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CoP | CONDITIONS OF PURCHASE AICHELIN GES.M.B.H., A-2340 MÖDLING

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1. ORDERS

Orders including their additions and modifications as well as other verbal or telephone agreements shall only be valid if and in the form as they have been sent to the Contractor in writing by the Client.

2. CONFIRMATION

Every order must be confirmed immediately, stating the prices and the binding delivery time. The confirmed prices are always fixed prices, unless a defined price escalation clause has been expressly agreed. All other agreements must also be confirmed in writing.

The order shall be deemed accepted unless objected to in writing within 14 days. The same shall apply to the binding nature of any other verbal or telephone agreement sent to the Contractor in writing. The Client's order numbers shall be repeated on all documents.

3. DELIVERY TIME

In the event of non-compliance with the agreed delivery date, irrespective of whether the contractor is to blame for the delay or not, the client is entitled, without having to waive any other claims and without having to prove the damage incurred, to withdraw from the order without delay and to obtain replacement from another party without the need to set a grace period.

Any additional prices for the replacement procurement shall be borne by the original contractor. This shall not apply if the Contractor informs the Client of unavoidable delays in delivery at an early stage and the Client agrees in writing to the postponement of the delivery date.

If urgent or accelerated shipments become necessary as a result of the Contractor's delay in delivery, the additional costs incurred shall be borne by the Contractor. Irrespective of this, the Contractor shall pay a contractual penalty of 0.7% for each commenced week of delay in delivery, up to a maximum of 7% of the total order value, unless this has been proven to the Client by official certification within 8 days of the occurrence of force majeure.

The payment of contractual penalties for default shall not release the Contractor from its obligations to perform and the resulting liabilities. The Client reserves the right to claim damages in addition to contractual penalties, to which a paid contractual penalty shall, however, be credited.

Should the Customer agree to a delay in delivery, this shall have no influence on the fixed prices. If the goods are delivered prematurely without the Client's consent, the Client shall have the right either to return them to the Contractor or to store them at the Contractor's expense and risk.

Force majeure entitles the Client to withdraw from the contract in whole or in part. The Client's and the Contractor's right to compensation shall be excluded in this case.

The Client shall be entitled to suspend the execution of the contract at any time for up to three months without incurring any costs.

Should the delivery dates agree in the purchase order change for reasons not attributable to the Contractor, the Contractor agrees to store the goods properly for up to 3 months at the expense and risk of the Contractor for the Principal.

4. SHIPPING

Generally, FCA (Incoterms 2020) applies, other shipping regulations, in particular whether the delivery is to be made to the AG's registered office or to another address, will be stated in the order letter or agreed later. The Contractor shall be liable for all damages and costs (such as storage charges, freight charges, etc.) arising from insufficient observance of the Client's instructions or from defective packaging. Each consignment must be accompanied by a delivery note stating the order number. Unless otherwise agreed, the Contractor shall cover the transport insurance.

An invoice, proforma invoice or any other document containing price information may only be enclosed with the consignment with the consent of the principal.

The Contractor must provide a valid proof of preference (such as movement certificate, certificate of origin etc.). Special product regulations, e.g. products subject to dangerous goods regulations, must be classified, packaged and labelled in accordance with the regulations, according to the various modes of transport; the legally prescribed safety data sheets must be enclosed with the order confirmation.

5. WARRANTY

The Supplier warrants that its services will be rendered in conformity with the contract and in accordance with the latest state of the art. During the warranty period, the Supplier shall bear the burden of proof that a defect did not already exist at the time of delivery.

The period for the assertion of warranty claims by the Customer shall end 24 months after acceptance of the entire system by the Customer of the Customer, but at the latest 48 months after final delivery in accordance with the order. The warranty period shall be extended by the period of standstills due to defects. If the defect is remedied by replacement or repair, the warranty period mentioned above shall commence.

