

## 1) GENERAL

- 1.1 The placement of our orders is performed solely on the basis of the following "Terms and conditions of purchasing". Acknowledgements of orders by our contractors or the terms and conditions of sale thereof or anything similar that may include conditions other than these will not be recognised by us and are considered as waived.
- 1.2 With the acceptance of an order placed by us, these conditions are also respectively accepted.
- 1.3 Our terms and conditions of purchasing also expressly apply to any business concluded in the future between our contractors and us, even if, in individual cases, no particular consideration was given to these conditions. Any arrangements (amendments, supplements) exceptionally deviating from our terms and conditions of purchasing only apply to the particular commercial transaction to which we have previously provided written confirmation.
- 1.4 Our terms and conditions of purchasing are also to be applied when the contractor installs or mounts delivery items on our behalf.
- 1.5 The supplier acknowledges that the relevant data, regarding him/her or his/her company, included in the order are subject to EDP-supported processing for our own purposes in order to facilitate bookkeeping and respective supplier evidence required by the ordering party. A transfer of the data is admissible in order to fulfil legal obligations, for purposes of monetary or payment transactions, and, in individual cases, – subsequent to special agreement by the relevant supplier – to provide information to precisely specified recipients.

## 2) PLACING OF ORDERS

- 2.1 Offers and quotations made by our contractors (including project costs) are provided to us free of charge and are only to be considered as an invitation to submit an offer of contract (place an order).
- 2.2 With regard to quantity and condition of the goods specified in the offer or with regard to the specific details of execution, the contractor is to comply precisely with our request. The pricing of goods that are charged according to weight is performed in accordance with the net weight without packaging and auxiliary packaging materials (e.g. lattice boxes, pallets, casings etc.).
- 2.3 Price quotations are binding and are not to be reimbursed; unless something was otherwise expressly agreed upon in writing.
- 2.4 Orders, agreements and delivery schedules, the amendment and supplementation thereof, as well as the amendment of the underlying agreement, including these terms and conditions of purchasing and this written form requirement itself, need to be made in writing in order to have legal effect. This also applies to any cancellations.
- 2.5 Any kind of verbal agreement – including subsequent amendments and supplementations to our terms and conditions of purchasing and to this written form requirement – must be confirmed in writing by us in order to have legal effect.
- 2.6 The written form requirement is also fulfilled through appropriate data transfer (e-mail) or telefax.
- 2.7 If our order does not contain any price quotations or only guide-line prices, the supplier is to add the binding prices on the confirmation of order, which is then subject to our written approval.
- 2.8 If the confirmation of order should in any way deviate from the content of our order, this circumstance must be expressly pointed out and is subject to our written approval. We unquestionably reserve the right to cancel the order if, for instance, an amicable order acceptance cannot be achieved within a period of 14 days.
- 2.9 On all documents and paperwork directed to us, with particular regard to confirmations of order, dispatch notes, delivery notes and invoices, the contractor is to state our order number, our order date, the article number and all respective data that we use to give a detailed identification of our order. With regard to make-and-hold orders, our contractor is also to note the respective data of the concerned call orders.

## 3) PRICES, TERMS OF PAYMENT AND BILLING

- 3.1 The prices mentioned in our order or the prices arranged between the contractor and ourselves are fixed prices. No price changes are allowed during the course of the arranged delivery period, even in the case of make-and-hold orders. We do not accept price adjustment clauses.
- 3.2 The prices do not include the statutorily applied value added tax. Changes to fiscal law or other changes of the conditions do not entitle the contractor to subsequently implement a price increase; exchange rate fluctuations in particular are to be borne by the supplier. The ordering party has the freedom of choice to either pay at the exchange rate applied on the day of order or at the exchange rate applied on the due date of payment. The invoice is to be issued in duplicate under observation of details stipulated in 2.9. Invoices are to be sent in separate mail.
- 3.3 We only accept invoices with separately stated value added tax. A separate invoice is to be prepared for each different VAT rate.

- 3.4 If not otherwise arranged, payments are performed within a period of 30 days with a 3 % discount or at the net price within a period of 90 days after receipt of goods. If the invoice is received later than the goods, the day of receipt of the invoice and not the day of receipt of the goods is decisive for the calculation of the discount period. A discount deduction is also allowed when the contractor performs an offset.
- 3.5 The payment can be performed with the inclusion of an offset against our counterclaims, which we will inform the contractor of in writing within the aforementioned payment period.
- 3.6 The contractor's set-off with counterclaims against our claims, or the contractor's exercise of right of retention is only then admissible if the respective counterclaim or the right of retention is accepted by us or is legally established.

