

# General Purchasing Terms

MULAG Fahrzeugwerk Heinz Wössner GmbH u. Co. KG

State 01.12.2016

**MULAG**

MULAG Fahrzeugwerk  
Heinz Wössner GmbH u. Co. KG

## 1. General Provisions

1.1. These Purchasing Terms exclusively apply to all of our business transactions with the supplier, including in all cases when they are not expressly referred to in subsequent agreements and contracts. Deviating delivery terms of supplier shall not apply, unless we have agreed to them by prior written and separate communication.

1.2. Any agreements or collateral agreements must be made in written form. In particular, our employees are obligated to issue written confirmation of verbal collateral agreements or commitments.

1.3. We supply our products to customers worldwide, in particular, in the areas of airfield apron, roadside maintenance equipment, and industry.

## 2. Conclusion of Contract

2.1. The supplier shall accept our order within ten (10) days from the date of the postmark and send us the corresponding order confirmation. In the event an order is sent by fax or email, this period will commence on the date the document is sent. If the order is not accepted within this period, we will not be bound by our order.

2.2. The order confirmation shall indicate the price, discount, binding delivery date and any numbers and reference codes from our order.

2.3. We reserve any rights and title of ownership and other rights in and to drawings, illustrations, calculations, and any other records or items, such as samples, models, etc.; they shall not be made available to third parties without our express prior written consent. Records, information and items shall only be used for manufacturing the goods ordered by us; upon completion of the order they shall be returned to us free of charge and without request. They shall not be disclosed to any third party.

2.4. No remuneration or compensation for visits or for written quotations, project proposals, etc., will be paid, unless the parties expressly agree on remuneration or compensation.

2.5. We have the right to request technical changes of the product to be supplied and/or a rescheduling of the delivery date to the extent the supplier can be reasonably expected to accept this. The parties shall mutually agree on how to reasonably deal with the consequences, i.e., higher/lower expenses or delivery dates.

## 3. Prices and Terms of Payment

3.1. The agreed prices are fixed prices; this shall also apply to framework orders during the entire contract term. If the parties have not expressly agreed on a price, the price will be deemed to have been agreed as the price for which the supplier sells or offers goods of the same nature and quality to third parties, however, not higher than the price for which the supplier had supplied us with goods of this type during preceding business transaction.

3.2. All prices are quoted „free delivery“ to the delivery addresses indicated by us, including statutory value added tax and packaging.

3.3. Unless otherwise agreed, payments shall be effected, at our option, either within fourteen (14) days from receipt of invoice with a deduction of a 3% cash discount, or within thirty (30) days from

receipt of the invoice without any deduction. However, this period shall not begin to run until the supplier has fully met its contractual obligations.

3.4. Invoices shall be sent to us in duplicate when the goods are shipped, however, by separate mail. The order number and order date shall be included in any invoice. Any invoice that is not accurately issued shall be deemed not to have been issued.

3.5. In connection with deliveries within the European Union, the supplier shall notify us of its VAT ID, provide evidence of its entrepreneurial status and cooperate with us on the creation of electronic and printed proof of exportation.

3.6. In the event of an inaccurate delivery, we have the right to withhold a reasonable portion of the payment due, up to three (3) times the value of the defective delivery portion, until due completion of the order. When payments are effected, this shall not be interpreted as an acceptance of the delivery in accordance with the Agreement.

3.7. The supplier shall not assign or pledge any rights arising from this Agreement, unless it has obtained our prior written consent. This shall not apply to receivables. However, we have the right to discharge our contractual duties vis-à-vis the supplier which shall release us from any other obligations vis-à-vis third parties.

## 4. Delivery Period, Delay

4.1. Delivery dates are binding. Compliance with the periods and dates agreed upon requires the receipt of the goods by the receiving location/place of use specified by us.

4.2. In the event that the supplier becomes aware of the fact that it will be unable to comply with an agreed date for any reason, it shall promptly notify us in writing and provide information on the reasons and duration of the delay.

4.3. In the event of a delivery default, we have the right to claim a contractual penalty in the amount of 0.5% of the contract volume for every full week of default, however, not more than 5%. We will reserve the right to claim contractual damages not later than at the date of invoice settlement. We reserve our right to enforce any other statutory claims we may have. The supplier has the right to prove that the actual damage incurred is lower than the amount of the contractual penalty.

4.4. The period for performing our contractual obligations will be extended in case of force majeure, labour unrest, operational disruptions, shortage of energy and raw material, riot and any other unforeseeable and unavoidable circumstances beyond our control, by the duration of the impediment and taking into account the scope of its effects. We shall promptly notify the supplier of the beginning and end of the impediments mentioned above.

## 5. Delivery Terms and Passing of the Risk

5.1. Any consignment shall be accompanied by a delivery note that includes our order number, the type of packaging, and the quantity and weight of the consignment.

5.2. We have the right to determine the type of packaging, the means and itinerary of transportation and the transportation insurance.

