

## General Conditions of Purchase

General conditions of purchase of Martin Bauer GmbH & Co. KG, Vestenbergsgreuth, Germany, hereinafter: Martin Bauer

### § 1 Scope of application

The business relationship of Martin Bauer with the Contractor concerning deliveries and services including work performances (hereinafter collectively referred to as "Services") shall be governed exclusively by these General Terms and Conditions, provided that the Contractor is an entrepreneur, a legal entity under public law or a special fund under public law (§ 310 (1) German Civil Code (Bürgerliches Gesetzbuch)). They also apply if Martin Bauer accepts the Services without reservation in the knowledge of conflicting or different terms; such conflicting or different terms are only binding on Martin Bauer if Martin Bauer has expressly consented to their validity in writing or in text form. Insofar as these General Terms and Conditions do not contain any provision, the statutory provisions shall apply.

### § 2 Purchase Offer, conclusion of contract, subcontractors, audits

1. Purchase offers, call-off contracts and/or orders ("Orders") from Martin Bauer shall be binding if made in writing or in text form. The Contractor's acceptance shall only bind Martin Bauer if it is declared unconditionally in writing or in text form within a period of one week (conclusion of contract). If Martin Bauer confirms an offer of the Contractor in text or written form ("Offer Confirmation"), the contract shall be deemed to have been concluded on the terms and conditions of such Offer Confirmation, if the Contractor does not object to these terms and conditions in text or written form immediately after receipt of the Offer Confirmation.
2. Martin Bauer reserves all property rights and copyrights to materials handed over to the Contractor in connection with the Order, e.g. specifications, calculations, illustrations, drawings and other documents; they may not be made accessible to third parties without the express consent of Martin Bauer in text or written form. They are to be used exclusively for the fulfillment of the contract; and, after its termination, are to be returned without being requested.
3. Unless otherwise expressly agreed or customary in trade, the Contractor shall provide the Services itself. Any subcontracting, even partial, to subcontractors requires the consent of Martin Bauer in text or written form, which will not unreasonably be withheld. Any consent given shall nevertheless not alter the Contractor's responsibility towards Martin Bauer for the proper performance of the contract.
4. If Martin Bauer requires that supplies or other parts of the Services are to be performed by Martin Bauer itself or by a third party

commissioned by Martin Bauer ("External Supplies"), Contractor shall be obligated to subject the External Supplies to a proper incoming inspection to check for obvious and hidden defects and to notify Martin Bauer of any defects without undue delay. External Supplies as well as information provided remain the property of Martin Bauer and are to be designated and managed as Martin Bauer's property. Their use is permitted only for Orders from Martin Bauer. In the event of culpable depreciation or loss, the Contractor shall provide compensation, whereby the Contractor shall also be responsible for simple negligence. This also applies to the charged supply of Order-allocated materials.

5. Martin Bauer shall be entitled to conduct an audit or inspection at Contractor's premises in connection with the Services Contractor provides or has provided to Martin Bauer. This shall also apply in particular if a company supplied by Martin Bauer or a domestic or foreign authority or organization carries out an audit or inspection at Martin Bauer and the Contractor's Services are also object of the audit or inspection.

### § 3 Time of performance

1. The time of performance begins after the complete clarification of all technical and commercial details and, if necessary for the performance of the Services, after receipt of External Supplies and materials to be provided by Martin Bauer, such as test samples together with any information and documents that are required for the Services to be performed.
2. The delivery time specified in the Order is binding for the Contractor. The timeliness of deliveries shall be determined by the date of receipt at the place of destination/delivery designated by Martin Bauer, and the timeliness of work performances or services with installation or assembly shall be determined by their acceptance by Martin Bauer.
3. The Contractor shall not be entitled to partial performance without Martin Bauer's consent in text or written form.
4. In the event of an expected delay in a delivery, service or subsequent performance, the Contractor shall notify Martin Bauer immediately and obtain its decision.

