

# General Terms and Conditions of Purchasing for Deliveries and Services

of Mitsubishi HiTec Paper Europe GmbH, Niedernholz 23, 33699 Bielefeld, Germany

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## § 1 Placing of Orders

- (1) The following GENERAL TERMS AND CONDITIONS OF PURCHASING apply for the principle's order on the reverse side of this page for the contractor's products and/or services.
- (2) Contractor conditions that deviate from these conditions apply only if and insofar as the principle recognizes them in writing.
- (3) Orders and agreements are binding only if the principle has made them in writing on its own order forms and the contractor has confirmed them within a period of 15 workdays using the enclosed "Order Confirmation" form. Changes in the order must be made in the same manner. The contractor is bound to the order only if it receives the order confirmation within this 15-day period.

## § 2 Scope of Deliveries and Services

- (1) For delivered objects whose handling is not generally known, the contractor must send the principle mounting or operating instructions without the principle having to request these documents, along with a specification as to which order made by the principle these documents belong. If the contractor does not send these documents, it is liable for any defects arising from improper use.
- (2) Delivery should include any necessary documents concerning the declaration of suitability or type approval (e.g. according to §19g WHG (Wasserhaushaltsgesetz = German Water Resources Act), a confirmation provided by the principle's employers' liability insurance association regarding the safety inspection performed (VBG 1 (regulations of the employers' liability insurance associations) from 01-Apr-1977 in the current version), as well as the necessary documents and declarations in accordance with Machinery Directive 89/392/EEC, in addition to amendment directives, the Gerätesicherheitsgesetz (Germany Equipment Safety Act), and the ordinances based on this law.
- (3) If plants or equipment contain operating adjuvants or materials, only materials released by the principle may be used.
- (4) While executing the order, the contractor should observe and adhere to our "Safety Regulations for Third-Party Contractors," the "Implementing Provisions for Electrical and Measuring and Control Equipment," as well as other processing regulations.

## § 3 Involvement of Third Parties

- (1) If the contractor wishes to pass on the entire order to a third party, it must obtain the principle's permission. If the contractor does not do so, the principle may rescind the contract completely or in part.
- (2) If the principle makes orders in the name of and on the account of a third party, this third party also has rights and obligations resulting from the contract. The principle, however, may assert the contractual claims of the third party against the contractor.

#### § 4 Delivery Dates, Deadlines, Periods of Completion

(1) If the contractor cannot observe a delivery date stipulated as binding, it must obtain the principle's decision as to whether the processing of the order should continue. The contractor is obliged to make all suitable and reasonable measures including work at night and on Sundays and holidays without additional remuneration to avoid missing deadlines. If the contractor is obviously not able to meet deadlines, the principle is authorized to contract third parties to perform the contractual services so that the deadlines can be met. In this case, the contractor is responsible for any additional expenses. The principle reserves the right to assert additional damage claims.

(2) If the contractor misses deadlines, the principle may rescind the contract completely or in part or demand compensation instead of the service in whole or in part after sending a reminder and after an appropriate contractual grace period has passed in vain.

(3) The contractor must immediately inform the principle in writing of pending noteworthy operational disturbances, strikes, or other acts of nature beyond control or of the occurrence of such disturbances.

(4) In case of any acts of nature beyond control, namely in case of strikes or lockouts in the principle's production facilities, the principle may rescind the contract completely or in part or demand a postponement of the delivery or service until a later date or period which the principle will determine. In case of construction performances, the risk remains with the contractor contrary to VOB regulations (Verdingungsverordnung für die Vergabe von Bauleistungen = German contracting rules for the award of construction performance contracts).

#### § 5 Official Inspection

If an official inspection is planned or agreed upon, it will be performed, insofar as possible, at the contractor's company under its responsibility and at its expense. The contractor remains liable for defects that were not recognized during this official inspection.

#### § 6 Passing of Risk

Insofar as nothing else has been stipulated, risk is passed to the principle with the acceptance of the delivery or service at the place of use.

#### § 7 Delivery Note, Dispatch Note

The shipping of delivery items by the contractor to the principle must be announced on time in such a way that the principle receives the information regarding the piece numbers, dimensions, and weights before the shipment arrives. As long as the principle has not received the dispatch note, it is authorized to invoice the contractor for any resulting wagon demurrage charges, fees, and costs. Any necessary warehousing will be carried out at the expense and risk of the contractor. Invoices issued by the contractor are not considered to be dispatch notes.

#### § 8 Shipping, Freight

(1) The delivery must be shipped to the "Shipping Address" named in the order including the principle's order data on the packaging, bill of lading, package addresses, dispatch note, invoices, and adhesive labels.

(2) The principle will store shipments having an incorrect bill of lading address solely at the contractor's risk and expense until the contractor corrects this situation.

