

# ProMinent Dosiertechnik GmbH, General Contract Conditions of Purchase

## 1. Scope of Application

### 1.1

These Terms and Conditions of Purchase shall apply in preference to and supersede any Terms and Conditions referred to, offered, or relied on by the Supplier at any stage in the dealings between the Supplier and ProMinent – hereinafter referred to as the Buyer. The Buyer will not be bound by any other diverging or conflicting terms and conditions of Supplier unless the Buyer expressly acknowledges in writing that such terms and conditions are required to apply. These Contract Conditions of Purchase shall apply even if the Buyer, being aware that Supplier's terms and conditions are in conflict with or divergent from these Contract Conditions of Purchase, accepts Supplier's delivery without reservation.

### 1.2

Any variation in, modification from, or supplement to these Contract Conditions of Purchase shall be made in writing.

### 1.3

These Terms and Conditions of Purchase shall also apply to any and all future dealings with the Supplier.

## 2. Purchase Orders

### 2.1

Any purchase order, contract acceptance, modification thereof or supplement thereto shall be made in writing. They may be made by means of electronic data transfer or machine-readable storage media. The Buyer shall not be bound by any oral or supplementary agreement made prior to, during, or after entering into a contract unless the Buyer acknowledges such oral or supplementary agreement in writing.

### 2.2

The Supplier agrees to declare acceptance of a purchase order within two (2) weeks. If the Supplier fails to declare acceptance of a purchase order within this time limit, the Buyer may terminate this purchase order.

### 2.3

The Buyer shall have the right, from time to time during the execution of a purchase order, by amendment to the order, to request variations in the design or workmanship of the goods to be delivered to the extent that the Supplier may reasonably be expected to carry out such variations. If any such change causes an increase or decrease in the cost of, or the time

required for, the Supplier's performance, an equitable adjustment shall be made in the contract price or delivery schedule, or both, by mutual agreement

#### **2.4**

All tender documents, including, without being limited to, drawings, calculations and illustrations generated, prepared, or assembled jointly with the Buyer are the exclusive property of the Buyer. They may not, without the Buyer's express written approval, be conveyed by the Supplier in any way to a third party.

#### **2.5**

The Supplier shall advise the Buyer of any potential defects already when submitting the tender, including, without being limited to, defects in workmanship according to the state of science and the state of the art, conformity with environmental legislation, and technical usefulness.

#### **2.6**

The Supplier shall not sub-contract any purchase order received from the Buyer without the prior written consent of the Buyer.

### **3. Delivery Dates or Periods**

#### **3.1**

The agreed dates or periods of delivery shall be binding. The relevant date for determining compliance with the delivery dates or deadlines shall be the date of receipt of the goods against the order at the Buyer's location or any other delivery address as stated by the Buyer.

#### **3.2**

If the Supplier should encounter conditions impeding timely delivery of the goods, the Supplier shall promptly notify the Buyer in writing of the fact of the delay. The Supplier shall, at its own expense, make every effort to meet the agreed delivery deadlines.

#### **3.3**

A delay by the Supplier shall render the Supplier liable to pay the Buyer compensation for default. The Buyer shall have the right to deduct from the contract price, as liquidated damages, a sum equivalent to 1% of the contract price for each full week of delay up to a maximum deduction of 10% of the contract price. The Supplier shall have the option of proving that its default did not cause any damage or considerably less damage than the amount of liquidated damages as specified hereinabove. This shall apply without prejudice to any other statutory remedy the Buyer may have, including, without being limited to, the Buyer's right to terminate the contract or to claim damages for failure to perform.

#### **3.4**

Acceptance without reservation of any delayed delivery shall not be interpreted as a waiver of the aforementioned claims of the Buyer.

#### **4. Packing, Shipping, and Assembly**

##### **4.1**

Unless otherwise agreed, the Supplier shall pack the goods to be delivered to afford the protection required under normal transport requirements and according to normal trade practice. Unless specified by the Buyer, all packing used shall be made of environmentally compatible materials for easy recycling. At the Buyer's request, the Supplier shall, at no cost to the Buyer, collect packaging at the Buyer's location.