### § 4 Place of performance, delivery, test samples

1. The place of performance for the Services of the Contractor is the place of destination/delivery (according to Incoterms® 2020) designated by Martin Bauer.
2. Unless otherwise agreed in writing or in text form, deliveries shall be made DDP –

Delivered Duty Paid in accordance with Incoterms® 2020 to the place of destination/delivery designated by Martin Bauer.

3. The goods to be delivered shall be properly packed according to Martin Bauer's specifications, failing which Martin Bauer may refuse to accept the goods without being in default of acceptance. Unless otherwise agreed, the costs of packaging in accordance with the requirements are compensated with the agreed prices.
4. Each delivery shall be accompanied by packing slips or delivery bills indicating the contents and the complete Order codes.
5. Unless otherwise agreed, the Contractor shall be obliged to unload the vehicle used for delivery or shall ensure that the carrier or its auxiliary persons unload the vehicle used for transport.

### § 5 Prices, payment, set-off, right of retention

1. All prices are exclusive of value added tax at the rate applicable at the time of performance.
2. Invoices of the Contractor shall only be proper if they comply with all corresponding specifications in the Order, in particular if they list the processing data and Order codes shown therein. Unless otherwise agreed in writing or in text form, proper invoices shall be paid by Martin Bauer within 14 days after fulfillment of the contract and receipt of the invoice with 2% discount or within 60 days without deduction. Insofar as the Contractor has to provide material tests, test reports, quality documents or other documents, the contract shall only be fulfilled when these documents have also been handed over in full.
3. The assignment or other transfer of the Contractor's receivables shall only be permitted with the textual or written consent of Martin Bauer, otherwise it shall be excluded outside the scope of application of § 354a of the German Commercial Code (Handelsgesetzbuch - HGB).
4. Martin Bauer shall be entitled to set-off and retention rights to the extent provided by law. Discount deduction is also permissible if Martin Bauer offsets or withholds payments in an appropriate amount due to defects in the Services.
5. Payments do not imply any acknowledgement of the deliveries or services as being in accordance with the contract.

### § 6 Change requests, additional services

1. Insofar as the agreed Services are work services, Contractor shall submit a quotation within a reasonable period of time which includes the effects on performance time



and prices if (a) Martin Bauer requests reasonable changes or additional services from Contractor or (b) Contractor recognizes that reasonable changes to the work services or additional services could be advantageous to Martin Bauer.

2. The Contractor may perform the offered changes or additional services only after agreement and conclusion of contract (in application of § 2.1.).

3. If the Contractor and Martin Bauer cannot agree on the changes or additional services, Martin Bauer shall be entitled to terminate the contract for the work services if they are no longer of interest to Martin Bauer without the requested changes or additional services. Martin Bauer shall pay for Services already rendered by the Contractor on a pro rata basis at the agreed prices.

4. The right of Martin Bauer to terminate the contract for work performance in accordance with the statutory provisions shall remain unaffected.

#### **§ 7 Receiving inspections, transfer of ownership and retention of title**

1. Martin Bauer will check immediately after receipt of the Services whether they correspond to the ordered quantity and type, whether there are any visible transport damages or visible defects; in order to fulfill the obligation to inspect under commercial law, it shall be sufficient to inspect the delivered goods and examine them on a random basis as well as to examine the documents to be submitted by the Contractor. Unless agreed otherwise, Martin Bauer is not obliged to perform its own laboratory tests.

2. A defect shall be deemed to exist in particular if the Services do not comply with the agreed specification, the limit values, the guidelines of the raw material base specifications or the raw material specifications together with the respective appendices or otherwise do not comply with the official and statutory regulations and the recognized state of the art.

3. If Martin Bauer discovers a defect during the aforementioned inspections or later, it shall be entitled to give notice of defects for the entire delivery from which the random samples were taken.

