

## I. Scope of Application

- (1) These Terms and Conditions of Ordering apply to all contracts between Chemex Foundry Solutions GmbH or one of its affiliates domiciled in Germany (hereinafter referred to as "Purchaser") and the performer (hereinafter referred to as "Supplier") concerning the delivery of goods and / or the provision of services to the Purchaser and therewith related matters and ancillary services (hereinafter referred to as "Contract", the performance referred to as "Delivery") and all orders and order acceptances of the Purchaser in this regard.
- (2) These Terms and Conditions of Ordering apply to all future business relations concerning deliveries of the Supplier, even if they are not explicitly agreed upon again. Any other terms and conditions which conflict with the following or statutory provisions or complement these without being explicitly acknowledged by the Purchaser, shall not be binding upon the Purchaser. This shall apply also if he does not expressly object to them or if he accepts the deliveries without reservations in knowledge of deviating or supplementary terms and conditions. As a matter of precaution, we already now object to such conditions.
- (3) These Terms and Conditions of Ordering complement, unless otherwise agreed, a framework agreement between the Purchaser and the Supplier. In case of a conflict between these Terms and Conditions of Ordering and the framework agreement, the provisions of the framework agreement shall prevail.

## II. Orders

- (1) A Contract shall be concluded by an offer of the Supplier, which is usually based on a request of the Purchaser and which is accepted by the Purchaser in writing, or by an order of the Purchaser which is accepted by the Supplier in writing or by (partial) Delivery. The Supplier shall be bound to his offer for 2 weeks.
- (2) In case a Contract is not concluded, the provisions of these Terms and Conditions of Ordering shall nevertheless apply with regard to collateral duties, in particular with regard to the non-disclosure agreement and the return obligations.
- (3) In case the goods and / or services to be delivered require further specification, the Supplier shall request such specification in writing in due time.

## III. Delivery

- (1) Agreed delivery times, delivery schedules or delivery data shall be binding. The compliance with delivery times, delivery schedules or delivery data is essential for the performance of the Contract. Delivery times shall commence with the day of the order. An unconditional acceptance or payment of a delayed Delivery shall not constitute a waiver of any rights on account of exceeding the period for performance.
- (2) As soon as the Supplier recognizes circumstances which may endanger a proper timely Delivery, the Supplier shall inform the Purchaser in writing, giving the reasons for the delay and informing the latter of its prospective duration. This shall apply for all circumstances recognizable by the Supplier, which are not known to the Purchaser, irrespective of whom they were caused by. If the Supplier does not fulfill his obligation to inform, he shall bear the damage resulting thereof, unless he is not responsible for the breach of obligation.
- (3) If the Supplier is in delay with Delivery, the Purchaser shall be entitled to a contractual penalty in the amount of 0.5 % of the net price for the delayed Delivery (accordingly proportionately in case of a partial delayed Delivery) for each commenced calendar week of the delay, however, no more than 5 % of the net price. The contractual penalty may also be demanded, if the Purchaser does not make a reservation regarding the contractual penalty at time of acceptance of the Delivery, however, beyond the final payment of Delivery only, if this right is reserved at the time of the final payment. Claims for damages and other claims and rights with regard to the delayed Delivery, exceeding the contractual penalty, are reserved by the Purchaser. The paid contractual penalty shall be credited towards further

claims for damages.

- (4) Unless otherwise agreed, the term of Delivery shall be DDP Purchaser's site (INCOTERMS) and the Supplier shall also owe the unloading of the goods. For the interpretation of trade terms, the version of INCOTERMS applicable at the time the Contract was concluded shall apply.
- (5) The Delivery shall be made to the address specified in the order. Shipping documents shall be available and complete at the time of Delivery. A delivery note shall be enclosed to each Delivery. All documents of the Supplier shall indicate the factory, department, order number and additional other information requested in the order. The Supplier shall enclose the specific Inspection Certificate 3.1 according to EN 10204 to the Delivery. The Inspection Certificate as well as the delivery documents and the containers / packaging shall show order number and batch number.
- (6) The risk shall pass from the Supplier to the Purchaser at the time the goods are handed over to the Purchaser, irrespective of the agreed upon price basis and of the person who carries out the shipping or arranges for it to be carried out.
- (7) Packaging material may be returned. The stipulations of the packaging ordinance (*Verpackungsverordnung*) shall apply.
- (8) Deliveries of partial quantities shall only be allowed upon Purchaser's explicit consent.
- (9) If a reservation of title in favor of the Supplier applies, this shall have the effect of a simple reservation of title; the Purchaser is entitled, regardless of the retention of title, to use and process the goods without any restrictions.

