

1. Scope of application; hierarchy

1.1 These General Terms and Conditions of Purchase (hereinafter called "GTC") apply to all legal transactions between Coloyal GmbH (hereinafter called the "Client") and its suppliers (hereinafter called the "Supplier"). The Supplier's conflicting, contradictory or supplementary GTC are expressly rejected; such rejection also applies in the event of the Supplier having stipulated a specific form for rejection. Acceptance of goods and services and payments do not signify acknowledgement of the Supplier's general trading conditions. This even applies if the Supplier states that it will only make deliveries on its own terms and conditions.

1.2 If other contractual provisions in an order or in signed supply contracts should deviate from these GTC those other contractual provisions shall take priority. Otherwise, the various provisions shall coexist.

2. Orders

2.1 Orders or calls for goods already ordered ("Call-ups") as well as amendments and additions must be made in written form. This requirement of written form shall be assumed to have been met if conveyed by fax, an e-procurement-system, email or EDI. The Client's orders may only be accepted by the Supplier within 14 calendar days. The Client's call-ups shall be binding on the Supplier unless the latter should raise an objection in written form with good cause within two working days of receipt. The time of receipt by the Client shall determine the timeliness of all declarations by the Supplier.

2.2 Where reasonable for the Supplier the Client may require changes to be made to deliveries or agreed services. In doing so, reasonable account shall be taken of the consequences, especially with regard to increases or reductions in cost and delivery and performance deadlines.

2.3 The Supplier is only entitled to make partial deliveries or perform service in part with the written consent of the Client. In such an eventuality the quantity outstanding must be specified on the delivery note.

2.4 All of the Supplier's correspondence – where applicable – must specify the SAP order number and be addressed to the Client's purchase clerk stated in the order.

3. Prices

Prices are quoted inclusive of all additional costs (transport, packaging and customs duty) with free delivery to the recipient, plus VAT, unless expressly agreed otherwise. Where the Supplier makes general price reductions after the conclusion of a contract but before delivery it shall also charge the Client those prices for the business transacted. Cost estimates are binding and free of charge unless expressly agreed otherwise.

4. Invoicing, terms of payment and set-off

4.1 The Supplier's invoices shall be drawn up in duplicate specifying the item number stated on the order, the Client's purchase clerk, the quantity supplied and prices, plus – where applicable – the SAP order number. All payments will be withheld by the Client until such time as an invoice compliant with the provisions of the German VAT Act [*UStG*] has been presented. At the request of the Client an invoice may be replaced by credit note procedure pursuant to the rules under the *UStG*.

4.2 Unless agreed otherwise, payments shall be made in the normal trade manner within 14 days with a 3% discount or within 30 days net. The place of performance for payment purposes shall be the Client's registered office.

4.3 The Client shall be entitled to offset against the Supplier's demands all accounts receivable on the part of group undertakings associated with it pursuant to §§ 15 et seq. of the German Companies Act [*AktG*].

5. Delivery, packaging, proof of origin, performance

5.1 The Supplier shall only be entitled to effect delivery after an agreed time limit or delivery period has expired if it has

the written consent of the Client.

5.2 The Supplier is obliged to use environmentally friendly products and processes in its deliveries and services where technically and commercially feasible. The relevant technological regulations, European and German, and all legislation and legal rules and regulations applicable at the place of performance and at the Supplier's designated place of delivery or performance stipulated in the contract shall be observed, especially rules pertaining to environment protection, fire safety, hazardous materials and accident prevention. Generally accepted health and safety provisions must be met.

5.3 The Supplier shall attach all requisite delivery documents to its deliveries. Delivery documents must state the delivery address, the SAP order numbers (where applicable), the item numbers stated on the order, the Client's purchase clerk, the quantity supplied, the weight and any other information of relevance to the delivery. Incorrect or incomplete delivery documents shall entitle the Client to refuse acceptance. Where machinery is supplied within the meaning of the Machinery Directive (Directive 2006/42/EC) the Client must also be supplied with the hazard assessment required under the directive.

