

General Terms and Conditions of Purchase

ProMinent GmbH

1. Application

- 1.1 These General Terms and Conditions of Purchase (hereinafter **"GTCs"**) of ProMinent GmbH (hereinafter **"ProMinent"**) shall form an integral part of all delivery contracts for goods and / or services (hereinafter **"Deliveries"**) between ProMinent and the supplier of Deliveries (hereinafter the **"Supplier"**). These GTCs apply to all future contracts between the parties, even if they are not explicitly agreed to.
- 1.2 Suppliers general terms and conditions or those of any third party shall not apply, even if they have not been rejected by ProMinent. This shall also apply if ProMinent, despite being aware of the Supplier's terms and conditions, accepts Deliveries without objection or if the Supplier refers to documents that contain either the contractual terms and conditions of the Supplier or a third party or make a reference to such a document.
- 1.3 The GTCs apply in their currently valid version, as amended, from time to time. ProMinent shall notify Supplier in time of any amendments of these GTCs. Such amendments shall also apply to ongoing contracts in case the Supplier does not object in written form within fourteen (14) working days after notification thereof. The latest version of the GTCs is available at www.prominent.com.
- 1.4 Legally binding notifications and declarations between the contractual parties and / or a third party shall be made in writing. This requirement shall be deemed fulfilled in case the relevant communication, i.e. in particular the order or order confirmation, is made by fax, SAP order or via electronic exchange of a PDF document. Other legal formal requirements and other evidence, in particular in case of doubt as to the legitimacy of the declarant, shall remain unaffected.
- 1.5 Deviations from these GTCs (including supplementary information and amendments) that were mutually agreed between the parties shall take precedence over this GTCs. Subject to proof to the contrary; any such agreement shall require the written confirmation of ProMinent.
- 1.6 References to legal regulations in these GTCs are solely foreseen as a clarification. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCs.

2. Conclusion of contract, scope of delivery

- 2.1 Any order issued by ProMinent (**"Order"**) under the terms of these GTCs is binding upon written submission or confirmation at the earliest.
- 2.2 The contract comes into force upon receipt of Supplier's written acceptance of ProMinent's Order. The Supplier is obliged to send such written acceptance by the time stated in the Order but latest after two (2) weeks of receipt of the Order. Receipt of the order confirmation by ProMinent is decisive for timely acceptance. Any acceptance received after this date shall be deemed a new offer from side of the Supplier and requires ProMinent's written confirmation.
- 2.3 The Order as well as technical / functional specifications, documents and contractual agreements referred to in the Order or the GTCs are part of the contract. In case of a deviation between these GTCs and the provisions of the Order, the provisions contained in the Order shall take precedence over those in the GTCs.
- 2.4 Upon receipt of the Order the Supplier shall be obligated to notify ProMinent of any possible defects to the Deliveries whether arising from or in connection to the adherence of any technical and scientific state of the art, or provisions on environmental protection, or the technical suitability of the Deliveries based on the specifications, requirements and information provided by ProMinent in the relevant Order. Supplier shall also be obligated to notify ProMinent if the Deliveries (in whole or in part) listed in the Order are incomplete or insufficient to satisfy the contractually agreed use and purpose of the Deliveries for ProMinent.
- 2.5 ProMinent has the right, within a reasonable scope, to modify any part of the Order issued to Supplier (including, but not limited to, quantity, design and materials of the Deliveries) prior to delivery or, if an acceptance has been agreed or is provided for by law, until the Suppliers request for acceptance of the Deliveries. If the requested modification of the Order causes either a cost increase or decrease or affects the delivery time, an equitable adjustment shall be mutually agreed between the parties in writing.
- 2.6 All Orders are personal to Supplier and are not to be assigned, sub-contracted or transferred to any other person without the prior written approval of ProMinent.

- 2.7 ProMinent has the right to cancel any part of the Order at any time due to circumstances occurring after conclusion of the contract. ProMinent's liability to Supplier for any such cancellation shall be limited to the value due for the portion of the Deliveries already performed.

