

## **General purchasing terms and conditions for the procurement of goods and services of Menzi Muck AG**

### **1. General terms and conditions**

These general purchasing terms and conditions apply to the current and future procurement of goods and services ("delivery items") by Menzi Muck AG, 9464 Rüthi (hereinafter referred to as "MM").

Deviating or additional terms and conditions shall exclusively be valid if they have been agreed upon in writing (in writing, by fax or email). Deviating or additional terms and conditions specified by the supplier shall also be excluded from the agreement if MM accepts the delivery items unconditionally.

### **2. Enquiry and offer**

The enquiry by MM and an offer by the supplier shall precede the order. The offer shall be free of charge. Any unclear sections, gaps or technical specifications which influence the suitability of the delivery items for the intended use or render them unusable, but also deviations compared to the demands in the enquiry shall be explicitly listed in the offer.

The supplier shall not be entitled to remuneration or compensation for expenses if the offer is not accepted.

### **3. Order and changes**

The supplier shall clearly indicate deviations from the order in the order confirmation. Order confirmations and any potential deviations from the order shall exclusively form part of the agreement if MM gives explicit consent.

After conclusion of the agreement MM shall have the right at any time to demand changes in terms of the delivery item, in particular with regard to specifications, drawings, design, concepts, time and location of delivery, packaging, quality, quantity and means of transport.

If such changes trigger an increase or reduction in costs for suppliers or if they influence the delivery date, the supplier shall immediately notify MM, at the latest within seven working days, about the expected additional costs and/or the scope of delivery delays. The parties shall consequently agree on an adequate adaptation of the remuneration for the supplier or the delivery date.

#### **4. Pricing, terms and conditions, fees, documents**

If no other agreements have been made, the agreed price shall be due within 10 days from delivery or performance of the service and receipt of the invoice with a 3% cash discount or within 30 days with a 2% cash discount or net within 60 days.

In the event of a commissioning of the order without a price or using a guide price MM shall reserve the right to approve the price after having received the order confirmation.

Subject to contradicting agreements, suppliers shall deliver the goods FCA (Incoterms 2010) to the destination specified in the order.

Any taxes (except VAT), fees, licences, approvals and other duties payable to responsible authorities within the context of delivery of the delivery item shall be borne by the supplier and included in the agreed price. If required, suppliers shall do the utmost within legal boundaries to enable MM a VAT refund.

#### **5. Delivery and delivery deadlines**

Agreed delivery dates and deadlines shall be binding. The delivery date specified in the order shall apply to delivery to the delivery address. If the demanded shipping documents are not delivered according to the regulations, the goods shall be stored at the expense and risk of the supplier until availability of said documents.

Part deliveries and advance deliveries are not permitted without the explicit consent of MM.

Deliveries by messengers shall be considered complete only if they can be verified by delivery slips that have been confirmed by MM. Delivery destinations are the incoming goods sections listed in the order or order confirmation at the plants in CH-9464 Rüthi, CH-1957 Ardon, CH-8352 Elsau and SK-95141 Nitra (Slovakia).

The agreed delivery date shall be deemed complied with once the goods have reached the delivery destination. If suppliers must assume that on-time delivery of the complete delivery or parts of it are not possible, they shall immediately indicate the reasons for this and state the estimated delay. The statutory consequences of delays (including complete or part cancellation of the order) shall not be excluded as a result of such a notification.

In the event of an expiry of the deadline, suppliers shall exclusively be permitted to invoke the provisions of a lack of required documents or additional objects and individual parts to be provided by MM if they have notified MM that the delivery is available in due time. The delivery period shall then be extended accordingly following mutual consent.

The transfer of use and risk of the ordered goods shall be completed following arrival of the delivery at the delivery destination or if approval of the delivery is required, after completion of said approval.

## **6. Property rights and technical documents**

Suppliers shall exclude, legally protect and indemnify MM from any damage, costs, claims and expenses (including legal costs as well as costs for the conclusion of settlements for such claims and legal action) as a result of a general use or legal action by a third party towards MM or its customers indicating that the delivery items or the intended use by MM or its customers that were agreed with the supplier infringe industrial property rights or copyrights by said third party.

Regardless of the aforementioned, the supplier shall not be liable if the infringement results from the manufacture of the delivery item as instructed by MM without the supplier having been able to gain awareness that following said instructions will infringe the industrial property rights or copyrights of a third party (despite having proceeded with care according to industry standards).

