



PHILIP MORRIS GmbH, Am Haag 14, 82166 Gräfelfing

## General Purchasing Terms and Conditions

### 1. Validity

- 1.1 These general terms and conditions of business for purchasing apply to our business relationships with contractors, legal persons under public law and separate funds under public law in the meaning of § 310 Paragraph 1 of the BGB (German Civil Code).
- 1.2 Our general terms and conditions of business for purchasing apply to all present legal business relationship as well as to those that will come into existence in future with regard to the purchasing of goods, provided that nothing to the contrary has been agreed in writing in individual cases.
- 1.3 Deviating declarations and terms and conditions of business of the seller do not obligate us even if we do not contradict them or they do not expressly contradict our general terms and conditions of business; we are only obligated if such terms and conditions of the seller have been confirmed by us in writing. Acceptance of services and deliveries does not in any way or case imply agreement with other conditions of the seller.
- 1.4 Individual agreements made with the supplier in the particular case (including side agreements, supplements and amendments) take priority over these Terms. As regards the terms of such agreements, our written confirmation shall be authoritative. The supplier remains free to prove that deviating individual agreements were made with authorised representatives.

### 2. Orders and contract completion

- 2.1 Provided there is no agreement to the contrary, our orders have to be confirmed within 5 (five) days of receipt of the order by the supplier in writing, specifying the binding delivery period and the price. Obvious errors (e.g. typos and errors in calculation) and any incompleteness in the order, including the order documentation, shall be notified to us by the supplier prior to acceptance, for purposes of correction and/or completion. If there is an ongoing business relationship and if the supplier wishes to refuse an order, it must notify this immediately, but no later than within 5 (five) days, failing which the order will be considered to have been accepted. In other cases we reserve the right to withdraw orders if they are not confirmed in writing within the specified period.
- 2.2 We can demand changes in the object of the order in design and quantity even after the placement of the order, provided that special operational conditions make this necessary and the change is commercially customary. In this case, effects on delivery schedules and any additional or reduced costs shall be regulated in a reasonable manner and by mutual consent. However, price increases or delays in delivery schedules will only be recognized if such a price increase or delay in delivery schedule is really necessitated by the change and can be proven to be such, and if the supplier immediately informs us accordingly in writing immediately after the change in order.

### 3. Validity of German and European legal safety regulations, installation and operating instructions

- 3.1 Supplied technical equipment, in particular, machinery, computers and comparable equipment, must be in conformity, in all respects, with the applicable safety regulations of the European Community and the Federal Republic of Germany, in particular, with the Equipment and Product Safety Act (Geräte- und Produktsicherheitsgesetz), the relevant EC directives as well as all supplements, amendments and the national specifications in which they are implemented. We are entitled to demand from the supplier, at any time, proof that the goods are in conformity with the German and European safety regulations.
- 3.2 During manufacturing, delivery and installation, the supplier must take into consideration all rules applicable from time to time, in particular, EN and DIN standards as well as VDE and VDI Guidelines. The supplier undertakes, when asked for, to provide us with information as regards all the safety regulations and technical regulatory documents, in particular, EN and DIN standards as well as VDE and VDI Guidelines that are applicable to the manufacture, operation and installation of the object being supplied. To the extent that specifications, plans, drawings, process