3. Delivery, packaging, passing of risk

- 3.1 Date, place and terms of delivery as mentioned in the Order are binding. Partial or premature Deliveries are not allowed without prior written approval of ProMinent.
- 3.2 All Deliveries shall be made DDP in accordance with INCOTERMS 2010 to the delivery address set forth in the Order (**"Place of Delivery"**) unless agreed otherwise in writing. If no specific Place of Delivery has been agreed between the parties, delivery shall be made to the registered office of ProMinent in Heidelberg, Germany.
- 3.3 The Deliveries shall be packed in a manner appropriate for the foreseen means of transportation and storage period if not otherwise agreed between the parties in writing. The Supplier shall only use environmentally friendly, recyclable packing materials unless specified otherwise in written form by ProMinent. The Supplier is obliged to take back any package materials at his own expense if requested so by ProMinent.
- 3.4 All Deliveries are to be accompanied by a delivery note containing the information required under applicable law and as a minimum the date of issuance and dispatch, weight and dimensions of the Deliveries, adequate information to properly identify the delivery (description of goods, article number, delivered quantities as well as ProMinent's order identification number and order date). In case the mentioned delivery note is missing or incomplete ProMinent shall not be liable for any delays in processing or payment resulting thereof. In addition to the above said delivery note a dispatch note of the same content is to be sent to ProMinent prior to delivery.
- 3.5 At any time ProMinent can change foreseen time and Place of Delivery as well as the type of packaging by written notification to the Supplier but not later than seven days prior to the agreed delivery date. In case any such requested modification causes a cost increase or decrease or effects the delivery time a fair adjustment of the Order shall be mutually agreed between the parties.
- 3.6 All risks to the Deliveries including loss, damage or accidental deterioration shall be borne by the Supplier until delivery of the goods has been completed in accordance with the contract.

4. Delays

- 4.1 In case the delivery or any foreseen service of the Supplier is delayed for reasons not attributable to ProMinent, ProMinent is entitled, in addition to any other claims or provisions foreseen by applicable law, to demand a lump sum price reduction of 0,3% of the net purchase order price for each commenced week of delay. This lump sum shall remain payable until all Deliveries have been made to ProMinent. The total sum of such lump sum price reduction shall not exceed 5% of the total net purchase order value. ProMinent has the right to claim damages of higher value in accordance with applicable legislation.
- 4.2 In case Supplier becomes aware of or should have reason to assume a delay of delivery or has reason to assume the delivery cannot be made either to the Place of Delivery or according to the foreseen terms he shall immediately inform ProMinent in writing. In case it is the responsibility of the Supplier he shall use his best efforts to comply with the agreed terms of delivery.
- 4.3 ProMinent's acceptance of a delivery either with or without reservations shall not waive or prejudice ProMinent's rights as mentioned under this section 4.

5. Prices and payment

- 5.1 The price mentioned in the purchase Order is binding, not subject to any escalation and includes statutory value-added taxes unless stated otherwise in the Order.
- 5.2 The purchase order price shall include all (ancillary) services of Supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs to the agreed place of destination including any transportation and liability insurance) unless agreed otherwise between the parties.

- 5.3 Payments are due within thirty (30) calendar days after receipt of proper invoice, complete delivery and / or service performance including formal acceptance by ProMinent or others as contractually agreed. ProMinent is entitled to a 3% discount on the purchase order price in case payment is made within fourteen (14) calendar days upon receipt of proper invoice. Date of payment shall be deemed the date of ProMinent issued transfer order.
- 5.4 Invoices are to be submitted in two copies and shall include purchase order date and purchase order number.
- 5.5 ProMinent shall not be held liable for any interests after due date within the meaning of § 353 of the German Commercial Code (HGB). Other statutory regulations with regard to late payment interests remain unaffected hereof.
- 5.6 Supplier shall not have the right to set off any amount due unless Supplier's claim is either undisputed, or has been determined as final and absolute or results from the same legal relationship. ProMinent shall be entitled to offset its own receivables against any amount payable under any Order with Supplier on the basis of these GTCs. Further statutory provisions (e.g. with regard to retention and non-performance) shall remain unaffected.

