

# TITAL – General Terms and Conditions of Purchasing 12/2009

## **1 Area of Application**

The following General Terms and Conditions of Purchasing (GTP) apply exclusively to all orders (deliveries and services) of the TITAL Group (TITAL Holding GmbH & Co. KG, TITAL Beteiligungsgesellschaft mbH, TITAL GmbH and other affiliated companies) registered in Germany (“TITAL”). General Terms and Conditions of the Supplier deviating from these GTP or from the law will not be recognized by TITAL, unless TITAL has explicitly agreed to these conditions in writing. Even when TITAL, being aware of these conflicting or deviating conditions of the Supplier, accept or pay any delivery of goods or services, these conditions will not become an integral part of this Agreement.

## **2 Offer and Conclusion of Contract**

2.1 Purchase orders, agreements and amendments are only binding when given or confirmed by TITAL in writing. Any related correspondence is to be addressed to the Purchase Department.

2.2 Purchase orders placed by TITAL without any time limit for acceptance can be accepted by the Supplier only within 14 days of the purchase order day.

2.3 Quotations are binding and will not be remunerated unless otherwise expressly agreed in writing.

2.4 Should the Supplier’s order confirmation deviate from our purchase order, a contract will only come into force, if TITAL have explicitly been advised of this deviation and have given their consent in writing.

## **3 Obligation to Review; Obligation to Procure**

3.1 The Supplier undertakes to test all drawings, calculations, specifications and other requirements provided by TITAL independently within the scope of his general and technical knowledge for errors and inconsistencies and, if necessary, to promptly notify TITAL in writing of any objections in order to resolve them.

3.2 The Supplier is in all events solely and without restrictions responsible for the procurement of the subcontracted supplies and services required for the ordered goods.

### **3.2.1 Process Modifications**

Any deviation from the production process of the approved initial sample is already deemed a modification. If the Supplier for example modifies the construction of appliances, any material, design, production process, testing methods, packaging,

conservation or place of production, then a prior written approval by TITAL is required.

### 3.2.2 Placing of Orders with Subcontractors

Should the Supplier place any orders with subcontractors, then he is responsible for this subcontractor fulfilling the provisions of this Agreement.

TITAL reserves the right to review these subcontractors as well. The Supplier is obliged to make possible this review by entering an agreement to this effect with the subcontractor.

However, this does not release the Supplier of his responsibility for the performance of the subcontractor.

## **4 Delivery; Supplier's Security Interests**

4.1 The delivery period and time of performance given by TITAL in their purchase order are binding. In the absence of these specifications, the goods and/or services are to be delivered within 14 days of the purchase order date.

4.2 If the Supplier cannot keep the delivery period and/or time of performance applicable according to 4.1, then he is obliged to promptly notify TITAL to this effect by stating a practicable delivery date. Moreover the Supplier is obliged to inform TITAL immediately and without further request about any supply difficulties occurring for whatever reason as soon as he becomes aware of them himself.

4.3 Any specifications made by TITAL regarding mode of transportation, forwarder and forwarding instructions are to be strictly adhered to.

4.4 Deliveries and services are to be supplied DDP „Application Site“ (INCOTERMS 2000). In the case of deliveries to constructions sites or directly to third parties the unloading will be carried out at the Supplier's risk and expenses.

4.5 Partial, over or under deliveries are permitted only with prior written consent by TITAL. All deliveries have to be supplied with a bill of delivery containing a detailed description, the itemized net weight as well as the complete SAP purchase order number of TITAL.

4.6 Unconditional acceptance of a delayed delivery or performance shall not constitute any relinquishment by TITAL of claims for damages arising from such a delay; this provision applies until complete payment of the remuneration owed by us for the delivery or service has been effected.

4.7 Except where different evidence is provided, the number of items, weights and measurements are determined according to the values obtained by our incoming parts inspection.

4.8 The Supplier shall support TITAL in a reasonable manner in obtaining any customs and other governmental benefits, and he shall hand over the evidence and documents requested by TITAL in this context, especially the certificates of origin.

4.9 In the case of missing or incorrect payment instruments, shipping documents, certificates of origin or documents required by turnover tax law, TITAL reserve the right to refuse acceptance of the goods at the Supplier's risk and expenses.

