

# GENERAL TERMS AND CONDITIONS OF PURCHASE

## Telair International GmbH

### 1. General

1.1. Any delivery and performance relationship between Telair International GmbH (hereinafter referred to as "Telair") and the contractor (hereinafter referred to as the "Contractor") shall be exclusively governed by the terms and conditions (see also <http://www.telair.com/terms-conditions-purchase/>) below, unless otherwise agreed in writing between Telair and the Contractor. These General Terms and Conditions of Purchase shall apply even if Telair accepts goods / services without reservation, despite being aware of terms of the Contractor which are inconsistent or which deviate from these General Terms and Conditions of Purchase.

1.2. These Terms and Conditions of Purchase, as amended from time to time, shall be an integral part of all future orders placed by Telair. They shall also apply to follow-up orders whether or not Telair makes express reference to said Terms and Conditions again.

### 2. Formation of contract

2.1 Telair is bound by written or electronic orders only.

2.2 The Contractor shall confirm acceptance of Telair's order in writing without undue delay. If the Contractor's order confirmation deviates from Telair's order, Telair will only be bound by the order if Telair has consented to the deviation in writing. The acceptance of goods / services or payment for same shall not constitute consent.

2.3 If the Contractor fails to accept the order within 14 (fourteen) days, Telair may cancel the order.

2.4 Modifications or amendments shall require written form. Oral collateral agreements shall not be binding.

### 3. Scope of the goods and services

The scope of service to be provided by the Supplier is defined in the contractually agreed specifications, the order of Telair as well as the purchasing conditions. If no other requirements are defined in the order, the supplies and services shall be delivered in merchantable quality and - if identical standards and / or regulations such as DIN, VDE, VDI, or equivalent standards exist - shall be provided according to these standards, together with the test certificates.

### 4. Modifications

4.1 Telair may, to the extent reasonable for the Contractor, request modifications to the design and execution of the goods / services. The consequences of any modifications, particularly any additional or reduced costs and the impact on delivery / performance dates, shall be the subject of a reasonable, mutually agreed arrangement.

4.2 The Contractor may modify its goods / services from a previous order of the same type or from a specification in the current order, provided the changes are for the purpose of improvement and Telair has given written consent. If a change affects the logistical requirements of an end user, the Contractor shall, in cases where the modification is consented to, take such requirements into account as well. The Contractor is responsible for ensuring that any modified goods / services are also fit and proper for the intended use stipulated by Telair.

### 5. Customer furnished material / Documents

5.1 Materials or parts ("Material") provided by Telair shall remain Telair's sole property.

5.2 The Contractor shall keep any Material Telair provides to it separate from other materials, label it as Telair's property and store it with the due care of a prudent merchant. The Contractor shall prevent any unauthorized access by third parties and notify Telair without undue delay of any changes in the quantity (e.g., theft or destruction of the item) or condition (limited usability) of the Material provided.

5.3 Processing or altering by the Contractor shall be performed on Telair's behalf. If goods which are Telair's property are processed along with other items not owned by Telair, Telair shall acquire a co-ownership interest in the new item equivalent to the value at cost plus VAT of the goods to which Telair holds title as a proportion of that of the other items being processed at the time of processing. The foregoing shall apply, mutatis mutandis in those cases where the goods are integrated by virtue of a combining or mixing process, unless another item not owned by Telair is deemed the principal component.

5.4 Where the Contractor receives drawings, models, matrices, tools, templates, samples or similar items for the purpose of executing the order, such items shall remain Telair's sole property. Furthermore, where such items have been developed by the Contractor with substantial assistance from Telair (tests, etc.), or have been manufactured by the Contractor according to Telair's instructions, they may only be used for the purposes of the order and, if they are Telair's sole property, shall be returned to Telair on request, freight paid, without undue delay. No lien may be exercised in respect of such items, except in the case of undisputed claims or claims that have been confirmed by a final and binding judgment. The Contractor shall maintain, keep and carefully store all items of this nature in operating condition.

5.5 If the Contractor has developed and / or manufactured parts or other items (including software, etc.) for Telair using Telair's specifications or documentation, the Contractor may not supply such parts or items to third parties or use them in the manufacture of products for third parties without Telair's written consent.

