

# General Purchasing Conditions of TCM Group

## I. Scope of application

Unless expressly agreed otherwise in writing, the following terms and conditions ("Terms") shall exclusively govern all deliveries, services and offers of our suppliers. The supplier shall be deemed to have accepted these Terms as amended from time to time and accessible at [www.tcm-international.com](http://www.tcm-international.com), upon performance of our order (first delivery), and agrees that all subsequent orders shall be exclusively governed by these Terms. Any general terms and conditions of our suppliers or third parties shall not apply, even if we do not expressly object to their applicability in a specific case. A reference to correspondence or a document that contains or references general terms and conditions of the supplier or a third party, shall not constitute the consent to the applicability of such terms and conditions. Deviating or additional terms and conditions of the supplier shall only be binding, if they are expressly accepted in writing. If, in exceptional cases, deviating agreements are duly executed in writing, they shall only apply to the respective transaction. Oral agreements are only binding if confirmed in writing.

## II. Purchase Orders

Purchase orders and modifications of or amendments to a purchase order shall only be valid if issued or confirmed by us in writing or electronically. The acceptance of our order shall be confirmed to us without delay. Such an acknowledgement may also be made electronically, unless previously agreed otherwise between us and the supplier. We reserve the right to cancel an order placed by us, should we not receive a proper order acknowledgement within a reasonable period of time, in any case not later than 5 days, after the purchase order was issued. Such cancellation shall be sufficient, if sent prior to our receipt of the order acknowledgement.

Where the order acknowledgement deviates from the purchase order, the supplier shall explicitly indicate the respective deviations. Such a deviation shall only be binding, if expressly agreed by us in writing. The unconditional acceptance of the delivered goods shall in no event be considered as consent.

The supplier may not, in whole or in part, subcontract or assign our purchase orders without our prior written consent. Any breach of this provision shall entitle us to cancel that order without substitution; further claims against the supplier remain unaffected.

## III. Delivery

The delivery time (delivery dates or delivery period) stated in the purchase order shall be binding and shall be the time of receipt of the goods at the named place of destination; otherwise on our premises. If the timely performance under the purchase order is likely to be delayed, the supplier is obliged to immediately notify us in writing. Even if we accept postponement of a delivery date, we expressly reserve the right to charge a contractual penalty of 3% per commenced week of delay (starting on Monday following the delivery week) but not more than 15% of the total order volume.

In addition, in the case of late deliveries for which the supplier is accountable, the supplier shall use the fastest means of transportation available, regardless of the mode of shipment specified in the purchase order, to minimize the delay. The costs for such transport shall be borne by the supplier. If, during the supplier's delivery period, it is predictable that the supplier will not be able to duly perform its deliveries and/or services on agreed date, we are entitled to take all measures at the supplier's costs and risk to avoid an impending delay. In the case of a delay in delivery for which we are not responsible, we are entitled to rescind the contract with immediate effect after 14 days without having to

grant a grace period. If a fixed date has been agreed, the contract shall be terminated upon nonobservance of such date, unless we demand performance of the contract within 14 days.

Partial deliveries and advance deliveries are subject to our written approval, except for deliveries affected not more than seven (7) calendar days prior to the agreed date, provided, however, that in this case, the term of payment periods starts on the contractually agreed date. In the case of early delivery, we reserve the right to charge the supplier for any additional costs, such as warehouse costs. Until the agreed delivery date, we only assume the liability of a depository.

Unless expressly agreed otherwise in writing, deliveries shall be made DDP (Incoterms 2010) to the named place of destination. Delivery documents and packaging shall be made according to the relevant standards and in order to ensure delivery free of damage and efficient internal handling.

Tool deliveries have to include the digital data (dxf, step file) of the delivery item. The digital data will be provided without separate payment.

#### **IV. Transport and passage of risk**

The supplier shall be liable for any late delivery and any transport damage.

The risk shall pass to us upon delivery, i.e. receipt of the goods by us, but in no event prior to the agreed delivery date.

Claims for compensation, if any, remain unaffected by the acceptance of late deliveries or services.

#### **V. Prices and payment**

Unless otherwise agreed in writing, the prices stated in the purchase order shall be fixed and, thus, shall remain unchanged until the full performance of the deliveries and services under the purchase order.

