



**Bender GmbH**

**STANDARD PURCHASE ORDER TERMS & CONDITIONS**

**1. Definitions**

“**Buyer**” means the Bender GmbH.

“**Contract**” means these Standard Purchase Order Terms and Conditions.

“**Goods**” means the materials, articles or services (or any of them) which are the subject of an Order.

“**Order**” means an order for Goods placed by a Buyer to the Seller which is governed by the terms and conditions of the Contract.

“**Restricted Party**” means (i) any person, entity, government or agency located in or organised under the laws of, or under the control of any person, entity or agency located in or organised under the laws of any Sanctioned Country (as defined below) or (ii) any person, entity, government or agency listed on, or owned or controlled by a person listed on, any of the lists of specifically designated nationals or designated or sanctioned individuals or entities (or equivalent) issued by the governmental agencies of the United States, the European Union (and its member states) or the United Nations Security Council, each as amended, supplemented or substituted from time to time.

“**Sanctioned Country**” means Cuba, Iran, North Korea, Syria, Sudan or any other country or territory subject to a general export, import, financial or investment embargo.

“**Seller**” means the vendor or supplier to whom an Order has been issued.

“**Specifications**” means the technical documents and information of the Goods prepared by Buyer.

**2. Acceptance of the Contract and the Order**

This Contract shall be incorporated into an Order and shall become binding once Seller has accepted Buyer’s order for Goods under the terms of an Order or shipment of the Goods, whichever occurs first. SELLER’S ACCEPTANCE IS LIMITED TO ACCEPTANCE OF THIS CONTRACT AND DOES NOT INCLUDE ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SELLER TO VARY THIS CONTRACT. THIS CONTRACT SHALL PREVAIL OVER ANY TERMS AND CONDITIONS IN ANY QUOTATION, CONFIRMATION OR ACKNOWLEDGEMENT

HERETOFORE OR HEREAFTER SENT BY SELLER. This applies even if Buyer does not reject such terms and conditions of Seller in the individual case.

### **3. Price, invoicing and regulations**

3.1 The prices are fixed for the duration of the Contract and include without limitation and subject to the Incoterms 2010, transportation, shipping, packaging material, packaging goods for transportation, labelling, storage, insurance, customs duties or all taxes to the designated delivery point unless otherwise previously agreed in writing between the Parties. Notwithstanding the preceding, if Seller reduces its prices on Goods covered hereunder prior to the delivery of any part of an Order, Buyer will benefit from such reduction on any undelivered portion of the Order. In the event of an imposition of any tax on the Goods hereby furnished which must be borne by Buyer, Seller agrees to remit to Buyer any refund which Seller might receive by reason of the unwarranted collection of such tax.

3.2 Any invoice will be made in duplicate and shall indicate the full name of each Party, the Order numbers, the packing slip references, the shipping address and a detailed description of the Goods.

3.3 Unless stipulated otherwise in an Order and subject to local laws and regulations, invoices will be settled within ninety (90) days of the date of the invoice.

3.4 Any excess transportation costs resulting from any deviation of the terms set forth herein shall be borne by Seller.

### **4. Delivery**

4.1 Time of delivery is of the essence in this Contract. If Seller fails to make shipment as per time specified in Order, or if no time is specified, within five (5) calendar days of receipt of shipping Order, Buyer may, without any liability and without prejudice to any other rights or remedies it may have:

- refuse any Goods and cancel an Order, and any advance payments shall be returned to Buyer within five (5) calendar days;
- buy substitute Goods elsewhere and recover from Seller any addition expenditure reasonably incurred.

4.2 Buyer may cancel any portion of an Order, which remains unfulfilled after the beginning of any bankruptcy proceedings by or against Seller or after the appointment of an assignee for the benefit of Seller's creditors, or of a receiver.

4.3 Buyer's partial payments to obtain discounts, payment for, or acceptance of all or any part of the Order shall not bind Buyer to accept future shipments nor deprive it of the right to cancel or to return at Seller's expense all or any portion of the Goods because of failure to conform to Order, or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing costs and other consequential, incidental and special damages incurred by Buyer. Such rights shall be in addition to any other remedies provided by law.