(3) The contractor must pay the freight insofar as nothing else has been stipulated. The contractor is responsible for the declaration of the goods category groups in the carriage documents to obtain the most affordable tariff rates.

### **§ 9 Packaging**

(1) The principle reserves the right to return the packaging at the cost of the contractor if no other agreements have been made.

(2) If the principle reuses the packaging or sends it off for materials recycling according to the Verpackungsverordnung (German Packaging Ordinance) outside of the public waste disposal system, the contractor must reimburse the principle for any necessary costs incurred.

### **§ 10 Insurance Costs**

The contractor will assume the costs of transport insurance and any other insurance that may become necessary insofar as nothing else has been stipulated in writing.

### **§ 11 Notice of Defects**

The principle must notify the contractor of obvious defects, regardless of type, and the delivery of goods that are obviously not those ordered within five days of the acceptance of the goods; it must notify the contractor of non-obvious defects, regardless of type, and the delivery of goods that are not obviously not those ordered within 10 days after the defect has been discovered in operation or after installation.

### **§ 12 Warranty**

The contractor assumes the warranty for its deliveries according to legal regulations insofar as nothing else has been stipulated in writing. For the use of perfect materials and the proper execution, function, and operational safety of the services, the contractor assumes the risk for 8,000 operating hours, but up to a maximum duration of two years starting from commissioning and a duration of five years for construction performances insofar as nothing else has been stipulated separately. Insofar as considerable defects must be eliminated during the warranty period, the warranty period begins anew after servicing.

The contractor's liability to pay damage includes the costs for disassembly and installation and the transport of the damaged parts and replacement parts. If the contractor does not meet its warranty obligations within an appropriate period of time, the principle is authorized to have the defects and damage eliminated by a third party at the contractor's cost. Any payments of the purchase price made before the defects were discovered do not in any way represent an acknowledgement that the deliveries and services are free of defects.

### **§ 13 Regulations Regarding Work Safety, Accident Prevention and Environmental Protection**

The contractor guarantees that the items to be delivered and services to be rendered correspond to the principle's applicable regulations regarding work safety, accident prevention, and environmental protection. For the structural composition (construction and equipment) of technical equipment (plants and machines), the contractor must observe the laws, directives, and regulations applying within the principle's scope of responsibility.

In particular, the contractor must observe laws regarding technical equipment, machine protection law, workplace ordinance, workplace directives, ordinance regarding hazardous materials, § 120 a of the Gewerbeordnung (German Trade, Commerce and Industry Regulation Act), the regulations of the respective state construction ordinance, fire protection, the trade supervisory centre, the employers' liability insurance association, and the recognized technical regulations (DIN standards (Deutsches Institut für Normung = German Standards Association), VDE regulations (Verband Deutscher Elektrotechniker = Association of German Electrical Engineers), VDI directives (Verein Deutscher

Ingenieure = Association of German Engineers), and TÜV regulations (Technischer Überwachungsverein = Technical Inspection Authority). The delivery must correspond to the respective current, practically proven technical regulations involving proven industrial science findings. In addition, the contractor is obliged to deliver plants or plant parts according to the provisions of the third and/or ninth ordinance of the Gerätesicherheitsgesetz (GSG = German Equipment Safety Act) and any other GSG ordinances, as well as any EU directives or applicable, harmonized European standards. In particular, the contractor must deliver plant or plant parts having the CE symbol.

If relevant, the plant must correspond to the current version of VBG 121 (Noise), especially in regard to the noise level of technical equipment (TA-Lärm (German noise pollution prevention regulation). The A-weighted mean sound pressure level must fall under 80 dB(A) at every test point at a measuring distance of 1m. A test report according to DIN 45635 on this topic must be included in delivery. Due to the observance of the work protection regulations, the contractor must consult with the respective employers' liability insurance association and the principle's safety engineer before executing the order. The work safety regulations must be observed. Any accident prevention equipment and structural work required later are included in the scope of delivery.

If construction performances are to be rendered within the scope of the order, the contractor must observe the guidelines of the Baustellenverordnung (BaustellV = German Construction Site Ordinance). In consultation with the principle, the contractor will provide a construction site coordinator and make a safety and health protection plan, if necessary.

More extensive requirements from work safety, accident prevention, and environmental protection regulations resulting from the implementation of EU directives into national law must also be observed.

#### **§ 14 Infringement of Patents and Trademark Rights**

(1) The contractor is responsible for making sure that the principle does not infringe upon the trademark rights and patents of third parties through the purchase and use of the deliveries and services insofar as these were not manufactured on the basis of drawings provided by the principle.

(2) The contractor is liable for all damages and all court and out-of-court costs incurred by the principle in connection with the infringement of the trademark rights and patents of third parties.

(3) The contractor is obliged to exempt the principle from the claims of third parties asserted due to the infringement of the aforementioned rights.

