



## General Terms and Conditions of Purchase

### 1. Scope

- 1.1 These General Terms and Conditions of Purchase will apply to our business relations with entrepreneurs, legal entities under public law, and special assets under public law (hereinafter referred to as the “**Seller**” or the “**Contractor**”). To the extent that we may conclude contracts with consumers for the purposes of the *KSchG* [the Austrian Consumer Protection Act], any mandatory provision of consumer-protection law will take precedence over these General Terms and Conditions of Purchase.
- 1.2 Our General Terms and Conditions of Purchase will apply to all business relations existing with us currently and in the future and involving legal transactions with regard to the purchase of products except as otherwise provided for in writing in any individual case.
- 1.3 All contracts concluded by us for the purchase of products will be based exclusively on these General Terms and Conditions of Purchase. Any diverging statements made, or terms and conditions specified, by Seller will place us under no obligation even if we shall have taken cognizance of the same, or if the same may have been enclosed with an order form or other document or if the same may be referenced in such order form or other document, or if we do not object to the same, or if the same may be explicitly contrary to these General Terms and Conditions of Purchase, except that, and only if, we shall have acknowledged the same in writing. Any taking of delivery of services and goods will in no case imply consent to any other conditions set by Contractor. These General Terms and Conditions of Purchase, once agreed, will until their revocation or alteration on our part continue to apply also to all future contracts concluded for the purchase of products.
- 1.4 Any individual arrangements made in any individual case with Contractor (including ancillary agreements, supplements, and amendments) will take precedence over these General Terms and Conditions of Purchase. In respect of the contents of any such arrangements, our written confirmation shall be authoritative. Contractor will be at liberty to provide proof of any individual arrangements stipulated with parties having a right of representation to that extent.

### 2. Orders and Conclusion of Contract

- 2.1 Except as otherwise provided, our orders shall be confirmed within 5 (five) days of receipt by Contractor, such confirmation to include binding information on the mandatory delivery time and the price. Any obvious error (e.g. typing errors and miscalculation) and incompleteness of an order, including the order documents, shall be pointed out to us by Contractor prior to acceptance, for the purpose of correction or completion. In the event of permanent business relations being in place and Contractor intending to refuse to accept an order, Contractor shall make a statement to such effect immediately but not later than within 5 (five) days; otherwise, an order will be deemed accepted. In other cases, we hereby reserve the right to cancel an order in the event of Contractor failing to give written confirmation thereof within the set period of time.
- 2.2 Even after having placed an order, we will be entitled to demand that alterations be made to the subject matter of a contract in terms of execution and quantity, to the extent that the same may be required due to operational reasons, and may be customary in the trade. In any such process, the implications thereof for delivery dates and any additional or reduced costs shall be agreed reasonably and by mutual consent. Any price increase or extension of the delivery period, however, will be recognized only if such alteration actually and demonstrably entails any additional cost or extension of the delivery period, and if Contractor shall have informed us thereof in writing immediately upon such change of order.



