

## **General Purchasing Terms and Conditions of**

**Georg Martin GmbH**  
**Martinstrasse 55,**  
**63128 Dietzenbach**  
**Germany**

**Status: June 2015**

### **§ 1** **General terms**

1. These Purchasing Terms and Conditions apply to the purchase of goods according to the contract made between Georg Martin and the Supplier.
2. These Purchasing Terms and Conditions have exclusive effect; no adverse terms and conditions, or terms by the Supplier that deviate from our GTC shall apply, except to the extent that Georg Martin has specifically agreed to their application in writing. Georg Martin's GTC also apply if Georg Martin agrees to implicitly receive any delivery in awareness of any commercial terms and conditions of the Supplier that are adverse or deviant from Georg Martin's General Purchasing Terms. Any lack of response from Georg Martin's side still implies rejection of the terms and conditions of the Supplier.
3. With the first delivery under these General Purchasing Terms the Supplier acknowledges their exclusive validity also for all additional deliveries.

### **§ 2** **Delivery and freight**

1. Orders and commissions and their modifications are binding if they are made or confirmed in writing. Any quotation can be accepted within a deadline of 14 days only, except if the parties specifically agree otherwise in writing.
2. Surpluses or shortages in deliveries resulting from the manufacturing process are only permissible to the extent agreed. Otherwise Georg Martin reserves the right to assert its contractual and legal claims.
3. Deliveries shall be done according to the order and the delivery deadlines agreed.
4. The Supplier shall comply with Georg Martin's freight instructions, and also those of the executing carrier or freight forwarder. All dispatch documents, communications and invoices shall indicate Georg Martin's order and item numbers.
5. Packaging shall be done in a way that prevents any transportation damages to the goods.
6. Costs of transport including packaging, insurance and all other additional costs are borne by the Supplier except if the parties specifically agree otherwise.

### **§ 3** **Export Control**

1. Supplier acknowledges that goods to be delivered or part of them may be subject to export laws and regulations and warrants to comply with all such applicable export regulations (including U.S. regulations as applicable).

2. Supplier shall identify all goods that are subject to Export Regulations at the time of acceptance of the purchase order and provide all relevant export control information. Such information shall be indicated on all delivery notices, including the export control classification (including U.S. EAR or ITAR classification), the number or reference of any applicable export license and any distribution restrictions in this regard. In the event of a change of the respective export control regulations or the export control classification the Supplier shall inform the Purchaser about such change.
3. Supplier shall be responsible for obtaining in time, at no cost to the Purchaser, all necessary governmental export licenses, authorizations, approvals and clearances, required for the delivery to make sure that all goods to be delivered can be used by the Purchaser in accordance with the purchase order and that all deliverables can be made in due time.
4. Further, in case of the existence of any export license, Supplier shall provide a copy of that document to Purchaser, showing all relevant information relating to the delivery, including any provisos, Purchaser has to comply with, e.g., but not limited to cases of re-exports. Any information or provisos which are classified or which are not related to compliance obligations of purchaser may be blackened in that copy.
5. Notwithstanding any other provision, Supplier shall be liable to Purchaser and indemnify him for all damages, losses, and liabilities incurred by Purchaser as a result of non-compliance of the Supplier with its obligations of the preceding paragraphs.

#### **§ 4**

#### **Prices and payment terms**

1. The agreed prices are maximum prices. Any price reductions between the date of order and the date of delivery shall be to Georg Martin's benefit. Except to the extent specifically agreed otherwise, the agreed prices shall be "free domicile" including packaging. The agreed purchase price is only the net price of the goods. The turnover tax at its legal rate is therefore not included in the prices; the turnover tax shall be indicated separately at its legal rate on the invoice at the date of issue of the invoice.
2. Invoices shall be issued with the order and item numbers indicated immediately upon dispatch of the goods for delivery, and shall be sent separately from the goods. The turnover tax shall be listed separately.
3. Payment is effected as soon as Georg Martin is in possession of auditable invoices, and according to the payment terms and conditions agreed in the orders and commissions. Except if specifically agreed otherwise by the parties in writing, the sum invoiced shall be paid with a 2% discount if payment is made within 14 days from delivery and receipt of the invoice, or net within 30 days from the date of receipt of the invoice. In case of receipt of earlier deliveries, the due date shall be governed by the agreed delivery term.
4. Payments shall be made conditional upon proper delivery and correctness of the price and calculations. In case any shortcomings are identified that imply warranty obligations Georg Martin has the right to withhold the proportionate part of the payment until delivery under such warranty obligation.