6. Warranty, notice of defects

- 6.1 In case Deliveries do not conform to the Order or other contractual documents ProMinent reserves all rights and remedies provided under applicable law. Deviating from these legal provisions the warranty period shall be thirty-six (36) months unless longer statutory periods apply or in case longer warranty periods have been agreed between the parties.
- 6.2 In accordance with applicable statutory provisions, Supplier shall guarantee that the Deliveries are free of defects (including latent defects) upon passing of risk. Supplier is liable for the agreed quality of the Deliveries and ensures that they are fit and suitable for use and any purpose held out by Supplier or made known to Supplier in writing by ProMinent. Furthermore, Supplier guarantees that the Deliveries correspond to the state of the art in terms of technical condition, quality and design and that the Supplier specified values regarding material, performance or efficiency are complied with. Product descriptions which (e.g. by designation or reference to the Order) are subject to the contract and shall be deemed to be agreements on quality. It is hereby irrelevant whether the product description originates from ProMinent, Supplier or the manufacturer of the products.
- 6.3 ProMinent shall have the right to select, at its sole discretion, either to demand remedy of defects, re-delivery of conforming Deliveries and / or claim for damages. In case the selected remedy causes disproportionate costs, Supplier shall have the right to propose an alternative.
- 6.4 Any utilized defect remedy shall also include the removal of the defective Deliveries and reinstallation in case the Deliveries has been installed in or attached to another item in accordance with its nature and intended use. ProMinent's statutory claim for reimbursement of expenses remains unaffected. Supplier shall bear all expenses resulting from necessary inspections and subsequent performance tests even if the findings of the inspection show there was no defect. ProMinent's liability for damages in the event of an unjustified demand for defect removal shall remain unaffected; ProMinent shall only be liable in this respect, however, if it has recognized or grossly negligently failed to recognize that no defect existed.
- 6.5 The statutory provisions (§§ 377, 381 HGB) shall apply to the commercial obligation to inspect and give notice of defects with the following amendment: ProMinent shall only be obliged to notify obvious defects (including incorrect and missing quantities) which become apparent upon initial inspection of the Deliveries upon receipt. If acceptance is required there shall be no obligation to inspect the Deliveries upon receipt. Otherwise, it depends on the extent to which an inspection is reasonable practicable in the course of proper business, taking into account the circumstances of each individual case. ProMinent's obligation to give notice of defects discovered later remains unaffected. Irrespective of ProMinent's obligation to inspect the Deliveries, notice of defects shall be deemed to be immediate and timely if it is sent within five (5) working days of discovery or, in the case of obvious defects, of delivery.
- 6.6 Notwithstanding § 442 I 2 BGB, ProMinent is entitled to assert its warranty claims without restriction even if the defect remained unknown to ProMinent at the time of conclusion of the contract due to gross negligence.

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7. Quality, spare parts

- 7.1 The Supplier shall comply with the technical specifications, state of the art, recognized standards of good practice and the applicable safety regulations. Supplier is obliged to constantly verify the quality of the Deliveries, and if applicable, shall inform ProMinent of any possible improvements to the quality. Type and extent of quality tests shall be agreed between the contracting parties. ProMinent has the right, at any time, to demand Suppliers compliance with established industrial standards and product specific testing methods. Supplier is obliged to keep all test documents available for inspection upon request by ProMinent for a period of at least ten (10) years after delivery.
- 7.2 Supplier is obliged to ensure spare parts availability for a minimum of ten (10) years after the date of the last delivery made to ProMinent.

8. Liability, insurances

- 8.1 Unless otherwise agreed in writing, Supplier shall be liable in accordance with all applicable statutory provisions.
- 8.2 Supplier shall maintain appropriate liability insurance at its own expense for damages for which it and its vicarious agents are responsible. Supplier shall be obligated to provide, upon request, proof of the amount of coverage per insured event. Supplier's contractual and statutory liability shall remain unaffected by the extent and amount of the respective insurance coverage.
- 8.3 In case ProMinent is held liable due to any violation of official safety regulations or applicable product liability regulations or laws, Supplier shall be obligated to release ProMinent from such claims if the violation is attributable to Deliveries provided by Supplier. Damages to be compensated by Supplier include costs for a precautionary recall campaign of the products. ProMinent shall inform Supplier, as far as possible and reasonable, of the content and scope of the recall measures to be carried out and give Supplier the opportunity to comment.

