

**MARLEY DEUTSCHLAND GMBH**  
**GENERAL PURCHASE TERMS AND CONDITIONS**

**1. DEFINITIONS**

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

1.2 **Company:** means the company that issues the Purchase Order.

**Contract:** means any Framework Agreement in force on the date of the Purchase Order, the Purchase Order, the Specification, any other documents to which the Purchase Order refers, the Sellers Quotation and acceptance of the Purchase Order (excluding any terms of sale that may be contained in such quotation and acceptance). In the event of any inconsistency or discrepancy between the various Contract documents the order of precedence shall be as listed in this definition. These Terms and Conditions shall be deemed to be automatically incorporated and shall apply to any and all Contract whether expressly attached therein or not.

**Framework Agreement:** means any agreement signed by or on behalf of the Company with the Seller or on behalf of the Seller, covering the supply of Goods to the Company or other companies within the Company's group.

**Goods:** means any Goods agreed in the Contract to be bought by the Company from the Seller (including any part or parts of them).

**Intellectual Property Rights:** means all patents, designs and trade marks (whether registered or unregistered), copyright, know-how, database rights and all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and applications, extensions and renewals in relation to such rights.

**Purchase Order:** means any request sent in writing or by electronic means for the delivery of the Goods.

**Seller:** means the person, firm or company who accepts the Company's Purchase Order.

**Seller's Quotation:** means a quotation by the Seller in respect of the Goods.

**Specification:** means the Company's written requirements in respect of the Goods.

1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

**2. APPLICATION OF TERMS AND ENTIRE AGREEMENT**

2.1 No standard terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such standard terms and conditions.

2.2 The Contract shall, unless otherwise agreed in writing by the parties, comprise the entire agreement between the parties in relation to any Purchase Order and shall supersede all previous arrangements, discussions or agreements between the parties, but for the avoidance of doubt, any representations made by the Seller to the Company regarding the quality or specification of the Goods shall be deemed to form part of the Contract.

- 2.3 Each Purchase Order for Goods by the Company from the Seller shall be deemed to be an offer by the Company to buy Goods subject to these conditions and no Purchase Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Purchase Order, in whole or in part, accepts the offer.
- 2.4 These conditions apply to all the Company's purchases and any variation to these conditions or to the Specification shall have no effect unless expressly agreed in writing by the Company.
- 2.5 For the avoidance of doubt these Conditions shall apply to the Contract irrespective of the language used in the Purchase Order and any associated documentation issued by the parties and the Seller acknowledges and recognises that it has full understanding of the language used in these Conditions.

### **3. QUALITY AND DEFECTS**

- 3.1 The Goods shall be new, of the best available design, of the best quality, material and workmanship, be without defect and conform in all respects with the Purchase Order and Specification.
- 3.2 The Seller shall be deemed to have full knowledge of the purpose for which the Goods are required (which could include resale and use in international markets) and the Goods shall be fit for purpose and of merchantable quality, properly packed and secured. The Seller shall test the Goods on behalf of the Company prior to delivery to ensure that they comply with the Contract requirements.
- 3.3 The Seller shall comply with all legislation applicable in the European Union and any territory where the Goods are to be delivered to the provision of the Goods including compliance with any health and safety requirements in respect of the Goods or policies or procedures operated by the Company or its customers at any of their sites.
- 3.4 Prior to delivery of the Goods to the Company the Company shall have the right and be given the opportunity by the Seller to inspect and test the Goods.
- 3.5 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Purchase Order or to any specifications and/or patterns supplied or advised by the Company to the Seller, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- 3.6 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract and does not imply acceptance of the Goods by the Company.
- 3.7 Where a Purchase Order includes manufacture to the Company's design(s) the Seller shall inform the Company as soon as possible of any invention or improvement in design or method of manufacture arising out of the performance of the Purchase Order and any Intellectual Property Rights in respect of the same shall belong solely to the Company. The Seller will give the Company, at the Company's expense, all necessary assistance to enable the Company to obtain the benefit of all and any such rights whether such right is capable of being registered or not in any part of the world.
- 3.8 If any of the Goods fail to comply with any of the provisions set out in this condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in condition 12 without prejudice to condition 4.
- 3.9 The claims the Company may assert due to defects are subject to the following periods of limitation:
- a) for services provided for a building or work whose result consists in the provision of planning and supervision services therefore: 6 years following acceptance of the work.
  - b) for items that were used for a building according to their normal purpose of use and which have caused the defectiveness of the building: 6 years following delivery.
  - c) in other respects, 3 years following the delivery of goods or acceptance of work performed.

