



Dülken, January 2017

## OTTO FUCHS Dülken GmbH & Co. KG General Terms and Conditions of Purchase

### 1. General

The following Terms and Conditions of Purchase shall apply to our orders, transactions and call-offs (hereinafter referred to as "orders"). Changes and additions must be made in writing. The supplier's General Terms and Conditions shall not apply, even if we have not expressly objected to them in any individual case. The acceptance of deliveries/services or payment for these does not constitute agreement to the supplier's Terms and Conditions of Sale and Delivery.

Insofar as these General Terms and Conditions are subject to the requirement of written form, communication in text form is sufficient (e-mail, fax etc.), unless the parties explicitly agree to a different arrangement.

### 2. Order

- 2.1 Orders, including any amendments or additions thereto, as well as acceptance thereof, must be made in writing. This shall not apply where verbal agreements are customary in the metal trade. Orders may also be issued via remote data transmission. Verbal agreements are not valid unless confirmed in writing.
- 2.2 If the supplier does not accept an order within five working days of receipt, this is deemed to have accepted and confirmed.
- 2.3 Our "Terms and Conditions for the Transport, Recycling and Disposal of Waste" shall also apply to orders involving waste disposal. These can be accessed at:  
<http://www.otto-fuchs.com/de/unternehmen/unternehmen/einkaufslieferantenportal.html>

### 3. Quality

- 3.1 With regard to the delivered goods, work, services and technologies (hereinafter referred to as "delivery item"), the supplier must comply with the standard technical rules, safety instructions and agreed technical data. Changes to the delivery item require our prior written consent.
- 3.2 The supplier is obliged to manufacture the delivery item in accordance with the regulations contained in the OTTO FUCHS Quality Assurance Requirements (QAR) that can be accessed at:  
<http://www.otto-fuchs.com/de/unternehmen/unternehmen/einkaufslieferantenportal.html>  
and to inspect them before delivery to us (outgoing inspection).
- 3.3 We shall be entitled to check production status during the supplier's usual hours of business and to request information about the processing status.
- 3.4 When specifying DIN standards or other standards that generally apply, the most recent version must be used in each case unless we state otherwise.

- 3.5 For metal deliveries, the supplier must verify by means of measurements that the goods are free from non-natural radiation. The absence of non-natural radiation must be confirmed on the certificate and/or on the delivery notes. We shall be entitled to reject and/or return deliveries of goods that have not been confirmed in this way at the supplier's expense.
- 3.6 The supplier must ensure that no conflict minerals are used for the manufacture of the goods in accordance with the "Dodd-Frank Act".

### 4. Delivery

- 4.1 Deliveries are only accepted Monday to Friday between 07:00 and 14:00 and deliveries for metals Monday to Thursday 07:00 and 14:30, Friday 07:00 – 12.00 (the exception being bank holidays and days that the company is closed).
- 4.2 If we are paying the freight for deliveries, the following terms and conditions shall apply:
  - Within Germany  
Shipment weight +30 kg: the supplier must notify the haulage company specified in the order.  
If the shipment weight is +2000 kg or if a package measures more than 240 cm in width/length or 180 cm in height, the supplier must notify us directly using the following e-mail address: [pickup-ofd@otto-fuchs.com](mailto:pickup-ofd@otto-fuchs.com).
  - Outside Germany, notification to: [pickup-ofd@otto-fuchs.com](mailto:pickup-ofd@otto-fuchs.com)  
If these terms and conditions are not observed, we shall not pay the freight costs.
- 4.3 Deviations from our orders require our prior written consent. Agreed deadlines and time periods are binding. The receipt of the delivery item by us is the determining factor for compliance with the date or period of delivery. If we have agreed to collect the delivery item, the supplier shall make the delivery item available in good time, allowing for the usual loading and shipping times and/or shall hand them over to the specified haulage company.
- 4.4 If agreed deadlines are not met, we can demand compensation for damage caused by delay in accordance with the statutory regulations. If the supplier anticipates difficulties with regard to production, the supply of primary materials, meeting the delivery date or similar circumstances which might prevent it from providing the goods/service on time or which might jeopardise the agreed quality of the goods/service, the supplier must inform us immediately.
- 4.5 Unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims for damages to which we are entitled due to the delayed delivery or service.
- 4.6 Partial deliveries are in principle not allowed unless we have expressly agreed to them or we can reasonably be expected to accept them.



- 4.7 Subject to proof to the contrary, the quantities, weights and dimensions determined by us when inspecting incoming goods are the decisive values.
- 4.8 If software and its documentation is included in the scope of supply or service, we shall not only have the right of use to a legally permissible extent (Section 69a ff. German copyright law), we shall also have the right of use with the agreed performance characteristics and to the extent required for the usage of the delivery item in accordance with the contract. We shall also be entitled to produce a back-up copy without express approval.

