



## General Conditions of Purchase

### Interpretation

1. The definitions and rules of interpretation in this condition apply in these Conditions.

Company: GfE – MIR GmbH

Contract: the Order and the Seller's acceptance of the Order.

Goods: any goods agreed in the Contract to be purchased by the Company from the Seller (including any parts of them).

Order: the Company's written instructions to purchase the Goods, incorporating these Conditions.

Seller: the person, firm or Company who accepts the Company's Order.

### Application of Terms

- 2.1. Subject to any variations under condition 2.4, these Conditions are the only conditions upon which the Company is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms and conditions.
- 2.2. Each Order for Goods by the Company from the Seller shall be deemed to be an offer of the Company to buy Goods subject to these Conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.3. No terms and conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4. These Conditions apply to all the Company's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by an authorized person of the Company.

### Delivery and Risk

- 3.1. Unless otherwise provided in the Contract or in these Conditions, the Incoterms, latest version, shall apply to the Contract.
- 3.2. Time for delivery shall be of the essence.
- 3.3. If any Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
  - 3.3.1. cancel the Contract in whole or in part;
  - 3.3.2. refused to accept any subsequent delivery of the Goods which the Seller attempted to make;
  - 3.3.3. recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and
  - 3.3.4. claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

### Quality and Indemnity

- 4.1. The Goods shall be of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specifications supplied or advised by the Company to the Seller.
- 4.2. The Seller shall keep the Company indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with
  - 4.2.1. defective materials, quality or workmanship;
  - 4.2.2. any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees, agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

### Price

- 5.1. The price for the Goods shall be stated in the Order and unless otherwise agreed by the Company in writing shall be inclusive of value added tax and all other charges.
- 5.2. Time for payment shall not be of the essence.

### Licenses

- 6.1. The Seller shall obtain and keep in good standing all governmental permits and licenses, as the case may be, which are necessary or expedient for the performance of the Seller's obligations under the Contract.

### Termination

- 7.1. The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if

- 7.1.1. the Seller commits a material breach of any of the terms and conditions of the Contract; or
  - 7.1.2. any distress, execution or other process is levied upon any of the assets of the Seller; or
  - 7.1.3. the Seller closes or threatens to cease to carry on its business; or
  - 7.1.4. the Seller has a bankruptcy order made against him, makes an arrangement or composition with his creditors, convenes a meeting of creditors, enters into liquidation or commences any other proceedings relating to insolvency or possible insolvency ; or
  - 7.1.5. the financial position of the Seller deteriorates to such extent that in the opinion of the Company the capability of the Seller adequately to fulfill its obligations under the Contract has been placed in jeopardy.
- 7.2. The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination.

#### **Force Majeure**

- 8.1. The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

#### **General**

- 9.1. The Seller shall not be entitled to assign the Contract or any part thereof without the prior written consent of the Company.
- 9.2. The Company may assign the Contract or any part of it to any person, firm or company.
- 9.3. Each rights and remedy of the Company under the Contract is without prejudice to any other right or remedy that the Company may have whether under the Contract or otherwise.
- 9.4. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 9.5. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 9.6. Any waiver of the Company of any breach of, or default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 9.7. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

#### **Governing Law and Jurisdiction**

- 10.1. All disputes arising from the execution of, or in connection with this Contract shall be settled amicably through friendly negotiation. In case no settlement can be reached through negotiation, the case shall then be submitted to Chamber of Commerce in Germany. The arbitration award is final and binding upon both parties. This Contract shall be governed by and construed in accordance with German law. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement. Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator. The Arbitration fee shall be borne by the losing party unless otherwise awarded.
- 10.2. Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation. The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator. If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties. The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest. Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration. Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses. The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.