



## Conditions of Purchase of Töpfer GmbH

### 1. Validity

Our conditions of purchase are exclusively valid; we do not accept an order confirmation of the supplier with other conditions to these, even if we do not expressly object to the order confirmation after receipt.

Our conditions are also valid for future deals with the supplier.

### 2. Order, confirmation, written form

Our orders are only effective if they ensue in written form or are confirmed in writing. The supplier is bound to confirm the order within a week. Deviations from our order on the part of the supplier require our approval.

### 3. Prices, payment

3.1 The prices are fixed prices and include all additional costs. Price increases after contract conclusion are not effective. If no prices are given in the order, thus the supplier is bound to communicate the prices without delay; the prices are only binding with our written confirmation.

3.2 The payment ensues after full provision of the performance and after receipt of invoice. When the raw materials are delivered, the goods have to be expressly released after the initial examination. The supplier has to give all order data in the invoice and send the invoice in duplicate.

3.3 Subject to special agreement the payment ensues within 14 days with 3% cash discount, net within 30 days. The payments are made by bank transfer to the account of the supplier. Decisive for the timely payment is the day on which we have instructed our bank to transfer the invoice amount.

### 4. Delivery periods

4.1 The delivery dates we have given are binding.

4.2 The supplier is bound to inform us in writing without delay, when circumstances transpire or of which he becomes aware which would result in his not being able to meet the agreed delivery time.

4.3 In case of the delay in delivery we shall be entitled to legal claims, we are especially entitled to demand compensation instead of the performance after fruitless expiry of an appropriate period. The supplier has the right to prove to us that he was not responsible for the violation of duty.

4.4 In case of the delay in delivery, we are entitled to demand lump sum default damages to the amount of 1% of the delivery value per completed week, however not more than 10%. Further legal claims (rescission and compensation instead of fulfilment) remain reserved.

4.5 4.5 The supplier has the right to prove to us that the delay has caused us no or a considerably lower damage.

## **5. Subcontractor**

The supplier must only use subcontractors with our prior written approval. He is responsible that the subcontractor meets all obligations which the supplier has taken over towards us. If the subcontractor is at fault, the supplier is liable as if he is at fault himself.

## **6. Force majeure**

Force majeure, industrial disputes, non-culpable disruption of operations, unrest, official measures and other unforeseeable, unavoidable and exceptional events entitle us to totally or partly rescind from the contract after we have set a reasonable extension.

## **7. Shipping terms, transfer of risk, documents**

7.1 Insofar as nothing else is agreed in writing, the delivery has to ensue free at domicile.

7.2 On all goods-accompanying documents, especially shipping documents and delivery notes, the supplier is bound to put our order number, our item number with designation, batch number, minimum durability date, exact quantity delivered and, if agreed on, "controlled organic cultivation"; if he omits this, thus we are not responsible for delays in release.

## **8. Delivery quantities**

The delivery quantities we have given are binding. We can reject excess, short and part deliveries.

## **9. Quality assurance agreement**

9.1 Insofar as the supplier and we have concluded a quality assurance agreement, it is binding without restriction.

9.2 The packaging and transportation containers used for the deliveries must be so designed that they protect the raw material from external influences. The packaging and transportation containers in contact with the raw material must not impair the quality of the raw material and have to correspond to the requirements of the food law, especially the German Consumer Goods Ordinance as well as the recommendations of the Plastics commission of the BfR (formerly BgVV).

## **10. Complaints**

10.1 We are bound to inspect the goods within an appropriate deadline for any deviations to quality or quantity. A complaint is deemed timely, insofar as it ensues within 10 days calculated from delivery of the item or with hidden defects from their discovery.

10.2 We are entitled to the legal claims for defects in full; in any case, we are entitled to demand elimination of the defect or delivery of a new item from the supplier according to our choice. The right to compensation, especially the claim to compensation instead of the performance, remains expressly reserved.

10.3 We are entitled to carry out the elimination of the defect ourselves on the expense of the supplier, when there is danger ahead or there is a special need for urgency.

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## **11. Warranty, guarantees**

- 11.1 The supplier warrants that the goods have the agreed on quality and corresponds to legal and official regulations valid for its distribution and its use. The goods have to be free from third party rights and must not violate commercial protective rights.
- 11.2 If the specific product features of the goods to be delivered are laid down in a "Töpfer specification" or laid down in detail in a specification of the supplier released and signed by Töpfer, thus the existence of these features are guaranteed by the supplier.
- 11.3. The supplier guarantees that the materials falling under the Medicinal Products Act comply with the provisions of this law and their respective ordinances, bio-products comply with the requirements of the EU regulation for the ecological agriculture as well as the respective designations for agricultural products and food. With baby food, the supplier also guarantees compliance with the requirements of the dietary regulation.
- 11.4 The statutory limitation period is 24 months, calculated from the delivery of the item.

## **12. Order documents**

- 12.1 The order documents given over to the supplier (raw material and product descriptions, calculations, drawings, illustration and other documents, especially the "Töpfer specifications") remain our property and must only be claimed by third parties with expressly written agreement. Without this approval, the documents must not even be used for the supplier's own purposes or the purposes of the third parties. The provided documents are to be sent to us without delay after the execution of the order or on our demand; the supplier bears the costs of the transmission.
- 12.2 The supplier cannot call on a right of retention should we demand a handing over.

## **13. Product liability, exemption, liability insurance protection**

- 13.1. Insofar as the supplier is responsible for a product defect, the cause of which is in his sphere of control and organisation and for which he is liable himself in relation to third parties, he is bound to release us from compensation claims of third parties upon first demand.
- 13.2. In the scope of his liability for damage events in the terms of 13.1., the supplier is also bound to refund to us any expenses, according to Sections 683, 670, BGB as well as according to Sections 830, 840, 426, BGB, which arise from or in connection with a product recall we carried out. We will inform the supplier – insofar as is possible and appropriate – about the content and extent of the recall measures to be carried out and give him the opportunity to comment.

Other legal claims remain unaffected.

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13.3. The supplier is bound to maintain a product liability insurance with an insured sum of at least 5,000,000 Euros per personal injury/property damage – flat rate; if we are entitled to further compensation claims, thus these remain unaffected.

#### **14. Assignment**

The supplier may only convey rights from this contract to third parties with our written approval. Section 354 a, HGB remains unaffected.

#### **15. Final clauses**

15.1 Place of fulfilment for the performances of the supplier is Dietmannsried.

15.2 Place of jurisdiction is, insofar as it is legally permitted by law, 87435 Kempten. However, we are also entitled to sue the supplier at his place of residence.

15.3 For this contract, German law solely applies.

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