

# ACTEGA Terra

## General Terms and Conditions of Purchase

(June 2007)

### 1. Award of contract, different conditions

- 1.1 These Conditions of Purchase apply to all contracts to which the regulations governing purchase pursuant to the German Civil Code (BGB) and the German Commercial Code (HGB) apply. These terms and conditions also apply to all future orders. This also applies if, in future orders issued by our suppliers and customers (hereinafter also referred to as "Vendors"), we do not explicitly draw attention to the operativeness of these General Conditions of Purchase. They will also be operative alongside any special terms that may be additionally agreed in the individual instance. Any agreements or collateral agreements that depart from the above must be documented in writing. The same also applies to any amendments of this documentation clause.
- 1.2 Only those orders that have been placed in writing (including fax or email orders) are binding. This also applies to subsequent collateral agreements, additions and/or amendments. The Vendor shall confirm each order in writing.
- 1.3 Our Conditions of Purchase apply exclusively; terms and conditions worded differently shall not apply even if we fail to object to them expressly. Anything to the contrary shall only apply if we expressly approve its validity in writing. Our Conditions of Purchase also apply if we accept a delivery / service supplied by the Vendor without reservation in the knowledge that the pertinent terms and conditions conflict with or deviate from our own. Neither a failure to object thereto nor payment or acceptance of the goods shall constitute recognition of third-party terms and conditions of business.
- 1.4 Excess deliveries will lead to no tacit modification of the contract; they will not be paid for separately, the Vendor can require their return at its/his own expense at any time. At our request, the Vendor will be obligated to accept the immediate return of any excess deliveries; in this case, the Seller shall pay us compensation for the cost of warehousing and preservation incurred in the space of time between the receipt of the request for return of the goods and collection of the excess consignment. If the delivery/provision of services is a commercial transaction for the Vendor and if the Vendor defaults on its/his obligation to take back the excess delivery, we shall also be permitted, at our discretion, to utilize or sell the same in accordance with § 373 HGB (Commercial Code).

### 2. Breach of obligations

The statutory claims regarding breach of obligations shall apply insofar as nothing to the contrary or nothing supplementary is arranged hereunder:

- 2.1 Delays in delivery or the provision of services
  - 2.1.1 The agreed delivery dates and place of performance are binding. If no arrangements to the contrary are made explicitly and in writing, delivery periods shall commence on the date of the order. 2.1.2 To allow us to make the necessary organizational preparations (e.g. creation of storage capacities) or to facilitate this task, the Vendor is not entitled to depart, without our prior written consent, from the delivery/performance dates or terms specified in the order. The criterion for compliance with the

delivery date, term of delivery/performance date is the proper transfer of the goods to a carrier that has been assigned the task of transporting the goods.

## **2.2 Defective deliveries/services**

2.2.1 The Vendor promises (§ 276 para 1 BGB/Civil Code) to furnish its/his/her deliveries/services in accordance with the specifications agreed, the current state of the art, and standard business practices, and to carry out a thorough function and quality check prior to delivery.

2.2.2 We investigate the goods at the place of destination within the ordinary course of business. Our inward inspection is restricted to obvious defects. Notices of defect are timely if they are made within 8 work-days of the delivery date. Payments do not signify a waiving of the right to make a complaint. We shall only accept goods which are made the subject of a complaint for the account and at the risk of the Vendor and shall store them on the Vendor's behalf.

2.2.3 If the service or delivery is defective, the Vendor shall also be liable for any losses that we incur in the ordinary course of business prior to the processing of the goods due to unrecognized defects in the goods supplied. The Vendor shall hold us harmless in this instance from any third-party claims for damages.

2.2.4 The Vendor shall be especially liable for violations of proprietary rights which occur as a result of contractually-agreed use of the object supplied.

## **3. Damages and holding harmless from third-party claims**

3.1 We rule out accepting liability for breaches of our obligations due to minor negligence if the breaches in question do not concern obligations that are essential to the contract, losses resulting from injury to life and limb or injuries detrimental to health, warranties, or claims under the Product Liability Act. The same applies to violations of obligations on the part of our agents and statutory representatives.

3.2 If the Vendor is responsible for a product-related loss, it/he/she undertakes to hold us harmless extensively from third-party claims for damages in this respect (including legal prosecution and defence costs at a reasonable level, expenses, fees, taxes, and reasonable advance payments, etc.) if the reason for such claims (in relation to us) falls within the Vendor's control and organizational sphere.