#### 5. Force Majeure

Acts of God, labour disputes, operational disruptions through no fault of our own, unrest, governmental measures and other inevitable events shall release us, notwithstanding other rights, in whole or in part from the obligation to accept the delivery item and the supplier shall not be entitled to demand compensation or to assert other claims against us.

#### 6. Dispatch Note and Invoice

- 6.1 The supplier must state the details of our orders, particularly the respective SAP order number, in the dispatch notes, delivery notes and invoices. For each order, the invoice is to be sent as one copy to our company headquarters' address; it must not be attached to the shipments. Collective invoices are not accepted.

- 6.2 Following receipt of the order, at the latest however before the delivery/service, the supplier must inform us whether the item to be delivered is subject to any statutory requirements that we must comply with when exporting or transferring the delivery item. The information is to be written on the respective delivery notes for each item. According to the legal basis, the following must be stated:

- If the delivery item is listed in the applicable EC Dual Use Regulation, EC Firearms Regulation or in the national German export lists: the corresponding list numbers.
- If the delivery item is subject to the "U.S. Export Administration Regulations" (EAR): the "Export Control Classifications Number" (ECCN) in accordance with the "U.S. Commerce Control List".
- If the delivery item is subject to the "U.S. International Traffic in Arms Regulations" (ITAR): the "United States Munition List Number" (USML).
- If the item on the delivery note is *not* subject to any regulations under export control law, this must also be stated in writing for each item.

In addition, for each item on the delivery note, the supplier must state the statistical goods number (customs tariff code) and, if required, it must issue a supplier declaration or a long-term supplier declaration (preferential or non-preferential origin).

If there are changes to the delivery item or to the aforementioned foreign trade principles, the supplier must inform us about this before delivery. If we incur damages due to false information or a lack of information concerning foreign trade data, we reserve the right of recourse against the supplier.

#### 7. Pricing and Transfer of Risk

Unless specifically agreed otherwise, prices are delivered duty paid (DDP) in accordance with Incoterms 2010. VAT is not included. The supplier shall bear the risk of accidental loss, destruction or deterioration of the goods until they are accepted by us or our local representative to whom the delivery item is to be delivered in accordance with the contract. The delivery item is to be unloaded at the agreed destination by the supplier. Any unloading by our employees shall be exclusively at the risk and expense of the supplier.

#### 8. Terms of Payment

With the exception of raw material and deliveries of scrap and unless otherwise agreed, invoices are settled either within 14 days deducting a 3% discount or within 30 days with no deduction from due date of the payment request and receipt both of the invoice and the goods and/or provision of the service. Payment is subject to invoice verification. If advance payments are agreed, we shall be entitled to make these dependent upon the provision of a directly enforceable bank guarantee payable on first demand. In the event of a defective delivery/service, we shall be entitled to withhold payment on a pro-rata basis until the contract has been duly performed. Without our prior written consent, which must not be unreasonably refused, the supplier shall not be entitled to assign claims to payment owed by us nor to have them collected by third parties. In the event of extended reservation of title, approval is deemed to be granted. We shall be entitled to offset payment to the supplier with due claims or claims payable at a future date to which we or one of our affiliated companies are entitled.

#### 9. Claims for Defects and Recourse

- 9.1 Acceptance of the delivery item shall be subject to an inspection to ensure the absence of defects, in particular to ensure correctness, completeness and suitability. With regard to Section 3.2, our incoming goods inspection shall be limited to checking the identity and whether there are any transport damages that can be identified externally. If, according to the conditions of proper business practice, we discover defects in a delivery/service, we shall inform the supplier immediately. In this respect, the supplier shall waive the objection to a delayed notification of defects pursuant to Section 377 of the German Commercial Code.

- 9.2 The legal provisions concerning material defects and defects in title shall apply unless otherwise stipulated below.

- 9.3 In principle, we shall be entitled to choose the manner of rectification.

- 9.4 If, following our request to remedy the defect, the supplier does not immediately begin to remedy it, we shall be entitled to carry out this work ourselves or to arrange for such work to be carried out by a third party at the expense of the supplier. Material defect claims become statute-barred in 2 years unless the item has been used for a construction/building in accordance with its normal use and has caused its defectiveness, in which case the 5-year statute of limitations applies in accordance with VOB (Verdingungsordnung für Bauleistungen - German contract procedures for building works). The period of limitation



shall begin when the delivery item is delivered and/or the service is provided (transfer of risk).

- 9.5 In the case of defects in title, the supplier shall indemnify us against any third-party claims that may exist. In the event of defects in title a period of limitation totalling 10 years shall apply.
- 9.6 For reworked or repaired parts of the delivery/service the period of limitation shall begin again from the date on which the supplier has met in full our claims for rectification.
- 9.7 If we incur costs as a result of the defective delivery/service, particularly freight, transport, labour and material costs or costs for an incoming goods inspection that exceed the extent in accordance with Section 9.1, the supplier must bear these costs.
- 9.8 If we take back products built and/or sold by us as a result of the defectiveness of the delivery item delivered by the supplier, or if, as a result of such defects, our customers have reduced the purchase price, or if some other claim has been lodged against us, we shall reserve the right to recourse against the supplier, whereby the fixing of a time limit for the assertion of our rights arising from product defects shall not be required.
- 9.9. We shall be entitled to demand reimbursement of the expenses that we have to pay in relation to our customer.
- 9.10. If a material defect becomes evident within 6 months from the transfer of risk, it shall be assumed that this defect already existed at the time of the transfer of risk, unless such an assumption is incompatible with the nature of the delivery item or defect.

