

**Standard Terms and Conditions for the Purchase of Goods of
AS-Etikettendrucksysteme GmbH, Gutenbergstraße 36, 72555 Metzingen**

I. Scope of these Terms and Conditions

- (a) These Terms and Conditions for the Purchase of Goods (hereinafter: the Purchase Conditions) shall apply to all orders made by AS-Etikettendrucksysteme GmbH (herein after: AS). The latest version in force at the time when the respective order is made shall apply to all future purchases by AS from Supplier without AS having the duty to refer to these Purchase Conditions in each particular case. These Purchase Conditions shall apply to the exclusion of any other terms and conditions of the Supplier. Any conflicting conditions used by Supplier are hereby expressly rejected. Furthermore, Supplier's execution of the order of AS shall be deemed as acceptance of these Purchase Conditions. Modifications of and amendments to these Purchase Conditions shall only become binding upon AS's express written confirmation at the time the contract is concluded. This formal requirement shall apply in any circumstance, even if AS accepts delivery without expressly rejecting any terms and conditions of the Supplier. Such modifications or amendments as well as supplementary agreements shall only apply to the contract they have been expressly agreed on by AS.
- (b) At the moment the contract is concluded there are no oral agreements. Terms and conditions being individually negotiated between AS and the Supplier shall prevail in case they have been agreed on after the conclusion of the contract. The written confirmation of AS or the contract (if any) shall be decisive on the content of such individually negotiated terms and conditions.

- (c) These Purchase Conditions shall only apply vis-à-vis merchants in accordance with Sec. 14 BGB (German Act on Civil Law), governmental entities or special governmental estates within the meaning of Sec. 310 (I) BGB.

II. Conclusion of the Contract, Modification of the Goods

- (a) AS's order constitutes an offer to conclude a contract with the Supplier. The contract is deemed to be concluded at the time the Supplier expressly accepts AS's offer or partly or completely effects delivery.
- (b) Acceptance of the order of AS shall be confirmed by Supplier without delay but in any case not later than within five working days upon receipt of the order. Any acceptance effected by Supplier after the expiry of this delay or in case the acceptance of Supplier does not correspond to the offer of AS, such acceptance is deemed to be a new offer made by the Supplier to AS. The Supplier has to expressly refer to such deviations of the offer. AS is free to accept such new offers of Supplier.
- (c) AS shall be entitled to demand modifications regarding the construction or design of the goods that may be reasonably expected from the Supplier, taking into due consideration increases and cost savings as well as the date of delivery.

III. Assignment, Subcontractors

- (a) The Supplier shall not without prior written consent of AS assign any of its rights or transfer any of its obligations under the contract or any parts thereof.
- (b) The Supplier shall not without AS's prior written consent assign subcontractors. Such consent will only be denied on reasonable cause.

IV. Prices, Terms of Payment, Delay in Payment of AS

- (a) All prices are fixed and shall be binding for the whole period of performance of the contract. Unless otherwise agreed, the price shall include the statutory value added tax, all deliveries of goods and services of Supplier (e.g. assembly or installation) as well as all related costs (e.g. costs for packing, loading and transport, insurances). On request of AS the Supplier has to take back the packaging material.
- (b) AS rejects all terms in contracts or standard terms and conditions allowing modifications or increases of prices.
- (c) Unless otherwise agreed AS will effect payment within 30 days, but the payment being only due upon the receipt of the goods (inclusive receipt of documents and acceptance – if any - of the goods and services) and the receipt of the complete or completed invoice. In case AS effects payment within 14 days Supplier grants a discount of 3 % on the invoiced net amount. This delay starts running on the receipt of the complete or completed invoice, but not before AS has received the goods or in case of services not before AS has accepted such services and in any case not before the receipt of all documentation and certificates of inspection. AS is entitled to prompt payment discounts on payments deferred in case AS received non-correct shipping documents or incomplete invoices.
- (d) AS shall not be obliged to pay any interest from due date. All statutory claims on interest following from late payment or default in payment shall remain unaffected. Higher interest rates as the interest rates provided for by law are expressly rejected. Any claims of the Supplier following from late payment or default in payment require the fulfilment of all conditions provided for by law. In any case such claims require a reminder of Supplier.
- (e) Invoices are to be sent to the post address of AS. The invoice must state: order number, order line item number for each items, quantity of packages, marks, numbers, gross and net weights, destination and dispatch route. Failure to quote the purchase order number and purchase order line item can result in

the return of the invoice and delay in payment for which AS will not be liable and therefore all rights of Supplier following from late payment or default in payment will be excluded.