3.3 If third-party claims are lodged against us due to alleged infringement of proprietary rights in respect of the deliveries/services furnished or due to alleged infringement of a reservation of title or other ad rem entitlements to the article(s) delivered or service(s) provided, the Vendor undertakes to hold us harmless extensively from these third-party claims in this respect (including legal prosecution and defence costs at a reasonable level, expenses, fees, taxes, and reasonable advance payments, etc.).

## **4. Warranty periods**

The statutory warranty periods shall apply in all cases. If the Vendor has concealed a defect with intention to deceive, the warranty period shall be extended to 10 years.

## **5. Transport/packaging**

5.1 The Vendor shall, on its/his own account, conclude a contract regarding the transportation of the goods by

the normal channel and in the customary fashion, up to the point specified at the destination specified, and shall pass the goods on to the appointed carrier. Pending the surrender of the goods to the carrier, the Vendor shall bear all the risks associated with the loss of or damage to the goods. The risk shall pass to the Buyer upon the goods being surrendered to the carrier.

5.2 The Vendor shall take out transport insurance for the goods at its own expense. The insurance policy shall entitle the Buyer to file claims directly with the insurance company and to communicate details of the insurance policy or proof of insurance cover in another form to the Buyer.

5.3 Pending the surrender of the goods to the carrier, the Vendor shall bear all the costs relating to the goods, and also the freight charges and all costs incurred due to the activities detailed in 5.1, including the cost of loading the goods and all unloading costs at the destination. Furthermore, the Vendor shall bear all the costs arising under item 5.2.

## 6. **Assignment and set-off**

6.1 The rights and duties arising from the contract may not be assigned by a contracting party without the approval of the other party. This shall not apply to the assignment of pecuniary claims. We shall, however, be at liberty to assign other claims to a company affiliated to us. The Vendor will be notified thereof. In this instance the Vendor will be granted the right to withdraw from the contract.

6.1 It will only be permissible for the Vendor to set claims off against counterclaims or to assert a right of retention in cases in which the Vendor's claims are uncontested, have become due, or are due and have been established in a legally valid fashion.

## 7. **Retention of title**

Since the goods we order normally pass into our products as a result of treatment or processing and any retention of title thereby expires, all deliveries to us must be free of such reservations and third-party rights (such as liens, other creditors' rights based on the assignment of claims, the ownership-transfer of goods for security, or other forms of security for loans, the sale of claims, lease-purchase arrangements, purchases subject to reservation of title, etc.).

## 8. **Documents and materials, confidentiality**

8.1 Models, tools, printers' copies, drawings, documents, etc. which we provide for the execution of an order shall remain our property and must be kept secret. They may not be entrusted to third parties, either for inspection or disposal, without our prior approval. Nor may they be used for the manufacture of third-party goods or be reproduced. They must be returned to us immediately upon completion of the order.

8.2 The provisions of item 8.1 also apply, mutatis mutandis, to confidential information.

8.3 This obligation regarding secrecy is to be imposed on all legal representatives, employees, and other third parties employed by the Vendor for the purpose of discharging its/his/her obligations deriving from our order.

9. **Payment**

- 9.1 Prices shall be fixed prices ex value added tax. Unless different arrangements are made explicitly and in writing, offers, cost estimates and other price calculations made by the Vendor will not be remunerated by us.
- 9.2 Payment shall be made upon receipt of the proper invoice and acceptance of the goods, these being free of defects - the period shall commence on the later date in each case - within 14 days with 2% discount or within 30 days net.
- 9.3 The Vendor is asked to invoice each order separately, in duplicate, and stating our order number. Payment of the invoice will be made only to the supplier specified in the order.

10. **Withdrawal from the contract/cancellation**

We are entitled to withdraw from or cancel the contract for a substantial reason. A substantial reason will exist, in particular, if the Vendor has issued an affidavit under § 807 ZPO (Code of Civil Procedure), if the Vendor's assets are subject to an execution procedure and the execution proceedings are not cancelled within 4 weeks, if a petition that is not abusive is made for the opening of insolvency proceedings regarding the Vendor's assets, or if insolvency proceedings are instituted or the institution of the same is rejected due to a lack of assets.

11. **Legal venue**

In the event of disputes, the legal venue is Hannover, Germany..

12. **Partial ineffectiveness**

The legal ineffectiveness of individual provisions of these terms and conditions shall not affect the effectiveness of the other provisions.

13. **Body of law applicable**

This contract is governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

Lehrte, June 2007

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