#### **4. INDEMNITY AND INSURANCE**

- 4.1 The Seller shall hold the Company harmless and keep the Company indemnified in full against all liabilities loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:
- a) defective or non-conforming Goods; and
  - b) any claim by any third party under any applicable law made against the Company during the period of time allowed under the law governing such claim in respect of any liability damage, cost or expense arising out of or in connection with the sale or use of the Goods. The period of time allowed under the laws governing the claim shall be deemed to start at the earliest of the following dates: (i) the date upon which the Goods or the products incorporating such Goods have been delivered by the Company to its direct customer or (ii) three months after delivery of the Goods by the Seller to the Company.
  - c) an infringement or alleged infringement of any Intellectual Property Rights caused by the use, manufacture or supply of the Goods; and
  - d) a breach of confidentiality
- 4.2 The Seller shall take out and maintain with a reputable and financially strong insurance company insurance policies sufficient to cover any liability of the Seller towards the Company and third parties in respect of the provision of the Goods. The Seller shall provide copies of its insurance policies and premium receipts following a request by the Company.

#### **5. DELIVERY**

- 5.1 The Goods shall be adequately protected against damage and deterioration in transit and delivered, DDP (Incoterms 2010) to the Company's place of business as stated in the Purchase Order unless agreed otherwise and stated as such in the Purchase Order.
- 5.2 The time and date for delivery shall be specified in the Purchase Order, or in a programme agreed by the Company.
- 5.3 The Seller shall invoice the Company upon, but separately from, despatch of the Goods to the Company. The invoice must show the relevant Purchase Order number.
- 5.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. If the Company requires it, information relating to the Goods must be supplied free of charge on delivery including, without limitation, a certificate of conformity.
- 5.5 Time for delivery shall be of the essence.
- 5.6 Unless otherwise stipulated by the Company in the Purchase Order, deliveries shall only be accepted by the Company in normal business hours.
- 5.7 If the Goods are not delivered or provided on the due date or on a revised date as may have been advised by the Company following the granting of a period of grace, without prejudice to any other rights which it may have, the Company reserves the right to:
- a) cancel the Contract in whole or in part and reject the Goods;
  - b) refuse to accept any subsequent delivery or provision of the Goods which the Seller attempts to make;
  - c) recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and
  - d) claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

- 5.8 Where the Company agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.
- 5.9 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense. If the Goods are delivered in advance of the due date the Company may reject the Goods at the Seller's expense or accept them, but will not be bound to pay for the same until the month following the month in which delivery should have taken place.
- 5.10 The Company reserves the right to reject any Goods which do not conform as to quality, quantity or description with the particulars of the Contract within fourteen (14) days from delivery. Rejected Goods will be replaced without delay at any cost to the Company. Any rejected deliveries in accordance with the above shall be stored at the seller's expense and risk until the seller recovers the same.

## **6. RISK / PROPERTY**

The Goods shall remain at the risk of the Seller until delivery to the Company is complete when ownership of the Goods shall pass to the Company. Where Goods are rejected by the Company risk shall pass to the Seller upon such rejection.

## **7. PRICE**

- 7.1 The price of the Goods shall be stated in the Purchase Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax but inclusive of all other charges and duties.
- 7.2 No variation in the price nor extra charges shall be accepted by the Company. No payment will be made for crates or packing material unless agreed by the Company and stated on the Purchase Order.

## **8. PAYMENT**

- 8.1 The Company shall pay the price of the Goods within the time period agreed between the parties as stated in the Purchase Order following receipt of a correct invoice.
- 8.2 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.

## **9. CONFIDENTIALITY**

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Company or its agents and any other confidential information concerning the Company's business or its products including a Purchase Order and its subject matter which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller. The Seller shall not publicise the fact it is supplying Goods to the Company without the Company's prior written consent. The Seller shall comply with the provisions of this condition for a period of three (3) years after the Contract has been completed or is terminated for whatever reason.

## 10. THE COMPANY'S PROPERTY / TOOLING

Materials, equipment, tools, dies, jigs, patterns, moulds, or any Intellectual Property Rights in all drawings, specifications and data supplied by the Company to the Seller or not so supplied but procured, manufactured or developed and disbursed by the Seller specifically for the manufacture of the Goods (collectively referred to as the "*Tooling*") shall at all times be and remain the exclusive property of the Company.

