

## GENERAL PURCHASING TERMS AND CONDITIONS OF GEMINI GREEN GMBH & CO.KG

### Section 1 Scope, form

(1) These General Purchasing Terms and Conditions (PT&C) apply to all business relationships with our business partners and suppliers (hereinafter referred to as "Vendors"). The PT&Cs only apply if the Vendor is a company (s. 14 BGB), a juridical person under public law or a public-law special asset.

(2) The PT&Cs apply to contracts concerning the sale and/or delivery of movable items ("goods") irrespective of whether the Vendor itself manufactures the goods or purchases them from suppliers (sections 433, 650 BGB). The PT&Cs are a component of all contracts we conclude with other vendors regarding the deliveries offered by them and apply to all future contracts regarding the sale and/or delivery of movable items, even if they are not purchased again separately.

(3) These PT&Cs exclusively shall apply. Different, contradictory or supplemental general terms and conditions of the Vendor or of third parties shall become a component of the contract only and insofar as we have expressly consented to them in writing (e.g. letter, email, fax). This requirement for consent shall apply in any case, for example even if we accept deliveries without reservation in the knowledge of the general terms and conditions of the Vendor or a third party or if we refer to a letter that contains or refers to the general terms and conditions of the Vendor or a third party.

(4) Individual agreements entered into with the Vendor in individual cases (including subsidiary agreements, supplementary information and amendments) shall in any case have preference over these PT&Cs. Subject to evidence to the contrary, a written contract or our written confirmation shall apply to the contents of such agreements.

(5) Legally relevant declarations and notices by the Vendor in respect of the contract (e.g. deadlines, warning, withdrawal) must be submitted in writing. Statutory form provisions and other verifications, notably if there is doubt regarding the authenticity of the declaring party, shall remain unaffected.

(6) References made to the validity of statutory requirements only provide clarification in terms of their significance. The statutory requirements therefore also apply without such clarification provided they are not directly amended and are expressly ruled out by these PT&Cs.

### Section 2 Conclusion of contract

(1) Our order shall be deemed to be binding no earlier than upon submission or confirmation in writing. The Vendor shall advise us of obvious errors (e.g. spelling mistakes and calculation errors) and if the order, including the order documentation, is incomplete so they can be corrected or completed before acceptance; otherwise the contract shall be deemed to be void.

(2) The Vendor shall confirm (accept) our order in writing within a period of 1 week. Late acceptance or acceptance than deviates from our order shall be deemed as a new offer and shall require acceptance by us.

### Section 3 Lead time and late delivery

(1) The lead time stated by us in the order (delivery date or delivery period) is binding. Early deliveries are only permitted after separate agreement. If the lead time is not stated in the order and has not been agreed otherwise, it shall be 10 working days (working days are Monday to Friday) from conclusion of the contract. Receipt of the goods at the delivery address stated by us during business hours shall be applicable for timeliness of the delivery.

(2) The Vendor shall immediately inform us in writing if it is unable to comply with agreed lead times – whatever the reason. This notification shall state the cause and estimated duration of the delay. This notification shall not prevent the start of the default.

(3) If the Vendor does not provide its work and services or not within the agreed lead time or is (otherwise) in default, our rights – notably the right to withdraw and the right to claim compensation – shall be determined according to the statutory provisions. The conditions of s. 3.4 shall remain unaffected.

(4) If the Vendor is in default, we can demand a general reimbursement of our default damages of 1 % of the agreed net price per full calendar week – in addition to other statutory claims – but not more than 5 % of the net price for the goods delivered late. We reserve the right to prove that higher damages were suffered. The Vendor reserves the right to prove that no or only significantly smaller damages were suffered.

(5) The unreserved acceptance of a late (partial) delivery does not represent a waiver by the client to the rights or claims resulting from late (partial) delivery.

### Section 4 Performance, delivery, transfer of risk, delayed acceptance

(1) The Vendor shall bear the procurement risk for its services unless agreed otherwise in the specific case (e.g. limited stocks).

