

## General Terms of Purchase of MCAM Symalit AG

### 1. IN GENERAL

- 1.1 These terms of purchase shall apply to all the orders of MCAM Symalit AG. By accepting our order, the supplier agrees to the following terms.
- 1.2 These terms of purchase shall apply on an exclusive basis. Any deviations from our terms of purchase or from the sale or payment terms of the supplier shall be binding on us only if a specific written agreement has been made with regard thereto.
- 1.3 Orders and delivery schedules and corresponding changes and amendments must be in writing.
- 1.4 Cost estimates shall be binding and the expenditure necessary to draw them shall not be remunerated unless otherwise agreed in writing.
- 1.5 Order confirmations must be submitted immediately. Failure to submit an order confirmation within 10 days shall be deemed acceptance of our order upon the terms contained therein. MCAM Symalit AG is however entitled to revoke without cost an unconfirmed order within a further 10 days. Deviations in the order confirmation relating to our order require our written consent to be binding.
- 1.6 Letters, dispatch notes, delivery notes, invoices and other accompanying documents must bear our order number.
- 1.7 Any additional costs and expenses arising out of non-compliance with the terms of our order, particularly in relation to dispatch and customs clearance, shall be borne by the supplier.

### 2. PRICES

- 2.1 Subject to written agreements to the contrary, the agreed prices shall be deemed to be fixed including packaging, transport, customs, weighing, measuring as well as any other delivery costs. VAT, to the extent applicable, must be showed separately.
- 2.2 Reservations in respect of price increases shall be valid only if they have our express written approval.
- 2.3 Unless otherwise agreed in writing, we shall pay within 60 days net or within 30 days with 2% discount of receipt of the invoice, subject to receipt of the goods.

### 3. DELIVERY

- 3.1 Agreed times and deadlines shall be binding. If the supplier anticipates difficulties with respect to the delivery date or similar circumstances which may hinder timely delivery or delivery of the agreed quality or quantity, it must immediately notify us thereof. The effects of default shall not be excluded by such a notice.
- 3.2 In the case of late delivery, agreed penalties may be withdrawn or demanded without evidence of the damage suffered from the invoice amount. Late deliveries, irrespective of the reasons, give us the right to cancel our order without notice or to set an adequate grace period for subsequent performance, subject to damage compensation claims. The acceptance without reservation of late delivery or performance does not constitute a waiver of the compensation claims arising out of late delivery or performance.
- 3.3 Partial deliveries and early deliveries must not occur without our express agreement.
- 3.4 The goods to be delivered must comply with the recognised technical rules with respect to safety and be manufactured so as to ensure that where used in compliance with provisions and handled with due care they do not present a life or health risk.

- Upon request, the necessary certificates are to be submitted. Dangerous goods must be packaged and market in accordance with applicable laws, the danger class or the mention "not dangerous goods" should be on the delivery note and the corresponding safety data document must be delivered together with the goods.
- 3.5 The goods must be accompanied by delivery note indicating our order number and reference, a designation of the good, the net and gross weight and precise number of items. Partial and left-over deliveries must be designated as such. The delivery shall only be deemed to have been made after the documents required in the order and the technical documents are in our possession.
  - 3.6 We reserve the right to take over charged packaging as own property or to return it against a credit note.
  - 3.7 The supplier shall be liable for any damage incurred during transport as a result of insufficient packaging. Insurance shall be borne by the supplier. Up until delivery at the agreed place, the goods shall travel at the cost and risk of the supplier.

