

# General Terms and Conditions of Purchase

## General

- a) These General Terms and Conditions of Purchase shall govern and apply to all contracts, including but not limited to future contracts, with companies, individuals, legal entities of public law or special funds under public law or other seller ("Seller" or "you") regarding the purchase by Markert USA LP ("Buyer", "we", "us" or "our") of moveable goods or moveable goods to be produced ("Purchase Good" or "Purchase Goods") from the Seller.
- b) Only our General Terms and Conditions of Purchase apply. Additional or deviating agreements or conditions of the Seller, to which we have not agreed in writing, do not apply. General Terms and Conditions of the Seller are hereby rejected. Acceptance of Purchase Goods or payment to Seller does not constitute our acceptance to any of the Seller's terms and conditions and does not serve to modify or amend these General Terms and Conditions of Purchase. These General Terms and Conditions of Purchase, along with any corresponding written and agreed-upon order or contract, comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. We may prospectively amend or modify these General Terms and Conditions of Purchase by providing reasonable, prior written notice of such amendment or modification to you.

## Offer

- a) Seller has to precisely mirror the respective request from Buyer in Seller's offer and – in cases of discrepancies – must explicitly point out such discrepancies.
- b) Seller's offer shall be provided free of charge and does not oblige us to purchase the offered goods. Buyer is not obligated to any minimum purchase or future purchase obligations whatsoever under these General Terms and Conditions of Purchase.
- c) Seller is bound by its offer for the time specifically stated in such offer, or if none, for no less than one month.

## Order and Conclusion of Contract

- a) Only written orders and order changes/cancellations are valid. Oral contracts are only binding if and insofar they have been confirmed in writing by both parties. We are entitled to change or cancel orders at any time, as long as the Seller has not confirmed our order in writing.
- b) In order to conclude a contract, Seller is required to confirm orders in writing within three (3) business days. A valid conclusion of a contract is subject to the condition that Seller uses our order form for its written confirmation. This applies mutatis mutandis in case of order changes. Every document has to show the complete order number, order dates and our order reference.

## Technical Provisions, Safety Regulations

- a) The Purchase Goods will comply with the highest standards of technology and quality in the industry, all applicable laws, any other applicable safety and accident prevention regulations. If the Purchase Good does not comply with these provisions and regulations this will be regarded as defect in accordance no. 5.
- b) Test certificates and certificates of origin and similar documents are part of the Purchase Goods to the extent we have requested them or Seller has agreed to provide them.

## Warranty

- a) Seller warrants to Buyer that for a period of two (2) years from the date of delivery, all Purchase Goods will: (i) be free from any defects in workmanship, material and design; (ii) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (iii) be fit for their intended purpose and operate as intended; (iv) be merchantable; (v) be free and clear of all liens, security interests or other encumbrances; and (vi) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Purchase Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or in equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Purchase Goods with the foregoing warranties.
- b) In case a delivery or service does not comply with the contract, these General Terms and Conditions of Purchase or the recognized standards of technology or industry quality, we are entitled to claim at our choice either repair free of charge or replacement free of charge ("Supplementary Performance"). In case the first try to conduct Supplementary Performance fails, we are entitled to claim at our choice either a reduction of the purchase price ("Reduction") or withdrawal from the contract ("Withdrawal"). We are entitled to the same claims if the Supplementary Performance is not conducted despite a reasonable grace period set by us or if Seller refuses such Supplementary Performance. In addition, we are entitled to rectify the defect by ourselves and claim reimbursement of the required expenditures or credit for a pre-payment, respectively. These claims also apply with regard to minor defects. Our right to claim damages in addition to a Reduction or Withdrawal remains unaffected.
- c) If we choose to claim damages upon a failed Supplementary Performance, we are free to either keep the Purchase Goods and claim damages, which may be in an amount equal to or greater than the difference between the purchase price and the worth of the defective Purchase Good, or return the defective Purchase Good and claim damages caused by the non-performance of the contract, in both cases including any consequential damages and damages caused by delay or failure of performance (if any).
- d) Any claims based on defects become time-barred after three years from the date of the delivery if not agreed otherwise and irrespective of any further-reaching statutory claims. With regard to Purchase Goods which require to be assembled at the delivery place the limitation period starts once the assembly is completed. In case a trial operation was agreed the limitation period starts once such trial was conducted by us without undue delay and completed without complaint. In any other cases the limitation period starts once the Purchase Good was received at the agreed delivery place.
- e) The warranty period shall be tolled for the time period between the notification of defect and the rectification of the defect. In case only parts of the delivery goods are defective, the warranty period shall be automatically prolonged for the entire Purchase Good for the time period between the notification of defect and the rectification of defect. In case parts are replaced or repaired the warranty period starts anew as soon as a contractually-compliant and defect-free Purchase Good was produced and delivered.
- f) In case of a deviation of weight the weight measured by us applies unless Seller proves that the weight was determined by correctly using a commonly accepted measuring method.
- g) Our claims with regard to defects shall not be affected because we accepted planning documents (cf. no. 7) unless a failure in the drawings or other documents was detectable for us, which has to be proven by Seller.

