

## proHeq GmbH General Purchasing Terms and Conditions

(Current as of May 2016)

### 1. Scope

- 1.1 The following terms and conditions for purchasing apply to any purchase of goods by the proHeq GmbH (hereafter referred to as the "**Buyer**" from the applicable goods supplier (hereafter referred to as the "**Supplier**"). They also apply to all future purchases of goods by the buyer from the supplier, even if these terms and conditions are not expressly mentioned. Individual contractual agreements between the buyer and the supplier take precedence over these terms and conditions.
- 1.2 The supplier's general terms and conditions which deviated from these terms and conditions for purchasing are not binding for the buyer. This also applies if the buyer does not expressly contradict them.
- 1.3 The buyer's following terms and conditions for purchasing also apply if the buyer unconditionally accepts the wares in awareness of supplier terms and conditions which are contradictory to or deviate from his conditions.

### 2. Conclusion of Contract

- 2.1 Every contract between the supplier and buyer must be made in writing. A tender by the supplier is only binding for the buyer if and to the extent the tender is confirmed in writing by the buyer.
- 2.2 The buyer is bound to an offer to the supplier over the conclusion of a contract regarding purchase of goods for a maximum of seven calendar days.

### 3. Supplier Obligations

- 3.1 If and to the extent that nothing else has expressly been agreed between the buyer and the supplier, the deliveries will be made "DDP" (Incoterms 2010) to Dornstadt.
- 3.2 The supplier will package the wares in a suitable manner to protect from transport damage and labelled pursuant to legal regulations and contractual agreements.
- 3.3 All deliveries are to contain a correct and complete packing slip which includes the following information:
  - Buyer name and address
  - Order number
  - Amount and exact article description
- 3.4 The agreed upon delivery deadline or time is binding for the supplier. Partial deliveries or early deliveries are not permitted without prior agreement of the buyer. The buyer is entitled to reject any incomplete or late delivery. The supplier is obligated to inform the buyer immediately in the event of a delivery delay.
- 3.5 If the supplier's delivery is delayed, he must pay the buyer a contractual penalty in the amount of 0.1% of his full compensation per working day, up to a maximum of 5% of the overall compensation. The contractual penalty will be calculated based on restitution to be paid to the buyer in the event of a supplier delay. In addition, legal claims are available to the buyer in the event of supplier delay.

### 4. Prices and Payments

- 4.1 The prices indicated in the tender or confirmed by the supplier are binding. The prices will include the costs of packaging, transport and shipping as well as VAT and customs duty.
- 4.2 All supplier bills must contain the buyer's purchase order number and all legally required information. The original bill must be sent directly to the buyer and not be included in the shipment.
- 4.3 Supplier invoices are due upon receipt of the goods, but at the earliest by the agreed upon deadline, if and to the extent

that the buyer receives a complete and correct original invoice.

- 4.4 The following payment deadlines apply to invoices when they are due pursuant to section 4.3:

- a) For suppliers headquartered within a European Union member state or within the European Economic Region, payment will occur (i) Net 14 with a 3% discount, or (ii) Net 30.
- b) For suppliers headquartered in a state outside of the European Union or European Economic Region, payment terms are Net 60.

### 5. Defect Notification Obligation

The buyer is obligated to immediately inspect goods upon receipt from the supplier for quality and count deficiencies to the extent this is feasible during the course of business. The notification of obvious defects is timely if received by the supplier within ten business days (at the buyer's location) from delivery. The notification of hidden defects is timely if received by the supplier within ten business days (at the buyer's location) of discovery.

### 6. Warranty

- 6.1 The supplier guarantees that the goods delivered are free of material and title deficiencies, are of the agreed upon composition, represent the current state of the art of technology and agreed upon quality requirements and that no third party rights impede the transfer of title.
- 6.2 The supplier does not violate any legal provision by fulfilling the contract with the buyer. The goods and their labelling fulfil the currently valid legal regulations of the Federal Republic of Germany, the European Union and the countries in which the goods are produced or for whose market the goods are intended, according to the buyer.
- 6.3 The buyer is entitled to exercise any of his legal rights against the supplier in the event of defects in the delivered goods.
- 6.4 If and to the extent that the legal regulations do not impose a longer deadline, the statute of limitations on defect claims is 24 months from the passing of the risk.

### 7. Producer Liability

- 7.1 If there is a claim against the buyer due to product defects of the goods delivered, the supplier must release the buyer from all liability for third party claims upon first request, to the extent that the cause is established in his domain and organization and he would be liable in external representation.
- 7.2 If the buyer must effect a recall due to damage pursuant to section 7.1, the supplier is obligated to recompense all necessary expenses which arise from or in connection with the buyer's recall. The buyer will inform the supplier accordingly on the content and scope of the recall and give him the opportunity to comment.
- 7.3 The supplier must take out and maintain product liability insurance for the term of the contract in a suitable coverage amount. The buyer can request proper proof of insurance from the supplier.

### 8. Violation of Third Party Property Rights

- 8.1 If and to the extent that the supplier is culpable in the violation of the property rights of a third party in the countries for which the goods are destined, to the knowledge of the buyer, he will release the buyer from any third party claims upon first request, including all necessary expenses which the buyer incurs in connection with the claims of third parties and the defence thereof.

- 8.2 The buyer is not entitled to enter into recognize the claims of third parties and/or enter into agreements with the third party without written permission of the supplier.

### 9. Confidentiality

The supplier is obligated to treat all of the information, files, documents and data received from the buyer confidentially, regardless of whether they were provided to the supplier orally, in text form, written form, electronically or in any other manner. The supplier will only forward confidential information to those employees or contractual partners who are also bound by confidentiality and only if required for the fulfilment of the supplier's contractual obligations.

### 10. Compliance

The supplier is obligated to refrain from committing or desist from actions which may lead to punishment for fraud, no confidence, insolvency crimes, competition crimes, assuring advantage or corruption for persons employed by the supplier or other third parties. If there is a violation of this, the buyer has a right of immediate withdrawal or cancellation of all existing transactions with the supplier, including discontinuation of all negotiations. The aforementioned unaffected, the supplier is obligated to adhere to all applicable laws and regulations.

### 11. Documentation

All tools and documentation, in particular buyer documents, plans and diagrams which are made available to the supplier remain the property of the buyer.

### 12. Release of Covenant

The supplier is not entitled to cede contractual claims to third parties without prior written agreement from the buyer. If the supplier cedes the claim without the buyer's agreement, the buyer can disengage the supplier at will.

### 13. Right to refuse service and right of retention

The supplier is only entitled to refuse service or to exercise a right of retention if and to the extent that there has been a legally asserted and undisputed claim against the buyer.

### 14. Final Provisions

- 14.1 All of the agreements concluded between the buyers and the suppliers are regulated in the current contract and these terms and conditions of purchase. The buyer and supplier have not concluded any oral ancillary agreements.
- 14.2 Changes, additions or ancillary agreements to these contractual agreements, including these terms and conditions of purchase between the buyer and the supplier must be made in writing. This also applies to changes to this written form clause.
- 14.3 The risk is transferred to the buyer at the fulfilment site. The fulfilment site is the delivery site agreed upon between the buyer and the supplier.
- 14.4 The sole court of jurisdiction for all disputes between the supplier and the buyer arising from this contract is Pforzheim, if and to the extent that the supplier is a trader in the sense of the German Commercial Code (HGB).
- 14.5 The laws of the Federal Republic of Germany apply exclusively, to the exclusion of the provisions of the United Nations Convention on Contract for the International Sale of Goods, CISG).