(4) After a legally binding judgement or determination that a trademark or patent infringement exists due to an out-of-court settlement, the principle is authorized to obtain the authorization for the use of the deliveries or services provided by the contractor from the holder of the trademark or patent at the expense of the contractor.

#### **§ 15 Liability**

(1) In regard to the contractor's liability and obligation to make compensation for damages, the legal provisions apply insofar as nothing else has been stipulated in writing.

(2) The principle is not liable for the property of the contractor, including the contractor's means of transport that get lost, damaged, or destroyed on the principle's premises. The same applies to the property of third parties that the contractor employs to fulfil its contractual obligations. The contractor is obliged to release the principle of any claims in this regard.

#### **§ 16 Release from Liability**

(1) Insofar as the contractor is responsible for damage to a product, it must release the principle from the damage claims of third parties inasmuch as the cause of the production damage has been placed in its realm of control and

organization. The contractor is obliged to reimburse the principle for the expenses incurred in connection with a recall action for the defective product. The principle will inform the contractor – as much as possible and reasonable – about the content and extent of the recall measures to be carried out and give the contractor an opportunity to respond. In addition, the contractor assumes all further court and out-of-court costs incurred by the principle due to the damaging event.

(2) The contractor is obliged to have product liability insurance for a lumpsum coverage of 5,112,919.00 for bodily injury and property damage.

(3) The contractor is obliged to have manufacturer's liability insurance for a lumpsum coverage of 2,556,459.00 for bodily injury and property damage. For craftsman's services, the contractor must show proof of processing damage coverage within the scope of § 4 Paragraph 1 Subparagraph 6 (b) of the General Liability Insurance Conditions with a compensation of at least 51,129.00 for each damage claim.

(4) Any damaged claims due to the principle going beyond these sums remain unaffected by these provisions.

### **§ 17 Invoicing**

(1) Invoices that do not completely reproduce the principle's order data will be considered to have been not issued until clarified by the contractor.

(2) Invoices must be directed to the postal address of the principle and may not be included in the delivery. Multiple copies (in quintuplicate for foreign deliveries) must be sent to the principle after the delivery of the goods or services rendered according to the principle's order form.

### **§ 18 Prices**

The stipulated prices – even standard or lump sum prices – are fixed prices. If these prices have not yet been expressly fixed in the offer and in the order confirmation, the contractor must inform the principle of these prices for confirmation before filling the order.

### **§ 19 Payment**

Unless otherwise agreed, the ordering party shall make payments within 45 calendar days of receipt of the invoice and inspection, which must be preceded by delivery or performance of the service. Payment shall be made at the later of

- a) the invoice date of a valid invoice received by the buyer
- b) the date of receipt of the conforming goods and/or services by the buyer

### **§ 20 Assignment of Claims**

Contractor claims against the principle may be assigned or pledged only with the express written permission of the principle. The principle is obliged to agree to an assignment if the assignee (new creditor) releases the principle in case of an accidental payment on the assignor (former creditor).

### **§ 21 Tools, Models, Drawings**

Tools, models, and drawings with which the principle provides the contractor for the execution of the order remain the property of the principle and must be returned when the order has been executed. The contractor is expressly obliged not to provide third parties with the working materials or documents provided by the principle, let third parties view

these working materials or documents, or deliver items manufactured according to these working materials or documents without the express permission of the principle.

### **§ 22 Publications**

Publications, photographs, and other publishable materials of any type, as well as the inclusion of the parts to be delivered in reference lists require the express, prior written permission of the principle.

### **§ 23 Retention of Title**

The contractor's retention of title is considered binding only if it has been expressly stipulated in writing.

### **§ 24 Place of Fulfilment and Jurisdiction**

The place of fulfilment for the deliveries and services provided by the contractor is the principle's factory or relevant installation sites.

The contract is subject to German law.

The place of jurisdiction for both parties is either the local municipal court at the location of the principle's headquarters or at the place of fulfilment.

### **§ 25 Severability Clause**

In the case that one of the provisions of these general terms and conditions of purchasing contract becomes invalid, the validity of the remainder of the provisions will not be affected. The same applies insofar as it should emerge that these General Terms and Conditions of Purchasing contain a loophole. The invalid or unfeasible provision or open loophole will be replaced by another appropriate provision, if legally possible, that comes closest to what the contracting parties desired or would have desired according to the sense and purpose of the contract insofar as they would have considered the item when closing the contract or at the later assumption of a provision.

**Mitsubishi HiTec Paper Europe GmbH**  
**Niedernholz 23 | 33699 Bielefeld | Germany**  
Tel. +49 521 2091-0 | Fax +49 521 2091-411  
info.mpe@mitsubishi-paper.com | www.mitsubishi-paper.com