

## **General Terms and Conditions of Purchase of Mendritzki Holding GmbH & Co. KG and affiliated companies**

### **1. General**

These General Terms and Conditions of Purchase (hereinafter called "Conditions of Purchase") shall apply to the present Agreement as well as any subsequent contracts with suppliers of Mendritzki Holding GmbH & Co. KG and its affiliated companies (a list of all affiliated companies is available at [www.mendritzki.de](http://www.mendritzki.de)) (Mendritzki Holding GmbH & Co. KG and its affiliated companies will hereinafter be called "Client"). The Client's Conditions of Purchase shall apply exclusively. They shall constitute an integral part of the Agreement, of orders and amendments. Contradictory, supplementary or deviating terms and conditions of business of the Contractor shall become part of the Agreement only if the Client acknowledges this expressly in writing. This shall also apply to terms and conditions of business stated in Contractor's supply or other provisions. Taking receipt of and also payment for deliveries/performances shall not constitute acceptance of the Contractor's terms and conditions of business. The Client's Conditions of Purchase shall also apply exclusively if the Agreement with the Contractor is executed without any reservation in the knowledge of terms and conditions of business that contradict, supplement or deviate from the Client's Conditions of Purchase.

For all business transactions, we require compliance with our Code of Conduct, which is published on our homepage [www.mendritzki.de](http://www.mendritzki.de).

### **2. Agreements, amendments, invoice, prices**

2.1 Agreements must be made in writing to be binding. Our order shall become binding at the earliest upon written submission or confirmation. The written form shall also be deemed adhered to when sending a fax or email.

2.2 Prior to acceptance, the Contractor shall indicate obvious errors (e.g. typos and calculation errors) and incompleteness of the order, including the order documents, for correction and/or completion; otherwise, the Agreement shall be deemed not concluded.

2.3 Each agreement (including amendments) shall be settled with an invoice. Interim, partial, partial final and final invoices shall be designated as such and numbered consecutively. Invoices without special designation shall be considered final invoices.

2.4 The invoice and all other documents used by the Contractor in business transactions with the Client shall include the following in compliance with the provisions of VAT law: price, ordering party, date and reference number of the agreement, agreement number, tax number issued by the tax office or VAT ID number of the Contractor, place of dispatch, receiving point, order item number in

ascending order and material number. The delivery/performance documents to be handed over to the receiving point already must contain the agreement number and the order item number in ascending order. The invoice must not be handed over together with the delivery documents. If the required information is missing as a whole or in part, the Client shall not be responsible for any resulting delays in processing and payment.

2.5 The price stated in the Agreement shall be a fixed price and exclude any additional claims. It shall include everything that the Contractor is required to effect to satisfy its performance/delivery obligation. The fixed price shall not include the Contractor's legally owed sales tax. Reimbursement of sales tax shall require that the Contractor has the right and the duty under the respective statutory provisions to collect the tax separately and that the tax is shown separately in the invoice.

2.6 Additional and/or changed deliveries/performances shall be remunerated by the Client only if a written amendment has been entered into prior to the execution of such performance.

### **3. Execution of performance, provision**

3.1 The Client may seek information about the contractual execution of the delivery/performance within normal business or operating hours. Upon request, the documents required for such information concerning the execution of the Agreement shall be submitted to the Client for inspection. Any non-disclosure interests of the Contractor shall be taken into account. The confidentiality interests of the contracting parties must be taken into account and may be set out in a separate agreement (confidentiality agreement) (see point 11).

3.2 The Contractor shall require the Client's prior written consent to transfer the execution of the delivery/performance or essential parts thereof to third parties, which consent may not be withheld unreasonably.

3.3 Unless otherwise agreed in writing, the Contractor shall bear the procurement risk for its deliveries/performances.

3.4 Where deliveries/performances have not been fully performed yet, the Client shall be entitled to demand changes regarding design, delivery and delivery time, insofar as there is a comprehensible interest in such changes, the Contractor is technically capable to make such changes and the requested change is reasonable.

