract (including features that can be found in objects, documents or software provided and other knowledge or experience) shall be kept confidential as well as from third parties as long as and insofar as such information is not demonstrably known to the public. This confidential information shall remain the exclusive property of the Customer and shall only be made available within the Supplier's company to persons for whom knowledge of such information is necessary for the purpose of delivery to the Customer and who are likewise obliged to maintain confidentiality. Such information may not be reproduced or used commercially without the prior written consent of the Customer, except for deliveries to the Customer. At the Customer's request, all information originating from the Customer (including copies and records) and items provided on loan shall be returned to the Customer immediately and completely, or they are to be destroyed. This is to be done in conjunction with a corresponding written declaration. Insofar as the parties have concluded a non-disclosure agreement, this shall take precedence over the provisions of this clause.

The Supplier undertakes to name the client as a reference and/or to advertise services or products which they have developed for the client within the framework of the contractual relationship with the Client only with the express prior consent of the Client.

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5.2. If, for the purposes of the contract, the Contractor should be given access to personal data, it must comply with all valid applicable data protection provisions, in particular the provisions of the General Data Protection Regulation ("GDPR"). The Contractor shall also ensure that such data is protected with state-of-the-art systems. Personal data may only be accessed and processed on behalf of the Client if the corresponding required data procession agreement has been signed. The Contractor shall ensure that the processing of personal data that is attributable to the Client will only take place within the territory of a Member State of the European Union, or in another signatory state to the Agreement on the European Economic Area. The Contractor shall oblige its employees to comply with the provisions for protecting personal data (Art. 4(1) GDPR), in particular with regard to maintaining the confidentiality of such data pursuant to Art. 28(3) lit. b GDPR, as well as to process such data only after being instructed to do so (Art. 29 and Art. 32(4) GDPR). The Contractor shall ensure that these obligations remain in effect even after termination of the employment relationship with the respective employees.

## 6. Inventions, industrial property rights

6.1. The Supplier hereby grants to all Customer affiliated companies a right to use patentable inventions that is free, transferable and unrestricted in regard to time and location within the scope of the legal relationship between the Supplier and Customer, in particular for development services. The Supplier shall organizationally ensure that they are able to meet their obligation for use and transfer.

6.2. The Customer reserves all rights to such information (including copyrights and the right to register industrial property rights). Insofar as the Customer has received such information from third parties, this reservation shall also apply in favour of these third parties.

6.3. The Supplier is aware that the goods will be used internationally. The Supplier assures that they have already notified the Customer of the use of published and unpublished, owned and licenced industrial property rights and applications for industrial property rights to the performance object prior to placing the order.

6.4. Each Party shall inform the other Party immediately of any risk of violation and alleged cases of infringement that become known and shall give each other the opportunity to counteract such claims by mutual agreement.

6.5. The Supplier guarantees that the goods and their customary use do not infringe any intellectual property rights of third parties, in particular no copyrights, patent rights, utility model rights, trademark rights, design rights or licence rights. If a claim is asserted against the Client by a third party due to such an infringement, the Contractor is obliged to indemnify the Client against any claims in this respect upon first written request. This claim shall not exist if the Contractor proves that the Contractor had no knowledge of the infringement of rights mentioned in the previous sentence nor could have been aware of it at the time of performance by applying commercial principles, including comprehensive and current examination carried out beforehand in accordance with third-party rights with regard to the performance object and its respective use. The Contractor's obligation to indemnify shall apply to all direct and indirect damages, losses, costs and expenses necessarily incurred by the Customer as a result of or in conjunction with claims asserted by a third party, including the necessary costs of asserting legal claims.

6.6. The Contractor shall contractually ensure in relation to its employees, freelancers or third parties, to the extent that they make use of such in the provision of services, that the rights under clause 6.5 are due to the Customer and are not affected by termination of the contracts between the Contractor and third parties. Otherwise, the Contractor shall reimburse the Customer for all resulting damages/losses and expenses, including the costs of reasonable legal defence, and indemnify the Customer in this respect against claims by third parties, unless the Contractor is not legally responsible for them.

## 7. Packaging, delivery note, invoice, origin of goods

7.1. The goods are to be packed in a customary and appropriate manner for transportation. Packaging must be designed in such a way that it is easy to separate and recycle, that mixed containers are avoided and that materials made from naturally renewable raw materials are used. The corresponding product and material information must be provided.

