

# GENERAL CONDITIONS OF PURCHASE of VON ARDENNE GmbH, 2013 edition

## 1. Scope

- 1.1. These General Conditions of Purchase apply to any and all Purchase Orders and other contracts concerning delivery of goods entered into by VON ARDENNE GmbH (VON ARDENNE) and its contractors (Contractor). Differing, conflicting, or additional terms and conditions on the part of Contractor are not accepted unless VON ARDENNE agrees to them in writing.
- 1.2. Oral statements before or during conclusion of the contract shall be binding only if confirmed in writing.

## 2. Ordering and Order Confirmation

- 2.1. All Purchase Orders and any amendments or additions thereto shall be binding only if made in writing.
- 2.2. VON ARDENNE is entitled to revoke the Purchase Order at no cost if the Contractor fails to confirm it without modification within 10 days from receipt. The order confirmation must include the Purchase Order number and the order item.
- 2.3. VON ARDENNE may request reasonable changes to the delivered goods in terms of design and execution. In such case, the consequences resulting therefrom –in particular with regard to additional or reduced costs and effects on the schedule- shall be considered accordingly.

## 3. Performance

- 3.1. Down payments shall be used by Contractor for the sole purpose of executing the Purchase Order. If equipment or other items are provided by VON ARDENNE to execute the Purchase Order, Contractor shall ensure proper storage and labeling as the property of VON ARDENNE. On VON ARDENNE's request, Contractor shall confirm such storage and labeling in writing. VON ARDENNE shall be entitled to audit the appropriate storage and labeling of its proprietary equipment. Contractor shall bear liability for any damage or loss.

3.2 VON ARDENNE acquires ownership of all items for which VON ARDENNE made a down payment or which were provided by VON ARDENNE to Contractor to perform the Purchase Order. Transfer of possession of such items to VON ARDENNE shall be substituted by storage of such items by Contractor at Contractor's place. If Contractor manufactures such items into another product, such manufacturing shall be considered to be performed for VON ARDENNE; transfer of title in such a product to Contractor shall be excluded. If Contractor acquires co-ownership in a manufactured product by incorporation or combination of VON ARDENNE provided items with other items, then Contractor assigns its share of co-ownership to VON ARDENNE; transfer of possession shall be substituted by storage of such product by Contractor at Contractor's place.

- 3.2. Contractor shall notify VON ARDENNE immediately of any initiation of insolvency and liquidation proceedings, Contractor's inability to pay or over-indebtedness, and/or attachment of or similar access to VON ARDENNE's property by third parties. In addition, Contractor shall support VON ARDENNE in retention of VON ARDENNE's property at Contractor's own cost.

## 4. Prices

The prices agreed in the Purchase Order are fixed prices. Any and all deliveries to be provided by Contractor under the Purchase Order and all rights granted to VON ARDENNE shall be compensated for with the prices stated in the Purchase Order.

## 5. Deadline, Delay

- 5.1. The agreed delivery dates and periods are binding. The definitive event for compliance with the delivery date or period is the receipt of the goods at the place of destination specified in the Purchase Order.
- 5.2. If Contractor becomes aware that the agreed dates, for whatever reason, cannot be complied with, Contractor shall immediately notify VON ARDENNE of such delay, indicating its probable duration.
- 5.3. In case of delay VON ARDENNE is entitled to claim a contractual penalty in the amount of 0.5% of the order value per week or part thereof, but not exceeding 5% of the total order value. Contractor has the right to demonstrate to VON ARDENNE that no damages or significantly lesser damages were incurred as a result of the delay. The penalty for delay will then be reduced accordingly. Any further claims for damages remain unaffected, but the contractual penalty shall be deducted therefrom.
- 5.4. If Contractor fails to provide the goods even within a reasonable period granted by VON ARDENNE, then VON ARDENNE is entitled to engage a third party to fulfill the contract (substitute performance) and to claim from Contractor compensation for such expenses and additional costs.

VON ARDENNE shall also be entitled to claim compensation for damages instead of fulfillment. Upon expiration of the grace period granted by VON ARDENNE, Contractor's right to remedy and VON ARDENNE's obligation to accept the goods shall lapse if and insofar as VON ARDENNE has engaged a third party for substitute performance or has demanded compensation of damages in lieu of performance.

