

# General Terms and Conditions of Purchase

## PALUX Aktiengesellschaft [public limited company]

### 1. Scope of validity

- 1.1. These Terms and Conditions of Purchase are applicable to all business transactions with us, insofar as you are a commercial party, a public law entity or a special public law estate, and even if these terms and conditions are not expressly referred to. We do not recognise business conditions that contradict or deviate unless we have expressly consented to their validity. In particular, the acceptance of deliveries or services or payment does not constitute consent.
- 1.2. Our Terms and Conditions of Purchase also apply in the corresponding current version for all future business with you, even if they are not attached in individual cases.
- 1.3. Orders or agreements made verbally or by telephone will only become legally binding once a written order has been issued by us.

### 2. Conclusion of Contract

- 2.1. Proposals from you shall be free-of-charge to us. If these differ from our enquiry, then you must highlight this clearly.
- 2.2. We expect a written order confirmation to be transmitted immediately. Insofar as you deviate from our order in an order confirmation, you are obligated to inform us of such points clearly. We reserve the right to retract orders if the confirmation has not been received within 14 days.
- 2.3. If, during the conclusion of the contract, errors occur which are not our fault, e.g. due to errors in transmission, misunderstandings etc., claims for damages against us per § 122 BGB [German Civil Code] are excluded.

### 3. Framework contracts / call-offs

- 3.1. With framework orders or long-term orders, the amounts and types to be delivered will be reported by us through separate call-offs. These call-offs are binding if they have not been rescinded within a week of being received and if no other agreement has been reached.
- 3.2. If you are not able to deliver the call-off straight away, you must inform us of this immediately and suggest a delivery time that you can achieve.
- 3.3. As the ordering party, we reserve the right to postpone the delivery or call-up date by up to 3 months in the event of a change in requirements. The term "change in requirements" refers to an assessment in accordance with the criteria as normally applied for business transactions. So, for example, a 15% decrease in turnover fulfils the requirements for the acceptance of a change in requirements. In the event of this type of change of dates, the supplier has no right to claim compensation. They are also not permitted to enforce acceptance within this period. The call-off and delivery dates newly stipulated by us within the permissible period of tolerance are binding for the supplier with the legal consequences per point 4.

### 4. Dates and delayed deliveries

- 4.1. Agreed dates and notice periods are binding and must be precisely complied with. The decisive factor in this is our receipt of the goods or the receipt of the goods by the recipient location / delivery address stipulated or agreed by us.
- 4.2. As soon as you detect that delays in delivery may arise, you must inform us of this immediately. Our rights resulting from delays in provision of service remain unaffected by this duty to inform.
- 4.3. If the delivery is carried out before the agreed date, we are entitled to reject this. Likewise, partial deliveries can be rejected by us. If necessary, we are entitled to send the goods back at your expense and risk or to have them stored by a third party.
- 4.4. If you should fall into arrears, we are entitled to charge a delay penalty in the amount of 1.0 % of the total order value per calendar week of delay started, up to a maximum of 5 % of the total order value. We can assert the retention required per § 341 section 3 BGB until the services have been paid in full. We reserve the right to assert claims for further damages.
- 4.5. In the event of arrears, we are entitled to have services that you failed to provide carried out by a third party at your expense after a reasonable period of grace set by us has expired. The right of withdrawal and to compensation for damages arising remains unaffected. You are required to compensate us for any extra expenses arising due to the delay in delivery.
- 4.6. If we are impeded in the acceptance of a delivery due to circumstances, which we have been unable to prevent despite due dili-

gence, then the acceptance date will be postponed by the duration of the impediment. If acceptance is not possible for longer than 6 months due to this impediment, we are entitled to withdraw from the contract. You are not entitled to claim for compensation in such cases.

### 5. Delivery and transfer of risk

- 5.1. The place of fulfilment for your deliveries and services is the recipient location / delivery address stipulated by us. The transportation risk shall be borne by you. The risk of complete or partial loss, the damage or other deterioration of the goods transfers to us after the acceptance at the point of reception.
- 5.2. With deliveries and services that result in you entering our site, you, your employees and your vicarious agents are obligated to comply with the instructions of our personnel.
- 5.3. Every delivery shall be accompanied by a delivery note that can be checked. In addition, in the event of third party deliveries, a comprehensive dispatch note or a copy of the delivery note shall be sent to us in good time. Delivery notes and dispatch notes shall not contain pricing data.

