



## General Terms of Purchase as of 02/2017

M&C TechGroup Germany GmbH

### 1. Applicability

- 1.1. The following terms and conditions shall apply to all contractual relationships between M&C TechGroup Germany GmbH (hereinafter: „M&C“) and its suppliers. M&C does not and will not accept terms and conditions of suppliers which are different from the terms and conditions set forth herein. Any deviation from the following stipulations shall only be valid if individually agreed to by M&C in writing
- 1.2. If there is a framework agreement in place between M&C and supplier, these terms and conditions shall apply to both, the framework agreement and the individual purchase contract.

### 2. Prices, Shipment and Packaging

- 2.1. The prices agreed are fixed and they exclude additional demands of whatever kind made by the supplier.
- 2.2. Supplier's reservation to increase his prices shall only be valid if agreed to by M&C in writing.
- 2.3. Unless otherwise stipulated, M&C shall bear the costs of shipment. The supplier must observe shipment instructions and routing orders received from M&C. If M&C's shipment instructions and routing orders are not complied with, extra costs arising from such non-compliance shall be borne by the supplier.
- 2.4. M&C shall bear the costs of packaging materials actually used at supplier's cost price as a maximum.
- 2.5. Notifications of dispatch, bills of lading, bills of delivery and all other documents and/or correspondence accompanying the goods shipped, shall clearly reveal the number of the respective M&C order.
- 2.6. The supplier shall take back packaging materials in accordance with applicable law. The products shipped must be packed in a manner so that damage in the course of shipment will be avoided to the maximum extent. Packaging materials shall only be used to the extent reasonably necessary to avoid damage during shipment.

### 3. Payment Terms and Default

- 3.1. M&C shall balance the supplier's invoices within 14 days with a cash discount of 3 per cent or within 30 days without discount.
- 3.2. Payment terms and terms for cash discount shall be counted from the day on which the respective invoice is received by M&C, but no earlier than the day on which the invoiced products have arrived at M&C's premises, or, in the case of services, the day when the respective services have been completed by the supplier and accepted by M&C. Where documentation, assembly instructions or similar documents must be provided by supplier, the payment term shall not start before such documents have been received by M&C. M&C commits itself to examine supplies and/or services (where formal acceptance is required) regarding their compliance with the contractual agreements and specifications in due course and to file and transmit to the supplier a protocol of acceptance.
- 3.3. Payments can, at M&C's discretion, be made by bank transfer or by cheque.
- 3.4. M&C shall at all times be entitled to exercise rights of retention and/or rights of set-off that it may have against the supplier.
- 3.5. Supplier shall not be entitled to exercise rights of retention or rights of set-off that it may have against M&C, unless M&C has acknowledged his respective claims in writing or if such rights have been acknowledged in a final and binding judgement by a court of law.

### 4. Term and Scope of Supply

- 4.1. Agreed time limits or dates for the supply of goods shall always be binding; where the supplier faces delay or has reason to expect a delay in supply, he shall notify M&C thereof as soon as possible.
- 4.2. Where the goods ordered arrive late, M&C shall have all remedies provided by applicable law. In particular, M&C may, after having granted the supplier an appropriate extension of time, be entitled to rescind the contract and claim damages in lieu of performance. If M&C claims damages, the supplier shall be entitled to show and prove that he is not responsible for the delay.



4.3. Partial deliveries shall only be permitted with the prior written approval of M&C. Quantities in excess of or less than what has been ordered by M&C shall only be admissible as is customary in the trade and only where the production process of goods does not allow to precisely manufacture the number of products or the quantity agreed.

#### **5. Items Used for the Performance of M&C's Order**

Molds, models, tools, colour printings, printing plates etc. that the supplier manufactures or purchases for the purpose of performing M&C's order and that M&C pays for, shall – at the moment when payment takes place – become the property of M&C and must be surrendered to M&C without delay at M&C's request.

#### **6. Confidentiality**

The supplier shall keep in strict confidence all images, drawings, calculations and other documents, data and information received from M&C and such items shall only be disclosed where there is a need to do so. This confidentiality obligations shall survive the term of the contract and shall only terminate when the respective information has become public knowledge.

#### **7. Materials Provided and Retention of Title**

7.1. M&C reserves title to all materials, parts and components (including tools) provided to the supplier. Such items shall exclusively serve the purpose of supporting or enabling the supplier to fulfill the contract entered into with M&C. Under no circumstances shall supplier be allowed to use such items (or allow any other person or entity such use) for any other purpose or to sell, lease or lend such items to any third party.