## **7. Confidentiality, advertising**

The contractual parties shall be mutually obliged to handle any commercial and technical information disclosed as part of the business relationship by the other party as confidential trade secrets unless this information is or becomes publicly available without the respective party being responsible for the publication. On request by MM, suppliers shall conclude a comprehensive non-disclosure agreement with MM.

Drawings, models, templates, samples, etc. shall exclusively be made accessible to third parties if the party that owns the items has given its prior consent.

## **8. Shipping, packaging**

Suppliers shall guarantee adequate packaging and compliance with all regulations in terms of parts transport. Suppliers shall bear the costs for parts packaging as well as transport packaging. Suppliers shall reimburse MM for the entire costs incurred as part of box, pallet, container, etc. returns. If suppliers use packaging which MM cannot dispose of in a free recycling system, MM shall be entitled to return or destroy this packaging at the suppliers' expense.

## **9. Warranty**

Following acceptance of the incoming goods and as soon as correct business processes permit, MM shall inspect the goods for obvious defects, identity, incorrect quantities and transport damage. There shall not be an obligation to carry out additional incoming goods inspections.

MM shall notify suppliers of defects within one week following their discovery. To this end, suppliers shall waive their right to object to a late notification of defects. Payments shall not constitute a waiving of notifications of defects.

Suppliers shall guarantee that the goods do not feature any defects that reduce their value or impair their suitability for the intended use, demonstrate the assured properties and correspond to the agreed services and specifications as well as the relevant legal stipulations, standards and other regulations in the agreed country of destination, especially the relevant accident prevention regulations.

In the event of defects during the warranty period suppliers shall be obliged on request by MM to immediately eliminate the defects or have the defects eliminated at the supplier's expense or provide MM with correct replacements free of charge. Suppliers shall bear additional costs incurred as a result of repairs or replacement deliveries, namely costs for the removal and transport of faulty goods, replacement deliveries or installation of the replacement goods.

If suppliers are late in terms of the elimination of defects or in urgent cases, MM shall be authorised to eliminate the defects or have the defects eliminated at the expense and risk of suppliers.

Goods or parts of goods subject to complaints shall remain available to MM until they have been replaced with products without defects or the purchase has been reversed. The goods shall be available to suppliers following their replacement.

Subject to deviating agreements, the warranty period shall amount to 36 months from delivery or if approval has been agreed upon, following successful approval by MM.

The warranty period shall be extended by the period during which a purchased product/production material cannot be operated as a result of reworking processes.

The decision by a neutral assessment authority shall be crucial in the event of differences in opinion in terms of defects. The party subject to the audit shall bear the costs for such audits.

The warranty period for replacement deliveries and reworking shall amount to 12 months. It shall commence upon arrival of the replacement delivery or the successful completion of reworking processes and shall end at the earliest upon expiry of the warranty period for the original delivery.

If reworking processes fail, suppliers fail to provide a replacement delivery or this delivery is also insufficient, the statutory warranty claims remain reserved.

Suppliers shall be liable as per the statutory regulations for damage that is not created on the goods themselves. Suppliers shall also provide sufficient, worldwide cover by an operation and product liability insurance and they shall submit a corresponding proof of insurance to MM on request. Suppliers shall also be liable for all costs incurred as a result of measures to avert damage, in particular also for a preventative replacement of products as well as other costs incurred within the context of recalls.

## **10. Insurance**

Suppliers shall provide insurance cover by renowned and solvent insurance companies at the expense of suppliers to adequately cover the liability of the supplier towards MM and third parties. MM shall be authorised to demand verification of a conclusion of such insurance cover involving a certain insurance protection and certain insured sums.

The existence of an insurance contract shall not restrict the suppliers' obligations resulting from these purchasing terms and conditions or any agreements concluded between the parties.

## **11. Quality assurance, environmental protection**

Insofar as no other agreements have been made, suppliers shall be obliged to verify the implementation of a quality assurance system as per ISO 9001 as well as an occupational safety system as per ISO 18001 on request by MM by submitting quality records or any other relevant documents. Suppliers shall also verify that they provide an environmental protection management system as per ISO 14001 or at minimum an equally equipped system.

