

GENERAL PURCHASING CONDITIONS of Jena-Optronik GmbH

1. Scope

1.1 The following General Purchasing Conditions of Jena-Optronik GmbH (hereinafter referred to as "Purchaser") apply to the production of works and to the purchase of goods (together "Deliveries") from the supplier (hereinafter referred to as "Supplier") as well as to his performance of services ("Services").

1.2 Any general terms and conditions of the Supplier deviating from or supplementing these General Purchasing Conditions are non-binding for the Purchaser, even if the Purchaser does not object to them explicitly, or if the Supplier states that he wishes to deliver only according to his general terms and conditions, or if these are included in his declaration of acceptance pursuant to Section 2.1, or the Deliveries note or, as the case may be, the purchase order. Acceptance or payment of Deliveries and Services does not constitute agreement either.

2. Conclusion of Contract

2.1 The Supplier may accept orders of the Purchaser only by written declaration within a period of two weeks following receipt of order. The receipt of the acceptance by the Purchaser shall be decisive for the observation of the deadline.

2.2 The acceptance of orders shall contain all material order data, particularly the exact description of the ordered Deliveries and Services (including number, if available), the purchase order number, the order date and the Deliveries date. The Supplier shall be responsible for any delays, which result from a breach of these provisions by the Supplier.

2.3 Amendments or changes of orders require the written confirmation of the Purchaser.

2.4 The Supplier is not authorized to subcontract third parties without the prior written consent of the Purchaser. The unauthorized subcontracting of third parties entitles the Purchaser to rescind or terminate the contract in whole or in part and to claim damages.

3. Prices

3.1 The agreed prices are fixed prices including packing and exclude subsequent claims or price increases of any kind.

3.2 Deliveries are made DAP, INCOTERMS 2010, unless agreed otherwise.

4. Payment Terms

4.1 Invoices of the Supplier shall be submitted in duplicate and shall contain all information required in the order for each delivery.

4.2 Subject to invoice verification, the Purchaser will effect payments by electronic bank transfer to the Supplier's bank account as notified to the Purchaser. The Purchaser will make payments only for those Deliveries and Services which are delivered / performed in accordance with the terms of the order.

4.3 Unless agreed differently, the Customer shall pay the agreed price within 14 days, calculated from the date of delivery or provision of services and receipt of a corresponding invoice, less a 3% prompt payment discount or net within 30 days following receipt of the invoice.

4.4 Should the payment day be a Saturday, Sunday or a bank holiday the payment shall be made the following business day.

4.5 Any interest rate for late payment of the Supplier shall be limited to the legal interest rate stipulated in Section 288 II in connection with Section 247 of the German Code Civil (BGB). Section 288 IV BGB shall be excluded.

4.6 In the event of a dispute between the parties, the Purchaser shall be entitled to withhold the payment of any disputed invoice until resolution of such dispute.

5. Delivery Date, Place of Fulfillment

5.1 Agreed delivery dates and deadlines are binding. Advance Deliveries and advance Services as well as Deliveries and Services after the agreed delivery date are permitted only with the consent of the Purchaser.

5.2 Relevant for the timeliness of Deliveries and Services is the receipt at the receiving place specified by the Purchaser. The Supplier shall notify the Purchaser without undue delay, if and as soon as it becomes apparent that he will be unable to meet the delivery or performance date. The acceptance of late Deliveries or Services by the Purchaser does not contain any waiver of compensation claims.

5.3 If - in the event of delay - the Supplier cannot prove that he is not responsible for the delay, the Purchaser may charge a penalty in respect of each commenced working day of delay amounting to 0.2 % but not exceeding a total of 5% of the total value of the contract. In the event that the appropriate reservation of rights is not made at the time of acceptance of Deliveries, Services or rectification, this penalty may be claimed up until the date of final payment. The Purchaser shall be entitled to charge the penalty in addition to performance. Further rights and claims shall be reserved herewith.

5.4 The Purchaser is not obliged to accept partial Deliveries or Services. In the case of agreed partial Deliveries, the remaining quantity still to be delivered shall be stated in the Deliveries note.