5.4 Deliveries must be properly packed in a merchantable manner. Environmentally friendly packaging materials are to be used, if possible. If specific packaging should be agreed the Client shall be entitled to refuse acceptance in the event of failure to comply therewith. Transport packaging shall be taken back by the Supplier at its own expense. Product packaging must be created in such a way that it can be disposed of by the Client in the ordinary course of its business at no extra cost. Reusable packaging must be used, if possible. If such packaging is used the Supplier must indicate this and clearly identify reusable packaging material as such. Reusable packaging material must be provided and returned at the Supplier's risk and expense.

The Client may return separately charged packaging to the Supplier carriage paid against payment of 2/3 of the separately charged packaging costs provided that the packaging is in a reusable condition.

5.5 Where goods are intended for export, the Supplier shall submit a written declaration concerning the customs origin of the goods using the proper form. This declaration must be forwarded to the Client by no later than the date of the first delivery. The Supplier warrants that goods supplied comply with all relevant legislation and in the case of deliveries to a country other than the country of origin that they also comply with such provisions in the country of destination.

5.6 Title to goods supplied passes to the Client when handed over. Simple retention of title, including amplified and/or extended retention of title, is expressly ruled out.

6. Use of personnel

6.1 The Supplier shall basically provide supplies and services using its own personnel. The Supplier shall only use staff to effect performance in accordance with statutory provisions, who are in possession of a valid work permit for the Federal Republic of Germany or, where performance is not effected in Germany, a valid work permit for the country of the respective manufacturer or service provider, who are properly registered with the German social security authorities or the social security authorities in the country of the respective manufacturer or service provider and whose performance, including taxation and other levies thereon, is correctly accounted for. All taxes and social security contributions shall be forwarded by the Supplier to the relevant collection authorities (social security authorities, tax office, and the like) in full and on time. Staff must have a valid employment contract with the Supplier and be remunerated according to the rules applicable. Staff have been instructed by the Supplier to

