

## **General Terms and Conditions of Purchase (GTCP) of Carl Aug. Picard GmbH (CAP)**

### **§ 1 – Scope**

#### **1.**

The version of the terms below valid at the time of conclusion of the agreement shall only apply to entrepreneurs, legal entities governed by public law or special fund under public law according to § 310 Paragraph 1 of the German Civil Code (BGB).

#### **2.**

Insofar as they are not changed or excluded with our express written consent, the following terms and conditions shall apply to all of our contracts, orders and purchase orders, to all deliveries and other services procured by us. They shall also apply, in particular, if our contracting party provides his deliveries or services subject to deviating terms and conditions with our knowledge. The general terms and conditions of our contracting party shall only apply if we confirm this writing; they shall not become subject matter of the contract even if we do not expressly contradict them.

#### **3.**

Our terms and conditions shall also apply to all future contracts, orders and purchase orders even if their validity is not communicated to our contracting party again in connection with our offer or order or our purchase order.

### **§ 2 - Offer and conclusion of contract**

#### **1.**

All of our orders, purchase orders, subsidiary agreements and assurances shall only be binding if they have been made in writing. Amendment of this written-form clause is only possible in writing.

#### **2.**

All agreements between us and our contracting party shall be recorded in writing upon conclusion of the agreement. All agreements – also insofar as they are entered into subsequently – shall only become effective with our written confirmation. To this extent, the power of attorney granted to our employees or representatives is limited.

3.

Our failure to object to commercial letters of confirmation sent by a contracting party shall not be construed as a tacit agreement to a contract whose content diverges from our own written confirmations and our other written declarations.

### **§ 3 – Written form, text form**

Insofar as the written form is provided for in these terms, it is also preserved if corresponding declarations are transmitted by fax or e-mail. A written agreement shall also be considered to be concluded if we and our contracting party submit declarations in written form respectively that cover this as regards content. Possible amendments to this written-form requirement shall adhere to the written-form requirement.

### **§ 4 – Prices and payment**

1.

The agreed price is understood to be net exclusive of the relevant rate of value-added tax and includes packaging, all additional costs and delivery CPT and DDP.

2.

Payment shall only be made on receipt of the goods as stipulated in the agreement and on receipt of the proper and verifiable invoice

a) within 14 days at a discount of 3 % or

b) within 30 days net.

3.

The supplier shall neither assign his claims against us nor have them collected by third parties. In the case of a defect covered by the warranty, we shall be entitled to refuse payment in respect of the defective delivery until such time as the defect is properly remedied.

### **§ 5 – Offsetting, right to retention**

We shall be entitled to offset against counter-claims to which we are entitled in all cases under the

statutory pre-requisites and shall be entitled to exercise the right of retention.

## **§ 6 – Delivery and passing of risk**

In all cases, service and price risk shall only pass to us on arrival of the goods and services arrive at our company or the receiving centre nominated by us.

## **§ 7 – Delivery dates, delivery deadlines, delivery schedules *and goods inventory, release orders, rescission in the event of force majeure***

**1.**

The delivery dates and deadlines agreed under the terms of the “just-in-time” contract are binding. Their adherence shall be determined by the receipt of the goods at our company or the agreed delivery location.

**2.**

Our release orders shall become binding at the latest when our contracting party does not dispute them within three days of receipt.

**3.**

Insofar as a delivery schedule for the delivery of products/parts has been agreed, our contracting party shall maintain an inventory of finished products/parts sufficient for at least two weeks at all times. Notwithstanding this, the quantities to be delivered to us as set out in the delivery schedule shall be binding for one month. Furthermore, the quantities specified in the delivery schedule for two further months are solely planning details for us, but binding for the supplier.

**4.**

Our contracting party shall report delays in the delivery in writing by stating the reasons and the probable duration as soon as the possibility of a delay in the delivery arises.

**5.**

If the delivery is delayed by more than one month as a result of force majeure, we shall be entitled to set further grace period of at least two weeks, on expiry of which without result we shall be entitled to

withdraw from the contract.

## **§ 8 – Documents, models, samples, tools**

### **1.**

Illustrations, drawings, calculations, models, templates, samples or similar objects shall remain our property in all cases and shall not be handed over or otherwise made available to third parties without our written consent. They shall be used exclusively for production based on the contractual relationship with us and shall not be used for any other purpose. They shall be returned to us unsolicited following performance of the contract. They shall be kept secret from third parties.

