

## Alape GmbH General Purchasing Terms

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### **1 General, Area of Application**

- 1.1 These General Purchasing Terms (GPT) apply to all business relations between Alape GmbH (Alape) and its business partners and suppliers (contractors). These GPT only apply if the contractor is an independent trader, (Art. 14 German Civil Code, BGB), public law entity or separate public estate.
- 1.2 These GPT apply in particular to contracts on the sale and/or supply of movables (hereinafter also referred to as goods) irrespective of whether the contractor manufactures the goods independently or purchases them from other suppliers (Arts. 433, 651 BGB). The currently valid version of these GPT shall also be regarded as a skeleton agreement for future contracts on the sale and/or delivery of movables with the same contractor without Alape having to make express reference to this in each individual instance.
- 1.3 The following GPT apply exclusively. Any divergent, contradictory or supplementary general terms and conditions of the contractor will only become a part of the contract, either in full or in part, if Alape has given express recognition of their applicability. This requirement for consent shall apply in all instances, including such cases where Alape is aware of contradictory terms and conditions of the contractor and accepts or makes delivery without reservations.
- 1.4 Individual agreements reached with the contractor on a case-by-case basis (including collateral agreements, supplements and amendments) have precedence over these GPT in all instances. A written contract and/or written confirmation from Alape is essential for the validity of agreements of this kind.
- 1.5 References to the validity of legal regulations serve only the purpose of clarification. For this reason, the legal regulations apply even without clarification of this kind, provided they are not directly altered or expressly excluded in these GPT.

## **2 Orders, Conclusion of Contracts**

- 2.1 Orders placed by Alape are only binding if they have been made in writing (letter, fax, e-mail) or confirmed in text form subsequent to an oral or telephonic order.
- 2.2 Prior to acceptance, the contractor must make Alape aware of any obvious errors (e.g. typing or calculation errors) and shortcomings in the order or supporting documentation so that Alape can correct or complete the paperwork, otherwise the contract will be regarded as null and void.
- 2.3 If Alape has informed the contractor about the intended use of the ordered goods or if the intended use can be recognized by the contractor, the contractor is obliged to notify Alape without delay in the event that the delivered goods are not suitable to fulfil the intended purpose.
- 2.4 The contractor is obliged to either confirm the order from Alape in writing within 5 days of receipt or execute the order without reservation within this same period, in particular by shipping the goods (acceptance).
- 2.5 Delayed acceptance shall be regarded as a new offer which requires acceptance by Alape.
- 2.6 Remuneration for any expenses incurred during the offer and negotiation phase, in particular visits, calculations for offers and projects, cost estimates and drawings, will only be granted by Alape if this has been agreed in advance in writing. Otherwise Alape will not be bound by any advance performances effected by the contractor, and in particular will not be obliged to grant the contract to the contractor.

## **3 Prices, Performances**

- 3.1 The prices listed in Alape's orders are fixed prices excluding VAT at the legally valid rate. "Ex factory" deliveries include packaging; imports include customs duty and other import charges.
- 3.2 If Alape and the contractor agree that prices are to be "subject to confirmation", it is agreed that the prices applicable on the day of delivery will be charged.
- 3.3 With contractual relationships which involve the regular delivery of goods to Alape, the contractor is obliged pass on any price reductions to Alape, even if fixed prices have been agreed.
- 3.4 Item 3.3., above, applies accordingly to contractual relationships which involve goods which Alape does not intend to procure until a period of 4 months or longer after the conclusion of the contract has expired.
- 3.5 Any costs, taxes, customs duties and other charges which come into effect or are increased after the order has been placed will be carried by the contractor.

## **4 Properties of the Goods**

- 4.1 Where Alape makes reference to drawings, illustrations, calculations, plans and tolerances in an order, it is agreed with the contractor that the resultant properties of the goods to be delivered are characteristics due by contract.
- 4.2 Where orders placed by Alape are based on samples and specimens, the properties of these samples and specimens are regarded as agreed with the contractor.
- 4.3 The presentation of drawings, illustrations, calculations, plans and tolerances by Alape does not exonerate the contractor from his obligation to check documentation of this kind for its correctness and suitability for the manufacture and delivery of the ordered products.
- 4.4 The contractor also guarantees that the delivered goods and/or materials and substances used comply with all national and European legal requirements (especially working safety,

health, fire prevention and environmental protection regulations, as well as construction, commercial and transport provisions, the German Equipment and Product Safety Act and export regulations) and relevant technical requirements, and that the necessary test and/or conformity marks have been applied.

