

**GENERAL TERMS AND CONDITIONS OF PURCHASE**  
**Eurofoam GmbH**  
**March 2009**

**1. GENERAL**

- 1.1 We shall place our orders exclusively on the basis of the following "Terms and Conditions of Purchase". Acknowledgements of orders from or general terms and conditions of our contractor or similar provisions containing terms and conditions different from the present ones will not be accepted by us and shall be deemed excluded.
- 1.2 By accepting our purchase order you also accept these Terms and Conditions of Purchase.
- 1.3 Our Terms and Conditions of Purchase shall expressly apply also to future transactions between us and our contractor, even if these Terms and Conditions are not specifically referred to in a specific case. Agreements (modifications, amendments) which, as an exception, deviate from our Terms and Conditions of Purchase shall only apply to the specific transaction for which we have confirmed them in writing.
- 1.4 Our Terms and Conditions of Purchase shall also apply where the contractor installs or assembles delivery items on our behalf.
- 1.5 The supplier acknowledges that the data on him contained in the purchase order will be processed electronically for bookkeeping and supplier information purposes. Such data may be transmitted if required by law, for monetary and payment transactions and, upon the concerned party's special consent, to accurately described recipients on a case-by-case basis.

**2. PLACING OF ORDERS**

- 2.1 Offers of our contractor (including project costs) shall be submitted to us free of charge and shall only be understood as an invitation to submit an offer for a contract (purchase order).
- 2.2 With respect to quantity and quality of the goods or any design details the contractor shall strictly comply with our inquiry in his offer. Pricing of goods which are charged according to weight shall be based on the net weight exclusive of packaging or packing aids (such as, e.g., skeleton containers, palletes, cases, etc).
- 2.3 Quotations shall be binding and free of charge unless expressly agreed otherwise.
- 2.4 Purchase orders, contracts on transactions, delivery calls, modifications thereof and amendments thereto or any change in the underlying contract including these General Terms and Conditions of Purchase as well as this clause on the requirement of written form itself shall be made in writing to be legally effective. This shall also apply to termination, if any.
- 2.5 Oral agreements of any kind, including subsequent modifications of or amendments to our Terms and Conditions of Purchase and this clause on the requirement of written form, shall require our written confirmation in order to be legally effective.
- 2.6 The requirement of written form shall also be deemed fulfilled by transmission of data (e-mail) or fax.
- 2.7 If no prices or only recommended prices are included in our purchase order, the supplier shall add the binding prices in the order acknowledgment, which prices shall, however, be subject to our written consent.
- 2.8 If the order acknowledgement deviates from the content of our purchase order in any way, this shall be expressly stated and our written consent shall be obtained. In any case we reserve the right to cancel an order if it is not accepted by mutual consent within 14 days.
- 2.9 Our contractor shall state our purchase order number, our purchase order date, the item number and all other information we have used for a more detailed description of our purchase order on all letters and writings to us, in particular on order acknowledgments, dispatch notes, delivery notes and invoices. In the case of call orders the contractor shall also include the relevant data of the call concerned.

**3. PRICES; TERMS OF PAYMENT AND INVOICING**

- 3.1 The prices stated in our purchase order and/or agreed with the contractor shall be fixed prices. Any change during the delivery period shall be excluded, including in the case of call orders. We shall not accept price escalation clauses.
- 3.2 Prices are exclusive of statutory VAT. Changes in tax laws or other changes in circumstances and conditions shall not entitle the supplier to increase the prices subsequently; in particular, the supplier

shall bear exchange rate fluctuations. The ordering party shall be free to choose whether to effect payment on the basis of the exchange rate which is applicable on the day of the purchase order or on the basis of the rate applicable at the due date. Invoices shall be issued in duplicate in accordance with the provisions of Clause 2.9. Invoices shall be sent by separate post.

- 3.3 We will only accept invoices where VAT is stated separately. Separate invoices shall be issued for each value-added tax rate.
- 3.4 Unless otherwise agreed payments shall be made within thirty (30) days of receipt of the goods at a 3% cash discount or within 90 days without deduction. If the invoice is received later than the goods, the date of receipt of the invoice shall be decisive for calculation of the cash discount period rather than the date of receipt of the goods. A cash discount may also be deducted in the case of a set-off by the contractor.
- 3.5 Payment may be effected by means of a set-off against our counterclaims; the contractor will be informed by us in writing within the payment period stated above if we apply this mode of payment.
- 3.6 Set-off of counterclaims of the contractor against our claims or exercise of a right of retention shall be permitted only if the counterclaim or the right of retention has been accepted by us or ascertained in a non-appealable manner.