### **5. Buyer's Right**

5.1 Buyer's signature of receipt, inspection, acceptance, testing, payment for or use of the Goods furnished under an Order shall not affect Seller's obligations under the warranties contained in this Contract which shall survive Buyer's inspection, acceptance and/ or use.

5.2 Buyer reserves the right to inspect all Goods supplied by Seller and to accept or reject any or all Goods at any time which are in Buyer's opinion, defective or which do not conform to Specifications or the warranties set forth herein, or shipped contrary to shipping instructions. Buyer may return all rejected Goods at Seller's risk and expense, with all handling, incoming and outgoing

transportation charges for Seller's account. Unless otherwise specified in writing, Buyer's count and/or weight will be accepted as final. Goods returned are not to be replaced except on written instructions from Buyer. Failure to give notice of defects to Seller shall not constitute a waiver of breach of warranty or of any other condition.

5.3 Buyer reserves the right to modify the Specifications at any time. Seller shall advise Buyer of any cost changes resulting from the modified Specifications, and Buyer shall have the right to accept such cost changes or terminate the Order. Any cost reductions resulting from a change in Specifications shall be for the benefit of Buyer.

## **6. Obligations of the Seller**

6.1 Seller warrants that the Goods furnished under an Order will:

- comply in all respects with the Specifications and samples, performance criteria, requested by Buyer,
- be fit for the purpose intended for which Buyer intends to use the Goods,
- be merchantable, safe and appropriate for the purpose for which Goods of this kind are normally used,
- be free from any third party lien, claim, title or interest,
- comply with all applicable legislation, regulations in force of any country which is connected with the Order including but not limited to productions, manufacture, process, label, mark, shipment.

6.2 All warranties and conditions shall survive acceptance of the Goods. Buyer reserves the right to require Seller to replace at its sole costs and expenses within the shortest period possible any Goods not supplied in accordance with these warranties.

6.3 Seller warrants, for a period of thirty six (36) months as of the transfer of of risk hat all Goods furnished or installed pursuant to an Order will function satisfactorily even if either installed by Seller or properly installed by others, provided Goods are operated and maintained in accordance with normal operating procedures and Seller's instructions, if any.

6.4 Seller agrees to accept any changes requested by Buyer to the Specifications, drawings, designs, packaging, time and place of delivery, method of transportation under an Order. In such event, the Parties agree to modify the Order accordingly.

6.5 Seller warrants that all applicable provisions of the relevant local Labor law, as amended from time to time, and regulations and orders will be complied with and that no article shall be manufactured in violation of any Child Labor or Occupational Safety & Health Law or equivalent. Seller further warrants that it shall not engage in any unfair labor, wage or benefits practice or practices in violation of the laws of any country of manufacture of articles provided here under or involving unsanitary, unhealthy, and/or unsafe conditions, the employment of child, forced, indentured, involuntary, prison or uncompensated labor, the use of corporal punishment, discrimination based on race, gender, national origin or religious beliefs, or similar employment activities and conditions. For purposes of this provision, "child labor" means the use of children who are under the age of fifteen (15) years. Buyer may, upon notice, inspect Seller's plant and facilities at reasonable times to determine compliance with the warranties set forth herein. Seller shall comply with all applicable laws, rules and regulations pertaining to environmental practices in the performance of its obligations hereunder. Seller shall not engage in any practice, which is in violation of Customs laws or regulations, international agreements, or the laws of the country of manufacture.

6.6 Seller warrants that the Products supplied to Buyer under this Contract have not been sourced directly or indirectly from a Restricted Party.

6.7 Seller warrant that the prices for the Goods hereunder and all allowances made and services provided in connection therewith are not discriminatory and not in violation of any competition law (included but not limited to EU Competition laws and regulations, US Federal Trade

Commission Act or the US Robinson-Patman Act). Seller warrants that the prices for the Goods are complete and no less favorable than those currently extended to the Seller's other customers of similar account size for similar quantities of the same or similar Goods. If the Seller offers better prices for the Goods to other customers of similar account size during the term of an Order, the Seller will reduce the Buyer's prices accordingly.

