

# General Purchasing Terms and Conditions of Quanmax AG

Version October 2010

Unless expressly agreed otherwise, the following terms and conditions shall apply to the contractual relationship. These **General Purchasing Terms and Conditions** shall be deemed to have been accepted with the execution of the order (first delivery) and the supplier shall accept these for all other delivery contracts. Divergent or additional terms and conditions of the supplier shall be applicable only if they have been expressly accepted by us in writing.

## 1. Offers and Orders

- 1.1 In case of queries and requests for proposals, the supplier must ensure that the offers comply with the contractual terms and conditions of this agreement.
- 1.2 Orders and modifications to these shall be valid only if they have been issued or confirmed by us in writing.
- 1.3 Most or the whole of our orders may be relayed only with our written agreement. Noncompliance with this provision shall authorize us to revoke the order without compensation; further claims shall remain unaffected by the same.
- 1.4 Assignment of receivables to third parties or to have such receivables collected by third parties is not permitted and similarly authorizes us to revoke the order without compensation; further claims shall remain unaffected by the same ,
- 1.5 If the supplier suspends his payments or if insolvency or judicial or extrajudicial composition proceedings are initiated with respect to his assets, we are entitled, without prejudice to any other rights, to terminate the contract.

## 2. Order confirmations

- 2.1 If the written, verbal or telephonic confirmation of the order is not received by Quanmax AG within 2 working days from the day of proof of dispatch of the order,
  - a) Quanmax AG shall not be bound to the order anymore and the order can be cancelled without any financial consequences for Quanmax AG.
  - b) The order so received shall be deemed to have been accepted with its content by the supplier.

### **3. Delivery**

- 3.1 In general, deliveries shall be accepted only as DDP (Delivered Duty Paid), unless agreed otherwise in writing. INCOTERMS 2000 apply.
- 3.2 In principle, both parties to the contract agree that the supplier is responsible for the implementation and compliance with the agreed schedule.
- 3.3 The listed delivery schedule is binding and indicates the date and time of goods receipt at the specified location, or at our premises. If compliance with the delivery schedule is at risk, the supplier is bound to inform us of the same in writing without delay.
- 3.4 The agreed delivery window permits the supplier to deliver the goods up to 3 working days before the agreed date of delivery.
- 3.5 If a delivery of the supplier falls outside the agreed delivery window, Quanmax AG is entitled to return the goods at the cost to the supplier or store them in the interim at additional charges.
- 3.6 Even when we accept a delay in the delivery date, we reserve the right to charge the penalty for late delivery by Quanmax AG to the clients of Quanmax AG, but at least a penalty of 1% of the order value per started week of delay (starting with the Monday following the week of delivery) , explicitly. Furthermore, in case of a delay in the delivery schedule for which the supplier is at fault, the supplier is obliged to use the fastest available means of transport without prejudice to the mode of shipping prescribed in the order, to minimize the delay. The cost for this transportation shall be borne by the supplier.
- 3.7 In the event of delay in delivery, which has been caused by a fault of the supplier, we are entitled to terminate the contract with immediate effect after 14 days, without any grace period being set. If a fixed date has been agreed, the contract shall be terminated with the lapse of the date, unless we desire to fulfil the contract.
- 3.8 Partial deliveries and advance deliveries require our written approval, except for deliveries up to max. 7 calendar days before the agreed date, whereby in such cases the payment periods begin only on the contractually agreed date.
- 3.9 The order shall be deemed to have been delivered only with the delivery of the complete documentation. Both, the agreed technical documentation or agreed quality documents such as acceptance protocols, quality checklists and audit trails are part of the ordered product. When collecting or delivering the goods, it is mandatory to hand over to Quanmax AG delivery notes in German or English that meet the criteria of Quanmax AG. The minimum specifications are order number, item name, quantity, serial numbers, delivery note number of suppliers and date.

- 3.10 The deliveries shall be made at the designated destination, unless otherwise agreed. The packaging must be selected taking into account the appropriate packaging standards so that a damage-free delivery and efficient handling within Quanmax is guaranteed
- 3.11 The period required for our incoming goods inspection is 10 working days. The supplier waives the right to object to delayed notification of defects in this respect. Our payment does not imply unconditional acceptance of the product.
- 3.12 The warranty period for hidden defects that cannot be identified during the acceptance or takeover begins from the date of identification
- 3.13 In the case of specially agreed delivery release by us, we have the right to extend delivery period by up to 90 days. In this case, the supplier is bound to store the goods free of charge and carefully till we provide the release for delivery.