- information, samples or design documents or data media and files, installation and operating instructions, operation manuals or similar explanations are necessary for the operation and maintenance of the object being supplied, the supplier undertakes to provide them in German. If not otherwise agreed, the labelling will be in German.
- 3.3 To the extent that an EC conformity declaration with CE designation, an EC manufacturer declaration (“EG Herstellererklärung”) or a certification is necessary for the manufacture or operation of the object being supplied, e.g. a type approval test (GS), the supplier undertakes to provide us with documentation on which this is based in German. This undertaking includes, insofar as applicable, the delivery of the “Exposure Analysis-Risk Assessment-Description of Protective Measures” document according to DIN EN ISO 14121-1 (“Safety of Machinery - Risk Assessment”). The delivery of combined plant components has to contain a guide book for the whole plant, the declaration of conformity for the whole plant (“EG-Gesamtkonformitätserklärung”) and the individual declarations of conformity (“EG-Einzelkonformitätsnachweise”).
- 3.4 The supplier undertakes to assist in harmonising the use of electrical, information and measurement instruments to the maximum extent possible, insofar as it will previously procure our agreement as regards the components and accessories to be supplied by it, e.g. computer operating systems, motors or switchgear and measuring instruments.
- 3.5 The supplier undertakes to follow all our relevant applicable standards for technical equipment and documentation that we make it aware of before placing an order.
- 3.6 Philip Morris GmbH hereby informs the supplier that Philip Morris GmbH, pursuant to Title 1, chapter 2, section 4 of the Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code an economic operator is and therefore meets the criteria’s set out in Section 3 - as an authorized economic operator according Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code. The supplier will support Philip Morris GmbH to this effect within its sphere of responsibility. In particular, the supplier warrants that all goods which the supplier produces, carries, supplies to and takes over from Philip Morris GmbH by order of Philip Morris GmbH will be produced, stored, treated, processed and loaded at safe facilities and at safe places of shipment and that it will issue proper transport documents for such goods. The supplier further warrants that it will protect such goods against unauthorised access during production, storage, treatment, processing, loading and transportation. The supplier also warrants that its staff who are concerned with the production, storage, treatment, processing, loading and transportation of goods of Philip Morris GmbH will regularly be subjected to safety examinations within the scope of what is legally admissible. The supplier shall be obligated to impose the obligations under this clause 3.6 also on subcontractors who are concerned with the production, storage, treatment, processing, loading and transportation of goods also for Philip Morris GmbH. Furthermore, Philip Morris GmbH expressly advises the supplier of its obligation under the regulations on terror lists.  
[http://www.zoll.de/SharedDocs/Downloads/DE/Vorschriften/Aussenwirtschaft-Bargeldverkehr/vo\\_eg\\_881\\_2002.pdf?\\_blob=publicationFile](http://www.zoll.de/SharedDocs/Downloads/DE/Vorschriften/Aussenwirtschaft-Bargeldverkehr/vo_eg_881_2002.pdf?_blob=publicationFile)  
[http://www.zoll.de/SharedDocs/Downloads/DE/Vorschriften/Aussenwirtschaft-Bargeldverkehr/vo\\_eg\\_2580\\_2001.pdf?\\_blob=publicationFile](http://www.zoll.de/SharedDocs/Downloads/DE/Vorschriften/Aussenwirtschaft-Bargeldverkehr/vo_eg_2580_2001.pdf?_blob=publicationFile)

#### **4. Prices and payment conditions**

- 4.1 The agreed prices are fixed prices; subsequent price increases will not be recognised. Price increases according to no. 2.2 remain unaffected.
- 4.2 The prices include the cost for the preparation for shipping, the packing costs and the shipping costs, unless there is an express agreement otherwise. The legally applicable value added tax should be added to the agreed prices, unless otherwise agreed. Turnover tax, freight, customs duties and other public taxes and levies are to be borne by the supplier, provided that legal regulations allow it. This also applies to taxes and other levies that might be levied after the order placement.
- 4.3 The legally applicable value added tax as well as all other taxes, levies, customs duties or charges, if applied, should be shown separately on all invoices.
- 4.4 The supplier will be responsible for collection and disposal of the packing materials. We reserve the right to return packing material in the event that the supplier fails to meet this obligation when



requested. We are entitled to reduce invoices of the supplier by the amount of costs that we might incur for the dispatch or collection or disposal of packing materials.

- 4.5 When purchasing a machine or a plant, the price, if no other express written agreement to the contrary has been made, includes the complete functionally ready machine or plant including all the necessary protective devices, but at least those which are necessary owing to the accident prevention regulations and other special safety regulations prevailing in the Federal Republic of Germany. If the plant has to be installed, the installation is also included in the price, unless otherwise expressly agreed. Parts that are not listed individually, but are necessary for the operation and functioning are included in the price. The same applies in case of installation for the correct installation instructions and the required incidental parts.
- 4.6 The payment-term is agreed in each individual Purchase Order. Payment is made according to the agreed payment-term, which starts either with the invoice received or with the goods received in case goods received is later than invoice received.

## **5. Assignment, subcontractors, right of retention, setoff**

- 5.1 Without our previous written consent, which may not be unreasonably refused, the supplier is not entitled to assign its claims against us or to have them collected by a third party.
- 5.2 The supplier is not entitled to transfer the fulfilment of its contractual responsibilities either wholly or partly, to a subcontractor without our previous, written consent. If we agree to the assignment of subcontracts, then, if so demanded by us, copies of the sub-contracts shall be submitted immediately after issuance by the supplier to our department that is responsible for the purchasing and specified on this order if and to the extent that this is required for examination of the production, the conditions of the order, the goods to be delivered and/or of any legal or governmental requirements. The liability of the supplier for the fulfilment of its contractual responsibilities by the sub-contractor remains unaffected thereby.
- 5.3 The supplier can exercise a setoff right or right of retention only on the basis of counterclaims which are non-appealable or uncontested.

