

General Terms and Conditions of Purchase



As of 12/2017

I. Scope of Application

These General Terms and Conditions of Purchase (hereinafter also referred to as: GTCP) shall apply exclusively to all legal relations between the Supplier and Cuyllits Holding GmbH, Culimeta Textilglas-Technologie GmbH & Co. KG, Culimeta Automotive Neunkirchen GmbH and Culimeta Automotive Darmstadt GmbH (hereinafter also referred to as: "we" or "us") in the area of purchasing. Additional or deviating terms and conditions of the Supplier are hereby explicitly excluded, and shall only apply in cases where they are confirmed in writing by us. Neither silence on our part nor the acceptance of the performance or the payment thereof shall be deemed to be confirmation. Subsidiary agreements, amendments or additions to these GTCP shall only be binding if confirmed in writing by us. The respective version of these GTCP shall also apply to future business transactions with the Supplier, without us having to refer to them in each individual case.

II. Conclusion of Contract and Amendments to Contracts

1.

Each individual contract concerning deliveries or services and any amendments, subsidiary agreements and declarations concerning its termination, as well as all other declarations and notifications shall require the text form, unless otherwise agreed upon. All offers made by the Supplier shall be submitted free of charge. A purchase order shall not constitute acceptance of an offer, unless expressly stated in the purchase order. Any references made to offers or letters by the Supplier in purchase orders shall apply exclusively with regard to the object referred to and only to the extent that the purchase order is not inconsistent with the object referred to. If the Supplier fails to accept the purchase order within two weeks of its receipt, then we shall be entitled, but not obliged, to withdraw the purchase order. A delivery by the Supplier based on a purchase order shall be deemed to be acceptance of this purchase order.

2.

Every accepted purchase order or contract for the supply of goods concluded in any other way shall be called a "supply contract" within the meaning of these GTCP.

3.

The Supplier may not transfer obligations arising from the supply contract to third parties without our prior consent in text form.

III. Prices, Conditions of Payment, Retention of Title

1.

The agreed prices are fixed prices plus any value-added tax that may be applicable. The Supplier shall not be entitled to any further payments, unless agreed upon in the purchase order or in any other way in writing between us and the Supplier. Unless otherwise agreed upon, payments shall be made within 14 days with a 2% discount or within 30 days without deduction. The time limit shall commence upon the receipt of the contractual services and of a proper and verifiable invoice stating the order number and/or part number. The time limit shall commence at the earliest, however, on the stipulated delivery date, even if we accept early deliveries.

2.

The Supplier shall not be entitled to assign claims against us to which he is entitled or to have these collected by third parties. The Supplier shall only be entitled to offset against our claims or to assert a right of retention when and insofar as his claims are undisputed or have been established as final and conclusive.

3.

In the event of a delivery that is not free of defects, we shall be entitled to withhold the payment of the respective amount until the service has been provided in accordance with the purchase order. In the event of a delivery that is not free of defects, the Supplier shall not be entitled to charge default interest.

4.

Statutory provisions shall apply with regard to the occurrence of a delay on our part, whereby by way of derogation, where applicable, the Supplier shall issue a written warning in any case. Any debt shall bear interest at 5 % points above the base lending rate.

5.

The ownership of goods supplied shall be transferred to us upon complete payment. Any prolonged or expanded retention of title by the Supplier shall be excluded.

IV. Delivery Conditions / Place of Performance

1.

The delivery shall be made in accordance with the conditions specified by us in the respective purchase order. In the event of no such agreement, the delivery shall be made DDP (delivered duty paid) to the place designated by us as per (INCOTERMS 2010). The delivery note shall contain our order and supplier number. The Supplier shall inform us of any official approvals and reporting obligations required for the import and use of the delivery items. The place of performance shall be the reception point designated by us.

V. Delay in Delivery

1.

The stipulated delivery dates and deadlines are binding. The Supplier shall inform us in writing without delay of any likely delay of performance, stating the grounds and the expected length of the delay. If he fails to meet this obligation, then this shall be considered as serious negligence, entitling us to claim damage compensation from the Supplier.