## **7. Intellectual Property Rights and Improvement of Goods**

7.1 Seller warrants that it has full legal rights to all intellectual property provided hereunder, and agrees to defend and indemnify Buyer and hold it harmless from and against all liability, loss, damage and expense, including reasonable attorneys' fees, resulting from any actual or claimed trade-secret, trademark, patent or copyright infringements or other literary or artistic rights infringement affecting the Goods furnished hereunder, or any litigation based thereon, and such obligation shall survive acceptance of the Goods and payment therefore by Buyer. If an Order relates to procurement of, or work on, machinery or equipment differing in structure or mode of operation from any item previously made by Seller, Seller agrees that every invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice in filling this Order, or in the performance of any research, design, or development work relating to the subject matter of the Order and which was done at the request of Buyer, shall be transferred to Buyer and become the sole property of Buyer. Seller shall keep such inventions, improvements or discoveries in strictest confidence and shall neither use nor divulge any information relative thereto to anyone without Buyer's consent in writing.

7.2 Any designs, trade name, trademarks, tools, molds, dies, films, patterns, drawings, equipment or other such materials used in the Goods supplied by Buyer to Seller, or developed by Seller to produce the Goods provided hereunder, shall be or remain the exclusive property of Buyer. By accepting the Order, Seller expressly agrees it will keep such material in strictest confidence and will neither use nor disclose to others any information relative thereto without Buyer's consent in writing. On completion of the Order or earlier upon simple request of Buyer, all such materials shall be returned to Buyer.

## **8. Indemnification**

8.1 Acceptance of an Order shall constitute an agreement upon Seller's part to indemnify and hold Buyer, its successors, assigns and customers harmless from all liability, loss (including but not limited to any loss of profit, loss of business, loss of opportunity, loss of reputation, damage and expense, including reasonable counsel fees) incurred or sustained by Buyer, or its successors, assigns or customers by reason of the failure of Goods to conform to the Specifications or breach of the Seller's warranties and obligations set forth in this Contract. Such indemnity shall be in addition to any other remedies provided by law, and shall survive acceptance of the Goods and payment therefore by Buyer.

8.2 Seller agrees to indemnify and hold Buyer harmless and upon request defend Buyer from all loss, liability, damages, claims for damages, suits, recoveries, judgments or executions (including costs, expenses, and reasonable attorney's fees) which may be made, had, brought or recovered by reason of or on account of injury to the property of any person whomsoever, or to any person (including death resulting therefrom), including Seller and its employees, caused by, arising from, incident to, connected with or arising out of this Contract or any article provided hereunder.

## **9. Confidentiality**

Each party shall keep in confidence any and all information including but not limited to all non-public information provided by the other party, all Specifications or other documents prepared by either party in connection with an Order, the fact that Buyer has contracted to purchase Goods from Seller, and all other non-public information relating to an Order or this Contract ("Confidential Information"). Further, each party shall ensure that its employees and representatives are made aware of the present obligations to keep confidential said information. Without the disclosing party's

prior written consent, the receiving party shall not disclose or use any Confidential Information for any purpose other than performing an Order.

## **10. Termination**

10.1 Each party shall be entitled to terminate the Contract or an Order without prejudice to any other rights and without incurring any liability towards the other:

- with a written notice of fifteen (15) days if the other fails to fulfil its obligations and fails to remedy its default within ten (10) days of such notice;
- with a written notice having immediate effect if the other is in liquidation or receivership or any other similar legal event;

10.2 Buyer may terminate the Contract and/or an Order by full right with immediate effect, without compensation, without prejudice to the exercise of Buyer other rights and without liability with respect to Seller in the following cases:

- there is a change in the control of Seller's company,
- there is an acquisition of holdings of Seller by a third party,
- Seller's financial situation deteriorates to the point that the performance of its obligations may not be assured,
- there is an event of force majeure which delays the execution of an Order for more than thirty (30) days;
- in the event that Buyer has reason to believe that Seller has sourced Goods supplied to Buyer under this Contract from a Restricted Party, Buyer shall be entitled to withhold payment until such time as it has received confirmation to its satisfaction that no such conduct or activity has occurred or will occur and Buyer will not be liable for any claims, losses or damages whatsoever related to its decision to withhold payment. In the event that Buyer determines that Goods supplied to it under this Contract and an Order have been sourced directly or indirectly from a Restricted Party, Buyer may in its sole discretion terminate this Contract and/ or any Order forthwith.

