

**General Terms and Conditions of Purchase**  
**regarding supplies and performances by Crespel & Deiters GmbH & Co. KG**  
**(hereinafter referred to as "C&D")**  
(version 9/2018)

**§ 1 General Provisions**

(1) The following General Terms and Conditions shall apply to supplies and performances of all kinds. The Supplier agrees to the exclusive application of these General Terms and Conditions of Purchase to the individual order as well as to any following business if he does not oppose to their application.

(2) The Supplier's general terms and conditions shall only apply if C&D has explicitly agreed to them in writing.

(3) These General Terms and Conditions of Purchase shall only apply to the business connections between entrepreneurs.

**§ 2 Order and Prices**

(1) The contract is concluded by C&D placing the order on the basis of a legally binding offer by the Supplier. The Supplier shall send an order confirmation to C&D after receipt of the order.

(2) If not agreed otherwise, prices are understood DDP place of delivery acc. Incoterms 2010, including packaging but without VAT. Prices stated in the order are binding.

**§ 3 Dates of Delivery and Performance**

(1) The agreed dates and times of delivery and performance are binding and are regarded as an essential contractual obligation of the Supplier. New dates of delivery/ performance can only be agreed in writing.

(2) In the event of a default in delivery/ performance C&D can claim its legal rights. Additionally C&D shall be entitled to claim liquidated damages in the amount of 0.5 per cent of the agreed total net price per each started week of the delay but only a maximum of 5 per cent of the total net price as liquidated damages. C&D is entitled to prove the existence of a higher damage and to claim such higher damage by taking into account the liquidated damages. The Supplier has the right to prove that no or considerably minor damage resulted from the default in delivery.

**§ 4 Delivery and Passing of Risk**

(1) The scope of the delivery/ performance is defined by the order. The deliveries have to contain the usual documents for the individual case, e.g. instructions for installation, use, maintenance, waste disposal etc. If not agreed otherwise, delivery is agreed DDP place of delivery acc. to Incoterms 2010.

(2) The risk of damage only passes to C&D by acceptance of the goods at their place of destination.

**§ 5 Invoice and Documentation**

(1) Subsequent to the delivery/ performance invoices shall be sent separately to the invoicing department of C&D Groner Allee 76, 49479 Ibbenbueren.

(2) Deliveries shall enclose bills of delivery and packing notes. These documents shall contain: number of the purchase order, amount and weight of total amount, gross-, net- and, if applicable, calculation weight, article description and, in case of partial delivery, remaining quantity.

**§ 6 Payment**

(1) Payment is only effected after acceptance of delivery/ performance as complete and free of defects as well as after receipt of invoice. C&D is granted a cash discount of 3 per cent for payments effected within 14 days. Payments within 30 days are effected net, without any discount.

(2) Assignments of claims by the Supplier to third parties require the written consent of C&D which shall not be withheld unreasonably. § 354a of the German Commercial Code (HGB) is not affected. In such a case payments are exclusively effected to the Supplier.

**§ 7 Guarantee/ Notice of Defects/ Warranty**

(1) The Supplier guarantees besides any warranties according to applicable law, that the delivery/ performance corresponds to the specification stated in C&D's order.

(2) With regard to defects apparent at the time of delivery the period for inspection and notice of defects (§ 377 sect. 1 HGB) is two weeks since receipt of the goods by C&D. If the detection of the defect either requires special inspection or testing or in the case of other hidden defects, the aforementioned period is two weeks since the detection of the defect. If in an individual case a longer period is adequate, such period shall apply.

(3) If the goods are defective the Supplier is granted the possibility of supplementary performance. In any case C&D does, however, have the right to choose between rectification of defect and additional delivery. Supplementary performance is, however, regarded as having failed after the first unsuccessful attempt.

(4) Irrespective of the legal cause the limitation period for C&D's claims and rights because of defective deliveries/ performances is three years since delivery. The aforesaid shall, however, not affect longer statutory limitation periods (especially acc. §§ 478, 479 BGB) as well as the provisions regarding the beginning, the suspension as well as the restart of the limitation periods.

**§ 8 Intellectual Property Rights**

The Supplier shall be liable for the delivery and its intended use by C&D not infringing any patents or other intellectual property rights of third parties. He shall indemnify C&D as well as their customers from all claims arising from the alleged infringement of such intellectual property rights. This indemnification shall, however, not apply if the Supplier has produced the

goods according to drawings, models or similar other descriptions or information by C&D and if he did not know and if, regarding the goods produced by him, he could not have known that such production infringes intellectual property rights.

### **§ 9 Product Liability, Indemnification, Insurance**

(1) Insofar as the Supplier is responsible for damage caused by his product, he is obliged to indemnify C & D against claims for damages by third parties on the first request insofar as the cause is set in his sphere of control and organization and he himself would be liable towards third parties.

(2) In this context, the Supplier is also obliged to reimburse any expenses in accordance with §§ 683, 670 BGB, which result from or in connection with a recall carried out by C&D, unless the expenses have to be borne by C&D acc. to §§ 830, 840 BGB in connection with §§ 426, 254 BGB. C & D will inform the Supplier - as far as possible and reasonable - about the content and extent of the recall measures to be carried out and give him the opportunity to comment.

(3) The contractor undertakes to maintain a product liability insurance with a lump sum coverage of € 10 million per personal injury / property damage. If C & D is entitled to further claims for damages, these remain unaffected.

### **§ 10 Ownership and Confidentiality**

(1) Models and drawings etc. that have been handed over to the Supplier for the preparation of the order and the manufacture of the ordered goods remain the property of C&D and shall be returned to C&D without explicit request when not needed anymore. Any other use which is not in direct connection with the order is forbidden.

(2) The Supplier is obliged to keep confidential any commercial and technical information of C&D that becomes known to him because of his business connection with C&D. This does not apply with regard to information that (i) is generally known or becomes generally known without any fault on the Supplier's part, (ii) has been handed over to him by a third party not bound by any confidentiality obligation, (iii) the Supplier has to disclose because of a judicial or administrative decision. Potential subcontractors have to be obliged accordingly. In case of breach of the confidentiality obligation, C&D is allowed to claim liquidated damages in the amount of 5 per cent of the order value. C&D is entitled to prove the existence of a higher damage and to assert such higher damage by taking into account the liquidated damages. The Supplier has the right to prove that no or a considerably minor damage resulted from the default in delivery.

### **§ 11 Force Majeure**

(1) Events of force majeure as well as unforeseeable and unavoidable export restrictions resp. restrictions on trade, strikes, lock outs or business disruption on the side of the contracting parties shall release them from their contractual obligations for the period and to the extent of the disturbance. The same applies if these events happen to the customers of C&D that were intended to receive the deliveries or to the Supplier's subcontractors, if these events were unforeseeable and unavoidable for the contracting parties and if the sale to other customers or the commissioning of other subcontractors is impossible or economically unreasonable.

(2) The contracting parties are obliged to inform each other accordingly and to adjust their obligations to the changed circumstances by taking into account the principles of good faith.

### **§ 12 Place of Performance, Jurisdiction, Applicable Law**

(1) Place of performance is the agreed place of delivery/ service.

(2) Exclusive place of jurisdiction with regard to all disputes arising from or in connection with the contractual relationship is Ibbenbueren.

(3) The legal relationship between the parties shall be governed by German law excluding the referring provisions of the Private International Law but including the United Nations Convention on Contracts for the International Sale of Goods (CISG).

### **§ 13 Severability**

If single provisions should be or become invalid, this shall not affect the validity of the remaining provisions as well as the validity of the contract.