

## General Conditions of Purchase

### 1 Scope

- 1.1 All orders for supplies and services of the Supplier to FONDIUM Group companies (hereinafter referred to as "FONDIUM") shall be governed exclusively by these General Conditions of Purchase.

Conflicting or additional terms of the Supplier, in particular General Conditions of Sale, shall be binding only if expressly accepted by FONDIUM in writing. The written form shall include all forms of transmissions of text in tangible form (fax, E-mail, EDI etc.). Any waiver of the written or tangible form shall be valid only if executed in tangible form.

- 1.2 These General Conditions of Purchase shall also apply notwithstanding the fact that FONDIUM being aware of Supplier's General Conditions of Sale, accepts his supplies and services without reserve.
- 1.3 These General Conditions of Purchase apply also to all future orders.

### 2 Offers

- 2.1 Based on FONDIUM 's request for quotation Supplier shall submit, free of charge an offer to FONDIUM. The offer shall strictly adhere to FONDIUM 's request for quotation; deviations shall explicitly be referred to.
- 2.2 Unless otherwise specified, the order shall be binding for 90 days.
- 2.3 All data relating to measurements, weight, performance or other characteristics in Supplier's offer shall be binding.

### 3 Orders and Order Variations

- 3.1 Orders shall only be valid if transmitted by FONDIUM in tangible form, through an IT-Interface or SAP-ICH (Internet Portal to SAP).
- 3.2 FONDIUM shall be entitled to request reasonable modifications to the Goods ordered. The consequences resulting from such changes, in particular with regard to an increase or decrease in price or the terms of delivery, shall be mutually agreed.

### 4 Prices, Terms of Payment

- 4.1 The prices referred to in the order are binding. If no price is agreed, the lowest spot market price quoted at the date of delivery shall be applied.
- 4.2 The agreed prices are firm and subject to VAT. They are understood DDP (delivered duty paid including packing) place of business of the company placing the order, according to Incoterms ICC as in force at the date of order.
- 4.3 Invoices shall be sent to FONDIUM on the date of shipment, however separate from the shipment. Invoices shall contain the following: number of FONDIUM's purchase order, order date, description of the Goods, quantities, consignee and place of destination.
- 4.4 Unless otherwise agreed, the following payment terms shall apply: 30 days with 3 % cash discount or 90 days net from receipt of invoice, at the earliest however from receipt of the goods. Supplies being delivered prior to the agreed delivery date shall be deemed delivered at the agreed delivery date. Payments are made on each 10<sup>th</sup>, 20<sup>th</sup> and 30<sup>th</sup> calendar day of the respective calendar month or on 28<sup>th</sup> February (each with +/- 2 calendar days tolerance). If the actual payment date lies between two of the aforementioned days of payment, the according invoice will fall due on the subsequent day of payment as defined hereinbefore.
- 4.5 FONDIUM may choose the method of payment at its discretion.

4.6 Payments by FONDIUM shall not be deemed an acknowledgement that the Goods have been supplied in conformity with the Contract.

4.7 In case of faulty supplies or services as well as in case of lacking material- or work certificates, certificates of origin or other documents, FONDIUM shall be entitled to a proportionate withholding of payments until the Contract is properly performed.

FONDIUM shall be entitled to claim statutory setoff and retention rights.

4.8 Additional supplies shall not give rise to any claims, whether based on the legal theory of conducting business without mandate or whether based on unjust enrichment.

4.9 The Supplier may not without FONDIUM's prior written consent, which shall not be unreasonably withheld, assign or transfer its rights and duties towards FONDIUM or have its claims collected by third parties.

4.10 Prepayments shall be made only against adequate surety (e.g. bank guarantee).

## **5 Packing, Shipment**

5.1 In line with the legal packing regulations as in force at the date of shipment the Supplier shall bear the cost for packing and storing as well as all other costs incident to the shipment of the Goods. The Supplier shall be responsible for the proper packing of the Goods. Damage to the Goods resulting from improper packing shall be borne by the Supplier.

5.2 Each shipment shall be accompanied by a delivery note containing the following data: description of the Goods, number of pieces, weights etc., number and date of order as well as place of destination indicated by FONDIUM.

