

## General Terms and Conditions of Purchase

### 1. General, Scope of application

- 1.1 These German Terms and Conditions of Purchase (T&Cs) shall apply for all business transactions between GELITA AG (GELITA) and its Suppliers.
- 1.2 These T&Cs currently in force shall also apply as a master agreement for all future supply contracts with the same Supplier without reference specifically having to be made to them again on each occasion.
- 1.3 These T&Cs alone shall apply. If the Supplier's general terms and conditions of business differ from or are contrary to, or are more extensive than, our T&Cs, they shall only become an integral part of any supply contract if, and to the extent that, GELITA has expressly agreed in writing that they shall apply. This requirement for consent shall apply in every case, for example, even in those cases in which GELITA is aware of the Supplier's general terms of business and accepts deliveries from the Supplier without expressing any reservations.
- 1.4 No verbal side agreements have been made.
- 1.5 Legally relevant declarations and notices which are to be submitted by the Supplier to GELITA after a contract has been signed, (e.g. setting time limits, warnings, declarations of withdrawal) must be made in writing to be valid.

### 2. Entering into a contract

- 2.1 Orders placed by GELITA may be placed in writing, sent in by fax or by e-mail. Verbal or telephone orders shall not be binding until they have been confirmed by GELITA in an approved format stated in the first sentence in 2.1. All orders placed by GELITA with a Supplier shall be placed on the basis of these T&Cs, even if no express reference is made to these T&Cs in the respective order.
- 2.2 Upon receipt, the Supplier shall be obliged to confirm orders placed by GELITA, either in writing, by fax or e-mail. In addition to the above, if an order is delivered by the Supplier, delivery shall be regarded as having been made in accordance with these T&Cs and the terms contained in the order. Should the Supplier's order confirmation or delivery not be received by GELITA within two weeks counting from the receipt of order, GELITA shall no longer be obliged to accept the order.
- 2.3 A binding contract shall materialise between the Parties when the order is accepted. It shall be the written order alone, and its acceptance in writing, that shall determine the content of the order. Given this, verbal side agreements shall not count.
- 2.4 GELITA shall be entitled to request subsequent amendments with regard to the delivery date and the specifications, unless the amendments requested are unreasonable for the Supplier when taking the Supplier's interests into account. In the event that subsequent amendments are made, the Parties to the contract shall enter into all the additional agreements which may become necessary as a result of amendments being requested.

### 3. Delivery, Passing of risk and title, Written correspondence

- 3.1 Deliveries must be made to the precise delivery address stated by GELITA on the order. Dispatch shall be at the Supplier's risk. The place of fulfilment shall be the delivery address specified by GELITA (Supplier's obligation to deliver).
- 3.2 The Supplier shall, moreover, have to comply with the transport regulations (e.g. dispatch and packing regulations, Incoterms) stated in the order.
- 3.3 The Supplier shall have to send off a dispatch note to GELITA for each consignment on the same day as dispatch. An invoice shall not be regarded as a dispatch note.
- 3.4 The Supplier shall be liable for costs and damages (e.g. demurrage for goods, storage fees, reloading fees, decrease in value and similar) accruing to GELITA as a result of the Supplier being culpable for not having shipped the goods as agreed. All consignments which cannot be taken over for such reasons are to be stored at the Supplier's cost and risk for as long as they cannot be taken over in due order by GELITA.
- 3.5 The risk for, and title to, the goods shall pass over to GELITA at hand-over at the place of fulfilment. Insofar as an acceptance test has been agreed, this shall be the point at which risk passes over. The title to the goods shall pass over to GELITA even before hand-over, if GELITA has paid for the goods in advance. In this case the title shall pass over to GELITA as soon as payment has been made. No extended or overall rights of retention of the Supplier shall be recognised. The passing of risk and title shall not affect GELITA's right to reject the goods, or GELITA's other rights.
- 3.6 The relevant department at GELITA, letter reference date and order number must always be quoted in written correspondence,

dispatch notes, invoices etc. This information is also to be stated on any airway bill or parcel address and post office dispatch notes there may be.

- 3.7 Written correspondence is to be kept separate for each order.

### 4. Delivery periods and non-compliance

- 4.1 The delivery periods quoted in the order are binding.
- 4.2 If the Supplier fails to supply within the quoted delivery period, GELITA shall be entitled to demand a contractual penalty amounting to 0.2 % of the net remuneration agreed for the respective order for each calendar day commenced of delay – up to a maximum of 5 % of the net remuneration agreed for the respective order, unless the Supplier is not responsible for the delay. The right of GELITA to assert claims or rights over and beyond this amount shall not be affected by the foregoing. Given this, any contractual penalty paid will count towards a duty to pay compensation for damages. If GELITA accepts a late delivery, the contractual penalty must be claimed by no later than the final payment.
- 4.3 The right of GELITA to withdraw from the contract on account of a late delivery shall not only cover the respective order, but also previous orders if there is no longer any practical point in using the respective contractual performance as a result of the delay in delivery.
- 4.4 Regardless of the liability described above, the Supplier shall be obliged to notify GELITA in writing of every delay in delivery as soon as he identifies it. The Supplier shall have to state the reasons for, and the probable duration of, the delay in writing and suggest measures to avoid or shorten the delay.