The price shall include packaging, delivery and transport to the shipping address indicated in the purchase order, unless otherwise agreed in writing. If packaging has been expressly excluded and the price for the packaging has not been agreed, packaging shall be calculated at cost price as evidenced in writing.

Unless otherwise agreed in writing, payment shall be made within thirty (30) days with a 3% cash discount or within ninety (90) days without deduction from the later of: the receipt of the conforming goods under the purchase order or the receipt of a proper and auditable invoice.

Payment shall neither constitute an acceptance of the delivery or service nor a waiver of any rights we might have. Issuance of a remittance order to our bank not later than on the due date, payment shall be deemed timely. Any bank charges of the receiving bank shall be borne by the supplier.

In the case of a defect, we may withhold payment until the proper remedy of such defect. We may in any case offset payment with any counterclaims.

#### **VI. Invoice**

The invoice shall be sent to us immediately upon delivery of the goods or full provision of the service, preferably in electronic form to the e-mail address [invoice@tcm-international.com](mailto:invoice@tcm-international.com). The text of the invoice shall be worded and the invoices shall be structured in such a way that they can be easily verified and compared to the respective purchase order. The purchase order number and purchase order data shall be clearly stated on the invoice. Invoices on labor shall include time sheets that have been confirmed by us.

We reserve the right to return invoices which are not in compliance with our requirements, in particular with respect to purchase order data or statutory VAT regulations, without having processed them. In that case, the invoice shall be deemed not submitted. The supplier may not offset its own claims against our claims, or assign or cede its claims to a third party.

## VII. Cancellation

We may rescind the contract in whole or in part even without fault on the part of the supplier. In such a case, the supplier shall only be entitled to invoice all services provably rendered until the date of termination of the contract, but in no event any lost profit. Advantages which the supplier may achieve or has achieved shall also be taken into account. After rescission the supplier shall be obliged to use all efforts to minimize the costs.

If the supplier discontinues its payments or if bankruptcy proceedings or court or out-of court composition proceedings are opened over the supplier's assets, we may rescind the contract notwithstanding any other rights we may have.

## VIII. Quality and documentation

The supplier shall constantly keep the quality of its products to be delivered to us according to state of the art standards and keep us informed about possibilities of improvement and technical modification.

The supplier shall establish and maintain a state-of-the-art, documented quality assurance system which shall be suitable as to its type and scope of operation. The supplier shall keep adequate records, especially on its quality tests, and make them available to us upon request. The supplier hereby agrees to quality audits by us or our agent to assess the effectiveness of its quality assurance system, and, if necessary, with the participation of our customer.

All deliveries shall include relevant and appropriate documentation such as manuals, conditions of storage and operating and the CE certification. The supplier shall be fully liable for any damages arising out of missing or faulty documentation.

## IX. Acceptance

The delivery of goods or services, the temporary use of the same or payments made shall neither constitute acceptance nor a waiver of any rights we may have.

Confirmations of receipt of goods issued by us shall not be deemed to be statements on final acceptance of the delivered goods.

The goods shall be accepted following the inspection for completeness and any patent defects within a reasonable period of time after receipt of the goods. If during spot-checks parts of the delivery are found to be not in compliance with our requirements or the quality customary in trade, we reserve the right to reject the whole shipment. We will notify the supplier of any defects identified as soon as possible. However, the duty to inspection and objection according to Section 377 of the Austrian Commercial Code does not apply.

## X. Warranty

For the period of 24 months from the final acceptance of the delivery or performance, the supplier warrants that the goods or services

- (i) comply with the agreed and commonly assumed specifications;
- (ii) are free from any defects in material, quality, workmanship or title;
- (iii) comply with all applicable laws, regulations, standards and codes of legal or administrative authorities; and
- (iv) are fit for the designated and intended purpose.

The supplier shall immediately remedy any defects which occur during that period, at its sole expense but at our option, by the repair or replacement of the defective good or service. All costs incurred in connection with the remedy of defects, such as transport costs, costs of assembly and disassembly shall be borne by the supplier.