## **6. Insolvency**

Should the supplier stop making payments or if insolvency is filed on its assets, then, if the delivery has not yet taken place, we are entitled to withdraw from the unfulfilled part of the contract and in case partial deliveries that have already been made are not of any use to us, to withdraw entirely from the contract. However, the prerequisite for this is that the supplier, despite our request for concurrent payment and delivery or for provision of security, has not done so within a reasonable grace period granted to it.

## **7. Delivery period**

- 7.1 The agreed delivery period shall be adhered to in a binding manner. It can be considered to have been adhered to if the shipment or the service is available on the agreed date at the agreed location. If the supplier foresees difficulties with regard to timely delivery, it must immediately inform us accordingly in writing, specifying the possible delivery date. In case of our agreement to this new delivery date, claims for damages owing to the delayed delivery will remain unaffected. Delivery delays according to no. 2.2 remain unaffected.
- 7.2 If there is a delay from the supplier, it is under an obligation to comply with our request for urgent shipment (express delivery, express courier, special handling parcel, airfreight etc.) at its cost.
- 7.3 In case of delays from the supplier's side, we are entitled, after a grace period of at least 2 (two) weeks has passed, to withdraw from the contract and to demand damages.
- 7.4 It is not necessary to grant a grace period if a fixed delivery date has been agreed, i.e. if we have stated in the concerned order that punctual delivery is of the essence for us, or if the supplier declares its inability to supply even within the grace period.
- 7.5 Neither of the contracting parties is responsible for non-fulfilment of its responsibilities in the contract if such non-fulfilment is owing to an event of force majeure such as war, natural disasters, fire, floods, explosions, earthquakes, unrest and official governmental measures. The supplier can effectively invoke an event of force majeure if it informs us about such event not later than 24 (twenty-four) hours before the agreed delivery date and specifically and individually proves such event in writing, by fax or email. If this information is not provided by the time specified in sentence 1 above, the supplier may invoke an event of force majeure only if such an event of force majeure



can be proved to have occurred within the 24-hour period and was responsible for the delay in delivery.

- 7.6 If the supplier is in default and has caused such default, we may demand – in addition to other claims available by law – liquidated compensation for our default damage equal to 0.5% of the net price per completed calendar week, however no more than a total of 5% of the net price of the goods delivered late. We shall be free to prove that we actually suffered higher damage. The supplier shall be free to prove that we actually did not suffer any damage at all or only substantially less damage.
- 7.7 If the supplier is in default in delivery, we will be entitled to enter into contracts of identical coverage if and to the extent that this is necessary to avert threatening consequential damage resulting from such default. Any additional costs thereby arising shall be borne by the supplier.
- 7.8 We are not obligated to accept any premature delivery of goods or service that takes place without our express previous consent.

## **8. Dispatch, delivery conditions, retention of ownership**

- 8.1 When the delivery takes place, on receipt of the goods at the point designated by us, the risk passes to us. The goods are to be supplied free at the point of receipt, unless expressly otherwise agreed. The supplier decides on the type of freight carriage, unless agreed otherwise, and also bears the costs involved thereby. However, the supplier will strive to use the method of shipment that is most favourable to us in terms of time and costs, and in cases of doubt, consult us to obtain our agreement.
- 8.2 Unless a fixed date is agreed (No. 7.4 above), the dispatch of every shipment shall be separately communicated to us in writing in advance in such a way that we have enough time to prepare for the acceptance, but at least 5 working days in advance; the invoice does not constitute notification of dispatch. If we inform the supplier before dispatch of the goods that we are not in a position to clear dispatch, the supplier undertakes to properly store the goods for up to three months and to dispatch the goods without delay only after we call for them, to the extent that it is reasonable for the supplier in each case. However, price increases will only be recognised if such a change to the delivery date really and verifiably causes additional costs for storage and if the supplier immediately informs us accordingly in writing immediately after the change in the order.
- 8.3 All communications relating to an order, especially those of notification of dispatch, the delivery notes and invoices, must contain the following: the order number, the dispatch call number, the method of shipment, quantity, designation of the goods, the gross and net weight and in case of partial shipments agreed with us, specify the quantity still outstanding.
- 8.4 a) The following applies to all suppliers with their head office in Germany:  
All the goods must be shipped with a delivery note and, if applicable, other accompanying goods notes.
- b) The following applies to all suppliers with their head office outside Germany:  
All the goods must be supplied with the necessary export and import documentation.
- 8.5 The supplier must ensure that the packing and marking of the goods is carried out in conformity with the specifications.
- 8.6 If the supplier has retained ownership rights over the supplied objects, such retention applies only until such time when payment for these objects takes place, if we have not already become owners of these objects owing to processing, compounding or mixing. We do not recognise current account and group provisos. Also excluded is the assignment to the supplier of our claims from the further sale of these objects by us in the framework of a so-called extended retention of ownership. We are not obliged to safeguard the rights of the supplier from retention of rights of any kind towards third parties.

