

# TERMS AND CONDITIONS OF PURCHASE

of PRODINGER Organisation GmbH & Co. KG and its affiliated companies according to §§ 15 ff. AktG (German Stock Corporation Act) affiliated companies ("PRODINGER")

## I. Definition

1. Company affiliated according to §§ 15 ff. AktG affiliated companies = Prodinger Verpackung GmbH & Co. KG
2. supplier = manufacturer, producer, dealer, service provider
3. delivery item = order of products, delivery of goods, performance of services - of whatever kind
4. specifications = requirements of the order as well as of any specifications at the latest index level, if necessary, after sampling
5. state of the art = a developed stage of technical possibilities at a certain point in time, as far as products, processes and services are concerned, based on the relevant findings of science, technology and experience
6. date = delivery dates stated in the order are binding fixed dates. If a fixed date is stated, this shall be deemed to be the fixed date. If a calendar week is specified, the last working day of the calendar week (Friday 12 noon) at the latest shall be deemed to be the fixed date. The respective business hours of the goods receiving department, as shown on the homepage, are to be observed.
7. export control and foreign trade data = supplier declarations on preferential origin (for European suppliers) or certificates on preferences (for non-European countries)
8. working days = Monday to Friday; public holidays are not working days

## II. Scope

1. The following conditions apply exclusively to all contracts concluded between PRODINGER and the Supplier concerning the delivery item. They also apply to all future business relations, even if they are not expressly agreed again. Deviating terms and conditions of the Supplier shall be deemed not agreed upon, as far as they deviate from those of PRODINGER. Something else is only valid, if something else was agreed in writing by individual contract.
2. PRODINGER's Terms and Conditions of Purchase shall also apply if PRODINGER accepts the delivery item without reservation in knowledge of Supplier's terms and conditions contrary to or deviating from these Terms and Conditions of Purchase.
3. All agreements made individually between PRODINGER and the Supplier in connection with purchase contracts (collateral agreements, supplements, amendments) shall be agreed in writing and shall then take precedence over these Terms and Conditions.

## III. Delivery item

1. The design and manufacture of the delivery item shall be carried out according to the documents and requirements submitted by PRODINGER in compliance with the required specifications. After receipt of the specifications, the Supplier is obliged to check them immediately, in particular for compatibility with the use required by PRODINGER. If the Supplier finds out during the review that the documents have to be corrected or

are not suitable for the execution of the order, he shall inform PRODINGER immediately. Corrections and objections will only be considered if they have been asserted in writing within one week.

2. the general product documentation and price lists of the supplier - available in written or other form - are only binding insofar as they have been expressly agreed in writing.
3. The supplier shall manufacture the delivery item in accordance with the latest state of the art and in compliance with the applicable laws, regulations and standards, and shall take all precautions to ensure that the delivery item complies with the requirements of the generally recognized technical safety and occupational health rules.
4. The supplier shall also be responsible for ensuring that the delivery item complies with the requirements of the Equipment and Product Safety Act, the accident prevention regulations of the employers' liability insurance associations and other protective regulations.

## IV. Information and documents

1. If one party provides the other party with drawings, plans, technical and other documents (in particular parts drawings or CAD-data), these shall remain the property of the submitting party. Excluded from this are documents of the delivery item which are included in its scope of performance.
2. The Supplier shall provide PRODINGER at the latest at the time of acceptance free of charge, insofar as not already included in the scope of the delivery item, with information, instructions and drawings in the respective agreed language, which enable PRODINGER to commission, maintain, service and store the delivery item in particular.

## V. Offer and conclusion of contract

1. The Supplier is bound to its offer for the conclusion of the purchase contract for four weeks.
2. If PRODINGER does not accept the offer of the Supplier within these four weeks, any documents provided are to be returned to PRODINGER immediately, at the latest within one week, or to be deleted.

## VI. Delivery/Transfer of Risk/Transfer of Ownership

1. The delivery clauses agreed in the order, are to be interpreted according to the INCOTERMS 2020, valid at the time of conclusion of the contract. If no delivery clause is named in the order, the following is agreed: DAP 2020 at the place of use intended by PRODINGER according to INCOTERMS 2020.
2. Partial deliveries are generally not permitted unless otherwise agreed in writing. Partial deliveries must be announced at least two working days in advance. The costs for this are borne by the supplier.
3. Ownership of the delivered goods passes to PRODINGER upon handover of the goods, unless a deviating agreement has been made between PRODINGER and Supplier. The Supplier assures that the goods delivered by him are not otherwise subject to retention of title and that he is the owner, so that he assures that PRODINGER also becomes the owner upon handover of the goods.

