

## General Terms and Conditions of Purchasing

**arias Fabrik für Kunststoffverarbeitung GmbH**  
**Am Winkelstück 12**  
**58239 Schwerte / Germany**

### ***1. Sole Scope of Application and Acknowledgement of Our Terms and Conditions of Purchasing***

- 1.1 We, hereinafter also known as the Buyer, place orders solely and exclusively on the basis of our Terms and Conditions of Purchasing of arias Fabrik für Kunststoffverarbeitung GmbH. Supplier's terms and conditions of business do not apply, even if we have not specifically objected to their application. The above provision also applies in the event that we accept, without reservation, consignments from the Supplier in awareness of Supplier's terms and conditions contrary to, or in deviation from, our Terms and Conditions of Purchasing.
- 1.2 Orders, agreements and modifications are binding solely if and when we have issued or confirmed them in writing. Agreements reached orally or by telephone do not become legally valid unless subsequently confirmed in writing.
- 1.3 You will provide to us, in conjunction with the offer, a safety data sheet, filled out completely, in accordance with Section 14 German Ordinance on Hazardous Substances and the relevant accident bulletin (transport) for materials (substances, preparations) and objects (e.g. goods, parts, technical devices, uncleaned empty containers) which, owing to their nature, their properties or their condition, may pose hazards to human life and health, to the environment or to objects and must therefore, pursuant to legal statutes, be given special treatment with respect to packaging, transport, storage, handling and waste disposal.
- 1.4 In the event of modifications to the materials or changes in the legal situation, you will submit to us updated data sheets and bulletins. In the event of bankruptcy proceedings against the contract partner or of a change in his ownership structure, the Buyer is entitled to cancel the contract, in whole or in part, without prejudice to procedural consequences. The contract partner is obligated to notify the Buyer immediately of any such circumstances.
- 1.5 If and when individual provisions of these Terms and Conditions of Purchasing or of the supply agreement are or become invalid, the validity of the remaining provisions will not be affected.

### ***2. Secrecy/Title of Ownership***

- 2.1 The Supplier may not assign concluded supply and service agreements or the Buyer's counterclaims, in whole or in part, to third parties unless the Buyer has given his previous written consent to the assignment.
- 2.2 The Parties covenant to treat any and all commercial, product-specific and technical details which are not obvious and which become known to them pursuant to the business relationships as business secrets. The Buyer has and retains title of ownership to any drawings, tools, moulds, attachments, models, stencils, samples and similar objects that the Buyer may make available. They may not be handed over or otherwise made accessible to unauthorized third parties without our express consent. If and when the above objects are prepared on behalf of the Buyer, the Buyer acquires title to them immediately upon their preparation or manufacture. The Supplier shall hand over any such objects to us automatically if and when he no longer requires them in the proper course of his business.
- 2.4 Sub-suppliers shall be obligated correspondingly.

### **3. Prices, Terms and Conditions of Payment**

- 3.1 The price shown in the order is binding, excluding statutory value-added tax. In the absence of deviating written agreement, the price includes delivery “free house” to the shipping address indicated in the order, including packaging.
- 3.2 Invoices, including any and all relevant documents and data, shall be submitted separately to the Buyer in proper form, as original with one copy or carbon copy, after completion of delivery/performance.
- 3.3 Payment will be made subject to proper fulfilment of the contract and the correctness of price and calculations. In the event of defective delivery, the Buyer is entitled to retain payment in a reasonable scope until proper fulfilment.
- 3.4 Any and all payments will be effected in the currency chosen by the Buyer.
- 3.5 Unless otherwise agreed, payments will be made 30 days after invoice date in full or within 14 days of the invoice date subject to a deduction of 3% cash discount.
- 3.6 The conditions shown below apply to the settlement of work done on an hourly wage basis under the terms and conditions agreed with the Supplier/Service Provider:
- The qualification of the Supplier’s/Service Provider’s employees for which the Buyer will be billed must be in conformity with the requirements of the concrete task at hand.
  - Records of the work done on an hourly wage basis shall be kept separately and submitted to the Buyer’s representative immediately, i.e. by the beginning of the week following the work at the latest, for confirmation.

### **4. Delivery, Default, Force Majeure & transfer of risk**

- 4.1 A delivery note in which the consignment is described precisely according to type, quantity and weight shall be included with each and every consignment. Delivery notes, bills of lading, invoicing and any and all correspondence must include the Buyer’s order number and, as appropriate, item designation. Unless otherwise agreed in writing, delivery shall be made “free works” of the Buyer, including packaging. The return of packaging is subject to express agreement. Transport costs for any return will be borne by the Supplier.
- 4.2 Shortfall or excess deliveries as well as partial deliveries are permissible solely in accordance with prior agreements concluded with the Buyer.
- 4.3 The agreed dates are binding. The receipt of the merchandise at the shipping address designated by the Buyer is authoritative for determining compliance with delivery dates or delivery periods.
- 4.4 The completion and readiness for acceptance or handover by the Supplier, including the handover of any and all documents in German which are required by laws or ordinances or which have been contractually agreed, e.g. approvals, test results, conformity declarations, operating and maintenance instructions, spare parts lists, user manuals, is authoritative for the performance of the service in good time. The Supplier is obligated to notify the Buyer in writing immediately if and when circumstances which will prevent his compliance with the agreed delivery period occur or become known to him. The agreed date is not under any circumstances modified by the notification of the presumed delay.
- 4.5 In the event of default of delivery, the Buyer is entitled to statutory claims. He is in particular entitled, after the expiration in vain of a reasonable subsequent period, to request damage compensation for non-fulfilment or to obtain substitute performance from a third party or to cancel the contract.