## IV. Payment

- (1) Unless expressly agreed otherwise between the Purchaser and the Supplier, prices are fixed prices carriage free to delivery place, including all taxes (including the applicable value-added tax), fees, custom duties, insurances, packaging and unloading costs.
- (2) If a price excluding shipment is expressly agreed upon, the Purchaser shall bear only the most favorable shipping costs, unless he has arranged the shipment otherwise. Furthermore, the Supplier shall bear all costs incurred up to the transfer of the goods to the forwarder, including loading and cartage.
- (3) Invoices shall be submitted to the Purchaser separately from the shipment in duplicate immediately after Delivery. Invoices shall indicate all predetermined references, in particular the order number, possible discounts and deductions as well as incurred taxes. If the issuing of a collective invoice is agreed, this invoice shall be sent at the latest on the third working day of the month following the Delivery.
- (4) Unless expressly agreed otherwise between the Purchaser and the Supplier, the payment shall be effected 14 days after receipt of the invoice with a cash discount of 3 % or net 30 days after receipt of the invoice.
- (5) The Purchaser is entitled to exercise statutory set-off and retention rights to their full extent. He is in particular not obliged to pay the price, if he is entitled to claims for rectification or Supplier delivered only in part. Retention and set-off rights of the Supplier are excluded, unless a counterclaim of the Supplier against the Purchaser is due and uncontested or has been finally adjudicated or stands in a reciprocal relationship to the claim of the Purchaser.
- (6) The Purchaser is entitled to assign any and all claims arising from the Contract without consent of the Supplier. The Supplier shall not assign claims arising from this contractual relationship to third parties without Purchaser's prior written consent.

## V. Warranty

- (1) Purchaser's claims and rights in the event of defects shall be governed by the applicable statutory provisions and these Terms and Conditions of Ordering. Further contractual claims and rights of the Purchaser shall remain unaffected.

- (2) Upon delivery of the Supplier, Purchaser shall inspect the Delivery within an appropriate period of time with regard to its type (identity check), transport damage as well as apparent quality and quantity deviations. The Purchaser is not obliged to carry out any further inspection. A notification of defects is carried out in due time in any case, if it is sent off by the Purchaser within five working days after delivery of the goods and is received by the Supplier subsequently. In the event of concealed defects, this term of notice shall commence on their discovery. Clause V paragraph (2) shall apply only for purchase and works supply contracts.
- (3) In case the Delivery is carried out directly to the Purchaser's client, the Supplier agrees that a possible notification of defect will only take place after an inspection by Purchaser's client according to the aforementioned provisions. A notification of defect may also be carried out directly by the Purchaser's client.
- (4) In case of imminent danger or special urgency, Purchaser is entitled – without prejudice to Suppliers liability for defects – to rectify the defect on his own at Suppliers expense. In such a case, the Purchaser shall inform the Supplier – as far as reasonable and possible – about these defects in advance. Sec. 439(3), 635(3) of the German Civil Code (BGB) shall remain unaffected.
- (5) The Supplier shall deliver goods respectively provide services free of rights of third parties which may interfere with the unrestricted usability in Europe, unless the Supplier has informed the Purchaser of such rights of third parties prior to or at conclusion of the Contract. The limitation period for claims arising from defects, including recourse claims, shall be 36 months, unless longer limitation periods are stipulated by law. The statutory provisions regarding the suspension of the limitation period for recourse claims shall remain unaffected. Goods that have been newly delivered or services newly rendered due to remediation of defects shall thus be subject to a new period of limitation for 24 months; if the remaining period initially agreed is longer, this limitation period shall apply.
- (6) A notice of defect issued within the period of limitation shall suspend the period of limitation until the Supplier and Purchaser have reached an agreement on the remediation of the defect and any possible consequences; however, this suspension shall terminate 6 months after the final rejection of the notice of defect by the Supplier. The limitation period for claims on account of defects shall become statute-barred at the earliest 3 months after the end of the said suspension, but in no case before the expiry of the limitation period set out in the previous paragraph.