We shall in any case be entitled to claim compensation for all damage from the supplier. The supplier shall reimburse all costs of examination, if the examination revealed defects.

In urgent cases, for example to prevent delay or if the supplier is in delay with the remedy of defects, we reserve the right to remedy or have remedied the defects at the supplier's cost without prior notice and notwithstanding our additional rights and remedies. The supplier shall fully reimburse the costs of such substitute

performance even if those costs exceed the costs that would have been incurred by the supplier's proper performance.

The warranty period shall be suspended for the duration of the work until successful remedy of the defect. For replaced or repaired parts, the warranty period shall again be 24 months from the replacement or repair. We shall be free to choose the place of performance for the remedy of defects.

The acceptance or approval of models or samples does not constitute a waiver of any our rights under this section.

For engineering, consultancy, software or documentation services and the provision of staff, the supplier warrants the correctness and completeness of its written and oral information and instructions for a period of 24 months from the provision of such services without any restrictions.

Upstream and sub suppliers of the supplier shall be considered as agents of the supplier as defined by Section 1313a of the Austrian General Civil Code. The supplier agrees to pass down any additional warranties from manufacturers or sub suppliers.

All claims shall not come under the statute of limitations before the lapse of three years from the notification of the defect. Additional statutory provisions remain unaffected.

## **XI. Product liability**

Notwithstanding any other obligations, the supplier shall indemnify, defend and hold us harmless from and against all product liability claims of third parties arising out of or in connection with the goods delivered and reimburse us for all costs and expenses incurred in connection with defending a liability claim or substitute performance. Should we have to carry out a recall campaign for third parties due to a defect of a good delivered by the supplier, the supplier shall bear any and all costs relating to that recall campaign. The supplier agrees to keep such risks sufficiently insured and to provide us with appropriate evidence thereof upon request.

For a period of eleven years from the last delivery, the supplier will declare the respective manufacturer, importer or upstream supplier of the delivered goods immediately, in no event later than within two weeks, upon our request, and make available to us any evidence and information, including but not limited to documents regarding the manufacturing, production, batches and delivery dates, necessary to defend product liability claims of third parties.

## **XII. Proprietary rights**

The supplier warrants the unrestricted use of the delivered goods and shall indemnify, defend and hold us harmless in all cases of disputes under patent law, copyright law, trademark law and registered design law arising out of the delivered goods and/or services. In the event any claim should be made against us at any time, that by virtue of its use or resale of the goods or services or otherwise, we are infringing or contributing to the infringement of any actual or alleged industrial property rights, supplier shall at its option and expense, (i) either procure within 30 days for us the right to continue using said goods, or (ii) modify same so the goods and services become non-infringing, or (iii) replace the goods with non-infringing goods. Such claim shall exist independently of the supplier's fault. The supplier shall be liable for the fact that in connection with its deliveries no proprietary rights of third parties are infringed.

## **XIII. Tools and materials**

The supplier shall treat tools, mold materials and other resources provided by us with utmost care. They shall be returned to us immediately upon request.

Means of production manufactured or procured by the supplier at our cost shall become our property as of their production or procurement.

The supplier shall reimburse us for all costs arising out of the damage to or loss of the resources provided by us.



#### **XIV. Special provisions for hardware and software**

Hardware and software shall always constitute a unity, unless otherwise agreed in the purchase order. If the supplier supplies software that has not been developed specifically for us, the supplier grants us a transferable and non-exclusive right to use the software. Such right shall be unlimited in time, in case of a one-off payment. For software specifically developed for us, the supplier grants us a transferable and indefinite license for all kinds of use. Unless expressly agreed otherwise, the latest version of the source code of the software shall also be delivered. The supplier shall install the software. Following the installation, the supplier will hand over the source code and machine code and the respective documentation (contents and structure of the data carrier, program and dataflow plans, test methods, test programs, error treatment, etc.) on a data carrier compatible with our system. Further to this documentation, the supplier will also provide sufficient copies of detailed written user documentation in German or English prior to acceptance.

Software that is made specifically for us shall be deemed accepted, if the software has run in accordance with the agreed specifications during a free-of-charge test run for a period of at least four (4) weeks in a satisfactory manner and without error reports. In case of doubt, the said period shall start only upon our productive use or, in case the software is passed on, by our end customer.