## 4) DELIVERY / PACKAGING AND SHIPPING

- 4.1 The delivery must be performed to the receiving centre named by us via the most economic route of transportation and is to be free of freight and packaging costs, duties or any other charges. We have the right to refuse acceptance of goods shipped on a freight forward basis. The supplier is responsible for transport hazards.
- 4.2 The delivery must be performed at the risk and expense of the contractor. The Incoterm provisions of DDP delivered, duty paid, without import VAT to the respective Greiner plant (Incoterms 2010) are deemed as agreed.
- 4.3 Therefore, the delivery items are, insofar as the nature of the goods makes packaging necessary, to be packaged and securely loaded for transport in order to provide protection against loss or damage, as well as to ensure prevention of harm to persons, equipment or other goods, at the cost of the contractor. The contractor is liable for all consequences due to faults or other deficient conditions of the packaging. Items damaged during transport will be returned on a freight forward basis to the contractor, who is, where applicable, responsible for the clearing and settlement of damages with the shipping agent.
- 4.4 We reserve the right to return the packaging to the contractor, whereby the respective value is to be credited to us, insofar as the return of packaging materials is to be performed free of charge to the contractor.
- 4.5 If using substances the supplier is responsible to transport, handle and store this substances conformable to law. Possibly remains have to be disposed in a technically manner, at the expense of the supplier.

## 5) FORCE MAJEURE AND OBLIGATION TO ACCEPT DELIVERY

- 5.1 Conditions of force majeure, which also include the effects of war, riots, strikes, lockouts and disruptions of transport and operations, – which are unforeseeable to us and for which we cannot be held responsible – in our area or in the area of our ancillary industries, release us from our obligation to accept delivery for the duration and scope of their respective effects. In such cases, we accept no claims that may be raised by the contractor regarding considerations or compensation for damages.

## 6) TRANSFER OF RISK

- 6.1 The risk is only transferred to us upon receipt of the delivery items at the respective receiving centres previously named by us. With regard to deliveries including installation or assembly, the risk is only transferred to us upon acceptance of the installed or assembled goods.

## 7) WARRANTY AND LIABILITY

- 7.1 Any form of exemption of liability or limitations of liability claimed by our contractual partners, with particular regard to the title of warranty or compensation for damages, will not be accepted, unless the liabilities in question were individually negotiated with us and expressly determined in written form.  
Thus, this applies, for instance, to amendments to the legal burden of proof on our account, shortening of schedules etc. Therefore, the exemption of the right of recourse in compliance with § 933b ABGB (Austrian General Civil Code) will also not be accepted.
- 7.2 The delivery item or items have to show the assured characteristics, provide the performances as agreed upon, and must be in accordance with state-of-the-art technology with regard to design and material. It is not allowed to contain defects or flaws, which would render it useless or diminish the value or the serviceableness for the usual form of use or for the use that was specified or disclosed in the order.
- 7.3 Quality, dimensions and weights of the delivered material are determined in exclusive accordance with the European Standards. All deliveries must be in complete compliance with the entire scope of statutory accident prevention regulations and safety regulations (CE Conformity) that were applied at the respective time of delivery.

