

# General Terms and Conditions of Purchase of Vitra International AG and its affiliated companies

Status: September 2016

Vitra International AG, of Klünenfeldstrasse 22, Muttenz, 4127 Birsfelden, Switzerland and its affiliated companies, as specified at [www.vitra.com/general\\_terms\\_purchasing](http://www.vitra.com/general_terms_purchasing), (hereinafter: "we" or "us") shall make all purchases exclusively under the provisions of these General Terms and Conditions of Purchase (GTP). They apply to all business relations with entrepreneurs ("*Unternehmern*"), legal entities under public law or special bodies or funds under public law ("*öffentlich-rechtlichen Sondervermögen*") (hereinafter: "Supplier"). Deviating or supplementary terms and conditions of the Supplier are excluded from the agreement, even if we do not expressly reject them.

## 1- Conclusion of the agreement and completeness

- 1.1 The Supplier shall confirm an order in writing within 2 working days of receipt thereof and in accordance with the instructions given in the order. All legal relations between us and the Supplier shall be governed by the written agreement and the present GTP. This fully reflects all arrangements made between the contracting parties on the object of the agreement. The use of fax or email is deemed to comply with the written form requirement; an order confirmation displayed in our supplier portal is also deemed to be sufficient.
- 1.2 Until we receive an order confirmation, all orders placed by us may be withdrawn without obligation. In the event that our order does not specify a price or delivery date and the Supplier inserts this information in its order confirmation, our written consent is required for this to become a binding agreement.
- 1.3 Contrary to the present GTP and unless otherwise expressly stipulated, any construction services performed in Germany and/or by a German supplier, are subject to the German construction tendering and contract regulations part B (VOB/B), in the version applicable at the time the contract is awarded.

## 2- Delivery dates

- 2.1 The binding delivery date for the Supplier is the delivery date specified in the order. Deviating agreements made in individual cases must be explicitly concluded in writing to be valid.
- 2.2 All goods must be received at the place of delivery specified by us within the delivery deadline. We are not obliged to accept early delivery of any goods, unless we have agreed to do so, or if, by accepting early delivery, we will not be disadvantaged in any way.
- 2.3 As soon as the Supplier has reason to expect that a delivery will be either partially or completely impossible on the agreed date, it must notify the order without delay, specifying the reasons and the anticipated length of the delay.
- 2.4 In the event of a delivery delay, we are entitled to assess a lump sum compensation fee for late delivery damages of 0.2% of the agreed total order price for each working day of delay, up to a maximum of 5% of the total. We are required to substantiate any incurred damages in excess of this amount. Further statutory rights remain unaffected. The onus is on the Supplier to demonstrate that the delivery delay has not resulted in any damages, or in damages of a significantly lower amount. Compensation claims for late delivery damages may be asserted even if delivery is accepted without reservation.
- 2.5 Should the Supplier experience a delivery delay, it is obligated to comply with our request for urgent delivery (any express, courier or package service, airfreight, etc.) without delay and at its expense.

## 3- Shipment, transfer of risk

- 3.1 Unless expressly agreed otherwise in writing, shipment is carried out at the Supplier's risk and expense (on DDP basis, in accordance with 2010 Incoterms). Location of delivery and transfer of risk is in each case the place of delivery specified by us.

- 3.2 If it is specifically agreed in writing that we shall shoulder the shipping costs, the Supplier is required to select the most favourably priced mode of shipment on our behalf. The Supplier shall be liable for any additional costs or other disadvantages incurred.
- 3.3 The latest version of our packaging guidelines shall apply, they are available at [www.vitra.com/general\\_terms\\_purchasing](http://www.vitra.com/general_terms_purchasing).
- 3.4 A shipment notification is to be issued on the day of dispatch of each delivery. In addition, delivery receipts in duplicate must be included in each individual shipment. The minimum information required on delivery receipts and invoices is our order number, our article number, our article description and the shipment quantity per article. In the event that one or several of these information items are not included and this should result in delays in our normal processing procedures, the payment deadlines as specified in Art. 4.3 shall be extended by the length of the processing delay.