### 6. Price and payment

- 6.1. The agreed prices are fixed prices and apply incl. freight, packaging and other ancillary costs, free-of-charge to the recipient location / delivery address cited by us. Price increases, regardless of reason, will only be accepted by us - even for long-term delivery contracts - if an express written agreement has been reached regarding this.
- 6.2. If you have taken on the erection or installation, subject to other regulations you will bear all necessary side costs such as travel costs, provision of tools and accommodation allowance, unless otherwise agreed.
- 6.3. Invoices should be submitted as a single copy, to our head office in Bad Mergentheim immediately after dispatch of goods or after the provision of the services, separated by order and citing the order number. VAT should be shown separately in the invoice. Improperly generated invoices shall be considered not issued. Invoices shall not be considered as order confirmations.
- 6.4. Payment will be made, within 14 calendar days from delivery / provision of service and receipt of invoice, with deduction of 3% discount or within 30 calendar days from delivery / provision of service and receipt of invoice, with deduction of 2% discount, or after 60 days net, unless otherwise agreed. The discount will be deducted from the invoice amount, including VAT. The time periods start with the receipt of the invoice or if the goods are received after the invoice, with the complaint-free acceptance of the goods, but never before the date agreed for the goods to be received.
- 6.5. Assignment of the goods from you to us is only permitted with our prior consent. If you assign claims against us to a third party without our agreement, the assignment is still effective. However, we can choose to pay you or the third party with discharging effect.

### 7. Checking of goods, complaint period

- 7.1. Acceptance takes place subject to the inspection for freedom from defects, in particular for correctness, completeness and suitability. § 377 HGB is waived by agreement. We will report deficiencies in deliveries to you immediately as soon as these are identified in the normal course of business.
- 7.2. Incorrect or different deliveries will not be accepted by us under any circumstances. We do not have to make any special claims in this regard.
- 7.3. Goods subject to a justified complaint will be returned to you at your expense.
- 7.4. We create fundamental costs (return of goods or additional costs), that we offset against existing payments. Please do not create any credit notes unless you have received a request for this from us.

### 8. Warranty

- 8.1. You are to ensure that the goods delivered and services provided correspond with the legal and official provisions applicable to their sale or use and that they do not violate industrial property rights or other rights of third parties. In addition, you must also ensure that the goods do not contain any banned substances from the legal REACH ordinance and RoHS directive.
- 8.2. The deliveries and services must represent the state of technology applicable at the time of delivery or foreseeable future state of technology as well as other legal provisions, technical

test provisions and accident prevention regulations. In particular, DIN standards, VDE provisions and DVGW approval must be complied with, insofar as they apply to the products delivered. They furthermore apply to the quality of the materials used, the proper design and execution of the goods delivered by you along with the services specified or agreed.

- 8.3. The legal warranty rights shall be available to us without limitation. Independent of this, we are entitled to require that faults be repaired or that the goods are replaced at our discretion. In this case, you must bear the expenses required for the purposes of fault rectification or replacement delivery. If you fail to carry out remedial actions or subsequent deliveries within a reasonable period of time or to an inadequate extent or if there is an urgent reason for immediate fault rectification, we are entitled to have the fault repaired or make covering purchases at your expense.

The period of limitation for warranty claims amounts to 5 years for buildings and items that have been used for a building in accordance with their customary application and which have caused a defect in this building. In general, the period of limitation for warranty claims amounts to 36 months from the transfer of risk, unless expressly agreed otherwise. The period of limitation for warranty claims is interrupted by us through a written notification of defect to you. The period of limitation for warranty claims starts to run again once you have declared the end of the repair works or the subsequent delivery in writing (date of receipt by PALUX) or when you have refused a repair or subsequent delivery in writing. Insofar as a longer period is legally set for warranty claims, this longer warranty period shall apply.

- 8.4. If assured characteristics are lacking as well as in cases of defective goods or incorrect delivery, we are entitled to claim damages for non-performance instead of other warranty claims whereby our damage compensation encompasses all of the additional costs arising for us. You shall indemnify us against claims from third parties in this regard.
- 8.5. For delivery items whose handling is not generally known or not yet generally known, installation and operating instructions must be provided together with the delivery at the latest without having to be separately requested and whilst citing our order number with the delivery. Otherwise you are liable for all damages that would not have occurred if this documentation had been present.
- 8.6. In case of defect of title, you will also indemnify us against any claims by third parties.

