

# GENERAL CONDITIONS OF PURCHASE

## of Lista AG and Thur Metall AG

The following conditions apply to all transactions of LISTA AG and Thur Metall AG with their suppliers (of goods, services, etc.) unless otherwise agreed in writing. The aforementioned companies are hereinafter referred to generally as LISTA. These conditions of purchase take precedence over any conflicting terms and conditions of the supplier. The supplier's terms and conditions shall only apply if LISTA expressly agrees to these terms in writing.

### 1. General

#### 1.1 Correspondence

All correspondence (invoices, order details, shipping notices, delivery notes, order confirmations, proofs, etc.) must cite the order number, order items, item number, quantity, customs tariff codes (Tares) and correct address.

#### 1.2 Contract conclusion of the individual transactions

Framework contracts, especially for on-demand business, service contracts and amendments to such contracts must be in writing and require the written order from LISTA and the corresponding written order confirmation from the supplier.

Recalls and individual orders are made by LISTA in writing or by telecommunication (fax, email, etc.) with a reference specifying the relevant purchaser at LISTA. Unless otherwise stated by the supplier within five days of the order being sent by LISTA, the contract, based on LISTA's individual order, shall be deemed to have been successful, unless LISTA requests an order confirmation.

The supplier will immediately review our requests for proposals and our orders for obvious errors, ambiguities, incompleteness and inadequacy of specifications chosen by us for the intended use, and indicate these to us. There shall be no consideration paid for visits to site, preparation of proposals or other pre-contractual services unless a fee is agreed in writing or mandated by law. If the supplier, under an existing business relationship, alters characteristics of goods or services, the supplier is obligated to explicitly inform us of such before the contract is signed and during the term of the contract.

#### 1.3 Sub-contracting orders

Any transfer of LISTA orders to third parties requires the prior written consent of LISTA.

#### 1.4 Revocation of the conditions of purchase

The amendment or revocation of these conditions of purchase, including this written form clause, must be in writing.

#### 1.5 Residual validity clause

Should any provisions in these conditions of purchase be or become invalid, this shall not affect the validity of the remaining provisions. An invalid provision shall be replaced with an effective provision that LISTA would have submitted at the time of concluding the contract had it been aware of the defect and that the parties would have agreed to accordingly in order to achieve the same – or at least similar – economic purpose. The same applies to closing loopholes in the contract.

### 2. Delivery

The place of performance for the supplier's delivery/performance obligation is the receiving location designated by us.

Each shipment must be accompanied by a delivery note stating the deliverables and our order number. If the supplier fails to provide this information, delivery is only deemed as made upon its assignment to

us. The supplier delivers the purchased item DDP (Incoterms) and in suitable packaging to the agreed destination. The supplier is fully liable for transportation damage caused due to inadequate packaging. If several destinations are agreed for the order, the supplier shall issue separate shipping notices. Under and over-deliveries are not permitted, especially in the case of order-related deliveries. Deliveries must be exact. Partial deliveries and under or over-deliveries must be agreed in writing in advance. Incorrect deliveries and excess quantities can be refused by us, even after unconditional acceptance, within the period of notice for defects and subjected to a penalty, at the expense of the supplier. Any direct shipment to our customers is undertaken completely neutrally and in our name. The necessary shipping documents must be requested from us in good time. Invoices and payment notices may only be sent to us. The supplier must retain the packaging material at its own expense, unless LISTA waives such retention in writing.

### 3. Delivery dates

Agreed delivery dates are binding and are due on the agreed delivery date at the destination. Upon expiry of the agreed delivery date, the supplier shall be in default without need for a reminder. On-call deliveries, unless otherwise agreed, must be delivered within ten working days of the request. The timeliness of deliveries depends on the arrival at the agreed receiving location; deliveries with installation or assembly, and the timeliness of works, depend on their acceptance. If documentation, test reports or other records, including electronic records, are part of the scope of services, the supply/service is not deemed as given prior to their complete and contractual transfer. Once the supplier must assume that it is not possible to perform the delivery on the agreed date, the supplier is obligated to notify us stating the reasons and the expected duration of the delivery delay. If the supplier is in default, we are entitled to demand a penalty of 0.2% of the order value per working day, but not more than 5% of the total order value. We can reserve assertion of the penalty reserved until payment of the invoice for the goods/services. The penalty shall be offset against claims for damages because of the delay. In case of premature delivery/service, we reserve the right to return the goods to the supplier at the supplier's expense. If we accept a premature delivery/service, the goods are stored until the agreed delivery date at the expense and risk of the supplier. The supplier can only request payment on the contractually agreed due date.