The Tooling shall, by and at the expense of the Seller, be properly:

- a) held in safe custody at its own risk; and,
- b) reported, declared to and covered by the Sellers' property insurer; and
- c) maintained and kept in good condition; and,
- d) where possible be marked as the property of the Company until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions.

The Tooling shall not be used by the Seller for any purpose other than supplying the Goods pursuant to the Purchase Order.

The Tooling (or part thereof) may be reclaimed by the Company at any time and on such notice of reclaim shall be returned forthwith by the Seller in accordance with the reasonable instructions of the Company.

## 11 TERMINATION

11.1 The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract immediately, without having to request a court order and without liability to the Seller if:

- a) the Seller fails to fulfil any of the terms and conditions of the Contract; or
- b) any distress, execution or other process is levied upon any of the assets of the Seller; or
- c) the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors, or a resolution is passed or a petition presented to any court for the winding-up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or
- d) in case of merger, spin-off or direct or indirect change of control of the Seller; or
- e) the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

11.2 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination including but not limited to confidentiality, remedies indemnity and guarantee shall continue to be enforceable as long as necessary to give them full force and effect notwithstanding termination.

## 12. REMEDIES

Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract and an additional grace period as may have been granted by the Company to rectify such shortfall has expired the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Company:

- a) to rescind the Purchase Order;
- b) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;
- c) at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- d) to refuse to accept any further deliveries/provision of the Goods but without any liability to the Seller;
- e) to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and
- f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

## 13. ASSIGNMENT

- 13.1 The Seller shall not be entitled to sub-contract its rights or obligations or assign the Contract or any part of it without the prior written consent of the Company.
- 13.2 The Company may assign the Contract or any part of it to any person, firm or company.

## 14. FORCE MAJEURE

- 14.1 Neither party shall be liable for failure to perform its obligations under this Contract if such failure results from circumstances beyond the party's control (wars and hostilities and Acts of God such as fire, flood etc.) (a "**Force Majeure Event**").
- 14.2 If either party is affected by a Force Majeure Event, it will use all best endeavours to avoid or cure the Force Majeure Event and will promptly notify the other party of the nature of the Force Majeure Event, the nature of any actual or anticipated failure, delay or imperfect performance and the anticipated consequence and length of such failure, delay or imperfect performance.
- 14.3 If either party is prevented by Force Majeure Event from performance of its obligations for a continuous period in excess of one month the other party may terminate this Agreement forthwith on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

## 15. ENVIRONMENTAL MATTERS

- 15.1 Seller shall ensure that the goods are protected from transport damages by appropriate packaging. The use of packaging material shall be limited to the amount required for this purpose. The packaging material used must be environmentally friendly. Obligations to accept returned packaging material shall be governed by the Packaging Ordinance as amended.

- 15.2 When delivering hazardous substances within the meaning of the Ordinance on Hazardous Substances, Seller shall, without being solicited, submit a safety data sheet to us prior to delivery. Seller shall indemnify us and hold us harmless against any claim of third parties arising from the fact that Seller has failed to provide safety data sheets or was late in doing so.
- 15.3 To the extent that waste is produced in the context of Seller's delivery or service, Seller shall be obliged to recover or dispose of any wastes at its own cost pursuant to the prevailing laws and regulations on waste unless otherwise agreed in writing between the parties. Seller shall accept the ownership and responsibility under waste management laws for waste where it arises.

## 16. GENERAL

- 16.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract shall continue in full force and effect.
- 16.2 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 16.3 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.4 Each right or remedy available to the Company under the Contract is notwithstanding anything to the contrary without prejudice to any other right or remedy of the Company whether under the Contract or at law.
- 16.5 Notwithstanding anything to the contrary in the Contract no limitation of the Seller's liability shall apply for personal injury or death caused by the Goods, in respect of damages for which the Seller is not permitted by law to exclude or limit its liability, or in case of damages due to gross negligence or wilful misconduct, or in case of any infringement of any third party intellectual property rights or in case of any breach of confidentiality undertaking.
- 16.6 Any notice to be served under these conditions must be in writing and may be delivered by registered mail.
- 16.7 The Contract and any part thereof shall be governed and construed in accordance with German law, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods, Vienna dated 11 April 1980, any statute implementing that convention and any conflict of law provisions.
- 16.8 Any differences or disputes arising out of or in connection with the Contract and any part thereof shall be brought exclusively in the court(s) of Hanover.