**3. Applicability of Safety Provisions under Austrian and European Law; Operating / Assembly Instructions**

- 3.1 Any work materials delivered, particularly machinery, computers, and similar equipment, shall in all their parts conform to the relevant safety provisions of the European Union and the Republic of Austria, particularly to the Machinery Safety Ordinance 2010 and the Product Safety Act, the relevant EU Directives, as well as any and all amendments made thereto and the national provisions into which they shall have been transposed. We shall be entitled at any time to demand that Contractor provide proof of a product's conformity with Austrian and European safety requirements.
- 3.2 During manufacture, delivery, and installation, Contractor shall comply with all relevant regulations, particularly EN<sup>1</sup> standards, ON<sup>2</sup> rules, as well as OVE<sup>3</sup> and VDI<sup>4</sup> guidelines. Contractor hereby undertakes to hand over to us, upon our request, copies of all safety regulations and technical codes relevant to the manufacture, delivery, and installation of the delivery item; in particular, EN standards and ON rules as well as OVE and VDI guidelines. To the extent that the manufacture, operation, and maintenance of a delivery item may require any specification, plan, drawing, process information, sample, or design documentation, or any data carriers and files, assembly or operating instructions, operating handbooks, or similar explanatory aids, Contractor hereby undertakes to supply the same in German-language versions. Unless otherwise provided, signage shall be in the German language.
- 3.3 To the extent that the manufacture or operation of a delivery item may require an EU Declaration of Conformity including CE marking, an EU Manufacturer's Declaration or a certification – e.g. type examination ("GS") –, Contractor hereby undertakes to hand over to us a German-language version of the documentation on which the same shall be based. The undertaking as aforesaid will – as far as may be relevant – also include the provision of a copy of "Hazard Identification – Risk Estimation – Description of Precautionary Measures" pursuant to ÖNORM<sup>5</sup> EN ISO 14121-1 ("Safety of Machinery – Risk Assessment". In the event of the delivery of equipment parts being interconnected to one another, the scope of delivery shall also include the complete instructions for operation, the EU Total Declaration of Conformity, as well as EU individual declarations of conformity.
- 3.4 Contractor hereby undertakes to cooperate in utilizing as consistently as possible the equipment of electrical, information, and measuring technology in such manner that Contractor will consult with us in advance with regard to the component and accessory parts to be co-delivered by Contractor such as, for instance, computer operating systems, motors, or switchgear and measuring devices.
- 3.5 Contractor hereby undertakes to observe our current standards applicable in each case to technical equipment and documentation, of which we will inform Contractor prior to placing an order.
- 3.6 Philip Morris Austria GmbH hereby expressly makes Contractor aware of Contractor's obligations pursuant to EU Regulations in connection with sanctions and embargoes on individual states (<http://www.bmeia.gv.at/index.php?id=65568&L=0>). Furthermore, Philip Morris Austria GmbH hereby makes Contractor aware of the obligations arising from Regulations (EC) Nos. 881/2002 and EC 2580/2001 as amended, which mandate the taking of restrictive measures against certain persons, organizations, and enterprises, and include a prohibition on providing the same with funds and economic resources, as well as a requirement that the competent authorities be provided with all information facilitating compliance with those Regulations.

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<sup>1</sup> The European Committee for Standardization

<sup>2</sup> The Austrian Standardization Institute

<sup>3</sup> The Austrian Electrical Engineering Association

<sup>4</sup> The Association of German Engineers

<sup>5</sup> Indicates that the standard has been incorporated into the Austrian code of standards



#### **4. Prices, and Terms of Payment**

- 4.1 The prices agreed shall be firm prices; any subsequent price increase will not be recognized. Price increases pursuant to Clause 2.2 above will remain unaffected.
- 4.2 Except as otherwise provided by express covenant, prices will be deemed to include the cost of preparation for delivery, the cost of packaging, and shipping charges. Except as otherwise agreed, the statutory value-added tax shall be added to the prices payable under a contract. Commodity sales tax, freightage tax, customs duties, and other public levies will be at Contractor's expense to such extent as may be permitted by law. The foregoing will apply also to any taxes and other levies accruing after the placement of an order.
- 4.3 The statutory value-added tax, as well as any other tax, charge, customs duty, or levy, if any, shall be indicated separately in all invoices.
- 4.4 Contractor will be responsible for the collection and disposal of packaging. We hereby reserve the right to return packaging material if Contractor upon request shall have failed to meet such responsibility. We shall be entitled to reduce an invoice amount by any cost we may be incurring for the shipping, or collection or disposal, of packaging.
- 4.5 Upon the purchase of a machine or installation, the price thereof will include – unless different arrangements shall have been made expressly in writing – the complete operational machine or installation including all necessary safety devices required on the grounds of the industrial-safety and other safety regulations in place in the Republic of Austria. In the event of an installation still to be assembled, the cost of assembly shall be included in the price as well unless different arrangements shall have expressly been made. Any parts not listed individually but required for operation and functioning will be included in the price. The same will apply *mutatis mutandis*, in the event of assembly, to correct assembly instructions and necessary consumables.
- 4.6 Payment will be effected net (i.e. without deduction of discount) within 60 days of the receipt of the invoice, or of the receipt of goods if these arrive later.

