

Terms and Conditions of Purchase

Umdasch Store Makers Leibnitz GmbH
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UMDASCH
SHOPFITTING

1. General

These Terms and Conditions of Purchase, hereinafter referred to as „TCP“, of Umdasch Store Makers Leibnitz GmbH, hereinafter referred to as „USMLE“, constitute an integral part of all contracts with contractors („Contractors“) under which USMLE acquires or purchases goods or services of any kind, in particular services and improvement, processing or conversion of goods [translator's note: hereinafter referred to as „work services“], be they for itself or to be passed on to third parties, with or without further processing by Umdasch. Amendments, modifications or side agreements shall be made in writing; this shall also apply to any abolition of this formal requirement of written form. USMLE shall not be bound by general terms and conditions of the Contractor. These TCP shall apply exclusively. If any provision of these TCP is or becomes ineffective, the validity of the remaining provisions shall not be affected. Only written purchase orders or orders shall be valid; agreements made orally or by phone shall be binding to the extent that they are confirmed in writing by USMLE. Processing of USMLE's purchase order shall be considered an acceptance of our terms. Through delivery of the ordered goods or services the supplier acknowledges that our TCP shall apply exclusively as the content of the contract. The Contractor's terms and conditions of sale and delivery shall not bind USMLE, even if we do not expressly object thereto.

2. Price

The prices shall be inclusive of VAT and, where applicable, inclusive of assembly, packaging, insurance, free delivery to the relevant destination and unloading and shall be fixed prices which cannot be increased for any reason whatsoever. Offers, cost estimates, visits and consulting and planning services shall be free of charge for USMLE unless otherwise agreed.

3. Delivery Date

Delivery dates shall be strictly observed. The goods must arrive at the agreed destination at the agreed delivery date.

In the case of non-observance of the delivery date USMLE is entitled to deny acceptance of the late delivery and is not obliged to grant the Contractor a grace period. In any case USMLE shall be entitled to cover its demand for the goods delivered late elsewhere at the cost of the seller and to claim any other damages. The delivery period shall commence at the date of the purchase order.

4. Transport and packaging

Transport and unloading at the relevant place of receipt stated in the purchase order shall be at the cost and risk of the seller; this shall also apply where carriage forward has been agreed. The supplier shall in any case be liable for damage and losses resulting from transport and unloading. Unless provided to the contrary, deliveries by post shall be sent to the address of USMLE; less than cargo lots sent by train shall be sent to Leibnitz station and carload lots shall be sent to Leibnitz station.

The shipment shall be packaged duly and in a way suitable for the relevant means of transport, particularly in accordance with USMLE's shipping rules.

5. Invoicing

The invoice must state the number, date and the reference of the purchase order and must be suitable for deduction of input VAT. The payment period shall commence not earlier than upon receipt of the invoice by USMLE. Partial invoices shall be accepted only if agreed.

6. Payment

6.1. Unless agreed otherwise, invoices of the Contractor for deliveries made or services rendered shall be due for payment upon receipt by USMLE, unless the delivery/service of the Contractor is not in compliance with the contract or USMLE has complained about the same. USMLE shall pay the invoice, at its option, either within ninety (90) days of receipt of the auditable invoice without deduction or within forty-five (45) days of receipt less a 3% cash discount, unless USMLE makes use of its right to set off.

6.2. Payment shall neither constitute recognition of the delivery nor a waiver of rights to which USMLE is entitled. Default interest and damages on the ground of delayed payment shall not be paid. USMLE shall be entitled to set off outstanding accounts receivable to which USMLE or a group company of USMLE is entitled vis-à-vis the Contractor, against claims of the Contractor based on the delivery or service.

6.3. Moreover, the Contractor agrees to an assignment of rights and duties of USMLE under this contract to third parties in whole or in part; in this context the Contractor waives any right to object as defined in Section 38 (2) of the Austrian Business Code [UGB]. The Contractor shall not be entitled to assign rights and duties under this contract to third parties or to group companies in whole or in part without obtaining prior written consent from USMLE.

6.4. The Contractor and USMLE hereby agree that all deliveries to USMLE shall be effected free from any retention of title.

7. Warranty and Guarantee

7.1. The Contractor shall be liable for the fact that its performance under the contract, in particular deliveries of goods, work services in the form of processing or manufacturing of products, and rendering of services shall be in accordance with the designated purpose that has been or must have been known to the Contractor. The Contractor is obliged to clarify any doubts about the designated purpose by asking USMLE. Accordingly, the Contractor shall also be responsible for the fact that in the case that products regarding which the Contractor has provided contractual services of whatsoever kind are forwarded to third parties for a charge or for no charge, those products can be used for the third party's designated purpose.

7.2. Moreover, the Contractor guarantees that deliveries (services) will be rendered in accordance with the purchase order and in compliance with all related laws and Austrian Standards [Ö-Normen].

7.3. Upon delivery/acceptance of delivered goods or rendered work services the Contractor shall assume warranty for 24 months from acceptance and full guarantee for 12 months thereof, which guarantee shall cover all defects that are identified within the guarantee period. Under the said warranty and guarantee the Contractor shall also compensate Umdasch for all damage which Umdasch has suffered as a result of defective delivery/service, without proof of fault being necessary.