## **9. Product liability and quality assurance**

- 9.1. Should a claim be made against us on the basis of the law on product liability or other regulations due to a product fault or if we incur damage in another way in connection with the delivery of a faulty product, in particular through recall, you shall indemnify us insofar as the damage arises as a result of a fault in the delivery or service provided by you. You undertake to conclude adequate product liability insurance and to provide verification of this to us upon request.
- 9.2. You must carry out quality assurance and maintain documentation pertaining to all relevant data that is appropriate in nature and scope and which represents state-of-the-art technology. In the event of claims due to product liability, you are obligated to provide us with corresponding paperwork and documentation to enable verification of a defective product.

## **10. Industrial property rights, confidentiality**

- 10.1. You assure us that the articles delivered by you do not violate national or foreign industrial property rights and guarantee us the full freedom and copyright permission for its use and trade nationally and internationally. In the case of legal actions undertaken by third parties due to the violation of national or foreign property rights with regard to the goods delivered, you must indemnify us from all claims made against us and to compensate us for any resultant damages.
- 10.2. All order documentation as well as drawings, models, samples etc. remain our property and shall not be passed on to third parties or used by you for your own purposes without our express consent. Such documents are to be protected by the you against any unauthorised viewing or use and unless otherwise agreed, have to be returned to us at the latest after completed delivery in an orderly condition. It is not permitted to retain a copy. There is no entitlement to retain any such items.
- 10.3. All technical data and other commercial and technical details that are not commonly known, which become known to you through the business relationship with us, are to be treated as confidential by you. They may only be used in the execution of orders for us

and only made accessible to such employees as are necessary for the implementation of the order.

- 10.4. If tools, drawings or other manufacturing equipment is made by you at our instruction and at our expense, it is agreed that these items shall transfer immediately into our ownership as soon as they are made. In the case of cost-sharing we will receive partial ownership in accordance with the proportion of the costs. You are revocably entitled to keep these items safe for us free-of-charge and carefully. We maintain all proprietary utilisation rights for the sole use of these items. You are not entitled to use these items beyond the scope of the order without our consent. You are entitled and obligated to revocable safekeeping of these. You must label the items such that our property is also documented with regard to third parties. You have no right of retention with regard to these items.
- 10.5. Sub-suppliers must be likewise obligated.
- 10.6. You may only advertise our business relationship with our prior written consent.

## **11. Limitation of liability**

We shall only be liable due to breach of contractual and non-contractual duties in particular owing to impossibility, default, fault when initiating contracts and tortious act - also for our executives and other vicarious agents - in cases of wilful intent and gross negligence, limited to the damages which are foreseeable when the contract is concluded and are typical for the contract.

These restrictions shall not apply with the culpable breach of essential contractual duties insofar as the achievement of the object of the contract is endangered and with damages to life, body and health.

## **12. Retention of title**

We accept the simple retention of title for the goods delivered from you. Other forms of security apply only with our express agreement.

## **13. General provisions**

- 13.1. The place of performance for both parties for all obligations arising from a contract, in particular for delivery and payment, is Bad Mergentheim or the place of performance cited by us.
- 13.2. The place of jurisdiction for all legal disputes arising from the contractual relationship, and relating to the drafting and effectiveness of the contract for both parties is the local or regional court responsible for Bad Mergentheim at our discretion. We also have the right to raise a complaint at your domicile.
- 13.3. Where a contracting party should cease making payments or if a provisional liquidator is appointed or where bankruptcy proceedings are initiated against its assets or an extra-judiciary insolvency proceedings are applied for, then the other contracting party shall be entitled to withdraw from the unfulfilled part of the contract.
- 13.4. Should a provision of these conditions and other affected agreements prove to be unworkable or become so, then this shall not affect the validity of the remaining contract. The contracting parties are obligated to replace the invalid provision with a provision that accomplishes as closely as possible the intended economic purpose of the invalid provision.
- 13.5. This contractual relationship is subject to German law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

**PALUX Aktiengesellschaft [public limited company]**

**Bad Mergentheim**