

## **Terms and Conditions of Purchase of EXCELLA GmbH & Co. KG**

### **1. Applicability**

- 1.1. These Terms and Conditions of Purchase shall apply for all contracts of purchase and also other contracts concerning deliveries/performances, including all future business transactions, which are concluded by EXCELLA GmbH & Co. KG (for short: EXCELLA) in D-90537 Feucht with businesses or with legal entities established under public law provisions.
- 1.2. Unless agreed to the contrary in writing in individual contracts, exclusively the following Terms and Conditions shall apply for all deliveries and performances made to EXCELLA. Contradictory terms and conditions of the Supplier shall also remain inapplicable if EXCELLA, in any individual case, fails to object to the same expressly. Should EXCELLA accept deliveries or other performances without express objection, or should payments be made by EXCELLA without contradiction, no recognition of the standard terms and conditions of the Supplier may in any case be inferred therefrom.

### **2. Conclusion of contract**

- 2.1. Only orders which are issued in writing (letter, fax, e-mail) are valid. Oral and telephonic agreements and ancillary agreements require written confirmation.
- 2.2. Each order is to be confirmed by the Supplier in writing, stating the binding delivery date and the price and also our order number. Through the confirmation of the order, drawings and other documents attached to the order shall become an integral part of the contract. In the entire exchange of correspondence, in all invoices and in all transport documents, the order number together with the date and, where appropriate, the position number are to be quoted.

### **3. Prices**

- 3.1. If no price is contained in the order, this order shall remain non-binding until agreement has been reached as to the amount of the price, or the order shall only become binding if no objection to the price quoted in the confirmation of order is raised within 5 working days.
- 3.2. The confirmed prices shall be fixed prices.

### **4. Delivery date**

The agreed delivery period shall begin with the date of issue of the order. As soon as the Supplier recognises that it cannot carry out the order, either in whole or in part, within the period stipulated - irrespective of the causes for the delay – it shall notify this without delay in writing, specifying the reasons and the probable duration of the delay.. If the delivery period is not met, EXCELLA shall be entitled to the statutory rights. In particular, EXCELLA shall be entitled, following the fruitless expiration of a reasonable period, to cancel the contract. Further, EXCELLA shall have the right, following the fruitless expiration of the period of extension, to demand damages in place of performance unless the Supplier proves that it was not responsible for the delay. In each case, part deliveries already made shall not constitute independent performance.

### **5. Delivery**

- 5.1. The place of performance is the place of the registered office of EXCELLA GmbH & Co. KG, Nürnberger Straße 12, 90537 Feucht or an address to be specifically stated.
- 5.2. Unless any contrary agreement is made, risk shall pass to EXCELLA upon the acceptance of the goods at the place of performance.
- 5.3. In cases where carriage paid delivery has been agreed, the carriage is to be prepaid. EXCELLA shall not make advance payment for carriage.
- 5.4. EXCELLA is insured for damage or loss during transport, and declares itself to be a waiver customer within the meaning of the Allgemeine Deutsche Spediteurbedingungen [*Standard German Terms and Conditions of Carriage*] unless contrary terms and conditions of delivery have been agreed.
- 5.5. The Supplier shall be liable for ensuring that all deliveries which are subject to a duty to label the same are properly labelled in accordance with the applicable statutory provisions. The delivery note is to be attached to the consignment as an accompanying document if the delivery is made by carrier, parcel service or post. In the case of deliveries by rail, the delivery note is to be served on the date of the despatch.
- 5.6. The details on the transport documents are to be so chosen that a goods inwards inspection is possible; this shall include in particular the order number for the contract.
- 5.7. Invoices shall not serve as delivery notes.

## **6. Warranty**

- 6.1. EXCELLA shall be under an obligation to examine the object of delivery to the extent and in so far as this is possible having regard to proper business operations. Complaints are to be lodged in respect of obvious defects no later than two weeks following the examination, and concealed defects within two weeks following their discovery. In this respect, the Supplier waives its defence that a complaint has been lodged out of time.. In order to comply with the period for lodging complaints, the despatch of the complaint within the specified period is sufficient.
- 6.2. The statutory provisions governing material defects and flaws in title shall apply unless provided to the contrary below..
  - 6.2.1. These Terms and Conditions expressly apply to the performance and consumption figures quoted, and also extend to the parts procured by the Supplier from sub-suppliers.
  - 6.2.3. The Supplier shall be responsible for ensuring that the object of delivery or the delivery performance corresponds to the generally recognised rules of technology, the Act governing Protection against Hazardous Substances (Chemikaliengesetz – *Chemicals Act*), the applicable provisions and rules and regulations governing environment protection, the industrial protection provisions and the respective accident prevention provisions of the trade associations binding for EXCELLA.
  - 6.2.4. The warranty period shall amount to two years, and shall begin with the passing of risk in accordance with 5.2. The period of limitation for the claims of EXCELLA on account of defects shall be suspended for the period of time beginning with the despatch of the notice of complaint by EXCELLA and ending with the acceptance of the delivery/performance free from defects. For repaired parts or parts of the delivery/performance supplied by way of replacement, the period of limitation shall begin to run anew with the acceptance of the replacement delivery/replacement performance.
  - 6.2.5. Should the Supplier fail without delay following the lodging of a complaint to make subsequent performance or to commence with the remedying of the defects, EXCELLA may, in the case of special urgency, at the