5.5 Place of fulfillment for the Supplier's Deliveries or Services is the receiving place specified in the order. If no receiving place is specified and it cannot be derived from the nature of the obligatory relationship either, the branch office of the Purchaser as per the order or, in lack thereof, the company seat of the Purchaser shall be deemed place of fulfillment.

6. Shipment, Transfer of Risk, Export Control, Offset Provisions

6.1 The Supplier shall package, ship, and insure the Deliveries properly and comply with all relevant packaging and shipment provisions. The Supplier shall be liable for all damages, which the Purchaser suffers because of the improper or insufficient packaging, shipping, or insurance.

6.2 Shipping papers such as e.g. Deliveries notes and packing slips shall be included with the Deliveries. All documents shall state the order number and the identification marks stipulated by the Purchaser in the order.

6.3 Additional costs, which the Purchaser incurs as a consequence of non-compliance with the above rules, shall be borne by the Supplier.

6.4 In the case of Deliveries without installation or assembly, the risk passes when the goods are received at the receiving place specified by the Purchaser. In the case of Deliveries with installation or assembly, risk passes upon acceptance to be carried out at the place of assembly.

6.5 The implied acceptance set forth in Section 640 paragraph 2 sentence 1 of the German Civil Code (BGB) is excluded.

6.6 The Supplier shall observe any export restrictions as well as the "Jena-Optronik Export Control Provisions" as visible on the homepage of Jena-Optronik GmbH (www.jena-optronik.de) in the section Contact & GTC. On request, the Purchaser shall provide the Supplier with a printed copy of these provisions.

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7. Rights of the Purchaser in case of defects

7.1 The Supplier shall be responsible for defects of the Deliveries under a purchase agreement or a contract to produce a work for a period of three years from the transfer of risk. In deviation from sentence 1, the limitation period for buildings and for works, whose results consist in the rendering of planning or monitoring Services for this purpose, shall last for five years after acceptance.

7.2 The Purchaser will notify the Supplier in writing without undue delay about any defects as soon as these are determined during the ordinary course of business. Insofar, the Supplier waives the objection of late complaint of defects.

7.3 The Purchaser shall be entitled to the statutory claims for defects without restrictions. The Purchaser shall have the right, at its option, to demand from the Supplier to rectify the defect or deliver an item free of defect or, as the case may be, the production of a new work. The right to claim damages, particularly the right to claim damages instead of performance, shall remain explicitly reserved.

7.4 In addition to the statutory claims, the Purchaser may in the case of a defect, after the fruitless expiration of a reasonable period set by the Purchaser for subsequent performance, rectify the defect itself and demand reimbursement of the necessary expenses, unless the Supplier has a right to refuse subsequent performance. In this respect, the statutory provision pertaining to self-remediation of defects for contracts to produce a work (Section 637 BGB) shall apply to purchase agreements accordingly. The Purchaser may demand advance payment from the Supplier for the expenses required to rectify the defect.

8. Rights of the Purchaser in case of breach of Services

Notwithstanding Section 7, the statutory rights of the Purchaser shall apply in case of breach of Services.

9. Quality and Safety, Access Right

9.1 The Supplier shall comply with the recognized rules of technology, the safety regulations and the agreed technical data and standards. He shall furthermore advise the Purchaser about any special, not generally known handling and disposal requirements and shall provide for each delivered good a manufacturer's certificate or certificate of conformity (CE) within the meaning of the applicable Directives of the European Union or other statutory provisions. Changes of the Deliveries and Services require the prior written consent of the Purchaser. The manner and nature of the cooperation on the quality sector, such as e.g. first sampling and documentation, is set forth in the respective product specification.

9.2 Employees authorized by the Purchaser and the representatives of public authorities have during regular business hours access to all business premises of the Supplier in which work is carried out for the Purchaser. They may inspect all applicable and order-related documents for particularly be granted to all persons authorized by the Purchaser, who are responsible for monitoring progress of the work commissioned by the Purchaser from the Supplier and for related audits, examinations, or for the qualification of the Supplier.

9.3 The representatives of customers of the Purchaser shall have access to all business premises at all times during regular business hours, where work is carried out for the Purchaser, if the Purchaser has consented.