## **9. Checking and inspection, data security**

- 9.1 The supplier is obliged to inform us of the status of the production when so requested by us.
- 9.2 We are entitled to examine the supplier at any time with regard to its prerequisites for order fulfilment and the progress of the production of the ordered goods. The supplier undertakes to support such checks, especially also by allowing visits to its business premises and production locations to such extent as this is necessary to examine the production, the conditions of the order, the goods to be delivered and/or any statutory or governmental requirements.



- 9.3 The supplier is obligated to keep its own accounting while complying with the customary accounting principles, in particular the GDPdU (Principles of Data Access and Verifiability of Digital Documents) and the GoBS (Principles of Regular Data Processing-Supported Record Keeping Systems). We are entitled to conduct operational audits and financial audits regarding the contractually agreed activities in the premises of the supplier if and to the extent that this is necessary to examine the production, the conditions of the order, the goods to be delivered and/or any statutory or governmental requirements. This shall also include, to the extent as required according to the above, the relevant business accounts and documents as well as related invoices. To the extent as required according to the above, the examination right also extends to the hardware and software employed by the supplier according to contract.
- 9.4 The supplier shall safely keep the data received from us according to the recognised state of information technology. If personal data are concerned, the supplier will particularly comply with the terms of the General Data Protection Regulation, the Federal Data Protection Act as well as any other data protection or data security laws applicable at a time.

## **10. Complaints, liability for defects, product liability**

- 10.1 Quality tests and quantity checks of the delivered goods at our goods-receiving department are basically carried out on a random sampling basis within 10 (ten) working days after delivery. Any defects thereby determined will be considered to be open defects and we have to notify them immediately; any defects not found are considered to be hidden defects unless they were easily recognisable. Even small deviations from our order will be considered to be defects. Confirmation of receipt of goods and payment of purchase price do not represent approval of the delivery.
- 10.2 Following agreement, the supplier will grant our representatives the facility to inspect goods at its works during normal working hours if and to the extent that this is necessary to examine the production, the conditions of the order, the goods to be delivered and/or any statutory or governmental requirements. We may reject the goods which are not in conformity with the conditions of the contract. When awarding sub-contracts, the supplier will impose the above obligation on the subcontractor to enable such inspections. These inspections do not affect the contractual obligations of the supplier. There is no implication thereby of approval of the goods before shipment.
- 10.3 The supplier will make available to us production plans and delivery plans for the goods insofar as we require such information for awarding or checking the execution of the order.
- 10.4 In cases of particular urgency and if the supplier does not deliver replacement or replenishment shipments within a reasonable time, we are entitled ourselves to carry out, in any manner we consider suitable, reworking or replacement shipments at the cost of the supplier.
- 10.5 In addition, the supplier warrants that its shipments and services conform to the accepted rules of technology as well as the safety specifications, labour protection regulations, accident prevention specifications and other regulations. If a court or government agency confirms to us or our customers with non-appealable effect that there is no such conformity, such a decision also applies to the supplier who is obliged to indemnify us from any third-party claims made against us as a result thereof, unless the supplier proves that it and its sub-contractors are not at fault.
- 10.6 Our claims based on defects will become time-barred two years after passing of the risk according to No. 8.1 above.
- 10.7 Furthermore, the supplier warrants that its products are free of defects in the meaning of the Product Liability Act. The supplier will fully indemnify us from all claims that are based on a shortcoming or defectiveness in the supplied product unless it proves that it is not at fault.
- 10.8 The supplier agrees to take out a customary public and product liability insurance with a coverage amount of Euro 5 million for bodily injury and property damage and Euro 5 million for pure financial loss, as well as coverage of Euro 100,000 for damage to work in progress, unless agreed otherwise. Additional damage claims that we are entitled to remain unaffected thereby.