The Client's obligation to inspect the delivery/service for defects and to give notice of defects after handover (§ 377 UGB) is expressly excluded; the Client has no obligation to inspect the deliveries and services of the Contractor prior to the agreed function and performance tests. In the event of defects occurring, the Client shall be free to choose between replacement, repair or price reduction.

The Customer may withdraw from the contract if the improvement (repair or replacement) is not possible or if this type of improvement chosen by the Customer is refused by the Supplier within the reasonable period set by the Customer, or if the Supplier does not carry out the improvement within the period set by the Customer or if the improvement is not economically reasonable for the Customer. In the event of repair or replacement, the Customer shall be entitled to withhold the payment for the defective delivery/service without interest until the defect has been completely remedied.

The warranty period shall be suspended if the Customer notifies a defect.

5.1. GUARANTEE

Irrespective of the above warranty, in addition to the properties expressly specified or otherwise promised or generally presupposed, the Supplier warrants the completeness and suitability of its deliveries and services for the specific case of need, in particular also the suitability of the deliveries and services for the operating conditions prevailing at the place of use in continuous operation in the association of the entire plant, compliance with all standards and official regulations applicable at the place of use (in particular with regard to safety and environmental protection), undisturbed availability subject to compliance with the performance and consumption values, ease of assembly, maintenance and repair, as well as state-of-the-art design.

The guarantee period shall end 24 months after acceptance of the OP's entire system by the OP's customer, but at the latest 48 months after final delivery in accordance with the order. During this period the Contractor shall be liable for all defects occurring in his delivery.

Any defects occurring before or during the warranty period shall be remedied by the Supplier at the place of use of his deliveries within the shortest possible time and at the Client's option by replacement or repair. All necessary services and incidental costs such as transport, customs duties, disassembly and assembly etc. shall be provided or borne by the supplier.

In the case of minor defects (up to [EUR 5,000.00] per individual case) or in the case of defects which cannot be remedied without delay, in particular in phases with critical deadlines (e.g. trial operation), the Client shall be entitled, without prior notice to the Contractor, to remedy such defects or have them remedied immediately at the expense of the Contractor, whereby other claims of the Client shall remain unaffected thereby. This shall also apply if the Supplier, despite being requested to do so, fails to remedy the defects on time.

6. GUIDELINES AND DOCUMENTATION

For each device, all technical instructions must be enclosed which serve to ensure safe and accident-free operation and maintenance of the product. The Contractor assures that all technical instructions supplied are complete and correct and correspond not only to the series but also exactly to the current technical status of the product supplied. In particular, the Contractor assures that the instructions supplied with the product comply with the valid provisions of the EC Machinery Directive 89/392/EEC with regard to didactic quality and comprehensibility and with the EC Directives on Electromagnetic Compatibility 89/336/EEC prescribed from 01.01.1996.

The Contractor shall draw up a declaration of conformity or manufacturer's declaration for the product, which must contain all information required to identify the product, as well as a list of the directives which have been observed during the design and manufacture of the product. If the affixing of the CE marking and/or a proof of conformity is prescribed or permitted for the supplies/services, the contractor is obliged to affix the CE mark and to provide the client with the necessary proofs of conformity in the language prescribed for the documentation.

The Client may demand that foreign-language operating instructions be handed over by the Contractor at no cost to him. The operating instructions must be handed over at the latest at the time of delivery.

7. LIABILITY AND PRODUCT LIABILITY

The Contractor shall be liable for damages caused to the Client or third parties in accordance with the applicable legal provisions. Conflicting exclusions of liability of the Client are invalid, except in the case of an individual written agreement. The Contractor shall be liable to the Client for defects in the product in accordance with the provisions of the Product Liability Act. If claims are made against the Client due to violation of safety regulations or due to domestic or foreign product liability regulations or laws, and if this claim is attributable to defective products supplied by the Contractor, the Contractor shall compensate the Client for all resulting damages and indemnify the Client against all other claims and actions. The Contractor is obliged to take out sufficient insurance against all risks arising from product liability and to present the insurance policy to the Client upon request.