#### **5. Assignment; Subcontractors; Right of Retention; Setoff**

- 5.1 Without our prior written consent – which shall not be unreasonably withheld –, Contractor will not be entitled to assign his claims against us, or to commission third parties to collect the same.
- 5.2 Without our prior written consent, Contractor will not be entitled to assign the performance of his contractual duties, wholly or in part, to a subcontractor. In cases where we have given our consent to the award of subcontracts, copies of such subcontracts shall, at our request and immediately upon their execution, be submitted to our department in charge of purchasing, and stated in each contract if and to the extent that such submittal may be required for the inspection of manufacture, for examining the terms and conditions of the order or the merchandise to be delivered, and / or for verifying compliance with statutory or regulatory requirements. Contractor's liability for the performance of his contractual obligations by a subcontractor shall remain unaffected.
- 5.3 Contractor may assert any right of setoff and / or right of retention only on the grounds of counterclaims that shall have been determined in a legally binding manner, or shall be undisputed.

#### **6. Insolvency**

If Contractor shall have defaulted on his payments, or in the event of Contractor obviously being able no longer to discharge his payment obligations, or in the event of any material deterioration in Contractor's financial and / or legal position which may be capable of having an essentially adverse effect on the discharge of his payment and other performance obligations, or in the event of an application for insolvency proceedings to be instituted over Contractor's assets, we shall be entitled to rescind the contract in respect of the part not performed yet and, in case partial deliveries already made will be of no interest to us, we shall be entitled to rescind the contract in its entirety. The foregoing, however, will be subject to the proviso that prior to any such rescission, Contractor shall have failed to perform within a



reasonable grace period set, despite our request for reciprocal and simultaneous performance, or for provision of security.

## **7. Delivery Period**

- 7.1 Observance of a stipulated delivery date shall be a binding requirement. A delivery date will be deemed observed in the event of a delivery or service being available on the agreed date in the agreed place of performance. In the event of Contractor foreseeing any difficulties in terms of the on-time delivery of an order, he shall immediately notify us thereof in writing, stating the potential date of delivery. Any consent by us to such new date of delivery will leave unaffected any claim for damages for late delivery. Any extension of the delivery period pursuant to Clause 2.2 will remain unaffected.
- 7.2 In the event of Contractor being in delay, Contractor will be required to comply at his own expense with our request for special delivery (express freight or expressage, express courier, express handling parcel, airfreight, etc.).
- 7.3 In the event of Contractor being in delay, we will be entitled – in the event of a grace period of at least 2 (two) weeks having expired without success – to rescind the contract and assert damages.
- 7.4 No setting of a grace period will be required if the date of delivery shall have been ‘firmly’ agreed, i.e. if we shall have expressed in the relevant contract that our interest in performance is conditional upon on-time delivery, or if Contractor declares his inability to deliver even within such grace period.
- 7.5 Neither of the Contracting Parties will be responsible for the non-performance of their obligations from a contract insofar as such non-performance shall be the result of force majeure such as war, act of God, fire, flood, explosion, earthquake, civil unrest, or administrative measures. Contractor may invoke a case of force majeure if he shall have notified us in writing of a case of force majeure not later than 24 (twenty-four) hours in advance of the agreed delivery date, giving a concrete and detailed account thereof by fax or by e-mail message. In the event of such notification not being made by the point in time mentioned in Sentence 1 of this Clause, Contractor may invoke a case of force majeure only if such force majeure can be proved to have occurred within the 24-hour period, and to have been the cause of the delay in delivery.
- 7.6 In the event of Contractor’s culpable failure to deliver, we will be entitled – aside from any further-reaching claims under statutory law – to demand payment of flat-rate damages for delay at a rate of 0.5% of the net price per complete calendar week, but not more than a total of 5% of the net price of the merchandise delivered late. We hereby reserve the right to prove that we have incurred higher losses. Contractor will remain entitled to prove that we have incurred no loss at all, or a loss being substantially less significant.
- 7.7 In the event of Contractor falling into delay, we will be entitled to make purchases of goods in replacement if and to the extent required to avoid any consequential loss resulting from such delay. Any additional costs arising therefrom shall be borne by Contractor.
- 7.8 We will be under no obligation to accept any delivery or service provided without our express prior consent.

