

## **General Terms of Purchase**

of the company: Productware GmbH

Am Hirschhügel 2, 63128 Dietzenbach Germany

### **§ 1. General Terms**

§ 1.1. For all orders and conclusion of transactions for Productware GmbH these general terms of purchase are valid unless it has been expressly agreed in a different manner. The terms of the contractor in its GTB (General Terms of Business) or order acknowledgement are herewith expressly contradicted. Amendments and additions as well as divergences from the terms of purchase listed below which may appear in the terms of sale of the supplier are only then deemed to be accepted if they have been confirmed in writing by us as an addition to our terms of purchase. The acceptance of deliveries and/or services or their payment does not constitute any consent to the terms of sale / GTBs of the supplier.

§ 1.2. The company known as Productware GmbH reserves the right at any time to make amendments to or to withdraw any order which has already been made to the contractor so long as the contractor has not yet confirmed that order in writing. Any opposing terms of delivery of the contractor are herewith expressly contradicted.

§ 1.3. With the initial delivery according to these terms of purchase the supplier also acknowledges their validity for all further orders.

### **§ 2. Delivery and Dispatch**

§ 2.1. Delivery takes place in accordance with the order and/or the following instructions of Productware GmbH according to the agreed deadlines. The contractor will immediately notify any alterations to the deadlines.

§ 2.2. The supplier must adhere to the despatch stipulations of Productware GmbH and of the forwarding agent and/or the freight carrier. The order numbers and article numbers of Productware GmbH are to be quoted in all dispatch papers, letters and invoices.

§ 2.3. Delivery takes place under the condition Delivery Duty Paid (DDP). The costs of transport including packaging, insurances and all other ancillary costs are borne by the contractor to the extent that it has not been expressly otherwise agreed upon.

§ 2.4 Goods acceptance: Monday – Thursday 07:30 hrs. - 16:00 hrs.

Friday 07.30 hrs. - 14.00 hrs.

### **§ 3. Delivery Periods, Delivery Deadlines**

§ 3.1. The delivery periods or deadlines agreed upon in the orders are binding and are understood to be inclusive of receipt at the location of fulfilment. Contractual fulfilment on the contractually determined deadlines is a principle obligation of the supplier.

§ 3.2 If events occur which make it impossible for the supplier to fulfil the obligation according to Clause 3.1 and/or if such occurrences are foreseeable then the supplier must without delay notify Productware GmbH as such with details of the nature of the occurrence, of the measures carried out or to be carried out by the supplier since if it neglects to do so it cannot at a later date have recourse to such occurrences. If the supplier does not comply with this obligation according to Clause 3.2 vis-à-vis then it is not protected by appeal to force majeure.

§ 3.3. Productware GmbH is entitled to refuse acceptance of goods which are not delivered at the deadlines quoted in the order and to send them back at the cost of the supplier or to warehouse them with a third party. Furthermore we are entitled, regardless of any concomitant legal regulations, and according to our choice, and with the granting of an appropriate period of grace, to withdraw from the agreement, to conclude covering transactions and/or to demand compensation for damages on account of non-fulfilment. We have the right to claim reimbursement of all additional costs incurred by the late delivery of supplies or services. Acceptance of the delayed delivery or service does not constitute waiving of any claims to damages for replacement.

§ 3.4 If the supplier exceeds the delivery deadlines agreed upon then Productware GmbH can freely decide, depending on the facts of the case, whether the supplier should have to pay a contractually penalty of 0.5% of the value of the goods per started week of deadline overrun, in total however not more than 5% of the value of the goods. The contractual penalty will be set against any claim for compensation for damages on account of delay. In the case of a contractual penalty for delay in delivery the claim for a contractual penalty still remains intact even if it is not expressly lodged upon acceptance of the delivery. Further claims similarly remain intact without especial proviso upon acceptance.

### **§ 4. Quality and Acceptance**

§ 4.1 The contractor ensures that the specifications to the goods supplied are in accordance with relevant norms and the state of the art.

§ 4.2 Productware GmbH reserves the right to examine the goods immediately after receipt for evident and visible defects and not to accept them until then. In the case of complaint the supplier can be charged the costs of the examination and of the replacement delivery. In any and every kind of defect the deadline period for complaint is 14 days from the date of their recognition. The supplier waives throughout the entire duration of the guarantee period the objection of delayed notification in respect of hidden defects.

§ 4.3. In the case of goods-in checks the dimensions, weights and quantity of items ascertained in a delivery shall be binding.

#### **§ 5. Prices, Terms of Payment and Transfer of Risk**

§ 5.1 Prices agreed upon are maximum prices; any reduction in price coming into being between order and invoice will be to the benefit of Productware GmbH.

§ 5.2 invoices are to be drawn up without delay after despatch of the goods. Value added tax is to be listed separately.

§ 5.3 Payment takes place under the proviso of proper and correct delivery as well as correctness of price and calculation. Upon ascertainment of a defect subject or guarantee obligation Productware GmbH is entitled to withhold in its entirety payment up until fulfilment of the guarantee obligation.

§ 5.4 To the extent that no special agreement has been reached the settlement of the invoice will either be within 20 days with deduction of a discount of 3% or within 30 days with a deduction of 2% or within 60 days without discount. The discount period runs from that point in time at which an invoice which is correct both in terms of calculation as well as in terms of goods has been received by us and/or the services have been provided. If these prerequisites are not fulfilled then Productware GmbH is not responsible for any delays in processing which occur as a result. Payment takes place with the proviso of inspection of the invoice.