8. DRAWINGS, MODELS AND OTHER TECHNICAL DOCUMENTS

All models, drawings and other technical documents provided for the execution of orders shall remain the property of the Principal and shall be returned to him upon request. The models, drawings, etc. may only be used for the purpose stated in the order and for the number of agreed units. Any other use is prohibited. In the event of non-compliance, a contractual penalty of 50% of the delivery value of the end product is due in favour of the Principal without proof of damage. The Contractor shall also be liable for ensuring that the models, drawings, etc. are not made available to third parties without authorisation. Upon request, the Contractor shall return the models, drawings, etc. provided without retaining copies for himself or third parties.

Ownership of the models shall pass to Aichelin upon the first material order, irrespective of whether Aichelin has assumed the entire model costs or only pro rata model costs.

9. PLACE OF PERFORMANCE AND JURISDICTION

The place of performance for both parties and for all legal relationships arising from the order is the AG's registered office. The place of jurisdiction for both parties shall be the courts competent for the Principal's place of business. If the Contractor is domiciled abroad, the place of jurisdiction shall be either the court having jurisdiction for the Contractor's domicile or the court having jurisdiction for the Contractor's domicile at the choice of the Client. Austrian law shall apply to the contractual relationship. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. For Contractors outside the EU, however, all disputes arising out of or in connection with the present contract shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these rules. The place of arbitration shall be Vienna, the language of arbitration shall be German.

10. PAYMENT AND ASSIGNMENT

Unless otherwise agreed in writing, payment shall be made within 30 days of receipt of invoice with 3% discount or after 90 days without deduction at the Client's option. The delivery date stated in the order shall take the place of the date of receipt of the invoice if the contractor delivers prematurely without agreement. By presenting the final invoice, the Contractor declares that he has thereby asserted all claims from the relevant business case and that no further claims will be made. The Principal shall be entitled to make payments to the Contractor with claims of Aichelin as well as its group of companies.

Rights and obligations arising from this contract may only be transferred to third parties with the written content of the Principal.

11. OTHER TERMS AND CONDITIONS

All deliveries by the Contractor must be free of retention of title. Such reservations shall also be invalid without the express objection of the Client.

Material provided by the OP shall remain the property of the OP, shall be permanently designated as such and shall be stored separately. If this material is treated or processed, the new, reworked or combined items - even in a semi-finished condition - shall immediately be deemed to have been transferred to the Principal.

The Contractor grants the Client and the End User and persons commissioned by the latter the right to inspect at any time the activities connected with the execution of the order and for this purpose to enter the corresponding work rooms of the Contractor and its subcontractors and to inspect documents. The performance of an inspection or a waiver of an inspection by the Client shall not restrict the Contractor's obligations. Any defects discovered in the course of the tests shall be remedied immediately by the Contractor at his own expense. To carry out the tests, the Contractor shall make available at its own expense auxiliary services, materials, labour, interpreters, suitable test equipment and testing devices.

The Contractor shall keep secret the contents of the order, the business case and all information received directly or indirectly from the Client or the end user and all information to be provided by the Contractor based thereon and shall use such information exclusively for the execution of the respective order.

12. CONFLICTING TERMS AND CONDITIONS

The Contractor's terms and conditions that conflict with the Client's special or general terms and conditions shall only apply if they have been accepted by the Client in writing. Even if the Contractor mentions conditions to the contrary in the order confirmation, they shall not bind the Client without express written acceptance. The execution of the order shall be deemed acceptance of the Customer's special and general terms and conditions if such acceptance has not already taken place before. The contractor shall be liable for costs incurred by the client due to non-compliance with his general or special conditions or other regulations made by third parties.

Should any provision of these terms and conditions be or become invalid, this shall not affect the validity of the other provisions. Upon placing an order, all previous written or oral agreements or declarations, in particular offers, prices, terms of delivery and payment, shall lose their validity.