

# General Terms and Conditions of Purchase of enmodes GmbH

## 1. Scope, form

- 1.1. These General Terms and Conditions of Purchase (GTCP) shall apply to all business relationships between enmodes GmbH, Wilhelmstraße 38, 52070 Aachen, Germany (hereinafter referred to as "enmodes") and its suppliers ("Seller"). The GTCP shall only apply if the Seller is an entrepreneur (§ 14 German Civil Code), a legal entity under public law, or a special fund under public law.
- 1.2. The GTCP shall apply in particular to contracts for the sale, manufacture, or processing of movable items ("Goods"), irrespective of whether the Seller carries out the manufacture or other processing of the Goods itself or has it carried out by third parties. Unless otherwise agreed, the GTCP in the version valid at the time of the order or, in any case, in the version last notified to him in text form, shall also apply as a framework agreement for similar future contracts without our having to refer to them again in each individual case.
- 1.3. These GTCP shall apply exclusively. Deviating, conflicting, or supplementary General Terms and Conditions of the Seller shall only become part of the contract if and to the extent that we have expressly consented to their application in writing. This requirement of consent shall apply in any case, for example, even if we accept the Seller's deliveries without reservation in the knowledge of the Seller's General Terms and Conditions.
- 1.4. Individual agreements made with the Seller in individual cases (including collateral agreements, supplements, and amendments) shall, in any case, take precedence over these GTCP. A written contract or our written confirmation shall be authoritative for the content of such agreements.
- 1.5. Legally relevant declarations and notifications of the Seller with regard to the contract (e.g. setting of deadlines, reminders, withdrawal) shall be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements remain unaffected.

## 2. Conclusion of contract

- 2.1. Our order shall be deemed binding at the earliest upon written submission or confirmation. The Seller shall point out obvious errors (e.g. spelling and calculation errors) and incompleteness of the order, including the order documents to us for the purpose of correction or completion before acceptance; otherwise, the contract shall be deemed not to have been concluded.

- 2.2. If the Seller submits an offer in response to an inquiry from us, it shall comply exactly with our inquiry in terms of type, quantity, and quality and shall expressly draw our attention to any deviations.

The order numbers, article numbers, delivery quantities, and delivery address of enmodes shall also be stated in all order confirmations, delivery documents, and invoices of the Seller.

- 2.3. The seller is required to confirm our order in writing within a period of 10 days or, in particular, to execute it without reservation by dispatching the Goods (acceptance).

A delayed acceptance shall be deemed to be a new offer and shall require acceptance by us.

- 2.4. Within the bounds of reasonableness for the Seller, enmodes may demand changes to the design and execution of the delivery item. In doing so, enmodes shall be entitled to change the time and place of delivery as well as the type of packaging by giving written notice of at least seven calendar days prior to the agreed delivery date.

enmodes will reimburse the Seller for any proven and reasonable additional costs incurred as a result of the change. If such changes result in delays in delivery which cannot be avoided with reasonable efforts in the Seller's normal production and business operations, the originally agreed delivery date shall be postponed accordingly. The Seller shall notify enmodes in writing of any additional costs or delays in delivery to be expected by it upon careful assessment in good time before the delivery date, but at least within five calendar days of receipt of our notification pursuant to sentences 1 and 2 above.

- 2.5. enmodes shall have the right to terminate a concluded contract in whole or in part. In such a case, enmodes shall be obliged to pay for all deliveries/services rendered up to that point and to reimburse any material procured, insofar as such material cannot be used by the Seller for any other purpose. Further claims of the Seller are excluded.

### **3. Delivery time and delay in delivery**

- 3.1. The delivery time stated by enmodes in the order is binding. If the delivery time is not specified in the order or offer and has not been agreed otherwise, it shall be 6 weeks from the conclusion of the contract. The Seller is obliged to inform us immediately in writing if he is not likely to be able to meet the agreed delivery times - for whatever reason. The Seller shall not be entitled to make partial or excess deliveries unless we have expressly agreed to this in writing.