## General Purchasing Terms

MULAG Fahrzeugwerk Heinz Wössner GmbH u. Co. KG



MULAG Fahrzeugwerk  
Heinz Wössner GmbH u. Co. KG

– Page 2 –

Otherwise, the supplier shall select the most cost efficient delivery mode that matches our best interests.

5.3. Place of performance for the supplier's duty to take back the packaging material pursuant to § 4 of the Packaging Ordinance is the place where the goods are handed over.

5.4. A credit note shall be issued for the full value of packaging material that is included in the invoice, but reusable.

5.5. We will only accept partial deliveries if we have expressly agreed on them with the supplier. If we agree on partial shipments, the remaining amount shall be stated on the delivery note.

5.6. The risk of loss or deterioration will pass to us when the goods are handed over and/or formally accepted, as the case may be, at the delivery address specified by us. The same applies, if we commission our own carrier.

5.7. The supplier will be not deemed to have performed its delivery obligation, until we receive the proper and accurate delivery and shipping documents. Until that date we have the right to store the goods at the expense and risk of the supplier.

5.8. To the extent that the attachment of a CE mark and/or a manufacturer or conformity certificate is required or permissible with regard to the goods delivered or services provided by the supplier, the supplier shall comply with any applicable statutory provisions and rules and attach the CE mark on the corresponding objects. In addition, the supplier shall promptly provide us, free of charge, with the necessary manufacturer or conformity certificates in the language(s) required for documentation purposes in accordance with the Agreement or required under applicable legal provisions.

### 6. Defects as to Quality and Defects in Title

6.1. The items delivered by the supplier and any other services provided by it shall be free from defects in title and as to quality; they shall comply with the agreed specifications, the latest state-of-the-art, the applicable legal provisions and the rules, regulations, guidelines and standards of public authorities, employers' liability insurance associations (Berufsgenossenschaften) and trade associations. In the event that deviations from these rules and regulations are required on a case by case basis, the supplier shall obtain our prior written consent. In the event that various versions of rules, regulations or standards exist, the German language version shall prevail.

6.2. The supplier shall ensure a permanent high quality of its products by taking appropriate quality assurance actions that are industry standard. If the supplier has any concerns regarding the type of design or workmanship required by us, it shall promptly notify us in writing.

6.3. When we accept a delivery, we reserve the right to inspect the delivery with regard to quantity and quality. The supplier shall exercise due care in its quality assurance inspections of the goods prior to their shipment. Upon receipt of the goods, we shall inspect them for apparent defects, identity, shortfalls and transportation damage. We shall notify the supplier of any non-compliance no later than within fourteen (14) days from receipt of the goods. Beyond this, there is no further duty to inspect the goods and to notify the supplier of defects. We shall notify the supplier of hidden defects within a reasonable period of their discovery, however, no later than within fourteen (14) days. In these cases, the supplier waives its defense of a delayed notice of defect.

6.4. If defective goods were supplied, we may also claim re-delivery of the goods in lieu of repair. Furthermore, upon the unsuccessful expiration of a reasonable grace period, or - if no grace period can be granted due to the particular urgency of the case - we have the right, following a notice to the supplier and at the supplier's expense, to carry out the rectification of defects on our own, to have the defects rectified by a third party, or to procure a replacement elsewhere.

6.5. The supplier shall bear any expenses incurred in connection with the repair or shipment of a replacement to the place of intended use of the goods. Upon request, we will inform the supplier of the place of use.

6.6. The cost incurred for the rectification of defects that the supplier will have to bear include, in particular, transportation and travel expenses, material, the costs of fitting and removal, and our expenses incurred in a more comprehensive goods receipt inspection.

6.7. As a rule, a processing fee in the amount of EUR 160.00 will be charged for processing a defect. We reserve the right to claim higher damages.

6.8. Claims based on defects in title and defects as to quality will become statute-barred within 36 months from the passing of the risk, unless the parties expressly agree otherwise. In the event that deliverables are repaired or replaced after a notice of defect, the statute of limitations period for these parts shall recommence, unless the repair was insignificant or the supplier's actions were explicit special goodwill service performed voluntarily by the supplier.

### 7. Product Liability, Indemnification, Liability Insurance

7.1. In the event that claims to damages are raised against us by a customer or any other third party, the supplier shall hold us harmless from and against such claims upon first written request, provided and to the extent that the damage is caused by a defect in the product supplied by the supplier or if such defective product contributed to the defect. However, in cases of fault-based liability this shall only apply if there is fault on the part of the supplier.

7.2. In the event that the supplier is responsible for the cause of the damage, it will be sufficient to prove that the defect caused the damage; in all other regards, the supplier will bear the burden of proof.

7.3. In any event, the supplier will assume the cost and expenses that correspond to its share of fault or causation, including, but not limited to, legal costs or costs of recall campaigns, if any, to the extent that the supplier is obligated to take these actions under the applicable law; the same applies in the event of recognizable or threatening defects in series production. With regard to any other issues, the statutory provisions shall apply.

7.4. The supplier agrees to take out a liability insurance policy to cover the risks described above, including the extended product risk with a coverage amount of no less than EUR 3.0 million; the supplier shall provide evidence of this insurance policy to us by submitting an up-to-date certificate from the insurance company on an annual basis.