7.4. The Contractor shall also be liable for fault of its upstream suppliers. If USMLE makes available staff to the Contractor, in particular for processing, assembly work, carrying out a test run or for unloading, such staff shall be subject to the Contractor's instructions and shall be considered its agent [Erfüllungsgehilfe as defined by Section 1313a of the Austrian General Civil Code [ABGB]] and the Contractor, and not USMLE, shall be responsible for their errors.

7.5. Acceptance of delivery (service) shall be effected by inspection at the place of use designated by us and/or on the occasion of using the goods. The provisions of Section 377 et seq. UGB shall not apply.

7.6. In the case of warranty USMLE shall be entitled, at its option, to ask for free substitute delivery, cancellation of the contract, free repair of the defect or a reasonable discount or to have the defect repaired by third parties at the Contractor's cost without prejudice to other options under the law. Travelling times, inspections and transports, if applicable, shall be borne by the Contractor.

7.7. The warranty and guarantee period shall commence to run again upon complete repair of defects, including with regard to those parts of the delivery (service) which were free from defects in the first place. If due to statutory provisions a grace period needs to be granted,

the Contractor shall be granted a reasonable grace period for improvement, replacement, etc.

7.8. The Contractor shall enclose instructions on storage, care and operation, if applicable, in German with the shipment without request; otherwise the Contractor shall be liable for damage suffered by USMLE due to ignorance of those instructions.

8. Liability of the Contractor

Limitations or exclusions of claims for compensation to which USMLE may be entitled vis-à-vis the Contractor on whatsoever legal ground, including on the basis of the Austrian Product Liability Act [Produkthaftungsgesetz], BGBl. [Federal Law Gazette] No. 99/1988 as amended from time to time, shall not be effective. The Contractor undertakes to indemnify and hold us harmless with regard to all product liability claims of third parties for a period of 12 years from delivery, to advise the name of the manufacturer, importer or supplier of the product upon request of USMLE and to make available to us in a timely manner all documents and records that are expedient for defending product liability claims of third parties. The designer (planner, architect, structural engineer, etc.) undertakes to compensate USMLE for all damage if USMLE is held liable under product liability for a design error.

9. Acceptance and passing of risk

The delivery item shall without exception be accepted by USMLE subject to reservation and so that an agent of USMLE takes delivery of the item at the plant or at a different place of destination (construction site). If the supplier still has to process or assemble the delivery item at the place of destination, acceptance by USMLE shall be effected only after completion of such work. If a test run of the delivery item is prescribed, acceptance shall be effected only after the test run has been carried out. If the object of delivery gets into the possession of USMLE before assembly or arrival at the place of destination, for example due to the fact that we have organised transport, this shall not be considered an acceptance of the delivery item by USMLE. The risk of damage, loss or destruction of the delivery item or of parts thereof shall pass to USMLE only upon acceptance of the same. This shall apply also if shipping was organised by USMLE or is for USMLE's account.

10. Prevention of accidents

If the Contractor has to provide its services on the premises of USMLE, the Contractor shall ensure that all provisions governing the prevention of accidents are complied with and the Contractor shall be liable vis-à-vis USMLE for damage caused thereby and by non-observance of USMLE's safety regulations.

If we make available staff to the Contractor, in particular for processing, assembly, carrying out a test run or for unloading, such staff shall be subject to the Contractor's instructions and shall be considered its agents [Erfüllungsgehilfen as defined by Section 1313a of the Austrian General Civil Code [ABGB]] and, thus USMLE shall not be responsible for their errors.

11. Place of performance and place of jurisdiction

The place of performance for deliveries and services shall be the destination stated by USMLE.

Leibnitz shall be the place of jurisdiction for all legal disputes arising in connection with the contractual relationship; however, USMLE shall be entitled to sue the supplier before any other court in Austria. All contractual provisions shall be governed by Austrian law; however, applicability of the provisions of the UNCITRAL Convention on Contracts for the International Sale of Goods, BGBl. [Federal Law Gazette] No. 1988/96, and the conflict of laws rules of the Austrian Statute on Private International Law [IPRG] shall be excluded.

12. Right of rescission

If insolvency or composition proceedings or preliminary proceedings are opened over the assets of the Contractor, USMLE shall be entitled to rescind the contract without granting a grace period. The same shall apply if the Contractor violates statutory provisions, in particular in the area of anti-corruption and anti-trust law, or the provisions of the Code of Conduct of Umdasch Group.

13. No set-off

The Contractor shall not be entitled to offset his own accounts receivable against claims or accounts receivable of USMLE or to withhold or reduce services for whatever reason. This prohibition to set off shall not apply to accounts receivable of the Contractor which have been recognised by USMLE in writing or which have been ascertained by a court in a non-appealable manner.

14. Miscellaneous

14.1 If USMLE makes available to the Contractor documents, in particular drawings, plans and specimens, the Contractor shall check them, in particular for accuracy and completeness, and settle any related doubts with USMLE on its own initiative. Documents, plans, specimens, models, prototypes etc. shall remain the property of USMLE and shall be returned to USMLE upon termination or fulfilment of the contract. Copyrights and/or other industrial property rights to such documents shall not be transferred by USMLE and shall not be made available for use.

14.2 The Contractor undertakes to maintain strict secrecy regarding all documents and other information, including but not limited to production know-how, quantities, documentations and drawings, which USMLE makes accessible to the Contractor in the course of the business relationship with USMLE or of which the Contractor otherwise obtains knowledge and to use the same only for performance of the present agreement. This duty shall survive termination of the contractual relationship.