4. Complaints may be made within one month of delivery or performance of the Service or, if the defects are only found during processing or use, of their discovery.

5. Martin Bauer shall not be responsible for any further checks and notifications vis-à-vis the Contractor other than those specified above.

6. Ownership of the deliveries and services shall pass to Martin Bauer upon handover or acceptance. Retentions of title by the Contractor shall apply only to the extent that they relate to Martin Bauer's payment obligations for the respective goods to which the

Contractor retains title. Extended or prolonged retention of title cannot be agreed with effect against Martin Bauer.

7. Martin Bauer retains the right of ownership to External Supplies provided (cf. § 2.4.) ("Reserved Goods"). If Reserved Goods are inseparably mixed or processed with other items or goods not belonging to Martin Bauer, Martin Bauer shall acquire co-ownership of the new item or good in the ratio of the value of the Reserved Goods (purchase price plus VAT) to the other mixed or processed items or goods at the time of mixing or processing. The Contractor shall safeguard free of charge Martin Bauer's sole ownership or co-ownership for Martin Bauer with the diligence of a prudent merchant.

#### **§ 8 Defects liability**

1. Martin Bauer shall be entitled to the statutory claims for defects of the Services to the fullest extent; in any event, Martin Bauer shall be entitled to demand from the Contractor, at its option, remedy of the defect or delivery of a defect-free Service; this shall also apply to Services for which the inspection was limited to random samples. The option is to be chosen by Martin Bauer at its reasonable discretion. The right to claim damages, in particular damages in lieu of performance, is expressly reserved. Likewise reserved is Martin Bauer's right to refuse rectification and removal of defects by the Contractor if there is no longer any interest in the Contractor's performance, if the trust relationship is unacceptably disturbed or if other statutory conditions are fulfilled which entitle the Contractor to refuse rectification.

2. Martin Bauer shall also be entitled to remedy the defect itself at the expense of the Contractor if there is imminent danger or urgency, e.g. due to imminent decay of the goods.

3. The Contractor shall be liable for any consequential damage caused by defects, in particular due to further processing or use of defective Services, or for damage caused by defective Services to companies supplied by Martin Bauer or to end consumers.

4. Insofar as claims are asserted against Martin Bauer due to defects in the goods or Services for which Martin Bauer is not responsible, the Contractor shall indemnify Martin Bauer against all claims of third parties, including the costs of any recalls. This shall not apply if the Contractor proves that it is not responsible for the defect, unless the Contractor is liable under a guarantee.

5. Further or other statutory claims remain unaffected.

6. Unless the law provides for longer periods, claims for physical defects shall become statute-barred after three years, claims for defects of title after five years.

7. The limitation period shall commence for deliveries of goods upon receipt at the

named place of destination, for work performances or services with installation or assembly upon their acceptance by Martin Bauer.

#### **§ 9 Product liability, indemnification, liability insurance coverage**

1. The Contractor shall be liable for all damages for which it is responsible in accordance with the applicable laws.

2. Insofar as the Contractor is responsible for product damage, it shall be obliged to indemnify Martin Bauer upon first request against claims for damages by third parties insofar as the cause lies within its sphere of control and organization and it is itself liable in relation to third parties.

3. Within the scope of its liability for damage claims, the Contractor shall also be obliged to reimburse any expenses arising from or in connection with a product recall carried out by Martin Bauer. Martin Bauer shall inform the Contractor about the content and scope of the recall measures to be carried out – as far as possible and reasonable – and give the Contractor the opportunity to comment. Other statutory claims of Martin Bauer shall remain unaffected.

4. The Contractor undertakes to maintain appropriate public and product liability insurance necessary to cover all claims for damages by Martin Bauer or third parties in connection with the Services.