### 4. Use, risk and ownership

Use, risk and ownership of the delivered goods are transferred to LISTA upon acceptance of the delivery at the agreed place of performance.

### 5. Prices

All agreed prices are fixed prices and exclude additional charges of any kind, e.g. ancillary costs, especially transport, packaging, public duties, taxes and customs clearance for international delivery, but excluding VAT (in accordance with DDP Incoterms). Prices other than those in the order from LISTA and price changes and related reservations are only binding if and insofar as they are explicitly confirmed by LISTA in writing. If prices are not yet finalised when the order is placed, we must be made aware of this immediately, but no later than three days after receipt of our order. In this case, the order will be effective only upon our subsequent confirmation of the price. The supplier is forbidden from the assignment of claims against us, unless we agree to the assignment in writing.

## 6. Terms of payment

LISTA pays the supplier's invoices within 30 days net, unless otherwise agreed.

The payment period begins at the earliest on the date of receipt of the original invoice, but not before receipt of the goods free of defects or acceptance of the service.

## 7. Warranty/guarantee

The supplier – regardless of any further warranty that may be agreed in individual cases – guarantees that the goods are free of defects upon delivery and correspond to the agreed specifications, possess the assured properties and correspond to the state of the art and the current Swiss and international standards and are provided with the applicable certifications.

LISTA checks the delivered purchased item as soon as possible, without being bound by a deadline. For certified suppliers, LISTA assumes that a quantitative and quality-specific incoming goods inspection corresponding to the product can be waived.

Making payments shall not be taken as approval of the delivery. In the case of a defect occurring during the warranty period, including the absence of assured properties, LISTA, in addition to statutory claims, has the right to request, at its discretion, the free and immediate rectification of the defect, the rescission of the contract, reduction of the purchase price or a replacement delivery. If the defect of the delivered item is not immediately corrected by the supplier or an assembly carried out, LISTA is also entitled to undertake the remedy of defects itself at the expense of the supplier, or to allow a third party to undertake such remedy. The return of defective products shall be made within a reasonable period, but not later than ten working days, at the instruction and expense of the supplier. If the supplier allows this period to expire unused, LISTA is entitled to dispose of the faulty products. The supplier shall bear all costs for proper disposal. In the event of a provable supplier error, LISTA reserves the right to charge a penalty at the expense of the supplier. The warranty period for any defect is two years from the date of delivery of the goods. A notice of defects may be raised at any time during this period. The limitation period for warranty and guarantee claims is three years from date of delivery of the goods. In the case of rectification and/or replacement, the warranty and limitation period for the rectified goods and/or the replacement begins again.

## 8. Property rights of third parties

The supplier shall also be liable for ensuring that no property rights or other rights of third parties are infringed by the use of the delivered goods. The supplier releases LISTA and its customers from all resulting claims of third parties that may arise from the infringement of property rights.

Claims in this regard expire with the limitation of corresponding third-party claims, but not before the expiry of 10 years from the date of delivery.

## 9. Product liability

The supplier shall hold LISTA entirely harmless of all third-party claims and indemnify LISTA for all damages suffered arising from the product liability and from measures of loss prevention in connection with the delivery performed by the supplier. In turn, LISTA will immediately inform the supplier of such claims, whereby any delayed information shall not lead to any loss of rights. LISTA has the right to bring a claim against the supplier even after the expiry of any time limits under applicable product liability laws. The supplier undertakes to maintain product liability insurance with an adequate sum of cover.

## 10. Customs law and preferential rights requirements

The supplier undertakes to provide every delivery, without being asked, with the correct preferential proof of origin (EUR.1 / EUR-MED movement certificate or a correct preferential declaration of origin on the in-

voice) for originating goods. Swiss suppliers shall provide an annually valid domestic suppliers' declaration in accordance with the provisions of the Swiss Customs Administration (EZV [www.ezv.admin.ch](http://www.ezv.admin.ch)). In the absence of proof of origin at the time of crossing the border, any applicable import taxes/fines are accepted by the supplier in full.