#### **4. Packaging**

- 4.1 The packaging selected by the supplier must meet the following minimum packaging requirements in all cases. The packaging of each packaging unit
  - a) Has an identification of the contents readable from outside
  - b) Has delivery notes attached on the outside that are protected from moisture and can be removed easily, and the required accompanying documentation
  - c) Is to be loaded and unloaded safely and unhindered with standard loading aids
  - d) Is appropriate, so that the actual goods survive the transport without damage and is suited to the mode of transport
  - e) Does not have any sharp edged elements, protruding nails or screws etc, which could be dangerous for employees while moving the goods
  - f) Avoids unnecessary fillers and multiple secondary packaging
  - g) Protects the goods from weather and natural phenomena like rain, water spray, UV radiation, temperature fluctuations
- 4.2 A written confirmation must be obtained from Quanmax AG for changes to the type of packaging vis a vis packaging specifications that have already been approved.
- 4.3 The supplier shall be responsible for meeting the requirements for country-specific packaging regulations of the designated location. Quanmax AG can demand disposal of the packaging free of cost.
- 4.4 Suppliers, for whom the packaging regulations in effect from 01.10.1993 are applicable, are bound to disclose their disposal license number provided by the Altstoff Recycling Austria or

inform us about how they will dispose the delivery packaging materials. If such information is not available, we would be forced to return the packaging at a cost or bill the disposal costs.

## **5. Quality – Documentation**

- 5.1 The goods to be delivered shall correspond to the respective applicable local and international stipulations (especially the rules for accident prevention and all applicable regulations), the latest recognized rules and standards of technology and most accurately to the documents like drawings, descriptions, patterns, specifications, acceptance conditions etc.
- 5.2 The supplier must submit complete and valid documents on request.
- 5.3 The supplier must conduct quality control appropriate in type and manner and corresponding to state of the art technology.
- 5.4 In the context of his obligation to warn as per § 1168 ABGB, the supplier must provide information in time and completely especially to the responsible persons of our purchasing department listed in the corresponding order.

## **6. Deviations, defects, resolution of defects**

- 6.1 The supplier is bound to inform Quanmax AG immediately in case of deviations from the agreed product properties, dates, quantities and qualities.
- 6.2 The supplier is bound to act on all conceivable options and activities independently to avoid damages towards Quanmax AG or third parties. If it is not possible to avoid damage, corresponding options and activities having the best possible results to minimize the damage or to limit the damage to the greatest possible extent must be initiated by the supplier independently.
- 6.3 If Quanmax Ag identifies one of the defects mentioned above, the supplier shall be informed of the same. Considering the damage minimization requirements mentioned above, the supplier can choose whether
  - a) He removes the defect himself and organizes the necessary transport
  - b) He assigns the defect removal to a third party (at own costs) in the form of an authorized specialized firm ensuring warranty claimsOr whether
  - c) He entrusts Quanmax AG with the task of resolving the defects at the cost of the supplier while ensuring the warranty claims.

6.4 However, in case of imminent risk or threat of consequent justifiable economic loss, which do not permit the selection of the first two options, Quanmax AG is entitled to avert the possible consequent damages on behalf of the supplier and select the option c) from 6.3, whereby Quanmax AG itself or a third party shall remedy the defect. The warranty claims are preserved in all cases.

## **7. Product guarantee**

7.1 The supplier guarantees that the supplied products and services are free of defects and is liable for product and consequential damages that result from defects for which the supplier is responsible.

7.2 The supplier guarantees freedom from defects in the form of a full warranty for 60 months from the date of delivery to Quanmax AG. Other warranty provisions will be agreed separately for the orders.

## **8. Prices, invoicing and payment**

8.1 The prices stated in the order are fixed prices, unless agreed otherwise, and thus cannot be changed till the scope of delivery and services has been fulfilled completely as ordered.

8.2 The agreed prices and services apply to Quanmax AG and its Group members and subsidiaries.

8.3 The prices are inclusive prices and include all costs and incidental charges necessary for rendering the services and the scope of services from the order. Quanmax AG will not accept additional costs, apart from the price and services defined in the order.

8.4 A single original copy of the invoice, stating information of Quanmax AG such as the order number and quantity is to be sent by post to Quanmax AG. Original bills must never be sent along with the delivery. The invoices of the supplier must match the details of the order of Quanmax AG.

8.5 Invoices not meeting the form requirements mentioned above will not be accepted and will be returned.

8.6 Payment shall be made on receipt of goods as per the contract and receipt of proper and verifiable invoice, basically after 90 days net, unless otherwise agreed in writing.

8.7 The payment target begins on completion of the provision of service with the date of receipt of the later of the following events:

a) Complete delivery with documentation as per order

b) Receipt of the correct invoice as per **Fehler! Verweisquelle konnte nicht gefunden werden.**

8.8 In the event of the existence of a defect covered by warranty, we are entitled to defer the payment till proper resolution of the defect.

