

## General Purchase Terms of MIXACO Maschinenbau Dr. Herfeld GmbH & Co. KG

### **1. Scope; conflicting/overriding agreements**

- 1.1 These General Purchase Terms ("**Purchase Terms**") apply to all contracts concluded between MIXACO Maschinenbau Dr. Herfeld GmbH & Co. KG ("**MIXACO**") with its suppliers and contractors (each a "**Supplier**") relating to their deliveries and other services.
- 1.2 These Purchase Terms shall apply, provided that the Supplier is an entrepreneur within the sense of Section 14 of the German Civil Code (BGB) upon conclusion of the contract. They shall also apply to transactions with legal persons under public law or special funds under public law. They shall not apply to transactions with consumers.
- 1.3 Any deviating conditions of the Supplier, which are not explicitly acknowledged by MIXACO, are not applicable. This shall also apply in cases where MIXACO makes its delivery without reservation, although it is aware of the Supplier's objecting terms or terms deviating from these Purchase Terms.
- 1.4 These Purchase Terms also apply to all future transactions between the Supplier and MIXACO in ongoing business relationships.
- 1.5 Individual agreements with the Supplier and deviating information in MIXACO's offers shall in any case take precedence over these Purchase Terms.

### **2. Written form; orders; conclusion of contract, call-off orders; modification of goods/services; Supplier declaration**

- 2.1 All orders and acceptance confirmations, changes and other side agreements and arrangements made prior to or at conclusion of the contract must be set forth in writing (letter, fax, e-mail, together "**written form**" or "**in writing**") to become legally effective.
- 2.2 The Supplier must confirm all orders in writing without delay, stating the order number. MIXACO may cancel any order that the Supplier has not accepted within one week after the date of the order. For call-off orders, MIXACO's call-off notices become binding unless the Supplier objects within one week after receipt; MIXACO shall notify the Supplier hereof on the call-off notice.

- 2.3 The Supplier shall alert MIXACO to any contradictory, incorrect or incomplete information about the goods or services in the order and await written clarification from MIXACO before dispatching the order confirmation or starting to perform the contractually agreed services.
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- 2.5 Without MIXACO's prior consent, the Supplier will not make any modifications, for example to the design, the composition, the method of dispatch or the packaging of the goods.
- 2.6 The Supplier shall forward the required declarations certifying the origin of the goods for customs purposes under the Regulation (EC) 1207/2001 to MIXACO at the conclusion of each contract, unless MIXACO has been provided with a valid long-term supplier declaration. The Supplier will be liable under the law for any and all disadvantages sustained by MIXACO as a result of a Supplier declaration being submitted not in proper form or late. If necessary, the Supplier will prove the information about the origin of the goods by way of an information certificate issued by the Supplier's customs office.

### **3. Prices; invoices; payment terms; advance payment**

- 3.1 The prices indicated on MIXACO's orders are fixed prices. Unless agreed otherwise, the prices are "DDP place of fulfilment" (INCOTERMS 2020) as set out in clause 5.2 and inclusive of all expenditures in connection with the deliveries and services owed by the Supplier, in particular but not limited to the cost of any inspection, acceptance, documentation, preparation of technical documents, packaging, shipping, customs and border clearance charges, and insurance. Where "DDP place of fulfilment" has not been agreed and the Supplier is obliged to dispatch the goods, the Supplier shall choose the most economic shipping method. Where the agreed price is not "inclusive of packaging", the packaging shall be billed at cost.
- 3.2 Invoices must be submitted in duplicate, separate from the goods if goods are delivered, and be verifiable. Invoices must at least indicate the product number and product name, the full order reference or MIXACO's order number, the date of the order, the shipping note number and the date of the delivery or service.
- 3.3 Payment shall be made within 14 days after delivery or (for work results) acceptance and receipt of a contractual invoice with a 3 % discount, and within 30 days net. Discountable payments will be deemed in time if MIXACO undertakes the necessary transaction within

the payment period. Any invoice failing to meet the criteria of clause 3.2 above may be rejected by MIXACO, in which case the beginning of the above periods for payment shall be determined by the date of receipt of the new, duly prepared invoice. In the event of early delivery or services the agreed date of delivery or service shall take the place of delivery or service for the calculation.