## 4- Prices and payment terms

- 4.1 All prices are net of statutory VAT, but include customs duties, packaging, insurance and shipping and are inclusive of all services and supplemental services (e.g. installation), unless other terms are agreed in writing.
- 4.2 All agreed prices are fixed prices. Price increases during the term of an agreement are excluded; unless agreed to the contrary, this also applies to contracts for blanket orders, call orders and standing orders.
- 4.3 Unless agreed otherwise, our invoice settlement terms are 14 days at 4% discount, 30 days at 3% discount, or 60 days net, based on the date of invoice receipt and confirmed delivery of goods.
- 4.4 The assignment of claims against us requires our prior written approval.
- 4.5 The Supplier is entitled to exercise its right of retention insofar as its counter-claim is based on the same contractual relationship, or is based on a claim that is undisputed or has been legally established. He may only offset those counter-claims that are undisputed or have been legally established, or are reciprocal counterclaims to our claims.

## 5- Warranty

- 5.1 The Supplier warrants that the delivered item is free from defects, meets the specifications as stipulated in the contract, uses the latest available technology and complies in particular with the relevant regulations, norms and guidelines, safety and accident prevention standards and the common technical quality norms (such as DIN, VDE, CE conformity). Control diagrams and spare parts lists are integral parts of each order and the Supplier must include these items in the delivery of the goods without prior request.
- 5.2 Should a delivered product not comply with the agreed specifications, or is defective due to another reason, we are entitled under statutory provisions to choose between replacement, repair and reduction of the purchase price, or withdrawal from the contract. The right to claim compensation remains unaffected. The Supplier will shoulder any costs incurred through the delivery of replacement items or the repair of defects.
- 5.3 The general limitation period for defect claims is 3 years starting from the date of risk transfer. If acceptance has been agreed, the limitation period begins with the acceptance. In the case of construction works and products used in a building structure in accordance with their intended purpose, or as explicitly agreed with the Supplier, and which caused defects in that building structure, contrary to VOB/B, the limitation period will be 7 years starting from the receipt of the products or the approval of the works. Longer statutory limitation periods remain unaffected. In the case of replaced parts, the limitation period begins again. We are also entitled to unrestricted warranty claims if the defect remained unknown to us upon conclusion of the agreement as a result of gross negligence.
- 5.4 The Supplier will inspect and document the quality of the products prior to shipment. We inspect the products delivered by

the Supplier on receipt to verify they are correct in terms of quantity and identity, as well as for obvious defects and transport damage. In addition, we conduct random inspections for other defects within the scope of our normal business operations. We have no further obligation to inspect the goods. We will notify the Supplier of any identified defects within 5 working days.

- 5.5 Irrespective of the contractual warranty claims, the Supplier shall indemnify us from and against all claims by third parties arising from defects in the services carried out or the products delivered by it, unless the Supplier is not responsible for such defects.
- 5.6 Should we be the subject of product liability claims, the Supplier must indemnify us from and against these claims to the extent that the Supplier himself is directly liable. In such cases, it must reimburse any costs incurred for preventive measures taken by us (e.g. product recalls); this applies equally to recognisable or imminent series production defects. Further legal claims remain unaffected. The Supplier is obligated to obtain insurance coverage against this liability risk and present evidence of this coverage to us on request.
- 5.7 This warranty also applies to items manufactured by sub-contractors.