The supplier undertakes to provide us with all subsequent program versions that include an error correction ("updates") and upgrades free of charge within the warranty period. In addition, the supplier undertakes to offer us technical service and software maintenance on market terms for a minimum period of five (5) years from the acceptance. During the warranty period, the maintenance fee shall be reduced accordingly.

#### **XV. Confidentiality**

All drawings, calculations and the like made available to the supplier for submission of offers

and/or execution of purchase orders remain our property and shall be returned to us together with the offer and/or upon execution of the purchase order. They may not be reproduced or disclosed to third parties without our written consent.

The supplier is obliged to treat the purchase order and resulting works as well as any related technical and commercial documents and facilities as a business secret and as strictly confidential. Where the supplier subcontracts any part of a purchase order with our express consent, the supplier shall impose the same obligations on its subcontractors.

For a period of five (5) years from the conclusion of the contract, the supplier is obliged to keep secret the terms of the purchase order and all information and documents made available for that purpose (except for information that is in the public domain) and solely use the same for execution of the purchase order. After execution of inquiries or purchase orders, the supplier shall return them to us immediately. The supplier may not refer to the business relationship in advertising material, brochures, etc. without our prior written consent.

The supplier's data (Business Register data, address, phone and fax number, address information required for modern communication technologies, locations, contact persons, deliveries and services ordered, delivery quantities) of the relevant transaction will be processed electronically for purposes of processing of the order, in particular for administrative and accounting purposes, only.

#### **XVI. Legal protection of ownership**

Any retention of title by the supplier is expressly excluded. We reserve the title to and any copyright in our purchase orders and orders and any samples, prototypes, drawings, illustrations, calculations, specifications and other documents made available to the supplier. Without our express consent, the supplier may not disclose, use or reproduce them to or by third parties. The supplier shall return all those documents and copies thereof, if any, to us without request, if they are no longer required by the

supplier in the ordinary course of business or if negotiations do not lead to conclusion of a contract. Tools, devices, models etc., which we make available to the supplier or which are manufactured for the purposes of the contract and charged to us separately by the supplier, shall remain or become our property. The supplier shall clearly mark them as our property, keep them in custody with care, protect them from any damage and use them only for the purposes of the contract. The supplier shall immediately notify us of any significant damage to such items. Where they are no longer required by the supplier for performance of the contract, the supplier shall immediately return those items to us in a proper condition.

## **XVII. Insurance**

The supplier is obliged to maintain a business liability insurance with adequate insurance cover at its own cost. Evidence of such insurance cover shall be provided at request.

## **XVIII. Export control**

The supplier agrees to comply with all applicable local, foreign and international trade and export control laws and regulations (together „Export Regulations“). The supplier is obliged to clearly mark all delivered goods and the respective documents according to Export Regulations and provide all classifications and information regarding the delivered goods. The supplier agrees to notify us about any changes in the delivered products, regardless of whether they were supplied in the past or are currently supplied, without request.

The valid classification and, if applicable, the required export license, approval or exceptions as well as any other trade restrictions must be clearly stated on all documents provided by the supplier. Supplier declarations are integral parts of the purchase contract.

The supplier shall indemnify, defend and hold us harmless against all claims arising out of or in connection with any breach of Export Regulations and reimburse us for all costs and

expenses incurred in connection with the defense of such claim.

## **XIX. Miscellaneous**

Quotations, offers, plans, cost estimates and the like are provided to us free of charge and we will not compensate any costs.

If individual provisions of these Terms are ineffective, unenforceable or become invalid, the effectiveness of the remaining provisions shall not be affected thereby. In that case and in case an unplanned gap is noticed, the ineffective, unenforceable or lacking provision shall be replaced by an appropriate provision which, to the extent legally possible, comes as close as possible to the intention the parties had or would have had according to the economic purpose of the agreement if they had thought of that point at the time of conclusion of this agreement.

The contractual relationship between us and the supplier shall be governed by Austrian law excluding its conflict of laws rules. The place of performance shall be the location indicated by us. The courts of Graz, Austria, shall have exclusive jurisdiction, unless expressly agreed otherwise.