7.2. A delivery note and a separate invoice must be issued to the Customer for each consignment. These documents will contain the Supplier number, purchase order number, date and number of the purchase order or delivery call-off and conclusion of purchase, quantity and material number, number and date of the delivery note, itemised gross and net weights, additional data of the Customer (e.g., unloading point) plus the agreed price / quantity units. Each delivery must be accompanied by a packing slip with an exact list of contents and specification of the order number.

7.3. If the invoice relates to different orders, the information given in section 7.2 must be listed separately for each order. If these details are missing, the invoices are not due and payable. The invoice may only refer to the respective delivery note.

7.4. A Supplier based in the EU must document the country of origin of the goods for the Customer with a long-term Supplier's declaration; a Sup-

plier outside of the EU must provide documentation using proof of preference or a certificate of origin. Any change in the country of origin of the goods must be reported to the Customer immediately and without prompting. The Supplier shall indemnify the Customer against all costs incurred as a result of incorrect, incomplete or erroneous statements or documents of origin.

## 8. Force majeure

Force majeure means any circumstance not within the party's reasonable control including but not limited to legally permissible labour disputes, operational disruptions through no fault, unrest, imposition of sanctions and embargos; measures by public authorities and other unavoidable events shall entitle the Customer – without prejudice to its other rights – to withdraw from the contract in whole or in part insofar as such events result in a substantial reduction, change or postponement of their requirements and are not of insignificant duration.

## 9. Warranty

9.1. The statutory provisions on material defects and defects of title shall apply, unless otherwise regulated below.

9.2. The Contractor guarantees that the performance object is free from defects, can demonstrate the guaranteed data and characteristics, complies with the agreed specifications, drawings, samples and/or descriptions, corresponds to the relevant market's legal provisions and standards expressly named in the specifications, does not exhibit any design defects, is of the quality specified in the contract, is suitable for the purpose or use intended by the Customer and has been manufactured in accordance with the state of the art recognised at the time of manufacture. The Client's release notes on drawings and specifications do not release the Contractor from its warranty obligations.

9.3. If a defect becomes apparent within six months of transfer of risk, it shall be assumed that it was already present at the time of transfer of risk unless this is incompatible with the nature of the item or defect.

9.4. The Customer may choose the type of subsequent performance.

9.5. If the Supplier does not begin to remedy the defect immediately upon request, the Customer may, in urgent cases, in particular to avert acute risks or avoid major damage, remedy the defect themselves at the Supplier's expense or have it remedied by a third party.

9.6. The warranty period ends 24 months after final commissioning at the end Customer, but 36 months after delivery to the Customer at the latest.

9.7. In the event of defects of title, the Supplier shall also indemnify the Customer and their Customers against claims by third parties. A limitation period of ten years applies to defects of title.

9.8. For parts of the delivery repaired within the limitation period, the limitation period shall be interrupted until the Supplier has completely fulfilled the claims for subsequent performance.

9.9. The Supplier shall bear the Customer's costs resulting from defective delivery of the contractual object, in particular transport, travel, labour and material costs or costs for an incoming goods inspection exceeding the usual scope; the Supplier shall also bear the costs which they have to bear towards their Customers, in particular in the event of the Supplier's breach of obligations for which the Supplier is responsible in the form of non-delivery. This shall apply analogously in the event of failure of an agreed acceptance for reasons for which the Customer is not responsible.

9.10. If the Customer takes back products or services manufactured and/or sold by them due to defects of the contractual item delivered by the Supplier, or if the purchase price has been reduced or otherwise claimed against the Customer for this reason, the Customer reserves the right to take recourse against the Supplier; this does not require the setting of a time limit otherwise required for warranty rights.

9.11. If Contractor shall not remedy the Defect within a reasonable grace period set by the Customer, the Customer may remedy the Defect itself or have this carried out by third parties at Contractor's costs, notwithstanding its warranty obligation. Furthermore, the Customer shall be entitled to terminate the contractual relationship for good cause if the agreed periods are exceeded.

## 10. Liability

10.1. The Contractor shall be obliged to compensate the Client for any damage/loss incurred by the Client directly or indirectly as a result of culpable (slight, moderate and gross negligence and intent) defective performance or performance due to culpable (slight, moderate and gross negligence and intent) breach of other main contractual and ancillary obligations or for any other legal grounds which may be attributed to the Contractor.

