

## **General Terms and Conditions of Purchase for Foreign Business of Liveo Research AG**

### **1. Scope of Application, Form**

- 1.1. All Purchases by Liveo Research AG (hereinafter called "**Liveo**" or "**Purchaser**") from contractual partner (hereinafter called "**Seller**") named in Paragraph 1.2. shall be made exclusively on the basis of these General Terms and Conditions of Purchase for Foreign Business (hereinafter called "**General Terms**"), which shall be accepted by the Seller by the placing of an order.
- 1.2. The General Terms shall only apply to Sellers domiciled outside of Switzerland, which are trading in their professional or business capacity when they sign the contract, or to foreign legal entities under public law, or to a foreign special fund under public law. Liveo's "General Terms and Conditions of Purchase for Domestic Business" shall apply to all customers domiciled within Switzerland.
- 1.3. The General Terms especially apply to contracts on the purchase or the delivery of goods (hereinafter called "**Goods**") irrespective of whether the Sellers' Goods are manufactured by themselves or purchased by subcontractors. Unless otherwise agreed, the General Terms apply at the time of the Purchaser's order as framework agreement in their then-current version or at least in the latest submitted text form also to similar future contracts without pointing it out in each individual case.
- 1.4. The General Terms apply exclusively. Deviating, conflicting or supplementary general terms and conditions become only integral part of the contract if we have agreed to their validity in writing explicitly. This approval requirement applies to any case, for instance even if we accept the Sellers' delivery without reservation being aware of their general terms and conditions.
- 1.5. Separate agreements reached with the Seller in individual cases (including side agreements, additions or changes) have priority over these General Terms. In the absence of comprehensive evidence to the contrary, for the content of such agreements a written contract or our written confirmation shall be authoritative.
- 1.6. Legally relevant declarations or notifications made by the Seller with reference to the contract (e.g. setting a deadline, reminder notice, rescission) must be submitted in written form. Statutory form requirements and further evidence, especially in case of doubts about the declarant's legitimacy, remain unaffected.

### **2. Conclusion of Contract**

Our offers are non-binding. A contract shall not become effective until it has been expressly confirmed by Liveo in a written order confirmation and shall be governed exclusively by the contents of the order confirmation and these General Terms. Oral agreements or promises as well as changes are only valid if they have been confirmed by Liveo's authorized representatives in writing.

### **3. Delivery Time and Delayed Delivery**

- 3.1. The delivery time mentioned in our order is compulsory. If the delivery time is not mentioned in our order and not agreed otherwise, it shall amount to 2 weeks from the conclusion of the contract.

The Seller is obliged to inform us immediately in writing, if the agreed delivery time is not likely to be met for whatever reasons.

- 3.2. If the Seller does either not deliver at all or not within the agreed delivery time or if the Seller is in default, our rights are then determined by the statutory provisions. The regulations of para. 3.3. shall remain unaffected.
- 3.3. If the Seller is in default, we can claim, in addition to further statutory claims, liquidated damages caused by the default in the amount of 1% of the net sales price per each completed calendar week, but in total not more than 5% of the net sales price of the goods which are delivered behind schedule. We reserve the right to prove that we have suffered a higher damage. The Seller reserves the right to prove that substantially less or no damage has occurred.