### **2.**

Tools supplied by us remain our property. Our contracting party is obligated to use them exclusively to manufacture the goods ordered by us. He shall be furthermore obligated to clearly identify the tools belonging to us as our property and to arrange at his own expense adequate insurance cover for these at the new value against fire, water and theft damage. Our contracting party hereby assigns to us all claims for compensation arising from this insurance; we accept the assignment. Our contracting party is obligated to carry out any service and inspection work that may be required as well as all maintenance and repair work at his own expense and in a timely manner. He shall notify us immediately of any malfunctions.

### **3.**

Our contracting party shall also obligate his sub-suppliers in accordance with sub-clauses 1 and 2 above.

### **4.**

Illustrations, drawings, calculations, models, templates, samples, tools or similar objects, which our contracting party creates in order to process our orders, purchase orders or similar, likewise software that he writes or customizes for us, shall become our property and shall be handed over to us by our contracting party, unsolicited, no later than the time of delivery of the objects ordered by us.

## **§ 9 – Quality of the goods, inspection and complain obligations, liability for defects**

### **1.**

Deliveries and services of our contracting party shall conform to the agreed specification as well as the respective state-of-the-art technology. In the context of that which is deemed reasonable for our contracting party, we shall be entitled to demand changes to the delivery objects in terms of construction and execution, whereby the implications, particularly with regard to additional or reduced costs as well as delivery dates and deadlines shall be regulated appropriately by us, or in all other cases in accordance with §§ 315, 316 of the German Civil Code (BGB).

### **2.**

We shall only be required to complain to our contracting party about obvious defects and additional or shortfalls in services, which are not hard to determine without an inspection, within ten working days of receipt of the goods. We shall submit complaints regarding defects identified by us within five working days of our becoming aware of them. In all other cases, § 377 of the German Commercial Code (HGB) shall not apply.

### **3.**

The liability of our contracting party for defects in his deliveries or services shall in all other cases be based on the statutory provisions.

## **§ 10 – Assignment of claims against third parties**

Our contracting party hereby assigns to us his claims for performance and claims against third parties, suppliers or subcontractors to which he is entitled due to defects in connection with the manufacture, delivery or service. The obligations or liability of our contracting party with respect to us shall neither be excluded nor restricted as a result of said assignment. However, we shall be obligated to re-assign the corresponding claims to our contracting party, if and to the extent that our contracting party personally satisfies his obligations to us. We undertake at all times to provide third parties, suppliers or subcontractors of our contracting party, at our contracting party's request, with declarations which may be necessary or useful to assert or safeguard the assigned claims or to provide any assistance that may be necessary or useful.

## **§ 11 – Product liability, liability insurance, warranty**

### **1.**

Our contracting party shall indemnify us against all claims for compensation which third parties assert against us based on regulations concerning wrongful acts, relating to product liability or by virtue of other regulations owing to errors or defects in the goods produced or delivered by us or by our contracting party, insofar as such claims would also be substantiated against our contracting party or are no longer substantiated solely due to the statute of limitations which has arisen in the meantime. Under these prerequisites, our contracting party shall also release us from the costs of the lawsuits which are initiated against us as a result of such claims. Insofar as the claims asserted against us are substantiated or no longer substantiated merely due to the statute of limitations which has arisen in the meantime, a pro-rata indemnification claim by us against our contracting party shall apply, the scope and amount of which is based on § 254 of the German Civil Code (BGB).

Our claims for indemnification, reimbursement of expenses and damages in accordance with §§ 437 Sub-clause 3, 478, 634 Sub-clause 4, §§ 280 ff. of the German Civil Code (BGB) remain unaffected by the above-mentioned provisions.

### **2.**

Our contracting party undertakes to maintain adequate product liability insurance for his deliveries to us. The sum insured must be a minimum of 5 million Euro to cover personal injury and property damage, lump sum.

### **3.**

Our contracting party hereby guarantees that the delivery object is free of flaws with regard to design, manufacture and materials and that it conforms to the agreed quality standards; § 434 of the German Civil Code (BGB) shall apply in addition.