7.5. The supplier is liable for damage resulting from non-compliance with these obligations. Furthermore, the supplier is liable for any culpable conduct of its employees, subcontractors or suppliers in the same manner as for its own fault.

7.6. In all other regards, claims for damages of whatsoever nature against us shall be excluded, if the damages are due to simple negligence on our

## General Purchasing Terms

MULAG Fahrzeugwerk Heinz Wössner GmbH u. Co. KG

**MULAG**

MULAG Fahrzeugwerk  
Heinz Wössner GmbH u. Co. KG

– Page 3 –

part or on the part of our legal representatives or vicarious agents. This exclusion of liability does not apply in cases of bodily harm, or of a breach of cardinal contractual obligation jeopardizing the attainment of the purpose of the Agreement. However, our liability shall be limited to foreseeable damage typical for this contract.

### 8. Third Party Proprietary Rights

8.1. The supplier warrants that the use of the delivered goods does not infringe on any proprietary rights, such as patents or utility models, other rights or business or trade secrets of third parties – including in the country of their intended use. Therefore, the supplier shall hold us harmless from any claims raised by third parties upon our first written request.

8.2. The supplier shall not be liable in the event that it merely manufactured goods in accordance with our drawings and models and did not know or should not have known that the manufacture of these goods infringes on third party rights.

### 9. Confidentiality

9.1. The supplier agrees not to use any details of our order(s), e.g., number of pieces, technical design, terms and conditions, etc. and any proprietary information that it has intentionally or incidentally received from us for its own purposes and not to disclose them to third parties. In the event that the supplier is obligated to disclose this information to its employees, subcontractors or suppliers for the purpose of performing its contractual obligations, it shall also bind these parties in writing to a corresponding confidentiality duty.

9.2. The inclusion of our company in a list of reference customers or the use of our order for promotional purposes is only permissible with our prior written consent.

9.3. Information, records and other items of any kind, such as samples, drawings, tools, models, etc., that we provide to the supplier shall be returned without being requested to do so free of charge as soon as they are no longer needed for filling the order. Such items shall not be used for the supplier's own purposes, nor be made available to third parties. Art. 9.1, sentence 2 shall apply accordingly.

9.4. The supplier agrees to pay a contractual penalty in the amount of 20% of the contract volume for any violation of this confidentiality duty, unless it is not responsible for this violation. Furthermore, in the event of a particularly severe contract breach we have the right to rescind the entire contract relationship with the supplier without notice and compensation and, if applicable, to claim a refund for payments made. If the supplier discloses or makes know-how that it received or obtained from us available to third parties that are our competitors, this shall constitute a particularly severe contract breach.

### 10. Contributions

10.1. Raw materials, resources and parts that we contribute to the manufacturing process remain our property. They shall only be used in connection with our order. The processing of raw materials, resources and the assembly of parts by the supplier are carried out on our behalf. In the event that our raw materials, resources and parts are mixed, combined or processed together with other items that do not belong to us, we acquire a co-ownership right and title in the newly created

object that is prorated based on the ratio of the value of our raw materials, resources and parts and that of the other processed items. If the newly created object is considered to be the main object belonging to the supplier, the supplier will transfer to us a corresponding co-ownership right and title at the date of mixing, combining and/or processing. The supplier shall store the object free of charge on our behalf in lieu of the transfer of possession. The supplier shall mark the object as our (co-owned) property.

10.2. Upon full payment, any tools or other manufacturing means that are created on our behalf and paid by us will become our property. The transfer of possession is replaced by the supplier's duty to store these items free of charge on our behalf exercising the due care of a prudent business person. The supplier shall store our property separately from other items that do not belong to us. Items that are our property shall be marked as such and shall also be identified as our property in the business records and books. Upon the termination of the business relationship, the tools shall be returned upon our request. The supplier shall not use these tools and manufacturing resources for its own purposes and shall not make them available to third parties.

10.3. Products that are manufactured based on our information and records (such as drawings, models and the like) or in accordance with other confidential information or using our tools or replicated tools, shall neither be used by the supplier for its own purposes nor offered or supplied to third parties.

### 11. Final Provisions

11.1. The supplier is not allowed to subcontract a third party without our prior consent.

11.2. In the event that either party ceases its payments or if insolvency proceedings are instituted against its assets, the other party has the right to rescind the Agreement with regard to the pending performance obligations.

11.3. Unless expressly otherwise agreed, the place of performance for delivery is the delivery address specified by us. The place of performance for all other obligations is our registered office.

11.4. The exclusive place of jurisdiction is Oppenau, Germany. However, we also have the right to file a court action in the court having jurisdiction at the supplier's place of business.

11.5. This agreement is governed by the law of the Federal Republic of Germany; the application of the conflict of law rules, UN Convention on Contracts for the International Sale of Goods (CISG), or any other conventions governing the sale of goods shall be excluded.

MULAG Fahrzeugwerk Heinz Wössner GmbH u. Co. KG 2016