

# Terms and Conditions of Purchase of Akkumulatorenfabrik MOLL GmbH + Co. KG, Bad Staffelstein



20.09.2017

These Terms and Conditions of Purchase shall apply to all types of agreements entered into by Akkumulatorenfabrik MOLL GmbH + Co. KG, Angerstr. 50, 96231 Bad Staffelstein ("MOLL") as purchaser, service recipient etc. In cases of doubt, the German version of these Terms and Conditions of Purchase shall constitute the sole basis of our legal transactions.

## 1. Purchase order, confirmation

The agreements concluded between MOLL and suppliers ("Supplier") are exclusively subject to these Terms and Conditions of Purchase. Contrary terms must be separately agreed in writing. A written agreement must be made for all purchase orders issued by MOLL, as well as any subsequent amendments and additions to the purchase order. The contractual content exclusively comprises the details and terms of the written purchase order from MOLL, including the associated delivery schedule and these Terms and Conditions of Purchase. The Supplier's terms and conditions set out in its confirmations, delivery notes and invoices shall not form part of the agreement.

If the purchase order is not confirmed in writing within 14 days or if its terms and conditions are amended, the contract offer from MOLL is deemed rejected.

## 2. Agreed quality, particularly samples and analyses

All the aspects contained in the purchase order, together with the Supplier's details concerning weights, dimensions, forms and qualities are deemed to constitute part of the agreed quality in accordance with Section 434 German Civil Code (Bürgerliches Gesetzbuch, "BGB"). If the purchase order is made following the presentation of a sample or analysis, the contents of this are deemed to be warranted characteristics.

Variances from the warranted or agreed characteristics shall entitle MOLL to refuse acceptance, irrespective of the other statutory consequences of defects.

## 3. Prices

The agreed prices are fixed prices, and apply for delivery to the business address of MOLL. Price increases may not be applied during the time in which the order is processed.

## 4. Delivery

Agreed dates (delivery dates, acceptance dates etc.) are fixed dates. If the time limit is exceeded, irrespective of farther-reaching statutory entitlements, MOLL shall be entitled, without stipulation of an additional time limit or issue of a reminder, to choose to demand either subsequent delivery, compensation for delayed delivery or non-performance, or to rescind the agreement and arrange a replacement delivery with a third party. The Supplier shall reimburse all the costs incurred as a result of the failure to satisfy the delivery period. The acceptance of a delayed delivery does not in any way constitute a waiver of compensation claims.

## 5. Dispatch, transfer of risk

In respect of every consignment, on the day of the delivery the Supplier shall provide a dispatch note stating the purchase order number, the precise number of units, article designations and the individual weight or dimensions. Every consignment shall be accompanied by a delivery note containing the aforementioned information. The Supplier shall be liable for all damage and consequential costs incurred through the failure to observe these

shipping instructions. The risk shall pass to MOLL only upon the receipt and acceptance of the delivery performed by the individuals authorized by MOLL with the performance of this procedure.

## 6. Packaging

The Supplier is responsible for ensuring appropriate packaging. The Supplier shall be liable for all losses and damage sustained during the shipment. Packaging shall not be remunerated. Packaging methods involving the return of empty containers should be avoided. If it is necessary to return empties, the Supplier shall bear the costs incurred in this connection.

## 7. Insurance

The Supplier shall insure the delivery in the customary form. MOLL shall only assume the insurance costs possibly incurred by the Supplier, if such an assumption has been agreed in writing prior to the delivery.

## 8. Production resources

All documents and materials made available by MOLL to the Supplier for the purpose of completing the purchase order, shall remain the exclusive property of MOLL and are only provided to the Supplier on a basis of trust. They must be adequately insured against all loss and decrease in value. They may not be made available or disclosed in any form to any third parties, without prior written consent. Following the fulfilment of the purchase order, or upon a special demand by MOLL, all articles provided to the Supplier must be returned to MOLL; any right of retention is precluded. Articles that MOLL has developed or further developed in collaboration with the Supplier, may be delivered to MOLL only.

## 9. Protection of intellectual property, use of trademarks

In the event that the Supplier is provided by MOLL with documents, drawings, software, know-how or other protected intellectual property, or other such knowledge of any type, or with data belonging to MOLL, unless MOLL has issued its prior, written consent, such articles and information may not in any way be used by the Supplier for its own purposes or made available or disclosed to any third parties, even if no special duty of non-disclosure has been agreed.

The aforementioned documents, data and other such information as well as any copies made of this data, may be made accessible to third parties only with the prior written consent of MOLL, and must be promptly returned to MOLL if the order is not awarded or if the contractual relationship is ended.

In the event that the Supplier's know-how, other such protected intellectual property or trademarks or other proprietary rights belonging to the Supplier are applied during the fulfilment of the contract, or must be otherwise used, the Supplier shall grant MOLL a non-chargeable right of use to such intellectual property and rights.

## 2. Patent infringements

The Supplier shall be liable for ensuring that the goods and services produced and delivered by it, do not infringe any third-party patents and industrial property rights whatsoever. If necessary, it must indemnify MOLL in respect of third-party claims of whatever type.

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### 3. Assignment of claims, retention of title

The assignment of the Supplier's claims under the purchase agreement is not permitted without prior written consent. Any retention of title is precluded.

