

## GENERAL TERMS AND CONDITIONS OF PURCHASE

### PROAUT TECHNOLOGY GmbH

#### 1. Scope of Application

- 1.1. These Terms and Conditions of Purchase shall exclusively apply to orders of PROAUT TECHNOLOGY GmbH, Köpenicker Straße 325 / Haus 201, 12555 Berlin (hereinafter referred to as "Principal"). The confirmation or performance of the order by the supplier shall be deemed an acceptance of these Terms and Conditions of Purchase. The Principal does not accept any deviating or additional terms and conditions of the supplier, except if confirmed in writing, even if the Principal does not explicitly object to them.
- 1.2. These Terms and Conditions shall only apply vis-à-vis entrepreneurs within the meaning of Sec. 14 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) as well as legal entities under public law and funds under public law.
- 1.3. The INCOTERMS 2010 shall apply in addition provided that they do not conflict with these Terms and Conditions or any other agreements between the Principal and the supplier.
- 1.4. These Terms and Conditions shall also apply to future transactions with the supplier within the framework of the ongoing business relationship even if they are not separately agreed upon again.

#### 2. Order and Order Confirmation

- 2.1. Orders of the Principal are only valid if they are made in writing. Oral orders require the written confirmation by the Principal (text form is sufficient), unless the Principal accepts deliveries based on oral orders without reservation. Side agreements are to be made in writing. If the offers of the Principal do not explicitly state a commitment period, the Principal shall be bound to an offer for one week from the date of the offer. The receipt of the declaration of acceptance by the Principal shall be decisive as regards a timely acceptance.
- 2.2. The supplier shall immediately confirm orders of the Principal in writing; the reference number shall be included in the confirmation.
- 2.3. The Principal retains title and copyright in any orders and assignments placed by the Principal as well as in any drawings, images, calculations, descriptions and other documents provided to the supplier. The supplier shall not make these available to third parties nor use or reproduce them itself or via third parties without the Principal's express consent. Upon request of the Principal, the supplier shall fully return these documents to the Principal if the supplier no longer requires them in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. In this case, the supplier shall destroy any copies it made of these documents, with the exception of the storage within the framework of the statutory record retention obligations as well as the storage of data for backup purposes within the framework of the usual data backup procedures.

#### 3. Scope and Content of the Obligation to Perform

- 3.1. The scope of the supplier's obligation to perform results from the specifications and statements of work transmitted upon conclusion of the contract or, if no such specifications were made, from the details contained in the offers and brochures of the supplier.
- 3.2. All deliveries must comply with the respectively applicable DIN (*Deutsche Industrienorm* (German industrial standard)) and/or VDE (*Verband der Elektrotechnik, Elektronik und Informationstechnik e.V.* (German Association for Electrical,

Electronic and Information Technologies) standards as well as any other standards and requirements common in the industry and or applicable in the EU, unless expressly agreed otherwise in writing.

- 3.3. The Principal only accepts the quantities or number of items ordered. The delivery of more or fewer items is only admissible upon prior consultation with the Principal. If the parties agree upon partial deliveries, the supplier is obliged to inform the Principal about the remaining quantities upon each partial delivery.
- 3.4. The supplier shall label and dispatch the goods pursuant to the relevant requirements of the countries of origin, transit and destination and shall observe the Principal's instructions regarding the "Delivery of Goods for External Suppliers" (*Warenlieferung für externe Lieferanten*) as applicable from time to time.