## **6- Industrial property rights, tools, confidentiality**

- 6.1 We reserve the ownership and industrial property rights to samples, models, tools, moulds, drawings and other documents which are attached to orders or which we provide to the Supplier. We will also assume ownership of any materials produced according to our specifications and paid for accordingly. They must be treated as confidential. On the completion of the job order, such materials are to be returned to us, or on our request, retained for use in future orders. They may not be transferred to third parties or used for any purpose other than our mutual business relations without our written permission. The Supplier's right of retention to these materials is excluded.
- 6.2 We claim unlimited rights to patents, inventions registered as designs or other protected intellectual property rights, developed by the Supplier or by one of its affiliated companies within the scope of the activity for us and shall submit an application for property rights. We shall be exclusively entitled to these proprietary property rights. The Supplier will notify us without delay of any technical enhancements in production of the products that he developed as part of the activity for us and will transfer to us all rights in such enhancements, in particular also copyrights. In addition, we will be entitled to issue licences to third parties. If it is not possible to transfer copyrights for legal reasons, the Supplier will grant to us worldwide, perpetual, and unrestricted exclusive usage rights, including the right to issue licences to third parties.
- 6.3 In the case of tools specifically used in the production of the goods ordered by us and over which we have not assumed ownership pursuant to Art. 6.1, the Supplier shall, on our request and on reimbursement of the fair market value of the item, transfer ownership to us, to the extent that the Supplier no longer requires these tools to meet its delivery obligations to us. Use of the tools on behalf of third parties or transfer thereof to third parties is not permitted.
- 6.4 Items produced using our moulds or tools may not be delivered to third parties without our express written permission.
- 6.5 For all tools provided by us, as well as tools of which ownership is transferred to us pursuant to Art. 6.1, the respective tool rental agreement concluded with the Supplier shall additionally apply; in the case of items supplied by us for production purposes, Art. 7 shall additionally apply.
- 6.6 In addition, our non-disclosure agreement applies. This can be found at: [www.vitra.com/general\\_terms\\_purchasing](http://www.vitra.com/general_terms_purchasing).

## **7- Supply of items for production purposes**

- 7.1 To the extent that we provide the Supplier with tools or parts used for the production of products, we retain ownership rights to these items. The Supplier is obliged to mark the items supplied as our property, to treat them with due care and to safeguard them from damages or theft. The Supplier is further obliged to prepare

an inventory of all items supplied by us as per 31 December of the 3rd year following conclusion of the contract and to submit this list no later than the end of January of the following year and every 3 years thereafter, or on our request.

- 7.2 If the Supplier processes, mixes or combines the items we supply to it for production purposes, this shall be deemed to be carried out in our name. If during the processing, mixing or combination with items of third parties their property rights should persist, we will thus acquire co-ownership of the new item in the ratio of the value of our supplied item to the other items.
- 7.3 The Supplier undertakes to insure at its expense all items belonging to us at their replacement value, against damages caused by fire, water and theft. At the same time, the Supplier hereby assigns to us all rights to damage claims in connection with this insurance; we herewith accept this assignment. The Supplier will notify us immediately of any damages caused to the items belonging to us which are not merely minor damages.

## **8- Liability**

- 8.1 We shall be liable in accordance with the statutory provisions for any culpable breach of material contractual obligations, i.e. contractual obligations, the performance of which characterise the contract and which are necessary for its proper implementation. For all other breaches of contractual obligations, our liability is limited to damages caused by acts of gross negligence or intent by our legal representatives or vicarious agents ("*Erfüllungsgehilfen*").
- 8.2 However, unless our conduct has been intentional, we shall be liable only for the foreseeable damage which typically occurs.
- 8.3 Claims asserted in connection with the product liability act or damages arising out of any injury to life, body or health are excluded from this liability limitation, in such cases we shall be liable in accordance with the statutory provisions.
- 8.4 Unless otherwise provided for under this Art. 8, claims against us for damages arising out of breaches of duty are excluded.
- 8.5 The Supplier is liable for all damages or costs we may sustain as a result of a culpable violation by the Supplier of industrial property rights held by third parties, while carrying out the order assigned to it, and the Supplier undertakes in this connection to indemnify us, or our customers, from any third-party claims arising from such a violation of industrial property rights. The Supplier may not be held liable for the delivered goods, to the extent that the goods produced conform to the drawings, models, other descriptions or specifications provided by us. Should we become aware of such a violation, we are entitled to cancel any order already placed in this connection.

## **9- Force majeure**

Labour unrest (strikes and lockouts), measures implemented by the authorities (unless the Supplier is responsible for such measures), fire, water damage or floods, as well as other unavoidable events, are deemed acts of force majeure and the contracting parties are released from their contractual obligations during the occurrence and aftermath of such events. The contracting parties are obligated to give each other the necessary information which may be reasonably expected without delay, and to adjust their obligations in good faith to the changed circumstances.

## **10- Insurance obligations of the Supplier**

- 10.1 The Supplier is obliged to take out business and product liability insurance with lump-sum coverage of at least EUR 5,000,000.00 per loss event for personal injury and property damage that is global in scope (including USA/Canada), to maintain this for the duration of the business relationship and to present this to us upon request. The business and product liability insurance must also cover pecuniary losses, product recall costs, inspection and sorting costs, installation and removal costs as well as combining and commingling loss/damage. The Supplier will ensure in its own interest that the exclusion of insurance coverage for contractual liability claims taking into consideration its outgoing goods inspection responsibility is waived. Any premium supplements due are taken into account in the pricing.