5.3 If the return of empties or of packing material has been agreed, the cost of transport and of disposal shall be for Supplier's account.

If the packing is invoiced separately, FONDIUM shall have the option to return the packing, carriage paid, to Supplier in usable condition against a credit of 2/3 of the value invoiced therefor. In case of standard packing (Euro-pallets, boxes) 100 % of the value invoiced are to be reimbursed.

5.4 Supplier shall select the mode of transport which is the most economical for FONDIUM.

5.5 The quantity of Goods supplied shall be calculated exclusively on the basis of the weights determined by FONDIUM.

5.6 FONDIUM is "SVS/RVS-Verbotkunde". Premiums for transport insurance, carriage, the preparation of transport documents as well as the cost for pallet-swaps shall not be reimbursed.

## **6 Delivery, Term of Delivery**

6.1 The dates and periods of delivery indicated in the order shall be binding. The date or period of delivery shall be deemed met if the Goods arrive at the agreed date at the place of destination. In case of deliveries other than on DDP-basis, the Supplier shall dispatch the Goods in due time taking into consideration the customary time for loading and transport; in addition, he shall inform the carrier indicated in the order.

6.2 If the date of delivery is a specific day, week, month or calendar quarter, the Supplier shall, irrespective of any reminder, be in arrear as of the first day of the following period.

If the Supplier is in delay as a result of the delayed supply of documents or free issue materials by FONDIUM, the Supplier is excused only if he has requested said supplies in due time. In such case, the time of delivery shall be reasonably prolonged.

6.3 If the agreed delivery period or the agreed delivery date is not met, Supplier shall, for each day of delay, pay a penalty of 0.1 % of the price of the supplies in delay, max 10 %. In case of partial delays, the penalty shall be calculated on the price of the supplies which cannot be used as a result of the partial delay.

FONDIUM reserves the right to claim compensation for any damages exceeding the penalty.

- 6.4 The Supplier shall inform FONDIUM immediately of any foreseeable delays or partial delays, stating the reasons for and the estimated time of the delay. Such notice shall not relieve Supplier from his liability for the consequences of such delay.
- 6.5 The Supplier shall not be entitled to supply additional or lower quantities. Part shipments or shipments ahead of schedule shall be accepted only if so agreed.
- 6.6 Shipments ahead of schedule are to be notified in due time. FONDIUM reserves the right to reject such early shipments on operational grounds.
- 6.7 Unforeseeable events beyond FONDIUM's control seriously affecting FONDIUM's clients as well as labor conflicts, operational disturbances, reduced operations, acts of government or similar reasons leading to a substantially reduced demand, shall entitle FONDIUM to defer the acceptance of further shipments for the time of the disturbance.
- 6.8 The Supplier shall be entitled to the rights of retention and set-off only on the basis of undisputed or legally confirmed claims. If this obligation is violated, this might constitute the ground for an interim injunction.

## **7 Inspection and Acceptance of the Delivery, Warranty**

- 7.1 The Supplier shall be notified immediately of any defects in the Goods as soon as they are discovered in the ordinary course of business. To this extent, the Supplier waives his rights of objection against a delayed notification of defects.
- 7.2 FONDIUM shall remain obliged to inspect incoming Goods at random with regard to identity, quantity, and easily ascertainable transport defects. Any such defects shall be notified within 10 days following receipt of the Goods.
- 7.3 Payment of the Goods shall not constitute a waiver of any warranty claims FONDIUM may have.
- 7.4 The Supplier warrants that the Goods comply with the agreed specifications and shall have the agreed performance, that they correspond to the newest state of the art and shall have no defects impairing its value or fitness for the purpose for which the Goods are intended. The Goods shall comply with applicable laws, accident prevention rules and other country-specific regulations as defined in the order.
- 7.5 In case of a supply of defective Goods, FONDIUM shall be entitled to the remedies provided by law.
- 7.6 If the Supplier is in arrear with his obligation to remedy any defects, in case of imminent danger or in case of urgency FONDIUM shall be entitled to remedy or have remedied the defects at Supplier's cost.
- 7.7 Supplier's liability for defects shall equally extend to parts sourced from subcontractors or sub-suppliers.
- 7.8 Unless otherwise agreed between the Parties, FONDIUM's warranty claims shall be time-barred 36 months from receipt of the Goods at the place of destination.