## 11. Documentation, materials, manufacturing equipment

a) We retain all intellectual property and copyright rights without limitation on illustrations, drawings, calculations and other documents (hereinafter: documents) that we make available to the supplier. The documents may be used solely for the execution of our order. They may only be disclosed to third parties with our written consent. The documents must be released to us at any time on our request or voluntarily after execution of the order, premature termination or non-occurrence of the contractual relationship.

b) The materials provided by us to the supplier remain our property. The processing of materials is done for us as manufacturer. If our property ceases to exist as the result of combining, mixing, processing or transformation, the supplier hereby assigns to us in advance co-ownership of the new item corresponding to the invoice value of the relevant materials. The materials may only be used for the execution of our order. They must be kept safe by the supplier free of charge, insured at the supplier's own expense against accidental destruction or loss and marked as our property. The materials must be released to us at any time on our request or voluntarily after execution of the order, premature termination or non-occurrence of the contractual relationship.

c) Manufacturing equipment procured or produced by the supplier and paid for by us or amortized over the parts price become our property upon commissioning by the supplier. The rules relating to materials provided shall apply accordingly. Manufacturing equipment that LISTA loans to the supplier shall be used exclusively for the production of the item commissioned by LISTA. The supplier is obligated to treat the manufacturing equipment properly and professionally. If manufacturing equipment is damaged, the supplier shall, regardless of the cause of such damage, bear the cost of repair or production of the replacement parts. If the supplier refers to the fact that the damage to the manufacturing equipment is due to a defect of the manufacturing equipment, the supplier shall bear the burden of proof. Ownership of the manufacturing equipment provided by LISTA remains fully with LISTA. The supplier shall not acquire any real property rights on the manufacturing equipment, in particular no retention rights. If LISTA's manufacturing equipment is seized by third parties or otherwise confiscated, the supplier shall inform LISTA without delay. The same applies in the event it is sought to open bankruptcy proceedings or debt enforcement moratorium proceedings on the supplier's assets. The supplier shall bear the costs incurred LISTA in protecting its rights in this regard.

## 12. Confidentiality / Ownership work output

a) All business and technical information received by the supplier from us for execution of the contract (order) is to be treated in strict confidence, including beyond the termination of the contract. This does not apply to information which was already known to the supplier or of which it has lawfully otherwise become aware.

b) Products produced according to documents created by us, such as drawings, models or other, or produced according to our tools, may not be used by the supplier other than for executing this contract or offered or supplied to third parties.

c) The supplier shall treat the contract (order) in confidence and may only refer to the business relationship with us in promotional materials with our written consent.

d) The supplier is not entitled to use subcontractors unless we have given our prior written consent. In the case of appointment of a subcontractor, the supplier has to transfer to the subcontractor all relevant contractual obligations for which the supplier has entered into with us. The supplier shall be liable for the fulfilment of these obligations by the subcontractor.

- e) All know-how and all work output, including partial output which is still to be developed between LISTA and the supplier, remain the property of LISTA and must be treated in confidence. LISTA is at all times entitled to the surrender of any original documents and media, regardless of their nature (paper, disk, magnetic tape, film and photo negatives, etc.) even in the case of outstanding payment on the part of LISTA.
- 13. Accident prevention regulations and environmental protection**  
Delivery is made in accordance with the provisions and generally recognised rules of safety engineering, occupational medicine, ergonomics, the rules of professional associations and regulations on environmental protection, in their latest versions, that are applicable in Switzerland, the European Community and the Federal Republic of Germany. For materials (substances, preparations) and objects (e.g. goods, parts, technical equipment, uncleaned empties), which may pose a danger to the life and health of persons, the environment and property because of their nature, their properties or their condition, and which therefore, by reason of regulations, require special treatment in terms of packaging, transport, storage, handling and waste disposal, the supplier will submit to LISTA, along with the proposal, a fully completed material safety data sheet according to Article 38 of the Swiss Materials Ordinance [Stoffverordnung] (systematic collection of Federal law 814.013) and a relevant accident data sheet (transport). In case of changes to the materials or the legal position, the supplier shall submit revised data and accident sheets to LISTA.
- 14. Place of performance**  
The place of performance for all deliveries is the location designated by LISTA. If no location is specified, the place of performance is then the domicile of LISTA.
- 15. Contract language/interpretation**  
The language of the contract is German. In the event of issues interpreting these terms and conditions of business, the German text alone is authoritative. The translation into a foreign language is merely for information purposes.
- 16. Applicable law and place of jurisdiction**  
The relationship between the supplier and LISTA is governed exclusively by Swiss law, in particular the Swiss Code of Obligations (OR, Obligationenrecht), excluding the United Nations Convention on the International Sale of Goods of 11 April 1980 (UN CISG). The place of jurisdiction for all disputes arising out of this agreement and out of all individual transactions is CH-8586 Erlen. However, LISTA also reserves the right to sue the supplier at its place of business.

Erlen, January 2015