## 6. Delivery, shipment

- 6.1. Each delivery must be accompanied by a transport document stating at least the purchase order number, order line, the VON ARDENNE item number and description of the content in terms of type and amount. Partial deliveries need to be marked as such. In case of excess delivery, VON ARDENNE is entitled to return the goods at Contractor's cost.
- 6.2. For products that are subject to German and/or European or U.S. export regulations, Contractor shall inform VON ARDENNE about the customs tariff number, country of origin, net weight, and preference and, for goods of U.S. origin, the ECCN number. This data must be provided on each order confirmation, delivery note, and invoice for each item.

- 6.3. Unless otherwise agreed in the Purchase Order, deliveries shall be made DAP (INCOTERMS 2010) to the place of destination specified by VON ARDENNE. VON ARDENNE does not assume costs for transport insurance. If the Purchase Order provides for an acceptance of the goods (and works, if any), then the transfer of risk shall be exclusively governed by § 644 para 1 sentence 1 and 2 BGB.

6.4. Incoming goods inspection at VON ARDENNE shall be limited to visible transport damage, quantity determination and identity of delivered goods, at least based on the transport document. VON ARDENNE will notify Contractor without undue delay of deficiencies found during the incoming goods inspection. Further deficiencies found during regular course of business will be notified by VON ARDENNE without undue delay after realization of such deficiencies. Apart from the foregoing, VON ARDENNE has no further examination obligations. Contractor waives his right to claim a delay in the receipt of the notification of defects.

## 7. Payments

- 7.1. Payments shall be made as agreed in the Purchase Order. Deliveries made before the agreed date shall have no effect to the related payment date.
- 7.2. Unless otherwise agreed, payment is due within 30 days of receipt of a verifiable invoice. The invoice shall refer to the purchase order number, order item, and the VON ARDENNE item number.
- 7.3. Contractor shall not assign to third parties any rights Contractor may have against VON ARDENNE. The rights of both parties pursuant to § 354a HGB shall remain unaffected.
- 7.4. VON ARDENNE shall be entitled to offset against any and all claims it may have against Contractor, regardless of the legal reason. This provision shall also apply even if one party agrees to cash payment and the other party has agreed to payment in bill of exchange or other services. Contractor may only exercise a right of retention if his counterclaim is based on the same contractual relationship.
- 7.5. The title to any goods to be delivered shall pass to VON ARDENNE no later than upon payment in full.

## **8. Third Party Intellectual Property Rights**

8.1. Contractor guarantees that VON ARDENNE does not infringe patents or intellectual property rights including applications for intellectual property rights and/or other copyrights by reselling or using the delivered goods for the intended purpose and shall indemnify and hold harmless VON ARDENNE against third party claims resulting from the use or infringement of such rights.

8.2. Contractor shall immediately inform VON ARDENNE of third party intellectual property rights which Contractor has become aware of and which may prevent VON ARDENNE or its customers from the agreed use of the delivered goods.

## **9. Acceptance**

If the Purchase Order provides for an acceptance of the goods, such acceptance must always be declared explicitly in writing by VON ARDENNE. Functional tests, commissioning, or use of the delivered goods shall not be deemed to be an acceptance in the legal sense pursuant to § 640 BGB.

## **10. Claims under defect liability / product liability**

10.1. Contractor warrants that the delivered goods conform to the current state of the art, comply with the applicable standards and regulations, and will be provided professionally, in perfect quality, in accordance with the contractually agreed specifications, and are free from third party rights.

10.2. Unless otherwise agreed in the Purchase Order, warranty period shall start with delivery or – if an acceptance has been agreed – with acceptance. For replaced or rectified parts, the warranty period shall restart with completion of rectification or replacement.

10.3. Contractor shall assume liability for any and all costs related to rectification of defects occurred during warranty period; especially, but not limited to, cost for disassembly and re-assembly of the defect good, cost for labor and materials and cost to transport the defect good to a place differing from the place of destination specified in the Purchase Order.

10.2. Contractor shall indemnify and hold harmless VON ARDENNE from any claims arising from producer's liability or under the Product Liability Act, as far as the damage was caused by a defect in the goods to be provided by Contractor. Contractor shall insofar bear all costs and expenses, including legal costs, unless the cause of the defect was outside of Contractor's sphere of responsibility.

## **11. Termination and Suspension**

11.1. VON ARDENNE is entitled at any time to temporarily suspend the execution of or to terminate a Purchase Order by written notice.

