

General Terms of Purchase and Procurement of SCHWIND eye-tech-solutions GmbH

I. General information – scope

1. Our Terms of Purchase and Procurement shall apply exclusively; we shall not recognise contradictory terms and conditions of the supplier or terms and conditions which deviate from our Terms of Purchase unless we had explicitly approved their validity in writing. Our Terms of Purchase shall also apply if we accept the delivery and/or works/services of the supplier without reservation in the knowledge of contradictory terms and conditions of the supplier which deviate from our Terms of Purchase and Procurement.
2. All agreements which are reached between us and the supplier for the purpose of executing this contract are to be recorded in writing in this contract.
3. Our Terms of Purchase and Procurement shall only apply towards entrepreneurs according to § 310 I BGB [German Civil Code].
4. Our Terms of Purchase and Procurement shall apply to all deliveries and/or works/services to us, irrespective of their legal character (hereinafter "Object of Delivery"). They shall apply both to purchase contracts as well as contracts for work and services, work delivery contracts and to combined contracts.

II. Offer – documents

1. The supplier undertakes to accept our order within a deadline of one week.
2. The supplier is bound to its offers (§145 BGB) 4 (four) weeks from receipt of the offer.
3. We reserve the property rights and copyrights to diagrams, drawings, calculations and other documents; they may not be made accessible to third parties without our explicit written consent. They are exclusively to be used for the deliveries to be made and/or works/services to be rendered on the basis of our order; they are to be returned to us without request after the processing of the contract. They are to be kept secret towards third parties, the regulation of XI.5 shall apply accordingly in addition.
4. There is no entitlement to remuneration against us for offers, acquisition planning, draft work and other preliminary work of the supplier.
5. The supplier undertakes to make the instructions and documents, in particular also lists of spare parts and proof of procurement, which are necessary for the use, the assembly, the service, the cleaning and the repair/rebuilding and the disposal of the Object of Delivery available to us free of charge.

III. Prices – terms of payment

1. The prices shown in the order are binding. In the absence of a deviating written agreement the price includes delivery DDP named place of destination (Incoterms 2010), including packaging.
2. The applicable rate of value added tax is not included in the price.
3. We can only process invoices if these – in line with the stipulations in our order – state the order number shown therein; the supplier is responsible for all consequences occurring owing to the non-compliance with this obligation insofar as he does not prove that he was not responsible for this consequence.
4. We shall pay, insofar as not otherwise agreed in writing, the price within 14 days, beginning from the delivery of all Objects of Delivery owed as per contract at the place of destination stated by us or with the acceptance of the Object of Delivery, if this has been agreed as per contract or is envisaged by law, and receipt of the invoice, with 3% cash discount or within 60 days after receipt of the invoice net.
5. We are entitled to rights to offset and rights of retention in the extent as stipulated by law.
6. The supplier is not entitled to refuse a measure for remedying defects owed by it until the full payment of the purchase price or remuneration.

IV. Delivery time

1. The delivery time stated in the order is binding.
2. The supplier undertakes to inform us immediately in writing if circumstances occur, or he recognises circumstances, from which it can be derived that the conditional delivery time cannot be adhered to.
3. In the event of default of delivery by the supplier we are entitled to request flat rate damages on default in the amount of 0.5% of the agreed remuneration per started week of delay, however no more than 5%. The right is reserved to further statutory claims (cancellation and damages instead of performance).
The supplier is entitled to prove towards us that no damages at all or substantially less damages were suffered as a result of the delay. We are entitled to prove that higher damages were suffered.
4. We can further request from the supplier the indemnification from all claims for damages and/or conventional penalty claims and/or other claims, which our customer asserts against us in connection with a delay in delivery insofar as the supplier is responsible for the delay in delivery.

V. Delivery – transport

1. The delivery is to be carried out, insofar as not otherwise agreed in writing, free house.
2. The supplier undertakes to quote our order number on all shipping documents and delivery notes; if it fails to do this we shall not be

responsible for delays in the processing which shall be attributable to supplier's time of delivery.