## VII. Deadlines/Delay/Withdrawal

1. The supplier is aware of the importance of meeting deadlines, especially against the background of ongoing production scopes within the further supply chain. In case of possible delivery delays PRODINGER is to be informed in writing immediately, however within three days at the latest, about the reason, the scope as well as possible solutions.
2. PRODINGER is entitled to demand additional reports at any time and to check the respective progress on site.
3. Should PRODINGER request an earlier date, the Supplier undertakes to take all measures to realize this date. The Supplier shall be exempt from this obligation only if it can provide and prove an important reason.

4. The Supplier is aware that the Contract depends on the timeliness of its delivery. The Supplier is automatically in default if the fixed date is exceeded, without the need of a separate reminder by PRODINGER.
5. The Supplier assures compliance with the agreed deadline. If the Supplier does not comply with this obligation, PRODINGER may set a grace period, but is not obliged to do so. After expiry of the agreed deadline PRODINGER is entitled to withdraw without giving reasons. Upon expiry of the deadline the Supplier shall be liable for damages according to § 286 BGB (German Civil Code). PRODINGER is entitled to claim full compensation. The burden of proof that the damage claimed by PRODINGER, has not arisen, is borne by the Supplier. The claims for delay can be asserted by PRODINGER even if the Supplier is not responsible for the delay. The Supplier has the possibility to ensure in due time that he fulfills his delivery obligations.
6. If PRODINGER asserts claims for damages, the Supplier is entitled to prove that he is not responsible for the breach of duty.

## VIII. Payments

1. The prices indicated by PRODINGER in its order are binding and apply "free delivery", unless otherwise agreed between the parties. The packaging costs are included in the price. The price is exclusive of the applicable statutory value added tax.
2. All invoices of the Supplier have to be sent by mail or fax and have to show the order number and article number indicated by PRODINGER.
3. PRODINGER is entitled to all legal rights of set-off and retention to the full extent. PRODINGER is entitled to assign all claims arising from the purchase contract without consent of the Supplier.
4. the Supplier is not entitled to assign claims, which are due to him against PRODINGER, or to have them collected by third parties. If the Supplier nevertheless assigns its claim against PRODINGER to a third party, PRODINGER may, at its option, make payment to the Supplier or the third party with discharging effect.

## IX. Warranty/Liability/Receiving inspection

1. the supplier has a quality management system and an outgoing goods inspection, which ensures that the ordered quantities are delivered on time and properly in the agreed quality and that the incoming goods inspections at PRODINGER can be reduced to a random visual inspection or, if necessary (for example: in case of direct delivery to PRODINGER Client by the supplier; direct delivery), can be omitted completely. If the random visual inspection should show that 10 items are defective, PRODINGER is entitled to return the entire delivered goods to the Supplier without further inspection. Upon PRODINGER's request, corresponding inspection records are to be made available. The Supplier cannot raise objections against this.
2. The Supplier assures that the delivery item corresponds to the specifications, the agreed availability and the use presupposed by PRODINGER.
3. The limitation period for claims for defects is 36 months from the transfer of risk, unless otherwise agreed.
4. PRODINGER has to notify the Supplier of a defect detected within the scope of the usual operating procedure, as well as to describe the respective defect. The Supplier waives in this respect the objection of the delayed notice of defects.
5. Upon receipt of the notice of defect, Supplier shall immediately, but no later than within one week, at its option and at its expense, repair the defect or replace the delivery item or the respective affected part of the delivery item ("subsequent performance"). A defect shall in principle be repaired at a place to be individually agreed upon with PRODINGER. A transport of the delivery item and/or parts thereof necessary in the context of the supplementary performance shall be carried out at the risk and expense of the Supplier.
6. If the Supplier does not comply with his obligation to perform within a set, reasonable period, PRODINGER may carry out the performance itself or have it carried out by commissioned third parties at the expense and risk of the

Supplier. The Supplier cannot raise objections against the costs claimed by third parties. An urgent case for a substitute procurement exists in particular if the Client threatens, for example, line stoppages, production downtimes or considerable additional costs (for example: by air freight) in the further processing.

7. PRODINGER is otherwise entitled to the legal claims for defects against the Supplier and the Supplier is liable to PRODINGER to the legal extent. Possible defect rights of the parties result from §§ 633 ff. BGB (German Civil Code).

## **X. Subcontractor**

1. The Supplier must notify PRODINGER in writing in advance of any subcontracting to third parties and only carry out such subcontracting with the prior consent of PRODINGER. Subcontracting does not release the Supplier from its overall responsibility for the delivery item.
2. The Supplier shall be responsible for any vicarious agents or assistants used.