- 3.4 The place of fulfilment for all payment obligations shall be at MIXACO's registered office in Neuenrade.
- 3.5 MIXACO's rights of setoff (*Aufrechnung*) and retention (*Zurückbehaltungsrecht*) are governed by the applicable laws.
- 3.6 An obligation to advance payment agreed upon in individual cases shall no longer apply if circumstances arise with the Supplier that make a contractual delivery and service appear doubtful. This applies, in particular, if (i) MIXACO's credit insurance refuses to cover the order or parts of the order from the Supplier or (ii) if the Supplier insufficiently fulfils its contractual obligations towards MIXACO or third parties or pays late. Payment in advance shall then be replaced by concurrent payment against delivery and performance.

#### **4. Delivery dates and deadlines; pre-schedule deliveries and delivery by instalments; excess and short delivery; late delivery; contractual penalty**

- 4.1 All dates and times for deliveries and services as indicated by MIXACO and/or as agreed are binding.
- 4.2 Where "DDP place of fulfilment" has not been agreed the Supplier shall provide the goods in a timely manner considering the time commonly required for loading and dispatch and, if applicable, arrange for their dispatch with the carrier designated by MIXACO.
- 4.3 Unless stated otherwise on MIXACO's order, pre-schedule deliveries and services, delivery/services by instalments as well as excess and short delivery are permitted only with MIXACO's express consent and must be identified accordingly in the shipping papers.
- 4.4 The Supplier shall advise MIXACO in writing without delay of any foreseeable delay in deliveries and services, indicating the reasons and the anticipated duration of the delay.
- 4.5 If the Supplier is late with any delivery or service, MIXACO will have the right to charge a contractual penalty in the amount of 0.3 % of the net value of the goods or services with which the Supplier is late but no more than 5 % of the net value of such goods or services,

for each working day or part thereof (Monday to Friday except public holidays at the Supplier's and at MIXACO's registered office). Notwithstanding Section 341(3) BGB, MIXACO may claim the contractual penalty until MIXACO's final duty, for example the final payment, has been fulfilled. Nothing in this shall prejudice any further rights and remedies MIXACO may have for reason of the delay. Contractual penalty payments will be credited against any claims for damages as may exist.

## **5. Labelling/packaging; place of delivery/fulfilment for deliveries/services; shipping note**

5.1 All goods must be duly and properly packaged and labelled in accordance with MIXACO's instructions. Where the Supplier is obligated to take back transport packaging in accordance with the German Packaging Ordinance (*Verpackungsverordnung*) or foreign legislation the Supplier must retrieve the packaging from the place of fulfilment at the Supplier's expense.

5.2 The place of fulfilment for all deliveries and services shall be the place of delivery indicated on the order, unless agreed otherwise and subject to clause 3.4. If no place of delivery is indicated on the order, the place of fulfilment shall be at MIXACO's registered office in Neuenrade.

5.3 Every delivery of goods must include a shipping note indicating MIXACO's order number and describing the content of the delivery by MIXACO's product number(s) (if stated on the order), the nature and the quantity of the goods.

## **6. Supplier's right of retention; setoff and assignment**

6.1 The Supplier has a right of retention with respect to deliveries of goods or work results only on the basis of claims from the same contractual relationship that are undisputed or have been established by final enforceable judgment. Any setoff by the Supplier shall only be permitted on the basis of the Supplier counterclaims that are undisputed or have been established by final enforceable judgment.

6.2 The Supplier shall have no right to assign its claims against MIXACO or have them collected by a third party, unless the Supplier has granted its supplier an extended reservation of title in the ordinary course of business. Nothing in this shall prejudice Section 354a of the German Commercial Code (HGB).

## **7. Passage of title; processing of delivered goods prior to the passage of title**

Where a reservation of title has been agreed for delivered goods, the title passes to MIXACO at the latest upon payment of such goods. MIXACO has the right to process, sell or otherwise dispose of delivered goods in the ordinary course of business, including before the passing of the title.