expense of the Supplier, remedy the defects itself or instruct a third party to do so. EXCELLA shall be entitled to set off the costs necessary for remedying the defects or to assert a right to withhold payment, even where the claim and the debt do not arise from the same business transaction.

## **7. Packaging and transport**

The Supplier shall be obliged to use appropriate (where applicable, prescribed) packaging and to make adequate declarations. Unless otherwise agreed, the Supplier shall select the most cost-effective type of transport for the performance of the contract. Only environment-friendly and, as far as possible, recyclable packaging may be used.

## **8. Invoicing and payment**

- 8.1. Invoices are to be submitted as a single copy for each consignment, with precise specification of the order number as well as the position number of the individual item. Invoices are to be sent by post; they may not be enclosed with the consignments. Invoices which are not properly submitted shall only be deemed to have been received as from the point in time of correction.
- 8.2. Periods for payment shall run from the date of receipt of the invoice. Should the object ordered or the documents belonging to the order only be received after the invoice, the receipt of the object or documents shall set the period for payment running. Ancillary costs which are to be evidenced by measurement sheets, time sheets etc., will only be recognised following examination and clearance by EXCELLA. The Supplier may only assign the claim for the purchase price with the prior consent of EXCELLA, which may not be unreasonably refused.
- 8.3. In the case of curtailment, the purchase price may be withheld until agreement has been reached as to the curtailed purchase price.. Payments do not mean any recognition of the delivery/performance as being in conformity with the contract..  
In the case of cancellation, the goods received shall be returned following re-payment of any amounts already paid..  
EXCELLA shall be entitled to a right of withholding, even where there is no legal connection between the obligation and the claim.
- 8.4. In addition, EXCELLA reserves the right to set off its claims against claims of the Supplier.
- 8.5. Invoices shall be settled in accordance with the payment conditions agreed in the order.
- 8.6. The place of performance for payments made by EXCELLA GmbH shall be Feucht.

## **9. Claims of third parties**

- 9.1. The Supplier shall be liable for ensuring that no patents or other industrial property rights of third parties are infringed by the delivery, use or operation of the goods delivered or by the performances in the Federal Republic of Germany or in the countries to which EXCELLA sends the goods in accordance with the designated purpose.
- 9.2. The Supplier undertakes to indemnify EXCELLA upon first demand from all and any claims which may be raised by third parties on account of infringements of such industrial property rights. Further, the Supplier shall indemnify EXCELLA for all expenditure incurred in connection with the claim by third parties which EXCELLA may consider to be necessary..

**10. Contractual documents**

- 10.1. Subject to any other agreements laid down in writing, all drawings and documents, in particular such as are necessary for the installation, operation and maintenance or repair of the object of performance, shall be provided by the Supplier in good time, without specific request, free of charge.
- 10.2. All details, drawings, drafts, films, originals etc., which are provided to the Supplier in order to furnish an object of performance, may not be used, reproduced or made accessible to third parties for other purposes, and shall remain the property of EXCELLA. The same shall apply for drawings which the Supplier prepares in accordance with the specifications of EXCELLA.
- 10.3. The Supplier shall regard the order and the works related thereto as a business secret, and treat the same confidentially. It shall be liable for all damage which EXCELLA suffers as a result of any infringement of the ownership and industrial property rights. All documents made accessible to the Supplier shall be surrendered upon demand without delay, together with all copies and/or reproductions.

**11. Court venue**

The exclusive court venue for disputes arising under the contract with EXCELLA shall be Nuremberg. EXCELLA shall, however, be entitled to sue the Supplier at the respective place of performance or any other substantiated court venue.

**12. General**

- 12.1. Any legal ineffectiveness of individual provisions shall leave the validity of the remaining conditions unaffected.
- 12.2. Should application be made for the opening of insolvency proceedings in relation to the assets of the Supplier or such proceedings be opened, EXCELLA shall be entitled to cancel the contract.
- 12.3. Any disclosure of the business relationship existing with EXCELLA for advertising purposes shall only be permitted with its written consent..
- 12.4. The law of the Federal Republic of Germany shall apply subject to the exclusion of its rules of transfer to other jurisdictions under private international law and of the CISG (The United Nations Convention on Contracts for the International Sale of Goods)