## **XI. Liability of the supplier/insurance cover**

1. If claims are asserted against PRODINGER by third parties - for whatever legal reason (for example, violation of a statutory property right) - the Supplier undertakes to indemnify PRODINGER against these claims upon first request, waiving the plea of contestability, set-off or any rights of retention. This includes all necessary expenses incurred by PRODINGER in connection with the claim by third parties and their defense, unless the Supplier has demonstrably not acted culpably.
2. The Supplier is obligated to take out an insurance policy with a minimum insurance amount of EUR 1,000,000.00 for the obligations incumbent upon him towards PRODINGER, to maintain this insurance policy for the duration of the business relationship and to prove the existence of the insurance coverage to PRODINGER upon request. The Supplier is liable according to the statutory provisions.
3. If PRODINGER has to carry out a recall action due to a case of damage, the Supplier is obliged to reimburse PRODINGER all expenses resulting from or in connection with the recall action carried out by him, without being able to raise any objections against this. The burden of proof that these expenses have not been incurred shall be borne by the Supplier. PRODINGER shall, as far as it is possible and reasonable in terms of time, inform the Supplier about the content and scope of the recall action and give him the opportunity to comment. Further legal claims of PRODINGER remain unaffected. The supplier is entitled to prove that he is not responsible for the damage.

## **XII. Liability exclusion**

1. Claims for damages of the Supplier against PRODINGER are excluded, regardless of the reason, as far as PRODINGER cannot be accused of intent. In cases of gross negligence claims against PRODINGER due to injury to life, body and health are not covered by this exclusion of liability. An individual liability, if this is assured in writing in a special way, remains unaffected by this.
2. If the Supplier can assert claims for damages against PRODINGER on the basis of the above provisions, these are limited to the loss and damage of the goods. The Supplier shall exclusively be entitled to delivery of goods of the same agreed type and quality. All claims for damages of the Supplier become statute-barred within one year after the claim arose, as far as shorter legal regulations do not intervene.
3. The exclusion of liability also refers to the personal liability of vicarious agents, of employees and of all workers as well as of the legal representatives of PRODINGER.

### XIII. Non-disclosure agreement

1. The supplier is obliged to treat all commercial and technical information which is not in the public domain and which becomes known to him through the business relationship as a trade secret and not to pass it on to third parties unless the supplier can prove that this information was already known to him or was subsequently made available to him by a third party authorized to do so or that it was or becomes generally known without the supplier being responsible for this. Unless otherwise agreed in an individual contract, the obligation to maintain secrecy shall remain in force beyond the termination of the contract for a period of 15 years.
2. It is expressly agreed that PRODINGER may transmit confidential information of the Supplier to employees of its affiliated companies within the meaning of § 15 AktG (German Stock Corporation Act) or to Clients, provided that the transmission is necessary for the performance of this contract.
3. The Supplier may only advertise the business relationship with the written consent of PRODINGER. A separate contract is required for this purpose.

### XIV. Protection agreement

1. PRODINGER's supply chain and everything related to it is part of the company and business secret (for example: custom-made products, printed images, constructive packaging, project-related information, direct deliveries).
2. For the duration of the business relationship between the parties and for a period of 2 years thereafter, the supplier undertakes not to reproduce the subject matter of the contract either directly or indirectly, in its own name or the name of a third party, for its own account or for the account of a third party, in whole or in part, nor to distribute an item identical or similar to the subject matter of the contract. The aforementioned non-competition clause shall also cover acts of circumvention contrary to good faith, for example through actions by organs or straw men of the Supplier or participations of the Supplier or shareholders of the Supplier in competitor companies which manufacture and/or distribute identical or similar items. In case of acts of circumvention PRODINGER is entitled to directly assert claims against Supplier due to a violation of the non-competition clause. The Supplier is fully liable for his vicarious agents and all business partners towards PRODINGER.
3. If the Supplier receives inquiries or orders from third parties during the duration of this non-competition clause for the production of items or parts identical or similar to the subject matter of the contract, the Supplier undertakes to notify PRODINGER of this without being asked and to forward this to PRODINGER. The Supplier is obliged to PRODINGER to provide information, also about the activities of its vicarious agents and business partners. In this respect PRODINGER is entitled to an unrestricted right of information towards the Supplier, its vicarious agents and its business partners. This also includes the presentation of documents and receipts. The Supplier is obliged to point this out to his vicarious agents and business partners, because otherwise the Supplier will be liable for damages towards PRODINGER without being able to raise objections.