4.10 If the Supplier has undertaken the assembly or installation or if nothing to the contrary has been agreed upon, then the Supplier, subject to any different regulations, shall bear all related expenses like travelling expenses or the provision of tools.

4.11. Should the end customer of TITAL notice any deviations caused by the Supplier's installation or external processing, thereby charging TITAL with expenses arising among others from application fees for deviation of dimensions, then TITAL reserve the right to pass on these expenses to the Supplier.

4.12 Any contractual security interests of the Supplier require in either case a separate written agreement between TITAL and the Supplier.

## **5 Force Majeure**

Force majeure, labour disputes, disruptions in operations beyond the concerned Party's reasonable control, disturbances, governmental measures and other unforeseen circumstances shall entitle us – without prejudice to our other rights – to withdraw wholly or partially from this Agreement, insofar as these events continue for a considerable period of time and result in a considerable decrease of our demand.

## **6 Contractual Penalty Clause**

6.1 In the event of a delay in delivery on the Supplier's part, TITAL may claim a contractual penalty to the amount of 0.5% of the total remuneration per calendar week, but not exceeding the maximum limit of 5 % of the total remuneration. This provision does not apply if the Supplier can provide evidence that he is not responsible for the delay.

6.2 The provision 6.1 does not apply if the Supplier defaults on his contractual obligations. In such case the contractual penalty is payable immediately.

6.3 The contractual penalty can be asserted together with the claim for the performance of contractual obligations. Should TITAL accept any delayed performance, they can assert the contractual penalty even if TITAL have not explicitly reserved this right at the time of acceptance of the performance. However, TITAL has to declare their reservation of assertion of the contractual penalty when making the final payment for the delivery in question at the latest; this declaration can be made by using a standard form.

6.4 The right to lodge a claim for further-reaching damage is not excluded, in this case, however, the contractual penalty according to 6.1 has to be deducted.

## **7 Warranty Claims, Regress and Product Liability; Insurance**

7.1 The Supplier assures that his deliveries and services are free of any deficiencies and comply with the agreed specifications, in particular with the most recent state-of-the-art, with the generally recognized technical and occupational health regulations issued by authorities and professional associations as well as with the relevant legislation.

TITAL request to be notified immediately about any defective parts. The Supplier must have a process for treatment and/or approval of defective parts by TITAL at his disposal. Should a result of sample testing reveal defective products, then these products have to be sorted out, labelled accordingly and returned to TITAL with a note in the relevant documentation to this effect. All of these products still in stock as well as any future batches have to be tested for this defect, until the cause of defect is eliminated. Batches already delivered have to be identified and TITAL has to be notified immediately.

Subsequent work on TITAL products has to be applied for and documented by the Supplier in writing and may be carried out only after written approval by TITAL.

7.2 The deliveries are accepted provided that acceptance testing proves them to be free of any deficiencies, correct, complete and fit for use. TITAL is entitled to check the subject matter of this Agreement insofar and as soon as it is feasible in the normal course of business; TITAL will notify the Supplier of any obvious deficiencies within 14 days of handover; concealed deficiencies will be notified immediately upon their discovery. In this respect, the Supplier shall waive any objection of a delayed notification of deficiencies.

7.3 Unless nothing to the contrary has been agreed upon, the legal provisions with regard to material defects and defects of title shall apply.

7.4 Should the Supplier in the course of supplementary performance replace or repair goods, the legal warranty period for these goods shall begin afresh.

7.5 Should the Supplier fail to fulfil his obligation for supplementary performance within a reasonable time limit set by TITAL without having the right to refuse supplementary performance, then TITAL is entitled to remedy the deficiency or to have the deficiency remedied by a third party at the Supplier's risk and expenses. TITAL can demand an advance payment from the Supplier for the necessary relevant expenses.

7.6 Should any expenses arise out of the deficient delivery of the subject matter of this Agreement, especially transport, labour and material costs or expenses for an acceptance testing exceeding the extent of a normal testing, then the Supplier has to bear these expenses.