Unless otherwise agreed in the provisions below, the statutory provisions shall apply in the event of defective deliveries. Our contracting party shall, at our discretion, either provide replacements free of charge, grant a rebate or remedy the defects free of charge. In urgent cases – and without prior consultation with our contracting party – we shall be entitled to remedy the defect ourselves or to have it remedied by a third party or to procure a substitute from an alternative source, all at the expense of our

contracting party. The same shall apply if our contracting party defaults on his warranty obligations.

If a defect is identified during the goods incoming inspection, we shall be entitled to assert claims for defects with regard to the entire delivery or to inspect the entire delivery at our contracting party's expense following his prior notification. The same shall apply if a defect is discovered during further processing.

The warranty period shall extend over a period of 24 months; it shall not commence prior to our receipt of the goods.

The warranty period for replacement deliveries shall likewise extend over a period of 24 months; it shall not commence prior to our receipt of the goods.

The return consignment of goods that are the subject of complaints shall be at the expense and risk of our contracting party.

In the event of repeated delivery of defective goods, we shall be entitled to assert claims regarding the loss incurred for the unfulfilled part of the delivery contract and to rescind the contract, and in the case of framework delivery agreements, to terminate the contract without notice, whereby any tool costs that we have paid, but which have not been amortised, shall be reimbursed to us.

## **§ 12 – Property rights, confidentiality**

### **1.**

Our contracting party is responsible for ensuring that the goods delivered or services provided by him do not infringe any rights of third parties, in particular patents, utility models, other property rights and copyrights within the member states of the European Union. He shall indemnify us against claims by third parties arising from the possible infringement of such rights. Furthermore, he shall assume all costs incurred by us in the event that we are forced to defend ourselves if third parties assert the infringement of such rights.

If we have culpably contributed to the infringement of such rights, we shall be entitled to a pro-rata indemnification claim against our contracting party, the scope and amount of which is based on § 254 of the German Civil Code (BGB).

If we inform our contracting party prior to or on conclusion of the agreement that the subject of the delivery or service to be provided by our contracting party is destined for specific, named countries outside the European Union, the above-mentioned regulations and obligations on the part of our contracting party shall also apply to these countries.

## **2.**

Our contracting party is obligated to regard all commercial and technical details associated with the purchase order as company secrets and to treat these in strict confidence.

The confidentiality obligations of the contracting party and the consequences of their violation shall be defined in a separate non-disclosure agreement.

Our contracting party may only refer to his business relationship with us in his advertisements if we have declared our agreement in writing for each individual case.

### **§ 13 – Status of origin**

If necessary, our contracting party shall provide us, free of charge, with a supplier declaration or any other documentation requested by the responsible authorities, e.g. the Federal Office of Economics and Export Control in Eschborn, the customs administration. Our contracting party shall reimburse all costs as well as other damages incurred by us as a result of incomplete or incorrect declarations.

### **§ 14 Transfer of ownership**

Ownership of the goods delivered shall be transferred to us on handover at the place of performance, unless the validity of simple retention of title is agreed in writing in individual cases. Extended or prolonged reservation of ownership on the part of our contracting party shall be excluded.

If we have made an advance payment or provided material for processing, ownership of the goods ordered shall transfer to us when production commences. The transfer shall be replaced by the agreement that the goods remain in our contracting party's possession for processing until the agreed delivery date and shall be stored free of charge for us.



## **§ 15 – Place of performance, place of jurisdiction, applicable law**

### **1.**

The place of performance for the deliveries or services to be provided by our contracting party is the agreed receiving centre and, in all other cases, Remscheid.

### **2.**

The exclusive place of jurisdiction is Remscheid, however we shall also be entitled to sue our contracting party at any other court of jurisdiction.

### **3.**

The business relationships between us and our contracting party shall be regulated exclusively according to the law which is applicable in the Federal Republic of Germany, to the exclusion of the international law governing the sale of goods and, in particular, the United Nations Convention on Contracts for the International Sale of Goods and other international agreements concerning the standardisation of the law governing the sale of goods.

## **§ 16 – Severability clause, partial invalidity**

Should one of the above-mentioned provisions prove to be partially legally ineffective, the separable content of the provision shall in case of doubt be considered legally effective.

Should one of the above-mentioned provisions prove ineffective in the event of a change in jurisdiction, its legislative content shall continue to apply. In the event of a change in jurisdiction, the non-mandatory provisions of the law shall take the place of the provision or part thereof which has become invalid.