#### 4. Delivery Dates and Contractual Penalties

- 4.1. Delivery dates and periods are binding.
- 4.2. The Principal is entitled to change the time and place of the delivery as well as the type of packaging at any time by way of a written notification, observing a notice period of at least seven calendar days before the agreed delivery date. The same shall apply to amendments of product specifications, provided that these can be implemented within the framework of the normal production process of the supplier without considerable additional efforts; in such cases, however, the notice period pursuant to the above sentence shall be at least 14 calendar days. The Principal shall reimburse the supplier for any proven and reasonable additional costs incurred due to the amendment. If such amendments cause delays in delivery which cannot be prevented with reasonable efforts in the normal manufacturing and business operation of the supplier, the originally agreed date of delivery shall be postponed accordingly. The supplier shall notify the Principal of any carefully assessed additional costs or delays in delivery to be expected in writing and in due time before the date of delivery, at least, however, within three business days after the receipt of the notification of the Principal pursuant to sentence. 1.
- 4.3. If a contractual penalty is agreed in case of a delayed delivery, the Principal's right to withdraw from the contract and to assert additional claims, such as additional claims for damages, shall remain unaffected.
- 4.4. In case of delays in delivery, the Principal is in any case entitled, after a prior written warning letter to the supplier, to request a contractual penalty in the amount of 0.5% for each commenced week of delay, as a maximum, however, 5% of the respective order value. The contractual penalty is to be set off against the damage caused by default to be compensated by the supplier.
- 4.5. The Principal is entitled to request an agreed contractual penalty up until the final payment even if the delivery or performance was accepted without any prior special reserve.
- 4.6. If the parties do not agree upon a delivery "ex-works" (DDP pursuant to the INCOTERMS 2010) and if the Principal agrees to assume the transport of the goods, the supplier shall prepare the goods to be picked up and dispatched at the time coordinated with the forwarding agent. In all other cases, the supplier shall be liable for any delays in delivery caused by the forwarding agent pursuant to the provisions of clause 4.
- 4.7. If it is foreseeable that the supplier cannot comply with delivery dates, in part or in whole, the supplier shall immediately inform the Principal accordingly stating the reason therefor and the expected duration of the delay. In case of a culpable breach of this duty, the supplier shall be liable for the resulting damage.
- 4.8. Without the Principal's prior written consent, the supplier is not entitled to make partial deliveries.

#### 5. Shipping Regulations and Dispatch Notes

- 5.1. The reference number specified by the Principal is to be indicated in the shipping documents. Immediately after the dispatch, the Principal is to be provided with the dispatch note in duplicate. The dispatch note has to contain the exact specification, quantity, weight (gross and net), type and packaging of the goods and the item.
- 5.2. If, for reasons for which the supplier is responsible, the requested and required shipping documents for a delivery are not provided in due time or do not contain essential and required information, the goods will remain in storage at the expense and risk of the supplier until the shipping documents and/or the complete shipping documents have been provided.

## 6. Passing of Risk and Prices

- 6.1. Due to the lack of an explicitly deviating agreement, CPT (carriage paid to indicated destination) (INCOTERMS 2000) shall apply as regards delivery terms. The prices specified by the supplier and the agreed prices are also subject to CPT and include all ancillary costs, such as customs duties.
- 6.2. The risk of accidental loss or accidental deterioration shall be borne by the supplier until the passing of risk (delivery or acceptance, provided an acceptance is prescribed by law or was agreed upon). This shall also apply if the shipment has already reached the agreed place of delivery.

## 7. Acceptance and Inspection of the Goods

- 7.1. Events of force majeure and other events for which the Principal is not responsible and which were unforeseeable, such as strikes, lockouts or natural disasters, entitle the Principal to delay the acceptance accordingly.
- 7.2. In case of excess deliveries which exceed the quantities customary in the trade, the Principal reserves the right to return the goods delivered in excess at the supplier's expense.
- 7.3. The acceptance of goods is subject to an inspection, in particular, as to whether the goods are free from defects and complete.
- 7.4. Any inspection obligations of the Principal are limited to the immediate inspection of the delivery as to whether it corresponds to the quantity and type ordered as well as to any transport damage and defects visible on the outside. If the Principal is obliged to make an immediate complaint, this complaint shall in any case be deemed made in due time if made within ten business days after the passing of risk or receipt (whichever occurs later) in case of visible defects and within ten business days after their detection in case of hidden defects. If a longer period is required for the inspection of the shipment, the longer period shall be applicable. In this respect, the supplier waives the right of objection for a delayed notice of defects.
- 7.5. In case of a delivery which consists of various goods, the Principal is only obliged to inspect 3% of the goods delivered with respect to defects. If the goods become unsaleable as a result of the inspection, a spot check of 0.5% of the items delivered shall suffice. If individual spot checks reveal that goods are defective, the Principal may, at its choice, request that the defective items be removed by the supplier or assert claims for defects regarding the overall delivery. Should a further inspection of the goods become necessary due to the defective goods exceeding the usual scope of the incoming goods control, the supplier shall bear the costs of such inspection.
- 7.6. If any third-party claims are asserted against the Principal due to the defective goods delivered by the supplier, the Principal has a right of recourse against the supplier; the above clauses shall apply mutatis mutandis.
- 7.7. By accepting or acknowledging samples or specimen provided,

the Principal does not waive any warranty claims.

