

## **Masa General Purchasing Terms and Conditions**

**Last revision: 19 July 2016**

### **§ 1 Terms and conditions**

Only these "General Purchasing Terms and Conditions, last revision 19 July 2016" (GTC) apply insofar as our written ordering text does not contain any deviating terms and conditions. Any deviating terms and conditions that are part of a quotation or part of the contractor's order confirmation are only binding if we have provided our express written acceptance of these. This also applies to any future orders – without the requirement to refer to the GTCs in each individual case – as well as to the case that - being aware of the contractor's General Terms and Conditions - we accept, without reservation, their supplies/services. The contractor will confirm – without delay, however at least within 5 business days – the order confirmation without reservation. If the contractor recognises that the order is unclear, incorrect or is unsuitable for its intended use, the contractor will immediately inform us thereof in writing; otherwise the contract is deemed as invalid.

### **§ 2 Delivery notes / verification**

All deliveries must be submitted with a delivery note/bill of materials. Our order data must be provided in all correspondences. Since for a large part of the material it is not possible to immediately check it for completeness, accuracy and zero defects, the deadline to screen the materials and provide notification of defects is extended to two weeks from the date of delivery. Our obligation to check the materials is limited to defects that can be visibly identified (including verification of the delivery papers) during our inspection of incoming goods as well as any defects (e.g. transportation damages; incorrect or short deliveries) which emerge during our quality control process carried out in a random sampling procedure. In the event that the delivery item is forwarded to a location other than the Masa headquarters, or is directly forwarded by Masa, then the deadline only begins once the delivery item has reached its final destination/location of use. Billed excess quantity deliveries are only recognised by Masa up to an excess delivery of 5%. In addition, the excess delivery is only accepted if the contractor provides previous written notice and the excess delivery is approved by Masa.

### **§ 3 Delivery / transportation risk**

Place of fulfilment for the deliveries/services is the location specified by us (obligation to provide); for payments, the place of fulfilment is our headquarters. The contractor assumes the transportation risk.

The contractor must adhere to the schedule specified in the order. If circumstances arise that jeopardise the on-time delivery, then the contractor must inform us of this immediately in writing. In case of scheduling violations, the contractor is automatically in default of delivery without needing to receive any additional reminder from us. We reserve the right to claim all legal rights for any cases of default.

### **§ 4 Obligations of the contractor**

The contractor is obligated to observe the following requirements:

**§ 4.1** Requirements for machines as per the **Directive on machinery** 2006/42/EC, execution of the delivery item: During the design and execution of the delivery item, the contractor always must adhere to the requirements of the Directive on machinery 2006/42/EC as well as all other relevant legal requirements applicable to the scope of the order and in relation to the product's safety. The contractor must supply to Masa GmbH, based on the requirements of the Directive on machinery 2006/42/EC, a declaration of conformity or a declaration of incorporation.

The design of the safety control of machines as per the Directive on machinery 2006/42/EC must be consistent with the contractor's risk assessment and be executed in accordance with the requirements of the Directive on machinery 2006/42/EC as well as EN ISO 13849. In order to be included in the

MASA Security Concept and to adhere to statutory provisions, the design of the safety control as well as the combination of signals with Masa GmbH's machine components must be coordinated with Masa GmbH.

Documentation: At the point in time of delivery of the contract item, the contractor must provide operating manuals, circuit diagrams, inspection documents and spare parts lists in accordance with the provisions of the Directive on machinery 2006/42/EC. The aforementioned also applies for "machines to be mounted" in accordance with the Directive on machinery 2006/42/EC. The documentation must at least be supplied in electronic form in order to enable a translation of the documents into the language of the country in which the machine will be delivered (statutory requirements of the final supplier in accordance with the Directive on machinery 2006/42/EC). Insofar as the contractor is in possession of the operating instructions in our end customer's local language, these must be provided to Masa GmbH at no cost.