### 5. Inspection of the goods

- 5.1 GELITA shall be entitled to inspect the goods himself in the Supplier's business premises himself, or to have them inspected by third parties appointed to do so by GELITA prior to delivery. GELITA shall inform the Supplier of this in advance, but no later than one (1) week prior to the day of inspection. Neither such an inspection nor non-inspection shall be construed as acceptance of the goods.
- 5.2 The Supplier shall be obliged to inspect the goods carefully prior to dispatch to ensure that they comply with the requirements of the respective order in all respects.

### 6. Prices and Terms of payment

- 6.1 Agreed prices shall be regarded as fixed prices plus VAT. Unless agreed otherwise in a given instance, the price shall include all services and ancillary services (e.g. assembly and installation) as well as all ancillary costs (e.g. proper packing, transportation costs, including any transport insurance and liability insurance cover which may have to be taken out). Packing material shall have to be taken back by the Supplier at GELITA's request.
- 6.2 Unless agreed otherwise, the time allowed for payment shall commence on the day on which the delivery of goods is received, but no earlier than the receipt of the proper invoice by GELITA.
- 6.3 Unless electronic transfer by means of EDI has been agreed for invoices, invoices are always to be sent by the Supplier in pdf file format to the e-mail address to be named by GELITA and not attached to the consignment of goods. An invoice should only be sent by post by way of exception.
- 6.4 Payment will be made
  - within 14 days to qualify for a prompt payment discount of 5% of the net invoiced sum,
  - within 30 days in full.
- 6.5 GELITA shall not owe any interest payable from the due date of payment (Section 353 of the German Commercial Code [HGB]). The Supplier's right to claim default interest shall not be affected by the foregoing. The definition of default shall be that laid down in the statutory regulations.
- 6.6 Payments shall not constitute a waiver by GELITA of its rights under warranty or rights to lodge a complaint.

### 7. Warranty

- 7.1 Unless specified otherwise below, the statutory regulations shall govern the rights of GELITA if the goods have quality or legal defects (including in correct delivery and shortfalls in delivery as well as incorrect assembly, faulty assembly instructions, operating manuals or user's guide) and other breaches of duty by the Supplier.
- 7.2 Those product descriptions which – in particular as a result of designation or reference made thereto in the order by GELITA – are covered by the respective contract, or which have been incorporated into the contract in the same way as these T&Cs shall definitely be regarded as agreed statements of quality. It will not make