## **8. Shipping; Terms of Delivery; Retention of Title**

- 8.1 Upon the receipt of merchandise delivered to a receiving station having been designated by us, the risk will pass to us. Unless different arrangements have expressly been made, delivery to the receiving station shall be free of charge. Except as otherwise agreed, the mode of freight transport will be decided by Contractor, who will also defray the cost associated therewith. Contractor shall, however, seek to secure such mode of transport as will be most advantageous to us in terms of time and cost, and will consult with us in cases of doubt.
- 8.2 The dispatch of each consignment, unless ‘firmly’ agreed (cf. Clause 7.4 above), shall be notified to us separately so well in advance that we will be left with enough time, but 5 workdays at least, to prepare our taking of delivery; an invoice will not be considered advice of shipment. In case that prior to the dispatch of a consignment we inform Contractor of our



- inability for the time being to grant release in respect of the same, Contractor hereby undertakes to properly store the merchandise for up to three months, and to dispatch the same only upon our call-off, to such extent as can reasonably be expected of Contractor. Any price increases, however, will be recognized only in the event of such change in the delivery period actually and demonstrably involving any extra storage cost, and in the event of Contractor having informed us thereof in writing immediately upon the change of order.
- 8.3 All notification relating to orders – in particular, advice of shipment, delivery notes, and invoices – shall *inter alia* include the following: the order number, the call-off number, mode of shipment, number of units, description of goods, gross and net weight and, in the event of any delivery by installments as agreed with us, shall state the residual amount outstanding. In that respect, the related provisions of § 11 of the Sales Tax Act shall be observed as well.
- 8.4 a) The following shall apply to all contractors domiciled in Austria:  
All goods shall be delivered with a delivery note and other necessary accompanying documents if any.
- b) The following shall apply to all contractors domiciled abroad:  
All goods shall be delivered with the necessary export and import documents.
- 8.5 Contractor shall ensure that the merchandise be packed and labeled in accordance with regulations.
- 8.6 In the event of Contractor having reserved title to the objects delivered, such reservation will in each case apply only until payment shall have been effected in respect of such objects unless we have already become the owners of such objects on account of processing, combination, or intermixture. We do not recognize any current-account or extended reservation of ownership. Any assignment of our claims arising from our resale of such objects to Contractor within the framework of a so-called extended reservation of ownership will also be ruled out. We shall be under no obligation to safeguard any of Contractor's rights whatsoever arising from reservation of ownership as against third parties.
- 9. Auditing and Inspection; Data Security**
- 9.1 Contractor will be required to provide us, at our request, with information about the current manufacturing status.
- 9.2 We shall be entitled to audit Contractor at any time with regard to his qualifications for fulfilling an order, and to the progress being made in manufacturing the goods ordered. Contractor hereby undertakes to support such reviews and, in particular, to permit inspection visits to his business premises and manufacturing sites to such extent as may be required to check on manufacturing, order-related conditions, the merchandise to be delivered, and / or compliance with statutory or regulatory requirements.
- 9.3 Contractor shall be required to conduct his own bookkeeping, observing all accounting principles prescribed by statute or being customary in the trade. We shall be entitled to conduct operational audits and financial audits on Contractor's business premises with respect to the contractually agreed activities if and to the extent that this may be required for checking on manufacturing, order-related conditions, the merchandise to be delivered, and / or compliance with statutory or regulatory requirements. This will also include – to the extent necessary in accordance with the foregoing – the related business accounts and documents as well as related invoices. To such extent as may be required in accordance with the foregoing, the right of audit will also cover the electronic data-processing equipment used by Contractor as per contract.
- 9.4 Contractor shall keep in safe custody any data received from us, in accordance with the proven state of the art in information technology. To the extent that the foregoing may relate to personal data, Contractor will in particular comply with the provisions of the Data Protection Act 2000.
- 10. Notification of Defects; Liability for Defects; Product Liability**
- 10.1 Any quality inspection and verification of quantity at our incoming goods department in respect of merchandise delivered will in principle be carried out through sampling within 10 (ten)