## Delivery

- a) Unless the parties have agreed differently in writing, all deliveries shall be free of charge to the delivery place agreed between the parties or stipulated in the offer, respectively. Title passes to Buyer upon the earlier of payment or delivery of the Purchase Goods to the delivery location. Seller bears all risk of loss and damage to the Purchase Goods until delivery at the at the delivery place. Delivery dates and locations set forth in a contract determine the date of receipt of the delivery at the delivery place ("Delivery"). Deliveries before the agreed delivery date require our prior written approval.
- b) The agreed delivery dates are binding, whereby events of force majeure are excluded. Unless something different was agreed, the delivery period starts at such time as the contract is agreed-upon. If it becomes detectable that possibly or probably the delivery dates will not be met, Seller must notify us stating the reason and the duration of the delay. In case Seller does not notify us, it may not claim such respective reason as an excuse for the delay. The foregoing sentence does not apply to events of force majeure.
- c) In case Seller does not fulfill its contractual obligations within the agreed delivery period, it is liable for and shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses attributable to Seller's failure to deliver the Purchase Goods within the delivery period. In case Seller is entirely or partly in default with the delivery or performance, we are entitled to all claims arising out of the default, whether arising under applicable law or equity, without restriction or limitation. To the extent that the parties have agreed upon liquidated damages for delayed delivery, such liquidated damages remain unaffected.

## Planning Documents

- a) Seller is not entitled to use or make available to third parties planning documents which we provide to Seller in order to produce the Purchase Good for any other purpose than the fulfillment of the contract. All non-public, confidential or proprietary information of Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with any order or contract is confidential, solely for the use of performing the order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.
- b) At our request, Seller must present the planning documents, working drawings, and other specifications and documents which relate to the Purchase Goods for our approval, and upon our approval Seller will provide us with one master print. At our request, Seller must provide us in addition with spare part drawings for the significant spare parts and with sufficient information with regard to the purchase of such spare parts.

## Insurance

- a) Transport insurance will be obtained by Seller, unless the parties explicitly agree differently in writing.
- b) Seller is obliged to have and keep in place at its costs a sufficient commercial general liability (including product liability) insurance, with financially sound and reputable insurers, covering damages caused by Seller, its personnel or its representatives. Seller is obliged to disclose to us the covered amount per damage event at our request.

## Delivery Provisions

- a) Seller is obliged to send a delivery notification for each and every delivery at the date of such delivery separate from the Purchase Goods and the invoice. Packing notes and delivery notes containing at least information on defects, an exact description of the Purchase Good and the order number must be enclosed with the delivery.
- b) In case we have agreed with Seller in writing that we bear the delivery costs, Seller is obliged to choose the cheapest and most suitable way of transport. All delivery notifications, delivery notes, packaging notes, consignment notes, invoices and the outer packaging, etc. must show the complete order signs and information on the unloading point prescribed by us.
- c) Seller is obliged to pack, label and send any dangerous substances in compliance with all applicable national and international laws, rules, orders, regulations, and legal provisions. In addition to the hazard class the accompanying documents must include all further information which is required by the applicable transportation provisions. Seller is liable for damages and bears all costs which are caused by, arise out of or related to non-compliance with these provisions. Seller is also liable that its sub-deliverers, subcontractors and agents comply with these provisions. All Purchase Goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Purchase Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.
- d) Seller bears the risk arising out of incorrect, incomplete or delayed shipping documents. All deliveries which we cannot accept due to non-compliance with any provision of these General Terms and Conditions of Purchase, are stored at Seller's costs and risk. We are entitled to check the content and condition of such deliveries.