## **11. Transfer of Risk and Title**

Title to the Goods and risk of loss shall pass to Buyer upon delivery free and clear of all charges, claims and liens of any nature to the designated delivery point and acceptance of the Goods. If a shipment is from a foreign port, Seller shall fully comply with the provision of the customs laws and taxes of the country of import in regard to valuation for duty, etc.

## **12. Force Majeure**

Neither Party shall be responsible for any delay or failure in performing any part of this Contract when it is caused by fire, flood, explosion, act of Gods, war, embargo, government requirement, civil or military authority or other similar causes (but not including strikes or other employees related work stoppages, delays or equipment failure or component shortages) or any unforeseeable and unavoidable event that is beyond its reasonable control (a "Force Majeure"), rendering Buyer unable to receive or Seller to deliver, or cessation of operation of Buyer's plant for which Order is destined, may, at the option of either party, render this Contract or an Order inoperative during the continuance thereof, provided that if any such cause continues for more than thirty (30) days, Buyer may, at its option, cancel this Contract or the affected Order with respect to the Goods undelivered upon written notice. It is agreed upon that the party affected by the Force Majeure shall promptly inform the other and shall take all reasonable and necessary steps to minimize the consequences of such an event.

## **13. Independent Contractor**

13.1 Seller is not an agent, a legal representative, a joint venture partner, an employee or a servant of the Buyer and is not empowered to act on Buyer's behalf in any manner.

13.2 Seller acknowledges that its employees, agents and subcontractors are performing services as independent contractors and not as Buyer's employees regardless of where they

perform services. Seller shall always remain responsible for the security of its employees, agents and subcontractors who must always respect the rules and policy of Buyer while on its site.

**14. Assignment**

Seller may not, without Buyer’s written consent, assign or transfer, voluntarily or by operation of law the Contract or any part of an Order, nor subcontract with any other party for the furnishing of Goods specified by an Order. Buyer may assign its rights and obligations hereunder, in whole or in part, to any party without the prior consent of Seller.

**15. Entire Agreement**

15.1 The Contract, any Order and any Specifications or directions attached hereto by Buyer, together with any written agreement between Buyer and Seller pursuant to which an Order is issued, contain the complete agreement between Buyer and Seller and no agreement or other understanding purporting to modify the terms and conditions hereof shall be binding upon Buyer unless otherwise agreed to by Buyer in writing subsequent to the date of the Order.

15.2 None of the terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Buyer to Seller. Each shipment received by Buyer from Seller shall be deemed to be only upon the terms and conditions contained in this Contract except as they may be added to, modified, superseded or otherwise altered by Buyer, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other form of Seller and notwithstanding Buyer’s act of accepting or paying for any shipment or similar act of Buyer.

**16. Severability**

If any condition or provision of this Contract is held by any court or other competent authority to be void, invalid or unenforceable in whole or in part, the other provisions of this Contract and the remainder of the affected provisions shall continue to be valid.

**17. Waivers and remedies**

Buyer’s failure to insist on the performance of any of these terms and conditions, nor exercise any of its rights or privilege, nor its waiver of any breach hereunder, under this Contract or under an Order shall be deemed to be a waiver of any of these terms and conditions or breaches by the Seller of an Oder where of the same or a similar type. The rights and remedies provided by these terms and provisions are cumulative and are not exclusive of any rights or remedies provided by law.

**18. Governing Law and Jurisdiction**

The Contract and the Order shall be interpreted and construed in accordance with the laws of Germany, without regard to its conflicts of laws. The rights and obligations of Buyer and Seller under this Contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. The Parties hereby agree to submit to the exclusive jurisdiction of the Courts of the city of [Mannheim].

**OPTIONAL**

**ACCEPTED**

**COMPANY NAME:** \_\_\_\_\_

**NAME OF AUTHORIZED SIGNATORY:** \_\_\_\_\_

**DESIGNATION:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**DATE OF ACCEPTANCE:** \_\_\_\_\_