- 3.2. If the Seller does not perform or does not perform within the agreed delivery time or if the Seller is in default, our rights - in particular to rescission and damages - shall be determined in accordance with the statutory provisions. The provisions in clause 3.3 shall remain unaffected.
- 3.3. If the Seller is in default, we may - in addition to further statutory claims - demand a lump-sum compensation for our damage caused by the delay in the amount of 0.5% of the net price per completed calendar week, but in total not more than 5% of the net price of the Goods delivered late. We reserve the right to prove that higher damages have been incurred. The seller reserves the right to prove that no damage at all or only a significantly lower damage has been incurred.

#### **4. Performance, Delivery, Transfer of Risk, Default of Acceptance**

- 4.1. The Seller shall not be entitled to have the performance owed by it rendered by third parties (e.g. subcontractors) without our prior written consent. The Seller shall bear the procurement risk for its services unless otherwise agreed in individual cases.
- 4.2. Delivery shall be made "free domicile" within Germany to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, the delivery shall be made to our registered office in Aachen. The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (obligation to be performed at enmodes' place of business).
- 4.3. The delivery shall be accompanied by a delivery bill stating the date (issue and dispatch), the contents of the delivery (article number and quantity), and our order identification (date and number). If the delivery bill is missing or incomplete, we shall not be responsible for any delays in processing and payment resulting therefrom. A corresponding dispatch bill with the same content shall be sent to us separately from the delivery bill.
- 4.4. For all substances, preparations, and products delivered to enmodes, the specifications and measures resulting from Regulation (EC) 1907/2006 (REACH) must be fulfilled on the part of the Seller.
- 4.5. In the event of the delivery of hazardous substances within the meaning of the Regulation on Hazardous Substances, the Seller shall provide us with the corresponding safety data sheet and all data necessary for its preparation in German. The same shall apply to the delivery of products during the use of which the release of such hazardous substances cannot be excluded.
- 4.6. The risk of accidental loss and accidental deterioration of the item shall pass to enmodes upon handover at the place of performance. If an acceptance has been agreed upon for specific Goods, such acceptance shall be decisive for the transfer of risk. If we are in default of acceptance, this shall be deemed equivalent to handover or acceptance.

4.7. The statutory provisions shall apply to the occurrence of our default in acceptance. However, the Seller must expressly offer us its performance even if a specific or determinable calendar time has been agreed for an action or cooperation on our part (e.g. provision of materials). If we are in default of acceptance, the Seller may demand compensation for its additional expenses in accordance with the statutory provisions (§ 304 German Civil Code).

## **5. Prices and terms of payment**

- 5.1. The price stated in the order shall be binding. All prices shall be inclusive of statutory value-added tax unless this is shown separately.
- 5.2. Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of the Seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).
- 5.3. The agreed price shall be due for payment within 30 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 14 calendar days, the Seller shall grant us a 3% discount on the net amount of the invoice. In the case of bank transfer, payment shall be deemed to have been made in due time if our transfer order is received by our bank before the expiry of the payment period.
- 5.4. We do not owe any interest on the due amount pursuant to § 352 of the German Commercial Code. Default on payment shall be governed by the statutory provisions.
- 5.5. We shall be entitled to rights of set-off and retention as well as the defense of non-performance of the contract to the extent provided by law. In particular, we shall be entitled to withhold payments due as long as we are still entitled to claims against the Seller arising from incomplete or defective performance.

## **6. Provided Materials**

- 6.1. Material/parts provided by enmodes shall remain the property of enmodes. They must be marked by the Seller as the property of enmodes and stored separately. The Seller shall be liable for any damage or loss unless he is not responsible for this.
- 6.2. If the item provided is combined or inseparably mixed with other items not belonging to enmodes, enmodes shall acquire co-ownership of the new item in proportion to the value of the item provided to the other combined or mixed items at the time of combination or mixing.
- 6.3. The processing or transformation of the provided item by the Seller shall always be carried out on behalf of enmodes. If the item provided is processed with other items not belonging to the Seller,

enmodes shall acquire co-ownership of the new item in proportion to the value of the item provided to the other processed items at the time of processing.