- adhere strictly to the regulations on employment protection, general young persons' employment protection and legal or official regulations valid for the time being. Compliance with the above provisions shall be constantly monitored by the Supplier.
- 6.2 The Supplier may only have supplies and/or services carried out in whole or in part by a suitable and reliable subcontractor with the prior written consent of the Client. In such an eventuality the subcontractor shall be required to enter into a written confidentiality and data protection undertaking in accordance with the agreements between the Supplier and the Client. The Client's consent shall neither limit the Supplier's obligations nor establish rights on the part of the subcontractor. The subcontractor shall act as the Supplier's agent.
- 7. Default, contract penalty**
Agreed deadlines and periods of time must be adhered to. In the event of delay in delivery the Supplier shall pay a contract penalty in the sum of 0.5% of the net order value per week or part thereof, subject to a maximum of 5% of the net order value. Further claims for default shall not be prejudiced hereby.
The Supplier shall promptly inform the Client of any predictable delays. The unreserved acceptance of or payment for delayed delivery or performance shall not constitute a waiver of the Client's claims on account of such delay.
- 8. Warranty, limitation period, Quality assurance, Notification requirements**
- 8.1 The Client shall examine deliveries of goods solely with regard to externally ascertainable discrepancy in identity and quantity plus externally ascertainable damage, especially for damage in transit ("**apparent defects**") and shall promptly raise an objection thereto with the Supplier. The Client shall also raise any objections to non-apparent defects with the Supplier as soon as they are revealed. The requirement to examine deliveries and raise any objections thereto shall in any event be met in relation to apparent defects if the Client raises an objection within a period of two weeks from the handover of the goods, whilst for non-apparent defects the deadline shall be two weeks from the date on which the defect is ascertained.
- 8.2 The Supplier shall carry out a works inspection of products to be supplied by it, particularly an outgoing goods inspection. The Supplier shall warrant that its delivery is of the agreed quality. The Supplier undertakes to prepare records of inspections carried out and archive the results of all testing, measurement and checking procedures for 10 years. The Supplier shall also keep retention samples of goods ordered by the Client. The Client shall have the right to inspect the aforementioned records and documentation and make copies thereof and to require retention samples to be produced for inspection purposes. All costs of dispatch shall be met by the Client.
- 8.3 The limitation period for the Client's warranty claims shall generally be three years unless the item to be supplied should be a building structure or an item the normal use of which was for a building structure and caused its defective nature, or a work the success of which lies in the performance of planning and supervision services for a building structure. In the above exceptional cases the warranty period shall be five years. The limitation period shall begin to run in accordance with statute. In the event of a defect being remedied by the delivery of a faultless item or performance of faultless work the limitation period shall begin to run again right from the start.
- 8.4 Rectification costs incurred as a result of a delivery item being taken to another location by the Client after being handed over shall be borne by the Supplier.
- 8.5 In urgent cases the Client may undertake rectification itself, or have the same undertaken, at the Supplier's expense if the Supplier does not agree to immediate rectification (maximum of 3 working days).
- 8.6 If it should be necessary to take safety or employment protection rules into account in connection with deliveries and/or performance the Supplier must make express reference thereto in writing.
- 8.7 Persons contracted by the Supplier or their employees who work on the Client's site must heed the provisions laid down in the respective factory regulations and instructions given by the works protection force or the Client's authorised personnel.
- 9. Product liability, insurance requirement**
9.1 In the event of a product liability claim being made against the Client by a customer or other third party the Supplier shall be obliged to indemnify the Client on first demand in respect of such claims where the origin of the damage lies within the Supplier's sphere of control or organisation. In cases of fault-based liability the duty of indemnification shall not apply if the Supplier is not responsible for the breach of duty. The Supplier shall assume responsibility for the costs and expenditure corresponding to its proportion of responsibility or fault, including the costs of any litigation or recall action and the costs of other expenditure necessarily incurred by the Client arising from or in connection with a claim asserted by a third party. The legislative provisions shall otherwise apply.
9.2 The Supplier shall be obliged to maintain product liability insurance cover with a lump sum insured of € 10 million per personal injury/pecuniary loss/material damage claim and to prove the existence of its reasonable cover to the Client on request.
- 10. Intellectual property**
10.1 The Supplier undertakes to carry out a check of intellectual property rights at the place of performance and destination of supplies or services proposed under the contract. The Supplier warrants that the goods and services and their application do not infringe any intellectual property rights held or applications for intellectual property rights made by third parties.
10.2 The Supplier shall be liable for all legal consequences, including all loss or damage sustained in the contractual use of the Supplier's goods or services as a result of infringement of intellectual property rights and applications for intellectual property rights.
- 11. Force majeure**
11.1 Force majeure, lawful industrial disputes and wildcat strikes, disturbances, official measures and other unforeseeable or extraordinary circumstances and situations that are nobody's fault shall release the contracting parties from their responsibilities for the duration of the impediment. This applies even if the events occur at a time when the contracting party concerned is in default. The contracting parties shall, as far as reasonable, provide each other with the information required in this connection and adjust their commitments in good faith in line with the change in circumstances. If the force majeure should continue for a considerable period of time the Client may cancel the contract in the event of a considerable reduction in its requirements.
11.2 The Client shall be released from its duty to take and accept delivery and may cancel the contract if the goods or services should no longer be viable for it as a result of the delays caused by the force majeure or industrial dispute.
- 12. Safeguarding the supply chain**
12.1 The Supplier shall state, if and when required, that it is a certified Authorised Economic Operator (AEO) and shall prove this by sending the Client a copy of its official certification by no later than the date of signature of the contract.
12.2 If the Supplier should not be a certified Authorised Economic Operator it undertakes to sign the customs security declaration (www.zoll.de) and to take the

