

## General Purchase Terms (GPT)

Effective as from 07/01/2021

**These General Purchase Terms (hereinafter “GPT”) apply to all Monosuisse Group plants<sup>1</sup> (hereinafter “Monosuisse”) and are in effect by and between Monosuisse and its contracting party. Passages with location-dependent Purchase Terms are explicitly designated with the location concerned.**

<sup>1</sup> Plants/locations of Monosuisse Group being:

- Monosuisse AG, Switzerland
- Monosuisse GmbH, Germany
- Monosuisse sp. z o.o., Poland
- Monosuisse RO S.R.L., Romania
- Monosuisse S.A. de C.V., Mexico

### **1 General provisions**

- 1.1 These GPT regulate the conclusion, content and performance of contracts for the supply of products/services between Monosuisse as buyer and the contracting partner.
- 1.2 Upon submitting an offer or confirming an order, in principle in an order confirmation form, the contracting party confirms having read and agreed to these GPT. Through the acceptance of the orders by the contracting party, the individual purchase and delivery contracts come into effect. These GPT become then an integral part of such contracts.
- 1.3 These GPT apply upon acceptance without reserve of any contracting party's delivery, even in Monosuisse's awareness of conflicting or deviating delivery conditions of said contracting party. Monosuisse does not recognize any terms and conditions of the contracting party that contradict or deviate from these GPT, unless agreed otherwise in writing by Monosuisse.
- 1.4 For their validity, any contract and declaration having legal relevance by and between the contracting party and Monosuisse must be in writing. Amendments or additions to the contract, as well as its cancellation, must also be in writing.
- 1.5 Rights and obligations deriving herefrom, as well as those deriving from supply contracts executed based on these GPT, will not be transferable without the parties' mutual written consent.
- 1.6 If one or more provisions of these GPT should be invalid or contradict mandatory law, such fact shall not affect the validity of remaining provisions. In such case, the parties agree to replace invalid provisions with valid ones, which, according to their content, achieve same economic effects.
- 1.7 In the event of any necessary interpretation or any other controversy, the English version of these provisions prevails.

### **2 Offer**

- 2.1 Contracting party will submit an offer based on Monosuisse's request. Such offer will be free of charge. In the offer, the contracting party shall comply with the descriptions and objectives of Monosuisse and, in case of deviations, shall expressly point them out. The contracting party has a duty of clarification.
- 2.2 Except otherwise agreed in writing, contracting party's offer will be binding thereto for 90 days.

### **3 Order and Conclusion of contract**

- 3.1 Specifications, amounts, delivery dates and prices are part of the orders.

- 3.2 All orders must be in writing (letter, e-mail or fax). In principle, this also applies to order acceptance by the contracting party in an order confirmation form. Oral and telephone orders, changes and additions must be confirmed in writing to be valid. The contract partner must confirm the order no later than 48 hours following reception.
- 3.3 Monosuisse will only be bound to the contract if order confirmation shows no deviation from order.. Deviations from the order shall be indicated by the contracting party on the order confirmation. Deviations shall only be binding for Monosuisse upon express written reconfirmation.
- 3.4 The scope of delivery includes everything required for accurate installation, operation and performance of product, regardless of whether mentioned and described in the specification to the order.

#### **4. Prices, terms of delivery and transfer of risk**

- 4.1 Contracting party's prices are deemed as fixed prices in the currency specified in the order. In principle, the contracting party undertakes to deliver products on a DDP basis in accordance with the currently applicable Incoterms. Any other terms of delivery must be agreed in writing by the parties.
- 4.2 The remuneration covers all services necessary for the proper performance of the contract . These are, specifically, delivery and assembly costs, personnel and material expenses, costs incurred in documenting and instructing, any expenses, packaging, shipping, insurance and unloading costs, eventual license and public fees and taxes (for example VAT, advanced disposal fees or customs duties).
- 4.3 Contracting party will be liable for damages suffered during shipping because of insufficient packaging.
- 4.4 Each shipment must be accompanied by a packing slip listing all order specific information. Partial and remainder deliveries must be declared as such in all shipping documents and invoices.
- 4.5 The risk shall pass to Monosuisse at the place of performance.

