

## **Translation of the General Purchasing Conditions of the Otto Egelhof GmbH & CO.KG**

### **General Purchasing Conditions**

#### **Section 1 Scope**

We will place orders based exclusively on our General Purchasing Conditions in the version that is in effect at the time. Agreements deviating therefrom must be in writing in order to be enforceable.

#### **Section 2 Orders**

(1) We will receive quotes free of charge. Only written orders will be binding. We will regard agreements made orally or by telephone as being effective only following our written confirmation. The requirement of a writing can only be waived in writing. Unless we receive a confirmation within two weeks of the date of order, we have the right to cancel the order.

(2) We have the right to demand modification of design and execution of goods to be delivered in exchange for appropriate compensation for additional, or reduced, costs resulting from such modification. If necessary, delivery periods will be extended accordingly.

(3) Any reservations of title in favor of third parties are excluded.

#### **Section 3 Prices**

Prices quoted in our orders are fixed and do not include Value Added Tax, but do include delivery to the place of use, as well as packaging.

#### **Section 4 Invoices, Conditions of Payment, EU Certificate of Origin**

(1) Invoices must be submitted separately from the delivered goods. They must be identified with the order number and date.

(2) Net payments will be made within 30 days after receipt of the invoice; however, at the earliest after arrival of the entire shipment and a non-contested claim that the debt has become due.

(3) Invoices received by us before the 15<sup>th</sup> day of the month and paid by us before the 25<sup>th</sup> day of the same month entitle us to a 3% discount. The same applies to invoices that are received by us after the 15<sup>th</sup> day of a month and paid before the 10<sup>th</sup> day of the subsequent month. If the relevant cut-off date does not fall on a business day, the next business day will be applicable.

(4) Full or partial assignment of claims is permissible only with our express consent.

(5) At the time of the first delivery, at the latest, the Supplier must provide (under this agreement) a declaration in accordance with EU Regulation 1207/2001, which must be resubmitted without solicitation on the 1<sup>st</sup> of January of each year, as long as the requirements for such declarations exist, and for the duration of the business relationship.

## Section 5 Shipping

- (1) The place of performance is the place of use as stated on the order. The Supplier will always bear the risk of transport up to the point of actual delivery.
- (2) Delivery must be effected in one shipment, including a delivery note, by the agreed upon deadline. Partial or preliminary shipments require our prior approval.

## Section 6 Date of Delivery

- (1) The agreed periods of time and deadlines are binding; non-adherence will be considered a breach, even without prior warning. Should the Supplier fail to provide a due service or should such a service not be in compliance with the contract, we shall be entitled to set an appropriate deadline for the Supplier to cure and withdraw from the agreement after unsuccessful expiration of the period given. Withdrawal from the contract is permissible even before a service becomes due, should it become apparent that the conditions for such a withdrawal will occur. Should the delivery not be in compliance with the contract, we reserve the right to withdraw even if the breach of duty of the Supplier is insignificant. The right to claim damages remains unaffected by such a withdrawal.
- (2) The Supplier is obligated to inform us without delay once he recognizes that the deadline for the delivery cannot be met. If the deadline for delivery is exceeded, a contract penalty in the amount of 0.5% of the net value of the total delivery will be levied for each started week of the delay of delivery.
- (3) Should an Act of God prevent us from accepting a delivery on schedule or using said delivery as agreed upon, we shall have the right to demand an appropriate postponement of the date of delivery. A strike and lock-out occurring on our premises or those of our customers shall also be considered an Act of God.

## Section 7 Quality Control

- (1) Any Quality Assurance agreements made with the Supplier supersede these General Purchasing Conditions.
- (2) To the extent that there are no special agreements regarding quality assurance, we will be required to subject arriving deliveries to a conventional incoming goods quality check and report determined defects within 14 days. To the extent that differences regarding number, size and weight of the delivered goods are found, the values determined by our incoming goods control department will be considered final, unless the Supplier can promptly prove our values to be incorrect.

## Section 8 Warranty

- (1) The Supplier guarantees that the delivered goods exhibit the agreed upon condition, specifically, that they are manufactured with the use of the most appropriate state-of-the-art materials and are not covered by third-party patents and other intellectual property rights.
- (2) If defects in the goods become apparent before expiration of the statute of limitations of warranty claims, the following shall apply:
  - (a) Defects must be eliminated by the Supplier at the Supplier's expense, at our discretion, by correction of the defect or by delivery of a defect-free product, which will satisfy Article 635, Paragraph 1, German Civil Code.

(b) Instead of demanding later compliance we shall also have the right to withdraw from the contract, to reduce the purchase price, and to claim damages or compensation for fruitless efforts.

(c) If the Supplier does not fulfill his warranty obligations within the stipulated period of time, if he refuses to perform the work, if a potential default situation is impending or urgency is required, we ourselves have the right to take necessary actions, or have such actions performed by third parties, at the Supplier's expense. This does not affect the Supplier's liability for defects. In these cases we have the right to demand an advance payment from the Supplier in order to cover expenses incurred on account of the elimination of the defect.

(d) A potential claim for damages shall also include expenses due to recalls.

(3) The Supplier is obligated to indemnify us against third-party claims resulting from defective deliveries. This claim to be indemnified expires, at the earliest, two months after a claim has been submitted by a third party, however, at the latest, three years after the delivery of the article in question.

(4) If defects occur before expiration of the statute of limitations of the warranty rights, it will be assumed that these defects existed already at the time of delivery of the article in question.

(5) Our approval of the Supplier's drawings, invoices and other documents shall not affect the Supplier's sole liability.

#### Section 9 Liability

(1) The Supplier is liable to us and third parties, within the scope of governing legal regulations, for all damages incurred due to the violation of contractual obligations or tortious activities.

(2) The Supplier shall indemnify us for all potentially arising third-party claims for damages that result from the Supplier's product or actions.

#### Section 10 Means of Production

(1) Tools, samples, models, drawings, documentation and similar objects that we have made available to the Supplier in order to carry out the order remain our property. At any time, we have the right to ask that they be returned. Such objects may be used only in conjunction with our orders. The same applies to technical and commercial information that we have made available to the Supplier.

(2) The Supplier is obligated to store and treat supplied drawings, technical documentation, tools and parts with care, to protect them against all risks; specifically, to insure them adequately against fire and theft at his expense and, at our request, to provide proof of a valid insurance contract.

#### Section 11 Final Provisions

(1) The legal relations of the parties resulting from or in connection with the respective delivery relationship are subject to the jurisdiction of the Federal Republic of Germany.

(2) The Defendant's seat shall be the place of jurisdiction for all disputes arising from business activities governed by these General Purchasing Conditions. However, we shall also be entitled to file a claim against the Supplier at the court in Stuttgart, our generally competent court.

(3) Should any condition of the General Purchasing Conditions be or become ineffective, the effectiveness of the remaining conditions shall not be affected thereby.

**NOTE:**

**For all disputes arising from business transactions, only the text of the original German version is applicable.**

Fellbach, 26<sup>th</sup> April 2002