(2) Delivery shall be at the Vendor's cost to the location stated in the order. If the delivery address is not stated and there is no other agreement, delivery shall be to our premises in Stuttgart. The respective delivery address is also the place of performance for the delivery and for any supplementary performance (debt to be discharged).

(3) The shall enclose a delivery note stating the date (issue and dispatch), contents of the delivery (article number and quantity) and our order reference (date and number). If the delivery note is missing or is incomplete, we shall not be responsible for any resulting delays in processing and payment. A corresponding notice of dispatch with the same contents shall be sent to us separately from the delivery note.

(4) For international orders, the Vendor shall enclose all documentation with the shipment of goods, which we need for technical customs purposes or in order to obtain benefits or to prove other facts connected with the purchase. The Vendor shall also promptly provide the information required for the "Intrastat Notification".

(5a) Upon request from us, the Vendor shall issue and provide us with a so-called supplier's declaration. In this supplier's declaration the Vendor shall confirm that the delivered product corresponds to the order and the specifications. As a minimum this must state the order number, the delivery number and the delivered quantity.

(5b) If a delivered product contains substances that are harmful to the safety or health of persons, the Vendor shall describe these in detail and explain what measures we have to take with regard to storage, treatment and use of the products.

(5c) The Vendor shall also advise if deliveries contain perishable products or products with a limited useful life and which circumstances may lead to the useful life being impaired.

(6) The risk of possible loss and possible deterioration of the items shall pass to us upon the hand-over at the place of performance. Insofar as acceptance has been agreed, it shall be authoritative for the passing of risk. Moreover, upon acceptance the statutory provisions of work

and services contract law shall apply correspondingly. The hand-over or acceptance shall be deemed irrelevant if we default in acceptance.

(7) The statutory provisions shall apply to our default in acceptance. The Vendor must expressly offer us its services even if a specific or specifiable period is agreed for action or cooperation from us (e.g. provision of material). If we default in acceptance, the Vendor can demand reimbursement of its additional costs according to the statutory provisions (s. 304 BGB). If the contract relates to non-fungible goods manufactured by the Vendor (single production), the Vendor shall be entitled to additional rights only if we agreed to cooperate and are responsible for the lack of cooperation.

(8) The Vendor is not authorised to make partial deliveries without our prior written consent.

### Section 5 Prices and payment conditions

(1) The price stated in the order is binding. All prices include statutory VAT, even if this is not shown separately.

(2) Unless agreed otherwise in a specific case, the price shall include all services and ancillary services from the Vendor (e.g. assembly, installation) and all additional costs (e.g. correct packaging, transport costs including any transport and liability insurance customs and customs clearance fees). If exceptionally the price of packaging is not included according to the agreement concluded and the remuneration for the – not loaned – packaging is not expressly stated, this shall be charged at the documented cost price. At our request, the Vendor shall take back and dispose of the packaging at its own cost.

(3a) The agreed price is payable without 30 calendar days from complete delivery and service (including any agreed acceptance) and receipt of a correct invoice. The invoice shall at least state the job number, order number, cost center and project number.

(3b) If we pay within 14 calendar days, the Vendor shall grant us a discount of 3 % on the net invoice amount. We also reserve the right to deduct a discount if we offset or withhold payments due to defects. Payment by bank transfer is made on time if our payment instruction is received by our bank before the payment deadline; we are not responsible for delays caused by the banks involved in the payment.

(4) We do not owe any interest on maturity (s. 353 HGB). In the case of default, we shall owe default interest at the rate of 5 percentage points above the basic rate according to s. 247 BGB. Moreover, the statutory provisions shall apply to the default.

(5) We reserve the right of offset and retention, as well as the defence of non-fulfilment of contract to the statutory extent. In particular, we reserve the right to withhold due payments as long as we are still entitled to claims from incomplete or defective services from the Vendor.

(6) The Vendor has a right of offset or retention only due to legally upheld or uncontested counterclaims.

(7) Price increases must be advised in writing with 3 months' notice to the start of their application. We must confirm the new prices in writing before they enter into force.