3.5 The Contractor shall ensure that its products, primary materials, plants/plant components and operating equipment are REACH and RoHS compliant and free from any conflict minerals and radioactivity. This shall also apply to contractors outside of the EU.

This shall be certified in writing upon initial delivery by the Contractor without request and shall be confirmed at regular intervals through suitable evidence. Any suppliers who do not meet said conditions will be blocked immediately.

3.6 The Contractor shall ensure that it complies with the statutory and regulatory protective regulations applicable to its delivery/performance.

3.7 The Contractor shall furthermore ensure that its delivery/performance complies with the EU End of Life Vehicles Directive 2000/53/EC contents in purchased parts.

3.8 Any provided materials shall remain the Client's property and shall be stored, labeled and administered separately free of charge. They may be used only for the purposes of the respective agreement and are also subject to the client's interests in confidentiality.

#### **4. Execution documents**

4.1 The documents made available to the Contractor shall require the Client's consent to be made accessible to third parties, reproduced or used for any purpose other than the agreed purpose. They shall be returned on request, and in any event, after order processing, at the latest. The Client reserves any and all property rights and copyrights to all documents provided.

4.2 The Contractor shall transfer ownership of any and all technical documents to the Client, as well as any other documents required for new production, maintenance and operation. The documents are drawn up in German and in accordance with the international standard SI system. The Client shall be entitled to reproduce and use documents for training courses and maintenance and upon agreement, also for additional purposes as well.

4.3 The Contractor shall assign to the Client all rights of use required for the use of the delivery/performance by the Client or by third parties, taking into account any patents, supplementary protection certificates, trademarks, utility models.

4.4 The Client shall have the unrestricted authority to carry out maintenance of the delivery/performance and changes thereto itself or to procure third parties to do so, and also to manufacture spare parts itself or to procure third parties to do so.

4.5 If the Agreement or the tender documents specify drawing numbers of both Client and Contractor or item numbers of Client and Contractor simultaneously, only the Client numbers shall be binding.

## **5. Payment, cash discount**

5.1 Payment shall be made by bank transfer to the Contractor's account stated in the invoice.

5.2 The payment period shall be 14 days less 3% cash discount or 45 days net.

5.3 The payment period shall commence upon receipt of the verifiable final invoice as defined in sections 2.3 and 2.4 at the location specified in the Agreement, but not prior to the date of delivery / installation of the contractual performance against confirmation of receipt or acceptance thereof.

5.4 If interim payments have been agreed, the payment period shall commence on the date of receipt of a verifiable interim invoice, but not before an agreed security (bank guarantee or similar) has been furnished.

5.5 Submission of the transfer order to the bank or credit institution shall be crucial for the timeliness of payment by the Client. The application of Section 286 (3) BGB (German Civil Code) shall be excluded.

5.6 The Client shall not owe any interest payable after the due date. The statutory provisions apply to the default of payment.

## **6. Delivery/performance deadlines and dates**

6.1 The delivery and performance dates and times stipulated in the Agreement shall be binding. The Contractor shall notify the Client without delay in writing if circumstances arise or become apparent indicating that the stipulated delivery and performance time cannot be met.

6.2 In case of the Contractor's default, the Client shall be entitled to the unabridged statutory rights. In case of the Contractor's default, the Client shall be entitled to demand a contractual penalty in the amount of 0.3% of the order value of the delayed delivery/performance per day, up to a maximum of 5% of the order value. The contractual penalty shall be set off against the total damage caused by default asserted. The Client reserves the right to assert the contractual penalty until the final payment.

6.3 The Contractor shall notify the Client without delay in writing if it has any doubts about the modalities of delivery/performance requested by the Client or if it feels impeded in the execution of its delivery/performance by third parties or by the Client.