#### VI. Quality Requirements, Health and Safety

- (1) The Supplier shall comply with all legal and contractual obligations, in particular his obligation to convey appropriate instructions for the processing and use. In addition, the Supplier shall fulfill granted guarantees and commitments, even if these are not separately shown in in the written contractual statement of the Purchaser. Moreover, the Supplier shall be responsible for the compliance with the obligations associated with the placing of the goods on the market respectively with the provision of services.
- (2) References of the Supplier to generally accepted standards or quality marks or other declarations of the Supplier regarding the fact that the goods respectively the services are fit for a certain purpose, shall constitute an agreement on quality.
- (3) The Supplier is obliged to deliver goods of the agreed type and quality. Furthermore, the Supplier shall deliver goods which comply in every respect with the applicable provisions on products and the most recent state-of-the-art. Moreover, the goods respectively the service shall be fit for the Purchaser's intended purpose of use. Significant in this regard shall be the purpose of use communicated or presupposed at the conclusion of the Contract. Insofar as doubts exist, the Supplier shall enquire information regarding the purpose of use from the Purchaser. If the purpose of use implicates a use abroad, the respective local provisions applicable on the product shall also be complied

with. The provisions of the Product Safety Act (*Produktsicherheitsgesetz*), the Explosion Protection Directive, the technical standards, environmental legislation and safety and accident prevention provisions shall be complied with in any case to the extent applicable.

- (4) The Supplier shall constantly examine the quality of his goods respectively services and, if necessary, suggest possible improvements. The Supplier shall cooperate with the Purchaser in this regard. The Supplier shall maintain a quality assurance system (QAS) that allows to attribute production factors to individual batches of the product and to retrace changes in the production process. The Supplier allows the Purchaser to inspect the documentation of its QAS and grants him access to the Supplier's premises for the examination of the QAS (audit) during regular business hours.
- (5) If the Purchaser has placed multiple orders for certain goods or services at the Supplier, the Supplier shall inform the Purchaser about relevant quality changes to the goods respectively services before the acceptance of any subsequent order without undue delay, particularly regarding the production process or components, integral parts and raw materials, even if the changes are within the determined specification. Goods modified in such way as well as goods which differ from the specification may be delivered only after prior written consent of the Purchaser and – to the extent agreed – after the identification of such changes.
- (6) The Supplier shall forward the latest version of the safety data sheet and technical information regarding the delivered goods to the Purchaser (purchasing department) unsolicited and, if necessary, specify which previous version of these documents has to be replaced.
- (7) In case representatives or agents of the Supplier operate at our premises, the Supplier shall instruct these persons to comply with all applicable provisions, particularly with the provisions for prevention of accidents. This also applies for known regulations at company level, for instance the smoking ban.
- (8) The Supplier shall ensure that he and his subcontractors comply with all applicable statutory provisions. In particular, the Supplier is obliged to ensure that the necessary permits are issued and that the provisions of the German Act to Strengthen Collective Bargaining Autonomy including the obligation to pay the applicable statutory minimum wage are fulfilled.
- (9) The Supplier shall indemnify and hold harmless the Purchaser from and against claims of third parties (including authorities) arising out of or related to a breach of the aforementioned provisions of this Clause VI. The Supplier shall not be liable for the breach of the aforementioned provisions of this Clause VI, if the Supplier is not responsible for the breach of duty. Further statutory and contractual claims and rights of the Purchaser shall remain unaffected.

#### VII. Product Liability

- (1) The Supplier shall constantly examine the goods, inter alia with regard to product safety, and prove this upon request. As soon as he becomes aware of it, the Supplier shall indicate to the Purchaser existing risks concerning the processing or use of the goods.
- (2) In the event of damage, the Supplier shall support the Purchaser in every reasonable manner, in particular by granting him all appropriate information about the goods respectively services, for instance, with regard to the delivered material, the production of the goods and their origin.
- (3) If a third party pursues a claim against the Purchaser due to product defects or any other defect or damage caused by the goods respectively service and which was, according to the third party, caused within Supplier's sphere of control and organization, the Supplier shall indemnify and hold the Purchaser harmless from and against any such claims. If a product recall has to be carried out by the Purchaser because of a product defect or any other defect or breach of duty attributable to the Supplier, the Supplier shall reimburse the Purchaser all expenses arising in connection herewith. The Purchaser shall

inform the Supplier of the content and the scope of the product recall and give the Supplier the opportunity to respond.