- 6.4. The Seller shall keep the item in which enmodes has sole or co-ownership in safe custody for enmodes free of charge and insure it appropriately at its own expense against damage to property, loss, etc.
- 6.5. Unless otherwise agreed in writing, the Seller shall be obliged to surrender to enmodes the items provided or other items in which enmodes has sole or co-ownership.

## **7. Property rights**

- 7.1. Items, models, molds, tools, samples, drawings, plans, and documents (hereinafter referred to as "Production Items") of all kinds - whether provided by enmodes or manufactured at enmodes' expense - shall remain the property of enmodes. The Seller shall keep the Production Items free of charge for enmodes and shall surrender them free of charge at any time upon enmodes' request. Changes to the Production Items may only be made with the prior written consent of enmodes.
- 7.2. The Production Items shall become the property of enmodes upon payment. The Seller shall store these items for enmodes free of charge and in an appropriate manner.
- 7.3. enmodes shall have the right to acquire ownership of the items manufactured or to be manufactured for enmodes at any time by paying any outstanding balance.
- 7.4. enmodes may at any time demand the return of items owned by it. The Seller may not assert a right of retention to the items owned by enmodes.
- 7.5. The provisions of Sections 6.2 and 6.3 shall apply accordingly to Production Items.

## **8. Quality Assurance**

- 8.1. The Seller shall, in each case, immediately check whether a description submitted by enmodes is obviously incorrect, unclear, incomplete, or obviously deviates from the sample. If the Seller recognizes that this is the case, it shall immediately notify enmodes in writing.
- 8.2. The Seller shall maintain an appropriate quality management system and shall manufacture and test the Goods in accordance with the rules of such quality management system. The Seller shall promptly satisfy itself that enmodes' requirements are compatible with its quality management system. The Seller shall immediately notify enmodes in writing of any changes to its quality management system or the status of the certification of the quality management system.

- 8.3. Enmodes, as well as enmodes' customers, shall be entitled, after prior notice, to inspect the Seller's production site and production facilities at reasonable intervals during normal operating hours to obtain information on the course of product manufacture at the Seller's and on the Seller's compliance with its contractual obligations, in particular on compliance with the agreed specification sheet/specifications, the delivery dates as well as the implementation of the quality safety systems and the quality assurance measures. The notice period shall be at least three working days. The Seller shall provide a professionally qualified employee to assist during such access. In doing so, enmodes shall take into account the Seller's need for confidentiality. Insofar as the delivery involves medical products in accordance with the Medical Products Act, the Seller shall also grant the "Notified Body" or the competent authorities access to its premises.
- 8.4. The Seller shall ensure that enmodes as well as its customers may, upon request, also carry out the measures listed in clause 8.1 at the Seller's subcontractors and suppliers and that enmodes and its customers are entitled to all rights vis-à-vis the subcontractors and suppliers to which enmodes is entitled vis-à-vis the Seller pursuant to clause 8.1. In particular, the Seller shall obtain the necessary consent from the subcontractors and suppliers so that enmodes or the representative of enmodes and their customers are in a position to carry out on-site inspections and investigations at the respective subcontractor and supplier.

## **9. Compliance**

The Seller undertakes to comply with the respective statutory regulations on the treatment of employees, environmental protection, and occupational safety and to work to reduce adverse effects on people and the environment in its activities. Furthermore, the Seller shall comply with the principles of the UN Global Compact Initiative. These essentially concern the protection of international human rights, the right to collective bargaining, the abolition of forced labor and child labor, the elimination of discrimination in respect of employment and occupation, responsibility for the environment and the prevention of corruption.

