

General Terms and Conditions of Purchase for JOLINE GmbH & Co. KG,

Date: July 2020

§ 1 Scope of application

1. Our General Terms and Conditions of Purchase apply to all service procurement across our fields of activity. These General Terms and Conditions of Purchase therefore apply both to the purchase of goods, the commissioning of works and to the commissioning of services.
2. They shall apply both to all future transactions and to the initiation of all business contacts with the provider such as, for example, the initiation of contractual negotiations or build-up for entry into an agreement, even if they are not expressly agreed elsewhere or if there is no further express reference to them.
3. We do not recognise any terms and conditions of the provider which differ from – or are contrary to – our terms and conditions of purchase. The application of the provider's general terms of business is expressly ruled out.
4. Any agreements previously made or previous versions of our Terms and Conditions of Purchase are revoked by these Terms and Conditions of Purchase.
5. Delivery of the requested supply/service and the billing of the agreed remuneration shall be treated as acceptance of these Terms and Conditions of Purchase.

§ 2 Entry into the contract

1. We place our orders, changes to orders and call-offs in writing, through remote data transmission, by fax or e-mail. The content of oral and telephone agreements (discussions) shall, in case of doubt, only be binding if confirmed by us in writing. The provider shall promptly confirm any orders, changes to orders or call-offs in writing. Where such confirmation is not sent within seven working days of receipt of our order or change of order, or where our order is not accepted within a period of seven working days, we shall no longer be bound by the order and are entitled to rescind. Call-offs become binding unless the provider rejects them within seven working days of receipt.
2. Order documentation, particularly appended drawings or sketches, shall remain our property. In all communications arising the provider shall be obliged to quote the company abbreviation given in our non-binding enquiry or written order. Our order or job number, item number already provided by us and the name of our in-house contact person should always be quoted.
3. References in advertising materials or reference documents to business connections with us and the use of marks and labels to which we are entitled require our prior written agreement.
4. Offer or cost quotations sent to us by the provider are binding. They shall be prepared by the provider free of charge.

§ 3 Subject matter of performance

1. The provider shall deliver or perform the supply/service requested by us as contractually agreed. Any deviations from this are only permissible with our written agreement. The provider shall be responsible for ensuring that the supply/service is always performed using appropriate materials and meets the accepted technical standards, statutory and official safety requirements and environmental standards that represent currently applicable law or which have already been adopted with a transition period and will definitely come into force.
2. Where we order parts which the provider manufactures according to a drawing, sketch or model we have provided then the provider should, at our request, present a test report with the delivery of the item, from which product features such as measurements are clear. In the case of initial samples, an initial sample test report shall be delivered at the same time free of charge.
3. Where the provider makes changes to the way the processed material is assembled or in the constructional design of its products or services compared with supplies or services previously provided to us, it shall notify us of this without delay. Changes require our consent as a matter of principle.
4. The provider must carry out the tasks allocated to it at its own premises. Subcontracting to third parties shall require our written consent. Where our contract with the provider concerns the provision of advice or other services which, given their content the contract requires should be provided by a particular person, then the provider shall arrange for those services to be provided personally by that particular person.
5. Where we commission the provider to carry out non-physical services such as design, consultation or programming services then, upon transfer or performance of the contractual obligation, the exclusive, universal, open-ended right to use the services provided shall be transferred to us. We must be notified of any inventions in connection with contractual performance and the exclusive rights to these inventions must be transferred to us. This is without prejudice to the personal rights of inventors.
6. Where we engage the provider to carry out services protected by copyright, the latter shall grant us an exclusive, universal, open-ended, transferable right of use to the copyright-protected service, which right shall be unrestricted in terms of content. The right of use includes the right to make physical reproductions of the work, to disseminate it, display it, to transfer it to an image or sound storage medium and to reproduce the work publicly or make it publicly accessible in non-physical form. The grant of the right of use shall in particular include the right
 - 6.1 To reproduce and disseminate the work in print media (e.g. in advertising leaflets, business cards, company brochures, business letters, newspapers, journals, magazines, brochures, books, on billboards and boards),
 - 6.2 To store, reproduce and disseminate the work on sound and data storage media (e.g. magnetic, optical, magneto-optical and electronic storage media such as CD-ROM, CD-i and other CD derivatives, DVD, disks, hard drives, memory, microfilm, video cassettes), irrespective of the technology used for transfer, carrying and storage;

- 6.3 To allow wired or wireless public access by way of digital or analogue electronic dissemination irrespective of the technology used, via telecommunications and data networks of all kinds (e.g. online services, internet, intranet, cable systems, satellite systems, via mobile services such as mobile phones, WAP services, teletext or navigation systems) including download rights for users
- 6.4 To reproduce the work in public and in particular to display it publicly
- 6.5 The preparation of photographs and the recording of the work on video or other film storage device and the reproduction and dissemination of photographs and recordings created in this way and granting of public access to them and their public display pursuant to paragraphs 7.1 to 7.7
- 6.6 To use the works in as yet unidentified forms of use,
- 6.7 to further transfer to third parties all rights of use individually or together or to grant third parties rights of use to the work. The provider hereby consents to the transfer of the rights of use to third parties.