### 4. Warranty

The Supplier shall be liable for all material defects and defective legal titles in the delivered goods, as existed prior to delivery and/or which arise within one year following the acceptance. Alongside the statutory consequences of defects, MOLL may choose to demand either a repair free-of-charge, replacement with flawless goods or to return the delivery in return for a credit note. In addition, the Supplier shall be required to reimburse the costs incurred directly or indirectly by MOLL due to the defective delivery and/or use of defective goods. In emergencies or in the event of a delay on the part of the Supplier, MOLL shall be entitled to arrange a replacement and/or to eliminate or arrange the elimination of the defects that occur. The two-year warranty period for the subsequently improved and/or the supplied replacement parts and articles, shall recommence from the start (Section 438 II German Civil Code (Bürgerliches Gesetzbuch, "BGB")). Notifications of defects may be raised at any time during the warranty period.

### 5. Payments

Invoices shall be issued in duplicate, with the inclusion of the purchase order number. Payments shall be made either within 14 days with a 3% early payment discount or after 30 days with a 2% early payment discount, or within 60 days without deduction - the choice resting with MOLL - calculated each time from the date of the receipt of the invoice or – if it falls on a later date - from the date that MOLL accepts the delivery.

### 6. Rescission of contract

MOLL is entitled to rescind a concluded agreement at any time and without having to state any reasons. In this case, MOLL shall reimburse the Supplier for the costs demonstrably incurred by it. The Supplier shall be obliged to present and validate all costs incurred. If the Supplier has acted in a culpable manner, such as leads to a contractual withdrawal, MOLL shall become immediately entitled and without acknowledgement of any legal claim or reimbursement of costs, to rescind the agreement.

### 7. Compliance with the Minimum Wage Act/special right of termination

The Supplier undertakes, as a minimum requirement, to pay its employees the minimum wage in accordance with Section 1 of the Minimum Wage Act (Mindestlohngesetz, MiLoG), and to comply with the other obligations arising from the Minimum Wage Act, especially the duties to keep records. Whenever demanded during the entire contractual period and up to six months following the end of this contractual relationship, the Supplier must prove the fulfilment of this obligation within 14 days, through presentation of suitable documents (especially documents pursuant to Section 17 (1) Minimum Wage Act). The Supplier is obliged to indemnify us on first demand in respect of all third-party claims, which arise due to an infringement of its obligations under the Minimum Wage Act or due to an infringement of the Minimum wage obligations by the subcontractors commissioned by it. The duty to indemnify also applies to all sanctions, fines and other official measures, which

are asserted in response to any infringements against the Minimum Wage Act by the Supplier or its subcontractors, as well as all costs of pursuing and defending legal actions. The Supplier shall be likewise obliged to enjoin those subcontractors commissioned in connection with its contractual relationship with us, to demonstrably pay the statutorily prescribed minimum wage. If a subcontractor uses the services of other subcontractors, the Supplier must ensure that all subcontractors are suitably enjoined to the aforementioned obligations. The Supplier shall be liable for all third-party claims arising from the breach of the obligation to pay the statutory minimum wage. If the Supplier and/or its subcontractor culpably breach the Minimum Wage Act and/or the obligations agreed in this connection, we shall be entitled to terminate the agreement without notice.

### 8. Special requirements imposed on series production suppliers

- Series production suppliers are those suppliers whose products are required to pass an initial sampling procedure prior to delivery, in accordance with a Production Part Approval Process (PPAP). The following system aspects must be maintained and implemented with respect to MOLL and our customers
- Commitment to implement proper change management procedures – all product or process changes must be reported and approved within an adequate time frame before implementation. The standard therefore is VDA Volume 2 Quality Assurance for Supplies - Production process and product approval PPA.
- Commitment to establish and maintain continuous internal quality checks and an internal requalification of every supplied material at least every 3 years – extent according PPA.
- Commitment to determine special characteristics, sensible handling of these characteristics in QC planning activities and suitable documentation and archival storage of the test records
- Active handling of product safety: The duties of the product safety officer have to be displayed within the processes of every supplier
- Determination of risks for production in order to fulfil the agreed long-term delivery volumes permanently and conform to requirements
- Commitment to determine and implement all applicable legal and governmental requirements
- Commitment to sustainable handling of environment issues and natural resources
- Duty of verifiable commitment regarding social responsibility of your company – Corporate Social Responsibility

### 17. Place of performance, legal venue, applicable law

For both parties, the legal venue applicable to all rights and obligations arising from the purchase order shall be Lichtenfels in Bavaria. All legal issues or legal disputes arising from this contractual relationship shall be determined exclusively in accordance with the law of the Federal Republic of Germany, to the exclusion of the United Na-

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tions Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980.

## **18. Severability clause**

If one or more of the provisions of the agreement and/or the Terms and Conditions of Purchase are unenforceable for whatever reason, this shall not affect the validity of the remaining provisions. The contractual parties are instead obliged to substitute the unenforceable provision with a legally permissible provision that best fulfils the intended contractual aims.

## **19. Data protection**

We shall store data as part of the reciprocal business relationships, in accordance with the Federal Data Protection Act (Bundesdatenschutzgesetz, BDSG).