9. Documents, confidentiality

- 9.1 ProMinent reserves right of ownership and copy-right to all drawings, illustrations, calculations, descriptions and other documents made available to Supplier by ProMinent. These documents shall be used exclusively for the contractually agreed purpose and shall be returned to ProMinent after execution of the contract. Supplier shall not be entitled to make the documents accessible to any third party without prior written approval of ProMinent.
- 9.2 Supplier may only refer to business relations with ProMinent in advertising materials with the express written approval of ProMinent.

10. Property

- 10.1 Materials, tools and equipment provided by ProMinent shall remain property of ProMinent, even if they are modified by Supplier, and shall be identified as such. Supplier shall properly maintain such equipment. Supplier is only allowed to provide these materials to any third party with ProMinent's prior written permission. Tools of ProMinent or tools of Supplier which have been manufactured for the production of products for ProMinent shall only be used by Supplier for the production of the Deliveries.
- 10.2 Any processing, mixing or combination (further processing) of items provided by ProMinent and carried out by Supplier shall be carried out for ProMinent and ProMinent shall be deemed to be the manufacturer and shall acquire ownership of the manufactured product in accordance with the statutory provisions, at the latest, at the time of further processing.
- 10.3 If Supplier retains title to the Deliveries, such retention of title shall only apply insofar as it relates to ProMinent's payment obligation for the respective Deliveries. In the ordinary course of business, ProMinent shall remain authorized to resell the Deliveries, even prior to payment of the purchase price, with advance assignment of the claim arising therefrom (alternatively validity of the simple reservation of title extended to the resale). This excludes all other forms of retention of title, in particular the extended retention of title, the forwarded retention of title and the retention of title extended to further processing.

11. Intellectual property rights, licenses

- 11.1 Supplier warrants that the Deliveries are free from third party industrial property rights, that conflict with the intended use of the Deliveries by ProMinent and that no further licenses, approvals, consents or payments in connection with such third party industrial property rights are required to enable ProMinent to use the Deliveries in accordance with the contract.
- 11.2 Supplier is obliged to indemnify ProMinent against any and all claims made by third parties against ProMinent due to the infringement of industrial property rights as mentioned under section 11.1 and to reimburse ProMinent all expenses resulting from such assertions.
- 11.3 Supplier's obligations under section 11.2 shall exist irrespective of any fault on part of the Supplier.
- 11.4 ProMinent has the unlimited and transferable right to use any software provided as part of the Deliveries to the extent necessary for the foreseen purpose of the Deliveries. Supplier shall be obligated to provide the documentation required for comprehensive use of the software without any additional costs for ProMinent. In the event of insolvency or Supplier's continued inability to perform in accordance with the contract, ProMinent shall have the right, with sole exception being made to standard software, to demand access to the source code.

12. Export control

- 12.1 Supplier is obliged to inform ProMinent immediately in writing if Deliveries are subject to export restrictions in whole or in part in connection with relevant German foreign trade law, EC regulations or other international embargo and export regulations.
- 12.2 If the Deliveries are intended for export or re-export by ProMinent, Supplier is obliged to provide the following information and data: (a) the export list number in accordance with Annex AL to the German Foreign Trade and Payments Regulation or comparable list items of relevant export lists; (b) the „Export Control Classification Number“ in accordance with the „U.S. Commerce Control List“ (ECCN), if the goods are subject to the „U.S. Export Administration Regulations“ (EAR); (c) the statistical commodity number (HS/KN code); (d) the country of origin (commercial/non-preferential origin), key for origin markings: D = third country / E = EU / F = EFTA; (e) long-term Supplier's declarations of preferential origin (for EU suppliers) or preference certificates (for non-EU suppliers); (f) any other information and data required by ProMinent for export and import and, in case of redistribution, for re-export of the goods. Supplier is obliged to inform ProMinent immediately in writing of all changes to the above information and data.
- 12.3 Should Supplier not fulfil its obligations according to above sections 12.1 and 12.2, Supplier shall compensate ProMinent for all resulting damages and expenditures unless it can prove that it is not responsible for violating said obligation. Furthermore ProMinent shall be entitled to cancel the delivery contract for cause.