#### **4. DELIVERY / PACKAGING AND SHIPMENT**

- 4.1 Shipping shall be effected without any freight charges, packaging costs, customs duties or charges for us on the most economical transport route to the receiving agent advised by us. We may refuse to accept carriage forward shipments. The supplier shall bear the transportation risk.
- 4.2 Delivery shall be at the contractor's cost and risk. Deliveries shall be subject to the DDP clause (Incoterms 2000), delivered, duty paid, free of turnover tax on imports, to the respective Eurofoam Gmbh works.
- 4.3 Accordingly, the delivery items shall be safely packed at the contractor's cost, to the extent packaging is necessary due to their nature, in such a way that they are protected against loss and damage and to prevent harm to persons or damage to equipment or other goods and shall be securely loaded for transport. The contractor shall be liable for all consequences caused by lack of packing or by defective packaging. Delivery items which are damaged during transport shall be returned to the contractor postage not prepaid, who shall be responsible for settling the claim with the freight forwarder, if any.
- 4.4 We reserve the right to return the packaging to the contractor; if the packaging is returned free of expense for the contractor, the respective amount shall be credited to us.

#### **5. INSPECTION AND ACCEPTANCE OBLIGATION / FORCE MAJEURE**

- 5.1 Events of force majeure, which shall include impacts of war, riot, strikes, lock-outs and interruptions of transport and business in our area or that of our upstream suppliers which we could not foresee and for which we are not responsible shall release us from our obligation to accept the goods for the duration of the disturbance and to the extent of its impact. In those cases claims of the contractor for consideration or damages shall be excluded.

#### **6. PASSING OF RISK**

- 6.1 The risk shall pass to us only upon receipt of the delivery item by the receiving agent named by us. If delivery includes installation or assembly the risk shall pass to us upon acceptance of the installed or assembled goods.

#### **7. WARRANTY AND LIABILITY**

- 7.1 We shall not accept exclusions of liability of any kind or limitations of liability of our contracting parties, in particular on the ground of warranty or damages, unless such exclusions or limitations have been expressly negotiated with us and put down in detail in writing.  
Accordingly, this shall apply, for example, where the statutory burden of proof is changed to our detriment or if periods are shortened, etc. Thus, we shall not accept exclusion of rights of recourse as defined in Section 933b of the Austrian General Civil Code [ABGB].
- 7.2 The delivery item shall possess the promised properties, render the agreed performance and its design and material shall be state-of-the-art. The delivery item shall not have any errors which eliminate or reduce the value or suitability of the same for normal use or use expected or advised when the purchase order was placed.

- 7.3 Quality, dimensions and weight of the delivered material shall be exclusively in accordance with EN Standards. All deliveries must be in full compliance with the statutory accident-prevention regulations and safety regulations (CE conformity) applicable at the time of delivery.
- 7.4 If promised properties of the delivery items or properties we have asked for are missing, or if accident-prevention regulations or other safety provisions have not been observed, or if the delivery item is otherwise defective we shall be entitled, irrespective of the severity of the defect, to claim, at our choice, cancellation of the purchase (contract), reduction of the purchase price or free-of-charge repair of the defect or substitute delivery at no costs. Claims for compensation for any direct or indirect consequential damage of a defective delivery shall not be affected thereby.
- 7.5 If the contractor fails to fulfil his warranty obligation within a reasonable period of time, we shall be entitled to repair the defects ourselves or have them repaired by third parties, or to obtain replacement elsewhere. In urgent cases (e.g., to avoid interruptions to manufacturing) we shall be entitled to repair identified defects ourselves at the supplier's cost without having to grant a grace period.
- 7.6 If defects cannot be repaired on site the shipping costs shall be borne by the contractor.
- 7.7 The warranty period shall be two years from the date the risk has passed, unless longer statutory periods apply.
- 7.8 We shall be entitled to notify defects within four weeks of receipt of the goods; in the case of hidden defects we shall be entitled to notify them within two weeks after they have been detected. Hidden defects shall include defects of the object of the purchase which are identified only during processing or putting into operation in the course of normal operation.
- 7.9 The foregoing warranty provisions shall also apply if the contractor installs or assembles delivery items on our behalf. In that case the warranty period shall commence upon acceptance of the completely assembled items by us or our customer according to the written confirmation of acceptance.
- 7.10 The contractor shall be liable for the fact that no proprietary rights of third parties are infringed by his services or by our use of the items and services purchased from him. The contractor undertakes to indemnify and hold us harmless in the case of infringements, if any.