(8) The Vendor is not authorised to charge small and lower-quantity surcharges.

### Section 6 Ownership protection

(1) We shall retain ownership or copyright to orders placed by us, jobs, as well as drawings, illustrations, calculations, descriptions and other documents provided to the Vendor. The Vendor shall not disclose them to third parties or use or reproduce them without our express consent. At our choice, they shall either be returned to us in full or destroyed at our own costs if they are no longer needed for normal business or if negotiations do not lead to a contract being concluded. Copies made of these by the Vendor shall be destroyed in this case; only the retention within the framework of the statutory duties of retention and the storage of data for backup purposes as part of normal data security are excluded from this.

(2) Tools and models, which we provide to the Vendor or which are made for contractual purposes and charged to us separately by the Vendor, shall remain our property or become our property. The Vendor shall mark them as our property, safeguard them carefully, secure them to a reasonable extent against damage of all kinds and only use them for purposes of the contract. The costs of their storage and repair shall be borne half each by the contractual partners – unless agreed otherwise. However, if these costs are due to defects to the objects manufactured by the Vendor or due to incorrect use by the Vendor, its employees or other vicarious agents, they shall be borne solely by the Vendor. The Vendor shall immediately advise us of all damage to these tools and models that is not merely insignificant. At our choice, it shall return them to us in a good condition or destroy them at its own cost if they are no longer needed by it for fulfilment of the contracts concluded with us.

(3) The Vendor's retention of title shall only apply if they relate to our payment obligation for the respective products, to which the Vendor retains ownership. In particular, expanded or extended retention of title is not permitted.

### § 7 Confidentiality

(1) The Vendor shall maintain confidentiality with regard to the conditions of the order and all information and documents provided to it for this purpose (with the exception of publicly available information) for a period of 5 years after conclusion of the contract and shall only use them to implement the order. After responding to queries or after settling orders, it shall return them to us in full or destroy them at its own cost at our discretion.

(2) The Vendor may not refer to the business relationship in advertising material, brochures, etc. without our prior written consent and may not exhibit delivery objects manufactured for us.

(3) The Vendor shall impose these obligations on its subcontractors corresponding to this s. 7.

### Section 8 Defective delivery

(1) Unless specified otherwise below, the statutory provisions shall apply to our rights in the event of material or legal defects to the goods (including incorrect and short delivery, as well as incorrect assembly, defective assembly, operation or control instructions) and in the event of other breaches of rights.

(2) According to the statutory provisions, the Vendor shall be liable in particular for ensuring that the goods have the agreed properties at transfer of risk. The product descriptions that are object of the respective contract or which are included in the contract in the same way as these PT&Cs – in particular as a result of a designation or reference in the order – are deemed to be the agreement in this case. Whether the product description comes from us, from the Vendor or from the manufacturer is irrelevant.

(3) Section 442 (1) sent. 2 BGB notwithstanding, we reserve unrestricted right to claim in the case of defects, even if the defect was unknown to us when concluding the contract due to gross negligence.

(4) The statutory provisions (sections 377, 381 HGB) shall apply to the commercial duty of investigation and complaint, with the following condition: Our duty of investigation is limited to defects, which are discovered during our goods-in inspection as part of the external observation, including of the delivery papers (e.g. transport damage, incorrect or short delivery) or from the random sampling during our quality control. If acceptance is agreed, there is no duty of investigation. Moreover, it depends on the extent to which an investigation is useful, taking into account the circumstances of the individual case. Our duty of complaint for subsequently discovered defects shall remain unaffected. Irrespective of our duty of investigation, our complaint (notification of defect) is certainly immediate and prompt if it is sent within 5 working days (working days are Monday to Friday) of discovery or, if the defects are obvious, after delivery.

(5) Supplementary performance also includes removing the defective goods and re-installation, provided that the goods were installed into another object or fitted to another object according to their type and intended use; our statutory claim to reimbursement of corresponding costs shall remain unaffected. The costs incurred for testing shall be borne by the Vendor even if it is found that in fact there was no defect, provided there was a justified suspicion before the test. Our liability for compensation in the event of an unjustified demand for repairs shall remain unaffected; to this extent, however, we are only liable if we find or grossly negligently do not find that there was no defect.