3. Each delivery to the place of destination by the supplier is to be announced to us immediately after the execution through an advice of despatch, from which the precise details of the type, quantity and weight of the Object of Delivery can be seen. Advices of despatch, bills of lading, invoices and all correspondence have to contain our order number.
4. The supplier shall bear the costs of the transport. Insofar as we have to bear the costs for transport and/or packaging owing to a separate agreement the supplier undertakes to choose the freight forwarder named to the supplier by us.
5. The supplier undertakes to immediately submit a written declaration concerning the origin of the Objects of Delivery under customs law (certificate of origin). The supplier shall be liable towards us for all damages, suffered by us through an improper or delayed submission of this declaration for which it is at fault. The supplier also has to declare its details of the origin of the goods by means of a confirmation of the customs office.
6. The supplier has to procure the delivery note and/or the customary transport document, which we require in order to take the Object of Delivery over according to XI.2, for us at its costs.

VI. Place of performance – passing of risk

1. The place of performance is the place of destination stated by us.
2. If no acceptance is envisaged by law and if an acceptance is not agreed as per contract either the risk of the accidental loss and of the accidental deterioration shall pass to us with the hand over by the supplier at the place of destination, otherwise with the acceptance envisaged by law or agreed as per contract.

VII. Inspection for defects – liability for defects

1. We are obliged to inspect the goods for possible deviations in quality and quantity within a reasonable deadline; the complaint shall be deemed in time insofar as, notwithstanding § 377 HGB [German Commercial Code], it is received by the supplier within a period of 10 workdays, in the event of obvious defects beginning from the termination of the unpacking of the Object of Delivery at the place of destination, in the event of hidden defects from the time when they are discovered.
In case of quantity deliveries we are only obliged to examine random samples. If it is determined hereby that more than 10% do not comply with the contractual or statutory requirements we shall be exempted from further examinations and can refuse the acceptance on the whole based on the random sample results and make the whole delivery available to the supplier for collection.
2. If the supplier is certified according to the ISO 9000 standard series (in particular according to 9001, 9002, 9003) and if we have entered into a Quality Assurance Agreement with the supplier, our obligation for inspection and to report a complaint according to § 377 HGB shall cease to apply.
3. The supplier guarantees that all deliveries/services comply with state-of-the-art technology, the relevant legal provisions and the regulations and guidelines of authorities, trade associations and professional associations. If deviations from these regulations are necessary in an individual case our written consent is to be obtained by the supplier in this respect. Our claims for defects are not limited by this consent. The supplier has to inform us hereof immediately in writing if it has misgivings about the type of design as requested by us.
4. We are entitled to the statutory claims for defects in full; we are in particular entitled to request remedy of the defects or delivery of a new Object of Delivery from the supplier at our choice. The right is explicitly reserved to damages, in particular that to damages instead of the service. The place of fulfilment of supplier's warranty obligations is the place where the defective Object of Delivery is located, even if this place is varying from the place of performance (VI.1).
5. We are entitled to carry out the remedy of the defects ourselves or have this carried out by third parties at the costs of the supplier if there is a danger in delay and/or a special need for urgency and/or the supplier has not satisfied the written request for remedy of the defect within a reasonable deadline set by us. We can remedy or have remedied insignificant defects immediately at the costs of the supplier. The supplier is to be informed immediately in the cases stated in VII.5. We shall send the supplier a report about the type and scope of the defects and the executed work.
6. The defects liability period for claims for defects of quality is 36 months, beginning from the passing of risk. If the passing of risk takes place with an acceptance and the passing of risk which takes place with an acceptance is delayed for reasons, for which are beyond supplier's responsibility, the defects liability period for defects of quality shall begin when the Object of Delivery is made available for acceptance in written form. The claims for defects with regard to spare parts shall become statute-barred in 36 months beginning from their installation/commissioning.
For Objects of Delivery, which are exchanged within the framework of the subsequent performance and/or subsequently improved Objects of Delivery and their parts the statute-of-limitations shall begin with the termination of the subsequent satisfaction.