### XV. Export control

1. The Supplier must comply with the respective applicable requirements of national and international export, customs and foreign trade law for all goods to be delivered and services to be rendered, if applicable within the scope of the business relationship. Necessary transfer or export licenses have to be obtained by the Supplier, unless according to the applicable foreign trade law not the Supplier, but PRODINGER or a third party is obliged to apply for these licenses.
2. As early as possible, but no later than 10 days prior to the delivery date, the supplier must provide us in writing with all information and data that we require to comply with the applicable foreign trade law in the case of export, transfer and import and, in the case of resale, in the case of re-export of the goods and services - in particular for each good and service:
  - the Export Control Classification Number (ECCN) according to the U.S. Commerce Control List (CCL) or "EAR99" if the goods are subject to the U.S. Export Administration Regulations. If the goods are subject to

the United States Munitions List or otherwise to the International Traffic in Arms Regulations (ITAR), please also indicate the corresponding list position;

- all applicable export list items (if the goods do not fall under any export list item, this must be indicated with "AL: N")
  - the statistical commodity code according to the current commodity classification of foreign trade statistics and the HS (Harmonized System) code;
  - the country of origin (non-preferential origin) and,
  - If requested by PRODINGER, the Supplier has to provide export control and foreign trade data.
3. In the event of changes in the origin, the characteristics of the goods or services or the applicable foreign trade law, the Supplier shall update the export control and foreign trade data as early as possible, but no later than 10 days before the delivery date, and notify us in writing. The Supplier shall bear all expenses and damages incurred by PRODINGER due to the absence or incorrectness of export control and foreign trade data.

## **XVI. Force majeure**

Cases of force majeure, such as war, riots, natural disasters and other unforeseeable, unavoidable, serious events for which the contracting parties or their vicarious agents are not responsible and which make it significantly more difficult or impossible for the contracting parties to fulfill their contractual obligations shall release the contracting parties from their contractual performance obligations for the duration of this event and to the extent of its effect. If the force majeure lasts longer than 1 month, the contracting parties are entitled to terminate the contract with immediate effect.

## **XVII. Compliance with Applicable Laws/Social Action/Environment**

1. The supplier confirms the compliance with applicable as well as relevant laws, regulations and directives within the scope of the business relationship with PRODINGER (in particular REACH regulation (Regulation EC No. 1907/2006, occupational health and safety regulations, environmental law, minimum wage law, the European Data Protection Act).
2. The supplier sets as its highest goal that the principles of the International Labor Organization (ILO) with regard to human and labor rights, the PRODINGER Code of Conduct as well as the guidelines of fair trade within the supply chain are observed.
3. Furthermore, the Supplier shall provide the delivery item in compliance with all relevant legal, official and trade association regulations concerning occupational safety and environmental protection valid at the time of the provision of the service, with appropriate consideration of the interests of environmental protection. If the Supplier has concerns regarding labor or environmental protection law against the type of execution desired by PRODINGER, he has to inform PRODINGER immediately in writing.
4. A breach of the aforementioned obligations entitles PRODINGER to claim damages as well as to withdraw from the contract, provided that the Supplier is culpably responsible for the breach of obligation.

## **XVIII. Place of fulfillment**

1. Place of performance for deliveries and payments is the respective PRODINGER location for which the delivery/service was intended or a delivery address specified by PRODINGER in the individual case.
2. Clause 1. shall apply insofar as the Supplier is a registered merchant within the meaning of the German Commercial Code (Handelsgesetzbuch). XIX. Jurisdiction The exclusive place of jurisdiction for all disputes arising between the Supplier and PRODINGER from the contracts concluded between them is agreed to be Coburg or, as far as permissible, the respective location of the ordering PRODINGER company. PRODINGER is

entitled to sue the other party also at any other court which may be competent according to national or international law.

## XX. Applicable law

1. The parties agree that due to the extensive planning and adaptation of the delivery item to PRODINGER's needs, exclusively the law on contracts for work and services applies, unless otherwise agreed in the individual contract.
2. The relations between the Supplier and PRODINGER shall in any case be governed exclusively by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods as well as the applicable conflict of laws.

## XXI. General provisions

1. PRODINGER has committed itself to compliance with its own code of conduct ("PRODINGER Code of Conduct") and in this respect expects the Supplier to comply with and ensure compliance with these or comparable standards also towards its subcontractors. The PRODINGER Code of Conduct is available at:  
<https://www.prodinger.de/unternehmen/downloads.html>
2. Should a provision be or become invalid, this shall not affect the validity of the other provisions. The contracting parties shall be obliged to replace the invalid provision with a provision that comes as close as possible to it in terms of economic success.
3. Subsidiary agreements are not concluded. Amendments or supplements are only possible in writing. This also applies to the amendment of this written form clause.
4. This version of the PRODINGER Terms and Conditions of Purchase is a translation. In case of discrepancies, the German version applies as authoritative.