- any difference whether the product description comes from GELITA, from the Supplier, or from any manufacturer there may be.
- 7.3 The Supplier shall guarantee that substances and chemicals supplied by him have been registered as necessary in accordance with the applicable regulations, or that these substances and chemicals are not subject to registration. Furthermore, he shall guarantee that chemicals and substances supplied by him comply with the statutory and administrative regulations and other standards and directives applicable for them.
- 7.4 If chemicals or substances to be supplied are subject to regulations governing hazardous working substances, the Supplier shall be obliged to furnish GELITA on a single occasion with the "Safety data sheet of the Verband der chemischen Industrie e.V." including clauses G and H in force fully filled out by the time the contract is signed at the latest.
- 7.5 GELITA shall be obliged to inspect the goods and notify the Supplier of defects no earlier than receipt even if title should already have passed over to GELITA previously. Manifest defects are to be notified within five working days from the receipt of goods while concealed defects are to be notified within five working days from discovery of the defect. Monday to Friday shall be regarded as working days.
- 7.6 If the Supplier under an obligation to GELITA to render a cure, GELITA shall be entitled to demand that the defect is rectified (subsequent improvement) or that a defect-free thing is supplied (replacement delivery). The Supplier's right in accordance with the law to refuse to render a cure shall not be affected by the foregoing. If the Supplier fails to fulfil his obligation to render a cure within a reasonable period of time set by GELITA, GELITA may consequently rectify the defect itself and demand that the Supplier pay compensation for the necessary expenses incurred by GELITA Supplier or demand that an appropriate advance towards such costs is paid by the Supplier. A period of time will not have to be set if a cure effected by the Supplier is unsuccessful, or if it is unreasonable for (e.g. on account of exceptional urgency, jeopardisation of safety at work or imminent and excessive damage); the Supplier is to be informed straight away and beforehand if possible.
- 7.7 Moreover, GELITA shall be entitled under the statutory regulations to reduce the purchase price or to withdraw from the contract. Besides which, GELITA shall, under the statutory regulations be entitled to compensation for damages and expenses.
- 7.8 The costs incurred by the Supplier for the purposes of inspection and subsequent improvement shall be borne by him, even if it should turn out that there was in fact no defect. The liability of GELITA to pay compensation to the Supplier for losses if GELITA demands that a defect is rectified without any justification for doing so shall not be affected by the foregoing.
- 8. Product liability / Product recalls**
- 8.1 If the Supplier is responsible for a product defect, given this, he shall have to exempt GELITA from third party claims if the cause of the defect is within his sphere of control and organisation and he is liable to outsiders.
- 8.2 As part of his exemption obligation, the Supplier shall have to reimburse expenditure in accordance with Sections 683 and 670 of the German Civil Code [BGB] arising from, or in connection with, third party claims. If GELITA is obliged, on account of a defect in a product supplied by the Supplier to conduct a warning and/or product recall campaign, the Supplier shall consequently reimburse GELITA for these expenses, unless the defect is not attributable to the Supplier's sphere of responsibility. GELITA shall inform the Supplier of the content and scope of warning and/or product recall measures – provided that this is possible and reasonable – and afford him the opportunity to make a statement in response thereto. Further statutory claims shall not be affected.
- 8.3 The Supplier shall have to take out and maintain a product liability insurance policy providing lump-sum cover of at least EUR 2,500,000 per claim for personal injury / property damage.
- 9. Third party rights**
- The Supplier shall guarantee that third party rights, in particular industrial property rights, shall not be breached as a result of his goods being supplied, used or sold on.
- 10. Insurance cover**
- 10.1 The Supplier shall have to take out an all risks transport insurance policy at his expense for every consignment delivered to GELITA, unless GELITA absolves him in writing him from his obligation to take out insurance cover prior to the consignment being delivered.
- 10.2 The Supplier shall, moreover, be obliged to maintain an appropriate level of general insurance cover. The insurance cover must, inter alia, cover any rights GELITA may have to exemption from third party claims, claims asserted under warranty, any claims asserted under a manufacturer's guarantee as well as claims asserted on the basis of physical injury and the death of persons. The amount of cover must be at least EUR 2,500,000 per claim.
- 10.3 The claims to which GELITA is entitled shall exist regardless of infringement and the scope of the insurance cover.
- 11. GELITA's liability**
- 11.1 GELITA shall be liable in accordance with the statutory regulations
- for damages which can be proven to be attributable to an intentional or grossly negligent breach of duty by GELITA, its legal representatives or assistants,
  - for personal injury (death, personal injury or physical harm) culpably caused by GELITA, its legal representatives or assistants,
  - for a culpable breach of important contractual duties as laid down by the statutory regulations. Important contractual duties are duties which are indispensable for achieving the contractual objective, and upon strict compliance with which the other Party to the contract can therefore rely. However, liability for a breach of important contractual duties attributable to ordinary negligence shall be limited to damages typically occurring and foreseeable when the contract was signed,
  - for damages arising as a result of a breach against a product guarantee furnished by GELITA.
- 11.2 GELITA cannot be held liable at all in any cases other than those named above, unless there is a compulsory liability provision which cannot be eliminated by agreement.
- 12. Limitation**
- 12.1 The reciprocal claims by the Parties to the contract shall be time-barred in accordance with the statutory regulations unless specified otherwise below.
- 12.2 The period of limitation for GELITA's contractual warranty claims is three years from the passing of risk. Insofar as an acceptance test has been agreed, the period of limitation shall begin to run following acceptance. The three-year period of limitation shall also apply for claims derived from legal defects, whereby the statutory period of limitation for real third party rights of surrender shall not be affected by the foregoing. Moreover, claims derived from legal defects shall not, under any circumstances, become time-barred for as long as the third party is still entitled – in particular on account of not being time-barred – to assert claims against GELITA.
- 12.3 Insofar as GELITA is also entitled to non-contractual compensation claims for damages on account of a defect, the normal statutory period of limitation shall apply for this (Sections 195 and 199 of the German Civil Code [BGB]), unless the application of the periods of limitation agreed above results in a longer period of limitation.
- 13. The Supplier's obligation to comply with the German General Minimum Wage Act [MiLoG], GELITA Supplier Code of Conduct, Exemption**
- 13.1 The Supplier shall undertake to comply with the regulations of the German General Minimum Wage Act [MiLoG] and to pay his employees at least the set statutory minimum wage applicable, if, and insofar as one of the exceptions in MiLoG does not apply or else if higher wages have to be paid as a result of a generally-binding collective bargaining agreement, or as a result of a collective bargaining agreement applicable for the Supplier.
- 13.2 The Supplier shall, moreover, undertake at GELITA's request, to sign, and to comply with, the GELITA Supplier Code of Conduct, which GELITA will make available to the Supplier upon request.
- 13.3 If the Supplier contracts sub-contractors or other third parties (collectively known below as **sub-contractors**) on the occasion of, or in connection with, rendering his services for GELITA, the Supplier shall consequently have to fulfil his obligations under MiLoG, in particular his record-keeping obligations (Section 17 MiLoG in conjunction with Section 2a of the German Act to Combat Clandestine Employment or in conjunction with Section 8 Para 1 of the German Social Security Code [SGB] IV). Moreover, the Supplier will have to make the sub-contractors working for him undertake to comply with the regulations of MiLoG and the GELITA Supplier Code of Conduct and make his subcontractors undertake to likewise place their sub-contractors under the same obligation accordingly. Upon request, the Supplier shall have to prove to GELITA by submitting the relevant documents that he has duly imposed the relevant obligations upon the sub-contractors working for him.
- 13.4 The Supplier shall exempt GELITA from all third party claims brought to the attention of, or asserted against, GELITA on the basis of a culpable breach of MiLoG, or the GELITA Supplier Code of Conduct, committed by the Supplier or his sub-contractors, including their sub-contractors. This shall apply in particular for, but shall not be limited to, third party claims in accordance with Section 13 MiLoG. The Supplier shall support GELITA in mounting a defence