(6) The following shall apply irrespective of our statutory rights and the conditions in s. 8.5: If the Vendor does not fulfil its duty of supplementary performance – either by correcting the defect (repair) or by delivery of a non-defective good (replacement) at our choice – within a reasonable period set by us, we can correct the defect ourselves and demand reimbursement from the vendor for the costs required for this, or demand a corresponding advance. If supplementary performance by the vendor fails or is unreasonable for us (e.g. because of the urgency, danger to operational safety or anticipated occurrence of unreasonable damage), a deadline does not have to be set; we shall immediately inform the Vendor of such circumstances.

(7) Accepting or approving submitted patterns or samples does not mean we waive our warranty claims.

(8) Moreover, if there is a material or legal defect, we reserve the right according to the statutory provisions to reduce the purchase price or to withdraw from the contract. Additionally, we are entitled to claim compensation and reimbursement of costs in accordance with the statutory provisions.

#### **Section 9 Supplier recourse**

(1) We are entitled to our statutorily determined recourse claims within the supply chain (supplier recourse according to sections 445a, 445b, 478 BGB) without restriction in addition to the claims due to defects. In particular, we reserve the right to demand exactly the type of supplementary performance (correction or replacement) from the Vendor, which we owe to our customer in the specific case. This shall not affect our statutory options (s. 439 (1) BGB).

(2) Before we acknowledge or fulfil a claim due to defects asserted by our customer (including claims for reimbursement according to sections 445a (1), 439 (2) and (3) BGB), we shall inform the Vendor and request a brief explanation of the matter for a response in writing. If a substantiated response is not received within a reasonable period and a mutually acceptable solution cannot be achieved as a result of this, the claim due to defect actually granted by us shall be deemed to be owed to our customer. In this case, it is incumbent upon the vendor to show evidence to the contrary.

(3) Our claims from supplier recourse shall also apply if the defective goods have been processed by us or another contractor, e.g. installation in another product.

#### **Section 10 Manufacturer liability**

(1) If the Vendor is responsible for product damage, it shall indemnify us from third-party claims to the extent that the cause is within its area of control and organisation and it is liable itself externally.

(2) As part of the indemnification obligation, the Vendor shall reimburse costs according to sections 683, 670 BGB, which are incurred from or in conjunction with a third-party claim, including recall campaigns implemented by us. We shall inform the Vendor – where possible and reasonable – of the content and scope of the recall measures and give the Vendor the opportunity to comment. Further statutory claims shall remain unaffected.

(3) At its own cost, the vendor shall purchase and maintain product liability insurance with a general sum insured of at least EUR 10 million per personal/material damage. Upon request at any time, the Vendor shall provide us with a copy of the insurance policy and confirmation that the policy has been paid in full.

#### **Section 11 Protected rights**

(1) According to the conditions of s. 11.2, the Vendor is liable for ensuring that products supplied by it do not breach third-party protected rights in countries of the European Union or other countries where it manufactures or allows the manufacture of products.

(2) The Vendor shall indemnify us from all claims brought by third parties against us because of the breach of commercially protected rights specified in s. 11.1 and shall reimburse us all necessary costs connected with these claims. This shall not apply if the Vendor proves that it is neither responsible for the breach of protected rights nor should have known of them at the time of delivery through due care and attention.

(3) Our further statutory claims due to legal defects to the products supplied to us shall remain unaffected.

#### **Section 12 Force majeure**

(1) If the Vendor is prevented from a timely delivery as a result of force majeure, labour dispute, accidental production stoppages, unrest, official orders, epidemic, pandemic and other unavoidable events, it shall inform us immediately.

(2) Disruptions to supplies and other performance disruptions suffered by subcontractors to the Vendor shall only be deemed to be force majeure if the subcontractor is prevented from providing the service owed by it as a result of an event according to s. 12.1. The Vendor shall immediately inform us of this.