- (4) If a third party pursues claims against the Purchaser due to the fact the Delivery of the Supplier infringes third-party intellectual property rights (e.g. patents, trademarks, copyrights), the Supplier shall indemnify and hold the Purchaser harmless from and against any such claims. The Supplier shall contribute to the elimination of a possible infringement of intellectual property rights by transmitting information and, if applicable, by modifying the product or obtaining licenses. The Supplier shall inform the Purchaser promptly about claims asserted by a third party.
- (5) The Supplier shall conclude and maintain product liability insurance with an appropriately insured sum for the Contract (at least 5 Mio. Euro per material damage claim and 10 Mio. Euro per claim for personal injury). Upon request of the Purchaser, evidence thereof shall be furnished.
- (6) The Supplier shall not be liable for the breach of the aforementioned provisions of this Clause VII, if the Supplier is not responsible for the breach of duty. Further statutory and contractual claims and rights of the Purchaser shall remain unaffected.

#### **VIII. Confidentiality, Advertising**

- (1) The Supplier shall maintain secrecy regarding business and technical details, which he has received from the Purchaser within the framework of this business relationship, and use this information only insofar as it is necessary for the proper performance of the Contract. This shall apply in particular to information marked "confidential" and to documents, models, samples and similar materials forwarded by the Purchaser.
- (2) The obligation referred to in Clause VIII paragraph (1) shall not apply, if the information a) was known to the Supplier at the time of conclusion of the Contract or becomes known later without basing on an infringement of the confidentiality obligation by the Supplier or b) was publicly known at the time of conclusion of the Contract or will become publicly known later or c) has to be disclosed by the Supplier because of an administrative or court order and the Supplier has informed the Purchaser hereof.
- (3) The Supplier is not authorized to use the legal relations towards the Supplier for advertising purposes and other publications without Purchaser's prior written consent.
- (4) All rights to the documents, samples, models and similar materials – particularly copyrights – shall remain with the Purchaser. Documents, such as samples, technical drawings or other documentation surrendered by the Purchaser to the Supplier or its partners, shall be returned after expiry of the Contract or in case of non-conclusion of the Contract.
- (5) For each individual case of a culpable breach of the confidentiality obligation under Clause VIII paragraph (1) and in case none of the exceptions mentioned in paragraph (2) apply, the Supplier shall pay to the Purchaser an appropriate contractual penalty to be determined by the Purchaser, which, in the event of a dispute, shall be verified by the competent court. This contractual penalty shall be without prejudice to the evidence of a higher damage actually occurred, but shall be credited against any further damages.

#### **IX. Unforeseen Events**

- (1) If the non-performance of the Contract is due to force majeure, particularly war, warlike conditions, natural disasters, accidents, labor disputes, governmental or political acts of caprice, interruption of power supply or flooding, the Supplier shall be obliged to negotiate with the Purchaser about an adjustment of the Contract.
- (2) Further statutory and contractual claims and rights of the Purchaser or Supplier remain unaffected in case of force majeure.

#### **X. Provision of Security, Revocation/Termination**

The Purchaser is entitled to demand a provision of security for advance payments to be effected by the Purchaser, if after conclusion of the Contract a considerable deterioration of the

solvency or the creditworthiness of the Supplier becomes apparent, which would endanger a claim of the Purchaser, in particular in case of non-payment, application and commencement of insolvency proceedings concerning the supplier's assets, a bill or check protest or a seizure. If the Supplier does not fulfill the provision of security within a reasonable period of time granted to him, the Purchaser is entitled to revoke the Contract wholly or in part. Alternatively, the Purchaser is entitled to terminate the Contract. Further statutory and contractual claims and rights of the Purchaser remain unaffected.

#### **XI. Foreign Trade Regulations**

- (1) The Supplier shall comply with all applicable national and international export control, customs and foreign trade regulations ("Foreign Trade Regulations"). The Supplier shall notify the Purchaser in writing no later than 2 weeks after ordering, and promptly in case of any changes, about all information and data required by the Purchaser to comply with Foreign Trade Regulations on export, import as well as re-export.
- (2) The Purchaser's obligation to fulfill the Contract shall be subject to the proviso, that the fulfillment of the Contract is not prevented by any impediments arising out of national or international Foreign Trade Regulations or any embargos or other sanctions.

#### **XII. Final Provisions**

- (1) Unless otherwise agreed, the laws of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (2) The ineffectiveness of individual provisions shall not affect the effectiveness of the remaining Contract. The same shall apply in case an individual clause is unenforceable.
- (3) Place of performance for the Delivery and for the rectification of defects shall be the delivery address specified by the Purchaser in the context of the Contract or, in case the Purchaser does not specify a delivery address, the Purchaser's registered office.
- (4) Exclusive place of jurisdiction for all disputes is Düsseldorf. However, the Purchaser shall be entitled to raise an action against the Supplier also at any other competent court of jurisdiction.