7. The total costs of the subsequent satisfaction, in particular costs for the search for the fault, the retrofitting costs, the installation and dismantling costs, the transport, route, labour and material costs as well as customs duties, shall be borne by the supplier.

VIII. Product liability - indemnification – cover by liability insurance

1. Insofar as the supplier is responsible for a product damage it undertakes to indemnify us from claims for damages of third parties at first request to the extent that the cause lies within its scope of control and organisation and it is liable itself in the external relationship.
In addition we can request that the supplier indemnifies us from all claims of our customers against us at first request if and insofar as the supplier has initiated a cause for this which establishes liability through its Object of Delivery/service. For the indemnification from claims for damages directed against us outside of the scope of liability of the Product Liability Act this shall only apply if and insofar as the supplier was at fault for the cause.
2. In that context the supplier is also responsible to compensate potential disbursements according to §§ 683, 670 BGB, which we incur as part of or related to a product recall. We will inform the supplier about the content and scope of required recall measures where possible and as appropriate and will give him the opportunity to comment on the measure.
3. The supplier undertakes to maintain product liability insurance with a sum insured in a reasonable amount per physical injury/property damage – as a flat rate; if we are entitled to further claims for damages these shall remain unaffected.

IX. Property rights

1. The supplier shall be responsible for ensuring that no rights of third parties, in particular property rights and applications for property rights are infringed within the Federal Republic of Germany in connection with its delivery. By submitting the technical documentation supplier grants to us the unlimited right to commercially use and exploit said documentation for the issuance of documents relating to equipment/plants produced/distributed by us.
2. If a claim is asserted against us by a third party in this respect then the supplier undertakes to indemnify us from these claims at first written request; we are not entitled to reach any agreements with the third party – without the consent of the supplier – in particular not to reach a settlement.
3. The indemnification obligation of the supplier refers to all expenses necessarily incurred to us from or in connection with the assertion of a claim by a third party.
4. The statute-of-limitations is ten years, beginning from conclusion of the contract.

X. ROHS directive and REACH regulations

1. The supplier shall be responsible for ensuring that its goods comply with the respective applicable and valid provisions of the directive 2011/65/EU of the European Parliament (ROHS) and of the regulations (EC) 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of chemical substances (REACH regulations) and that its goods have been preregistered or registered after expiry of the transitional periods insofar as necessary under the provisions of the REACH regulations. The delivered goods shall only contain substances that have been pre-registered or registered after expiry of the transitional periods, insofar as the substance is not excluded from the registration as far as necessary under the provisions of the REACH regulations..
2. In line with the provisions of the REACH regulations the supplier shall provide safety datasheets or the information which is necessary according to Art. 32 REACH regulations. Upon request it shall provide us the information according to Art. 33 REACH regulations.
3. Upon request the supplier provides certificates regarding the compliance with the ROHS directive of the delivered goods.

XI. Export Control and Customs Regulation

1. The supplier is bound to inform SCHWIND in writing as early as possible before the delivery date about potential approval obligations of its goods according to applicable German, European (EU), US-American export-, customs and foreign trade legislation as well as export-, customs and foreign trade legislation of the country of origin of its goods. To fulfill this obligation the supplier has to communicate the following information and data:
 - a. the export list number according to annex AL of the German export administration regulation or equivalent list items of applicable export lists;
 - b. the "Export Control Classification Number" according to the U.S. Commerce Control List (ECCN) provided that the goods are subject to export controls under the U.S. Export Administration Regulations (EAR);
 - c. the customs-tariff numbers (HS /KN – Code);
 - d. the country of origin (trade origin/ non-preferential origin);
 - e. (long-term) supplier's declarations with regards to preferential origin (for EU suppliers) or certificates documenting the preferential origin (for non-EU suppliers);
 - f. all other information and data, which SCHWIND will require at import or export or in case of resale of the goods;.
2. The supplier is bound to inform SCHWIND immediately in writing of any changes to the abovementioned information and data.
3. In the event of any breach of its obligations according to paragraph 1, the supplier shall be liable for any expenses and/or damages as well as any other disadvantages incurred by SCHWIND (e.g. supplementary

claims of import duties or penalties). This provision does not apply if the supplier can provide evidence that he is not responsible for the violation of duties.