##### **4.2**

If delivery is to be made to any other point than the Buyer's location, the Supplier shall send the Buyer a despatch note.

##### **4.3**

The Supplier shall be liable for any loss or damage during shipping.

##### **4.4**

Unless otherwise agreed in writing, delivery shall be free domicile.

##### **4.5**

The Supplier shall state the order information as specified by the Buyer on all shipping documents.

#### **5. Inspection for and Notification of Defects**

##### **5.1**

The Buyer should promptly notify the Supplier of any defects of goods as soon as such defects can be discovered under the circumstances of a proper conduct of business.

##### **5.2**

The Supplier agrees to waive its defence of Buyer's delay in lodging a complaint in respect of a defect of goods.

## **6. Quality and Documentation**

### **6.1**

The Supplier warrants to the Buyer that the goods supplied are in conformity with the Buyer's technical specifications, the latest state of the art, the generally accepted engineering standards, and the relevant safety regulations. No changes in the manufacture of the goods shall be made without the Buyer's prior written consent. Any technical data or test or inspection requirements specified by the Buyer shall not release the Supplier from its liability that the goods delivered are without defects, in conformity with the purchase contract and fit for the intended use.

### **6.2**

The Supplier shall continuously inspect the quality of the goods delivered under a purchase contract and advise the Buyer of possible quality improvements, if any.

### **6.3**

The procedure and scope of quality inspections shall be agreed upon by the contracting parties. The Buyer shall have the right to demand at any time that the Supplier apply inspection methods that are common in the industry and specific to the product.

### **6.4**

The Supplier shall retain quality inspection documents for no less than ten (10) years and present them for inspection at the Buyer's request.

### **6.5**

The products delivered shall be in conformity with the relevant standards and directives, including, without being limited to, the Directives of the European Community. The Supplier shall be liable for any delays caused by missing or incorrect attestations of conformity.

## **7. Invoicing and Payment**

### **7.1**

All invoices shall be sent to the Buyer in duplicate indicating the order number and the order date.

### **7.2**

Subject to delivery in accordance with the contract and unless otherwise agreed upon, payment shall be made no later than fourteen (14) days of receipt of invoice with a 3% discount, or net no later than thirty (30) days of receipt of invoice.

## **8. Warranty**

### **8.1**

The Supplier warrants to the Buyer that all goods supplied shall be free from defects, including, without being limited to, defects in the quality as agreed upon, are fit for the intended use, are in conformity with the state of the art in respect of technical properties, quality, and workmanship, and conform to the data specified by the Supplier in respect of material, performance, or efficiency.

### **8.2**

The Supplier warrants to the Buyer that the goods supplied are in conformity with the statutory provisions, the relevant guidelines, directives and standards, and that the contractual use of the goods supplied shall not cause the Buyer to infringe any Trade Mark, or Copyright.

## **9. Scope of Warranty**

### **9.1**

To the extent that the Supplier is liable to repair or replace supplied goods, the Supplier shall also bear the cost involved in any such repair or replacement, including, without being limited to, the cost of transport, labour, and material. This shall apply even if payment of such cost has been advanced by the Buyer. Furthermore, the Supplier shall pay the necessary cost of discovering a defect and identifying its cause and the Supplier shall compensate the Buyer for any damage sustained through the repair of supplied goods as well as any damage to any other property of the Buyer sustained through any such repair.

### **9.2**

The cost of repair or replacement shall include, without being limited to, the cost of packaging, freight, dismantling and installation. The Supplier shall pay the Buyer a reasonable compensation for the Buyer's time spent on repairing or replacing supplied goods.

### **9.3**

In the event of a frequent occurrence of damage due to the same cause (recurrent damage), the Supplier shall supply the Buyer as quickly as possible with faultless parts in replacement of the batch or for general repair and replacement purposes. The Supplier shall be liable for any and all measures required to prevent damage, including, without being limited to, the preventive exchange of parts, if any such exchange of parts is due to defects of the goods manufactured or supplied by the Supplier. In this case, the Supplier shall pay any and all costs and expenses, including, without being limited to, the cost of a recall.