#### **§ 10 Confidentiality, Copyrights and Rights of Use, Data Protection**

1. The Contractor shall treat confidential all information it obtains from Martin Bauer or it develops for the performance of the Services unless Martin Bauer has given its prior consent in writing or in text form for a dissemination or publication. This obligation shall not apply to information that was or became publicly available, was already lawfully in the Contractor's possession, was developed by the Contractor independently from the contract, was received from a third party source that, to the knowledge of the Contractor, was not bound by a confidentiality obligation, or is required to be disclosed to comply with a judicial or official order or decree or the law.

2. Martin Bauer retains the copyright to all documents supplied by Martin Bauer (specifications, certificates of analysis, batch certificates, expert reports etc.). These documents may only be used for the purposes defined in the contract. Any use, even in a modified form, for other purposes, including, but not limited to, transfer to third parties, publication or use for promotional purposes etc. requires Martin Bauer's express consent in writing or in text form.

3. Contractor grants Martin Bauer the non-exclusive, transferable, worldwide and perpetual right to (a) use, incorporate into other



goods or services, and distribute the Services, including the related documentation; (b) sublicense the right of use to affiliated companies within the meaning of § 15 of the German Stock Corporation Act (Aktiengesetz – AktG) (hereinafter referred to as “Affiliated Companies”), to commissioned third parties, to distributors and to end customers; (c) license Affiliated Companies and other distributors the right to grant end customers the right to use. The Contractor grants Martin Bauer exclusive, transferable, worldwide and perpetual property rights to goods or Services including the associated documentation produced exclusively for Martin Bauer.

4. The Contractor will treat in confidence all personal data that it receives and in accordance with the applicable statutory regulations on data protection. These data will be processed, used and stored for the sole purpose of performing the contract and responding to inquiries in connection with the contract and will be immediately deleted upon justified request of the person concerned.

#### **§ 11 Specific rights of withdrawal and termination**

1. In addition to the statutory rights of withdrawal, Martin Bauer shall be entitled to withdraw from or terminate the contract in whole or in part if (a) the Contractor is in default with a delivery or Service and this default continues for more than two weeks after receipt of the reminder, despite a reminder being sent or (b) Martin Bauer can no longer be reasonably expected to adhere to the contract for any other reason relating to the Contractor, taking into account the

circumstances of the individual case and the interests of both the Contractor and Martin Bauer, in particular if a significant deterioration in the financial circumstances of the Contractor occurs or threatens to occur and the fulfillment of a delivery and performance obligation towards Martin Bauer is jeopardized as a result.

2. Martin Bauer shall also be entitled to terminate the contract if insolvency proceedings or comparable proceedings have been applied for or instituted against the assets of the Contractor.

3. In the event of termination by Martin Bauer, it may make use of the existing equipment for the continuation of the Services or of the Services already provided against an adequate remuneration.

#### **§ 12 Code of Conduct for Suppliers**

1. The Contractor undertakes to comply with the requirements set out in the Supplier Code of Conduct of Martin Bauer Group which forms the basis for any supply relationship Martin Bauer has with contractors and suppliers. The current Supplier Code of Conduct can be downloaded from the Internet at: [https://www.martin-bauer-group.com/wp-content/uploads/2019/08/Supplier-Code-of-Conduct\\_englisch\\_ohne\\_Unterschriftenfeld-2019-08-13.pdf](https://www.martin-bauer-group.com/wp-content/uploads/2019/08/Supplier-Code-of-Conduct_englisch_ohne_Unterschriftenfeld-2019-08-13.pdf)

2. If the Contractor culpably violates the obligations under this § 12, Martin Bauer shall be entitled to withdraw from the contract or to terminate the contract without prejudice to any further claims. If the remedy of the breach of duty is possible, this right may only be exercised after the futile expiry of a reasonable period of time for the remedy of the breach of duty.

#### **§ 13 Applicable law, legal venue**

1. German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

2. The sole legal venue for all disputes arising out of or in connection with the contract is the competent court for Martin Bauer’s registered office. However, Martin Bauer is entitled to bring a lawsuit at the competent court for the place of business of the Customer.