6.4 If the execution period is exceeded due to force majeure, the Client may request delivery/service from the Contractor at a later point in time than the originally agreed conditions or, after expiry of a reasonable extension period, may withdraw from the Agreement as a whole or in part or cancel it.

6.5 The unconditional acceptance of a late delivery/performance shall not constitute a waiver of the claims for damages due to Client.

6.6 Delivery/performance prior to the agreed dates shall entitle the Client to refuse such delivery/performance until the due date.

6.7 The statutory provisions apply to cases of acceptance default. The Contractor must also expressly offer its delivery/performance to the Client if a particular or determinable calendar time is agreed for an action or cooperation on the part of the Client (e.g. providing material). If the Agreement concerns a good to be manufactured by the Contractor individually (item made to specification), the Contractor shall only have additional rights if the Client was obligated to cooperate and is at fault for the failure to do so.

## **7. Place of performance, transport, packaging, customs duties**

7.1 The place of performance shall be the location of the Client's receiving point specified in the Agreement.

7.2 The costs for transport and packaging shall be included in the fixed price (unless otherwise agreed). At the Client's request, the Contractor shall collect and dispose of the packaging materials from the receiving point at the Contractor's expense or the packaging materials shall be returned to the Contractor at the Contractor's expense.

7.3 Insofar as Contractor and Client agree that one of the international "Incoterms" trade clauses drawn up by the International Chamber of Commerce (ICC) apply to the Agreement, the respective current version shall apply. Unless agreed otherwise in writing, the delivery/performance shall be delivered/rendered and duty shall be paid (DDP Incoterms® 2010 "delivery duty paid", as per Incoterms) at the place of delivery/performance or use as specified in the agreement documents.

7.4 The Contractor shall take out transport insurance only at the Client's request.

## **8. Acceptance, defect notification period, passage of risk, transfer of ownership**

8.1 For each delivery/performance of the Contractor, the handover shall take place at the Client's receiving point during the Client's current opening hours against confirmation of receipt, unless acceptance of the delivery/performance has been agreed separately. Quality inspection or technical acceptance shall not replace the handover against confirmation of receipt or acceptance.

8.2 The Client shall inspect the delivery/service upon receipt of the goods for obvious and visible defects, quantity or identity deviations and transport damage. The delivery of another item or too small a quantity shall be equivalent to a defect. The complaint shall be deemed to have been made in due time if it is submitted within two weeks. In the case of obvious quality and quantity deviations, the period shall commence upon the handover of the delivery/performance at the receiving point and in the case of concealed quality and quantity deviations, upon their discovery. The Contractor waives the objection of late defect notification.

8.3 The risk shall pass to the Client at the time of handover against confirmation of receipt or at the time of acceptance.

8.4 If weighing is required, calibrated scales must be used.

8.5 If the contractual performance or parts thereof are rejected after delivery against confirmation of receipt or on the occasion of the acceptance date as non-conforming, the Contractor shall be obliged to retrieve the contractual performance/partial performance without delay at its own expense. The Client shall be entitled to return the contractual performance/partial performance to the Contractor at the Contractor's expense after a reasonable collection period has expired. In such cases as well, risks shall not pass to the Client prior to the renewed transfer against confirmation of receipt or acceptance.

8.6 The contractual performance or parts thereof, which should be handed over or accepted again at the receiving point against confirmation of receipt, or the items to be delivered as replacement shall be delivered by the Contractor again, at its own expense and risk, to the Client's receiving point.

8.7 The transfer of ownership to the Client shall take place upon delivery and irrespective of payment of the purchase price. However, in the individual case, if the Client accepts an offer of transfer of ownership by the Contractor, conditioned by payment of the purchase price, the reservation of proprietary rights of the Contractor ceases to exist at the latest upon payment of the purchase price for the delivered good. In the ordinary course of business prior to payment of the purchase price, the Client shall remain authorized to resell the goods with advance assignment of the resulting claim to the Contractor. All other forms of retention of title shall be excluded in any case.