§ 4 Models, tools, drawings, sketches, logos

1. Where, in connection with the supply/service, we provide the provider with models, samples, production facilities, tools, measuring and testing devices, drawings, work sheets, templates or other necessary materials, these shall remain our property. The provider shall exercise the diligence of a prudent businessperson in safely storing these and shall do so free of charge and separately from other items in its possession, labelled as our property and used by the provider solely for the purpose of delivering the supply/service to us. The models and tools made available to the provider must, at the latter's cost, be insured against disasters such as fire, water damage, theft and loss.
2. The provider is hereby reminded that drawings or sketches may be subject to copyright protection and our logos to trademark protection. The provider therefore undertakes not to share our logo, the drawings or sketches and data, or the tools and models produced on the basis of the same, without our prior written consent or to use them other than for contractual purposes.
3. Upon completion of performance or the dispatch of the delivery, the provider shall transfer to us all job-related production facilities, tools and models created by it at our expense. We shall accept the transfer. Should these remain with the provider, the transfer shall be replaced with a lease to the provider of the production facilities and tools for the purpose of performance of the task.
4. Where the provider produces goods at our request and with our support, e.g. through our provision of models, drawings etc., the goods of the relevant type may only be produced for us and delivered and sold to us.

§ 5 Payment conditions

1. Payment periods shall run from the designated delivery or performance date, no earlier than from the date of receipt of the goods or date of full performance, acceptance of the same – where agreed or legally provided - and proper invoicing. Where the issue of further certificates or

material testing certificates is agreed, payment periods shall not start to run until receipt of these documents. These documents represent a material part of delivery and must be submitted no later than five days from receipt of the goods or invoice.

2. Unless the parties have agreed otherwise, the provider shall give a 3% discount for payments made within 14 days of receipt of the goods. Otherwise, payment shall be made net within 45 days. Should defects in the delivery have arisen or been identified within that period, we shall have a right of retention and the provider's claim for payment shall not become due until the defect has been completely eradicated or a defect-free replacement provided. In that case we are also entitled to a discount.
3. Settlement of an invoice shall not be treated as a waiver of notices of defects. In case of defective delivery, we shall be entitled to withhold payment on a pro rata basis pending proper performance.
4. We are also entitled to set-off and retention rights to the extent provided by law.
5. The provider is not entitled to assign to third parties its claims to payment of its fee without our prior written consent. We shall not unreasonably withhold such consent.

§ 6 Prices, dispatch, packaging, delivery

1. The prices agreed are strictly fixed prices. Where no prices are indicated in the order, the provider's list prices shall apply with the normal trade deductions. Where the provider reduces the prices for the goods ordered ahead of delivery, the reduced prices shall apply. Unless otherwise agreed, dispatch of the goods shall be strictly carriage and insurance paid within Germany: CIP (Incoterms 2020) or delivered duty paid from abroad: DDP (Incoterms 2020) to our delivery address provided.
2. The provider shall be charged packaging costs. The supplier shall include transport and repackaging within its costs and be responsible for disposal of the same unless agreed otherwise.
3. Packing slips shall be enclosed with all deliveries and the relevant shipping documents sent on the date the goods are dispatched. Full order and product numbers must be given in dispatch notes, consignment notes, package addresses, delivery notes and invoices. The provider's VAT number must be evident. Invoices must include invoice numbers. Deliveries without adequate accompanying documents shall be set aside and handling and payment put on hold pending clarification and the provider shall store them with us at its sole cost and risk until the situation is cleared up. The provider shall be solely liable for damage and costs arising from failure to heed or comply with these terms and conditions.

§ 7 Delivery and performance period

1. Agreed deadlines and periods are binding. Compliance with the delivery deadline or delivery period shall be judged based on when we received the goods or when the service was performed. The provider shall promptly inform us in writing if circumstances arise or become evident from which it follows that the agreed delivery or performance period cannot be met. Such notice does not release the provider from its liability for the delay.