2.

If the Supplier is responsible for the failure to comply with the deadlines in accordance with his contractual obligations, then all costs resulting from this shall be at his expense.

VI. Packaging/Inspection Obligation

Unless specified by us or the joint customer, the Supplier shall ensure that the delivery item is packaged securely as customary in trade. We shall only conduct an incoming goods inspection

with regard to obvious deficiencies and transport damage. The delivery item shall be examined during assembly and commissioning. In this respect, the Supplier waives the right of objection to belated notice of defects.

VII. Property Provided by Us

1.

If we or our customer provide the Supplier with tools, templates, matrices, measuring instruments, devices, moulds, samples and associated software, drawings and other accompanying documentation ("property provided"), these shall remain our property or the property of our customer. The Supplier may only use the property provided to manufacture the delivery item or to perform the supply contract; the Supplier may not use it or allow others to use it for any other purpose without our prior written consent. The Supplier shall keep the property provided in good condition at his own expense, and shall replace it when necessary. The Supplier shall insure the property provided at his own expense amounting to the replacement costs in the event of loss. The Supplier hereby assigns all his payment claims against the insurer to us; we shall accept this assignment.

2.

The Supplier shall treat the property provided carefully and harmlessly, and shall hold us or our customer harmless against any claims, liability, expenses and damages arising from or associated with the installation, use, storage or repair of the property provided. We or our customer shall be entitled to enter the Supplier's premises during usual business hours and to check the property provided and any corresponding records. We shall notify the Supplier about the inspection in text form 24 hours beforehand.

3.

The Supplier agrees that we are entitled to remove the property provided at any time and without reason and payment or to request its surrender. If we make such a request, the Supplier shall return the property provided without delay and shall prepare it for dispatch or shall deliver it to us or our customer. Any possible right of retention by the Supplier shall be excluded, irrespective of the legal grounds. We shall pay the Supplier appropriate delivery costs.

4.

If the Supplier processes the property provided or combines or mixes it with objects not owned by us, we shall acquire joint ownership of the new product proportional to the value of the property provided to the value of the product as a whole.

VIII. Intellectual Property / Property Rights / Transfer and Granting of Rights

1.

We shall retain ownership and all other rights, such as copyright, to the information provided to the Supplier by us. The Supplier shall carefully store all documentation and objects that he has been provided with, as well as duplications, at his expense, and shall return or destroy these at any time at our request. The Supplier shall have no right of retention, irrespective of the grounds.

2.

The Supplier shall be liable for all claims arising from the violation of property rights or applications for property rights following the contractual use of the delivery item. The Supplier shall indemnify us and our customers from all claims that may arise from the use of such property rights or applications for property rights. The Supplier grants us a non-exclusive, royalty-free, permanent and worldwide right of use to the Supplier's own rights for meeting the obligations assumed in the supply contract for any use of these rights.

IX. Maintenance of Secrecy

1.

The Supplier shall maintain secrecy in respect of all commercial and technical details that are not in the public domain that are surrendered to him by us, in particular drawings, models, templates, samples, data carriers, and so on, and shall not surrender them or make them otherwise available to third parties (including subcontractors) without our written consent. Such information may only be duplicated within operational requirements and copyright provisions. Subcontractors shall be placed under a similar obligation.

2.

These obligations of the Supplier shall not apply in the case of information that was already legitimately known to him upon its receipt without being obliged to maintain secrecy or that legitimately became known to him without being obliged to maintain secrecy, that was already generally known or generally became known or for which we granted the Supplier written permission to use the information in any other way.

3.

In the event of a breach of the obligations in accordance with the aforementioned provisions, each case of infringement shall incur a contractual penalty amounting to € 25,000.00 by the Supplier. However, the Supplier retains the right to have the appropriateness of the amount of the contractual penalty established by court. Any further damage claims to which we are entitled shall be offset against contractual penalties paid.