## 6. Conditions of delivery / Transfer of ownership and risk

- 6.1 Place of performance or place of delivery regarding all contractual obligations shall be Miesbach, Germany, unless otherwise agreed upon (for example, shipment to another receiving location). Delivery shall be free of charge.
- 6.2 The contractual items shall be packed and sent according to industry standards and customary commercial practice at the expense of the Contractor. Telair shall be entitled but not obliged to specify the appropriate packaging.
- 6.3 One copy of standardized or other delivery notes, which state individual quantity, total quantity, gross weight and net weight, shall be included with every delivery. Invoices shall not be considered as delivery notes. Order confirmations, delivery notes, freight documents, invoices and any other documents shall include the order number, Supplier code, as well as a position, material or article number. Subsequent costs incurred to Telair which are caused by non-compliance with the aforesaid requirements shall be borne by the Contractor.
- 6.4 Property and risk of the contractual items shall pass to Telair with arrival at the specified place of delivery / performance. The transfer of property shall not constitute an acceptance or any other kind of approval of the contractual items by Telair.

## 7. Delivery / performance dates

- 7.1 Agreed dates and periods are binding. For the purposes of determining whether a default in performance exists, it is irrelevant whether the Contractor receives its own supplies on time.
- 7.2 In the event of default, Telair may charge a contractual penalty of 0.5%, but no more than 5%, of the order value for each week or part thereof by which the agreed delivery / performance date is exceeded. Forfeited contractual penalties may be claimed right up until final payment. Furthermore, Telair is entitled to asset claims for any further loss or damage resulting from delay of the Contractor.
- 7.3 The Contractor shall notify Telair in writing without undue delay of foreseeable delays in the provision of goods or services and advise Telair of the anticipated duration of any such delay.
- 7.4 Where delays are attributable to force majeure, the Contractor shall provide evidence of the existence of force majeure. The Contractor shall, at its own expense, do everything in its power to perform the agreement on time, despite the existence of force majeure. If it is highly likely that a delay will continue for more than 1 (one) month, particularly because the Contractor notifies Telair that it will not be able to deliver any earlier than that, Telair may (partially) rescind the agreement.
- 7.5 To the extent reasonable in the individual case, Telair will accept early delivery / performance. However, the agreed periods for payment shall still commence on the previously agreed delivery / performance date or subsequent invoice

date. The Contractor shall bear any warehousing costs Telair incurs as a result of taking delivery early.

- 7.6 If partial or successive delivery / performance is agreed, Telair may, to the extent reasonable, postpone the dates and volume of delivery / performance.

## 8. Prices

The agreed prices are fixed prices and include all incidental costs incurred up to the agreed place of delivery (with the exception of value added tax at the applicable statutory rate). Where it has been agreed that a consignment shall be dispatched at Telair's risk, the prices shall not include any transport insurance or insurance against damage, as Telair will cover these risks and hereby waive any such insurance.

## 9. Invoices / Payments

- 9.1 Unless otherwise agreed, payments will be effected net within 30 (thirty) calendar days upon receipt of the invoice either with means of payment at the discretion of Telair or by offset with counterclaims, Telair shall have the right to payment by bill of exchange or check.
- 9.2 An invoice date prior to receipt of the contractual items will not be accepted. If the delivery / performance date is after the invoice date, the delivery and performance date shall be considered as beginning of the payment period instead of the invoice date. In case of premature deliveries and services, the contractually agreed delivery and performance dates shall be conclusive for the payment period. The period usually begins with the receipt of the contractual item or, if agreed upon separately, with the acceptance of the contractual item and upon receipt of a correct and verifiable invoice. Invoices shall contain bank details, delivery location, order number, material number, unit price, and quantity. The invoice shall also contain all information for input tax deduction, especially the tax code number or sales tax identification number (or UID), invoice number and other required information of the Contractor in accordance with the relevant statutory provisions and the applicable law. In case the aforementioned information is not contained in the invoice, Telair shall not be obliged to pay the turn over tax (respectively Value Added Tax (VAT)). If Telair is denied an input tax deduction due to an improper invoice by the Contractor, the Contractor shall refund the turn over tax (respectively VAT) formerly paid by Telair.
- 9.3 The Contractor shall not be authorised to transfer its claims against Telair to third parties or to have them collected by third parties. The Contractor shall only be authorised to offset claims against Telair or to assert a right of retention if the claims are undisputed or its counterclaims have been determined with final legal effect. The exclusion of set-off shall not apply to counterclaims arising from the same business transaction / contract.
- 9.4 Payments remitted by Telair may not be construed as an acknowledgement on Telair's part that the goods are conforming.

## 10. Obligation of inspection and notification

10.1 The Contractor shall accept that random examination of a representative part of the delivery will be sufficient Telair's obligation of inspection of the contractual items. The inspection shall be performed in due course of business. The inspection shall cover the quantity and the external appearance of the contractual items. Telair shall not be obliged to test the functions or to verify any not apparent quality characteristics or dimensions of the contractual items.

As long as the documentation to be delivered by the Contractor together with the contractual items is not complete, Telair may reject the contractual delivery. Detected defects shall be notified to the Contractor within an appropriate period. The same shall apply to any defects which will be discovered later.