#### **5 Terms of payment**

- 5.1 The order number, accurate designation of product and the number of item or drawing must be indicated in every communication, confirmation, packing slip, invoice, etc.
- 5.2 Payment of invoice must be within 30 days as from its reception. Any other payment condition must be agreed in writing by the parties. The right to offset against any counterclaims of Monosuisse shall remain reserved.

#### **6 Delivery, delivery time and consequences of late deliveries**

- 6.1 The delivery shall be made to the address specified in the order (place of performance).
- 6.2 The delivery is due on the agreed delivery date at the place of performance regarding fixed dates, any delay will be automatically deemed as a default, unless the parties agree a different solution in the event of early notice of hardship to deliver by the contracting party. If the contracting party does not deliver in full on the agreed delivery date, it shall be in default of delivery without further ado.
- 6.3 In the event of delayed delivery, the contracting party undertakes to pay 1% of the net purchase price, up to a maximum of 10%, as a contractual penalty for each commenced week of delay in delivery, irrespective of fault or proof of damage. Shortage of raw material and supplier and sub-supplier delays will not be deemed Force Majeure. Furthermore, Monosuisse is entitled to claim demonstrated damages suffered by the delay according to legal provisions. A payment of delay penalty does not release the contracting party from its obligation to perform with delivery in terms with the contract.
- 6.4 Partial and early deliveries will be admitted only if previously agreed in writing.

- 6.5 If the contracting party is in default with respect to the delivery, Monosuisse may refuse acceptance of the delivery, rescind the contract and/or claim damages for non-performance of the delivery obligation.
- 6.6 The contract may also be rescinded if, during manufacture, it is evident that item of delivery will not be appropriate for the intended purpose.

## **7 Warranty and liability**

7.1 The assurance of characteristics of a product or service is made in the respective contracts. The contracting party independently guarantees that product to deliver/service to be rendered has been inspected and delivered in a controlled manner and there is no defect that may harm functionality, operating reliability and common useful life under known conditions of use. Furthermore, the contracting party warrants that the product/service to be provided by it complies with the specification. The contracting party also warrants that the product to be delivered/service to be provided complies with the recognized rules of technology, the applicable provisions of the legislator and the applicable regulations and directives with regard to execution, occupational safety and fire and environmental protection at the place of performance in terms of safety and is such that life and health are not endangered when used as intended and when due care is taken.

7.2 For deliveries to Monosuisse Switzerland, Germany, Poland and Romania: The contracting party undertakes at its own expense to enclose with each delivery, in accordance with the legal provisions of the place of performance, the necessary EU declaration of conformity and the declaration of origin in accordance with the origin criteria of the relevant free trade agreement.

For deliveries to Monosuisse Mexico, the contracting party undertakes to enclose with each delivery, at its own cost, the required certificate of origin in accordance with legal the provisions at the place of performance.

7.3 The contracting party is responsible to ensuring that it uses only production materials, semi-finished products and auxiliary materials that comply with agreed requirements. Furthermore, the contracting party is responsible for complying with the respective legal requirements, directives, regulations and the safety regulations for restricted, toxic and hazardous substances as well as the requirements regarding the environment, electricity, etc. of the delivered products in the respective country of manufacture and at the place of performance.

7.4 Except otherwise agreed by the parties in writing, the warranty period shall be 24 months as from the date of delivery to Monosuisse. The warranty shall be five years if the delivery is integrated into an immovable construction. During the first 24 months following acceptance of delivery, Monosuisse may claim any defect thereof at any time. This shall not apply, however, to obvious defects or defects of which Monosuisse can reasonably be expected to notify in good faith for other reasons. An incoming inspection at Monosuisse does not take place. The contracting party is responsible for guaranteeing and verifying the agreed quality.

7.5 In the event of defect, Monosuisse may elect to demand repair or replacement at the expense of the contracting party. In exercise of such right to elect, it should be reasonably taken into account whether the contractor may repair the defect according to contractor's business nature. In any case, the contractor must assume any expense needed to repair or replace delivered item. In the event of substantial defects, Monosuisse may directly rescind the contract.

7.6 If repair or replacement is not possible due to the delivery situation, special urgency, an agreed fixed date or for other urgent operational reasons and is not reasonable for Monosuisse, Monosuisse may purchase replacement products at the expense of the contracting party in order to avert imminent greater damage.