X. Warranty / Liability and Damage Compensation

1.

The Supplier shall guarantee that the subject of the contract is free of defects and supplied in conformity with our requirements. If the delivery item is deficient, then the Supplier shall be liable towards us in accordance with statutory provisions, unless otherwise provided for in the provisions below. In urgent cases, we shall be entitled to rework items ourselves or to have it performed by third parties without any previous attempt to provide rectification having been made by the Supplier. The Supplier shall bear any costs incurred by such reworking. An urgent case exists in particular when our operating safety is endangered, when there is a risk of unusually high damage being incurred or when we are unable to wait for a rework by the Supplier in order for us to be able to maintain supply availability.

2.

If the Supplier uses third parties in the provision of services, he shall be liable for these in the same way that he is for his own vicarious agents.

3.

The Supplier shall be liable for deficiencies that occur within 36 months of us receiving the delivery, unless a longer warranty period is provided for by law. Insofar as acceptance of performance has been agreed upon, the time limit shall commence upon acceptance. The 36-month warranty period shall also apply accordingly for claims arising from defects of title; in addition, claims arising from defects of title shall not become statute-barred in any case, as long

as the third party that invokes the right can still make demands on us.

4.

In the event of supplementary performance, the aforementioned time limits shall be extended by the time during which the delivery item cannot be used in conformity with the contract. The limitation period of claims due to deficiencies shall begin two months after our buyers' claims have been met by us at the earliest, and, at the latest, however, after the end of five years following the delivery or acceptance.

The Supplier shall indemnify us from claims of third parties due to product liability when and insofar as the damage was caused by a flaw in the delivery item supplied by the Supplier. The right of indemnity shall apply only to the extent at which the Supplier would be directly liable himself.

5.

The Supplier shall assign to us any possible reimbursement claims by an insurer arising from warranty claims by us; we shall accept the assignment; the Supplier shall immediately present up-to-date insurance certificates to us at our request.

XI. Quality and Documentation

1.

The Supplier shall comply with the recognised rules of technology, safety regulations and the stipulated technical specifications (e.g. customer requirements that have been communicated, IMDS requirements or REACH) with regard to his deliveries. Any changes to the delivery item shall require our prior written consent.

2.

Irrespective of this, the Supplier shall constantly monitor the quality of delivery items. The Supplier is obliged to use the documents stipulated by our quality assurance for documentation and to comply with the specifications as amended from time to time. The Supplier guarantees that the goods he supplies are in conformity with statutory and/or official requirements.

XII. Origin of Goods and Preference, Export Controls

1.

The Supplier undertakes to issue all commercial and other documents that are necessary in accordance with the applicable legal requirements for their import to Germany, and to enclose them with the delivery.

2.

Upon delivery, a valid supplier's declaration under Commission Implementing Regulation (EU) 2015/2447 or under the Implementing Act on the Union Customs Code/ Annex 22-16 – I shall be presented in the case of a first delivery being made to us. A reference to the delivery shall be established by stating the item number on the supplier's declaration.

3.

When the validity of the supplier's declaration ends and the business relationship is to be continued, we shall be provided free of charge with a new long-term supplier's declaration without having to make such a request.

4.

If it is not possible to issue a supplier's declaration with preferential origin status, a declaration of origin shall be enclosed with the delivery.

5.

The Supplier shall be responsible for the accuracy and completeness of the supplier's declaration.

The Supplier shall assume full liability for incorrectly issued supplier's declarations and any resulting claims asserted by our customers. We shall check the accuracy of supplier's declarations based on random choice using information certificate INF 4 issued by the Central Customs Authority. It is not permitted to make a fundamental change to the purchased goods in terms of the quality, the customs tariff number, the country of origin and preferential status.

6.