**§ 4.2 Requirements for pressure equipment as per the Directive on pressure equipment 2014/68/EU:**

The contractor must deliver a declaration of conformity based on the requirements of the Directive on pressure equipment 2014/68/EU.

Documentation: At the point in time of delivery of the contract item, the contractor must provide the documentation department of MASA GmbH with the operating manuals, circuit diagrams, inspection documents and spare parts lists in accordance with the provisions of the Directive on pressure equipment 2014/68/EU. The documentation must at least be supplied in electronic form in order to enable the translation of the documents into the language of the country in which the machine will be delivered (statutory requirements of the final supplier in accordance with the Directive on machinery 2006/42/EC). Insofar as the contractor is in possession of the operating instructions in our end customer's local language, these must be provided to Masa GmbH at no cost.

**§ 4.3 Requirements for equipment and protective systems intended for use in potentially explosive atmospheres (ATEX), in terms of the Directive on explosion protection 2014/34/EU:**

The contractor must deliver a declaration of conformity to Masa GmbH based on the requirements of the Directive on explosion protection 2014/34/EU.

**Documentation:** At the point in time of delivery of the contract item, the contractor must provide the documentation department of MASA GmbH with the operating manuals, circuit diagrams, inspection documents and spare parts lists in accordance with the provisions of the Directive on explosion protection 2014/34/EU. The documentation must at least be supplied in electronic form in order to enable a translation of the documents into the language of the country in which the machine will be delivered (statutory requirements of the final supplier in accordance with the Directive on machinery 2006/42/EC). Insofar as the contractor is in possession of the operating instructions in our end customer's local language, these must be provided to Masa GmbH at no cost.

**§ 5 Deadline safeguard amount**

If the contractor exceeds the delivery dates, we will charge a deadline safeguard amount of 0.2% of the contract value for each calendar day the delivery date is exceeded, however no more than 5% of the contract price. The contractor must furnish evidence that absolutely none or a far lower amount of damage resulted. These regulations do not expressly exclude the assertion of other contractual or statutory rights (e.g., withdrawal from the contract, damage compensation, etc.) We are authorised to assert the claims under reservation of the deadline safeguard amount until payment of the invoice.

## **§ 6 Prices**

The prices listed in the order are net prices and cannot be changed unilaterally by the contractor. Irrespective of that, in case of altered market conditions (e.g., lower list prices, higher rebates) the contractor will pass along these price advantages to us without a specific request to do so – even for existing orders.

## **§ 7 Price setting**

The prices include free delivery to the specified delivery address and include packaging and transportation costs as well as other ancillary costs associated with the transport, e.g., customs and fees.

## **§ 8 Additional deliveries/services; goods for stock**

Additional deliveries/services going beyond the scope of the order may only be executed by the contractor after prior written order from our procurement department. We will not make any additional payments without the submission of a written supplementary order. If the contractor is obligated to keeping stock of goods (in particular on the basis of lists that are submitted by us), then we are not obligated to take delivery insofar as this has not been expressly agreed to in an individual contract. Therefore, an acceptance obligation only exists in cases in which a certain, expressly determined quantity of the delivered item is accepted by us – and that has been expressly agreed upon between the contractual parties.

## **§ 9 Payment**

The payment is concluded after receipt of the goods/invoice as follows: 21 days with 3% discount; 45 days with 2% discount; or net payment within 90 days. The following forms of payment are acceptable: [Please enter the desired method of payment.] The payment is transacted under reservation of our verification of both the goods and the invoice.

## **§ 10 Offsetting / retention**

We are authorised to offset all of our own receivables from the contractor against payables to the contractor as well as exercise a right of retention.