## **9. Warranty claims, Contractor's liability, indemnification, insurance**

9.1 Warranty claims shall be subject to the statutory provisions, with the following proviso:

9.1.1 The Contractor shall remain responsible for its delivery/performance and its defect-free provision even if the Client has signed, approved, stamped or marked the plans, drawings, calculations and other execution documents submitted by the Contractor as seen.

9.1.2 In deviation from Section 442 (1) sent. 2 BGB, the Client shall have unlimited deficiency claims even if it was not aware of the deficiency at the conclusion of the Agreement due to gross negligence.

9.1.3 In case of special urgency and/or imminent danger, if it is unreasonable to expect the Client to set a deadline for subsequent performance, it may remove the defect itself and request reimbursement of the required expenses. The Client shall immediately notify the Contractor without delay of such warranty claims as well as the type and extent of the urgent measures taken.

9.1.4 The Client may set a reasonable deadline for the Contractor to remove a defective item. After expiry of such period, the Client may realize the contractual performance at the Contractor's expense, e.g. by selling or scrapping it, while safeguarding the Contractor's economic interests.

9.1.5 The period of limitation for warranty claims shall be three years from acceptance or take-over against confirmation of receipt, unless longer periods have been stipulated in individual cases, or if a longer period is provided by law. It shall be extended by the time during which the defective delivery/performance cannot be used as intended due to the defect. The 3-year statute of limitation shall accordingly apply to claims from deficiencies in title as well, whereby the statutory period of limitation for action in rem regarding third parties (Section 438 (1) no. 1 BGB) shall remain unaffected; moreover, claims from deficiencies in title shall not lapse in any case as long as the third party can assert a right – in particular due to the lack of a statute of limitation – against the Client.

9.1.6 The limitation period for warranty claims shall also be suspended if the Contractor itself investigates the existence of a defect. The suspension of the limitation period shall end only once the Contractor notifies the Client in writing that negotiations have ended or that the result of the investigation will be sent to the Client or the Contractor refuses further removal of the defect in writing. The resumption of negotiations, investigation or removal of defects shall again lead to the suspension of the limitation period.

9.2 The Contractor shall be liable for damages and reimbursement of expenditures according to the statutory provisions.

9.3 The Contractor shall hold the Client harmless from all product law, product liability and/or similar claims from third parties if and insofar as the cause of these claims lies within the Contractor's sphere of control and organization and the Contractor is itself liable in dealings with third parties.

9.4 Within the context of its obligation to indemnify, the Contractor shall pay compensation to the Client for all expenditures which may arise from or in connection with claims by third parties, including callbacks issued by the Client. The Client shall inform the Contractor regarding content and scope of callback measures – insofar as possible and reasonable – and provide it with the opportunity to make a statement. Additional statutory claims shall remain unaffected.

9.5 The Contractor undertakes to take out product liability insurance with an appropriate amount insured, to maintain it throughout and beyond the duration of the contractual relationship and present it for inspection at the Client's request.

## **10. Data storage**

To the extent permitted by the Federal Data Protection Act, the data required for the execution of the contractual relationship shall be stored and processed by the Client. The Contractor expressly consents to this.

## **11. Confidentiality**

The Contractor undertakes to treat all information and processes of which it obtains knowledge during the provision of its delivery/performance as confidential without restriction. They must not be made accessible to third parties. The Contractor shall be liable for all damages arising from a breach of such obligation.

The Contractor may only provide outsiders with information on technical details of the delivery/service, (partial) order values or (partial) prices in the cases prescribed by law. Press releases and other publications regarding placed orders shall be permitted only in agreement with the Client. This shall also apply to the notification of rounded or approximate values and to percentage comparisons with previous orders.

## **12. Intellectual property rights**

If the Client is held liable by a third party for alleged industrial property right infringements, the Contractor shall be obliged to indemnify the Client upon the Client's first written request against such third-party claims, unless the Client is not responsible for such industrial property right infringement. The indemnification obligation shall cover any and all expenses incurred by the Client in connection with claims asserted by third parties.