10.2 Conclusion of a liability insurance contract does not release the Supplier from liability.

## **11- Other obligations of the Supplier**

- 11.1 All obligations pursuant to the contract must be fulfilled by the Supplier itself. The engagement of a sub-contractor is subject to our prior written consent.
- 11.2 If agents of the Supplier work on our premises or on the premises of one of our customers, the Supplier is responsible for ensuring that they observe accident prevention regulations and the standards of the Association of German Engineers (VDI-Richtlinien) as well as our existing internal company rules. The Supplier is liable for all damages that it or its representatives cause in our premises or on our customers' premises through a breach of duty, unless the Supplier or its representative cannot be held responsible for this breach of duty. On our request, the Supplier must provide proof of a liability insurance policy with sufficient coverage.
- 11.3 The Supplier undertakes to produce and deliver the products in compliance with all applicable statutory guidelines. This shall also apply to the Registration, Evaluation, Authorisation and Restriction of Chemicals regulation (REACH) and the EU Timber Regulation (EUTR), as well as other relevant regulations with respect to materials used or the intended purpose. The Supplier shall maintain updated documentary verification of the above as required, or as agreed with us, and it is its responsibility to provide a copy to us without prior request, as per the instructions in our purchase order.
- 11.4 The Supplier warrants to comply with the provisions of the Minimum Wage Act ("*Mindestlohngesetz*") (where applicable), during the period of our business relations, as well as with any comparable regulations relating to the minimum wage that apply to its business location and to secure a similar warranty from any sub-contractors, third-party suppliers or temporary employment agencies it appoints. The Supplier agrees to sign a corresponding declaration of compliance with minimum wage regulations on our request.
- 11.5 The Supplier undertakes to issue a self-disclosure document confirming its compliance with the standards of ethical conduct, in particular the social and environmental standards enshrined in the Declaration of Human Rights of the UN, the UN Convention on the Rights of the Child, the UN Convention on the Elimination of All Forms of Discrimination against Women, the UN Global Compact, the OECD Guidelines for multinational companies as well as the conventions of the International Labour Organisation (ILO). Moreover, the Supplier undertakes to adhere to our Supplier Code of Conduct, which can be found at [www.vitra.com/general\\_terms\\_purchasing](http://www.vitra.com/general_terms_purchasing).

## **12- Reservation of title**

Unless otherwise agreed by the parties in writing, all forms of extended or prolonged reservation of title are excluded, so any reservation of title that may validly be declared by the Supplier shall apply only to the goods delivered to us and only until said goods have been paid for.

## **13- Place of jurisdiction, applicable law**

- 13.1 Place of jurisdiction for all legal disputes arising from or in connection with the respective agreement or the present GTP, is the registered address of Vitra International AG. We are further entitled at our discretion to file legal proceedings at the Supplier's registered address or to seek a final settlement regarding any disputes arising from or in connection with the respective agreement or the present GTP under the Rules of Arbitration of the International Chamber of Commerce (ICC), by one or more arbitrators appointed in accordance with said Rules. If the Supplier so requests, we are obligated to notify it of our decision, either to conduct arbitration proceedings or proceedings in an ordinary court, no later than two weeks following receipt of the Supplier's request.
- 13.2 Place of fulfilment for all deliveries is the place of delivery specified by us; if no place of delivery is specified, place of fulfilment is the registered address of Vitra International AG, or

for deliveries to affiliated companies, place of fulfilment is the registered address of the affiliated company.

- 13.3 Swiss law shall apply. The UN Convention on the International Sale of Goods (CISG) is excluded, i.e. is not applicable.
- 13.4 In the event that individual provisions of the respective agreement become ineffective, the remaining provisions and the overall agreement remain unaffected. Insofar as the ineffective provision is not part of the General Terms and Conditions, it shall be replaced by a provision which comes as close as possible to the economic significance of the ineffective provision. The same shall apply *mutatis mutandis* in the event of a lacuna.