- 4.5 Deliveries must comply with environmental protection regulations, in particular those governing the handling of dangerous materials (Hazardous Industrial Materials Ordinance). If environmental protection regulations prescribe special disposal, written disposal notes must also be provided.
- 4.6 If Alape places multiple orders for products of the same kind on the basis of previous orders or within the scope of a permanent delivery agreement, the contractor is obliged to notify Alape of any changes to the specifications, manufacture and manufacturing process, composition and ingredients and any changes to the contractor's suppliers prior to making delivery to Alape.
- 4.7 Any changes to the quantity and quality of products ordered by Alape and other subsequent amendments to the contract are only regarded as agreed once express written confirmation to this effect has been given by Alape.

## **5 Packaging**

- 5.1 Alape is entitled to return packaging material at the risk and expense of the contractor.
- 5.2 The contractor must dispose of or accept the return of non-recyclable packaging material at his own expense if requested to do so by Alape. If the contractor fails to meet this obligation within a specified period of time, he is liable to reimburse Alape for any expenses incurred and compensate the resultant damage.
- 5.3 If, as an exception, the contractor charges separately for packaging, Alape is entitled to return it at 2/3 of the price charged for it on the invoice.

## **6 Delivery Period, Delayed Delivery**

- 6.1 The delivery period stipulated by Alape in the order is binding. If a deadline has been agreed, it begins with the date of the written order. If the delivery period is not listed in the order and no other arrangements have been made, the deadline will be two weeks from the conclusion of the contract. The agreed deadlines are an essential component of the contract.
- 6.2 Deliveries before the agreed deadline are not permitted. Any exceptions require the consent of Alape.
- 6.3 The contractor is obliged to notify Alape immediately in writing if it appears likely that he cannot comply with the agreed deadline for whatever reason.
- 6.4 Deliveries are regarded as having been made on time under the following circumstances:
  - Delivery without assembly and/or commissioning at Alape: punctual arrival at the agreed unloading point.
  - Delivery with assembly and/or commissioning at Alape: upon acceptance by Alape.
- 6.5 If the contractor does not effect his performance or does not do so within the agreed deadline, or if he is in default, the rights of Alape – with special regard to withdrawal and compensation – are determined in accordance with legal provisions. This will not affect Item 6.7.
- 6.6 The contractor may only invoke the failure of Alape to produce documentation or other advance performances if he has issued a written complaint in regard to the advance performance and has still not received it within an appropriate period of time.

- 6.7 In the event of delayed delivery, Alape is entitled to claim from the contractor a flat-rate delay compensation sum amounting to 0.3% of the net invoice sum per working day on which the time limit was culpably exceeded, but totalling no more than 5% of the net invoice sum. The invoice sum is determined with inclusion of sales allowances but without cash discounts. Any further-reaching rights and claims legally due to Alape (withdrawal, compensation) are reserved. Compensation is to be set at a higher level if Alape can provide evidence of greater damage. The contractor has the right to prove to Alape that considerably less damage or none at all was caused due to the delay.