10. Provision of Materials

10.1 All documents and objects of any kind provided to the Supplier by the Purchaser remain the property of the Purchaser. They may be used exclusively for providing the ordered Deliveries or Services. The Supplier shall insure all objects provided to him against loss and deterioration. The Supplier does not have any retention right with respect to the objects of the Purchaser.

10.2 To the extent that objects provided by the Purchaser are processed or transformed by the Supplier into a new movable object, the Purchaser is deemed to be the manufacturer. In the case of a connection or inseparable mixing with other objects, the Purchaser acquires joint ownership in the new object in proportion of the value, which the objects had at the time of connection or mixing. If the connection or mixing occurs in a manner, where the objects of the Supplier have to be considered the main object, it shall be agreed that the Supplier transfers proportional joint ownership to the Purchaser, while the Supplier stores the joint ownership for the Purchaser free of charge.

10.3 The Supplier shall carry out any maintenance and inspection work that may be necessary at his own expense and shall insure the provided objects sufficiently and prove this to the Purchaser upon request.

11. Confidentiality

11.1 The order of the Purchaser shall be treated confidentially. The Supplier furthermore shall keep all commercial and technical information and documents, which become known to him through the business relationship and which are not generally known, secret and use these exclusively for providing the ordered Deliveries. Drawings, models, samples, and similar objects shall not be submitted or made available to unauthorized third parties. Duplicating such objects is permitted only within the limits of copyright provisions and to the extent required in order to fulfill the obligations incumbent upon the Supplier. Any subcontractors shall be bound to confidentiality accordingly.

11.2 The Supplier is only entitled to mention, depict, or use the company name, the logo or the trademarks of the Purchaser in any other way for purposes of advertising materials, when naming references, or for other publications, if the Purchaser has consented to this in writing in advance.

11.3 The Purchaser may demand observance of further security regulations.

12. Spare Parts, Readiness to Deliver

12.1 The Supplier shall supply spare parts to the Purchaser under fair and reasonable conditions throughout the period of the usual technical lifetime, but in any case for a period of at least ten years after the last Deliveries.

12.2 If the Supplier discontinues the Deliveries after expiration of the period set forth in Section 12.1 or during that period, he shall provide the Purchaser with the opportunity for a last order under fair and reasonable conditions.

13. Software

13.1 If the deliveries or the Services provided by the Supplier are subject to patent or copyright protection, the Purchaser shall be granted all rights of reproduction, use, operation, release, adaptation, modification or translation of the Deliveries or Services as far as this is necessary for the purpose of the purchase order. The grant of rights under this Section is included in the compensation according to Section 3.

13.2 The Purchaser acquires full property of the Deliveries or the Services covered by the respective purchase order, in particular insofar as folders, plans, technical memos, drawings, models, prototypes or tooling are concerned.

13.3 The Supplier shall inform the Purchaser - at the latest at the time the order is confirmed - whether the Deliveries and Services to be delivered contain "open source software". In the context of this provision "Open Source Software" means any software that is provided royalty-free by the respective licensor to any user on the basis of a license or another agreement with the right to modify and/or to distribute such software. By means of example and without limitation, Open License Terms include the following licenses: the GNU General Public License (GPL), the GNU Lesser GPL (LGPL), the BSD License, the Apache License or the MIT License.

Should the Deliveries and Services delivered by the Supplier contain open source software, the Supplier shall deliver to the Purchaser the following, latest at the time the order is confirmed:

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- The source code of the relevant open source software, insofar as the applicable open source conditions require the disclosure of this source code;
- A schedule of all open source files used, indicating the relevant license and including a copy of the complete text of such license;
- A written declaration that through the intended use of the open source software neither the Deliveries of the Supplier nor the products of the Purchaser will be subject to a "Copyleft Effect". In the context of this provision, "Copyleft Effect" means that the provisions of the open source license require that certain of the Supplier's Deliveries, as well as any products derived from these, may only be distributed further in accordance with the terms of the open source license e.g. only if the source code is disclosed.

Should the Supplier not indicate until after receipt of the order that its Deliveries and Services contain open source software, then the Purchaser is entitled to cancel the order within 14 days of receipt of this information and provision of all the information contained in the above paragraph.