Following a corresponding announcement at minimum forty-eight (48) hours in advance, MM shall be authorised to access the suppliers' premises during ordinary business hours and without impairing the business processes of suppliers to verify technical documents, tools and records within the context of delivery agreements as well as the suppliers' manufacturing process.

The claims of MMs based on defects shall not be restricted by any scheduled audits.

Suppliers shall be obliged to archive all records relevant to the quality of the delivery items for a minimum duration of ten (10) years following delivery to MM.

Suppliers shall also make sure their sub-contractors and sub-suppliers comply with the aforementioned obligations to provide MM with corresponding verification on request.

## **12. Spare parts supplies**

Suppliers shall be able to provide spare parts for a minimum of ten years following the last delivery to MM for series production purposes. In comparison to the last price paid, the price shall reduce/increase as per market price developments.

## **13. Production equipment**

Providing no other previous agreements have been made, if MM bears the costs for design and production or the purchasing price to procure production equipment in whole or in part, these elements shall form part of a co-ownership until full payment of their value, by which time MM shall be the sole owner of these elements.

Product and/or part-specific initial investments by suppliers shall be remunerated by MM at the earliest following approval or acceptance of initial samples or written approval by MM. All costs for the maintenance and/or follow-up tools shall be included in the part price.

Suppliers shall be responsible and bear the costs for normal maintenance of the production equipment; they shall also bear the risk of coincidental loss, impairment and damage, excluding normal wear.

#### **14. Force majeure**

If one of the contractual parties is unable to correctly meet the corresponding obligations due to force majeure (weather conditions, earthquake, floods, volcanic eruptions, fires, traffic accidents, war, terrorism, strikes), the corresponding other party shall be unable to derive any rights, regardless of their legal grounds.

#### **15. Social responsibility**

Suppliers shall be obliged to comply with the respective legal stipulations on handling employees, environmental protection and occupational safety. They shall make sure that negative effects on humans and the environment are reduced as much as possible. Suppliers shall be obliged to process the contract as per the principles specified in the directive of the Global Compact UN initiative and the International Labour Organization (ILO) as part of the "Declaration on fundamental principles and rights at work".

Suppliers shall neither actively, nor passively, directly, nor indirectly participate in any form of bribery and corruption, infringements of the human rights or discrimination of employees, forced labour or child labour.

#### **16. General terms and conditions**

If any section or part of a section of these purchasing terms and conditions is rendered ineffective or no longer viable, it shall be ignored and this process shall not affect the validity of the remaining purchasing terms and conditions. If necessary, MM and suppliers shall be obliged to replace the condition rendered ineffective or no longer viable by a condition that is economically equivalent, effective and viable, providing this does not trigger comprehensive changes to the contents of these purchasing terms and conditions.

In the event that MM does not enforce the rights of the agreement with suppliers temporarily or in individual cases, this shall not affect further compliance with any of the suppliers' obligations.

Suppliers shall not be permitted to transfer rights and obligations resulting from a delivery or service agreement to third parties or have sub-suppliers or sub-contractors carry out essential parts of the work without prior written consent by MMs.

In the event of installations or other work for MM or third parties, the safety instructions valid at the place of work or installation location must be complied with in addition to these general purchasing terms and conditions.

## **17. Place of delivery, place of jurisdiction, applicable legislation**

Insofar as no other agreements have been made, the place of delivery shall be the Menzi Muck plant specified in the order or order confirmation (in CH-9464 Rüthi, CH-1957 Ardon, CH-8352 Elsau or SK-95141 Nitra, Slovakia).

These general purchasing terms and conditions as well as all agreements to which these general purchasing terms and conditions apply shall be subject to Swiss material law (OR) excluding Swiss collision legislation. The agreement by the United Nations on international goods purchases dated 11 April 1980 ("Vienna Convention") shall hereby be explicitly excluded.

The sole place of jurisdiction shall be the court situated in the municipality where the MM headquarters are located, in CH-9464 Rüthi. However, MM shall reserve the right to take action against suppliers at any other court in charge.

In the event that legal action is taken against MM by a third party as a result of a product fault triggering compensation for personal injury and/or property damage ("product liability"), due to an infringement of property rights or any other contractual infringements, MM shall be authorised to initiate the required legal steps at the affected place of jurisdiction to enforce any potential claims to release or recourse by the supplier. In such cases, the legislation valid in terms of the parties' rights and obligations shall exclusively be the legislation enforced by the affected court.

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