## **7 Performance, Delivery, Transfer of Risk, Delayed Acceptance**

- 7.1 The contractor may only commission a third party (e.g. subcontractor) with delivery or assembly/servicing tasks or parts thereof with the advance written consent of Alape. Alape will consent to this if the third party can provide economical and technical assurance that the delivery and/or performance will be fulfilled in accordance with the contractual agreements reached between Alape and the contractor.
- 7.2 The contractor is not entitled to make partial deliveries without an explicit agreement to this effect. Unless otherwise agreed, advance, partial or multiple deliveries will not be accepted. Short deliveries will be compensated by the contractor, even if Alape does not give immediate notification of this.
- 7.3 The handover of ordered or customary assembly instructions, operating instructions, maintenance regulations and other technical documents is considered to be a part of every complete delivery.
- 7.4 Deliveries within Germany are to be made "free buyer's address" (DDU or DDP in line with Incoterms 2000) to the location listed in the order. If the destination is not listed and no other agreement has been reached, delivery will be made to Alape's head office in Goslar. Each place of delivery shall also be the place of performance (obligation to be performed at the creditor's place of business).
- 7.5 A bill of delivery, with details of the date (issue and shipment), content of the delivery (Alape article number, name and quantity), and Alape order code (date and number) must be included with every delivery. If the bill of delivery is missing or incomplete, Alape cannot be held responsible for any resultant delays in processing and payment.
- 7.6 Notification of shipment must be sent to Alape separate from the bill of delivery but with the same content.
- 7.7 The risk of accidental loss and accidental deterioration of the goods is transferred to Alape with the handover at the place of performance. If an acceptance inspection has been agreed, this will be decisive for the transfer of risk. In all other instances too, the legal provisions of work and services contract law will apply accordingly with regard to acceptance. The same applies to handover and/or acceptance if Alape is in default of accepting delivery.
- 7.8 Legal regulations apply to the occurrence of default in accepting delivery. The contractor must also offer his performance explicitly to Alape, however, even if a set or ascertainable calendar period has been agreed for action or cooperation on the part of Alape (e.g. provision of material). If Alape is in default of accepting delivery, the contractor can demand compensation for his additional expenditure (Art. 304 BGB) in accordance with legal provisions. If the contract covers an infungible (individual manufacture) to be manufactured by the contractor, he will only have more extensive rights if Alape is obliged to cooperate and can be held responsible for failure to do so.

## **8 Rendering of Accounts and Payment**

- 8.1 Invoices are to be issued in euros in duplicate.
- 8.2 To ensure that Alape can process invoices in a timely and correct manner, the contractor is obliged to list the Alape order number, quantities and unit of issue, Alape article name and Alape article number on all invoices with separate listing of the value-added tax sum applicable in each instance.
- 8.3 Without this information, Alape cannot be held responsible for any delays in the processing and payment of invoices.
- 8.4 Unless agreed otherwise, Alape will make payment after delivery and/or acceptance (if agreed) and receipt of the invoice on the 25<sup>th</sup> calendar day of the following month on which both of these prerequisites have been fulfilled, with deduction of a 3% cash discount on the gross invoice sum. Time delays caused by incorrect or incomplete rendering of accounts will not have a negative effect on the discount deadline outlined above.
- 8.5 Alape does not owe any interest after the due date. The contractor's right to the payment of default interest is not affected by this. Legal regulations apply to the occurrence of default on the part of Alape. The contractor must issue a reminder in all instances, however.
- 8.6 The contractor's rights to compensation due to delay is limited to the amount of damage that can be typically foreseen with Alape, or the definite amount announced in advance before the delay occurred, unless the default on the part of Alape was due to gross negligence or specific intent.
- 8.7 Any claims due to the contractor for damage compensation in lieu of the performance caused by default of payment on the part of Alape will also be limited to the extent that the maximum amount of compensation that can be demanded may be no more than the value of the order, unless the default on the part of Alape was due to gross negligence or specific intent.

## **9 Quality Assurance by the Contractor, Retracing of Lots**

- 9.1 Alape commissions the contractor to monitor and assure the quality of the goods he supplies. The contractor is obliged to conduct a thorough shipping inspection and to notify Alape of any reservations which may exist in regard to possible defects.
- 9.2 In the event of a defect, the contractor must ensure the retracing of the lot by marking the goods in the procurement, production and delivery chain and making an entry in historical files.

## **10 Material Defects**

- 10.1 Unless agreed otherwise below, legal regulations will apply to Alape's rights in the event of material defects of the goods (including incorrect and short deliveries, incorrect assembly and insufficient assembly, operating and user instructions) and other neglect of the contractor's duty.
- 10.2 In accordance with legal regulations, the contractor is liable in particular for ensuring that the goods have the agreed properties when the risk is transferred to Alape. The product descriptions which constitute the subject matter of each contract – especially when specifically named or referred to in orders placed by Alape – or which are included in the contract in the same manner as these GPT, are also regarded as an agreement on the properties of the goods. It is of no consequence whether the product description originates from Alape, the contractor or the manufacturer.