## 8. Payment and Invoices

- 8.1. The price stipulated in the order shall be binding.
- 8.2. In the absence of a written agreement stating otherwise, the price includes the delivery and transport to the delivery address stipulated in the contract, including packaging.
- 8.3. Unless otherwise agreed, payment shall be effected, at the Principal's discretion, either within ten days with a discount for prompt payment of 3%, within 14 days with a discount for prompt payment of 2% or within 30 days as from the receipt of the invoice and complete performance. The occurrence of default of payment of the Principal at an earlier point shall be excluded. In case of a specified period, the Principal shall only be in default of payment upon a prior written warning of the supplier.
- 8.4. In case of deliveries which do not comply with the contractual agreements, in particular in case of defective deliveries, the Principal is entitled to withhold payment until proper performance without losing any rebates, discounts or similar price reductions.
- 8.5. All payments are subject to an invoice verification should there be any subsequent complaints.
- 8.6. The order details of the Principal are to be indicated in the invoices of the supplier which are then to be posted in duplicate. A copy of the delivery note is to be enclosed. The Principal is entitled to effect payment by bill of exchange or cheque. In this case, discount charges and taxes shall be borne by the Principal.
- 8.7. The date of receipt of the invoice shall be the date of receipt at the invoice address specifically indicated in the order. Payment periods commence upon receipt of the invoice by the Principal, on no account, however, before the agreed delivery date.
- 8.8. If an invoice of the supplier does neither contain the department of the Principal which has placed the order nor the order number provided to the Principal, the Principal shall only be in arrears with payments 40 days following the due date and receipt of the consideration.
- 8.9. Any down or interim payments do not constitute an acknowledgement of the performance being in compliance with the contract or of the fulfilment of performance by the supplier.

## 9. Warranty

- 9.1. The supplier undertakes to comply with the recognised technical standards and in particular with any regulations, norms and directives issued by the government, supervisory authorities, employers' liability insurance associations and the German Association for Electrical, Electronic and Information Technology (*Verband der Elektrotechnik Elektronik Informationstechnik e.V., VDE*) with regard to performance, accident prevention and environmental protection in Germany or, if a different country of destination was specified vis-à-vis the supplier, in that respective country of destination. This shall also apply to export regulations. The norms and directives mentioned by the Principal shall apply in their most recent version at the time of the delivery.
- 9.2. The Principal is entitled to the full statutory warranty rights (claims for defects). The Principal in particular opposes any and all restrictions of the statutory warranty rights, including any related claims for damages. This shall in particular apply to the Principal's rights in case of a recourse due to consumer claims asserted pursuant to Sec. 478 BGB.
- 9.3. Unless otherwise agreed, the limitation period for claims for defects shall be 36 months after the delivery or, if acceptance is prescribed by law or was expressly agreed upon, after acceptance. If statutory deadlines are longer, such statutory deadlines shall apply. Clause 9.5 shall apply to the limitation

period of claims for defects of title.

- 9.4. In order to prevent imminent disproportionate damage, the Principal is also entitled to remove defects itself at the supplier's expense or to procure replacements. However, the Principal shall notify the supplier immediately, if possible prior to the performance of such measures. This shall also apply to purchase contracts.
- 9.5. The Principal's claims for defects of title shall become statute-barred two years after the Principal gained or should have gained knowledge of them, at the latest, however, five years after the passing of risk.
- 9.6. The supplier shall exempt the Principal from any and all claims asserted against the Principal by third parties due to defects or flaws of the goods.
- 9.7. Upon receipt of the written notice of defects of the Principal by the supplier, the limitation period of warranty claims becomes suspended until the supplier rejects the claims or declares that the defect has been removed or otherwise refuses the continuation of negotiations regarding the claims. In case of replacement deliveries and removals of defects, the warranty period commences anew for replaced and improved parts, unless the Principal had to assume due to the behaviour of the supplier that the supplier had not considered itself obliged to carry out the measure but rather effected the replacement delivery or removal of defects as a gesture of goodwill or for similar reasons.

#### **10. Liability for Compensation and Product Liability**

- 10.1. The Principal is entitled to the full statutory compensation claims.
- 10.2. The supplier shall indemnify the Principal upon first demand against any and all compensation claims asserted against the Principal due to defects of a product delivered by the supplier, provided that the defect was caused in the sphere of control and organisation of the supplier and that the supplier itself is liable vis-à-vis third parties.
- 10.3. The supplier shall furthermore reimburse the Principal for any reasonable expenses pursuant to Secs. 683, 670 and Secs. 830, 840, 426 BGB incurred by the Principal due to an error caused by the supplier or in connection with a recall or information measure carried out by the Principal (e.g. warning notices published in the media), unless the Principal had to assume at the time when the measure was carried out and under the circumstances which were known to the Principal that such a measure was not necessary. Insofar as this is possible and reasonable, the Principal shall inform the supplier of the scope and content of the measures to be carried out and give the supplier the opportunity to provide a statement. Any other statutory rights of the Principal shall remain unaffected.
- 10.4. The supplier undertakes to take out a product liability insurance with a cover of at least EUR 2,500,000.00 per case of liability and to maintain such insurance beyond the complete fulfilment of the reciprocal contractual obligations for a duration of ten years following the putting into circulation of the processed items of delivery by the Principal. Upon request of the Principal, the supplier is obliged to provide proof of the respective insurance and payment of the corresponding premiums. If the supplier is liable vis-à-vis the Principal due to a product defect, the supplier is obliged upon first demand to assign to the Principal its insurance claims in the amount of the damage incurred by the Principal. If, pursuant to the insurance contract, an assignment is inadmissible, the supplier irrevocably instructs the insurance company to make any and all payments exclusively to the Principal. Payments to the Principal resulting from these assigned insurance claims shall be set off against the Principal's claims against the supplier.
- 10.5. Unless otherwise agreed, the supplier is obliged to label its objects of delivery so that they are permanently identifiable as

