

# PURCHASING CONDITIONS of NTT Austria GmbH



## **1. Validity:**

- 1.1. Unless stipulated otherwise, all orders placed by NTT Austria GmbH („NTT“) are exclusively subject to the below conditions; the same holds true for the case in which differing conditions of a supplier remain uncontradicted by NTT. Differing conditions of a supplier shall be deemed acknowledged by us only upon our written acceptance preceding the receipt of the confirmation note.
- 1.2. Offers or estimates of costs made to our company shall be gratuitous, irrespective of any necessary preliminary work.

## **2. Orders:**

- 2.1. As a rule, orders will be placed in writing. Orally placed orders shall be regarded as having been placed on our Conditions of Purchase even if no special reference has been made to these conditions.
- 2.2. In case of permanent business relations, subsequent orders shall be regarded as having been placed on our Conditions of Purchase even if no special reference has been made to these conditions.
- 2.3. The supplier confirms by acceptance of the order to be entitled by trade licenses to fulfill all necessary actions for completion.

## **3. Confirmations:**

Orders are to be confirmed by means of a confirmation note, which we must have received back within 2 weeks from the date of order, otherwise the supplier will conclusively accept and execute our order according to our conditions.

## **4. Quality and Environment:**

- 4.1. Delivered goods and services must meet exactly the requirements concerning quality and environmental protection, as stated in the order form. Unless expressly stated otherwise in the order form, the standards (e.g., DIN, ÖNORM, works standard specifications) and drawings mentioned in our orders refer to the latest version valid at the time of order placement. Unless our offer contains specific conditions, the delivered goods must at least be of merchantable quality and must comply with the applicable safety regulations in consideration of the state of the art and the rules of technology, the relevant regulations and standards of electrical engineering and telecommunications as well as all applicable ÖVE and/or VDE regulations; they must also comply with the technical standards of ÖNORM, DIN and/or the harmonized European Standards (EN). All relevant EU directives applicable to the product, especially those regarding the "CE"-marking, must be observed. The corresponding declaration of conformity, including the pertinent documentation (in case of non-EU suppliers) shall be part of the goods delivered.
- 4.2. Austrian suppliers commit themselves to the disposal of packaging material through a management system accepted by law.
- 4.3. In case of services rendered on our premises, the supplier commits himself to take along any resulting waste and to observe the relevant regulations.
- 4.4. Deliveries by subcontractors are to be handled preferably by reusable packaging. In manufacturing processes of products for NTT, the subcontractors also commit themselves to refrain from using substances that may be harmful to the ozone layer.

## **5. Place of Delivery, Prices and Packaging:**

- 5.1. Unless stipulated otherwise in the order form, the place of delivery shall be our business address.
- 5.2. Unless stipulated otherwise, the prices shall be understood as fixed prices DDP (delivered duty paid) stated destination (Incoterms 2000). Damage resulting from nonobservance of such instructions shall be paid for by the supplier. At Scheydgasse 41, A-1210 Vienna, deliveries can only be taken workdays, every Monday through Thursday between 7.00 a.m. and 3.30 p.m., and every Friday between 7.00 a.m. and 1.30 p.m. Without appropriate shipping documents, the delivery shall not be taken as the performance of order or given further treatment, but shall be stored at the risk and expense of the supplier.
- 5.3. The order placed must not be passed on to subcontractors in full or in part without previous written consent on our part.

## **6. Invoices and Delivery Notes:**

- 6.1. For every item on invoices and delivery notes, our order number and the item number must be stated.
- 6.2. Invoices must contain detailed specifications on the order number, the date of order and the goods delivered (designation of type and quantity). They must also be in accordance with the sales tax regulations, failing which the maturity of the invoiced amount shall be deferred. Every invoice for goods delivered within the European Union, must contain the statistical merchandise number(s) and the net weight of the article(s). The packaging of goods delivered from abroad must include a delivery note and a copy of the invoice.

## **7. Payment:**

Unless stipulated otherwise, payment shall be made by bank transfer within 90 days after receipt of the invoice, to an account to be notified in writing, subject to regular delivery, or upon receipt of the goods, depending on which date is later. Payment does not imply acknowledgement of the regularity of delivery and thus no renunciation of warranty claims or damage claims, which we are entitled to because of failures of performance.

## **8. Delivery, Default in Delivery**

- 8.1. Dates of delivery or completion stipulated by us and/or agreed upon imply that the goods are available to NTT on the specified day and at the specified place of delivery.
- 8.2. We shall be entitled to refuse the acceptance of goods delivered before the specified date of delivery and to send back the goods delivered prematurely or to store them with third persons at the risk and expense of the supplier. Should we be hindered from accepting the delivery due to circumstances we have been unable to avert despite reasonable care, especially in case of operating troubles, e.g. strike, etc., incurred through no fault of our own, the moment of acceptance shall be postponed by the duration of the hindrance.
- 8.3. In the event of default in delivery we shall be entitled to withdraw from the contract without setting a period of grace, notwithstanding legal claims that may go beyond that. All damage resulting to our company because of default on the part of the supplier, whether or not caused by the fault of his own, shall fall on him.
- 8.4. In the event of default in delivery, without prejudice to the provision in 8.3, a penalty in the amount of 1 percent of the net order total for each day of delay will be due. Payment of the penalty has to be effected within 30 days from demand of payment by NTT.