§ 5.5 The supplier bears the risk of damage up until acceptance of the goods by us or by the person delegated by us at the location to which the goods are to be delivered according to contract.

§ 5.6 If Productware GmbH makes goods available to the supplier for purposes of assembly or testing and/or commissioning of already assembled goods and/or if Productware GmbH commissions the supplier with the assembly of these goods then the supplier is liable for the risks as from the moment of provision of the goods up until their acceptance by Productware GmbH.

#### **§ 6. Set-off and Assignment**

§ 6.1 The supplier is only entitled to set off items with undisputed or legally determined accounts payable. If payments have been made by the recipient before delivery then ownership is transferred to Productware GmbH pro rata of value at the point in time of payment.

§ 6.2 Without prior written consent on the part of Productware GmbH the supplier cannot either partially or entirely assign claims and obligations arising from this agreement to third parties. All contractual obligations for the supplier remain unaffected by such consent.

#### **§ 7. Guarantee**

§ 7.1 The obligation to guarantee by the supplier is determined by the legal stipulations to the extent that other conditions are not regulated below. The supplier releases Productware GmbH upon the first request from all claims by third parties which are lodged on account of its share of cause on account of defects, infringements of copyrights of third parties or product damage in its supplies. The supplier is obligated to maintain product liability insurance to a sufficient extent.

§ 7.2 The period of guarantee is of at least 12 months as from delivery to the location of fulfilment. If the legal period of guarantee is longer than this, then this will be valid.

§ 7.3 In the case of defective supplies the supplier, depending on the discretion of Productware GmbH, has to provide replacement free of charge, a reduction in price according to the stipulation of the legal stipulations on such reductions or has to make good the defects free of charge. In urgent cases Productware GmbH – after consultation with the supplier – is entitled to itself undertake the making good of the defects or to cause this to be done by a third party at the cost of the supplier or to make other arrangements for replacement. The same holds good if the supplier is in delay with the fulfilment of its guarantee obligation. If, according to the statistical test procedure designated in the order, the overrun of the maximum permissible portion of defects is ascertained then Productware GmbH is entitled to lodge claims for defects in reference to the entire delivery or, at the cost of the supplier and after prior consultation with the supplier, to test the entire delivery.

§ 7.4 For replacement deliveries and repair tasks the supplier is liable to the same extent as for the original supply object, that is to say also for transport, travel and work costs, all without limitation. The period of guarantee for replacement deliveries begins at the earliest on the day of receipt of the replacement delivery.

§ 7.5 The supplier is obligated to reimburse appropriate costs for any recall operation on account of product liability law. A notification requesting comments on the matter will previously have been sent to the supplier by Productware GmbH.

#### **§ 8. Confidentiality**

§ 8.1 In respect of all internal matters at Productware GmbH in the widest sense, including items of information on tests, production, programming, drawings, plans, drafts, prototypes, models or the provision of other services which become known to the supplier during the course of fulfilment of contract the latter is obligated to confidentiality. The supplier is not entitled to make known to a third party, without the prior written permission of Productware GmbH, the intention of a contract whether in brochures, advertisements or any other kinds of media or writing etc.

## **9. Information and Data**

§ 9.1 Drawings, drafts, samples, manufacturing stipulations, company-internal data, tools, installations etc which we make available to the supplier for the preparation of offers or for the execution of an order remain our property. They may not be used for any other purposes, duplicated or made accessible to third parties and are to be kept safe with the due care of a diligent businessman.

§ 9.2 Production media (programming, drawings, plans, drafts, prototypes, models, devices, work documentation and similar) made available by Productware GmbH or manufactured for Productware GmbH may only be used exclusively for the preparation of offers and for the execution of our orders. They may not be made accessible to third parties without the written consent of Productware GmbH and are at the latest however, unless recalled earlier, to be handed back to us

3 years after use, during which time they are to be held in safekeeping free of charge and according to instructions. They are to be insured by the supplier against destruction or loss. To the extent that this can be successful their usefulness and value retention are to be ensured via appropriate professional maintenance.

## **10. Third Party Copyrights**

§ 10.1 The supplier ensures that the rights of third parties are not in conflict with the intended usage of the goods purchased, in particular that the copyrights of third parties are not infringed. Insofar as Productware GmbH nonetheless may have claims lodged against it by third parties for any possible infringement such as copyright, patent or other protected rights then the supplier releases it from this and from any performance due in connection with this.

## **11. Data Protection**

§ 11.1 The supplier declares its irrevocable agreement that person-related data conveyed shall be handled and/or processed in connection with the contract and under compliance with the legal stipulations.

## **12. Escape Clause**

§ 12.1 The ineffectiveness of individual terms does not affect the remaining terms. Should a term be or become invalid then this is to be replaced with a term which is of equal commercial significance. Amendments or additions to these terms of purchase require the written form. Verbal agreements have no validity unless they are confirmed in writing.

## **13. Court of Jurisdiction, Applicable Law**

§ 13.1 Court of jurisdiction is, if the supplier is a registered trader, as per our choice the location from which the order was issued. The agreement is subject to the law of the Federal Republic of Germany with the exclusion of conflict of laws. The application of the Hague Conventions Relating to a Uniform Law on the International Sale of Goods, the uniform UN purchasing law or any other conventions on the law on the purchasing of goods are excluded.