- 10.3 Contrary to Art. 442 Para. 1 P.2 BGB, Alape is also entitled to claim without limit on defects caused as a result of gross negligence if Alape was unaware of the defects at the time the contract was concluded.
- 10.4 Commercial Code regulations (Arts. 377, 381 HGB) apply to the duty to examine goods and complain about defects immediately with the following proviso: Alape's duty to examine goods is limited to defects which are detected openly when goods are examined externally during receiving inspection, including delivery papers, and during Alape's random quality control checks (e.g. transport damage, wrong and short deliveries). If acceptance has been agreed, there is no duty to examine goods. In all other cases, it depends on the extent to which an examination is feasible under consideration of the circumstances of each instance in the ordinary course of business.
- 10.5 The duty to complain immediately about subsequently detected defects is not affected by this. Complaints lodged by Alape (notification of defects) will be regarded as being without undue delay and within the prescribed period in all instances if they are received by the contractor within 14 calendar days.
- 10.6 The costs incurred by the contractor for the purpose of testing and making subsequent improvements will also be carried by the contractor if it transpires that there was no actual defect. Alape's liability for damage in the event of unjustified claims for the rectification of defects is not affected by this, but Alape may only be held liable if it recognizes or fails to recognize in a grossly negligent manner that there was no defect.
- 10.7 If the contractor fails to meet his obligation for supplementary performance – either by correcting the defect (subsequent rectification) or delivering non-defective goods (replacement delivery), as desired by Alape – within an appropriate period of time determined by Alape, Alape is entitled to rectify the defect independently and demand compensation and/or advance payment from the contractor to cover the expense incurred. If supplementary performance by the contractor fails or cannot be reasonably expected of Alape (e.g. due to particular urgency, danger to operational safety or the risk of incurring an inappropriate amount of damage), no deadline has to be set; the contractor must be notified to this effect without delay, in advance if possible.
- 10.8 In all other cases of material defects, Alape is entitled by legal regulations to reduce the purchase price or withdraw from the contract. In addition to this, Alape is also legally entitled to claim for damages and compensation of expenses. Alape is entitled to the existing legal claims and rights without restriction.
- 10.9 Claims due to a defect will lapse after 36 months from the transfer of risk and/or final acceptance. Where structures are concerned, or articles used in a structure in accordance with their intended purpose, the faulty condition of which causes damage, and with projects whose success depends on the effecting of planning and monitoring performances for a structure, damage claims due to a defect will lapse after 60 months.
- 10.10 If Alape can take recourse against the contractor in accordance with Art. 478 BGB, any claims which Alape may have against the contractor in line with Arts. 437 and 478, Para. 2 BGB due to the defective condition of a newly manufactured article sold to one of Alape's buyers will lapse at the earliest 6 months after the point in time at which Alape has satisfied the claims of the buyer.
- 10.11 If the goods delivered by the contractor are defective and the contractor has the right to claim supplementary performance, substitution, defrayal, repayment of (part) of the price, expenditure or damage compensation from his pre-supplier or subcontractor, the contractor assigns these rights to Alape here and now and with Alape's consent by way of security.

This security agreement will expire automatically once the contractor has satisfied all of Alape's claims due to defects. Alape will not make use of this assignment as long as the contractor properly fulfils his obligations towards Alape regarding defects.

- 10.12 The limitation period for delivered parts which could not remain in operation during the examination and/or rectification of the defect will be extended in each instance by the duration of the interruption of operations. The limitation period for subsequently delivered parts begins anew at this point in time. This also applies if parts have been substantially reworked.
- 10.13 The provisions contained in this section do not shorten any legally valid longer limitation periods and do not restrict the legal regulations on the suspension and rescheduling of deadlines.

## **11 Defects of Title, Third Party Property Rights**

- 11.1 The contractor guarantees that no third party rights will be infringed in connection with his delivery or through his delivery and performance or their contractually agreed utilization by Alape.
- 11.2 If any claims are asserted by a third party against Alape in this regard, the contractor is obliged to indemnify Alape against such claims at the first written request to do so. This will also apply if Alape has assured the third party of the freedom of third party property rights and/or domestic or foreign property rights. Alape is not entitled to conclude any agreements with the third party, especially out-of-court settlements, without the consent of the contractor.
- 11.3 The indemnity obligation covers all expenditure which may necessarily arise for Alape from or in connection with the claim of a third party, or which Alape may understandably assume was intended for proper settlement.
- 11.4 The limitation period for claims of this kind is 10 years from the handover of the goods or effecting of the performance.
- 11.5 In the event that separate property rights exist for the delivery or performance owed by the contractor, the contractor is obliged to notify Alape to this effect.