#### 10. Product Liability

In the event of a product liability claim being asserted against us, the supplier is obliged to indemnify us against any such claims if and to the extent that the damage was caused by a defect in the delivery item. However, in cases of liability based on fault, this shall only apply if the supplier is at fault. If the supplier is responsible for the cause of the damage, it shall be the responsibility of the supplier to prove that they are not at fault. In such cases, the supplier shall bear all costs and expenses, including those for any legal action or recall campaigns. In addition, the statutory regulations shall apply. If requested, the supplier is obliged to prove that there is sufficient cover under a product liability insurance policy.

#### 11. Industrial Property Rights

The supplier is liable for claims which ensue from an infringement of industrial property rights, copyrights or other third-party property rights when using the delivery item in accordance with the contract. The supplier shall indemnify us against all claims arising from exercising such rights. Upon delivery of a delivery item protected by copyright, the supplier shall grant us an unlimited right of use for all types of use.

#### 12. Execution of Work

Persons who carry out work on our premises in order to fulfil the contract must comply with our regulations concerning health & safety and environmental protection. Liability for accidents suffered by any such persons on our premises is not accepted, unless acci-

dents are intentional or attributable to gross negligence on our part.

#### 13. Material Transfer

Any raw material, products, items, containers and special packaging provided by us remain our property. They may only be used as agreed and must be stored separately from other items and must be marked as our property. Materials are processed and parts are assembled for us. It is agreed that, according to the value of the materials supplied relative to the value of the total product, we become a co-owner of the products manufactured using our materials and parts, which in this respect our supplier stores on our behalf. If an item provided by us is damaged or no longer usable due to incorrect processing or treatment, the supplier must compensate us for the damages that we incur. The supplier is obliged to insure the items provided by us against loss and deterioration. If requested, the supplier is obliged to prove that there is sufficient insurance cover.

#### 14. Documents and Confidentiality

- 14.1 When dealing with third parties, the supplier is to keep confidential any business or technical information (including features which might be gleaned from items, documents or software handed over, as well as any other knowledge or expertise) made accessible by us, as long as and to the extent that these are not demonstrably in the public domain; they may only be made available within the supplier's premises to persons who need to make use of such information for the purpose of supplying us and who are also bound by confidentiality; any such information shall remain our exclusive property. Except for deliveries to us, any such information may not be duplicated or exploited commercially without our prior written consent. At our request, any information originating from us (including any copies or recordings made, if applicable) and any lent items must be immediately returned to us or destroyed in full. We reserve all rights to such information (including copyrights and the right to the registration of industrial property rights such as patents, utility models etc.). Insofar as these were provided to us by third parties, this reservation of rights shall also apply to these third parties.
- 14.2 Delivery items that are manufactured in accordance with documents drawn up by us such as drawings, models and such like, or produced according to our confidential information, or which are manufactured using our tools or tools modelled on ours, may neither be used by the supplier themselves nor be offered or supplied to any third parties. The same also applies to our print orders.
- 14.3 The business relationship with us may only be referred to for the purposes of advertising or making recommendations to third parties with our prior written consent.

#### 15. Compliance

The supplier is obliged to comply with all the relevant laws of the applicable legal system(s) and must not commit offences or refrain from carrying out actions, either passively or actively, directly or indirectly, that can in particular result in prosecution due to the granting of an unfair advantage, bribery, fraud, em-



bezzlement, infringements of competition law or criminal insolvency offences. In the event of non-compliance, we shall be entitled, insofar as this is reasonable, to revoke and/or terminate without notice all contracts with the supplier and to break off our business relationship with them. We shall also be entitled to demand compensation for damage (see Code of Conduct which can be accessed at):

<http://www.otto-fuchs.com/de/unternehmen/unternehmen/einkaufslieferantenportal.html>

#### **16. General Provisions**

16.1 If the supplier discontinues its payments or if insolvency proceedings in respect of its assets or settlement out of court are applied for, we shall be entitled

to cancel the contract. In that case, the supplier is obliged to return to us immediately all items and documents that belong to us together with the test and measurement reports that it has archived.

16.2 The place of fulfilment is the place where the goods are to be delivered to in accordance with the order.

16.3 As we deem fit, the place of jurisdiction may be the supplier's headquarters, the court that is responsible for us or the place of fulfilment. The contract shall be subject to the law of the Federal Republic of Germany excluding the provisions of conflict law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).