14. Product Liability; Infringement of Rights of Third Parties

14.1 The Supplier shall meticulously examine its Deliveries for defects and undertakes to do everything feasible in order to avoid any product liability. If the Purchaser is held responsible by a third party because of the defectiveness of a product and if the defectiveness is due entirely or in part to a defect of the Supplier's Deliveries, the Purchaser may instead of compensation of all losses also demand indemnification vis-à-vis the third party. The Supplier's obligation to pay damages shall also include the costs of a precautionary recall measure in order to prevent damage, if this is appropriate.

14.2 The Supplier shall indemnify the Purchaser against any liability based on claims that the Deliveries and Services of the Supplier intentionally or negligently infringe any third-party rights. In this case, the Supplier shall indemnify and hold harmless the Purchaser on first written demand from all cost, expenses and payment obligations arising from the infringement. The Purchaser shall refrain from concluding any agreements with the third party related to the infringement, in particular from any settlement agreement, without the Supplier's prior approval.

15. Employee Protection, Environment and Hazardous Materials

15.1 The Supplier shall observe Jena-Optronik's provisions on Employee Protection, Environment and Hazardous Materials ("Jena-Optronik Provisions on Employee Protection, Environment and Hazardous Material") as visible on the homepage of Jena-Optronik GmbH (www.jena-optronik.de) in the section Contact & GTC. On request, the Purchaser shall provide the Supplier with a printed copy of these provisions in the German or the English language.

15.2 The Supplier shall also observe Jena-Optronik's provisions on Corporate Social Responsibility in Sourcing ("Jena-Optronik CSR Sourcing Provisions") as visible on the homepage of Jena-Optronik GmbH (www.jena-optronik.de) in the section Contact & GTC. On request, the Purchaser shall provide the Supplier with a printed copy of these provisions.

15.3 The Supplier shall employ only such employees for works at the Purchaser who have the qualification required for this work. The Supplier shall make corresponding proof available to the Purchaser upon request with short notice for a sample examination.

16. Termination of Services

16.1 The statutory provisions of the German Civil Code concerning the termination of Deliveries and Services shall apply.

16.2 Moreover, the Purchaser may terminate the relevant purchase order(s) if the Supplier has failed to observe or perform any of the conditions of the order(s) and has failed to remedy any such breach within thirty (30) days of notice thereof from the Purchaser. Any claims for damages shall remain unaffected by such termination.

17. Insurance

17.1 The Supplier shall conclude and maintain with insurers of recognized reputation and security adequate insurance policies to cover its liabilities under the purchase orders issued by the Purchaser. At a minimum, Supplier shall maintain a General Third Party liability Insurance for an amount of no less than 5.000.000 (five million) EUR per occurrence and in the yearly aggregate. The Supplier shall also conclude and maintain Product Liability Insurance. The limit of coverage of such insurance shall be not less than 5.000.000 (five million) EUR per occurrence and 10.000.000 (ten million) EUR in the yearly aggregate.

17.2 The Supplier shall provide certificates of such insurances on request of the Purchaser at any time.

18. Final Provisions

18.1 The laws of the Federal Republic of Germany excluding the provisions of the UN Convention on the International Sale of Goods (CISG) shall apply to all legal relationships between the Purchaser and the Supplier.

18.2 Should the Supplier cease to make payments, or if an interim insolvency administrator is appointed or if insolvency proceedings are commenced in relation to the assets of the Supplier, the Purchaser may terminate the contract and/or any purchase orders issued there under. In the event of termination the Purchaser may continue to utilize existing facilities, Deliveries or Services already performed by the Supplier in exchange for reasonable payment.

18.3 Place of venue for all disputes arising from the business relationship as governed by these General Purchasing Conditions shall be, at option of the Purchaser, the place of fulfillment as per Section 5.5 or Munich. The Purchaser is furthermore entitled to file a claim against the Supplier at any other place of general or special jurisdiction.

18.4 Changes and amendments to these General Purchasing Conditions as well as side agreements require the written form. This shall also apply to any waiver of this written-form clause.

18.5 If any of the above provisions should be or become ineffective, the validity of the remaining provisions shall remain unaffected. The parties hereto are obliged to agree upon a provision to replace the ineffective provision that approximates as closely as possible the economic intent of the ineffective provision.