## **9. Warranty**

9.1 The supplier provides a complete warranty for all deliveries and services for a period of 24 months. The supplier must immediately remedy any defects occurring during this period at own expense on demand. All costs related to the corrective action, such as transport, dismantling and assembly costs shall be borne by the supplier. The warranty period will be suspended for the duration of improvement works till successful resolution of the defect. Parts replaced or repaired under warranty are again subject to a warranty period of 24 months from the date of replacement or repair. The location for fulfilment for corrective action within the warranty obligation shall be our choice. Further legal provisions remain unaffected

9.2 In those cases, in which the supplier does not comply with his warranty obligations upon request in a reasonable time and in other cases of extreme emergency, we are entitled, without further notice, to carry out the resolution of defects on our own or through a third party at the expense of the supplier or to obtain other replacement if this is not possible.

9.3 We reserve the right to immediately exercise the right of rescission or price reduction rather than improvement and replacement. The supplier shall compensate us for damage resulting for us due to the defective deliveries.

9.4 If we face liability for damages, as the manufacturer of the end product, which are caused by defects in the basic material or sub-products delivered by the supplier, the supplier must indemnify us against such a liability and provide full redress.

## **10. Spare parts**

10.1 The supplier shall provide spare parts lists for the respective executed projects, which contain the price and delivery period for spare parts. The supplier guarantees the availability of the spare parts contained in these lists for a period of 2 years from delivery. If a spare part is not available within that period anymore, the supplier shall provide a technical alternative and its delivery period shall not be longer than that agreed originally for the relevant spare parts.

## **11. Manufacturing equipment and materials**

- 11.1 Manufacturing equipment that we have made available to the supplier must be handled with due care and preserved for 10 years from the last date and time of production to be available for us. It must be returned to us immediately on demand
- 11.2 Manufacturing equipment produced or procured by the supplier for which we paid the production costs (tool costs) are the property of Quanmax AG. If the supplier is not able to maintain this equipment in a state ready for use for 10 years to place at our disposal, he is obligated to inform us in writing and hand over the production equipment on demand.
- 11.3 In the event of damage, loss or destruction of basic materials supplied by us (semi-finished products, castings, fabricated parts, etc.) the cost of their re-procurement is to be compensated by the supplier

## **12. Confidentiality**

- 12.1 All the information provided for creating offers or execution of orders shall remain our property and must be returned to us with the offer or after execution of the order. This information may not be reproduced nor made available to third parties without our written consent.
- 12.2 The supplier is required to handle the order and the work resulting from it as well as all related technical and commercial documents and facilities as a trade secret and with strict confidentiality. In case of partial sub-contracting of the present order to subcontractors that has been approved by us, the supplier shall impose the same obligation on his subcontractors.

## **13. Rights of third parties**

- 13.1 The supplier undertakes to supply delivery or services free from rights of third parties. The supplier warrants that rights of third parties are not violated particularly in the execution of the contract and use of the object of delivery or service. He shall indemnify us against any claims for damages or complaints by third parties due to infringement.

## **14. Force majeure**

- 14.1 Each party shall be released from its contractual obligation, if it is unable to meet its obligations due to the reasons of 'force majeure'
- 14.2 The following unforeseeable, external, unavoidable events are recognized as force majeure:
  - a) Thunderstorms e.g. storms, floods, hail, lightning strike

- b) Fire
- c) War
- d) Embargo

14.3 Both parties to the contract shall waive any claims to compensation for damages in case of force majeure.

## **15. Applicable law**

15.1 Austrian law shall apply. The UN license to sell is excluded. The jurisdiction for the purchase transactions of Quanmax AG is Linz, Austria

15.2 Quanmax AG reserves the right to change the jurisdiction and the applicable law in individual cases to the location or nation of the branch of the supplier.

## **16. Partial invalidity, replacement in case of invalidity**

16.1 It is agreed that part invalidity of individual points of the general terms and conditions of purchase shall not lead to the total annulment of the general terms and conditions of purchase

16.2 If individual provisions from these terms and conditions violate legal regulations or laws of relevant and approved legislations or authorities, both parties to the contract agree to replace the concerned points of these terms and conditions of purchase with regulations that are recognized by the legislation or authorities and come closest in intent to this point

## **17. General provisions**

17.1 No compensation is provided for the preparation of bids, plans, cost estimates, etc.

17.2 The supplier is permitted to indicate business relations with us in his advertising activities only with our express written consent.

17.3 The legally binding acquisition of re-export limitations from the title of the technology transfer is limited to goods for which a verifiable export permit is required in the destination country (for the U.S., applicable for current version of the Export Administration Regulations of the U.S. Department of Commerce), which are also marked as such in the shipping documents and for which the supplier expressly brings to our attention this fact in offers and order confirmations.