## **9. Security Rights:**

Supplier warrants to be fully authorised to dispose of the delivered goods. If supplier should not be fully authorised to dispose of the delivered goods (e.g. due to security interests of third parties) we shall be entitled to refuse the acceptance and to demand immediate delivery of unencumbered goods as well as to claim damages.

## **10. Acceptance and Warranty:**

- 10.1. Unless stipulated otherwise, the warranty period shall be 24 months, starting at the earliest on the day the goods have definitely been accepted by our company. The definite acceptance of the goods on our part does not take place until an inspection or quality check has been performed on the occasion of the application of the goods on the location of use, at our customer. If the application of the goods takes place on our premises, such an inspection or quality check is carried out within a reasonable period of time following the delivery of the goods. After the defect has been completely eliminated, the warranty period regarding the defective goods starts afresh. If a defect exists it is presumed during the whole warranty period that the defect has been existing since the date of delivery.  
In case of goods which may be assessed for attributive aspects, the quality check shall be carried out according to respectively effective MIL sample procedure (currently MIL-105D) with the AQL value stated in the technical data. If no specific value has been prescribed, AQL shall be considered to be 1,5%. In case of goods which may not be assessed for attributive aspects (raw materials, semimanufactured products) the features stated in the order shall be regarded as testing criteria. Should this examination show a defect, we shall be entitled to regard the whole delivery as defective on the basis of the partial result. In such a case we also reserve the right to cancel that part of the order which has not definitely been accepted by our company, thereby precluding the possibility that whatever claims against us may result from this.
- 10.2. In case of hidden defects the warranty period shall start no earlier than at the time the defect is discovered.
- 10.3. Application of § 377 UGB (commercial code) is excluded.
- 10.4. Our confirmation on the counterreceipt and/or our receipt for the acceptance shall always be only conditional, that is the goods shall be regarded as accepted only after the subsequent examination has shown no subsets and/or defects.
- 10.5. A liability case shall entitle us, regardless whether the remedy of the defect is feasible and reasonable, to choose among suspension of the contract, replacement of the goods, elimination of the defect or a reasonable reduction of the price, or having the defects eliminated at the supplier's expense. Should a period of grace be required under mandatory law, in any case, a period of no more than 4 weeks shall be regarded as reasonable. In general we shall be entitled to eliminate the defects ourselves or to have them eliminated by third persons at the risk and expense of the supplier, without setting a period of grace. The supplier's warranty shall remain valid for delivered goods which involve the elimination of discovered defects by our company or by third persons. All reasonable expenses resulting in the course of the elimination of defects shall be covered to the full by the supplier.

## **11. Product Liability:**

- 11.1. The supplier commits himself to compensate us for any damage under product liability, regarding the products supplied by him (including parts thereof), and to indemnify us and hold us harmless vis-à-vis product liability claims of third persons, concerning both personal and material damage.
- 11.2. The supplier shall also be committed to furnish all data, instructions, drawings and other documentation (in German or English) complete and unsolicitedly, which are necessary for the destined use (installation, application, etc.) of the supplied products.
- 11.3. Should the supplier later gain knowledge of circumstances which might give rise to product liability claims, he shall be committed to inform us about them immediately and to compensate us for any expenditure and damage caused to us in connection with possible call-back campaigns for defective products, or for which we have had to compensate third persons.
- 11.4. Should product liability cases give rise to legal disputes, the supplier shall make all useful evidence available to us in time, support us to the best of his ability and compensate us for the expenses that are appropriate to such legal disputes.

## **12. Secrecy:**

Documents, data, drawings, samples, models, stencils and other makeshifts handed over to the supplier by our company, shall remain our material and intellectual property, which is entirely at our disposal. The supplier must not use them for purposes other than those stipulated, duplicate them or make them accessible to third persons. Confidential treatment is herewith expressly agreed upon. The supplier shall transfer his commitment to secrecy to all persons who will have access to the documents designated by our company. These pieces of information may be used exclusively for performing our orders, and all documents handed over or elaborated must be returned to NTT at the termination of the order.

## **13. Copyright and Patent Right:**

The supplier is committed to indemnify us and hold us harmless vis-à-vis claims of third persons in disputes arising from goods delivered and/or services rendered, concerning patent rights, trademark protection, the protection of patterns and designs and the copyright, and to guarantee us the unrestricted use of the goods delivered and/or services rendered.

## **14. General Aspects:**

- 14.1. The cession of contractual claims on the part of the supplier is unlawful and ineffective without previous written consent by NTT.
- 14.2. Should particular stipulations of these Conditions of Purchase be or become ineffective, the effectiveness of the remaining ones remains unaffected. The ineffective stipulation has to be replaced by a valid one, which corresponds to the set goal in the best possible way.

## **15. Jurisdiction and Applicable Law:**

All contractual relations subject to these Conditions of Purchase shall be governed by Austrian law. The application of the UNCITRAL agreement of the United Nations on contracts on international purchase of goods shall be precluded by mutual agreement. Disputes arising from contracts subject to these Conditions of Purchase fall under the exclusive jurisdiction of the competent court of Wien Innere Stadt, A-1010 Vienna.