## **11. Licenses**

- 11.1 Insofar as the supplier undertakes to supply software, the supplier must ensure that the necessary licenses for the use of the software are provided to us. Unless agreed otherwise, the license shall include the use of subsequent newer versions and for usage on any number of computers used internally by us (processor/peripherals).
- 11.2 Unless expressly otherwise agreed, software license fees are included in the price.



## **12. Intellectual property rights**

- 12.1 The supplier guarantees to us that no patents, utility models, trademarks, trade names, copyrights or other industrial property rights of third parties will be infringed owing to its deliveries and services in Germany or in a country to which, according to the knowledge of the supplier, delivery is to take place. If any claims are made against us by third parties on the basis of infringement of such rights, the supplier will fully indemnify us from all claims unless it proves that it is not at fault.
- 12.2 All specifications, plans, drawings, process information, samples or design documents or data media and files which we make available to the supplier in the context of the contract remain our property and all the information derived from it or communicated to the supplier in any other manner in the context of the contract is subject to the obligation of secrecy and may not be published or made available to third parties or used by the supplier for any other purpose other than the execution of the contract without our previous written consent. This also applies if the business is not executed or not executed completely or the contract is nullified prematurely. We can demand at any time that these objects which are our property be released, without the supplier being able exercise any right of retention.
- 12.3 Devices that are ordered by us and/or are manufactured owing to our involvement according to paragraph 2 in connection with the order placed by us, their parts as well as the documentation that is made available to the supplier according to paragraph 2 remain our property. The supplier undertakes to take the necessary measures to ensure that these objects cannot be copied by a third party. The supplier itself will also not copy the ordered items or have them copied.
- 12.4 If the contract includes design work, experimental work or research work, the supplier undertakes to communicate to us immediately the complete details with regard to all ideas, improvements, designs or inventions that are made and developed in the context of the execution of the contract.
- 12.5 Insofar as these results are not already our intellectual property, the supplier will transfer, on demand from us, all the transferable copyrights and other permissions for the publication, reproduction and utilisation of such ideas, improvements, designs and inventions. The supplier will take all actions and generate all the documents that are necessary for the registration and implementation of any industrial copyrights in our name.

## **13. Advertising**

The supplier is not authorised without our previous express written consent to use the business relationship existing with us for advertising purposes.

## **14. Obligation to secrecy**

- 14.1 The supplier will undertake for itself, its employees and other staff the responsibility to preserve confidentiality of all the processes, data and other facts from our business sector of which it becomes aware owing to or in the course of the cooperation with us, even after the period of the business relationship with us unless we expressly free it of such an obligation. In addition, the supplier undertakes to impose the same confidentiality obligation on its employees and other staff. The supplier must not, without our prior written approval, publish the information to be kept in confidence, pass it on to third parties or use it other than for execution of the contract. The confidentiality obligation shall not apply if and to the extent that the knowledge contained in the matters, data and other facts provided to the supplier were already generally known at the time of conclusion of the contract or become generally known during the term of the contractual relationship other than through a breach of the confidentiality obligation by the supplier or if any information contained in the documents provided must be disclosed by virtue of the order of a court or authority.
- 14.2 Upon request, Philip Morris GmbH is allowed to assign these Terms including contracted services to companies affiliated with Philip Morris GmbH.

## **15. Liability**

The liability of the supplier shall be according to the statutory regulations.

## **16. Place of performance, jurisdiction, applicable law**

- 16.1 The place of performance for both parties - unless stated otherwise in the order - is the seat of our purchasing department in Munich.



- 16.2 If the preconditions of § 38 ZPO (Code of Civil Procedure) or of Art. 17 EuGVVO (European Regulation on Jurisdiction, Recognition and Enforcement of Court Decisions) for an agreement on jurisdiction exist, the place of jurisdiction for all the disputes arising from the business relationship (even for actions arising out of a bill of exchange or a cheque) will be the Regional Court (Landgericht) in Munich. However, we can also sue the supplier at the place of jurisdiction of its domicile or company location.
- 16.3 All the legal relationships and legal actions in the relationship between us and the supplier are exclusively subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods is excluded.
- 16.4 If any provisions of these Terms are or become invalid, the validity of the other provisions of these Terms remains unaffected thereby. The parties will endeavour to replace the invalid term with a valid term which comes closest financially to what was originally intended by the parties. If no agreement is reached, the relevant statutory regulations shall apply in addition. This regulation applies correspondingly to any gaps in these Terms or the contract concluded with the supplier.

**Philip Morris GmbH**  
**Effective from June 2018**