- precautions and abide by the regulations detailed therein.
- 12.3 If the Supplier should infringe all or any of the precautions and/or regulations detailed in the customs security declaration or if it should complete the "security declaration" attachment wrongly the Client shall have the right to summarily terminate the contract concerned for good reason.
- 12.4 The Supplier shall also indemnify the Client in respect of all third-party claims arising in the course of non-compliance or partial non-compliance with the duties on the Supplier agreed in the customs security declaration – especially vis-à-vis authorities – unless, in the case of fault-based liability, the Supplier is not responsible for the breach of duty. Any further claim in damages or other claims and/or rights shall not be prejudiced hereby.
- 12.5 The Supplier shall bear pursuant to statute all of the costs sustained by the Client as a result of faultiness or as a result of non-compliance with the individual requirements of the customs security declaration, including the costs of summary termination.
- 13. Minimum wage**
- 13.1 The Supplier shall be obliged to pay its workers the statutory minimum wage. At the request of the Client the Supplier shall, during the entire term of the contract and for six months after the end of the present contractual relationship, provide it with evidence within 14 days that it has fulfilled such duty by submitting appropriate documentation (especially documents pursuant to § 17(1) of the German Minimum Wage Act [*MiLoG*], clearance certificate provided by the relevant social fund or holiday fund etc.).
- 13.2 The Supplier shall indemnify the Client on first demand in respect of all claims by third parties (especially the Supplier's staff, the Client's customers and the German Federal Employment Office [*Bundesagentur für Arbeit*]) in connection with breaches of the requirement to pay the statutory minimum wage.
- 13.3 The Supplier shall be obliged to impose on any of its subcontractors the same duty to prove payment of the statutory minimum wage and indemnify the Client as it is itself required to do under clauses 13.1 and 13.2. If its subcontractors should themselves use subcontractors the Supplier shall ensure that all the subcontractors' subcontractors are made subject to the same requirement.
- 13.4 The Supplier shall be liable to the Client for all third-party claims arising from breach of the duty to pay the statutory minimum wage by subcontractors.
- 14. Procurement of energy services, products, facilities and energy**
- On the procurement of energy services, products and facilities which have or might have an effect on significant energy consumption, products and services shall be evaluated with regard to their energy efficiency by the central purchasing department or the procuring entity. Energy efficiency shall be a deciding factor in this respect. All other things being equal, energy services, products and facilities whose energy efficiency is greater will take preference.
- 15. Concluding provisions**
- 15.1 The contracting parties shall consider all commercial and technical data that is not public knowledge and all information that comes to their knowledge due to their business relationship as trade secrets and shall treat same in strictest confidentiality without, in particular, making it accessible to third parties. The same applies to information and documentation. Subcontractors must be made subject to the same commitment in writing. Third parties for the above purposes shall mean group undertakings not associated with the Client pursuant to §§ 15 et seq. of the German Companies Act [*AktG*]. The aforementioned documentation must be promptly returned to the Client once the contract has come to an end at its own expense.
- 15.2 Rights and duties, with the exception of assignments of pecuniary claims in the case of transactions pursuant to § 354a HGB [*German Commercial Code*], may only be assigned by the Supplier to third parties with the written consent of the Client. Third parties for the above purposes shall not mean group undertakings associated with the Client pursuant to §§ 15 et seq. of the German Companies Act [*AktG*]. The forum for all disputes arising from or based on the contract and these GTC shall be the Client's registered office and for claims on the part of the Client it shall also be the Supplier's registered office.
- 15.3 The laws of the Federal Republic of Germany shall have exclusive application to the exclusion of the UN Convention on the International Sale of Goods and private international law.
- 15.4 If one or more of the provisions of these GTC should be or become invalid in whole or in part the validity of the remaining provisions of the GTC shall not be prejudiced thereby. The invalid provision shall be replaced by such other reasonable provision as is commercially closest to what the contracting parties intended or would have intended if they had considered the invalidity of the provision. The same shall apply *mutatis mutandis* if these GTC should contain an omission.