the supplier's products.

#### **11. Industrial Property Rights**

- 11.1. The supplier undertakes to ensure that the object of delivery or the service is free from any rights of third parties in Germany or, if it has knowledge of a different country of destination at the time of the conclusion of the contract, in the country of destination. In case of an infringement of industrial property rights of third parties for which the supplier is responsible, the supplier is obliged to reimburse the Principal for any and all resulting damage. If the supplier cannot remove the industrial property rights of third parties within a reasonable period of time, the Principal is entitled to obtain from the owners of such property rights for a customary and reasonable consideration and at the supplier's expense in particular the permit for delivering, taking into operation, using and reselling the object of delivery or the service in the scope required for the purpose of the contract.

#### **12. Confidentiality, Drawings**

- 12.1. The supplier is obliged to keep strictly confidential the order of the Principal and any related commercial and technical details. Any information provided by the Principal, any drawings prepared by the Principal or the supplier on the basis of this information etc. may only be used or exploited for other purposes upon the written consent of the Principal. Unless otherwise agreed, the obligations specified in this clause 12.1 shall apply permanently.
- 12.2. The supplier shall bind any subcontractors accordingly pursuant to clause 12.1.
- 12.3. The supplier's sole responsibility for a proper performance shall not be affected by an acceptance or approval of drawings, plans and samples provided by the supplier.

#### **13. Assignment, Prohibition of Set-off, Retention of Title**

- 13.1. Any rights under this order may only be assigned to third parties upon mutual agreement between the parties. The Principal's approval shall be deemed granted if the supplier has granted its supplier an extended retention of title within the course of ordinary business transactions.
- 13.2. Any tools, devices and models which the supplier is provided with or which were manufactured for contractual purposes and separately invoiced to the Principal by the supplier shall remain or become the property of the Principal. The supplier shall mark them as the property of the Principal, store them properly, protect them against damage of any type and only use them for contractual purposes. In the absence of a deviating agreement, the contractual parties shall each bear half of the costs of the maintenance and repair of such tools, devices and models. However, if such costs result from defects of objects manufactured by the supplier or from an improper use of the supplier, its employees or other vicarious agents, the costs shall exclusively be borne by the supplier. The supplier shall immediately inform the Principal of any damage to these objects which is not minor. Upon request, the supplier is obliged to return the items to the Principal in proper condition if they are no longer required for the performance of the contracts concluded with the Principal.
- 13.3. Any deductions or set-offs vis-à-vis the Principal are only admissible if the claims of the supplier are undisputed or have been established with final legal effect. The same shall apply to rights of retention and rights to refuse performance.
- 13.4. The supplier shall only have rights of retention of title if these concern payment obligations of the Principal for the respective products with regard to which the supplier has reserved title. In

particular expanded or extended retentions of title shall be inadmissible.

#### **14. Vicarious Agents**

- 14.1. The supplier shall be liable for its own deliveries and services as well as for the deliveries and services of its suppliers; in this context, the suppliers of the supplier shall be regarded as vicarious agents of the supplier.

#### **15. Place of Performance, Applicable Law and Jurisdiction**

- 15.1. Place of performance for deliveries and services shall be the place of destination, for payments the seat of the Principal.
- 15.2. German law shall apply to any and all claims under and in connection with this contract. The UN Convention on the International Sale of Goods shall not apply.
- 15.3. Exclusive place of jurisdiction – provided that the supplier is a merchant – for any and all disputes arising directly or indirectly from this contractual relationship shall be Berlin, Germany. The Principal may also initiate an action against the supplier at its registered seat.
- 15.4. Should individual provisions of the contract be or become invalid, this shall not affect the validity of the remaining provisions.

(Last updated: March 2022)