V. Set-off of Payments and Right of Retention

- (a) AS expressly rejects any limitation of the right of retention or the right to set-off provided by law. In case of delivery of defective goods or services or uncompleted delivery of goods and services AS is entitled to invoke a right of retention for the full amount of the price.
- (b) Any set-off of the Suppliers claims against claims of AS and any right of retention of Supplier shall not be allowed, unless such claims of the Supplier are undisputed or subject of a final and conclusive judgement of a competent court.

VI. Delivery, Transport, Insurance and Default of Delivery of Supplier

- (a) The delivery dates and delivery periods mentioned in the order of AS are binding.
- (b) Supplier shall notify AS immediately in writing as soon as Supplier anticipates difficulties - resulting from whatsoever reasons - that may prevent Supplier from complying with the agreed delivery period. Such notification shall not release the Supplier from complying with its obligations under this contract.
- (c) No concession with respect to delays in delivery, dispatch, completion or performance shall be construed as a waiver of any of the rights and remedies of AS. No acceptance of goods delivered or services performed after delivery date shall be construed as waiver of any of the rights and remedies of AS.
- (d) Deliveries made in advance of the delivery dates and delivery periods are not allowed. In case AS, nevertheless, accepts such deliveries made in advance, AS

shall be entitled to defer payment until payment would have been due if such delivery had not been made in advance.

- (e) AS accepts no responsibility or obligation to pay for goods delivered or services performed in excess of the order and any such excess goods shall remain at the Supplier's risk, provided that AS notifies Supplier of this defect in accordance with § 377 HGB (German Act on Commercial Law).
- (f) The Supplier is obliged to arrange at its own cost for transportation insurance of the goods covering the whole risk of transportation.
- (g) AS reserves all rights provided by law in case of default in delivery. In case of default in delivery, AS is further entitled to liquidated damages for delay amounting to 0,5 % of the value of the order for each full week of delay; but always provided that the liquidated damages shall not be over and above 5 % of the net value of the order. The liquidated damages payable as aforesaid shall be set-off against further monetary claims. AS is entitled to claim such liquidated damages in addition to the claims for fulfilment of the contract as a minimum sum in relation to the damage the Supplier has to pay according to the legal requirements for such damage. Further statutory rights (in particular, withdrawal from the contract or higher damages) shall remain unaffected. In case AS accepts the late delivery, AS has to claim for the liquidated damages at the latest at the time AS effects the last payment.

VII. Delivery and Passing of Risk

- (a) The goods are to be delivered to the address designated in the order – delivery free domicile. In case there is no place of delivery designated in the order or stipulated otherwise, the goods shall be delivered to our place of business in Metzingen.
- (b) The risk of accidental loss or deterioration of the goods shall only pass to AS at the moment AS has acknowledged the receipt of the goods by a duly author-

ized person. In case of partial deliveries the risk only passes regarding the respective partial delivery.

VIII. Industrial Property Rights of the Goods

- (a) Supplier shall indemnify AS against any liability arising from any infringement of industrial property rights (i.e. trade marks, patents, patent pending, utility models and designs, copyright and etc.) following from the use of the goods and services in accordance with the contract on AS's first demand provided that the Supplier acted negligently or with intent. Supplier shall reimburse AS for all damages and expenses reasonably incurred by AS because AS is held liable by a third party.
- (b) AS shall only be obliged to defensive measures against any actions on the basis on the infringement of any rights and described in 8.a of these Purchase Conditions as soon as the Supplier has indemnified AS with regards to all costs that might arise from such defensive measures. AS is not entitled to conclude any agreements especially amicable settlements without consent of the Supplier.
- (c) AS and the Supplier shall promptly notify each other of any such claims or proceedings.
- (d) The statutory limitation relating to defects in title lapses 3 years after delivery of the goods or the completion of services, notwithstanding a longer period following from § 438 Abs. 1 Nr. 1 BGB and § 634 a BGB (German Act on Civil Law).

IX. Property of AS, Means of Production or Tools

- (a) AS retains the title in all means of productions or tools given to Supplier by AS (hereinafter: means of production of AS), such as materials or parts, tools, moulds, samples, models, designs, drawings, patents, templates or other specifications, plans, drawings or data or all comparable documents and objects.