## **10. Confidentiality**

- 10.1. The Seller shall be obliged to treat as strictly confidential all information of a technical or commercial nature from the environment of enmodes in oral, written or other form to which it gains access in the course of its cooperation with enmodes, in particular know-how of enmodes as well as information on trade and business secrets, e.g. inventions, technical processes, formulas, (hereinafter "Confidential Information") and to take all necessary measures to prevent third parties, in particular current or potential competitors, from obtaining knowledge thereof and exploiting it. Freelancers and employees shall be obligated in writing to maintain confidentiality, unless they are already otherwise obligated to do so. The Seller shall impose the same confidentiality obligation on any subcontractors and suppliers with regard to the Confidential Information.
- 10.2. The Seller shall not use the Confidential Information for its own purposes or for third parties without the express written consent of enmodes.

10.3. Exempt from the obligations set out in clauses 10.1 and 10.2 is information, which demonstrably

- was generally known at the time the information was obtained, or
- was already known to the Seller at the time it became known, or
- is or has been made accessible to the Seller by third parties, provided that such third parties have lawfully obtained the information and are authorized to disclose it, or
- have been previously exempted from these obligations in writing by enmodes.

10.4. The obligation to maintain confidentiality shall not apply to the extent that Seller is obligated to disclose such information due to a legal or regulatory provision. In this case, the Seller shall inform enmodes of the disclosure.

10.5. The Seller shall return all documents, data carriers, and other materials received from enmodes immediately upon request. Any files created and all electronic copies shall be deleted from all data carriers.

10.6. In the event that the Seller receives inquiries or orders from third parties for the construction of the same or similar devices or device parts, the Seller undertakes to notify enmodes of this unless it immediately refuses to accept the order. Detailed technical solutions containing know-how shall also be deemed to be equipment parts.

10.7. In the event of each individual willful or negligent breach of one of the obligations under this Section 10, the Seller shall pay enmodes a reasonable contractual penalty to be determined by enmodes for each individual case, the amount of which the Seller may have reviewed for reasonableness by the court having jurisdiction pursuant to Section 15.3. The contractual penalty shall be set off against any claims for damages enmodes may have. As compensation for damages, enmodes may demand at least an appropriate license fee.

10.8. The obligations under clause 10. shall also apply to the period after the end of the cooperation between the contractual partners.

10.9. The above provisions according to clauses 10.1 to 10.8 shall apply accordingly to the Production Items mentioned in clause 7.

## **11. Liability for defects**

11.1. The statutory provisions shall apply to enmodes' rights in the event of defects as to quality or title in the Goods (including incorrect and short delivery as well as improper assembly, defective assembly, operating or operating instructions) and in the event of other breaches of duty by the Seller, unless otherwise stipulated below.

- 11.2. The Seller warrants that the performance is free from defects and warrants in particular that the Goods comply with the requirements of the agreed specification sheets, the agreed specifications, the other agreements on quality and the state of the art.
- 11.3. In addition, the Seller warrants the following properties or compliance with the following conditions:
- 11.3.1. The Goods or services of the Seller are customary in the trade and suitable for the agreed use without any restrictions. It shall be functional and free from planning errors and technical design defects.
  - 11.3.2. The Goods or services comply with all relevant statutory provisions and regulations applicable in the Federal Republic of Germany, for example, the German Medicines Act and Medical Devices Act, all applicable directives, recommendations, guidelines, standards, and opinions, as well as the relevant EU regulations and directives. The Goods or services shall also comply with all generally recognized applicable standards and quality norms such as DIN, VDI, VDE, CE, etc., as well as the standards established by professional associations.
  - 11.3.3. The Goods or services of the Seller comply with the general rules of technology (technical standards, regulations, procedures, conditions, etc.), occupational health and safety regulations, accident prevention regulations, environmental protection law, and the provisions of the Product Safety Act in terms of manufacture, quality, and usability.
  - 11.3.4. The marking of the Goods or services or their packaging as well as the certificates and declarations of conformity supplied shall comply with the statutory and other applicable regulations in force at the time of the transfer of risk.
- 11.4. If the Seller intends to make changes to the Goods - for example, by using other raw materials or material compositions - it shall inform enmodes of this in good time. This shall apply both to confirmed orders and to orders placed which are executed on call or to continuous deliveries in framework supply agreements. Such change requests shall be deemed to be a request for an amendment of the contract. They shall only be effective within the framework of existing contracts if enmodes has agreed to them in writing.
- 11.5. Notwithstanding § 442 para. 1 sentence 2 German Civil Code, enmodes shall also be entitled without restriction to claims for defects if the defect remained unknown to enmodes at the time of conclusion of the contract as a result of gross negligence.
- 11.6. The statutory provisions shall apply to the commercial duty to inspect and give notice of defects, subject to the following proviso: enmodes' duty to inspect shall be limited to defects which become apparent during our incoming Goods inspection under external appraisal including the delivery documents (e.g. transport damage, incorrect and short delivery) or which are identifiable during our quality control in the random sampling procedure. Insofar as an acceptance has been agreed for specific Goods, there shall be no obligation to inspect. Otherwise, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case.