7.7 The Supplier is obliged to indemnify us against any claims from product liability and to compensate TITAL for any resulting losses, to the extent that these losses are attributable to a deficiency of the subject matter delivered and/or produced by the Supplier. If any claims are lodged against TITAL for a liability based on cause irrespective of fault, this provision applies only if the Supplier is at fault. If the Supplier is responsible for the cause of the damage, the burden of proof lies with the Supplier. In this case the Supplier shall bear any relevant costs and expenses, including those

arising out of a legal prosecution or a product recall campaigns. In all other cases the statutory provisions apply. The Supplier will be informed to the possible and reasonable extent about the content and the scope of a product recall campaign.

7.8 Furthermore the Supplier shall take out an insurance policy with appropriate coverage against all risks resulting from product liability.

## **8 Infringement of Third Party Industrial Property Rights**

The Supplier is responsible for not infringing any third party patent or industrial property rights in connection with his delivery/service and he shall indemnify TITAL against third party claims to this effect at the first written request. Any expenses or damages arising for TITAL from any claims by third parties or in connection therewith will be paid for by the Supplier. Regardless of this provision TITAL is entitled to conclude any agreements, especially a settlement about the alleged infringement of an industrial property right, with third parties also without the Supplier's consent.

## **9 Invoices and Date of Payment**

9.1 Invoices have to show the SAP purchase order number of TITAL, the exact name and quantity of the delivered goods as well the price per item or volume. They are to be addressed to the address given in the purchase order. A correct and complete invoice is a prerequisite for payment.

9.2 Provided that there are no special agreements to this effect, invoices are due for payment within 14 days following receipt with a 2% discount for early settlement or strictly net within 60 days of invoice date.

## **10 Protection of Industrial Rights and Know-how**

10.1 Any patterns, samples, designs, software, documentation and other records as well as the material, tools, production and inspection equipment and know-how handed over to the Supplier by TITAL remain the sole property and legal responsibility of TITAL. They have to be kept confidential and may be disclosed to third parties only with the prior explicit written consent by TITAL, in which case the Supplier has to ensure that these third parties are committed to the same provision of non-disclosure.

10.2 The rights, documents and objects mentioned in 10.1 have to be returned to TITAL immediately and without request as soon as the obligations under this Agreement have been fulfilled or if the Supplier does not need them anymore for the performance of his obligations under this Agreement. Any other real or legal disposal and/or direct or indirect application by the Supplier or third parties is illegal.

10.3 In the case of research, development, construction, engineering and other contracts the subject of which is the development of a technical problem solution, all inventions made by the Supplier in connection with this Agreement as well as all relating industrial rights applied for, filed or granted, are owned exclusively by TITAL.

The same applies to new technical know-how not already part of the state-of-the-art technology. If requested so by TITAL, the Supplier shall claim the inventions of his employees. The Supplier agrees to advise TITAL in writing of the employee invention and the technical know-how within 6 weeks. The expenses according to the Employee Inventions Act will be borne by TITAL.

## **11 Right of Access**

The Supplier, with prior notice, shall grant TITAL, our customers as well as their competent, approving authorities, e.g. the Federal Office of Civil Aeronautics or the Federal Office for Defence Technology and Procurement, access to all production facilities as well as to all technical records in relation with the production of the processed contract products at any time. During a visit by TITAL and/or their customers the Supplier shall lend his organisational support and attend to the visit.

## **12 Compliance with Legal Regulations**

By acting responsibly, TITAL aims to strengthen TITAL's good reputation. The Supplier agrees to comply with all legal regulations. This holds especially true for any applicable laws for the protection of fair trade, for any ban on exports and imports, for customs and tax regulations as well as for regulations for the protection of the environment. The Supplier agrees, especially in the course of his cooperation with TITAL, not to bribe his business partners and to grant a fair compensation, reasonable working hours, safe working conditions as well as a working environment free of discrimination to his own employees.

## **13 Miscellaneous**

13.1 Place of payment is the place of business of TITAL registered in the Commercial Register.

13.2 This Agreement shall be governed and construed according to the law of the Federal Republic of Germany under exclusion of the conflict of laws and the UN-Convention on Contracts for the International Sale of Goods (CISG).

13.3 Place of jurisdiction for all kinds of disputes arising out of or in connection with this Agreement is Meschede. However, TITAL is entitled to take legal action against the Supplier in the court with jurisdiction at his place of business or at the place of performance.

Bestwig, 7 December 2009