Furthermore, AS retains all its industrial property rights such as rights following from copyright, patent, trademarks, patent pending utility models and designs in respect to the means of production of AS. All means of production of AS have to be returned in good order and condition to AS on request or after the delivery of the goods. All means of productions of AS may not be copied, disclosed to third parties or be used for any other purpose than the manufacturing of the goods as provided in the contract.

- (b) The processing of materials and the assembly of parts is exclusively effected for AS. AS shall become co-owner regarding any new product manufactured by using AS's materials and parts to the extent of the value of AS' materials and parts in proportion to the value of the new product.
- (c) The parties agree that AS shall have full legal and beneficial title to all means of production that will be manufactured by Supplier or one of Suppliers contractors (means of production manufactured for AS) to the extent AS has agreed to reimburse the costs associated therewith. All means of production manufactured for AS have to be returned in good order and condition on request or after the manufacturing of the goods. All means of production manufactured for AS may not be copied, disclosed to third parties or be used for any other purpose than the manufacturing of the goods according to the contract. AS shall have all industrial property rights such as rights following from copyright, patent, patent pending, trademark, utility models and designs unless otherwise agreed with Supplier.
- (d) Supplier shall arrange for necessary maintenance and inspection as well as all repair and restoration measures for the means of production of AS as well as for the means of production manufactured for AS. All these services shall be at the expense of the Supplier.
- (e) In case the means of productions of AS or the means of productions manufactured for AS are damaged or modified by the Supplier to such extent that the Supplier is prevented from using such means of production for the specific pur-

pose of the contract, then the Supplier shall reimburse the means of production which can no longer be used for the specific purpose of the contract, unless the Supplier is without fault in this regard. Furthermore, in such case, AS shall be entitled to set off its claim against the Supplier's claim for the purchase price.

- (f) The Supplier shall insure all means of production of AS and all means of production manufactured for AS at its own expense against all risks, in particular against fire and theft, and shall provide evidence of such insurance upon AS's request. The Supplier assigns all its claims against this insurance to AS. AS accepts this assignment.

X. Retention of Title of Supplier

The Supplier may retain the title in the goods delivered until full payment of the price has been effected. AS expressly rejects any further attempts of Supplier to agree on other clauses as the retention of the title, including but not limited to the so-called extended clause of reservation of title or extended reservation of title as well as any reservation of title in favour of a group of companies. In case of partial payments AS will become co-owner of the goods proportionate to the value of the payment to the value of the goods.

XI. Termination of the Contract

AS reserves all rights to terminate the contract provided for by law. AS does not agree with any limitation of such rights to terminate the contract.

XII. Notice of Defect

- (a) Unless otherwise agreed or provided by law any notice of defect shall be deemed to be given in due course relating to § 377 HGB (German Act on Commercial Law) in case a recognizable defect has been notified to Supplier within 5 working days after delivery of the goods. Any concealed defects will be

notified to the Supplier as soon as such defects have been discovered in due course of business.

- (b) In case of an existing business relationship and provided AS has inspected, tested and released the product, Supplier shall inform on its own initiative AS in writing of all changes of such product. Furthermore, Supplier shall in such cases be obliged to inspect the product with regard to all modifications and amendments that might arise from the modifications of production conditions at its place of business, including but not limited to modifications of means of production, machines or the introduction of new production processes and to inform AS of such modifications or amendments in writing. In case Supplier fails to give such information in the above mentioned cases, § 377 HGB (German Act on Commercial Law) shall not apply to the extent the modified or amended condition of the product causes a defect of the product.
- (c) AS expressly rejects any terms and conditions setting out any requirements as to the form in which or the delay within which a notice of defects has to be given.