- 7.4 If the delivery item should lack certain characteristics that were either assured to us or were demanded by us, if the accident prevention regulations or other protection-related regulations are not adhered to or if the delivery item should exhibit other deficiencies, we have the right, regardless of the severity of the deficiency, to make a choice between demanding a rescission of sale (cancellation), a markdown of the purchasing price (reduction), a free remedy of the defect or a free replacement delivery. All compensation claims concerning direct or indirect forms of consequential damage resulting from a deficient delivery remain unaffected by this.
- 7.5 If the contractor fails to fulfil his obligation of warranty within an appropriate period, we are entitled to remedy the defects ourselves or to have the defects remedied by a third party or to procure a replacement from a third party supplier at the expense of the contractor. In urgent cases (i.e. in order to avoid interruption of production processes), we are entitled to remedy determined defects ourselves at the expense of the contractor without having to set a deadline.
- 7.6 If defects cannot be remedied on site, the transport costs are charged to the account of the contractor.
- 7.7 The obligation of warranty lasts for a period of two years, calculated from the day of transfer of risk, unless longer terms are stipulated by law.
- 7.8 We have the right to issue a notice of defects within a period of four weeks after receipt of goods, or, after the detection of latent or hidden defects, within a period of two weeks after the discovery. Defects that are counted as hidden defects are such that are not determined until processing or commissioning within the normal course of operations.
- 7.9 Our aforementioned provisions of warranty are also to be applied when the agent installs or mounts delivered items on our behalf. In this case, the warranty period begins when the completely in- stalled or mounted items are accepted by us or by our customer in conjunction with a written letter of acceptance.
- 7.10 The contractor is liable to ensure that the trade mark rights of others are not violated by his performance of services or by our use of the items and services purchased from him. The contractor is obligated to indemnify us and hold us harmless if any cases of violation should occur.
- 8) TRANSFER / ASSIGNMENT**
- 8.1 The delivery commitment concluded between the contractor and us is not allowed to be transferred to third parties without prior receipt of our written approval.
- 8.2 Without prior receipt of our written approval, the contractor is also not entitled to assign his claims, which he is entitled to raise toward us on the basis of the service and supply agreement, to third parties.
- 8.3 Any transfer or assignment performed in breach of these provisions is legally ineffective.
- 9) ENTRUSTED DOCUMENTS AND SECRECY**
- 9.1 Documents and objects of any kind, such as descriptions, samples, drawings, models, tools, moulds, or any other items that we have provided the contractor with, remain our property.
- 9.2 The contractor is neither allowed to use the documents for his own purposes, nor is he allowed to provide access for third parties, insofar as no direct connection with the order processing exists. At the latest, the complete documents, including any copies that may have been made, have to be returned without request when they are no longer required by the contractor for the performance of services and deliveries. The documents are to be returned to us free of charge.
- 9.3 These documents are to be checked by the contractor immediately after receipt. Deviations from this provision are only allowed in conjunction with our written approval. If these documents should contain technical errors or errors of another nature, the contractor is to immediately inform us of this upon their discovery.
- 9.4 The contractor is obligated to maintain secrecy with regard to all technical and commercial data concerning us, insofar as such information is not already publicised. This particularly applies to the documents mentioned in 9.1. and for price quotations and conditions.
- 10) MODULS and TOOLS**
- 10.1 Any moulds and tools manufactured or procured by the contractor on our behalf become the sole property of our company upon production or procurement of those items by the contractor. The handover is temporarily replaced by the fact that the contractor holds the items in safe custody for us on a non-paid basis. The payment for the safekeeping is included in the purchasing price.
- 10.2 During the period of safekeeping, the contractor is responsible for any kind of deterioration and the destruction of the moulds and tools.
- 10.3 The contractor is obligated to insure the moulds and tools at his own expense against theft, fire damage, destruction and any kind of deterioration, and he must provide evidence of such insurance upon request.
- 10.4 The contractor is to keep moulds and tools maintained in good condition at his expense.
- 10.5 The contractor is neither allowed to pass moulds and tools on to third parties, nor is he allowed to use them his own or third party purposes.
- 10.6 We have the right to also pass on the moulds and tools to third parties to facilitate the production of parts for us or to either maintain, renew or modify the moulds and tools ourselves or to commission a third party to do so for our purposes.
- 10.7 We have the right to take the moulds and tools away from the contractor if the supply of parts is not performed on schedule or in accordance with the stipulated provisions. We reserve the right to take the moulds and tools away from the contractor if, for future orders, the contractor should demand higher prices for the parts than was agreed upon for the first delivery of parts made with the aid of our moulds and tools.
- 11) PLACE OF PERFORMANCE / CHOICE OF LAW AND JURISDICTION**
- 11.1 The place of performance for supplies and services provided by our contractor is the receiving centre specified by us.
- 11.2 The place of jurisdiction for disputes between the contractor and us, insofar as the contractor's headquarters is based in a country within the European Union (EU), is the relevant court of jurisdiction of the respective Greiner plant. We are also entitled to file a complaint at the court responsible for jurisdiction of the contractor's headquarters.
- 11.3 Austrian substantive law is applied. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- 11.4 All disputes between the contractor and us, insofar as the contractor's headquarters are outside the European Union (EU), will be ultimately decided by one or several arbitrators, who are nominated and who act in compliance with the rules of conciliation and the arbitration code of the International Chamber of Commerce in Paris. The place of arbitration is Vienna. The official language used in court is English. The arbitration court decides in accordance with Austrian substantive law.
- 12) SEVERABILITY CLAUSE**
- 12.1 The agreement concluded between the contractor and ourselves also remains binding upon the discovery of legal ineffectiveness of individual provisions of the agreement or of these respective ordering terms and conditions.
- 12.2 An ineffective provision or an ineffective business term is to be replaced by a provision, in accordance with good faith, with a respective provision that comes closest to the ineffective provision or condition and ultimately ensures the achievement of the economic purpose of the agreement.

**Greiner Perfoam GmbH**  
Mainstraße 1  
A - 4470 ENNS  
Austria  
Phone: +43 (7223) 9010-0  
Fax. +43 (7223) 9010-99  
mailto: <mailto:office.enns@greiner-perfoam.com>