7.7 Should Monosuisse demand repair or replacement, the contracting party must repair defect or deliver replacement within the requested term and assume all expenses related with repair or replacement (that

is, testing, disassembly, shipping, assembly, etc.). The warranty period will restart for repaired or replaced components from the moment of repair or replacement.

- 7.8 If the contracting party has not (successfully) completed requested repair or replacement or has not done so within the set period, Monosuisse will be entitled to rescission or price reduction. Supply of repair/replacement will be deemed as in default, particularly if contracting party delays beyond reasonable terms defined by Monosuisse or refuses to perform them.
- 7.9 Contracting party will be liable, within the sphere of its guaranteed characteristics, of all damage, including indirect damage, caused by the product delivered thereby, unless he proves his lack of fault.
- 7.10 If any person results injured or the property of third parties suffers damage due to acts or omissions of the contracting party and Monosuisse is claimed on such grounds, Monosuisse is entitled to recourse against the contracting party.
- 7.11 The contracting party shall be liable for the conduct of its employees and other auxiliary persons as well as for the performance of the contract by third parties (e.g. suppliers, subcontractors) as for its own conduct. Claims arising from product liability remain reserved.

## **8 Indemnity, product recall**

- 8.1 The contracting party must indemnify Monosuisse against claims asserted against Monosuisse as a result of a defect of the delivered product, insofar as such defect is the responsibility of the contracting party. The contracting party is to reimburse Monosuisse expenses and costs required as a consequence of defect (such as expert's fees, legal counselor's fees, court or consultation fees, etc.).
- 8.2 Within framework of obligation in accordance with clause 8.1, contracting party will also reimburse Monosuisse any expenses incurred in relation to a product recall by Monosuisse.
- 8.3 If Monosuisse is held liable by third parties based on the provisions of product liability law because deliveries are defective within the meaning of these provisions, the contracting party shall indemnify Monosuisse in full against such claims.

## **9 Confidentiality and product exclusivity agreement**

- 9.1 The contracting party may not use business and manufacturing secrets communicated to it by Monosuisse as well as all technical and commercial information, which has become known to it in connection with the purchase transaction for purposes outside the purchase transaction, or make such information available to third parties. Contracting party is specifically prohibited from manufacturing or having third parties manufacture comparable products for other customers using technical manufacturing know how made available thereto by Monosuisse. The contracting party shall guarantee, in appropriate agreements, that such confidentiality duty is to be also imposed on its employees, suppliers and subcontractors.
- 9.2 Provisions defined under clause 9.1 will apply for an unlimited period of time and will expire if and to the extent that technical manufacture knowledge made available by Monosuisse in illustrations, drawings, calculations and other documents becomes public knowledge.

## **10. Third party's intellectual property rights**

- 10.1 Contracting party is responsible and liable for not breaching third party intellectual property rights (that is, patents, samples, models, etc.) in delivery and use of offered products.
- 10.2 In the event Monosuisse is deemed liable of a (potential) violation to third party intellectual property rights, the contracting party, at first request by Monosuisse, will take part in litigation and will conduct any litigation in name of Monosuisse at its own cost. The contracting party will fully indemnify Monosuisse

for such claims and any act in relation thereto, independently of fault and any other agreed limitation of liability.

#### **11 Personal Data**

Personal data of the contracting party is treated in accordance with the Swiss Federal Law on Protection of Data ("DSG"), the General Data Protection Regulations of the EU (GDPR), and other relevant regulations and only to the extent needed for contract fulfillment.

Further information about our Privacy Policy is available at [www.monosuisse.com](http://www.monosuisse.com).

#### **12 Place of performance, place of jurisdiction and applicable law**

12.1 The place of performance is the domicile of the Monosuisse company ordering products/services or a different delivery address expressly defined in writing.

12.2 **The exclusive place of jurisdiction for all litigations is the place of performance.** However, Monosuisse is free to exercise its rights before any competent court or office in Switzerland or abroad.

12.3 The legal relationship between Monosuisse and the contracting party is exclusively governed by **the substantive law of the place of performance.** The application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) as well as the Hague Convention and the Conflict of Laws are expressly and fully excluded.