#### **4. Performance, Delivery, Transfer or Risk and Default in Acceptance**

- 4.1. Without our prior written consent, the Seller is not allowed to let a third party (e.g. a subcontractor) perform its duties under the contract.
- 4.2. The supply and performance are to be done DAP (Incoterms 2010) at the place indicated in the order. If the place of destination is not stated and nothing else has been agreed on, the delivery must be made to our place of business in Basel. The respective place of destination is also the place of performance for a delivery or any other supplementary performance (obligation to provide).
- 4.3. The delivery is to be enclosed with a delivery note stating the date (issue and dispatch), the content of the delivery (article number and quantity of articles) as well as our purchase order identifier (date and number). If the delivery note is missing or incomplete, we are not responsible for delays in processing and payment resulting from this default. Separate from the delivery note, a respective dispatch note with the same content must be submitted to us.
- 4.4. The risk of accidental loss and deterioration of the delivery Goods shall be passed to us upon handover at the place of performance. If an acceptance has been agreed, it is determinative for the transfer or risk. In addition, the statutory provisions of the law on contracts to produce a result (Swiss legal term: "Werkvertragsrecht") shall apply accordingly. It is equivalent to a delivery or an acceptance, if we are in default of acceptance.
- 4.5. In the case of a default in acceptance, the statutory provisions shall apply. The Seller must, however, also offer us its performance explicitly if a specific or definable calendar period is agreed for an action or contribution on our part (e.g. the provision of material). If we are in default of acceptance, the Seller can claim compensation for its additional expenses according to the statutory provisions. If the contract concerns the Seller's manufacturing of non-fungibles (single-unit production), the Seller is entitled to additional rights only if we are bound to cooperate and are liable for the failure to provide assistance.

#### **5. Prices and Terms of Payment**

- 5.1. The price stated in the order is binding. All prices shall include statutory VAT unless stated separately.
- 5.2. Unless otherwise agreed in a given case, the price shall include all the Seller's performances and all auxiliary services (e.g. assembly, installation) as well as all additional costs (e.g. appropriate packaging, transportation expenses including possible insurance for transport and third-party indemnity).

- 5.3. The agreed price is due for payment within 30 calendar days from the date of complete delivery and performance (including an acceptance if so agreed) as well as receipt of a proper invoice. If we pay within 14 calendar days, the Seller gives us a discount of 3% of the net amount of the invoice. Payment shall be deemed effected in due time if the instruction to the bank for the bank transfer is made by Liveo on the due date.
- 5.4. We do not owe any default interest. The statutory provisions apply for the delay in payment.
- 5.5. We are entitled to offset and retain as well as to object the uncomplete performance of the contract to the extent permitted by statutory provisions. Especially, we are entitled to withhold due payments as long as we still hold claims arising from incomplete or faulty services against the Seller.
- 5.6. The Seller is only entitled to offset and retain on the basis of counterclaims that are undisputed or have been finally decided by a competent court.

## **6. Secrecy and Retention of Title**

- 6.1. We reserve the proprietary rights and copyrights in respect of images, maps, drawings, execution manuals, product descriptions and other documents. Such documents shall only be used for the contractual performance and must be returned to us after the completion of the contract. The documents must be kept secret from third parties, even after the completion of the contract. The secrecy obligation shall only expire, if and insofar as the know-how contained in the submitted documents becomes a matter of common knowledge.
- 6.2. The above-mentioned provisions shall apply accordingly to substances and materials (e.g. software, finished or semi-finished goods) as well as to tools, templates, samples and other items that we provide to the Seller. As long as they are not processed further, such items must be stored separately at the Seller's expense and insured against damage and loss to a reasonable extent.
- 6.3. Processing, mixing or combining (further processing) of provided items by the Seller shall be carried out for us. The same applies in the case of further processing of the delivered Goods by us so that we are considered manufacturer, thereby acquiring title to the product at the latest by further processing.
- 6.4. The title to the Goods shall be transferred to us unconditionally and regardless of whether the purchase price has already been paid. However, if we accept in a given case a Seller's offer of assignment upon payment of the purchase price, the Seller's retention of title shall expire with the payment of the purchase price for the delivered Goods at the latest. In the ordinary course of business, even before the purchase price payment we shall be entitled to resell the Goods by advance assignment of the purchase price claim resulting from such transaction (alternatively, by application of the simple retention of title and of the extended one in the case of resale). In any case, all other forms of the retention of title are thus excluded, especially the expanded, the transmitted as well as the extended one in the context of further processing.