## **8. Quality requirements; compliance, in particular RoHS / REACH / CE marking**

- 8.1 The Supplier in its deliveries and other services is responsible for observing the current state of the art and the agreed technical data and specifications, without prejudice to further duties as may exist.
- 8.2 The Supplier, at its expense, is responsible to ensure compliance of its deliveries and other services with all applicable requirements of European and national law governing the lawful distribution within the European Economic Area and Switzerland, in particular but not limited to the Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) and the Directive 1907/2006 of 30 December 2006 on the registration, evaluation, authorisation and restriction of chemicals (REACH) each as applicable from time to time and the national transposition measures. Where required by law, goods must be provided with a CE marking (for example toys, electrical and electronic equipment) and furthermore must be labelled and packaged in compliance with all other applicable legal requirements. For any delivery of electrical and electronic equipment, the Supplier shall proactively and at the Supplier's expense provide MIXACO with a current EU declaration of conformity prior to the delivery and shall continually update the declaration in the event of ongoing business relationships. The Supplier shall be liable to MIXACO under the law for any and all losses and costs caused by any breach of these obligations, and shall indemnify MIXACO against third party claims in this respect.
- 8.3 The Supplier shall comply with all other national, European and international laws applicable to the deliveries and other services, in particular but not limited to environmental protection, health and safety protection (including any minimum wage), product safety, anti-corruption, antiterrorism, and data protection legislation, as applicable from time to time, at the Supplier's expense. The Supplier will not take part in any child labour scheme, be it actively or passively, directly or indirectly.

## **9. Defects; warranty; statute of limitations; right of entry**

- 9.1 The statutory provisions (Sections 377, 381 HGB) apply to the commercial duty of inspection and notification of defects with the following condition: MIXACO's duty of inspection is limited to defects which become apparent during an incoming goods inspection under external examination including the delivery documents (e.g. transport damage, wrong and short delivery) or which are recognizable at MIXACO's quality control in random sampling. If acceptance has been agreed, there is no obligation to carry out an inspection. Besides, it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case.
- 9.2 MIXACO's warranty rights (*Gewährleistungsrechte*) are governed by the applicable laws, as amended by the terms of this clause 9 and clause 10.2.
- 9.3 For deliveries of goods, MIXACO must report any obvious defects to the Supplier within 14 days after delivery and any hidden defects within 14 days after their discovery.
- 9.4 The Supplier has sole responsibility for the deliverables and work results, whether or not MIXACO has approved any drawings, calculations and other documents or attended technical or official inspections, tests and acceptance tests. This also includes proposals, recommendations and other contributions by MIXACO.
- 9.5 The Supplier will bear all expenditures incurred in connection with determining and removing defects, including expenditures incurred by MIXACO. Where any goods delivered have been incorporated in another product in accordance with their nature and intended purpose the Supplier, as part of the duties of remedial action, shall in MIXACO's discretion either undertake the necessary removal of the defective item and fitting of the repaired or delivered defect-free item at the Supplier's expense, or reimburse MIXACO for the necessary expenditures.
- 9.6 Any payment towards the agreed price or acceptance of the goods by an agent of MIXACO from the Supplier prior to the determination of a defect shall not constitute an acknowledgment that the goods are free of defects or release the Supplier of its liability for defects.
- 9.7 MIXACO may at its discretion choose between the removal of a defect or delivery of a replacement or, where work results are concerned, the completion of a new work result.
- 9.8 Where, due to particular urgency of the matter, it is not appropriate to set a deadline for the Supplier to take remedial action MIXACO, without prejudice to MIXACO's legal remedies,

has the right to undertake or arrange for substitute performance and claim reimbursement of the necessary expenditures from the Supplier. MIXACO will give the Supplier advance notice of any such substitute performance, where possible.

- 9.9 MIXACO's warranty claims shall become time-barred 36 months after the beginning of the statutory limitation; nothing in this shall prejudice any suspension or interruption of the limitation period as may be provided by law.
- 9.10 MIXACO has the right to request access to the manufacturing sites of the Supplier and, if applicable, of the Supplier's sub-suppliers in order to inspect the goods and work results on site for flawlessness, subject to reasonable prior notice and during normal operating hours; this includes inspections for the use of suitable materials and appropriate professionals. The Supplier shall provide any information necessary for this purpose and submit the relevant documents for viewing. Where necessary to protect trade or business secrets of the Supplier or a sub-supplier, and requested by the Supplier for that reason, any such inspection shall be carried out by a third party sworn to secrecy, who must not forward any information about trade and business secrets to MIXACO. Inspections shall be without legal effect on any formal acceptance of the deliveries and services.