XIII. Defects of the Goods and Services, Warranty

- (a) AS reserves the right to all claims provided for by law in case the delivered goods or services show a defect (including but not limited to the case the Supplier effects delivery of a wrong good or service, a failure as to the quantity or quality of the goods or services, defect in installation or documentation relating to use or installation) unless otherwise stipulated hereinafter. Clause 8 of these Purchase Conditions applies on defects in title.
- (b) If any such defect is not repaired or the relevant goods replaced - at AS's option - within a reasonable delay set by AS, AS may repair, replace or reinstall the goods at the risk and expense of the Supplier. In this case AS is entitled to an advanced payment. In case the Supplier tried to remedy the defect twice or made one replacement delivery without the defect being eliminated or in case any further attempts to remedy the defect are unreasonable with regard to AS (i.e. because of urgency, danger to general plant safety, unreasonably high pending loss) AS does not have to set such reasonable delay; but AS has to inform the Supplier as soon as possible.
- (c) AS reserves all rights in connection with claims for damages relating to the delivery of defective goods or services. AS does not agree with any limitation of such claims, in particular but not limited to claims in tort, or limitations relating to the type of negligence or fault necessary for such claim or the scope of damages or the maximum sum of damages covered.
- (d) Notwithstanding AS's inspection of the incoming goods, the Supplier shall remain liable for goods manufactured or delivered by himself and shall be responsible for the faultless condition of these goods. The inspection of incoming goods shall in no way release the Supplier from its liability.
- (e) In case AS chooses repair or replacement delivery because of a defect of the goods or services the statutory limitation will start again at the moment of repair or replacement delivery, unless AS on the basis of the conduct of the Sup-

plier had to assume that the Supplier did not fulfil a duty to repair or replacement delivery but did only act on goodwill and without acknowledging a legal obligation.

- (f) Notwithstanding § 438 Abs. 1 BGB and § 634 a BGB (German Act on Civil Law) the statutory limitation relating to defects lapses 3 years after delivery of the goods or the completion of services in case the law does not provide for a longer period.
- (g) The Supplier's warranty includes all parts which Supplier sourced from its subcontractors. Supplier is not entitled to assign to AS any of Supplier's rights against its subcontractor in order to discharge Supplier's warranty and may not make its warranty dependent upon the fact that AS was not able to enforce any assigned rights against the subcontractor.

XIV. Liability and Insurance

- (a) The Supplier shall indemnify AS as provided for by law [including but not limited to indemnification because of delay, failure to fulfil contractual obligations, defects in goods or services, tort or failure to fulfil obligations following from pre-contractual relationships (§ 311 BGB; German Act on Civil Law)] against all and any damages, expenses or collateral damages including but not limited to damages following from a hindrance in production or production downtimes. Supplier is liable as provided for by law in case it employed executive personnel or other persons in performing its obligations under the contract and Supplier is liable as provided for by law for its legal representatives and vicarious agents. AS rejects any limitation as to the amount of the damages.
- (b) In case AS is held liable on basis of any product liability law or due to the violation of official safety regulations or similar regulations according to domestic or foreign law, the Supplier shall reimburse AS fo all damages and expenses incurred by AS if and to the extent the Supplier's supply or conduct was defec-

tive or irregular, (negligently or with intent) and caused such damages and expenses.

- (c) The Supplier shall insure against its legal liability arising under paragraph XIV. (a) of these Purchase Conditions above. Such insurance shall extend to indemnify AS and be effected with insurers and on terms approved by AS in the minimum sum of € 25,000 unless otherwise stated in the Order or stipulated in writing by AS prior to the Contract being entered into. Satisfactory evidence of such insurance and payment of the current premium shall be shown to AS upon request. The insurance effected by the Supplier in respect of its employees shall be for an unlimited amount.

XV. Trade Secrets

- (a) The Supplier is obliged to treat as a trade secret all orders of AS and all related information including but not limited to business and technical details that are not known to the public for a period of five years after the conclusion of the contract. The Supplier shall not without the previous written consent of AS advertise or - except for the performance of the contract - make known to third parties the fact that the Supplier supplies goods or services to AS.
- (b) Goods manufactured according to documentation, such as drawings, models or confidential information etc. or with tools of AS or produced according to information provided by AS must neither be used by Supplier himself, nor be offered or delivered to any third party.
- (c) Parts developed or modified in co-operation with the Supplier may be delivered to a third party only with the prior written consent of AS.

XVI. Place of Performance, Applicable Law, Place of Jurisdiction

- (a) Unless otherwise agreed upon, the place of performance for payment and for delivery is our business seat in Metzingen.

- (b) It is agreed that the law in force in the Federal Republic of Germany shall exclusively apply to these Purchase Conditions and to all legal relations between the Supplier and AS as would be the case between two contracting parties in Germany excluding the application of the United Nation's Convention on the International Sale of Goods (CISG).

- (c) Exclusive jurisdiction and venue for all present and future claims in connection with or arising directly or indirectly out of the Contract, including claims from bills of exchange and cheques, shall be the seat of business of AS at Metzingen inasmuch as the Supplier is a general merchant, a body corporate or a public person. Notwithstanding the foregoing, AS is also entitled to take legal action at the principal domicile of the Supplier.