- workdays following delivery. Any defect detected thereby will be deemed an obvious defect, and shall be notified by us immediately; any defect not detected will be deemed a hidden defect unless detection would have been easy. Even small deviations from our order shall be deemed a defect. Any delivery verification certificate and payment of the purchase price will not constitute approval of the delivery.
- 10.2 Contractor will, upon agreement, enable our representatives to inspect merchandise at his factory during usual business hours if and to the extent that this may be required for checking on manufacturing, order-related conditions, the merchandise to be delivered, and / or compliance with statutory or regulatory requirements. We shall have the right to refuse to accept any merchandise not conforming to the terms and conditions of the contract. The obligation to enable inspections as aforesaid will be imposed *mutatis mutandis* by Contractor on a subcontractor. Such inspections will leave Contractor's contractual obligations unaffected. In no event will approval of the merchandise prior to delivery be implied by any such inspection.
- 10.3 Contractor will provide us with manufacturing and delivery schedules for the merchandise to the extent that we may require such information for awarding a contract, or checking on the execution thereof.
- 10.4 In cases of particular urgency and in the event of Contractor failing to meet our demand for replacement or subsequent delivery within a reasonable period of time, we will be entitled to carry out ourselves, or cause to be carried out by third parties, any correction or replacement delivery at Contractor's expense in such manner as we may deem appropriate.
- 10.5 In addition, Contractor shall be responsible for ensuring that his deliveries and services will be in conformity with the recognized state of the art as well as with the relevant provisions relating to security, occupational safety, accident prevention, and other regulations. If any court or governmental agency finds in a legally binding or non-appealable decision, as against us or our purchasers, that such deliveries and services are not in conformity with the requirements as aforesaid, such finding will also apply as against Contractor, who will be required to indemnify us from any third-party claims based thereon, unless Contractor shall be able to prove that he and his subcontractors have not been at fault.
- 10.6 Our claims based on defects will become statute-barred within three years of the passage or risk pursuant to Clause 8.1 above.
- 10.7 Contractor will furthermore be responsible for ensuring that his products shall be free from defects within the meaning of the Product Liability Act. Contractor will fully indemnify us and hold us harmless against any and all claims based on the defective condition or defectiveness of a product delivered unless Contractor shall be able to prove that he has not been at fault.
- 10.8 Except as otherwise provided, Contractor hereby undertakes to maintain such employer's liability and product-liability insurance as may be customary in the trade, with an amount insured of EUR 4 million for damage to property and personal injury, or EUR 4 million for consequential loss, and of EUR 100,000 for active and contributory loss or damage. Any further-reaching claims for damages to which we may be entitled will remain unaffected thereby.
- 11. Licenses**
- 11.1 To the extent that Contractor may undertake to deliver computer software, Contractor shall ensure that we will be granted the licenses required for the use of such software. Except as otherwise provided, such license will include the use of subsequent new versions, as well as use on any number of computers used by us internally (central unit / peripheral equipment).
- 11.2 Software license fees will, unless different arrangements have expressly been made, be included in the price.
- 12. Proprietary Rights**
- 12.1 Contractor hereby represents and warrants to us that his deliveries and services will not infringe any patents, utility models, trademarks, trade names, copyrights, or other industrial property rights in Austria or any country which according to Contractor's knowledge will be the



destination of deliveries. In the event of any claim brought against us by third parties for infringement of any such right, Contractor will hold us harmless and indemnify us fully in respect of all such claims unless Contractor shall be able to prove that he has not been at fault.