#### **§ 5**

#### **Set-off and assignment**

1. The Supplier may set off uncontested, and bindingly and finally established claims only.

2. Any assignment of claims against Georg Martin is only valid with a written consent from Georg Martin. In case of an extended reservation of ownership, such consent is deemed given.

## **§ 6 Confidentiality**

1. The contracting parties agree to treat as commercial secret all commercial and technical information that they have obtained in the course of this commercial relationship and that is not in the public domain.

2. Drawings, models, templates, samples and similar objects shall not be handed over to or otherwise made accessible for any unauthorised third party. Any reproduction of these objects is only permissible to the extent required by the business and with regard to copyright regulations.

3. Subcontractors shall be bound by relevant obligations.

4. The Supplier may advertise their business relationship with Georg Martin with the prior written consent of Georg Martin only.

5. If a separate confidentiality agreement is made between the parties, then such agreement shall prevail over these provisions above.

6. The validity of article 11 remains unaffected.

## **§ 7 Delivery deadlines, delivery terms**

1. The delivery deadlines and terms given in the orders and commissions are binding. All agreed delivery terms are fixed. The time of delivery at Georg Martin shall be of merit for compliance with the delivery terms or deadlines. The risks transfer to Georg Martin at that time only. Georg Martin's business hours for delivery shall be observed.

2. The Supplier is obliged to immediately notify Georg Martin in writing of any foreseeable exceeding of the delivery time with the reasons communicated, and, as far as possible, to define the expected delivery time. Georg Martin's rights attached to any delay in the delivery remain unaffected by this obligation of notification.

3. Georg Martin has the right to refuse reception of the goods that are not delivered according to the delivery terms indicated in the order, and Georg Martin is entitled to return or store such goods at a third party to the cost and risk of the Supplier.

4. In case of delayed delivery, Georg Martin is entitled to charge penalty at 0.2% per working day, however, not more than 5 % of the net order value. Georg Martin has the right to reserve and deduct the amount of penalty until payment of the goods concerned. Other claims for delayed delivery remain unaffected. The liability of the Supplier for damages also extends to eventual lump sum damages and contractual penalties that Georg Martin owes to its own customers due to any delayed delivery by the Supplier, provided that Georg Martin has informed the Supplier of the lump sum damages or contractual penalties that have been agreed with the customer.

## **§ 8 Quality and acceptance**

1. For its deliveries, the Supplier shall comply with the agreed technical data and other specifications, commonly recognised technology standards and safety requirements. Any changes to the goods supplied require a prior written consent from Georg Martin.
2. Georg Martin shall check the goods for any obvious and visible shortcomings, deviations from the identity of the goods or transport damages immediately upon reception. In case of any complaints, the Supplier shall carry the costs of testing and replacement delivery. In case of any complaints, the deadline for making such complaints shall be 10 working days from discovery, where it is sufficient to send the notification within the set deadline. In this context the Supplier waives its right to object any delayed complaints.
3. As far as measurements, weight and item numbers of a delivery are concerned the values measured at checking upon reception shall be binding.
4. If delivery directly to a third party is agreed, then such third party shall carry out the checking of the goods according to article 7.2 hereof. This replaces checking of the goods by Georg Martin.

## **§ 9 Warranty**

1. The warranty obligations of the Supplier apply according to the relevant laws except if regulated otherwise herein below.
2. Georg Martin is fully entitled to assert all claims for damages available under the law. In particular, the Supplier shall, within Georg Martin's discretion, provide free of charge replacement, or remedy the shortcoming free of charge. After consultation with the Supplier, and to the Supplier's cost, Georg Martin is entitled in urgent cases to effect remedy of the shortcoming on its own or have third parties to remedy it, or obtain replacement in a different way. The same applies to the case when the Supplier is in delay with the delivery of its warranty obligations. Georg Martin specifically reserves the right to assert full indemnity from damages, and the right to reduce the price as provided by the law.
3. Claims for complaints lapse 36 months after delivery. Such statute of limitation is suspended if Georg Martin indicates a shortcoming to the Supplier. The suspension ends in this case with the complete remedy of the shortcoming, or if the Supplier refuses to provide a remedy; and the statute of limitation restarts three months after the end of such suspension the earliest.
4. The warranty period restarts with any replacement delivery, except if the Supplier has clearly made a new delivery for reasons of goodwill only.
5. If Georg Martin is entitled to receive damages or to withdraw from the contract due to a material or legal shortcoming, then Georg Martin may claim a lump sum indemnity of 10 % of the net order value, except if the Supplier is not responsible for the shortcoming. The assertion of any additional claims for damages is not excluded. The Supplier has the right to prove that the material or legal shortcoming has not led to any damages, or that the value of such damages is significantly lower than the lump sum indemnity.