XII. Reservation of title - provision - tools – non-disclosure obligation

1. Insofar as we make parts available to the supplier we reserve the ownership hereto. Processing or conversion by the supplier are carried out on our behalf. If our reserved goods are processed with other objects which do not belong to us we shall acquire the co-ownership to the new object in the ratio of the value of our object (purchase price plus VAT) to the other processed objects at the time of the processing.
2. If the object made available by us is inseparably mixed with other objects which do not belong to us we shall acquire the co-ownership to the new object in the ratio of the value of the reserved object (purchase price plus VAT) to the other mixed objects at the time of the mixing. If the mixing is carried out in the manner that the object of the supplier is to be seen as the main object then it shall be deemed as agreed that the supplier assigns us pro rata co-ownership; the supplier shall keep the sole ownership or the co-ownership in safekeeping on our behalf.
3. Insofar as the collateral rights, to which we are entitled according to Par. 1 and/or Par. 2, exceed the purchase price of all of our reserved goods which have not yet been paid by more than 10%, we are obliged to release the collateral rights at our choice at the request of the supplier.
4. We reserve the property to tools; the supplier undertakes to exclusively use the tools for the production of the goods ordered by us. The supplier undertakes to insure the tools belonging to us at the value as new at its own costs against damages through fire, water and theft. At the same time the supplier hereby now already assigns us all claims for damages from this insurance; we hereby accept the assignment. The supplier undertakes to carry out possible necessary service and inspection work as well as all maintenance and repair work to our tools at its own costs in time. It has to report possible interferences to us immediately; if it culpable fails to do this then claims for damages shall remain unaffected.
5. The supplier undertakes to maintain strict secrecy concerning all received diagrams, drawings, calculations and other documents and all non-obvious, commercial and technical information. They may only be disclosed to third parties with our explicit consent. The non-disclosure obligation shall also apply after processing of this contract; it shall lapse if and insofar as the production know-how contained in the diagrams, drawings, calculations and other documents which were handed over has become general knowledge.

XIII. Procurement of spare parts

Supplier shall supply spare parts at the respective market prices for a period of 10 years regarding technical/mechanical spare parts and for a period of 5 years regarding electrical/electronic spare parts from the date of acceptance of the Object of Delivery. In the event of the Object of Delivery comprises Software its updates and support shall be made available for at least 10 years.

XIV. Code of Conduct/Legal Compliance

The Supplier will and will ensure, that its employees, directors, officers, representatives, agents and sub-suppliers will comply with all applicable legal requirements, whether local or foreign, including but not limited to any laws prohibiting corruption and bribery as well as with the Anti-Bribery and Anti-Corruption Rules. Prohibited are in particular:

- Payments for undue services.
- Payments for unaccounted services.
- Payments aimed at accelerating a process ("facilitation payments").
- Payments without evidence of a receipt.
- Commissions not reflecting market conditions.
- Gifts.
- Over-invoicing and under-invoicing.

XV. Place of jurisdiction – applicable law

1. The exclusive place of jurisdiction is our head office; we are however entitled to also file action against the supplier at the court of jurisdiction at its registered seat. Our head office shall also be an additional place of jurisdiction for actions against the supplier, which has no general place of jurisdiction in the Federal Republic of Germany, in addition to the statutory places of jurisdiction. Arbitration agreements reached by the parties have precedence.
2. The law of the Federal Republic of Germany shall apply to all legal relations, which arise from this contract and possible secondary and follow-up business transactions and the place of jurisdiction agreement under XII.1; the applicability of the UN Convention on the International Sale of Goods is excluded.