In the event of placing an order with us, the Supplier is obliged to notify us if goods from his scope of delivery are subject to a licence requirement for export in accordance with the Foreign Trade and Payments Act (AWG), the Foreign Trade and Payments Regulation (AWV) or the EC Dual-Use Regulation, as amended, or if they are included in the list of dual-use goods. The Supplier shall notify us without delay if goods were not subject to a licence requirement for export or were not on the dual-use list at the time of placing the order, but have since become subject to a licence requirement or have been included in the dual-use list or if any other export barriers or obstacles become known to the Supplier. If customers, competitors or authorities make a claim against us due to a violation of AWG, AWV or the EC Dual-Use Regulation that is attributable to a delivery made by the Supplier, then we are entitled to request the Supplier to indemnify us from these claims or to claim compensation from the Supplier for the damage caused by the lack of conformity with AWG, AWV or the EC Dual-Use Regulation, unless the Supplier is excluded from liability in these cases owing to lack of blame.

XIII. Force Majeure

1.

In the event of force majeure, e.g. natural disasters, unrest, official measures or other unforeseeable and unavoidable events, we and the Supplier shall be exempt from the mutual obligations to perform for the duration of the disturbance and the extent of its impact. The party affected shall inform the other contractual partner in detail without delay and shall take all reasonable measures to limit the effects of such events.

XIV. Termination of the Contract

1.

In the event of a longer-term supply commitment, the suspension of payment or the opening of insolvency proceedings, the rejection of the opening of such proceedings for lack of assets or the institution of comparable proceedings as well as the submission of a declaration in lieu of an oath against the assets of a contractual partner shall entitle the other contractual partner to withdraw from the supply contract with regard to the part that has not yet been performed. If we withdraw from the supply contract or a part thereof for one of the aforementioned reasons or for any other reason for which the Supplier is responsible, then only the finished delivery items supplied by the time of the notice of withdrawal in compliance with the provisions of the supply contract shall be paid for by us. Other acceptable grounds for withdrawing from the supply contract or a part thereof are the assumption that the Supplier will fail to meet his obligations concerning supplementary performance within an appropriate time limit set by us. We shall be

entitled to make claims against the Supplier for damage compensation beyond this.

In the event that the Supplier withdraws from the supply contract or a part thereof, he shall inform us in writing in such good time that we are able to have the delivery items manufactured by another supplier without any problems and to have the requirements undertaken accordingly. The Supplier is obliged to fulfil the supply contract until the new supplier is able to supply the subject of the contract in accordance with the specifications and supply contract. The Supplier is obliged to support us in the search for a suitable alternative supplier and to secure deliveries by subcontractors and suppliers of raw materials for the subject of the contract.

XV. Anti-Corruption Law Provisions

1.

The Supplier assures that he shall not take any actions or omit to take any actions that, irrespective of the form of participation, could lead to regulatory or criminal proceedings, in particular due to corruption, being taken against the Supplier, persons employed by the Supplier or third parties commissioned by the Supplier. The Supplier is responsible for taking suitable measures to ensure infringements are avoided. For this purpose, the Supplier shall in particular impose corresponding obligations on persons he employs and third parties he commissions.

2.

The Supplier undertakes to provide information on the aforementioned measures at our written request, in particular about their content and implementation. In addition, the Supplier shall immediately inform us of the initiation of official preliminary investigations due to a breach. In addition, if there are indications of a breach by the Supplier, we shall be entitled to request written information about the breach and the measures taken.

3.

In the event of a breach, we shall be entitled to request immediate discontinuance by the Supplier and the reimbursement of all damages incurred by us due to the breach.

XVI. Data protection

1.

It is pointed out to the Supplier according to Section 33 of the German Data Protection Act that we shall save his data. Such data shall be processed in compliance with the German Data Protection Act.

XVII. General Provisions

1.

If the Supplier is a merchant, legal entity under public law or a federal special fund under public law, then the jurisdictional venue shall be our respective place of business. However, we are also entitled to sue the Supplier at another competent court.

2.

German law applies to the contractual relationship with the exception of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention/CISG).

3.

If a provision is or becomes invalid, then the validity of the remaining provisions shall not be affected.