10.2 The inspection and notification duties of Telair shall be limited to the content of section 10.1. Moreover, the Contractor shall waive the claim of late notification of defects according to § 377 HGB.

## 11. Liability for defects

11.1 The Contractor shall warrant that all delivered contractual items:

- a) comply with the specifications / samples / drawings, the latest developments of science and technology, regarding operation, configuration, functionality and design, as well as with all applicable statutory regulations and applicable standards and other requirements which apply;
- b) be free from defects;
- c) correspond in quality to market and industry standards;
- d) third party rights are not infringed by delivery, operation or other use of the contractual items
- e) are suitable for the intended use and purposes

11.2 If contractual items do not meet the aforementioned warranties ('defective contractual items'), Telair shall be entitled to choose between either demanding repair of the contractual items within a suitable timeframe at the expense and risk of the Contractor or demanding the replacement of defective items by fault-free items at the expense and risk of the Contractor.

In addition to the statutory claims and rights, Telair shall be entitled to repair or replace the defective items itself, or order a third party to repair or replace the defective items, in the event that the Contractor does not meet its obligations or special circumstances require the immediate repair or replacement of the defective items. Furthermore, Telair shall be entitled to demand advance payment from the Contractor to cover the necessary costs for the removal of the defect.

11.3 The Contractor shall bear all costs connected to the repair or replacement of defective contractual items (including

costs for transport, handling, assembly and disassembly, as well as material and labour costs).

11.4 The warranty period shall be 4 (four) years beginning with the transfer of risk. For buildings, construction and real property the statutory warranty periods shall apply. Claims of Telair, which arise during the warranty period, shall lapse at the earliest 6 (six) months after the claim arose, but not before the end of the agreed warranty period.

11.5 The rights of Telair according to section 10 shall be in addition to any other statutory or contractual rights and claims. Place of performance of any warranty obligation shall be, unless otherwise agreed upon, the place of delivery / performance.

## 12. Quality Management / Environment Protection

12.1 The Contractor shall constantly monitor the quality of its deliveries and services. For this purpose, the Contractor shall maintain a quality assurance system (e.g. according to DIN EN 9100) and demonstrate this to Telair on request. Upon request of Telair, the Contractor shall adapt its quality assurance system as specified by Telair. Moreover, on request of Telair, the Contractor shall conclude a quality assurance agreement with Telair.

12.2 The Contractor shall not use or deliver legally prohibited substances and materials. The Contractor shall comply with all applicable laws and standards regarding the preservation of the environment and with any regulation with regard to work safety and fire protection.

12.3 The Contractor shall inform Telair without delay about defective contractual items, awaiting for delivery or already accidentally delivered. Defective contractual items shall be immediately blocked by the Contractor upon approval of Telair respectively the customer of Telair.

## 13. Product Liability / Insurance

13.1 The Contractor will indemnify Telair from all claims from other parties for product- and manufacturer's liability if the damages are due to the Contractor's sphere of control and organization and he is liable to third parties. In these cases, the contractor will be liable for costs according to a product recall and these claims (including all costs of the legal proceedings) for whose provision Telair had provided - under well-understood consideration to the interests of the Contractor - to a third person. Other legal conditions will remain unaffected. Further the Contractor will bear all costs of actions which are originated for (also preventative) correction of defects, in particular through our product monitoring obligation. The Contractor has to arrange with his insurer that this indemnity will be included to his commercial third party liability insurance.

13.2 The Contractor is obligated to have product liability insurance with an amount covered minimum with 5 million Euros per personal injury / damage to property. The covering has to differ from § 4 paragraph 1 cipher 3 AHB and should

be valid for damages in all countries. On demand the contractor shall provide Telair with a confirmation of the insurance (certificate of insurance).

#### 14. Rescission, Termination

14.1 Without prejudice to any other claims, Telair has recourse to the full range of statutory rights of rescission and termination.

14.2 In particular, Telair may rescind the agreement in whole or in part if:

- a) Telair has substantially less demand as a result of force majeure, industrial disputes, interruptions to operations for which Telair is not responsible, riots and unrest, regulatory action or unavoidable events; or
- b) the goods to be delivered are intended for on-supply to a third party and the agreement with such third party fails to be performed for reasons for which Telair is not responsible, in particular if insolvency or similar proceedings are instituted against assets of the third party, or the third party otherwise suffers financial collapse or discontinues operations.

14.3 Telair is further entitled to terminate agreements stipulating a statutory right of termination with immediate effect if:

- a) the Contractor is responsible for the breach of a material contractual obligation;
- b) the Contractor discontinues its operations or threatens to do so; or
- c) an application to institute insolvency proceedings is filed against the Contractor.