## **§ 10 Liability for damages**

1. The Supplier is liable to Georg Martin for all damages intentionally or negligently caused by it or its agents at the fullest scale allowed by the law.

2. If the Supplier is liable for an error in the sense of product liability, then it is obliged, upon Georg Martin's first notification, to keep us free from any claims for damages of third parties provided that the reasons are within the Supplier's control and organisation, and the Supplier is itself liable externally. This claim for release also extends to expenses under Articles 683, 670 BGB (German Civil Code) and under Articles 830, 840, 426 BGB which result from or in relation to an eventual call-back effected by Georg Martin or one of its customers. Georg Martin shall, as far as possible and reasonable, notify the Supplier of the contents and extent of any call-back to be carried out, and provide an opportunity to the Supplier to state its standpoint. All other legally available claims remain unaffected.
3. The Supplier is obliged to maintain a third party liability insurance and a product liability insurance cover at appropriate amounts.

## **§ 11**

### **Third party intellectual property rights**

1. The Supplier warrants that no third party rights hinder the appropriate use of the purchased goods, especially that no third party intellectual rights are violated.
2. If, however, Georg Martin is held accountable for the possible violation of any third party rights, such as e.g. copyrights, patents and other intellectual property rights, then the Supplier shall relieve Georg Martin of all such claims and any deliveries that might result therefrom.
3. This provision shall not apply to the extent that the Supplier has manufactured the supply goods according to the drawings, models or similar descriptions or data of equal significance provided by Georg Martin, and if the Supplier does not know, or cannot be expected to know, in relation to the products manufactured by it that they constitute a violation of intellectual property rights.
4. The Supplier is obliged to inform Georg Martin immediately of any risks of violation of such rights, and shall provide Georg Martin with the possibility to act against any resulting claims in a coordinated fashion.
5. The Supplier shall disclose, without separate warning, the use of all published and unpublished own and licensed intellectual property rights and applications on the supply goods.

## **§ 12**

### **Information and data**

1. Models, drawings, drafts, samples, stencils, templates, tools, manufacturing instructions, other production assets, and confidential data that Georg Martin provides to the Supplier remain property of Georg Martin. These shall not be used for any other purpose, reproduced or handed over to any third party unless with the prior written consent of Georg Martin; they shall be treated with due care generally expected in the trade; and shall be returned without separate notice forthwith upon completion of the order.
2. Article 11. 1 also applies to tools, forms, equipment and machinery that the Supplier has manufactured for the purpose of producing the goods ordered by Georg Martin, which have been reimbursed by Georg Martin. Such tools, forms, equipment and machinery shall become, eventually proportionate, property of Georg Martin with the payment reimbursement.

## **§ 13**

### **Data privacy**

Personal data disclosed shall be stored and used by Georg Martin subject to the legal regulations and according to the assignment.

**§ 14**  
**Exclusion of liability**

Georg Martin, its employees, legal representatives, and agents shall not be liable for damages suffered by the Supplier. This exclusion of liability does not apply if a material obligation under the contract is violated. This exclusion of liability shall also not apply to damages resulting from injury to life or bodily integrity or health that result from intentional or negligent violation of obligations, and to other damages that result from any intentional or grossly negligent violation of obligations.

**§ 15**  
**Closing provisions**

1. If any of the provisions of these General Purchasing Terms is or turns out to be ineffective or unenforceable, then that does not affect the validity of all remaining provisions. The same applies to the case when any other contractual agreement is or becomes ineffective or unenforceable. Any ineffective or unenforceable other contractual provision shall be replaced by another provision that comes as close as possible to the commercial and legal purpose of the ineffective or unenforceable provision.
2. Changes and amendments to these General Purchasing Terms and other contractual agreements require the written form for their validity. Any deviation from this requirement for the written form also needs to be made in writing.
3. Except to the extent provided otherwise in the contract, the place of delivery and payment is the registered seat of Georg Martin. However, claims for complaints shall be settled at the place where the delivered goods are located.
4. The court having geographical authority over the registered seat of Georg Martin is the exclusive place of jurisdiction. However, Georg Martin also has the right to file claims against the Supplier with courts of jurisdiction over the registered seat of the Supplier.
5. The law of the Federal Republic of Germany is the governing law. The use of the UN Convention on Contracts for the International Sale of Goods is excluded.