#### **4. QUALITY, WARRANTY, DEFAULT CLAIMS AND RIGHT OF RECOURSE**

- 4.1 The supplier warrants delivery that fully conforms to contract and is faultless, use of good raw materials, goods in good condition, which are appropriate for the intended use.
- 4.2 The supplier must timely inform us of any planned change to the product, its features and the production process and provide a sample upon request. Changes may only be made after receiving the written approval from MCAM Symalit AG – after MCAM Symalit AG could make use of the possibility of verification and validation.
- 4.3 No limitations on the warranty and liability of any kind shall be accepted. The rights to an exchange and reduction in price as well as damage compensation shall be reserved in every case. The warranty period is two years. Defect claims may be made during the entire warranty period. The costs for necessary trials, attempts, etc. as a result of delivery not conforming to the order or defective delivery shall be borne by the supplier. Any payment and use of the delivered goods shall not be deemed an acceptance of the delivery and performance with respect to quality and quantity.
- 4.4 We reserve the right to fully or partially retain payment in the case of a defect, to the extent we claim a replacement, until the supplier performs its duty to make a conforming replacement delivery, or until the situation concerning rescission, price reduction and compensation have been clarified in a binding manner.
- 4.5 If we withdraw products manufactured and/or sold by us as a result of the defects in the goods delivered by the supplier, if the purchase price is reduced with respect to us as a result or if a claim is made against us in any other way, we reserve the right to take recourse against the supplier, whereby there shall be no notice period for our defect claims. Corresponding claims shall be timebarred 5 years after delivery by the supplier.
- 4.6 The Supplier shall be responsible for ensuring that the procurement or use of the goods it offers or delivers does not violate patents or third party protection rights. In case of such violations as well as in the case of full or partial divestiture of title, the supplier shall hold us harmless from and against any claims existing on the part of third parties and shall support or represent us in negotiations and legal disputes. A time limitation of 10 years shall apply to such violations.
- 4.7 In the event an action is brought against us on grounds of product liability, the supplier has an obligation to hold us harmless from any such claims insofar and to the extent the damage is caused through the deficiency of an item delivered by the supplier under this agreement. The supplier shall accept liability in such cases for all costs and expenditure, including the costs of any legal proceedings or product recall. Statutory provisions shall further apply.

## **5. CONFIDENTIALITY**

- 5.1 Our orders and the related commercial and technical details must be treated as confidential by the supplier. Equally, the supplier may only disclose the existence of the business relationship if we have given our written agreement thereto.
- 5.2 Any business or technical information (including features to be inferred from any items handed-over, documents or software, and any other knowledge and experience) made accessible by us must be kept confidential in respect of third parties and may only be made available to persons within the supplier's company who need to use such information for the purposes of the delivery to us and are bound by a confidentiality obligation accordingly. Without our prior written agreement, such information – except deliveries to us – may not be replicated or used for marketing purposes. Upon our request, any information originating from us (including any copies and notes) and items lent must be immediately returned in full or destroyed according to our instructions. We reserve all the rights in such information (including copyrights and the right to apply for industrial property rights, such as patents, utility patents, etc.). Insofar as these are made accessible by third parties, this reservation of rights shall apply in favour of such third parties.
- 5.3 Products which are manufactured on the basis of documents drafted by us, such as drawings, models and the like, or on the basis of our confidential information, may neither be used by the supplier itself nor offered or delivered to third parties.

## **6. SUB-CONTRACTING**

The subcontracting or transfer of our orders to a third party without our written agreement is not permitted. Each case of breach of this clause shall give us the right to terminate the agreement without notice or to refuse, fully or in part, the performance of the supplier. We reserve our right to damage compensation claims.

## **7. ASSIGNMENT OF CLAIMS, SET-OFF**

The assignment of claims against us and the set-off by the supplier of its claims against us shall be excluded unless we agree in writing.

## **8. SEVERABILITY CLAUSE**

If any provision of these terms, of our order and of any other agreement made should be or become inoperative, this shall not affect the validity of the other provisions. The contract parties are obliged to replace the inoperative provision with another clause approximating as closely as possible the economic intent of the provision being replaced.

## **9. PLACE OF PERFORMANCE, JURISDICTION, APPLICABLE LAW**

The exclusive place of performance for delivery and payment and jurisdiction for any dispute arising out of this agreement and these terms of purchase shall be the place of the registered office of MCAM Symalit AG. We are however entitled to file action against the supplier at our discretion before a court at the place of its registered office, branch office, at the place of performance or at any other place. The contractual relationships with the supplier shall be exclusively governed by Swiss law, with the exclusion of the Vienna Convention on the Sale of Goods and the law on conflict of laws.