14.4 In case of proper termination the Contractor shall be entitled to request the agreed remuneration from Telair. The Contractor has to credit against costs saved on account of the termination of the contract.

#### 15. Subcontractors

The Contractor must obtain Telair's prior written consent before engaging or changing subcontractors or using third parties or temporary staff, unless such staff performs incidental functions. The Contractor shall otherwise impose the same obligations on any subcontractors as those it has assumed in its relationship with Telair. The Contractor shall furthermore be liable for the negligence of its subcontractors / suppliers as it would be for its own negligence.

#### 16. Stocks / Spare Parts

The Contractor guarantees to keep its goods / services in stock / have them available for their normal lifespan, but for at least 3 (three) years from the date of its last delivery / performance. Even in cases where such an obligation has expired in respect of goods / services provided to Telair, the Contractor shall give Telair timely notice of any

intended discontinuation of goods / services so as to ensure that parts can still be delivered for Telair to hold in stock.

#### 17. Third party rights

17.1 The Contractor shall inform Telair about published and unpublished owned or licensed property rights and property rights applications related to the contract or to the provision of deliveries or services.

17.2 The Contractor shall warrant that the use and operation of the contractual items will not violate any property rights or copyrights of third parties. Once the Contractor recognizes that the use or operation of its goods and services results in a violation of property rights and copyrights of third parties, he shall inform Telair without delay. Furthermore, the Contractor shall bear the responsibility and the expenses, costs (including legal costs) and damages resulting from the third party claims against Telair due to a violation of property rights or copy rights. In addition, the Contractor shall at its own risk and expenses either provide Telair with the necessary rights, licences and permits for Telair, at its to use the concerned contractual items, or modify the contractual items in such a way, that further violation of property rights or copyrights of third parties will be excluded, while ensuring the contractual items still comply with the contractual obligations, requirements and specifications agreed upon between Telair and the Contractor.

17.3 If Telair pays partly the development costs of the contractual items, Telair shall have cost free, non-exclusive right to use the contractual items for all purposes, unlimited in time and / or place, and including the right to sublicense all the inventions included in the contractual items including all relevant property rights and copyrights pertaining to the inventions. If development of software is part of the contractual items to be delivered, the Contractor shall provide Telair with the source code and comprehensive software documentation.

#### 18. Data protection

Telair may store, transmit, modify and delete personal information about the Contractor in accordance with the provisions of the Federal Data Protection Act (Bundesdatenschutzgesetz), provided this is necessary in connection with executing the agreement.

#### 19. Proof of Origin and Export Regulations

19.1. The Contractor shall be responsible for and shall comply with all requirements resulting from regulatory permits and legal reporting requirements for the introduction and the use of the contractual items. The Contractor shall obtain all necessary export and import licenses as well as any other government permits at its own risk and shall deal with all customs formalities. The Contractor shall timely and without special request inform Telair of any necessary support.

19.2. The Contractor shall promptly provide Telair with the requested proof of origin duly signed and together with all necessary information.

## **20. Confidentiality**

20.1. Telair and the Contractor are obligated to keep all information according to the business relationship and in the context of this contract a strictly secret, unless they are public, lawful bought from a third person or it was worked out independent from a third person and only used to fulfill the contract. In particular these proprietary information's are secrets according to technical data, quantities, prices as well as information's about products and product development, current and further research- and development projects and all corporate data of the other party.

20.2. The Contractor is obligated to keep all drawings, calculations, samples and other documentation strictly secret and is allowed to disclose to a third person only with a written approval, unless the information's contained are publicly.

20.3. The Contractor has to inform and contract his subcontractor accordingly.

## **21. Supplier Code of Conduct**

Telair and the Contractor herewith declare to go beyond legal compliance and to be committed to a corruption-free business community. All business shall be conducted in accordance to the attached TFO-72358-06-e.

## **22. Final Provisions**

22.1. All legal relationships between Telair and the Contractor shall be governed by the law of the Federal Republic of Germany, with the exception of The United Nations Convention of 11.04.1980 on Contracts for the International Sale of Goods (CISG).

22.2. Place of jurisdiction for all disputes resulting from or in connection with the contract between Telair and the Contractor shall be Munich, Germany. However, Telair shall be entitled to initiate judicial proceedings against the Contractor at its place of jurisdiction.

22.3. Changes and additions to these General Conditions and Terms of Purchase, as well as side agreements shall require written form. This shall also apply to the writing requirement itself.

If any of the above provisions may prove to be invalid, the validity of the other provisions shall remain unaffected. The ineffective provision shall be replaced by a valid provision coming closest to the factual, legal and commercial sense of the ineffective provision. This shall apply similarly in the event of a gap.