7.2. Any processing or reworking done by the supplier shall occur exclusively for and on behalf of M&C. M&C reserves its right of ownership also with respect to the results of reworking and/or processing. If and to the extent the supplier combines goods that are owned by M&C with third parties' goods, M&C shall become a co-owner of the new thus generated product at a percentage which reflects the proportion of the value of the M&C goods and of the third party goods at the moment when the production occurred. If the value of the components/ingredients contributed by the supplier is, in proportion to the M&C components/ingredients, so overwhelming that under applicable law, the supplier is deemed to have become the owner of the final product, the supplier shall establish co-ownership in favour of M&C. Where the supplier has possession of goods owned or co-owned by M&C, he shall keep such goods in safe custody on behalf of M&C.

#### **8. Supplier's Retention of Title Rights**

8.1. Where the supplier reserves retention of title to goods sold and delivered to M&C, title to such goods shall automatically pass to M&C upon payment. Any retention of title right exceeding the frame of a simple retention of title (such as extended or overall reservation of title or „all sums due“-clauses) shall not be accepted and thus be void.

8.2. The supplier may only demand return of the goods if he rescinds the contract.

#### **9. Limitations and Exclusions of Liability**

Any limitations and/or exclusions of supplier's liability shall be void.

#### **10. Warranty and Guarantees**

10.1. The supplier shall bear sole responsibility and thus guarantee that all goods and services supplied (including those of sub-suppliers) shall be in compliance with the latest and up-to-date legal requirements, applicable norms, rules, standards, regulations, directives etc. of any competent authority, public body, workers' compensation boards, professional associations and such. This shall in particular apply to the following directives in their most recent versions, or, respectively, to their successors or other norms (including their national implementations):

- ATEX-Directive 2014/34/EU
- „Machinery Directive“ 2006/42/EC
- Electromagnetic Tolerance Directive 2014/30/EU
- Low Voltage Directive 2014/35/EU
- „REACH“-Directive 1907/2006/EC



If in certain situations and as an exception, deviations from such directives etc. should be or become necessary, the supplier must obtain M&C's prior written approval. Such approval shall in no way exclude or modify the suppliers' liability for defects.

- 10.2. The supplier shall bear responsibility that all products supplied by him comply with the requirements of the Restriction of Hazardous Substances directive 2011/65/EU (RoHS2) and its annexes at the time of delivery.
- 10.3. The supplier shall bear responsibility that all products and services supplied by him are free of defects, that they comply, in all respects, with the M&C requirements and that they are fit for the particular kind use.
- 10.4. The supplier shall guarantee the durability of the products supplied (in accordance with the provisions of § 443 of the German Civil Code) for a term of 24 months from the day of the passing of the risk to M&C.
- 10.5. Notices of defects shall under all circumstances be deemed as given in due time if they are received by the supplier within 5 working days following receipt of the goods by M&C or, in case of hidden defects, within 5 working days after detection of the fault by M&C.
- 10.6. The supplier shall indemnify and hold harmless M&C from all claims raised by domestic or foreign third parties, based upon the allegation that products supplied to M&C infringe upon national or foreign patents, utility models, designs, intellectual property rights or similar rights. Such indemnification shall include all costs, expenditures etc. that M&C will have to bear as a consequence of such third party's claim.

## 11. Certificates and Declarations

- 11.1. The supplier shall deliver the relevant safety data sheets to M&C together with the respective products. He shall indemnify M&C from all third party claims that may be raised because the required safety data sheets have not or not in a timely manner been delivered or if they are faulty. If the respective security data sheets are modified or revised after supply, the supplier shall advise M&C thereof without delay.
- 11.2. If and to the extent M&C needs certain certificates and/or declarations in order to resell the products purchased, such as certificates of quality, declarations of conformity and/or long-term suppliers' declarations, M&C will advise the supplier of such necessity and the supplier shall thereupon deliver the required documents in their most recent version to M&C at his earliest convenience.

## 12. Code of Conduct

The supplier commits itself to observe and comply with the Code of Conduct of M&C which can be viewed at and read at [www.mc-techgroup.com](http://www.mc-techgroup.com).

## 13. Place of Performance, Legal Venue and Applicable Law

- 13.1. Unless otherwise stipulated in the respective order, place of performance for all supplies, services and claims resulting from the respective contract and its performance shall be the registered seat of business of M&C.
- 13.2. If the supplier is a commercial entity, a public authority or a public body, then exclusive legal venue shall vest in the courts having jurisdiction over M&C's registered place of business. M&C shall, at its discretion, be entitled to alternatively bring legal action against the supplier before a court of law having jurisdiction over supplier's place of business.
- 13.3. The legal relationship between the supplier and M&C shall exclusively be governed by German law.

M&C - Embracing Challenge