2. The provider may only rely on the absence of necessary documents or information which we are to procure or materials we are to provide as an obstacle to performance if it requested the transfer of the documents, information and materials from us in writing – where we are obliged to provide these – and did not receive them within a reasonable time.
3. Early deliveries do not affect when payment is agreed as being due. Part deliveries shall only be accepted following express agreement. The outstanding balance of the delivery must be recorded in the delivery documents. Where part deliveries have not been agreed, the agreed due date for payment shall be calculated no earlier than from the date delivery is completed in full.
4. The provider shall automatically be in default in relation to delivery as soon as the delivery date agreed as being binding is missed.
5. Where the provider misses the contractually agreed delivery deadline, it shall pay a contractual penalty of 0.2% of the delivery price (not including value added tax) for every working day of the delay for which it is responsible, but subject to a maximum of 5% of the delivery price. Any contractual penalty forfeited may be claimed up until final payment.
6. Where the provider is responsible for the delay in delivery, it shall be liable in full for all loss and damage the late delivery causes us; the forfeited contractual penalty shall be added to the loss or damage caused by delay.
7. Acceptance of a delivery does not mean damages due as a result of the delay in delivery are waived.

§ 8 Warranty for defects, limitation period and liability

1. We accept goods delivered while reserving the right to inspect them for defects. We satisfy our obligation to inspect and give notice of defects under article 377 German Commercial Code in relation to obvious defects in the delivery/service if we send notice of a defect within 20 working days of receiving the delivery. Where examination of the delivery is not feasible in the ordinary course of business within this period, we shall notify the provider of obvious defects within 15 working days of identifying the defect. The provider therefore waives the objection of late notice of defects.
2. Where there are material defects evident in the delivery/service, we shall be entitled to bring the statutory claims for defects within 36 months of the transfer of risk. Where the law provides longer limitation periods for notice of defects in relation to specific items or rights acquired by us or in relation to products we manufacture using the items for delivery, these longer limitation periods shall be deemed agreed also in relation to the provider.
3. Where we are legally entitled to subsequent performance, the provider shall, at our option, either eradicate the defects or deliver a replacement free of defects.
4. Where subsequent performance fails or should the provider refuse the type of subsequent performance selected, we may rescind the agreed contract, reduce the existing remuneration claim

against us, or, if the provider fails to give evidence that it was in no way responsible for the defects, claim damages instead of performance. The same shall apply if subsequent performance by the provider is unacceptable for us. This is particularly the case where the provider does not immediately comply with its obligations, despite having been requested to remove the defect, and there is a threat of serious risks or increased loss or damage. In these cases, we shall also be entitled to do the rectification work ourselves or have them done by third parties at the provider's cost. This shall apply in particular if increased loss or damage – in particular, claims from our customers for delay – can only be avoided through the rectification of the defects by us or a third party engaged for that purpose.

5. The running of the limitation period shall be suspended for the time the provider spends attempting subsequent performance. Limitation periods shall be suspended at the moment we give notice of defects. The limitation period shall not start to run again until the item for delivery is usable free of defects. In the case of new parts delivered within the limitation period as part of the warranty, the limitation period shall begin to run again from the point at which the provider has fully complied with our claims for redelivery unless we should assume from the provider's conduct that it did not regard itself as bound by such obligation and instead only undertook replacement delivery or eradication of the defects out of a willingness to oblige or for similar reasons.
6. Where we accept the return of an item sold to our customers on the grounds that it is defective and the defect was caused by delivery/performance on the part of the provider, or should our customer reduce the agreed price, we shall have the rights against the provider set out in article 437 German Civil Code without this requiring a time limit to be set.
7. Where a material defect becomes evident within six months of the transfer of risk, there is an assumption that the item was already defective when risk passed unless that assumption is incompatible with the nature of the item or defect.
8. Where the provider's delivery/performance provided to us contains defects of title, the provider shall indemnify us against potential third-party claims unless the provider is not responsible for the defect of title.
9. Should claims be made against us on grounds of a breach of domestic or foreign or official safety standards or product liability regulations or on grounds of defects in our products which are attributable to deliveries or services by the provider, we may request compensation from the provider for the loss/damage caused by its products and an indemnity against related third-party claims. In cases of strict liability, however, this shall only apply where the provider is at fault. To the extent the cause of the loss/damage lies within the provider's area of responsibility, it shall to such extent bear the burden of proof.
10. The costs to be compensated shall also include the costs of any necessary product recall, as well as the necessary costs of litigation. The provider shall be notified of the subject matter and scope of the product recall to be conducted. The provider shall take out producer's liability insurance for its obligations arising from its liability as the producer of the items delivered.

§ 9 Rights of rescission in case of force majeure

1. Where the goods ordered are no longer required as a result of events of force majeure, industrial action, interruptions in operations, riots, official measures or other avoidable occurrences arising after the contract was entered into, without our being significantly at fault, we may, where the duration of the events described is significant, rescind the contract wholly or in part or request a delay in performance without the provider becoming entitled to bring claims against us.