11.2. After receipt of such written notice as to Section 11.1, Contractor is - until further instruction of VON ARDENNE - obliged to suspend work, to give no further orders to third parties, and to cancel orders already issued to third parties. The performance and materials already provided or currently in progress shall initially be secured by Contractor until further instruction from VON ARDENNE.

11.3. If VON ARDENNE terminates the Purchase Order for convenience, Contractor shall –excluding any further claims for whatever legal reason- be entitled to payment of such portion of the Purchase Order Price corresponding to the performances which are proven to be already executed at the date of receipt of the notice as to Section 11.1. Furthermore, Contractor shall be entitled to compensation of the proven termination costs.

11.5. VON ARDENNE shall be entitled to terminate the Purchase Order if insolvency proceedings are filed on the assets of Contractor or if Contractor suspends payments. Further legally provided termination or withdrawal rights shall be unaffected.

## **12. Rights to Results**

12.1. Results shall mean any and all findings obtained, laid down or embodied as well as goods or other documents produced in the course of the execution of the Purchase Order. Contractor shall transfer any and all rights to the Results to VON ARDENNE.

12.2. Contractor shall grant VON ARDENNE - insofar as VON ARDENNE is not regarded as the author of the respective Results - a right to Results (regardless of whether or not such Results are protected by industrial property rights) which is exclusive, free of charge and without limitation in place, time and contents to use such Results in any type of use. In the case of Results which are protected by copyright and in the case of software -also with regard to the documented source code- VON ARDENNE shall in particular be entitled to show, edit or in other way transform such Results and to offer, publish, distribute, reproduce them in the original, edited or transformed form also over data networks. Furthermore, VON ARDENNE shall be entitled to perform any acts under § 69c UrhG [German Copyright Act] and to grant unlimited rights of use. VON ARDENNE shall be entitled to transfer the rights of use granted to VON ARDENNE and to grant non-exclusive, sublicensable or exclusive rights of use.

12.3. Contractor shall inform VON ARDENNE immediately in writing of all inventions or technical improvements which were created in fulfilling the Purchase Order (hereinafter referred to as „Inventions“), regardless of whether or not such Invention is protectable. Contractor shall claim the Inventions and Invention shares of his employees without limitation and transfer them completely to VON ARDENNE. VON ARDENNE shall be entitled to apply for the intellectual property rights in its own name. For that purpose, VON ARDENNE receives from Contractor the necessary information and documents. VON ARDENNE shall bear the expenses of the application and maintenance of the intellectual property right and, in case of use, the statutory employee remuneration which would apply to inventors of VON ARDENNE. Such expenses shall not be included in the remuneration pursuant to Sec.4. Contractor shall keep all Results and Inventions confidential until the application for the intellectual property rights in question have been disclosed.

12.4. Should VON ARDENNE not be interested in the transfer of rights to an Invention or Invention share, VON ARDENNE shall inform Contractor thereof. In such case, Contractor shall be entitled to apply for the intellectual property right in its own name. VON ARDENNE shall receive a right of use which is non-exclusive, free of charge and without limitation in place and time.

## **13. Confidentiality**

The parties shall not make available to third parties technical or business information disclosed to each other and declared to be confidential during the period of five years after termination of the Purchase Order. This shall not apply to information that was known or generally available to the other party or the public prior to its disclosure, or that became generally available or known to the public after disclosure without any wrongful act or omission of the other party, or that became generally available or matches information that the other party obtained from an authorized disclosure or that was made accessible to third parties or was independently developed by an employee of the other party who had no knowledge of the information in question.

## **14. Place of fulfillment, jurisdiction**

14.1. The place of fulfillment for all deliveries is the place of destination designated by VON ARDENNE in the Purchase Order.

14.2. Venue shall be the place where VON ARDENNE has its registered office. VON ARDENNE's right to sue Contractor at Contractor's seat shall remain unaffected.

## **15. Miscellaneous**

15.1. Should one or several provisions of these General Conditions of Purchase be held invalid, the validity of the remaining provisions shall remain unaffected. In the event of invalidity of a provision, the invalid provision shall be replaced by a valid clause whose economic result corresponds as far as possible to that of the invalid provision.

15.2. The Purchase Order and these General Conditions of Purchase shall be construed with and governed by the law of the Federal Republic of Germany, under exclusion of its conflict of law-rules and the United Nations Convention on the International Sale of Goods (CISG).

15.3. VON ARDENNE declares pursuant § 33 BDSG that VON ARDENNE will store Contractor's data on the basis of the German Data Privacy Act.