## **7. Defective Delivery**

- 7.1. The statutory provisions shall apply to our rights in cases of any breach of duty by the Seller unless otherwise agreed in the following.
- 7.2. The statutory provisions apply to the obligation of examination and notification of defects. Liveo is not obligated to claim remedies because of breach of contract by the Seller either in conjunction with notice given under Art. 39 CISG or within a reasonable time thereafter.

- 7.3. Supplementary performances also include the removal of the defective Good and its reinstallation provided that the Good has been built into another item according to its intended purpose. The costs of Seller (including installation and dismantling costs) arising from the inspection and supplementary performance have to be borne by the Seller even if it becomes apparent that there was no actual defect. Our liability for damages in the context of unauthorised requests for removing defects remains unaffected; insofar, we are only liable if we have (not) realised (by gross negligence) that there was no defect.
- 7.4. Our claim for damages is not limited to the foreseeable, typical damage (derogation of Art. 74 para. 2 CISG). Liveo may declare the contract avoided by way of derogation from Art. 49 para. 1 a CISG and demand replacement by way of derogation from Art. 46 para. 2 CISG, if the infringement is a material breach of the contract. By way of derogation from Art. 75 CISG we are not obligated to conduct a substitute transaction within a reasonable time after avoidance.

## **8. Product Liability**

- 8.1. If the Seller is responsible for a product defect, the Seller shall be obliged to indemnify us against third party claims to the extent that the reason is deemed to be in the Seller's sphere of control and organisation and the Seller is liable in relation to third parties.
- 8.2. In terms of its indemnity obligation, the Seller has to compensate for expenses arising from or in connection with any recourse taken by third parties, including product recalls carried out by us. With regard to content and scope of product recalls, we will inform the Seller, as far as possible and reasonable, thereby giving the Seller the opportunity to a statement. Additional statutory claims shall remain unaffected.
- 8.3. The Seller must conclude and maintain a product liability insurance with a limit of indemnity in the amount of at least EUR 10 millions for each personal injury or property damage.

## **9. Statute of Limitation**

- 9.1. The mutual claims of the contractual parties shall become time-barred according to the statutory provisions, unless otherwise specified hereinafter.
- 9.2. By derogation of Ar. 210 Swiss Code of Obligations, the general period of limitation for claims of defects of quality amount to 3 years upon passing of the risk. If an acceptance is agreed, the period of limitation shall begin with such acceptance. The triannual limitation period shall also apply correspondingly to claims of defects of title. Furthermore, claims of defects of title do not expire on no account as long as the third party – especially if the period of limitation is not yet expired in relation to the third party – can still assert such right against us.

## **10. Legal Venue, Applicable Law**

- 10.1. The place of jurisdiction for all disputes arising from the contract is Freiburg im Breisgau (Germany). Notwithstanding the previous sentence, we are also entitled to bring a claim against the Seller at his registered place of business.
- 10.2. The laws of Switzerland including the UN Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall apply to these General Terms and the contractual relationship of the contracting parties.

## **11. Privacy Policy**

Liveo shall collect, process or use personal data only with the scope of data protection regulations. For details, please refer to the Privacy Policy of Liveo, which you can access under [www.liveoresearch.com/en/general-terms-and-conditions](http://www.liveoresearch.com/en/general-terms-and-conditions) or request from Liveo at any time.

## **12. Final Provisions**

- 12.1. If one or several provisions of the contract and/or these General Terms shall be or become invalid or unenforceable, the validity of the remaining provisions of the contract and/or these General Terms shall not be affected hereby. In such case, the contracting parties undertake to replace the invalid or unenforceable provision by such valid and enforceable provision that comes closest to the intended economic purpose. The same shall apply if the contract is incomplete.
- 12.2. The contracting parties mutually undertake to take all reasonable measures necessary for achieving the purpose of the contract and to refrain from any act that may affect the fulfillment and performance of the contract.