- 12.2 All specifications, plans, drawings, process information, samples, or design documents or data carriers and files provided by us to Contractor in connection with the contract shall remain our property, and all information derived therefrom or communicated in other ways to Contractor in connection with the contract will be subject to an obligation to maintain secrecy, and may without our prior written consent not be publicized or forwarded to third parties, or utilized by Contractor for a purpose other than the performance of the contract. The foregoing will apply also in the event of a transaction not being carried out, or carried out in full, or in the event of a contract being canceled prematurely. We shall be entitled at any time to demand that the objects being our property be returned without Contractor being entitled to assert a right of retention.
- 12.3 Any equipment ordered by us and / or manufactured on the grounds of our cooperation pursuant to Paragraph 2 in connection with an order placed by us, its parts as well as the documents provided to Contractor pursuant to 2, etc., will be our property. Contractor hereby undertakes to take the necessary precautions to preclude such objects from being replicated by third parties. Contractor will not himself replicate, or commission the replication of, the objects ordered.
- 12.4 In the event of the contract covering design work, experimental development work, or research, Contractor hereby undertakes to immediately communicate to us complete details regarding all ideas, improvements, designs, or inventions made and developed in connection with the performance of the contract.
- 12.5 Insofar as such results may not have already become our property, Contractor will upon our request assign to us all transferable copyright and other authorizations with regard to the publication, reproduction, and utilization of such ideas, improvements, designs, or inventions. Contractor will perform all such acts and prepare all such documents as may be necessary in terms of the application for, and implementation of, any industrial property rights on our behalf.

### **13. Advertising**

Without our prior express consent in writing, Contractor will not be entitled to use business relations with us for advertising purposes.

### **14. Secrecy**

- 14.1 Contractor hereby assumes for himself, his employees, and vicarious agents the obligation to maintain confidentiality even beyond the term of our business relations with regard to such transactions, data, and other facts as may become known to Contractor on the occasion of, or in connection with, cooperation with us unless we expressly discharge Contractor from such obligation. In addition, Contractor hereby undertakes to impose such obligation to maintain secrecy *mutatis mutandis* on Contractor's employees and vicarious agents. Without our prior written consent, Contractor shall not publicize or forward to third parties, or use the information to be kept confidential, for any purpose other than the performance of the contract. The obligation to maintain secrecy will not apply if and to the extent that upon the conclusion of the contract, the knowledge contained in the transactions, data, and other facts as communicated was already in the public domain, or may become generally known during the term of the contract without Contractor being in breach of such obligation to maintain secrecy, and will apply neither in cases where information about the contents of the documents communicated shall be provided on the grounds of a judicial order or administrative decision.
- 14.2 Philip Morris Austria GmbH shall be entitled to assign these General Terms and Conditions of Purchase, and the contracts being the subject matter hereof, to other affiliates++/ companies of the Philip Morris Group.



**15. Liability**

Contractor's liability will be governed by the relevant statutory provisions.

**16. Place of Performance; Legal Venue; Governing Law**

16.1 For both Contracting Parties, the place of performance – unless specified otherwise in a contract – shall be our corporate domicile in Vienna.

16.2 The legal venue agreed hereby in respect of any dispute arising from our business relation (including actions for bills of exchange, or checks) shall be the competent court of jurisdiction for Vienna, *Innere Stadt*. We do reserve the right, however, to have recourse against Contractor also in the legal venues having jurisdiction over Contractor's residential or corporate domicile.

16.3 All legal relations and legal transactions as between us and Contractor will be governed exclusively by the laws of the Republic of Austria, to the exclusion of the norms of private international law. Application of the provisions of the United Nations Convention on the International Sale of Goods shall be ruled out.

16.4 Should any provision of these General Terms and Conditions of Purchase be or become invalid, the validity of the remaining provisions of these General Terms and Conditions of Purchase shall in other respects remain unaffected. The Contracting Parties will use their good efforts to replace such invalid provision with a valid provision coming as close as possible economically to the originally intended purpose. In the event of no agreement being reached, the relevant statutory provisions will apply by way of supplement. The foregoing will apply *mutatis mutandis* to any loophole contained in these General Terms and Conditions of Purchase, or in the contract concluded with Contractor.

**Philip Morris Austria GmbH**

**Valid as from August 2015**