## **§ 11 Drawings / blueprints / samples / goods**

Drawings, blueprints, samples, tools, goods, etc. provided by us remain our property and may not be reproduced or made available to third parties, insofar as this is not necessary for contract fulfilment. After contract fulfilment, these must be returned to us without a specific request to do so. The above also applies to any third parties used by the contractor; this will be ensured by the contractor. The contractor is responsible for damages incurred by non-compliance. The contractor's scope of warranty and warranty obligations in terms of the delivered object is not affected by our approval regarding drawings and other technical documents. The contractor is obligated to only use goods/parts that are the property of Masa for the manufacturing of goods ordered by Masa.

All rights to our confidential information remain exclusively with us. In particular, this applies to all claims resulting from proprietary rights or registered designs. The contractor is obligated to refrain from using the confidential information provided by us either for their own or third-party purposes and/or to register or have registered any industrial property rights in their name without our express written permission. In particular, the contractor is not authorised – upon conclusion of the business cooperation – to use the confidential information received within the course of the collaboration for themselves or third parties.

If we initiate the registration of industrial property rights based on, or through, confidential information provided to the contractor, then the contractor must not assert any claims to the confidential information provided by Masa. This pertains to making claims to prior use, or the objection of obvious prior use, or prior knowledge destroying novelty, or any other comparable objections or pleas.

If the nondisclosure agreement is infringed upon to our detriment, then we can claim damages from the contractor that are equivalent to the damage(s) incurred by us.

## **§ 12 Right of retention**

The transfer of ownership of the goods to us must – and without consideration – follow immediately upon payment of the invoice. Insofar as a right of retention has been agreed upon in an individual contract, we remain authorised, within the orderly course of business, even prior to payment of the purchase price, to resell the goods under advance assignment of the resulting receivables (alternatively through the application of the simple and the extended right of retention on the resale). Excluded are all other forms of the right of retention, especially the expanded, the forwarded and the extended right of retention on the further processing.

## **§ 13 Warranty**

### **§ 13.1 Scope of warranty**

The contractor guarantees that the goods delivered/services provided as per the contract are defect-free. The contractor guarantees the adherence to the assured properties and that the deliveries/services meet the latest technical standards in terms of the intended use, and, in particular, regarding the compatibility to our systems, designs, material, executions and eventually assembly and all relevant legal provisions. This also applies to the regulations and requirements of authorities, professional and trade associations, and does not infringe on any third-party rights. Our specifications (e.g., material, process, technical documents, and selection of the subcontractors) do not absolve the contractor from his obligation to deliver defect-free products and services. If the contractor has concerns regarding our specifications, then these must be made to us in writing.

### **§ 13.2 Warranty claim**

It is our choice whether the warranty claim exists as a demand for rework or new or replacement delivery. If rework or new/replacement delivery is not possible, unacceptable or unsuccessful, then the right to withdrawal, reduction, or in other cases compensation for damages because of non-fulfilment is not affected. Rework or a new/replacement delivery is also considered unsuccessful if the contractor refuses the warranty work or does not process this within an appropriate time frame. In urgent cases, or if the contractor does not fulfil their warranty obligations, we can have the required measures implemented at the expense and risk of the contractor regardless of the contractor's warranty obligations. The contractor does not fulfil their warranty obligations if they do not immediately begin implementing – after they have been requested to remedy the defects – the corresponding measures in order to remedy the defects. All of the expenses incurred within the scope of the warranty obligations (e.g., disassembly, assembly, freight, packaging, insurance, customs, other public fees, testing and technical approvals) must be borne by the contractor.

### **§ 13.3 Warranty period**

The contractor assumes the warranty for the scope of delivery and service as defined in the contract for a period of 36 months after passing of risk. The originally agreed warranty period applies anew for reworked or replaced parts. The three-year statute of limitations period also corresponds to claims arising from defective titles, whereby the statutory period of limitations for the restitution of third-party property remains unaffected; claims from defective titles going beyond this do not have a statute of limitations period as long as third-party rights, especially in regard to a failing statute of limitations, may still be made against us.