13. Ingredients, dangerous goods, Dodd-Frank Act

- 13.1 If the Deliveries contain substances which have to be (pre-) registered according to the „List of Declarable Substances“ valid at the time of the Order or are subject to legal restrictions on ingredients or are subject to reporting obligations (e.g. according to stipulations in REACH or RoHS), Supplier is obliged to inform ProMinent of this in writing latest upon delivery. Supplier shall provide safety data sheets in accordance with Article 31 of the REACH Regulation in the language of the recipient country.
- 13.2 If the goods are classified by international regulations as hazardous Supplier is obliged to inform ProMinent of this in writing latest upon receipt of the Order.
- 13.3 Supplier shall ensure that the supplied goods do not contain raw materials that are subject to the applicable version of Section 1502 of the Wall Street Reform and Consumer Protection Act („Dodd-Frank Act“). According to the current version, these include particularly tantalum, gold, tin, tungsten and derivatives. Supplier shall particularly not use raw materials originating from the DR Congo or neighbouring countries listed in the Dodd-Frank Act in case these materials originate directly or indirectly from mines financed or supported by armed groups. In case of a violation of the Dodd-Frank Act Supplier shall release ProMinent from all and any damages and expenditures resulting therefrom.

14. Compliance

- 14.1 Supplier undertakes to comply with all applicable laws, regulations and provisions, including all applicable anti-corruption laws and export control regulations, upon conclusion of the contract and during the complete duration of this contractual relationship. Supplier warrants that it has not committed any prohibited conduct, either directly or indirectly, in connection with the contractual Deliveries and/or other services for ProMinent and that it will not do so in the future. Prohibited conduct includes, in particular, to promise, offer or grant to a person any undue advantage or to request or accept any undue benefit or advantage to improperly influence business actions. Supplier confirms compliance with the previous sentences of this section 14.1 during the negotiations of this contract.
- 14.2 If and to the extent that ProMinent is informed of facts that could lead to a reasonable and verifiable suspicion of a breach of section 14.1 and Supplier is not able to invalidate this suspicion within a reasonable period of time on the basis of verifiable facts („Duty to Explain“), ProMinent shall be entitled, subject to further claims, to terminate the contract with immediate effect, if and to the extent that a termination is - regarding the seriousness of the respective breach of section 14.1 - is neither inappropriate nor there are any mandatory legal grounds preventing Supplier from fulfilling its Duty to Explain in accordance with section 14.2.
- 14.3 Supplier shall be obliged to inform its personnel as well as third parties with whom it cooperates or intends to collaborate for the Deliveries to ProMinent about the compliance obligations stated in section 14.1 and 14.2 and to monitor their compliance therewith.
- 14.4 Furthermore, Supplier shall be responsible for ensuring that the statutory minimum wage is paid at its company, subcontracting companies and all agencies providing temporary employment.

15. Place of jurisdiction, applicable law

- 15.1 The exclusive place of jurisdiction for any and all disputes arising from or in connection with the contract shall be ProMinent's registered place of business, provided Supplier is a tradesman or corporate body under public law or Supplier has no place of general jurisdiction in the Federal Republic of Germany. However, ProMinent shall also be entitled to file action at the place of Supplier's registered office.
- 15.2 German substantive law shall apply. The UN Convention on the International Sale of Goods (CISG) is explicitly excluded.

16. Severability clause

In the event that individual provisions of these GTCs should be or become entirely or partly invalid or infeasible, or in the event that these GTCs unintentionally contain loopholes, the validity of the remaining provisions shall remain unaffected thereby. The invalid, infeasible or missing provision shall be replaced by a valid and feasible provision that comes as close to the economic purpose of these GTCs as intended by the parties and which they would have agreed if at the time of conclusion of these GTCs, they had been aware of the invalid, infeasible or missing provision.

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