## 10. IP rights

- 10.1 The Supplier grants MIXACO non-exclusive, perpetual, worldwide, irrevocable and assignable rights of use in all deliveries or work results eligible for intellectual property protection in order to integrate them in other products, distribute them and make them available to the public on the internet. In particular but without limitation, this includes the right to modify, edit or otherwise redesign the deliverables or work results for purposes of integration and to distribute the deliverables or work results in the original or in a modified, edited or redesigned form.
- 10.2 The Supplier shall indemnify MIXACO against any and all claims of third parties resulting from any infringement of patents, copyrights, design rights, trademark rights, name rights and other intellectual property rights and applications for intellectual property rights ("**IP Rights**") through the contractually agreed use of the deliverables or work results, unless the Supplier is not responsible for the infringement of rights. This applies equally to all necessary expenditures incurred by MIXACO in connection with any such third party claims, in particular the costs of legal defence. Where the Supplier may be held liable under this clause 10.2, the Supplier further will be liable for all consequential losses incurred by MIXACO, particularly as a result of shortage of supplies and disruptions of production. The claims under this clause 10.2 shall become time-barred 36 months after the beginning of

the statutory limitation; nothing in this shall prejudice any suspension or interruption of the limitation period as may be provided by law.

- 10.3 IP Rights that arise from developments based on special orders by MIXACO or joint developments with the Supplier are vested solely in MIXACO if they are based on MIXACO's secret knowhow and/or if MIXACO bears the development costs. For this purpose, the Supplier herewith assigns to MIXACO any and all IP Rights in such developments at the latest from the moment of their creation. If it is impossible to assign the resultant IP Rights to MIXACO, the Supplier will grant MIXACO at the latest at the moment of their creation exclusive rights of use for full exploitation, in particular with no limit as to time, territory and subject matter.
- 10.4 The Supplier may use any goods manufactured, services rendered or other work results made with knowledge or resources from MIXACO (such as designs, drawings, specifications), which incorporate IP Rights or secret technical knowhow or manufacturing methods of MIXACO, only to fulfil the contract with MIXACO.

## **11. Supplier's liability for product damage; recalls; insurance**

- 11.1 In the event of any product damage the Supplier will indemnify MIXACO against any third party claims, provided the cause of the damage falls within the Supplier's sphere of control and organisation and the Supplier is liable in relation to third parties.
- 11.2 In the event of any necessary recall and/or recall ordered by the authorities or other actions required to avert danger to individuals or property of third parties, the Supplier is liable for all expenditures, costs and losses incurred by MIXACO as a result of such recall or other action and will indemnify MIXACO against any such third party claims where the cause of the recall or other action is lack of conformity of the deliverables and/or packaging or services with the contract, particularly lack of conformity with the agreed specifications or contractual representations or a product defect, unless the Supplier is not responsible within the meaning of clause 11.1 above. Nothing in this shall prejudice any further rights or remedies as may exist.
- 11.3 Without prejudice to any further duties, the Supplier shall notify MIXACO without delay if the Supplier becomes aware of any specific circumstances with a view to the goods delivered or services rendered that necessitate a recall or other action according to clause 11.2 above by MIXACO or by the Supplier and/or establish a relevant risk of product liability. The contracting parties shall seek to coordinate the further steps while MIXACO will have



the right to take the final decision on a voluntary recall campaign. Nothing in this shall prejudice any statutory reporting duties of the contracting parties.

- 11.4 The Supplier shall at the Supplier's expense and at least for the duration of the business relationship maintain liability insurance, including product liability and recall insurance, providing for adequate coverage for the Supplier's deliveries and services; the product liability insurance shall provide a minimum cover of EUR 10 million per claim for personal injuries and property damage (including exclusive pecuniary losses) and a maximum annual indemnity limit of no less than EUR 20 million, while the recall insurance shall provide a minimum of EUR 5 million per claim and per insurance year. Copies of the insurance policies shall be submitted to MIXACO upon request.