## **§ 14 Completeness of the trade/assembly**

The contractor guarantees the completeness of his trade/assembly for the intended purpose. The contractor even guarantees this if individual parts of the trade/assembly are not – or not completely – described.

## **§ 15 Product liability / exemption**

If the contractor is responsible for product damage or personal injury then they must release us from any third-party claims, since the grounds for the damage are within their area of responsibility and organisation and because the contractor themselves is liable to third parties. In accordance with §§ 683, 670 of the German Civil Code (BGB), within the scope of this duty to release, the contractor must compensate the expenses arising from a third-party claim including the expenses for a product recall executed by us. We will instruct the contractor on content and scope of recalls – insofar as possible and reasonable – and will provide the contractor with the opportunity to make a statement. Further legal claims remain unaffected.

The contractor must conclude and retain product liability insurance with an insured amount of at least €10 million per person/property damage.

## **§ 16 Liability for environmental damages**

The contractor is liable for all damages resulting from a breach of the regulations of the environmental protection rights e.g., emissions protection laws; the waste oil, water supply and waste removal laws; and their corresponding ordinances. The contractor releases us from any third-party claims that are directed towards us as a result of such a breach.

## **§ 17 Suspension / termination**

Upon written request, the contractor is obligated to obey with a suspension of the order. Additional costs can only be claimed by the contractor if the suspension exceeds a period of six (6) months. We are authorised to terminate or cancel the order or withdraw from the contract at any time. The contractor has the right to demand compensation for the services rendered up to the point of the termination. This demand must be made under confirmation of the incurred production costs; however, this amount cannot exceed the amount of the contract price.

## **§ 18 Masa Supplier Code of Conduct**

Masa GmbH and its subsidiaries expect their suppliers to comply with the respectively applicable national laws, the principles of the "United Nations Global Compact", as well as the "Masa Supplier Code of Conduct" in all their activities. Masa furthermore expects them to support continuous improvement regarding the principles and requirements of the Masa Supplier Code of Conduct and in turn to require the companies affiliated with them to comply with all applicable laws, as well.

## **§ 19 Place of jurisdiction**

The place of jurisdiction is the location of the court of law competent for us or – based on our selection – the contractor's place of business, insofar as the contractor is a businessman in the sense of the German Commercial Code, a legal entity under public law, or a special fund under public law.

## **§ 20 Applicable law**

Additionally to the provisions of the contract, only the laws of the Federal Republic of Germany applicable for the legal relationships of domestic parties apply. That also applies to foreign

transactions. Prerequisites and effectiveness of the retention of title are subject to the laws of the respective location of the object, insofar as the selected choice of law is ineffective or inadmissible in favour of German law.

## **§ 21 Nondisclosure**

The contractor is obligated not to publish, forward to third parties, or use for its own business purposes any of the existing documents or those that are created within the scope of the contract processing or any of the knowledge and information about us gained within the scope of the contract awarding and processing. The nondisclosure agreement remains in effect, even after the processing or completion of the contract. The contractor must ensure that the nondisclosure obligation is also adhered to by its employees, vicarious agents and subcontractors; this nondisclosure obligation does not apply if the contractor can prove that the documents and information:

- a) Are or were generally known, without the contractor being responsible for this;
- b) Were already known to the contractor before they were made available to him by us;
- c) Were made available to the contractor through a third party, without this third-party infringing on their nondisclosure agreement with us.

## **§ 22 Industrial property rights**

The contractor provides us and our customer with the right to unlimited use of the scope of delivery/service. The contractor will rebuke all infringement actions brought against us/or our customers based on industrial property rights and will assume all costs resulting from these kinds of legal disputes for us/or our customers.

## **§ 23 Severability clause**

If one or more of the provisions in this contract is or becomes invalid, then the remaining provisions in the contract remain unaffected. Both parties are required to replace the invalid provision with a legally valid provision that comes closest to fulfilling the original intended purpose of the invalid provision.