§ 10 Acceptance

1. Should it be for us to accept performance in the context of the particular order, we shall provide written notice, where performance is in line with the contract, that the provider has performed its obligations under the contract.
2. Where we fail to give prompt notice of acceptance, the provider may give us a further reasonable period in which to declare our acceptance. Upon expiry of that period performance shall be deemed to have been accepted if we fail either to give written notice of acceptance or to set out in writing which defects remain to be eradicated. When it sets the time limit the provider shall remind us of this legal consequence.
3. There is no entitlement to require partial acceptance.

§ 11 Intellectual property rights

1. The provider shall be liable for ensuring that no third-party rights are infringed in connection with its delivery/service unless such infringement falls outside its responsibility.
2. Where an action is brought against us by a third party for alleged infringement of intellectual property rights, the provider shall be obliged to indemnify us against these claims unless the breach of intellectual property rights is not within its responsibility. The indemnity obligation shall cover all expenses necessarily arising from or in connection with the claim by a third party.
3. Where the provider already holds industrial property rights in relation to the requested deliveries or services or the production process for the same, these shall be shared with us upon request, citing the relevant registration number and we shall receive an open-ended, non-exclusive right of use free of charge.

§ 12 CE declaration of conformity, manufacturer's declaration/certificates, quality management

1. Items for delivery must meet all requirements, guidelines and standards relating to the particular goods and be delivered with the prescribed certificates and confirmations. Should a manufacturer's declaration or declaration of conformity be required for the goods, the provider must prepare these and provide them promptly upon request at its own expense.
2. The provider must maintain a quality management system that meets the requirements of EN ISO 9001 or EN ISO 13485 and shall plan, implement and verify its performance in line with the requirements of that quality management system.

3. Where the provider procures production or testing devices, software, services, materials or other pre-deliveries from sub-suppliers for the manufacture or quality assurance of items for delivery, the provider shall incorporate these contractually into its quality management system or itself monitor the quality of the pre-deliveries as necessary and keep corresponding records of this within its quality management system.

§ 13 Confidentiality

1. The provider undertakes to keep confidential all information to which it gains access that is marked as confidential or which, due to other circumstances, evidently amounts to trade or company secrets, particularly technical and financial information and, unless expressly approved in writing in advance or required for the purpose of the contract, undertakes not to record it or to share it with third parties or exploit it in any other way. This confidentiality undertaking shall remain in place for a further five years following full performance or the termination of the contract.
2. This shall not apply to the following:
 - Information which was already known to the provider before the contractual negotiations commenced or which is shared by third parties as not confidential provided they are not in breach of their own confidentiality obligations;
 - Information that is or becomes known through no fault or assistance on the part of the provider or;
 - Information that must be disclosed as a result of legal duties or an official or court order.

In the latter case, the provider must promptly notify us ahead of disclosure.

3. Where the provider relies on one of the above exceptions, it shall be up to it to provide evidence of the existence of the requirements. This is without prejudice to further legal confidentiality obligations.
4. For each instance of the provider's culpable infringement of this duty of confidentiality we shall be entitled to claim liquidated damages of EUR 10,000.00 (in words: ten thousand euros); it shall be open to the provider to provide evidence that we incurred no loss/damage or a lesser degree of loss/damage. Where this is successfully demonstrated, we shall only be entitled to damages for the loss/damage actually incurred.
5. We reserve the right to claim such higher level of damages as we are able to provide evidence for instead of or in addition to the liquidated damages.

§ 14 Miscellaneous: place of performance, jurisdiction, applicable law, data dissemination, language of the contract, severability

1. The place of performance shall be our registered place of business in Hechingen.

2. The courts of Hechingen shall have exclusive jurisdiction over all disputes arising between the parties out of the contractual relationship, unless the provider is a trader, legal entity under public law or separate fund under public law or the provider has no general place of jurisdiction within the Federal Republic of Germany or moves its place of jurisdiction abroad. By way of exception to this, we shall also be entitled to bring claims against the provider at its general place of jurisdiction.

A trader is any businessperson entered in the commercial register or who operates a business and needs a commercial business establishment. The provider has its general place of jurisdiction abroad if it has its place of business abroad.

3. Should a provision of these Terms and Conditions of Purchase or a provision in relation to other agreements be or become invalid, this shall not affect the validity of any other provisions or agreements.
4. The provider is aware that data from business operations, including personal data, are required to be stored and processed as necessary for business purposes and shared with third parties. The provider hereby agrees to such data capture and processing.
5. The language of the contract is German. Where the parties use any other language in addition, the German text as agreed shall take precedence.
6. The contractual and other legal relations with the provider shall be governed by German law, subject to the exclusion of the UN Convention on Contracts for the International Sale of Goods.