## **8. TRANSFER / ASSIGNMENT**

- 8.1 The contractor's delivery obligation vis-à-vis us shall not be transferred to third parties without our prior written consent.
- 8.2 The contractor shall not be entitled to assign his claims vis-à-vis us under the delivery or service contract to third parties without our prior written consent.
- 8.3 Any transfer or assignment effected in violation of these provisions shall be legally ineffective.

## **9. DOCUMENTS MADE AVAILABLE AND CONFIDENTIALITY**

- 9.1 Documents of any kind, such as descriptions/specifications, specimens, drawings, models, tools, moulds and any other items which we have made available to the contractor shall remain our property.
- 9.2 The contractor shall not be allowed to use our documents for his own purposes or to make them available to third parties unless a direct connection to the order to be processed exists. The documents including copies thereof, if any, shall be returned to us without request not later than at the time they are no longer needed by the contractor for execution of services or deliveries. The documents shall be returned to us free of charge.
- 9.3 The contractor shall inspect these documents immediately upon receipt. Deviations from the same shall only be permissible if we have consented thereto in writing. If the documents contain technical or other defects/errors, the contractor shall inform us thereof immediately upon identification of the same.
- 9.4 The contractor undertakes to keep all technical and commercial data regarding us secret, unless they are already in the public domain. This shall apply, in particular, to the documents listed in Clause 9.1 and to information on prices and conditions.

## **10. MOULDS AND TOOLS**

- 10.1 Tools or moulds manufactured or procured by the contractor on our behalf shall become our sole property upon manufacturing or procurement by the contractor. Delivery shall be replaced by the contractor keeping such tools for us at no cost. The costs of such safe-keeping shall be included in the purchase price.
- 10.2 During safe-keeping the contractor shall be liable for any form of deterioration or loss of the tools or moulds.

- 10.3 The contractor undertakes to take out insurance for the tools and moulds against theft, fire, loss and any form of deterioration at his own cost and to present evidence thereof at our request.
- 10.4 The contractor shall maintain the tools and moulds at his cost.
- 10.5 The contractor shall not be allowed to pass tools and moulds on to third parties or to use them for his own or other than his own purposes.
- 10.6 We shall be entitled to make the tools and moulds available to third parties for manufacturing of parts for us, to repair the tools and moulds ourselves or have them repaired by third parties for our own purposes and to replace or alter them.
- 10.7 We shall be entitled to take away the tools from the contractor if parts are not delivered in time or properly. We reserve the right to take away tools also if the contractor demands prices for future deliveries of parts that exceed the prices agreed for the first delivery of our tools and moulds.

**11. PLACE OF PERFORMANCE / PLACE OF JURISDICTION; CHOICE OF LAW**

- 11.1 The place of performance of deliveries and services of our contractor shall be the receiving agent advised by us.
- 11.2 The place of jurisdiction for all disputes arising between the contractor and us shall be the court having subject-matter jurisdiction over the place of the respective Eurofoam GmbH works if the contractor's registered office is in the European Union (EU). We may also bring action in the court having jurisdiction over the registered office of the contractor.
- 11.3 Austrian substantive law shall apply. Applicability of UN Sales Law shall be expressly excluded.
- 11.4 If the contractor's registered office is outside the European Union (EU), all disputes arising between the contractor and us shall be finally settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Vienna. The language of arbitration shall be English. The arbitral tribunal shall decide in accordance with Austrian substantive law.

**12. SEVERABILITY CLAUSE**

- 12.1 The contract concluded by and between us and the contractor shall remain binding also in the case that individual provisions of the contract or of these terms and conditions of ordering are legally ineffective.
- 12.2 Ineffective provisions or terms and conditions shall be replaced in good faith by a regulation that comes as close as possible to the purpose of the ineffective provision or condition and ensures that the economic purpose of the contract can be achieved.