against third party claims as outlined above, in particular by passing over information as well as handing over relevant documents. The Supplier shall make his sub-contractors undertake a corresponding commitment and he shall also make them undertake to place their own sub-contractors under comparable commitments.

#### **14. Miscellaneous provisions**

- 14.1 The Supplier shall undertake to observe and comply with the statutory environmental, health and safety, personal hygiene and energy management regulations applicable for goods ordered by GELITA. The Supplier shall also report incidents or suspicious cases to GELITA. The regulations with which the Supplier must comply shall also include GELITA's internal environmental, health and safety, personal hygiene and energy management works regulations in the brochure entitled "Information for visitors and tradesmen" which GELITA shall provide to the Supplier upon request. The Supplier must instruct his employees prior to taking up work for GELITA and at GELITA's premises about the contents and stipulations of the statutory regulations designated in this No 14.1 as well as about the stipulations in the brochure entitled "Information for visitors and tradesmen". Upon request the Supplier shall have to prove to GELITA that he has given proper instruction.
- 14.2 The Supplier shall, at GELITA's request, be obliged to provide GELITA straight away during the term of their business relationship with all quality and other certification required by law or normal within the industry or which are necessary given the type of goods to be supplied and for their intended use.
- 14.3 The Parties to the contract shall – even after the contract has ended – not allow third parties access to information acquired from the other Party to the contract which constitutes a business or trade secret (Section 17 of the German Act against Unfair Competition [UWG]) or whose content or nature is manifestly of a confidential nature, provided that such information is not in the public domain or known to the Party to the contract lawfully from other sources.
- 14.4 GELITA is entitled to transfer its rights and duties created by this contract or the contract as a whole over to another Group company or to a third party. In the event that the rights and duties or entire contract are transferred over to a third party, the Supplier shall be entitled to serve extraordinary notice of termination on the contract.
- 14.5 The Supplier may not offset with counter claims, unless they are not contested or have been adjudicated. By the same token the Supplier can only assert rights of retention if they have been recognised by GELITA, have been adjudicated or such counter claims are ready for judgment.

#### **15. Applicable law, Place of jurisdiction**

- 15.1 The legal relationships between GELITA and the Supplier shall be governed by the law of the Federal Republic of Germany alone. German international private law and the UN Convention on Contracts for the International Sale of Goods [CISG] shall not apply.
- 15.2 If the Supplier is a registered trader within the meaning of the German Commercial Code, a legal entity established under public law, or a public law special fund, or if the Supplier does not have a general place of jurisdiction within the Federal Republic of Germany, Heidelberg shall be the exclusive – and international – place of jurisdiction for all disputes between the Parties, or in connection with this contract. GELITA shall, however, also be entitled to sue the Supplier at his general place of jurisdiction.

#### **16. Binding character of these T&CS**

Should individual provisions of these T&CS be or become partly or entirely invalid or unenforceable, or should it turn out that they are incomplete, the validity of the remaining provisions shall not be affected as a result thereof. This shall not apply if the adherence to these T&CS were to constitute unreasonable hardship for one Party.

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