10.2. If a claim is made against the Customer on the basis of product liability, the Supplier shall indemnify and hold harmless the Customer if and to the extent that the damage was caused by a defect in the goods delivered by the Supplier. In the case of fault-based liability due to negligence or wilful misconduct, the indemnification shall only apply if the Supplier is at fault. If the cause of the damages/losses lies within the Supplier's area of responsibility, the Supplier shall bear the burden of proof in this respect. In such cases, the Supplier shall bear all costs and expenses, including the costs of any legal action or recall action.

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10.3. The Supplier shall be obliged to take out and maintain an appropriate business liability and product liability insurance policy, including damage to product assets, material damage, financial loss and recall costs with an insurer licenced in the EU. The coverage limit must be at least five million EUR per claim for personal injury and property damage plus product asset damage and recall costs.

mediately replace the invalid or unenforceable provision by such a provision which meets as close as possible to the economic purpose of the invalid provision. If this is not successful, the relevant statutory provisions shall apply. The same shall apply to any loophole of these GTCP.

## 11. Assignment of receivables

11.1. Without prior written consent, which may not be unreasonably withheld, the Supplier may not assign their claims/receivables against the Customer or have them collected by third parties.

11.2. The Customer only may withhold payments on the basis of counterclaims or declare offsetting.

## 12. Property

Goods subject to retention of title may be resold, mixed, combined or processed, pledged or transferred by way of security by the Customer in the ordinary course of business.

## 13. Quality and documentation

13.1. The goods must comply with the state of the art in science and technology, the safety regulations and with the agreed technical data. The Supplier must set up and prove an appropriate quality management system.

13.2. The Supplier must keep quality records for all products of when, how and by whom their defect-free manufacture was ensured. This evidence must be kept for 15 years and presented to the Customer if required. The Supplier is entitled to shorten the retention period if they are able to exclude dangers to life and health in the use of the products. The Supplier shall oblige sub-Suppliers to the same extent within the limits of the law.

13.3. In all other respects with regard to quality and documentation, reference is made to section 9.

## 14. Code of Conduct

14.1. The Contractor is obliged to comply with the laws of the applicable legal system(s) and the relevant embargo and/or sanction provisions. In particular, the Supplier will not actively or passively, directly or indirectly participate in any form of bribery, violation of the fundamental rights of their employees or child labour. In addition, the Supplier will assume responsibility for the health and safety of its employees in the workplace, comply with environmental protection laws and promote and demand the best possible performance.

14.2. The Contractor shall provide the required organisational instructions and measures, in particular in the areas of property protection, business partner security, staff and information security, packaging and transport, to guarantee safety in the supply chain in accordance with the requirements of corresponding internationally recognised initiatives based on the WCO SAFE Framework of Standards (e.g., AEO, C-TPAT). The Supplier shall protect its deliveries and services to the Client or to third parties designated by the Client against unauthorised access and manipulation. The Supplier shall use only reliable staff for such deliveries and services and shall impose a duty on any sub-contractors to also take corresponding measures. Further, the Client's Code of Conduct shall apply.

14.3. Should the Contractor culpably breach the aforementioned duties, the Client shall be entitled, irrespective of further claims, to withdraw from the contract or terminate the contract. Insofar as a rectification of the breach of duty is possible, this right may only be exercised following expiry of reasonable period of time for rectification of the breach of duty without success.

## 15. Miscellaneous

15.1. The exclusive place of jurisdiction for all legal disputes arising directly or indirectly from contractual relationships based on these GTCP shall be Hamburg/Germany.

15.2. If not otherwise agreed in the contract, the required written form shall also be fulfilled by sending an e-mail or fax of the respective document. This also applies to termination of or withdrawal from a contract, amendment or supplement to this contract or individual contract as well as to the conclusion, amendment or supplement of an individual contract.

15.3. The Contractor is not entitled to any rights of retention insofar as they arise from counterclaims from other legal transactions with the Client.

15.4. The Contractor may only offset such claims or assert a right of retention against such claims which have been expressly acknowledged in writing by the Client or which have been established as legally binding.

15.5. The contractual relationship shall be governed exclusively by German law to the exclusion of the conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

15.6. If either party suspends payments or if insolvency proceedings are instituted against its assets or if judicial or extrajudicial composition proceedings are applied for, the other party shall be entitled to withdraw from the contract with respect to the part that has not been fulfilled.

15.7. In case any provision of these GTCP is or becomes invalid, the remaining provisions shall remain unaffected. The parties hereby undertake to im-