(3) If it is not possible for us to accept the products as a result of force majeure, labour dispute, accidental production stoppages, unrest, official orders, epidemic, pandemic and other unavoidable events or if acceptance of the ordered products is not economically reasonable because of the unavoidable events, we shall immediately inform the Vendor of this.

(3) The respective contractual party shall not be liable for the above events, which significantly hinder the timely delivery or acceptance of the ordered products or temporarily prevent or make impossible the proper implementation of the contract.

(4) In the event that adhering to the contract for the period of the delays caused by the above events is unreasonable for one of the parties, it shall reserve the right to withdraw from the contract or to terminate same for good reason. Typically, adhering to the contract is unreasonable at the latest if the force majeure or the above event lasts longer than 30 days or results in a considerable reduction in our demand.

#### **Section 13 Expiration**

(1) Unless agreed otherwise, the mutual claims of the contractual parties shall expire according to the statutory provisions.

(2) Section 438 (1) No. 3 BGB notwithstanding, the general expiration period for claims due to defects is 3 years from transfer of risk. If acceptance has been agreed, the expiration period shall commence upon acceptance. The 3-year expiration period shall also apply correspondingly to claims due to legal defects, whereby the statutory expiration period for material surrender claims from third parties (s. 438 (1) No. 1 BGB) shall remain unaffected; claims due to legal defects shall not expire as long as the third party can still assert the right – notably due to lack of expiration – against us.

(3) The expiration periods under sales law, including the above extension, shall apply to all contractual claims due to defects – to the statutory extent. Insofar as we are entitled to claims for compensation outside the contract because of a defect, the regular statutory expiration (sections 195, 199 BGB) shall apply to this if application of the expiration periods under sales law lead to a longer expiration period in the specific case.

(4) The expiration period for warranty claims shall be suspended upon receipt of or written notification of defect by the Vendor until the Vendor rejects our claims in writing or declares the defect to be corrected or otherwise refuses to continue negotiations regarding our claims. In the case of replacement and repair, the warranty period for replaced and repaired parts shall start again unless we had to assume from the Vendor's conduct that it did not see itself required to carry out the measure and instead only performed the replacement or repair for reasons of goodwill or similar reasons.

#### **Section 14 Compliance**

(1) The Vendor shall comply with the statutory conditions applicable to it in conjunction with the contractual relationship. This refers in particular to anti-corruption and money laundering legislation as well as anti-trust, employment and environmental protection provisions.

(2) The Vendor shall ensure that the products supplied by it comply with all applicable requirements for sale in the European Union and in the European Economic Area. Upon request, it shall verify compliance with us by submitting suitable documentation.

(3) The Vendor shall make reasonable efforts to ensure compliance by its subcontractors with the obligations applicable to the Vendor as specified in this s. 13.

#### **Section 15 Mixed contracts**

(1) If object of the contract is also the provision of services by the Vendor, our General Terms and Conditions for Services (T&CS) shall also apply.

(2) The Vendor can view the respective current version of these on our homepage ([www.selecta-one.com](http://www.selecta-one.com)).

#### **Section 16 Choice of law, place of jurisdiction and language**

(1) The law of the Federal Republic of Germany shall apply to these PT&Cs and to the contractual relationship between us and the Vendor, to the exclusion of international uniform law, in particular the UN Convention on the International Sale of Goods.

(2) If the Vendor is a merchant as defined in the Commercial Code, a juridical person under public law or a public-law special asset the exclusive – also international – place of jurisdiction for all disputes resulting from the contractual relationship is our place of domicile in Stuttgart. However, we reserve the right in all cases to sue at the place of performance of the delivery obligation according to these PT&Cs or a higher-ranking individual agreement or at the Vendor's general place of jurisdiction. Higher-ranking statutory provisions, in particular regarding exclusive competences, shall remain unaffected.

(3) Even if these PT&Cs are translated into another language, the German version alone of these General Purchasing Terms and Conditions shall remain binding.

Stuttgart, August 2020