Warranty claims for replaced parts or repairs shall be time-barred after 12 months, however not prior to the expiration of the original warranty period of the respective Good.

Any notice of defects shall suspend the statute of limitations for the total supply and the limitation period shall be prolonged by the period of repair or replacement.

The period of limitation shall be deemed met, if the defect is notified within said period in writing and no filing of any complaint or any other action to suspend or interrupt the period of limitation provided by law shall be necessary. The notification of a defect shall suspend the statute of limitations with regard to said defect for a period of 12 months.

- 7.9 The warranty shall cover all costs arising in connection with the remedy of the defect, e.g. handling costs, the costs of dismantling and re-installation, costs for return shipments and similar costs and expenses. Inspec-

tions of defective parts shall be carried out in FONDIUM's works. The costs of return consignments of defective parts shall be for Supplier's account.

In addition, FONDIUM shall be entitled to charge a handling fee of € 50.00 for each consignment containing defective parts.

## **8 Spare Parts**

The Supplier ensures the supply of spare parts for a period of 15 years at competitive conditions regarding price, quality and delivery terms.

## **9 Product Liability, Insurance**

9.1 The Supplier shall indemnify and keep FONDIUM harmless from and against all damages and damage claims of third parties arising out of or in connection with the supply of defective Goods, in particular if he is also directly liable for such third party claims.

9.2 The Supplier undertakes to maintain a public-/product liability insurance policy with an insured sum of at least EUR 5 Mio. per instance for personal injury and/or property damage including assembling and disassembling coverage which is valid worldwide.

Furthermore, the Supplier undertakes to maintain a recall insurance of at least EUR 5 Mio. per instance with worldwide coverage for products which will be incorporated into a motor vehicle. This provision is without prejudice to any additional claims for compensation that may arise to the benefit of FONDIUM.

## **10 Infringement of Industrial Property Rights**

The Supplier warrants that the Goods and their use shall not infringe any industrial property rights in the country of destination of the Goods or in other countries to which the Goods may be re-exported.

The Supplier shall indemnify and keep harmless FONDIUM from any claims for damages arising out of the possible infringement of industrial property rights of third parties.

## **11 Secrecy, Ownership of Technical Documents, Publicity**

11.1 The Parties undertake to keep strictly confidential all commercial or technical information of the other Party of which they gain knowledge in the course of their commercial dealings and which have not yet entered the public domain. The Supplier shall also maintain the terms of the order and the technical information or objects transmitted to him in connection with the order in strict confidence.

11.2 Each Party shall retain title, copy- or any other rights to the technical documents (pictures, drawings, calculations etc.), samples, patterns or tools placed at the other Party's disposal.

These documents and objects may not be disclosed to third parties without the owner's prior written consent. They may be used solely for the purpose of the cooperation between the Parties. Upon termination of the cooperation they shall be returned to the owner.

11.3 Tools, gauges, jigs, patterns etc. supplied or paid for by FONDIUM shall be properly stored and insured against all common risks. Without FONDIUM's written consent they may not be modified, destroyed nor used for third parties.

11.4 In his advertisements the Supplier may refer to his business relationship with FONDIUM only with FONDIUM's prior written consent.

## **12 Assignment and Subcontracting**

The assignment of the orders to third parties (sub-contractors, sub-sub-suppliers) shall require FONDIUM's prior consent which must be given in writing. Additional costs resulting from such assignment or subcontracting shall be borne by the Supplier.

## 13 Quality Assurance

The supplies to FONDIUM shall comply with the state of the art, the applicable safety-regulations and the agreed technical specifications. The Supplier shall provide evidence that he has put in place a quality management system. FONDIUM reserves the right to inspect Supplier's quality management system in Supplier's works.

Modifications of the Goods supplied shall require FONDIUM's prior written consent.