Our obligation to give notice of defects discovered later shall remain unaffected. Notwithstanding our duty to inspect, our notice of defect shall be deemed to have been given without undue delay and in good time if it is sent within 15 working days of discovery or, in the case of obvious defects, of delivery.

11.7. If an acceptance is required for specific Goods, the following provisions shall apply:

11.7.1. Acceptance shall only take place after complete performance and by formal declaration and preparation of an acceptance report; tacit acceptance shall be excluded.

11.7.2. The Seller shall be obligated to notify enmodes in writing of the provision of the finished Goods or services. After receipt of the notification of provision, enmodes may inspect the performance within a reasonable period of time, but at least 15 working days. Acceptance shall be declared if the inspection does not reveal any defects which more than insignificantly impair the suitability for the contractually intended use.

11.7.3. Even if acceptance is declared, all defects discovered during the inspection and listed in the acceptance report shall be remedied by the Seller immediately after acceptance at the Seller's expense.

11.7.4. In all other respects, the statutory provisions on contracts for work and services shall apply mutatis mutandis to the acceptance.

11.8. If the Seller fails to meet its obligation to provide supplementary performance - at our option by remedying the defect (rectification) or by delivering an item free of defects (replacement) - within a reasonable period of time set by us, we may remedy the defect ourselves and demand reimbursement from the Seller of the expenses required for this purpose or a corresponding advance payment. If the subsequent performance by the Seller has failed or is unreasonable for us (e.g. due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no deadline need be set; we shall inform the Seller of such circumstances without undue delay, if possible in advance.

11.9. Otherwise, in the event of a defect in quality or in title, we shall be entitled to reduce the purchase price or to rescind the contract in accordance with the statutory provisions. In addition, we shall be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

## **12. Supplier Regress**

Our statutory rights of recourse within a supply chain (supplier recourse pursuant to §§ 445a, 445b, 478 German Civil Code) shall be available to enmodes without restriction in addition to the claims for defects. This shall also apply if the defective Goods have been further processed by us or another entrepreneur, e.g. by incorporation into another product.

### **13. Producer's Liability**

- 13.1. If the Seller is responsible for a product defect, he shall indemnify us against claims of third parties to the extent that the cause lies within his sphere of control and organization.
- 13.2. The Seller shall take out and maintain product liability insurance with a lump sum coverage of at least three million € per claim and at least six million € per calendar year. enmodes may demand written proof of the existence of such insurance at any time.

### **14. Other Provisions**

- 14.1. The Seller shall have a right of set-off or retention only in respect of counterclaims which have become res judicata or are undisputed.
- 14.2. These GTCP and the contractual relationship between us and the Seller shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 14.3. The exclusive place of jurisdiction for all disputes in connection with the contracts between the contracting parties and with regard to the validity of these contracts shall be Aachen (Federal Republic of Germany). enmodes shall also be entitled to assert claims against the Seller at any other statutory place of jurisdiction, in particular at the place of the Seller's general place of jurisdiction.
- 14.4. Should individual provisions of these Terms and Conditions be or become void or ineffective in whole or in part, this shall not affect the validity of the remaining provisions. The ineffective provision shall be replaced by a provision that comes as close as possible to the meaning and purpose of the ineffective provision.

Enmodes GmbH

31.05.2023