- 4.6 Cases of force majeure and other unforeseeable, inevitable and serious incidents for which the Buyer is not accountable and which result in major difficulties or impossibility of fulfilment of the acceptance obligation, e.g. operational disruptions of any kind, strikes, legal lock-out, release the Buyer from the obligations under the contract; hindrances of temporary nature, however, release him solely for the duration of the hindrance.
- 4.7 Risk is only transferred to us, even if shipping is agreed, once the goods are delivered to us at the destination.

## **5. Quality**

- 5.1 The Supplier warrants that any and all deliveries/performances are in compliance with state-of-the-art technology, the pertinent legal provisions and the regulations and directives of government authorities, employers' liability associations and professional federations. The Supplier warrants the use of materials appropriate to the intended purpose, proper design or model and construction, error-free function and achievement of the agreed performance under the agreed terms and conditions. Modifications of the merchandise are subject to prior written consent.

## **6. Warranted Characteristics**

- 6.1 Characteristics shall be deemed as warranted if and when, upon the Buyer's request, the Supplier has expressly designated them as present.
- 6.2 Data or values shown in the works test certificate shall be deemed warranted characteristics in every case, applicable to the entire lot to which the works test certificate applies.

## **7. Notification of Defects/Warranty**

- 7.1 In the case of purchase contracts and agreements for works and materials, the Buyer will give written notice of obvious defects in the deliveries without delay as soon as they have been determined in the proper course of ordinary business. The notice shall be deemed without delay in any case, provided that it has been submitted within 2 weeks after receipt of the consignment at the Buyer's company. The Supplier will be notified of any defects discovered at a later time within 2 weeks of their discovery.
- 7.2 The Supplier shall, without delay and at no charge, including any and all secondary costs, remedy any defects in delivery/performance or the lack of warranted characteristics for which notice is given during the warranty period; the remedy shall, at our discretion, take the form of subsequent improvement or substitute delivery. If and when subsequent improvement/substitute delivery is not possible or is unsuccessful, or is delayed or refused even after the setting of a reasonable subsequent period, the Buyer is entitled to exercise the statutory rights to rescission of the contract or reduction of the price.
- 7.3 The right to assert damage compensation claims is expressly reserved. This provision also applies to damage compensation claims for non-fulfilment.
- 7.4 In urgent cases, the Buyer may, after consultation, carry out the subsequent improvement himself, or have it carried out, at the Supplier's expense and risk. The Buyer may remedy minor defects himself without prior agreement and without prejudice to warranty obligations.
- 7.5 The warranty period is 2 years, commencing upon the handover or acceptance of the merchandise at the Buyer's place of business, provided that legal statutes or contractual agreements do not establish a longer

warranty period. The warranty period for spare parts is 2 years after installation/commissioning and ends at the latest 4 years after delivery.

- 7.6 The limitation period shall be suspended from the day of receipt of notice of defects until such time as the Supplier declares the defect to be remedied or refuses to remedy the defect.
- 7.7 The warranty period for subsequently improved or replaced parts commences upon the day of the subsequent improvement or the delivery of the improved parts or substitute delivery.

## **8. Liability/Insurance**

- 8.1 If and when the delivery/performance is defective, if and when there is a breach of contractual care, custodial care, information or other contractual secondary obligations or if and when there is a failure to comply with contractually agreed deadlines, the Supplier is obligated to pay compensation for any loss or damage suffered by the Buyer, directly or indirectly, as a consequence.
- 8.2 The supplier undertakes to indemnify us against claims by third parties arising from breach of obligation on its parts, on first written request.
- 8.3 If and when claims are asserted against arias Fabrik für Kunststoffverarbeitung GmbH owing to the breach of official safety regulations or on the basis of domestic or foreign product liability regulations or laws or owing to the defective nature of our products which results from the Supplier's merchandise, we are entitled to request compensation for this damage or loss to the extent that it has been caused by the products delivered by the Supplier. This loss or damage also encompasses the costs of any precautionary recall action.
- 8.4 The Supplier/Service Provider shall maintain liability insurance in adequate scope. He shall conclude an insurance policy with reasonable cover for any and all risks arising from product liability, including the risk of a recall action. The Supplier/Service Provider will submit evidence of such insurance upon request.

## **9. Intellectual Property Rights**

- 9.1 The Supplier warrants that any and all deliveries/performances are free of third-party intellectual property rights and that no patents, licenses or other intellectual property rights or patent applications made available for public inspection are violated, in particular by the delivery and utilization of the merchandise.
- 9.2 The supplier indemnifies the customer and its customers from third-party claims arising from any breach of industrial rights by the delivered goods and shall also bear all costs that arise in this regard, on first request.
- 9.3 The Buyer is entitled to obtain permission to use the relevant merchandise and services from the authorized owner of relevant rights at the Supplier's expense.

## **10. Performance of Work**

- 10.1 The Supplier/Service Provider shall monitor his personnel at the Buyer's place of business and instruct them to comply with and observe any and all special legal, official and plant regulations which have been issued for such operations.

Compliance and supervision fall under the Supplier's or Service Provider's duty to take care.

- 10.2 The Supplier/Service Provider may not assign personnel who cannot correctly understand instructions given in German and who are unable to communicate in German to work in the Buyer's facility.

10.3 The services, which are to be performed, must be carried out in observation of Section 2 (1) Sentences 1 and 2 of the accident prevention regulations. Compliance and supervision fall under the Supplier's/Service Provider's duty to take care.

**11. Place of Performance/Venue**

Place of performance and venue are the Buyer's registered office.

**12. Language**

Unless otherwise expressly agreed, the language of the contracts, procedures and court proceedings is German. If and when the parties make use of other languages in addition to German, the German wording has priority.

**13. Proper Law**

Unless otherwise agreed, proper law is solely and exclusively the law of Germany.

The provisions of the UN CISG do not apply.

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