The limitation period for the indemnification claim shall be two years from knowledge or grossly negligent lack of knowledge of the circumstances giving rise to the claim on the part of the Client. The indemnification case shall otherwise shall expire ten years after its accrual, regardless of knowledge or grossly negligent lack thereof.

### **13. Quality**

#### 13.1 Quality assurance system

The Contractor shall set up and maintain a documented state-of-the-art quality assurance system which is suitable in terms of type and scope - the minimum requirement shall be ISO 9001 certification for all primary materials and operating resources and auxiliary materials that influence the quality.

The Contractor shall constantly monitor the quality of its performance. Prior to the respective delivery of the delivery items, the Contractor shall ensure that the materials or products intended for delivery are free of defects and comply with the stipulated technical requirements and shall assure the Client of this in writing. The Contractor shall keep records, in particular of its quality inspections, and archive such records pursuant to the applicable standards and make them available to the Client upon request. The Contractor consents to quality audits by the Client or its authorized representative to assess the effectiveness of its quality assurance system.

#### 13.2 Energy management / occupational safety management / corporate environmental protection

The Contractor guarantees and warrants compliance with all statutory safety and environmental laws and regulations of the Federal Republic of Germany.

The Contractor operates a continuous improvement process in product quality, in the use of resources and energy and in occupational safety both internally and with its contractors.

Energy efficiency is also assessed when offering materials, products or services.

The following shall apply to orders where the Contractor carries out something at the Client's premises and not to pure deliveries:

- 1) The Contractor represents and warrants that the necessary GBUs have been created and are maintained.
- 2) The Contractor represents and warrants that it will grant the Client access to inspect them upon request.

#### **14. Assignment of claims, right of retention, set-off**

14.1 The Contractor shall be prohibited from assigning its claims against the Client to third parties. Section 354 a HGB (Commercial Code) shall remain unaffected.

14.2 The Contractor shall not have any rights of retention to the extent that they arise from counterclaims under other legal transactions with the Client.

14.3 The Contractor may offset only such claims (including under other legal relationships) which are undisputed or have been finalized.

14.4 The Client shall have unrestricted rights of set-off and retention. It shall be entitled in particular to retain payments which are due if it still has claims from incomplete or deficient services against the Contractor.

14.5 The Client shall be entitled to assign and any all claims under the Agreement without the Contractor's consent.

#### **15. Termination or withdrawal for good cause**

The Client may terminate or withdraw from the Agreement for good cause, particularly if the Contractor has filed a petition in insolvency or if the Contractor has suspended its payments not only temporarily or if insolvency proceedings have been opened against the Contractor's assets or the opening of such proceedings has been dismissed for lack of assets.

#### **16. Jurisdiction, applicable law, written form**

16.1 To the extent permitted by law, the place of jurisdiction shall be the Client's registered office. In case of master agreements, such jurisdiction shall also apply to disputes in connection with individual requests, irrespective of the location of the offices of the requesting body. The Client shall also be entitled to take legal action at the Contractor's location.

16.2 German law shall apply exclusively, under exclusion of the provisions on conflict of laws. The UN Convention on Contracts for the International Sale of Goods (CISG) shall expressly not apply.

16.3 Any amendment to the Agreement shall be made in text form.

16.4 Only the respective German version shall be binding. Unless otherwise expressly stipulated in writing, any and all documents shall be prepared in German and any and all declarations shall be issued in German.

## **17. Severability**

If individual provisions of these Terms and Conditions are or become invalid as a whole or in part, these Terms and Conditions shall otherwise remain in full force and effect. The same shall apply to the respective Agreement. The contracting parties hereby already agree at this point in time to replace any invalid provisions with effective provisions which come as close as possible to achieving the economic purpose intended by the parties. The same shall apply to closing any unintended loopholes.