## Force Majeure

- a) A party shall not be liable for delayed or failed performance under these General Terms and Conditions of Purchase due to force majeure, labor disputes, riots, official measures and any other events beyond the reasonable influence and control of such party.
- b) In case the force majeure continues for more than one month, the impacted party is entitled to withdraw from all contracts affected by the force majeure, whereby all other rights and claims shall be excluded.

## Invoices and Payment

- a) Invoices must correspond with the agreed-upon order with respect to positions and prices. Possible increased or decreased contractual performances must be listed separately in the invoice. The price of the Purchase Goods is the price stated in the order (the "Price"). If no price is included in an order, the Price shall be the price set out in Seller's published price list in force as of the date of the order. Unless otherwise specified in the order, the Price includes all packaging, transportation costs to the delivery location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.
- b) Buyer will pay undisputed invoices generally within 30 days. Payment periods start with the agreed point in time, however, at the earliest, with the receipt of all Purchase Goods, documents (in particular certificates, specifications and approval notes) and the invoice. In case we conduct the payment within 14 days from the receipt of the Purchase Goods, documents and the invoice, Seller grants a discount of 2% calculated on the net invoice amount. Seller may not assign its payment claim except pursuant to our

written approval.

- c) Our payment is not to be regarded as an acceptance of conditions, prices or a declaration of the absence of defects or waiver of any warranty rights or other rights under these General Terms and Conditions of Purchase.
- d) Seller will pay default interest in an amount equal to the lesser of 5 percent per annum or the maximum amount permissible under applicable law. Seller is not entitled to claim lump sum reminder fees. Seller must prove concrete damages.

### **Place of Performance**

- a) Place of performance with regard to the delivery is the delivery place designated by us. Place of performance with regard to the payment is Moravia, New York.

### **Applicable Law**

- a) All matters arising out of or relating to these General Terms and Conditions of Purchase are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York. The parties waive application of the CISG. Any legal suit, action, or proceeding arising out of or relating to these General Terms and Conditions of Purchase shall be instituted in the courts of the State of New York located in the County of Cayuga (or the United States District Court for the Northern District of New York), and each party irrevocably submits to the exclusive jurisdiction of such courts in any suit, action, or proceeding.

### **Origin of Goods**

- a) Seller shall comply with all applicable laws, regulations, and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under these General Terms and Conditions of Purchase. Seller shall comply with all export and import laws of all countries involved in the sale of the Purchase Goods, including with respect to Certificates of Origin and origin of the Delivery Goods and any raw materials. Seller assumes all responsibility for shipments of Purchase Goods requiring any government export clearance. Buyer may terminate these General Terms and Conditions of Purchase if any governmental authority imposes antidumping or countervailing duties or any penalties on the Purchase Goods.

### **Indemnification**

- a) Seller shall defend, indemnify and hold harmless Buyer and Buyer's customers (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the Purchase Goods or Seller's negligence, willful misconduct or breach of these General Terms and Conditions of Purchase. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Purchase Goods infringes or misappropriates the patent,

copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

### **General Provisions**

- a) If single clauses of these General Terms and Conditions of Purchase are partly or entirely invalid the validity of the remaining clauses shall not be affected. The parties are obliged to replace the invalid clause with a valid clause, which most closely approximates the invalid clause. Seller may not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Seller of any of its obligations under these General Terms and Conditions of Purchase. Provisions of these General Terms and Conditions of Purchase which by their nature should apply beyond their terms will remain in force after any termination or expiration of these General Terms and Conditions of Purchase, including, but not limited to, Sections 4, 5, 6, 7, 8 and 9. In addition to any rights or remedies that may be provided under these General Terms and Conditions of Purchase, Buyer may terminate these General Terms and Conditions of Purchase or cancel any order or delivery, with immediate effect upon written notice to Seller, if Seller: (i) fails to perform or comply with any of these General Terms and Conditions of Purchase, in whole or in part, or (ii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. The rights and remedies of Buyer under these General Terms and Conditions of Purchase are cumulative and in addition to any other rights and remedies available at law or in equity or otherwise. No change to any order or contract is binding upon Buyer unless it is in writing, specifically states that it amends such order or contract and is signed by an authorized representative of Buyer.

As of February 2023