## 14 Environment

14.1 The Supplier takes the responsibility that the Goods are in conformity with the environmental, security and accident-prevention standards in force at the date of delivery. He shall be liable for any breach of these provisions and shall indemnify and, at its request, keep FONDIUM harmless from any claims that may be raised by third parties against FONDIUM.

14.2 With regard to all materials and objects (in particular dangerous substances or preparations) which by their nature, properties or condition may pose dangers to the environment, to objects or people if put to use or being commissioned and which therefore require special handling with regard to packing, transport, storage or disposal, the Supplier shall submit to FONDIUM, prior to shipment, a completely filled-out security data sheet as provided by applicable law and the pertinent EU-Directives. In addition, the Supplier shall send to FONDIUM instructions on actions to take in case of possible transport accidents.

14.3 In case of the supply of plants, all properties of the plant relevant for its safe operation as well as all security measures are to be evaluated and laid down in an instruction manual or a similar document.

14.4 Supplier guarantees that its supplies shall not have ionizing radiation that exceeds the relevant statutory maximum permissible value. If contractually agreed, Supplier shall present test records of adequate checking devices upon FONDIUM's demand at any time.

14.5 The Supplier must fulfil all specifications and measures resulting from the REACH Directive for all substances, preparations and products supplied/provided to FONDIUM. The Supplier shall identify any product containing materials which are subject to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Conflict Minerals") and accordingly fill in the Conflict Mineral Report provided by FONDIUM.

## 15 Protection of Personal Data

In the course of the implementation of the order the processing of personal data may be necessary. The Supplier hereby consents to such processing and agrees that FONDIUM may in the ordinary course of business disclose such data to third parties (e.g. clients, etc.) at home and abroad.

## 16 Force Majeure

16.1 Neither Party shall be liable for any non-performance of the Contract caused by events of Force Majeure. Occurrences of "Force Majeure" are events occurring after conclusion of the contract which are unforeseeable and beyond the Parties' reasonable control. This shall also apply if a case of Force Majeure affects a sub-contractor of one of the Parties.

16.2 The Party affected by Force Majeure shall immediately inform the other Party of the occurrence of an event of Force Majeure and on its probable duration. Otherwise it may not invoke the defense that its non-performance has been caused by Force Majeure.

## 17 Termination, Rescission

17.1 If the Supplier is in arrear with its delivery or his warranty obligations pursuant to Clause 7, and if a reasonable grace period has elapsed in vain, FONDIUM shall be entitled to rescind the contract, waive its claims to the supply of the Goods and claim damages.

17.2 In case of foreseeable delays of the Supplier which are not attributable to any acts or omission on the part of FONDIUM, or if it is foreseeable that the Goods will not be fit for the purpose intended, FONDIUM may rescind

the contract and waive its claim to the supply of the Goods, unless the Supplier in a reasonably short period ensures the prompt and proper fulfilment of the contract.

- 17.3 FONDIUM may further terminate the contract and rescind any pending order if insolvency or similar proceedings are being instituted against the Supplier or if the Supplier has permanently become insolvent.
- 17.4 The aforementioned rights to rescind or terminate a contract or an order shall not prevent FONDIUM from asserting any other remedies it may have at law.

## **18 Severability**

Should one or more provisions of these General Conditions of Purchase be or become void or unenforceable, the void or unenforceable provision shall, taking equitably into consideration the interests of both Parties, be replaced by a provision which comes closest to the economic intent the Parties had envisioned by the void or unenforceable provision.

## **19 Place of Performance, Applicable Law, Venue**

- 19.1 Unless otherwise agreed, the place of business of the FONDIUM Company placing the order shall be considered the place of performance of the contract.
- 19.2 The contract shall be subject to the substantive laws being in force at the place of the FONDIUM Company placing the order. The United Nations Convention on the International Sale of Goods of April 11, 1980 shall not apply.
- 19.3 Exclusive place of jurisdiction shall be the place of business of the FONDIUM Company placing the order, without, however, limiting said Company's right to bring action against the Supplier in any other court having jurisdiction over the subject-matter concerned.

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