## **12. Tools; provision of materials**

- 12.1 If, at MIXACO's request, the Supplier makes any tools including technical documents, drawings, standard specification sheets, etc. ("**Tools**") for purposes of fulfilling the contract, the parties agree that such Tools shall become the property of MIXACO. In lieu of their actual handover, the Supplier has the right to keep the Tools on loan for purposes of fulfilling the contract. The Supplier may not use the Tools for fulfilling other orders from third parties. Upon fulfilment of the contract and on MIXACO's request the Supplier must release the Tools to MIXACO. The compensation for the making of the Tools is included in the agreed total price, whether or not it is indicated separately.
- 12.2 All items, models, documents, drawings, samples and tools made available to the Supplier by MIXACO for purposes of fulfilling the contract are MIXACO's property. This includes items acquired by the Supplier at MIXACO's expense for purposes of fulfilling the contract and material provided by MIXACO. The items and documents made available to the Supplier may only be used and – as required for operational reasons and permitted by copyright legislation and only as strictly necessary to fulfil the contract – copied for fulfilling the contract with MIXACO. After fulfilment of the contract and at MIXACO's request, they must be returned to MIXACO without delay, including all duplicates made thereof.
- 12.3 The Supplier bears the risk of loss of and damage to the property of MIXACO, however, not for normal wear and tear. The Supplier will store the property of MIXACO at the Supplier's expense and with the diligence of a prudent businessman, separate from other property of the Supplier, handle it with care, maintain it in good condition and, as reasonably feasible, mark it as the property of MIXACO. The property of MIXACO may not be removed from the Supplier's business premises and/or the agreed location, sold, used as collateral, pledged, etc.

- 12.4 The property of MIXACO may not be joined, mixed or processed with the Supplier's or a third party's property unless this is necessary for fulfilling the contract with MIXACO. In the event of processing or transformation, MIXACO shall be considered the producer. If the property of MIXACO is joined or inseparably mixed with other items, MIXACO shall be considered co-owner at the proportion of the value (purchase value plus value-added tax) that the items had at the time of joining or mixing. If such joining or mixing is such that the Supplier's property may be considered the main component, it shall be agreed that the Supplier transfers proportionate co-ownership to MIXACO. The Supplier shall store the sole or joint property for MIXACO.
- 12.5 The Supplier shall insure the property of MIXACO at the Supplier's expense at reinstatement value. The Supplier hereby assigns to MIXACO, and MIXACO accepts the assignment of, any payment claims against the Supplier's insurance relating to the property of MIXACO.

### **13. Confidentiality; advertising**

- 13.1 The Supplier shall treat as a business secret and keep confidential any and all commercial and technical information that is not publicly known (e.g. from illustrations, plans, drawings, calculations, execution instructions, product descriptions) and which is disclosed to the Supplier in connection with the business relationship with MIXACO, as well as the fact of the business relationship as such. This confidentiality undertaking shall survive and remain in effect after the termination of the contract. The confidentiality undertaking does not extend to information which (i) is or becomes public domain other than by a breach of rights, (ii) is known to the Supplier at conclusion of the contract, or (iii) is disclosed to the Supplier by a third party without breaching any nondisclosure obligation.
- 13.2 The Supplier may not advertise the business relationship with MIXACO or use it for reference purposes, except with MIXACO's express consent

### **14. Applicable law; place of jurisdiction**

- 14.1 The contractual relationship between MIXACO and the Supplier, including these Purchase Terms, shall be subject to the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 14.2 The place of jurisdiction for all disputes arising from and/or in connection with the contractual relationship, including these Purchase Terms shall be the registered seat of MIXACO, if the Supplier is a business person (Kaufmann) as defined by the German Commercial

Code (HGB), a legal person under public law or a special fund under public law. In all cases, however, MIXACO shall be entitled to bring an action at the place of performance of the delivery obligation or at the Supplier's general place of jurisdiction. Any overriding statutory provisions, in particular, regarding exclusive places of jurisdiction, shall not be affected.

## **15. Final provisions**

- 15.1 Changes or supplements to the contract, including this written form provision, must be made in writing to become effective. The same applies to any ancillary and additional arrangements.
- 15.2 If these Purchase Terms are provided to the Supplier in various language versions, the German version shall be authoritative.
- 15.3 If a provision of the contract, including these Purchase Terms, is or becomes invalid in whole or in part, the validity of the remaining provisions of the contract shall not be affected by the invalidity of said provision. The invalid provision is to be replaced by a provision that comes closest to the economic purpose of the invalid provision, without being invalid.