**9.4**

This warranty shall remain valid for 24 months after the goods have been delivered to the Buyer. In the case of replaced or repaired goods, the warranty shall be renewed under the same terms and conditions as those applicable to the original goods. If in the case of recurrent damage a defect is first discovered within the warranty period, any subsequent case of recurrent damage shall be deemed to have occurred within the warranty period, and any notice given or any legally significant act performed in respect of the first occurrence of the damage shall be deemed to have been given or performed also in respect of all occurrences of recurrent damage.

**9.5**

Unless otherwise provided in the above warranty clause, the statutory provisions shall apply.

**10. Product Liability****10.1**

The Supplier shall indemnify the Buyer against any and all third party claims, including third party claims based on liability regardless of the Buyer's fault, if the damage giving rise to any such claim was caused by a product supplied by the Supplier. This also shall apply if and to the extent that the Supplier is liable for fault directly to a third party.

**10.2**

In case of a contributory fault on the Buyer's part, the Buyer and the Seller shall share liability for the damage in accordance with their respective contribution.

**10.3**

The Supplier shall procure and maintain product liability insurance with sufficient coverage.

**11. Industrial Property Rights and Copyrights****11.1**

The Supplier shall be liable for all third party claims of infringement of industrial property rights arising from use of the supplied goods in accordance with the contract. The Supplier shall indemnify the Buyer and the Buyer's customers against all claims arising from the use of any such industrial property rights.

**11.2**

The Buyer shall have exclusive ownership of any drawing, sample, or any other document prepared by the Seller for the Buyer.

**11.3**

If the goods supplied include software, the Buyer shall have an indefinite right of use of such software to the extent required for the use of the goods in accordance with the contract. In the case of the Supplier's insolvency or protracted inability to effect performance under the contract, the Buyer shall have the right to demand access to the source code in order to safeguard same.

**12. Confidentiality****12.1**

The Supplier shall treat and keep as confidential any information obtained from the Buyer in the course of their business relationship.

**12.2**

The Supplier shall not disclose or convey in any way any drawing, model, or other document to any unauthorized third party.

**12.3**

This obligation of confidentiality shall survive the termination of the supply agreement.

**13. Buyer's Title****13.1**

The Buyer shall retain title to materials or tools supplied by the Buyer in any case, even if such materials or tools are modified by the Supplier. The Supplier shall maintain such materials or tools in good order and condition. Tools supplied by the Buyer shall not be conveyed to any third party without the Buyer's prior written consent.

**13.2**

The Buyer shall retain title to any drawing, model, contract specifications, tender document, or other document which the Buyer conveyed to the Supplier. Such items shall not be used for any other than the intended purpose without the Buyer's express consent.

**13.3**

The Supplier shall use the tools supplied by the Buyer or the Supplier's own tools made for the manufacture of the Buyer's products for no other purpose than the manufacture of the goods ordered by the Buyer.

## **14. Supplier's accessory obligations**

### **14.1**

The Supplier shall clearly mark the supplied goods in accordance with the Buyer's instructions.

### **14.2**

The Supplier shall ensure that spare parts are available for a period of ten (10) years from the last date of delivery.

### **14.3**

The Supplier shall not mention its business relationship with the Buyer in any advertising material without the Buyer's prior consent in writing.

## **15. General Provisions**

### **15.1**

The place of performance for all obligations arising from a contract shall be the place of the Buyer's registered office. Any dispute arising between the Buyer and the Supplier in connection with a contract shall be subject to the jurisdictions of the courts of the place where the Buyer has its registered office.

### **15.2**

The contract shall be governed by and construed in accordance with German law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

### **15.3**

If any provision of these General Contract Conditions of Sales or of any other agreement be deemed invalid, the validity of the other provisions of the contract shall not be affected thereby. The parties to the contract shall replace any invalid provision by a provision which comes closest to the commercial essence and purpose of the desired provision.

**ProMinent Dosiertechnik GmbH**

---

Revised: 020106