## **12 Liability**

- 12.1 In the event of compensation, including compensation in lieu of performance, the contractor is liable towards Alape to the full extent for every degree of attributable fault in accordance with legal regulations, unless an agreement to the contrary is stipulated in these purchasing terms.
- 12.2 The contractor is obliged to take out manufacturer's liability insurance with an insurance sum sufficient to cover the contractual risks and present the policy to Alape on request.
- 12.3 If Alape is to pay for damage in accordance with the legal provisions that form the basis of these terms and conditions, liability will be limited as follows in the event of slight negligence: liability only exists if essential contractual obligations have been infringed and is limited to the typical damage that was foreseeable at the time the contract was concluded. This restriction does not apply to physical injuries endangering life and health. If the damage is covered by an insurance policy taken out by the contractor to cover damage of this kind (with the exception of insurance of fixed sums), Alape may only be held liable for any related disadvantages incurred by the contractor, such as higher insurance premiums or interest losses until the insurance company has settled the damage claim.
- 12.4 Alape's liability due to default is regulated conclusively in Item 8.

12.5 The personal liability of Alape's legal representatives, vicarious agents or personnel for damage caused by them through negligence is also excluded.

## **13 Spare Parts**

The contractor guarantees follow-up deliveries of spare parts and/or components for a period of 10 years from the initial delivery.

## **14 Confidentiality**

- 14.1 All information and documentation, as well as technical and commercial knowledge – especially illustrations, drawings and calculations – classified by Alape as confidential must be kept strictly confidential. The contractor may only disclose material of this kind to third parties with the express written consent of Alape. This also applies to models, samples and tools handed over to the contractor by Alape.
- 14.2 Any confidential information imparted may only be used for the purpose of fulfilling the contract. All confidential documents provided by Alape must be returned without delay upon completion of the contract without any request to do so.
- 14.3 The obligation to observe confidentiality also applies once the contract has been completed.
- 14.4 It expires as soon as the information contained in the documentation becomes general knowledge.
- 14.5 Other rights, especially ownership right, brand rights and copyright, are reserved.

## **15 Offsetting, Retention, Assignment**

- 15.1 Alape is entitled to offset claims asserted by the contractor with all counterclaims. This will also apply if the due dates of the reciprocal claims are different. The contractor also consents to having his claims offset vis-à-vis other companies in the Alape group.
- 15.2 Alape is entitled to assert rights of retention as well as the defence of non-fulfilment of contract within the scope of the law. Alape can also assert a right of retention towards the contractor if its counterclaim is not based on the same contractual relationship. Alape is entitled to retain due payments in particular if it still has valid claims against the contractor concerning incomplete or defective performances.
- 15.3 The contractor can only offset against claims from Alape if his counterclaim is uncontested or has been established res judicata; the contractor can only assert a right of retention if it is based on claims from the same contractual relationship.
- 15.4 The contractor may only assign claims against Alape with the prior consent of Alape unless the legal transaction on which they are based is a commercial transaction for both parties. The consent of Alape to assign to pre-suppliers is considered as given for goods assigned to the contractor under extended retention of title.

## **16 Applicable Law, Place of Jurisdiction**

- 16.1 The law of the Federal Republic of Germany applies to these GPT and all legal transactions between Alape and the contractor, with exclusion of all international and supranational (contractual) legal systems, in particular the UN Sales Convention. The prerequisites and effects of retention of title, on the other hand, will be subject to the laws that apply at the place where the goods are located, if these stipulate that the choice of law in favour of German law is non-permissible or ineffective.
- 16.2 If the contractor is an independent trader as defined by the Commercial Register, a legal entity under public law or a separate estate under public law, the exclusive place of



jurisdiction – including international proceedings – for all disputes arising directly or indirectly from the contractual relationship will be Alape’s principal place of business in Goslar. Alape is also entitled, however, to bring action at the contractor’s general place of jurisdiction.

**Alape GmbH**

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